

GUIDELINES FOR EFFECTIVE RESPONSE TO DOMESTIC ABUSE



**DOMESTIC VIOLENCE
COUNCIL**

Los Angeles County Protocol for the Response to Children Exposed to Domestic Violence

**An Inter-Agency Protocol in Compliance With
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MISSION STATEMENT

Children living in homes where one parent repeatedly exercises coercive control over the other face significant emotional trauma. The constant use of manipulation, favoritism, and threats by the abusive parent destabilizes family functioning and undermines healthy relationships. The trauma is worsened when children witness one parent hit, push, beat, humiliate, injure the other or threaten to do so.

Many children in such homes are also more likely to experience neglect, physical abuse and sexual abuse and suffer long-term psychological and behavioral problems. Early intervention with families experiencing domestic abuse can mitigate many of these negative effects. Successful early intervention requires a strong community commitment to collaboration among law enforcement, child protective services and support agencies.

Guidelines for Effective Response to Domestic Abuse (GERDA) outlines the best efforts for those professionals in Los Angeles County who respond to and work with families where there is domestic violence (also known as intimate partner violence - IPV). Implementation of this protocol will help establish that the immediate and long-term safety and emotional needs of the children and victim will be met. It will act to improve the overall public safety of domestic violence victims and their children throughout the county.

INTRODUCTION AND GOALS

Any protocol is only as good as the overall supervision and enforcement of its tenets. The protocol fundamental principles delineated in this document can only be achieved and maintained with earnest and consistent training and consciousness-raising for all stakeholders within Los Angeles County departments and private agencies.

GERDA is intended to be a dynamic training and reference manual that supplements the policy and practices of the each particular agency. The audience is primarily the first responders and domestic violence counselors and advocates, though it may also be of interest to other professionals and community members in Los Angeles County.

The GERDA protocol is meant to be a living document. It is anticipated that a multi-disciplinary committee provide oversight of the protocol to update any changes in law or practice and to act as ombudsmen for any complaints from service recipients or policy questions from any of the participating departments and agencies.

CORE VALUES

GERDA was based on ten core values, intended to serve as the foundation of the County protocol for first responders. Maintaining a commitment to these values is critical for the ongoing success of the protocol.

One document in particular helped shape the development of the GERDA protocol, "The Guidelines for Public Child Welfare Agencies Serving Children and Families Experiencing Domestic Violence," developed by the American Public Human Services Association, National Association of Public Child Welfare Administrators (2001). From this article and other literature reviewed from other states and California counties, protocol fundamental principles were identified and underlie the nine core values.

Collaboration/Partnering

The ability to work together formally or informally through ongoing communication and demonstrated mutual respect is the cornerstone of any effective collaborative response. It is only through collaboration that agencies establish consistency in their response to families.

Training/Cross-Training

Without a strong commitment to mandatory training and cross-training, the GERDA Protocol cannot be implemented successfully or sustained. Each participating agency should commit to participating in initial countywide GERDA training, developing an internal training curriculum, and providing periodic cross-training opportunities to other agencies.

Prevention

Healthy and safe families and communities is a primary goal for the County. To the extent possible, encouraging preventative interventions with families before violence occurs or escalates is a worthwhile goal. Each County department and community agency interfacing with individuals and families should invest in a strengths-based and empowerment philosophy that can be incorporated into their protocols when responding to families at risk of DV. Violence prevention efforts by County departments and community agencies, beyond the first responder protocols, should focus on the social and cultural determinants of mental and physical health and the multiple, connected forms of violence that impact the community and, therefore, each family and child.

Investigation/Initial Assessment

Each agency should create detailed step-by-step procedural guidelines, such as checklists, to maximize the effectiveness of investigations and assessments made by first responders. The guidelines should be grounded in a solid understanding of the dynamics of domestic violence, core elements of safety planning, and importance of interagency collaboration. All agency procedural guides should include a directive to involve a domestic violence advocate

whenever possible to provide victim support.

Accountability of Abuser/Support versus Blame of Adult Victim & Children

The overriding principle in effective response to domestic violence is to hold the abuser accountable and at the same time supporting the adult victim and children. Focusing on how the adult victim might have caused the abuse or failed to leave the relationship is counter-productive and can distract the responder from determining how the batterer's physical and emotional intimidation has limited the victim's options. The focus of the response and subsequent interventions should identify and restrain the batterer's violent and coercive actions.

Promote Safety

Informed practice of intervention is to view the adult victim and children as a unit that must be given utmost safety consideration through the entire response, investigation and intervention process. Securing the safety of the child is best achieved by securing the safety of the adult victim. Safety of the family unit (the victim and children) should be the focus of all work, and investigations should not re-victimize the victim. Effective safety plans must incorporate all relevant elements of the orders and plans for each responding agency.

Confidentiality

It is expected that the safe location of the adult victim (and children) is to remain absolutely confidential in all communication and documentation between agencies and within the various court systems. This confidentiality also includes any location where the adult victim and children receive support services or engage in daily routines. Any breach of confidentiality places the victim, children and domestic violence support staff at risk and must be taken seriously and new safety measures put into place.

Cultural Awareness & Recognition of Underserved Communities

While respecting and being sensitive to cultural differences, one should not minimize the seriousness of, nor condone, the use of violence. It is critical that professional responders have an understanding of how culture, religion, disability, sexual orientation, gender identification, or other social constraints impact the adult victim's choices and create possible barriers to accessing services. Both responders and service providers also should be aware of their own cultural and religious biases that can interfere in their ability to follow the protocol, complete an accurate assessment, or develop effective interventions. In addition, attention to the primary language spoken in the home is essential for a thorough and accurate investigation and assessment.

Children's / Victim's Rights

Children in families experiencing domestic violence are both victims and witnesses. The risks to their emotional and physical well being should not be minimized. Children should be seen

as individuals with their own set of needs and treated with respect and dignity. All professional responders should recognize that children have the right to remain children and not be expected to take on adult roles and responsibilities. Children have a right to protection. Children have the right to remain safe in the home with the non-abusive parent. These rights should also be extended to transitional age and non-minor dependent youths (between eighteen and twenty-one) as well as other dependent adults.

When a first responder must take a statement or interview a minor or other dependent adult for an investigation, it should be done separately and not in the presence of the parents, guardians, caregivers, or other children. Further, if an interview by a first responder is required, efforts should be made to have it conducted by someone who has received training in the interviewing of minors and/or dependent adults, and ideally in the principles of forensic interviewing. Such a standard should also be extended when possible to any other minors, dependent youths or adults who were not present at the scene but may have relevant information for the criminal investigation and/or child welfare assessment.

When subject to violent acts, the victim parent and children have the right to receive immediate medical trauma and mental health crisis counseling services and should be referred to those services. In addition, they also have the right to domestic violence supportive services immediately through expert domestic violence counselors' assessment and other assessment avenues.

Domestic Violence (DV) Advocate Representation in Decision-Making

The experience and knowledge of a DV advocate and preference of the adult victim should guide collaboration among agencies. Taking this guidance into account results in strengthening each agency and, ultimately, helps everyone do a better job and keeps the victim/children safer. This practice will help prevent multiple investigations of the same incident.

Many protocols throughout the U.S. have established that DV advocates and specially trained DV experts within other agencies need to be consulted at decision-making points every step of the way in the investigation or service provision to maintain appropriate safety of the victim and children. In Los Angeles County, first responders should make reasonable efforts to do the same.

PROTOCOL ORGANIZATION AND AGENCY ROLES

The following chapters of the GERDA Protocol will address the recommended approach for the County departments and community agencies most commonly involved in responding to domestic abuse. The goal is to set down the fundamental roles and responsibilities for each department and agency from a domestic violence perspective. It is not meant to be a comprehensive outline.

Chapter 1 offers recommendations for building a countywide infrastructure to manage

and support the implementation and maintenance of the GERDA protocol. It also lays out a number of best efforts that should be incorporated into the policies and practices of all departments and agencies working with families experiencing domestic abuse.

Chapter 2 on Criminal Justice applies to both the offices of District Attorney and City Attorney. In Chapter 3, the role of law enforcement is outlined. Although it is based primarily on the policies of the Los Angeles Sheriff's Department, the principles should be consistent with the many other city police departments countywide. Since the Department of Children and Family Services (DCFS) is the only child protection agency in Los Angeles County, the practices described in Chapter 4 would also apply countywide. Chapter 5 on Dependency Court was first developed by California Superior Court Judge Jacqueline H. Lewis for the Los Angeles County Juvenile Dependency Court and was subsequently used as the basis for the 2011 *Domestic Violence in Dependency Cases: A Judge's Guide* by the Judicial Council of California, Administrative Office of the Courts.

The chapter on the Community Services, Chapter 6, is a full overview of the roles and responsibilities of the many different agencies, professionals, task forces, and service providers that work with families experiencing domestic violence in Los Angeles County. The final chapter addresses the diversity of Los Angeles County with emphasis on only a handful of the many underserved communities that require a specialized approach in the response to DV

CHAPTER 1

RECOMMENDATIONS FOR PROTOCOL IMPLEMENTATION

In order to initiate the implementation of the GERDA protocol, two sets of recommendations are offered. The first concerns the establishment of a County infrastructure to establish successful maintenance of the GERDA protocol over time. The second underscores the protocol fundamentals reflecting the core values that should be incorporated into the protocols of all agencies.

SETTING UP A COUNTY INFRASTRUCTURE

ICAN/DVC Executive Committee

The Domestic Violence Council (DVC) and the Inter-Agency Council on Child Abuse and Neglect (ICAN) will need to establish an inter-agency GERDA Executive Committee that would be responsible for the ongoing management, training and periodic review of the protocol.

Troubleshooting

In addition, for optimal collaboration, an emergency troubleshooting process (preferably with 24-hour coverage) should be in place. Each department or agency should designate a specific person, office or division that has been fully trained in the GERDA protocol and has the authority to oversee the management of the protocol and address any problems around the clock. That way, if a responder or agent attempting to follow the County protocol encounters barriers, there is an established process and a person to call so that problems can be handled.

Training

Prior to implementation of GERDA, designated staff from all relevant agencies and County departments will successfully complete a GERDA Protocol training. This initial training will be in a train-the-trainer format. The graduates of this initial training will then train their own agency/department staff or volunteers. Ideally the GERDA train-the-trainer sessions will include a specific curriculum on a web-based or electronic format that will be made available to the designated trainees for use within their own department or agency so that subsequent GERDA Protocol training is consistent across agencies and County departments.

The GERDA training will incorporate a feedback mechanism to determine its effectiveness through evaluation and review. The goal of the countywide training will be to establish certain key protocol elements for each relevant department or agency. The elements would include:

- Initiation of a policy and culture shift regarding the response to domestic violence.
- Instituting a methodology for regular basic domestic violence training.
- Establishment of a curriculum committee to look at current practices.
- Utilization of a plan for subsequent training for newly hired staff.
- Implementation of a plan to cross-train all stakeholders that interface with the individual department or agency.

After the GERDA train-the-trainer sessions, each agency should develop an internal GERDA protocol training in conjunction with a DV advocate (who has successfully completed the "Train-the-Trainers") or have a domestic violence advocate conduct the training. The goal would be for each department or agency to develop a training curriculum that would provide a general awareness about domestic violence dynamics, the roles of various agencies/parties, and advanced trainings to deepen understanding of the dynamics and safety concerns of domestic violence focusing on the specific strategies to be used with clients. Critical topics for all professional staff should include:

- Elements of safety planning.
- Interactive approaches that address interviewing techniques, non-blaming language and appropriate resource referrals.
- Methods to distinguish the difference between high-conflict relationships that may have some form of physical expression and the abusive relationships where the coercive control differential perpetrated by a batterer threatens the well-being of the victim parent and children.

Agency Protocols

Each agency's response procedures should establish that:

- At every decision point in DV cases, there is reference to the GERDA Protocol criteria.
- Core safety guidelines are clearly delineated for all parties.
- Fail-safe checks and balances are in place.
- A checklist is included as a guide for thorough investigations.
- An overview of DV dynamics is included.
- Relevant staffs are trained in interviewing of children and its impact on their emotions, and whenever possible in the principles of forensic interviewing.

PROTOCOL FUNDAMENTALS

Safety

All departments and agencies working with families experiencing domestic violence have the responsibility to take steps to maintain the safety of the non-abusive parent and children through the development of a comprehensive safety plan, or compliance with an existing plan.

All investigative parties have an obligation to become knowledgeable about all existing court orders such as Restraining Orders, Stay Away Orders, Arrest Warrants, Visitation Orders, etc. It

is important that the orders of all courts be consistent with one another and work to establish the highest level of safety for the victim and children.

It is important to remember that minor and/or egregious violations of any court orders are the batterer's way to continue victimizing the partner and to make the children pawns in this victimization.

It is imperative that violations of existing court orders be taken seriously and are addressed in the strongest manner possible.

Visitation with parents who are batterers should be monitored at all times. Visitation centers should be used whenever possible. Use of visitation centers maximizes the safety of the children and non-offending parents and serves as a parenting training resource for batterers.

Cross-reporting needs to be based on concern for the victim and children and its purpose is to provide support in order to empower the victim to make appropriate decisions.

Confidentiality

Confidentiality is important for all aspects of the safety plan and internal and external agency communication.

Firstly, domestic violence support agencies are required by law to maintain the confidentiality of their shelters. If an adult victim is staying in a domestic violence shelter, the name of that shelter must not be recorded on court documents, provided to the opposing party or that party's attorney or the child's attorney; the name of that shelter must not be verbalized in court or placed into a court record. Domestic violence counselors from that shelter who accompany the party to court must not be identified by name in open court or in court records. Advocates must not be forced to state their affiliation for the court record. Violations of any of these restrictions will result in a breach of confidentiality placing the victim, children, and domestic violence support staff at risk and require the immediate transfer of the victim and children to a different undisclosed location.

It is important to note that the strong confidentiality requirements of shelters are not designed to impede the ongoing work of other agencies such as law enforcement and child protective services but to promote safety. Victims have an absolute legal right to their confidentiality and safety. This cannot be eroded through pressure from the criminal, civil or juvenile court systems.

Even if the victim and children are not in a shelter, maintaining strict confidential locations is crucial in order to protect the family as well as those providing the family with services.

In terms of communication about the family among departments and agencies, confidentiality limitations need to be recognized. The victim must approve of any communication that takes place. Victims need to be informed how best to communicate with other agencies and how to waive confidentiality if they so choose. The guiding principle should be the safety of the victim and the children. That is, if one of the stakeholder agencies learns of information that impacts

the safety and well-being of the victim and children, they should be required to share that information with the victim, inform the victim of any legal mandate to cross-report, and provide referrals to appropriate advocacy agencies.

Investigations and Assessment

First responders should refrain from using language that threatens the victims that their child(ren) will be taken away unless they cooperate with the prosecutor, the investigating detective, the first responding patrol officer or the DCFS worker.

Moreover, forms and written reports in each agency should use language that embraces the tenets of the GERDA protocol. The professional responsible for the report should use language that conveys that the abuser is accountable and reflects accurately the imbalance of power or coercive control elements found in the family experiencing the violence.

Beyond investigation of physical violence toward his or her partner, the batterer also must be assessed thoroughly as a parent, based on past behavior and the immediate risks to the physical and emotional safety of the adult victim and children. Controlling, coercive and harassing behaviors, as well as sexual, emotional, verbal, and financial abuse should be assessed as thoroughly as any physical violence or threat.

Cultural and Diversity Awareness

There needs to be an awareness of cultural, ethnic, and social nuances. Each department and agency should identify for its staff ways to find an impartial consultant for a particular culture, religion or special needs population for any given incident. Each agency also should make every effort to have the capacity to provide staff or independent interpreters for families whose primary language is not English.

Similarly, all departments and agencies should have guidelines to assist in the appropriate response to families where one or more of the members have a special needs and/or disability. Finally, these guidelines should underscore an acceptance of alternate family structures, sexual orientation and gender identification.

Rights of Children

Unless there is life-threatening danger, the children must not be placed in an adult role: that is, children should not translate, be given information intended for the adult victim, or have primary responsibility for the safety of the family.

The children and non-abusive parent should not be disenfranchised. Their rights come before the rights of the batterer. For example, in making the decision of who should leave the home, efforts should be made to have the batterer leave and not the children or victim provided that an effective safety plan is in place.

Despite legal limitations, the children's right to seek and be given appropriate domestic violence

support services (including psychological counseling) should supersede both the parameters of custody orders and a parent's refusal to authorize consent for treatment. Children who may be required to, or wish to, testify should receive maximum services to see them through this process.

Interviewing Children

The best interviewers of children are those professional responders or DV advocates who have training in domestic violence and child abuse. It is not necessary for interviewers of children to be licensed mental health professionals. The GERDA fundamental principles, however, would expect agencies performing the interviews would to the best of their ability use interviewers who have received training in the interviewing of children and are knowledgeable of the potential traumatic impact of such interviews. Ideally the interviewers would be trained in the principles of forensic interviewing of children and dependent adults. All parties should be aware that their professional contact with the child could automatically be construed as having an agenda. Interviewing children should be free of any agenda or preconceptions. Children must not be coerced, and their interests should be placed above those of any other party. Also, it is important to remember:

- Children have the right to be listened to and given the opportunity to express their opinion about visitation, testifying, placement, and other decisions affecting their lives.
- The focus should remain the best interest of the child.
- All possible actions should be taken to make children feel safe and be protected from coercion, threat and violence.
- The number of times the child is interviewed should be limited and agencies should attempt to work together and at multidisciplinary centers whenever possible.
- If a child makes a decision that places herself or himself at emotional or physical risk, advocates may assist the child in understanding safety plans.

Out-of-Home Placement

California law currently requires that if a child needs to be placed outside the home of a parent, relatives are given first consideration. However, parties responsible for finding placements need to recognize that placement in the home of the batterer's family may put the children at risk of the relative's emotional undermining of the victim parent and continued denial of the batterer's accountability. Also, in cases of homicide and murder-suicide, placement with the murderer's family should be considered as inappropriate, especially if relatives of the deceased victim are interested, even if not quickly geographically available.

Abduction or Concealment of Children

The issue of child abduction or concealment can appear in one of two ways: 1) when a victim parent escapes from the batterer with the children to an undisclosed safe location or 2) when the batterer takes the children to intimidate and coerce the victim. Legally one parent cannot conceal a child from the other. The parent from whom the child was taken has the right to have the child returned. However, Penal Code 278.7 provides an exception for victims of domestic violence in the first scenario as long as they notify the Office of the District Attorney Child Abduction Unit

of their location within 10 days and begin a custody proceeding within 30 days to arrange visitation. All agency responders should be aware of this exception and inform victim parents of the requirement and/or link them to a domestic violence advocate who can assist.

For the second scenario, this act should be considered child abuse and a child abuse report needs to be made. Local law enforcement needs to respond to reports of such abductions in an immediate fashion and not obfuscate the process. This use of children to coerce or intimidate the victim is an abuse of the child's rights. Also in such cases, the County has the multiagency ICAN Child Abduction Task Force that provides assistance to agencies dealing with child abduction recoveries to maintain the physical and emotional safety of the child. The team is comprised of representatives of the Offices of the District Attorney, DCFS, Sheriff's Department, Los Angeles Police Department, FBI, County Counsel and community mental health agencies and child advocates.

PROMISING FUTURE PROGRAMS

Improving the response to domestic violence victims and their children in Los Angeles County will require a commitment to pursue new programs and practices beyond this current protocol. A partial wish list includes:

- An aggressive pursuit of funding by Los Angeles County at large to facilitate the implementation of the Protocol.
- An aggressive pursuit of legislation by Los Angeles County that will facilitate the implementation of the GERDA Protocol goals. For example:
 - As Welfare and Institutions Code (WIC) §308 allows foster placement information to remain confidential; it should be amended so that all DV shelter information also remain confidential within court records. Further, all information, no matter how seemingly insignificant, should remain confidential in all court and public records.
 - In cases of DV homicides, the children should be placed with disinterested parties (not relatives or family friends) pending extensive psychosocial evaluation and assessment, enrolled immediately into trauma-specific counseling, and participate in the forensic interviews. Ultimately, any final placement decision must be deemed acceptable in light of current psychosocial and safety assessments—the placement could be with the non-offending parent, suitable relatives or foster care.
- Development of visitation centers where visits could take place under the guidance of trained child-development and DV specialists.
- Development of short-term foster home placements with specially trained caregivers where the children of DV homicide victims could be temporarily placed (i.e., an intensive 72-hour hold) and where psychosocial and medical assessments could take place, trauma therapy could be started, and forensic interviews and photos could be completed.

CHAPTER 2

CRIMINAL JUSTICE SYSTEM

POLICIES AND PROCEDURES FOR PROSECUTORS IN RESPONSE TO CHILDREN AND FAMILIES IN HOMES WITH DOMESTIC ABUSE

Public safety requires recognition that there is a public duty mandating a firm commitment to ending the cycle of violence perpetrated in a family setting. The cycle often begins when children are exposed to violence in their homes either by witnessing a parent being abused and/or by being abused themselves. These children carry both emotional and physical scars into adulthood. The cyclical legacy of violence continues because children raised in a violent environment are more prone to act out violently upon themselves, other family members, and the public throughout their lives.

Violence upon a person, whether perpetrated by a complete stranger, an acquaintance, or a loved one, is criminal conduct and should be treated as such. It is a violation of the law of the State of California when an individual perpetrates acts of violence against his or her child, partner, sibling, parent or other individual within the family circle. It is much more than a family matter. Public safety in the streets loses much of its moral impact if personal safety in the home is not enforced.

There are several pivotal provisions for our response to children and families in homes with domestic abuse:

- The purpose of this policy is to hold abusers accountable for their actions and protect adult victims, child victims, and witnesses of all ages from further harm.
- Where resources permit, best efforts should be made so that domestic abuse cases and child physical abuse cases are vertically prosecuted by prosecutors who have received specialized training in prosecuting such cases and who handle the case from start to finish.
- Serious and repeat offenders who cause serious injury and/or have prior convictions for IPV or related crimes should be targeted for felony prosecution if they meet specified criteria listed later in this document.
- Responsibility for decisions regarding the prosecution of a case rests with the prosecutorial office that has jurisdiction over the matter. Prosecutors are committed to policies promoting the vigorous pursuit of a just outcome in domestic abuse cases. The focal point for prosecutors is whether there is legally sufficient evidence to support a conviction. This can result in decisions to proceed with the prosecution of a case with or without victim cooperation.
- In the prosecution of a domestic abuse case, regardless of whether a case is filed or a conviction obtained, consideration for the safety and support of the victim or victims is crucial.
- Identifying long-term survivors of domestic abuse who come into contact with prosecution agencies, including survivors who may currently have criminal charges

pending against them (in other words, a victim in one case is a defendant in another) is important. A broad range of crimes may arise from IPV and may include situations in which a long-term victim of domestic abuse may employ survival strategies that result in transgressions of the law (such as cases in which a long-term victim of domestic abuse may be forced by an abusive partner to participate in criminal activity). Awareness of the far-ranging impact of a history of domestic abuse should be considered in seeking a just disposition of all relevant cases.

STATUTORY DEFINITIONS OF DOMESTIC VIOLENCE AND INTIMATE PARTNER VIOLENCE

Statutory laws defining domestic abuse appear in many different California codes including the Penal Code, Evidence Code, Welfare and Institutions Code, Code of Civil Procedure, and the Family Code. There can be significant variance in the definition of what conduct or relationship qualifies an incident as one involving intimate partner violence depending on the context. Care should be taken to review the applicable statutory authority in order to have a case properly identified as coming within the meaning of the laws governing domestic abuse cases so that statutory mandates are followed and essential services are offered to the victims of such acts.

Penal Code (PC)

Domestic violence is defined in the Penal Code (PC) as abuse committed against an adult or a minor, who is a spouse, former spouse, cohabitant, former cohabitant, or a person with whom the suspect has had a child, or is having or has had a dating or engagement relationship [PC §13700(b)].

Abuse, in the intimate partner violence context, means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent bodily injury to himself or herself, or another [PC §13700(b)].

The following definitions are used in the Penal Code:

Traumatic condition is defined as a condition of the body, such as a wound or external or internal injury, including but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force [§273.5(d) PC].

Domestic abuse in gay, lesbian, bisexual, transsexual, and transgender relationships is covered by this protocol and the statutory language that defines domestic abuse [PC §13700(b)].

Family Code (FC)

Domestic Violence is described in FC §6211 as abuse perpetrated against any of the following persons:

- A spouse or former spouse
- A cohabitant or former cohabitant
- A person with whom the respondent is having or has had a dating or engagement relationship

- A person with whom the respondent has had a child
- A child of a party or a child who is the subject of an action under the Uniform Parentage Act
- Any other person related by consanguinity or affinity within the second degree

Abuse is defined in the Family Code as intentionally or recklessly causing or attempting to cause bodily injury, sexual assault, placing a person in reasonable apprehension of imminent serious bodily injury or engaging in any behavior that has been or could be enjoined pursuant to FC §6320. [FC §6203]

Pursuant to FC §6320, the court is authorized to issue an *ex parte* order—an order is issued when only one party to the dispute is present in court—enjoining a party from molesting, attacking, striking, threatening, sexually assaulting, battering, credibly impersonating another person on an Internet web site or other electronic means, harassing, telephoning, destroying personal property, contacting directly or indirectly another party, or contacting a named family or household member.

Under California law, certain Orders obtained in family court can be enforced in criminal court. In other words, violation of certain family law orders is a crime. For example, a victim of IPV may go to family court to get a Protective Order issued under the Domestic Violence Protection Act. A violation of that Domestic Violence Protection Order is a violation of Penal Code Section 273.6 and can therefore be prosecuted in criminal court. In serious cases, where there are repeated violations and or violations of a Protective Order that causes injury, violators can be sentenced to jail.

DOMESTIC ABUSE FILING GUIDELINES

The Standard: Legally Sufficient Evidence of Each Element of the Crime Charged With or Without Victim Cooperation

Frequently, after reporting abuse, a victim will tell the police and/or prosecutor that he or she does not want to prosecute and wishes to drop the charges. The filing decision should not rest solely upon whether or not a victim is cooperative. Consideration should be given to proceeding with prosecution regardless of the wishes of the victim whenever there is legally sufficient evidence to support a conviction.

California Courts have analyzed and applied the decisions of the United States Supreme Court in *Crawford v Washington* (2004) 541 U.S. 36 and *Davis v. Washington* (2006) 542 U.S. 813. These cases made hearsay evidence (out of court statements offered to prove the truth of the matter) that was previously admissible (e.g., certain statements made to police) inadmissible except under certain circumstances. Therefore, cases which used to be proven without a victim's actual presence in court can no longer be proven without that victim's testimony. Accordingly, success at trial often requires a victim to come to court to testify. A more in-depth analysis of the possible impact of *Crawford* appears later in this document. However, it is important, for all reasonable efforts to be made to assist the victim in feeling comfortable with testifying truthfully regarding the crime and in ensuring that the victim's testimony is placed on the record at the earliest possible time.

Consideration should also be given to the safety and support of the victim that will be necessary to responsibly prosecute the case. Examples of services and information that may assist a victim in deciding to testify include:

- Referrals to domestic abuse service providers
- Referrals to domestic abuse shelters
- Criminal court protective orders, including emergency protective orders
- Providing financial assistance for authorized items through victim-witness assistance
- Assistance with travel, bus tokens, taxi fare, vouchers, etc.
- An explanation of the criminal justice process
- Referrals for transitional housing
- Referrals for counseling services
- Referrals to an immigration specialist
- Referrals to a family law specialist
- Notification of the right to presence of an advocate and support person at a law enforcement interview [PC §679.05]
- Referral to a victim service representative (victim–witness assistance) for assistance, even in a case that is declined for filing

For further information, refer to the Victim Service Representative section below.

In reviewing a domestic abuse case, the filing deputy should look for independent evidence to support the charges and/or corroborate statements initially provided to the police by the victim and any other witnesses including, but not limited to:

- Locating and interviewing other witnesses to the crime including conducting expedited forensic interviews of child witnesses.
- Obtaining medical reports, including a copy of any written reporting form completed by the health care provider, documenting traumatic injury via a *subpoena duces tecum* (SDT) after a case filing or via a search warrant prior to filing the case. The Health Insurance Portability and Accountability Act (HIPAA) of 1996 permits covered entities to disclose otherwise protected health information to law enforcement and prosecutors without authorization or notification when required by state mandatory reporting laws (45 Code of Federal Regulations 164.512(f)(1)(I). Prosecutors are included in the definition of law enforcement under both state and federal law (45 Code of Federal Regulations 164.501; California Penal Code Section 1545(b).
- Obtaining evidence of the defendant’s identity including physical characteristics and identification by the victim or other witness.
- Issuing an SDT for the 911 tape with spontaneous statements from the victim or other reporting party at the time of filing [Evidence Code §1240].
- Locating, interviewing and subpoenaing other witnesses who may have seen the victim’s injuries.
- Preparing for the possibility that it might be necessary to impeach the victim by utilizing prior statements [EC§1235].

- Recognizing that the victim’s hearsay statement to medical personnel of the threat to injure or the cause of the injury may survive *Crawford* (i.e., legal challenges) and may be admitted in lieu of the actual testimony of the victim [EC§1370].
- Knowing that under certain circumstances, hearsay statements of the victim may be admissible if the victim’s absence at trial is a result of threats or intimidation by the defendant and/or agents of the defendant seeking to prevent the victim from testifying and knowing the importance of investigating any threats or other actions taken by the defendant or agents of the defendant made against the victim and/or the victim’s family both prior to and after the incident that is currently being prosecuted, including calls made from jail.
- Insuring that police at the scene of an offense conduct a thorough search for physical evidence and documentation of the recovery of any weapons, broken furniture, torn clothes, photos, damage to telephones, and records of medical treatment, etc.
- Documenting both external and internal injuries and symptoms in any case in which a victim states that she was “choked” or strangled, including, but not limited to bruising, any loss of consciousness, petechiae, difficulty breathing, coughing and hoarseness. [In cases where no report of strangulation is made, victims who have any of the above symptoms should be specifically asked whether any strangulation occurred and if any instruments were used. In either event, victims should be offered medical attention and informed that discomfort and injury, including serious injury, from strangulation may not surface for a number of hours and that medical treatment for all subsequent discomfort (including shortness of breath, hoarseness, or confusion) should be sought immediately and that all such injuries and treatment should be documented.]
- Locating other witnesses, written documentation such as other crime reports and restraining orders, and physical evidence that may establish a pattern of conduct qualifying as modus operandi, adding them to the subpoena list and documenting their statements documented in writing [EC §§ 1109, 1101, and 1108].
- Analyzing the statement from the defendant, even if a denial, as it often provides valuable evidence to corroborate the victim’s initial statement to the police.
- Looking for evidence of motive, with emphasis on obtaining documentation of reported and/or witnessed threats.

When possible, case preparation should include an interview by the assigned prosecutor, in person, with all first responders (law enforcement, Emergency Medical Technicians, paramedics, DCFS social workers), detectives, or other assigned case managers from any involved agency.

Filing Criteria for Perpetrators of Domestic Abuse

Standards for filing may vary between agencies. Each prosecutor should be familiar with the standards established by their agency. The following comments reflect the filing criteria established by the Family Violence Division of the Los Angeles County District Attorney’s Office. They are offered as an example of standards that are considered victim sensitive but remain committed to a standard of prosecutorial ethics consistent with the primary mission of a

prosecutorial agency to represent the People of the State of California in a criminal action in a just, proportionate and ethical manner.

Felony Filing Considerations

Felony charges shall be filed, if one or more of the following criteria are present:

- The offender personally used a gun or other dangerous or deadly weapon.
- The offender inflicted serious bodily injury.
- The offender has a misdemeanor history of two or more convictions in cases where domestic abuse or other crimes involving assault are alleged.
- The offender has one felony conviction in a case alleging domestic abuse or another crime that involved allegations of assault.
- The offender has a prior strike.

Felony charges may be filed in the following circumstances:

- The offender has been previously convicted of a violation of **one** the following misdemeanors:

PC §273.5, Spousal Abuse
PC §245, Assault with a Deadly Weapon
PC §422, Criminal Threats
PC §417, Exhibiting a Deadly Weapon
PC §136, Witness Intimidation
PC §273a, Child Endangerment
PC §273d, Corporal Injury to a Child
PC §262, Spousal Rape

- The offender has another case pending with charges as listed above.

Misdemeanor Filing Considerations

Like felonies, misdemeanor filings are dependent upon the existence of sufficient admissible evidence to support a conviction.

PC §273.5(a), Spousal Abuse, is an alternative felony/misdemeanor (known as a “wobbler”) which requires corporal injury resulting in a traumatic condition. When there is evidence to support proof of a traumatic injury, this is the preferred charge for filing rather than PC §242/243(e)(1), Battery. Spousal Abuse [PC §273.5] is not subject to diversion.

Misdemeanor PC §273.5 charges are filed when the facts of the case indicate:

- The statutory criteria for a traumatic condition are met;
- The relationship between the victim and offender is one or more of the following:
 - Spouse or former spouse;

- Cohabitant or former cohabitant;
- Fiancé or fiancée or someone with whom the offender has or had a dating relationship;
- Or, the victim is the mother or father of the offender’s child; and,
- The felony criteria based upon prior criminal history for a felony filing are absent.

Battery charges, pursuant to PC §243(e)(1) may be filed if there is evidence of a willful and unlawful use of force against the victim but the victim suffered no injuries constituting a traumatic condition.

It is important to recognize that the prosecution of domestic violence misdemeanors is an important tool in breaking the cycle of violence. The majority of domestic violence crimes throughout the country are prosecuted as misdemeanors. Misdemeanor incidents are often the first time that a victim of domestic violence formally interacts with the “system.” A domestic violence victim’s experience in the course of interacting with police and prosecutors may impact her or his willingness to access services in the future and thus, may have a significant impact on the future safety of victims and their families. Accordingly, all of the information provided relative to the treatment of domestic violence victims and the collection of evidence in domestic violence offenses set forth previously in this document regarding felony prosecutions are applicable to misdemeanor prosecutions as well.

Filing Criteria for a Domestic Abuse Survivor Now Charged as a Defendant

In reviewing a case submitted for filing in incidents in which the suspect has a reported history of having been a victim of domestic abuse, the following issues should also be considered:

- Evidence that the suspect is presently in an abusive relationship.
- Evidence that the suspect’s intimate partner batterer is involved in the criminal activity alleged.
- Evidence that the suspect’s intimate partner has prior convictions of spousal abuse perpetrated against the suspect.
- Evidence that the suspect’s partner has a substantial record of violent crime.
- Evidence of a history of threats against the suspect, the suspect’s children or other family members prior to alleged criminal activity.
- Evidence of a prior history of domestic abuse can be considered as potential mitigation for the suspect’s involvement in the alleged criminal activity as to the level of the charge filed and any potential sentence for the offense.
- Evidence that the suspect was not the dominant aggressor in the incident under investigation.

Referral to the City Attorney Pursuant to PC §17(b)(4)

Referrals to the local city attorney or city prosecutor by the district attorney are appropriate when the facts of a domestic abuse case do not meet the criteria stated in this policy for a felony filing. Occasionally a city attorney/prosecutor or police officer will have questions about a referral made pursuant to PC §17(b)(4). In these instances, it is recommended that the city attorney/prosecutor

or police officer contact the Head Deputy or Deputy-in-Charge of the relevant office to review the referral.

Referral for Office Hearing

In the District Attorney's Office, an office hearing is not an alternative to criminal prosecution in cases involving domestic abuse, including violations of protective orders charged under PC §§273.6, 166 136.1, 29825(a) or 646.9(b). Cases involving domestic abuse are not referred for office hearings even when prosecution is declined. Hearing Officers employed by the District Attorney's Office do not have the training and experience necessary to conduct an office hearing for an incident involving domestic violence in a safe and effective manner. Cases that are declined within the jurisdiction of the City of Los Angeles are generally referred to the City Attorney's Office for Los Angeles (LACA). In addition to filing misdemeanor offenses, the LACA has a City Attorney Hearing Program.

The goal of the Hearing Program is to increase the safety and security of victims of family violence and their children by providing an effective alternative to prosecution of misdemeanor offenses in criminal court. Hearings are set in minor, first offense cases. Hearings are not appropriate for repeat offenders, cases involving serious injury or cases in which either party has a history of violent conduct or mental illness. Hearing officers employed by the LACA in this capacity have had training in how to conduct such hearings in a manner that maintains the safety of the victim of abuse and effectively intervenes in the cycle of violence perpetrated by the abuser.

ADDITIONAL PROSECUTION GUIDELINES FOR DOMESTIC ABUSE CASES

As indicated when discussing filing decisions above, each prosecutorial agency establishes the guidelines to be used by their deputies. The following are the guidelines established for the District Attorney's Family Violence Division:

- When spousal rape is alleged, a pre-filing interview between the victim, investigating officer, and the assigned deputy should be conducted. These interviews should be audio or video-taped, when possible.
- An interview before the preliminary hearing should be conducted whenever a pre-filing interview was not conducted. Hearsay testimony of the victim at a preliminary hearing pursuant to Proposition 115 [PC §872] is discouraged absent criteria present under EC §1370 that survived *Crawford* or other unusual circumstances. If it appears that the case will be tried without the presence of the victim, immediately begin to document due diligence efforts to locate the victim and give the required notice to the defense.
- All reasonable efforts shall be made to resist the pretrial release of a charged defendant [PC §273.84(a)].
- Before any person who is arrested for PC §§136.1, 262, 273.5, 422 or 646.9 PC may be released on bail in an amount that is less than the amount contained in the bail schedule, a hearing shall be held in open court [PC §1270.1(a)].
- Further, when responding to any bail or own recognizance motion, the prosecutor should request that two court-day written notice be provided in compliance with PC §1270.1 so that adequate preparation can occur.

COMMON CHARGES AND ALLEGATIONS IN DOMESTIC ABUSE CASES

Many of these offenses listed below may be charged as felonies or misdemeanors depending on the circumstances of the specific case and consideration of the factors outlined above.

PC §136.1 - Intimidating or Dissuading a Witness
PC §166 - Violation of a Court Order
PC §187 - Murder
PC §207 - Kidnapping
PC §236/237 - False Imprisonment
PC §243(e) - Battery- listed relationship
PC §245(a)(1) - Assault with a Deadly Weapon
PC §245(a)(2) - Assault with a Firearm
PC §245(a)(4) - Assault with force likely to Produce Great Bodily Injury
PC §246 - Shooting at an Inhabited Dwelling
PC §246.3 - Negligent Discharge of a Firearm
PC §261.5 - Unlawful Sexual Intercourse
PC §262 - Spousal Rape
PC §273(a) - Child Endangerment
PC §273.5 - Spousal/Cohabitant Abuse
PC §273.6 - Violation of a Protective Order
PC §417 - Brandishing a Weapon
PC §418 - Forcible Entry into the Home of Another
PC §422 - Criminal Threats
PC §451 - Arson
PC §459 - Residential Burglary
PC §502 - Computer Related Crimes
PC §528.5 - Credible Impersonation of Another on Internet or Other Electronic Means
PC §530.5 - Unauthorized use of personal identifying information; mail theft
PC §591 - Malicious Destruction of a Telephone Line
PC §591.5 - Removal, destruction, or obstruction of use of wireless communication device with intent to preclude summons for assistance or notification of law enforcement
PC §596 - Poisoning Animals of Another
PC §597(a) - Intentional Killing or Abuse of Animals
PC §594 - Vandalism
PC §602.5 - Aggravated Trespass
PC §603 - Forcible Entry into Residence with Property Damage
PC §631 - Eavesdropping
PC §646.9 - Stalking
PC §653m(c) - Annoying Calls or Electronic Communications
PC §25400 - Possession of a Concealed Firearm
PC §25850 - Possession of a Loaded Firearm
PC §12022.7(e) – Great Bodily Injury in a Domestic Abuse Case

SENTENCING IN DOMESTIC ABUSE CASES

As a general practice, all reasonable efforts should be made to persuade the court to impose the most severe *authorized* sentence upon a person convicted as a spousal abuser [PC 273.84(b)]. This does not mean that a high term in state prison or the maximum available jail time is offered or requested in every case. The term *authorized* denotes a familiarity with the Rules of Court, statutory sentencing guidelines, and the facts of the pending case (including prior record of the defendant, severity of the injury suffered by the victim, factual difficulties present in the case, and other mitigating factors).

Felony Sentencing—Probation

In a felony domestic abuse case, six months in county jail as a term of probation is the minimal recommended period of incarceration. The period of probation should be for five years and pursuant to PC §1203.097 shall include the following terms and conditions of probation in addition to any other appropriate terms and conditions:

- The defendant shall not own or possess a firearm or other dangerous or deadly weapon.
- The defendant should be ordered to complete a 52 week batterers' program, which meets the criteria established in PC §1203.097(c).
- A criminal court protective order with provisions designed to protect the victim from further acts of violence, threats, stalking, sexual abuse, harassment and stay-away conditions shall be issued by the court pursuant to PC §1203.097(a)(2).
- A minimum payment of five hundred dollars (\$500) to be disbursed as specified in PC §1203.097(a)(5).
- A fine with an order that the defendant make payments to a battered women's shelter up to a maximum of \$5000 or an order that the defendant reimburse the victim for reasonable expenses that the court finds are the direct result of the defendant's offense [PC §1203.097(a)(11)].
- Any order to complete a chemical dependency program or residential treatment program, if appropriate, must be completed in addition to, and not in lieu of, the batterers' program [PC §1203.097 (a)(10)(C)].
- The defendant should be ordered to support his or her dependents.
- The defendant should be ordered to comply with the orders of any dependency court or family court order in effect during the term of probation that does not conflict with more stringent orders imposed by the criminal court.

No victim shall be compelled to participate in a program nor ordered to participate in counseling [PC §1203.097(c)(1)(D)].

Requests for electronic monitoring should be strongly opposed as inadequate, both as a safeguard for the victim and as punishment for the offender. In some instances, work furlough may be appropriate.

PROBATION INVESTIGATION AND SUPERVISION

The Probation Department's involvement in a felony domestic abuse case begins when the judge orders an own recognizance report, pre-conviction report, or a probation and sentencing report after conviction. After reviewing the facts of the case as presented in available documents, speaking with the victim and collateral contacts, and evaluating the prior history, the deputy probation officer (DPO) makes a recommendation to the court either for denial of probation (state prison) or probation with specific conditions.

Gathering facts concerning the present offense and the history of the relationship between the defendant and the victim can be problematic. During the investigation of a domestic violence case, the DPO is required to contact the victim for a statement; however, the victim sometimes is difficult to locate or reluctant to talk about the incident for reasons described elsewhere in this document regarding victim conduct in domestic violence cases. The defendant is not routinely interviewed during the preparation of a pre-conviction report. Frequently, attorneys representing the defendant do not believe it is in the best interest of their client to waive their constitutional Fifth Amendment right against self-incrimination at this stage of the proceeding. In these circumstances, the court orders the preparation of a pre-conviction report and includes a provision prohibiting the DPO from interviewing the defendant about the present offense or any prior criminal history. This means the investigating DPO often has only the police report to review. Accordingly, little is known or can be learned about the circumstances preceding or surrounding the present offense or of the history of the relationship between victim and defendant until details begin to emerge during the supervision process.

Probation has specialized domestic violence caseloads that are designed to provide intensified supervision and surveillance of the probationer in the home and the community, increased protection and enhanced services for victims, monitoring of the probationer's participation in a domestic violence treatment program and an immediate response to any violation on the part of the probationer. With a reduced caseload (approximately 100 cases per DPO, the DPO may focus on the following:

- Victim letter
- Monthly office visits
- Field visits (as needed)
- Collateral contacts
- Fee collection
- Monitoring progress and compliance with batterers' intervention program
- Progress reports to the court on compliance with probation terms and conditions

BATTERERS' INTERVENTION PROGRAMS (BIPs)

The Probation Department is mandated by the Penal Code to approve and monitor batterers' treatment programs (BIPs). They are monitored for verification of satisfactory completion of requirements for all facilitators, evidence of reliable record keeping and notes about participants' progress, a safe and appropriate site, and effective groups. This is accomplished by semi-annual, unannounced visits to treatment sessions and auditing of a random sampling of client files. The Probation Department maintains a list of all approved BIPs. The list is available from the Probation Department or on their website or from the Criminal Court.

MISDEMEANOR SENTENCING

Misdemeanor Sentencing: Custody or a Term of Probation

In terms of the safety of the victim and the victim's family, many of the same considerations addressed in felony sentencing are addressed in misdemeanor sentences as well. However, convicted misdemeanants may only be sentenced to serve custodial time in county jail, not state prison.

While the maximum time for any one misdemeanor offense cannot exceed one year, serious domestic violence cases involving a number of different offenses can yield multiple-year sentences. When there is evidence of serious injury or repeated offenses and the law permits, multiple-year sentences should be sought. Additionally, jail overcrowding may affect the length of time actually served by a defendant sentenced to jail. For this reason, a domestic violence victim should always be advised to register with the VINE program (described more fully herein) which will notify her or him when the defendant is released.

Misdemeanor Sentencing: Probation with No Custody

In any crime in which a person is placed on probation and the victim is a person defined in FC §6211, the requirements of PC § 1203.097 that are listed above apply, regardless of whether the crime is prosecuted as a felony or a misdemeanor.

FELONY SENTENCING - STATE PRISON

Absent unusual circumstances, a state prison sentence is ordinarily warranted when:

- The defendant used a firearm or other dangerous or deadly weapon.
- The defendant inflicted serious bodily injury upon the victim [as defined in PC §243(f)].
- The defendant's prior record establishes a pattern of criminality, which justifies a state prison commitment due to frequency or seriousness of prior offenses. It is important to be aware of an individual prosecutorial agency's office policy on presumptive second-strike cases.

At all stages of the proceedings, reasonable efforts shall be made to reduce the time between arrest and disposition [PC §273.84(c)]. Defense continuances should be opposed unless there has been compliance with the provisions of PC §1050. The felony sentencing scheme in California is based upon the imposition by the court of a determinate sentence for most offenses. The court must decide the most appropriate and just sentence for a defendant. Should the court deem that a state prison sentence should be imposed, the judge must consider which of the available terms within the sentencing triad will be ordered. The California Rules of Court contain factors that may be considered by the court in deciding whether to impose the aggravated, middle or mitigated term in state prison.

Aggravating Factors to Consider at Time of Sentencing

- Prior record of violence
- Children present (filing a §273(a) PC should be considered)
- Victim pregnant
- Adult victim holding child at time of assault
- Drug or alcohol use
- Victim particularly vulnerable (for example: asleep, developmentally disabled, physically impaired, etc.)
- Suicide threat history of defendant (or other mental health concerns)
- History of violating court orders
- Power and control history
- Intimidation
- Emotional abuse
- Isolation
- Minimizing/blaming/denying
- Using children
- Economic abuse
- Male privilege
- Coercion and threats
- Gang affiliation
- Law enforcement employment
- Multiple prior restraining orders
- Use or threatened use of deadly weapon
- Severity of injuries (especially strangulation)
- Crime involved great cruelty
- Threats to abduct or harm children
- Injury to or threats to injure pets
- Witness intimidation or dissuasion
- Stalking behavior
- Conviction of multiple crimes
- Planning, sophistication, or professionalism in commission of assault

PROCEDURAL ISSUES IN PROSECUTION

Intimate Partner Battering and Its Effects

The conduct of a domestic violence victim may seem confusing or counterintuitive to a juror or someone unfamiliar with domestic violence. For example, a victim may return to her abuser despite the abuser having caused injury to him/her. Sometimes expert testimony is admissible to explain why a domestic violence victim has acted in a certain way. Under EC §1107, expert testimony on Intimate Partner Battering and Its Effects (formerly known as Battered Woman Syndrome or BWS) is admissible by either the prosecution or the defense in a criminal case. Expert testimony may include, but is not limited to:

- Family violence dynamics
- Why a victim might stay in an abusive relationship
- Why a victim might recant, minimize, fail to report or refuse to cooperate in the prosecution of a case
- The social, economic and cultural context surrounding the victim
- The effects of battering on domestic abuse survivors
- How the history of domestic abuse impacts a survivor's perception of danger
- Survival strategies that may be employed by a survivor

The proponent of the evidence must establish the relevance of the testimony and lay a foundation for the expert's qualification. Under EC §1107, expert testimony on intimate partner battering and its effects serves many different purposes. Testimony may be used to dispel stereotypes about domestic abuse survivors, to support the credibility of a survivor's testimony, to support traditional defense theories, to negate an element of a crime or to mitigate a charge [*People v. Humphreys* (1996) 13 Cal. 4th 1073].

HABEAS CORPUS RELIEF

In 1992, the California Evidence Code was amended to allow expert testimony on battered woman syndrome (now known as intimate partner battering and its effects) to be admitted as evidence in criminal cases. Accordingly, defendants whose conduct may have been affected or explained by expert testimony on intimate partner battering and its effects and who were convicted before 1992 were prevented from entering evidence that may have led to a different result. This law, however, only affected trials occurring after the law went into effect. In 2002, PC §1473.5 went into effect, allowing incarcerated survivors of domestic abuse convicted of homicide to submit a petition for writ of habeas corpus to challenge their original conviction and seek release from custody. The petitioner carried the burden of establishing that he or she was a battering victim; and that had evidence of the battering been introduced at the time of conviction, whether the conviction resulted from a plea or a trial, there was a reasonable probability that the results of the proceedings would have been different.

Effective January 1, 2005, PC §1473.5 was expanded beyond homicide to include incarcerated survivors of domestic abuse convicted of any violent felony (as defined in PC §667.5) that occurred prior to August 29, 1996 (the date the California Supreme Court issued its opinion in *People v. Humphreys* (1996) 13 Cal.4th 1073, which formally recognized that expert evidence of intimate partner battering and its effects are relevant to understanding the circumstances related to subjective fear as well as objective reasonableness faced by a battering victim who kills the abuser.) PC §1473.5 now enables a survivor-defendant serving a sentence for committing a violent felony prior to August 29, 1996 to petition the court for habeas relief in cases where expert testimony relating to intimate partner battering and its effects was relevant but not received into evidence at the trial court proceedings (which includes any point prior to sentencing) relating to the prisoner's incarceration. The petitioner must establish that had evidence of intimate partner battering and its effects been received in evidence at the trial proceedings, there is a reasonable probability that the results of the proceedings would have been different. Petitioners can seek a new trial, a reduced sentence, or another equitable remedy if expert testimony on intimate partner battering and its effects was not presented in their criminal case and they were prejudiced by its absence. This section applies to convictions that resulted from trial or plea as to which expert testimony admissible pursuant to EC §1107 may be probative on the issue of culpability. EC§1473.5(d) specifies that the changes are not intended to expand the uses or applicability of expert testimony on intimate partner battering and its effects that were in effect immediately prior to that date in criminal cases. The section is scheduled to sunset on January 1, 2020.

VICTIM'S ASSISTANCE

Victim Service Representatives

Victim service representatives (VSRs) are often referred to as advocates. They are assigned from Victim-Witness Services to assist the victims of domestic violence and are an important resource both for assisting the victims and explaining the criminal justice system. Services, which are available for the victim, include counseling, medical reimbursement, wage loss reimbursement, funeral and burial expenses, re-location expenses, court support, and emergency financial assistance.

Victim's Rights

Victims of domestic abuse have a number of statutory rights. Those rights were enhanced in 2009 with the passage of Marsy's Law which amended the California constitution and is discussed in PC §679.026. Among them are:

- A VSR and any other representative or support person appearing on behalf of the victim may be allowed to attend district attorney interviews with the victim. In cases involving sexual assault and domestic abuse, the victim must be advised of the right to have an advocate and a support person present during all interviews with law enforcement and/or the prosecutor [PC §§679.04, 679.05].
- Victims have a right to have their name withheld from the police report and charging documents [PC §293 and Government Code (GC) §6254(f)].

- Victims have a statutory right to be heard at sentencing proceedings [PC §1191.1, *et. seq.*].
- Victims have a statutory right to notice of release of the defendant from custody; prior to conviction [PC §646.93 PC] and post-conviction [PC §679.02 PC].
- Victims have a right to a support person present in the courtroom during testimony for certain offenses, including domestic abuse, sexual assault, and child abuse [PC §868.5 PC].

Whenever a domestic abuse case is filed as a felony, it is recommended that copies of the police reports be forwarded to the appropriate VSR. At the same time, the prosecutor assigned to vertically prosecute the case should notify the appropriate Victim-Witness representative of the filing. The VSR should contact the victim by phone or letter within three days after the filing of the complaint.

Communication between VSRs and domestic abuse victims is privileged. This privilege, however, is limited and rebuttable.

CONTEMPT BY A VICTIM

It is not unusual for a victim of, or witness to, domestic abuse to evade service or not appear on a lawfully served subpoena. Personal service of the victim or witness to compel attendance at the preliminary hearing or trial is strongly encouraged. Once the victim or witness appears in court, it is imperative that the victim and witnesses be ordered back by the judge for all subsequent court appearances.

When a victim fails to appear when ordered to do so by the court, or upon personal service of a subpoena, a warrant for her or his arrest may be requested (body attachment). The victim may be held in custody pursuant to the body attachment; however, incarceration of victims further victimizes them and should be requested very rarely and only in serious cases where it is necessary to proceed with the prosecution. The approval of a supervisor is necessary when a body attachment is requested in the District Attorney's Office and Los Angeles City Attorney's Office. When a body attachment is sought, all efforts should be made to have law enforcement serve it on the day of the hearing or trial in Criminal Court and to bring the victim directly to the courtroom.

Once lawfully called to testify, a victim is required to testify. If the victim refuses to testify, the court may hold her or him in contempt. Victims of domestic violence or sexual assault may be found in contempt, but may not be incarcerated as punishment for that contempt. A court may refer a victim for domestic violence counseling before holding the victim in contempt.

CIVIL COMPROMISE

Civil compromise in domestic abuse matters shall always be opposed. PC §1377 excludes certain offenses from being compromised. Included among these excluded offenses:

- Violations of any court orders as described in PC §§ 273.6 and 273.65
- Offenses committed by or upon any family or household member when the offense involves any person described in FC §6211 or PC §13700

If the judge fails to follow the law and grants a civil compromise, that failure and subsequent dismissal of the case shall be reported to the appropriate Head Deputy and sent to the Appellate Division of the applicable prosecutorial agency for review.

IMMIGRATION ISSUES PRESENT IN DOMESTIC ABUSE CASES

Violence Against Women Act (VAWA)

VAWA was first authorized as federal law in 1994. Most recently, VAWA was reauthorized in April 2014. Provisions in the bill are designed to enhance the investigation and prosecution of violent crimes perpetrated against victims of domestic abuse and allow civil redress in cases with or without criminal prosecution. The 2005 revision expanded protections for victims of crime who are not lawful residents of the United States and who are seeking immigration protection. VAWA created a mechanism under which an alien victim of violence can self-petition to obtain lawful permanent residence in one of two categories: T-status or U-status [8 U.S.C. § 1154; Immigration and Nationality Act (INA) §101 (a) (15) (U)]. T-status is available to victims of “severe forms of trafficking” who are physically present in the United States as a result of the trafficking. U-status is available to “aliens who have suffered substantial physical or mental abuse” as a result of listed criminal acts. Domestic violence offenses, both felony and misdemeanor, are qualifying crimes.

U-Visa

In order to be eligible for U-interim relief, four criteria must be established:

- The applicant immigrant has suffered substantial physical or mental abuse as a result of having been a victim of the specific criminal activity;
- The applicant immigrant possesses information concerning that criminal activity;
- The applicant immigrant has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of the criminal activity;
- The criminal activity described violated the laws of the United States or occurred in the United States or the territories and possessions of the United States.

One of the requirements in a U-visa application is that the document includes a certification from a federal, state or local qualifying official (such as a law enforcement officer, prosecutor or judge). The element that will come under the most scrutiny when being evaluated by a prosecutor is the degree of helpfulness demonstrated by the applicant. This decision should be made on a case by case basis. Some issues to consider include:

- The statements of the victim-applicant contained in the police report.
- In a case that was filed, the victim-applicant’s willingness to cooperate with the prosecution of the case. A reluctance to prosecute should not always result in a refusal to supply the requested certification.

- In a case that was declined, the reason for the declination should be considered in deciding whether the victim-applicant meets the criteria for “helpfulness” even if other factors lead to the conclusion that the case did not meet the standards for a filing.

Programs Available In California

As of January 1, 2007, pursuant to Welfare and Institutions Code (WIC) §§13283 and 18945, victims of human trafficking, domestic violence and other specified crimes of violence are eligible for state and local benefits and social service programs such as:

- Refugee Cash Assistance (RFA)
- California Food Assistance Program (CFAP)
- CalWORKs
- Cash Assistance Program for Immigrants (CAPI)
- In-Home Support Services (IHSS)
- Employment Social Services
- Medi-Cal
- General Assistance (GA)
- State Food Stamps
- Healthy Families

In order to be eligible for benefits, WIC §18945 requires that the immigrant victim has filed an application for U-interim relief.

RELEVANT CALIFORNIA CASE LAW

***Crawford v. Washington* (2004) 541 U.S. 36**

- Excludes out of court “testimonial” statements offered for the truth of the matter asserted where there has not been the opportunity for cross examination.
- Ends or limits some California hearsay exceptions:
 - EC §1370 – Statements of physical injury now limited (see below)
 - EC. § 1360 – Statements describing an act of child abuse or neglect
 - EC §1228 – Statements describing an act of sex crime on child
- “Testimonial” statements are not admissible unless the declarant is unavailable to testify *and* the defendant has had a prior opportunity to cross-examine him or her.
 - The Court left for another day a comprehensive definition of what is “testimonial.”
 - The Court stated that testimony is typically a solemn declaration or affirmation made for the purpose of establishing some fact.
 - Statements made to law enforcement in anticipation of litigation are also excluded.

- What is **not** “testimonial” per *Crawford* and still admissible?
 - Business records
 - Statements in furtherance of conspiracy

Subsequent case law

- *Davis v. Washington* (2006) 542 U.S. 813 and *Hammon v. Indiana* (2005) 546 U.S. 976
 - *Davis* (2006)
 - Victim calls 911 to report defendant at location in violation of a restraining order and gives description of defendant. Statement was introduced at trial without victim.
 - 911 operator presumed to be law enforcement agent.
 - Statements not “testimonial.”
 - Interrogation of victim not to establish some past events but to describe events as they occurred, requiring police assistance.
 - Information elicited necessary to resolve then-existing emergency.
 - Court never identifies hearsay exception although it would appear to be a spontaneous declaration.
 - *Hammon* (2006)
 - Police respond to call, speak to victim and husband separately and find out about domestic abuse.
 - Held to be “testimonial” and not admissible without declarant being available.
- *People v. Brenn* (2007), 152 Cal. App. 4th 166
 - California case applying *Davis* to a 911 call – statements made by stabbing victim to 911 operator and first police officer on scene were admissible as spontaneous statements.
- *People v. Cage* (2007), 40 Cal 4th 965, 984
 - Statements to medical personnel regarding injury are not testimonial and are admissible without the declarant being available pursuant to EC §1370.
 - Statements to law enforcement about injury are “testimonial” and inadmissible without the declarant being available.
- *Michigan v. Bryant* (2011) 131 Sup. Ct. 1143

- Statements whose “primary purpose is to enable police assistance to meet an ongoing emergency” are admissible.

Crawford Issue: Exception to the Confrontation Clause

Forfeiture by Wrongdoing

The U.S. Court specifically stated that the rule of forfeiture by wrongdoing extinguishes confrontation claims on essentially equitable grounds, based upon the equitable principle that no one should profit from his or her own wrongful conduct. The rule provides that if the defendant “procured the witnesses’ unavailability, the witness’ testimony comes in despite the Confrontation Clause” of the U.S. Constitution 6th Amendment.

- What is required to establish forfeiture by wrongdoing?
 - First described in *Reynolds v U.S.* (1878) 98 U.S. 145- a bigamy case in which the accused secreted the witness and refused to disclose her whereabouts and then sought a dismissal.
 - The court found that the defendant was precluded from objecting on hearsay grounds if:
 - Defendant intentionally prevented the attendance of the witness
 - Specific intent was to deprive prosecution of the testimony of an essential witness
 - Committed wrongful, although not necessarily criminal, act
- Can the charged crime be the wrongdoing?
 - *Giles v. California* (2008) 128 S. Ct. 2678
 - The defendant shot and killed his ex-girlfriend claiming self-defense in the face of her jealousy.
 - Prosecutor offered a prior statement of the victim, made to a police officer weeks before the murder, to show the defendant’s propensity for violence.
 - Trial court permitted introduction of statement if:
 - Fits a hearsay exception
 - Intentional criminal act by defendant
 - Excluded if “unjust” to admit it
 - Jury not to be advised of forfeiture finding
 - Appellate court reaffirmed the doctrine of Forfeiture by Wrongdoing
 - Statements of the victim are not inadmissible due to violation of Confrontation Clause where defendant engages in criminal act which makes witness unavailable to testify.

- A criminal act need not be motivated by intent to prohibit witness from testifying.
 - All statements by victim are admissible, not just ones relating to current crime (allows 1108 and 1109 evidence to come in through police officers).
 - Requires foundational showing in 402 hearing to prove witness's unavailability due to criminal act by defendant.
 - Standard – More probable than not that defendant procured unavailability of witness.
 - Need more than an unavailable witness' un-confronted testimony.
 - Need corroborative evidence.
- For a Prosecutor to Utilize the “Forfeiture” Rule-
 - The court must hold a 402 hearing.
 - Proponent of the hearsay statement has the burden (preponderance of the evidence or clear and convincing) to show that the witness is unavailable and the defendant caused or procured the unavailability of the witness.
 - Hearsay is admissible at 402 hearing.
 - Options for Prosecutors in a Case with a Non-Cooperative Victim
 - Provide victim/witness services in an effort to secure cooperation.
 - Ask the court to issue and hold warrant in a case where the victim failed to appear in response to a lawfully served subpoena.
 - If a body attachment is issued, attempt to arrange for DA Investigators or other Law Enforcement Officer to bring victim in on the day he or she is going to testify.

CHAPTER 3

LAW ENFORCEMENT FIRST RESPONDERS

In family and domestic violence/intimate partner violence cases, the victim's safety often depends on the law enforcement officer who arrives first on the scene to render aid, determine the facts, and possibly arrest the batterer. The interaction between the victim and all aspects of law enforcement is an integral part of the victim's ability to remove her or himself from the abusive situation. This section will focus on law enforcement's effective response to domestic abuse.

DISPATCHER

As the dispatcher is most often the first contact by the law enforcement agency in a reported incident involving family violence, it is essential that all agency dispatchers receive training on the importance of being aware of certain issues that commonly arise in family violence cases and are readily familiar with the core values of the GERDA Protocol and how to respond to such calls in order to reduce the risk of harm to all parties on the scene and responding law enforcement personnel.

All calls reporting threatened, imminent, or currently in progress acts of family violence and/or the violation of any protective order or restraining order, including orders issued pursuant to PC §136.2 shall be dispatched as a priority call.

A *priority* call is a call for service which shall be dispatched and handled prior to a routine call for service.

Family violence calls reporting that the suspect is present and the incident is currently in progress shall be dispatched as an *emergent* call.

An *emergent* call is a call for service with an emergent nature and requires an immediate response.

Dispatcher shall attempt to obtain the following information from caller:

- Location and physical description of involved parties
- Weapons use during the incident, present at the location, or in possession of any of the parties
- Information regarding current status of the incident
- Emergent medical attention needed
- Presence of children at the scene and current location of the children

Dispatch shall update responding officers with additional information as it becomes available.

The law enforcement agency shall take actions to preserve all documentation of the facts and circumstances of the call, including the recorded 911 call.

LAW ENFORCEMENT OFFICERS – FIRST RESPONDERS TO CALL

The law enforcement officer to arrive first on the scene shall:

- Secure the scene to establish safety for the officers, involved parties, and witnesses.
- Request emergent medical attention if needed for parties.
- Separate parties to be out of eyesight and hearing of each other – law enforcement officers should not compromise officer safety in separating the parties.
- Document any excited utterances, admissions, and spontaneous declarations (e.g., victim runs out of house screaming, “He’s going to kill me – he has a knife”).
- Observe scene for later documentation (e.g., coffee table broken, furniture overturned, hole in wall, etc.).
- Observe behavior, state of mind, emotional state, any signs of intoxication, any physical indications of abuse, etc., of all involved parties for later documentation.
- Observe whether there are any potential witnesses in the vicinity of the scene (children, neighbors, paramedics, etc.) to interview or determine who should be interviewed at a later time.

Once the scene is secure, an assessment should be made as to the level of search which should be conducted at the location of the family violence incident – law enforcement officers should refer to their department’s policy regarding probable cause for the search.

- Reasons for search:
 - Officer safety;
 - Safety of other persons in residence, including exigent circumstances;
 - Prevent the destruction of evidence;
 - Crime scene – evidence.
- Searches should be documented, including the result of the search.

Interview of Involved Parties

A law enforcement officer shall interview the involved parties as follows without compromising officer safety:

- Interview parties separately.
- Party being interviewed should be out of the line of sight and hearing of the other party.
- Family members, including juveniles, should NOT be used as translators.
- If a party is disabled and unable to communicate with law enforcement, law enforcement should provide and/or make every reasonable attempt to provide disabled party with means to communicate.
- Notify victim they have a right to have an advocate present during interview.
- Law enforcement should audio/video record interviews with parties and maintain any tapes made for any purpose to be booked into evidence.

- Listen carefully to each party’s explanation of what happened without being judgmental.
- As not all injuries may be visible, inquire if any injuries.
- If emergent medical treatment does not appear to be necessary, ask the injured party if they would like medical treatment, particularly if there is a report of strangulation.
- If either party reports an act of strangulation, it is strongly suggested that a medical assessment be conducted.
- If possible, photograph any visible injuries or evidence of trauma prior to medical treatment.
- If both parties are injured or if there are mutual restraining orders, determine the dominant aggressor:
 - PC §§836(c)(3) and 13701(b) both state that peace officers shall make reasonable efforts to identify the dominant aggressor in a domestic violence incident. It further states that the dominant aggressor is the person determined to be the most significant, rather than the first aggressor.
 - Factors peace officers should consider in identifying the dominant aggressor are:
 - Height and weight of the parties
 - Level of violence
 - Corroborating witnesses and evidence
 - Use of alcohol and/or drugs
 - Offensive and defensive injuries
 - Seriousness of injuries
 - Presence of intense emotional reaction (fear, rage, etc.)
 - Injuries consistent or inconsistent with explanation
 - Level of detail concerning facts of incident
 - History of domestic violence
 - Prior convictions (particularly for acts of violence)
 - Prior calls for service
 - Threats
 - Restraining/protective orders [California Restraining and Protective Order System (CARPOS)]
 - Claims of self-defense
- Inquire whether firearms or other deadly weapons are present at the location. If there are firearms or other deadly weapons, peace officers shall take custody of the firearms or other deadly weapons:
 - Penal Code §12028.5(b) states that peace officers who are at the scene of a domestic violence incident involving a threat to human life or physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present.
 - If a restraining order or order of protection is in effect, the restrained party cannot lawfully own or possess any firearms [PC §136.2(7)(B)(i)].

- Document any observed signs that the **alleged abuser** was under the influence of alcohol and/or a controlled substance:
 - PC §13730(c)(1) states that domestic violence incident reports shall include a notation whether the peace officer who responded to the domestic violence incident observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance;
 - Peace officers should consider administering to the alleged abuser an intoxication test (field sobriety tests, breath, blood, or urine) to determine the alleged abuser’s level of intoxication.

- Document any observed signs that the **victim** was under the influence of alcohol and/or a controlled substance:
 - Peace officers should consider administering to the victim an intoxication test (field sobriety tests, breath, blood, or urine) to determine the victim’s level of intoxication.

- Inquire if the children were at the location at the time of the incident, and if so:
 - Document:
 - Which rooms the children were in at the time of the incident
 - If the children were used as shields during the incident and if so, by which party
 - If the children attempted to intervene in the altercation and if so, how
 - If the children were physically injured and if so, was medical attention needed
 - What is the children’s current location
 - Assess the needs of the children;
 - Call the Department of Children and Family Services (DCFS) if the children are the victims or have been subjected to physical, sexual, or emotional abuse and/or neglect [PC §11166(j)].

Interview of Witnesses

Law enforcement shall interview witnesses as follows:

- Interview reporting party, if possible.
- Family members, including children, should *not* be used as translators.
- Interview all persons at the location where the family violence occurred at the time of the incident and if a home, all who live in the location, if possible.
- Interview neighbors.
- Interview family members, whether or not witnesses to the incident under investigation, if possible.
- Interview persons rendering medical aid (firemen, paramedic, ambulance attendants, nurses, doctors, etc.).

- Identify and interview persons to whom the victim could have made a statement regarding the current domestic violence incident or any other incidents of domestic violence.
- Standard interview guidelines – law enforcement officers should ask questions regarding:
 - If they saw any injuries from the present incident or past incidents;
 - Has the party complained or stated they have injuries from the present incident or past incidents;
 - What led up to the incident;
 - What did each party say during the incident;
 - Prior history of threats or violence;
 - Prior medical treatment from domestic violence;
 - Use of other names (both victim and alleged abuser);
 - How long at current address/previous addresses;
 - Restraining or protective orders involving all parties;
 - Do they know of any weapons in the possession of the parties or at the location;
 - The names and ages of the children and where are they currently.

Interview of Children

Law enforcement shall interview the children of the involved parties or any child at the location where the incident occurred as follows:

- Interview all children present at the scene separately, even if the child is not believed to be a victim or a witness.
 - Attempt to interview children out of the presence and hearing range of both parties; some children will feel more at ease if they maintain a visual of the victim.
 - Visually check the children for injuries, state of mind, and emotional state and document all observations.
 - Document any excited utterances or spontaneous declarations made by the children (example - children run out of house screaming, “Daddy’s hurting Mommy”).
 - Conduct a basic interview with the children using open-ended and non-suggestive questions.
 - Document children’s physical responses as well as verbal responses.
 - Document children’s actions during the incident and during the first response to the home (e.g., child found hiding under bed, child crying inconsolably, child called 911).
 - If child abuse is determined or suspected:
 - Complete domestic violence investigation while ensuring the safety of the children - upon completion of the domestic violence investigation, begin child abuse investigation.
 - In all confirmed or suspected instances of child abuse, a cross-report must be made to the Department of Children and Family Services (DCFS).
 - PC §11166(j) states that a peace officer shall immediately, or as soon as practicably possible, report by telephone to DCFS every known or suspected instance of child abuse or neglect. In addition, the peace officer shall complete

a Suspected Child Abuse Report form (SCAR) and send, fax, or electronically transmit the SCAR to DCFS within 36 hours of notification of the child abuse or neglect.

Obtain Prior Reported History of Domestic Violence

Law enforcement shall obtain prior domestic violence history as follows:

- Check domestic violence history by name of parties, including AKAs.
- Check domestic violence history by address.
- If a report is written, document all prior domestic violence history on the report.

Restraining Orders

Law enforcement shall obtain and enforce domestic violence restraining orders as follows:

- Determine if either party has a restraining order against the other party via CARPOS, if possible.
- If no current restraining order exists or the current terms of the restraining or protective order permits contact between the parties, offer an Emergency Protective Order (EPO) to the victim (if a victim refuses an EPO and law enforcement believes the victim is still in danger, law enforcement has the discretion to obtain an EPO on the victim's behalf without the victim's consent).
- If the restrained party violates a restraining order, law enforcement officers shall document the violation on a report and, if practical, arrest the restrained party.
- A restrained party must be served with the restraining order to be in violation of the restraining order. If the restrained party has not been served, law enforcement may verbally serve the restrained party.
 - If law enforcement verbally serves a restrained party, the law enforcement officer must complete a proof of service and cause the proof of service to be filed with the court.

Scene/Location

Law enforcement shall protect the scene/location for documentation and collection of evidence:

- Check the scene/location for evidence.
- Document physical evidence at the scene.
- Take photographs of victim, damage, and general scene.
- If suspect is not at location, obtain a picture of the suspect from the victim and/or family member (this could include driver's license, CA identification card or identification from employer, or any clear photograph of the suspect as she or he looked at the time of the crime).
- Ask if the suspect has any identifying marks such as tattoos, birth defects, etc., something that could readily identify the suspect.

Support at the Scene

Law enforcement officers shall offer and/or provide the following support to the victim:

- Provide the victim with domestic violence/sexual assault Victim's Right card [California Constitution, Article J, Section 28(12) and PC §679.08].
- Provide the victim with VINE information.
- Provide the victim with Victim's Rights card known as Marsy's Law.
- Ask the victim if they would like a domestic violence advocate present or to speak with an advocate.
- Ask the victim if they would like to go to a domestic violence shelter or to a safe place.

Report Writing

Law enforcement officers shall document the following in their report regarding a domestic violence incident:

- The relationship of the parties involved
- The description of the injuries to the parties
- The statement of each party, witness, and children
- The description of evidence collected
- The description of the scene
- Alcohol and/or drugs used by the victim and suspect, their condition, alcohol or drug tests and the results (if known)
- The names and ages of all children residing with the victim and suspect
- Any past domestic violence history
- All brochures/pamphlets/cards given to victim
- Offers of restraining order and the results
- Offers of an advocate and the results
- Offers of safe passage to a shelter or a safe place and the results

Placement of Children

If both parents/guardians are unavailable to care for a child, the Department of Children and Family Services (DCFS) shall be called by the law enforcement officer. Law enforcement may take a child into protective custody, but only DCFS can arrange for placement of the child.

CHAPTER 4

CHILD PROTECTIVE SERVICES EMERGENCY RESPONSE

The Department of Children and Family Services (DCFS) is the child welfare agency that provides the child protective services for the County of Los Angeles. Although they are rarely called to the scene of a domestic violence incident, DCFS Children's Services Workers (CSWs) are the agency responsible for providing services to children and families at risk. This section will focus on effective response by child protective services to families experiencing domestic violence.

DCFS recognizes the grave physical and emotional impact the dynamics of domestic violence have on the adult and child victims. Although children are at risk for physical harm in such homes, the more insidious damage comes from the emotional abuse and deviant social role modeling.

DCFS defines domestic violence as “a learned pattern of behaviors used by *one* person in a relationship to have power over and control over the other person. It can include physical, emotional, economic abuse and/or sexual assault.”

The definition above does *not* imply mutuality. When investigating allegations of domestic violence in a home, the CSW should be looking to uncover which adult is the dominant aggressor by collecting evidence of how the behaviors and attitudes of one parent intimidate, control or isolate the other. The parents should not be lumped together as mutual combatants. Although some domestic violence victims strike back physically or verbally against the aggressor in self-defense, they are not the dominant aggressors. Close examination of the controlling and intimidating behaviors will help to uncover the bigger picture of aggression. It is, therefore, very important to discriminate cases where there is an incident of physical altercation from cases where there is on-going coercive control and aggression by one parent.

The dynamics of domestic violence are not limited to physical and verbal threats and acts of intimidation; there are also dynamics of isolation and coercive control. Dominant aggressors frequently maintain control through the disruption of the bonds between family members; in particular the abusive controlling parent strategically undermines the authority and relationship among the children and the other parent. This pattern of emotional disruption of natural healthy alliances leads to rivalries and suspicions among family members, leaving them vulnerable to further manipulation by the abusive parent.

The assessment of domestic violence should include a safety appraisal of the at-risk parent as well as the children. Every effort should be made to keep the at-risk parent and child together with interventions that maximize the safety of both. A parent is considered to be at-risk in family situations where they are directly or indirectly dominated, harassed, or intimidated by their intimate partner physically, emotionally, socially, or economically.

Although the dominant aggressor must be held accountable for the risk in the home, child welfare law mandates that both parents be assessed. Sometimes the non-aggressive at-risk parent may also have endangered or physically abused the children; therefore, any assessment must take into account how the ongoing threats by the aggressor affects the behavior of the at-risk parent. That is, occasionally, the at-risk parent has a history of trauma (including the current domestic violence) that has rendered them so psychologically vulnerable that they are not able to provide adequate ongoing care of their children without substantial support services and individual counseling. Unlike the chronic danger posed by the controlling aggressive parent, however, this vulnerability of an at-risk parent is often situational and ameliorated when the at-risk parent is out from under the control of the aggressive parent and buttressed with adequate support.

Assessments of the victim parent must also consider all protective actions taken while still in the home with the aggressive parent as well as those taken after having left. DCFS investigators must factor in the complex underlying pressures exerted on an at-risk parent by the abusive controlling parent in order to obtain an accurate assessment of the family.

Further, distinguishing the risks posed to the children from the victimized parent is complicated and underlines the need for a thorough assessment of all family members. The decision that at-risk parents have made to minimize the risks to their children can frequently put them in a double-bind of being labeled as “failing to protect” or “over-protective and alienating.” That is, the decision to stay with the aggressive parent is often a protective act, not a neglectful act, since the most dangerous time for the at-risk parent and children is when they attempt to leave the home or relationship. Staying can be the lesser of two evils. On the other hand, the decision to take more pro-active steps to keep the children safe from the physical and emotional abuse of the dominant aggressor are misconstrued as alienating the children from the aggressor parent. In fact, the dominant aggressor will also portray these attempts as acts on the part of the at-risk parent to interfere with the aggressor’s relationship with the children.

COLLABORATION WITH DOMESTIC VIOLENCE SERVICE ORGANIZATIONS

All DCFS CSWs should be knowledgeable about the qualified domestic violence service organizations throughout Los Angeles County. Strong partnerships with domestic violence advocates and community service providers create a valuable network to facilitate consultation on domestic violence cases. Such alliances will support cross training, enhance assessments, and improve safe case planning.

COLLABORATION WITH LAW ENFORCEMENT

If law enforcement made the report of domestic violence to DCFS, the CSW needs to contact the reporting law enforcement agency to collect information on the status of any ongoing or prior criminal investigation or prosecution. In all cases, however, the CSW should check the Los Angeles County Family and Children’s Index (FCI) database found on the DCFS Intranet website (LAKids) or at www.fci.lacounty.gov. Such information is critical in making a full assessment of the family. Finally, as in all DCFS home visits, if the home environment appears volatile, hostile

and/or dangerous, it is advised that the CSW leave the home and immediately obtain assistance from law enforcement prior to resuming the contact.

ASSESSING THE FAMILY: THE DYNAMICS OF POWER AND COERCIVE CONTROL

As with all investigations, the CSW should take all steps to interview all family members separately. The CSW needs to gather a wide range of details on the dynamics of power and coercive control present in the family—both current and in the past—in order to determine the degree of danger in the home and which family members are at risk. Coercive control is a set of deliberate actions or threats used by the abusive parent and designed to keep the at-risk parent in the relationship and connected. They may include episodes of physical and/or sexual assaults but not always.

In approaching families where domestic violence is alleged, the CSW should establish a trusting relationship by emphasizing the need for safety for all members and identifying him/ herself as a resource for support. It is important to remember that parents are often more afraid of DCFS taking the children away than they are of the continued emotional and physical abuse. In fact, DCFS intervention often results in the abused parent feigning closeness with the aggressive parent in an attempt to assuage both the aggressor as well as DCFS. The CSW may need to be patient in gaining the trust of the victim parent.

Further, family members often do not feel safe in revealing information at the first meeting or while in near proximity of an abusive family member. The CSW may not be able to obtain sufficient details needed to determine risk at the first home visit; therefore, the CSW is strongly advised to follow up with a separate interview at another location, such as the regional office. It is often advisable to have the family come to the DCFS regional office where the CSW will have more support and space to conduct thorough and secure interviews and investigation. This might be particularly true if there are any communication barriers.

In collecting the evidence, the CSW needs to pay attention to observable physical signs in the home as well as to the descriptions and reports of abusive and controlling dynamics in the family.

To obtain adequate descriptions and facts, it is important for the CSW to interview each family member and all collateral contacts separately in a non-threatening manner using open-ended questions about the family's day-to-day functioning, attitudes and actions to elicit relevant information or details on the dynamics outlined below.

Taking the time to listen carefully to the children can assist in revealing signs of imbalance of power in the home. Some children in describing family life will parrot the blaming and abusive language of the aggressive parent. Such generational or developmental inappropriate language demonstrates the negative impact on the children by the aggressive parent as well as points to the power imbalance in the home.

Follow-up questions that focus on gathering specific examples and clarifying facts on the family's history and current risk of domestic violence are also critical to the investigation and

assessment.

Family members are frequently reluctant to provide details of the abusive incidents for fear of retaliation from the abusive parent or from DCFS. Occasionally, it may be necessary for the CSW to use direct questioning about the family dynamics and violent incidents; however, the family members may still conceal or minimize the facts. The underlying reason is fear and not lack of cooperation. In addition, attempting to uncover a detailed history of the parental relationship is a critical area for investigation. Identification of the aggressor's strategies to keep the at-risk parent controlled will be the cornerstone for a thorough assessment and an effective safety plan.

Making collateral contacts at schools or medical facilities to collect any relevant reports or testimony about any known or suspected incidents of family violence or coercive behaviors can be critically important in uncovering evidence of domestic violence and sorting out any potential cross allegations of abuse by the aggressive parent.

After compiling as many details and descriptions about the family members' behaviors, actions and dynamics, the CSW will have a more accurate picture of which parent (if either) imposes abusive and violent control over the other and the degree to which the children have been impacted.

Throughout the investigation and assessment, the CSW should try to obtain and document the following information:

Visible Physical Evidence

- Injuries (black eyes, bruises, abrasions, broken bones, etc.)
- Damage to property especially emotionally important items, destroyed furniture, torn pictures, dents or holes in walls or doors, phones ripped out of wall, no working phone, etc.
- Drug paraphernalia or signs of excessive alcohol consumption

Signs of Imbalance of Power and Coercive Control

- Committing violent acts towards the intimate partner, children, pets, self, people outside the family
- Intimidating acts: physical, sexual or emotional
- Threatening physical, sexual, emotional harm (including suicide) to control
- Withholding money or creating debt that limits the at-risk parent from leaving
- Name-calling and bullying
- Victim blaming: telling them they "deserved" or "caused" the violence or threats
- Intentional or reactive isolation of the family socially or geographically
- Promising changes and rewards that are rarely fulfilled to garner compliance
- Manipulating truth and reality by providing false or exaggerated information
- Limiting access to basic medical/dental care or schools
- Jealous, obsessive and harassing behaviors: taping, stalking, and monitoring

- Attitudes of entitlement and privilege
- Increased symptoms of depression and anxiety

Abusive Family Dynamics

- Intentional undermining of the authority and parenting style of the other parent
- Inconsistent discipline strategies: overly compliant to overly harsh
- Children overly protective or overly judgmental of one parent over the other
- Pattern of disrupting the supportive relationships among family members
- Poor or inconsistent boundary management
- Chronic sibling rivalries and bullying among the family members
- Signs of parentification/role reversals (child takes on parental caregiver role)
- Pattern of verbal or physical expression of anger
- Aggressive, anxious or withdrawn behaviors in children
- Chronic school or medical problems

Assessing Violent Incidents

- How did the incident begin?
- Who was in the home at the time?
- What was each person doing?
- What happened to each person in the home?
- What did the children see or hear before, during, and after the incident?
- How did each person feel before, during and after the incident?
- What happened after the violence or the arrests?
- How did the incident stop?
- What happened after it stopped? What did each person in the home say or do?
- What is each person's theory about why the incident/s took place?
- Has physical violence or threat of violence ever been used before? Against whom? When? What?
- Is there a criminal history with prior arrests for violence?
- Has anyone ever gotten or filed for a restraining order?
- Has anyone in the family ever been on parole or probation?
- Has anyone ever had to get medical treatment after an incident?
- How does each person express anger in this family?
- Has anyone threatened to harm or abduct the children?
- Has anyone tried to stop or get help to stop the abusive incidents?
- Has anyone gone to therapy or support groups because of the abusive incidents?
- Has anyone ever moved out of the house because of the abuse?
- Which parent does the child feel most comfortable or safe with? For what reason?

DIVERSE AND UNDERSERVED COMMUNITIES

As mentioned above, assessing safety in a home can be challenging. When the household includes members of diverse and underserved communities, the assessment requires particular close attention. Individuals from underserved communities are more vulnerable to exploitation and control by their intimate partners. These include, but are not limited to, new immigrants, undocumented immigrants, the LGBT community, people with disabilities, as well as people in teen dating or gang-affiliated relationships. CSWs not knowledgeable of the challenges facing these populations should seek guidance from community advocates and others with experience during their assessment of the family. GERDA fundamental principles would indicate that CSWs be aware of special DCFS programs addressing services for diverse families as well as community agencies and service organizations that have the expertise in the assessment or can provide needed services. An initial source of information can be found below in Chapter 7, “Diverse and Underserved Communities.”

DETERMINING LEVEL OF DANGER

In determining the level of danger to the at-risk parent and children, the CSW should use the appropriate Structured Decision-Making (SDM) Safety and Risk assessment tools. Domestic Violence is more than the physical assaults or threat of assaults. The dynamics of coercive control can be measured in a number of the SDM items on family dynamics and parenting styles.

Beyond SDM, the CSW is reminded that studies have repeatedly shown that the situation presenting the greatest risk for lethality is when the abused parent threatens to, or has left the abuser. A thorough assessment of the level of danger or lethality is, therefore, critical in order to assist the at-risk parent to develop a comprehensive safety plan that will protect the at-risk parent and the children. The safety plan should address all aspects of the family’s daily life, court orders, visitation plans, or meetings with professionals (e.g., DCFS staff, therapists, counselors, advocates, attorneys, doctors, and so forth.)

Red Flags Associated with Increased Dangerousness

- History or threats of suicide
- Access to weapons
- Recent separation or divorce
- History of stalking and spying behaviors
- History of assault (especially strangulation)
- Recent changes in family (custody, births, or deaths)
- History of being violent and abusive in relationships
- Recent loss of, or threat to, employment
- Recent loss of residence or eviction
- Recent increase in financial difficulties
- Severe health problems
- Current substance abuse of the abusive parent, especially alcohol abuse
- Chronic mental health problems of the abusive parent

EFFECTIVE SAFETY PLANNING

Planning Safe Re-location

If one parent and the children appear in imminent danger from the dominant aggressor, the CSW should determine if they can stay safely in the home of a relative or friend, or assist them with referrals to shelters and/or disability support services. Then, the CSW should verify that the relative/friend/shelter has accepted the parent and all the children and verify that they have a plan to get to the relative/friend/shelter.

Basic Elements of a Safety Plan

Beyond establishing safe locations for the at-risk parent and children, the CSW is to develop a safety plan with that parent. A DV safety plan is not the same as a SDM safety plan; it is much more comprehensive. It is critical that this planning not be done while the abusive parent is present. Likewise, the plan itself and any documents outlining the plan or its resources should be kept away from the abuser and/or in a safe location outside the home. Although a comprehensive safety plan is required, a basic safety plan should include:

- Linking to an experienced domestic violence victim support agency
- Identifying needs such as housing, employment, transportation, child-care, health care, or legal assistance
- Providing referrals and links to any services/resources needed
- Providing information about restraining orders and discussing if one would be appropriate
- Discussing whether or not Family Law Court would be an acceptable option
- Ascertaining social supports (if possible, friends and family the abusive parent does not know)
- Ensuring all electronic devices and technology are protected and not traceable
- Making specific suggestions to the at-risk parent such as:
 - Devise an emergency escape plan for the at-risk parent and children
 - Keep an extra set of car keys, money, phone calling card and clothes
 - Have access to a list of important addresses and phone contact numbers
 - Know how to contact local domestic violence advocates and support services
 - Give copies of important documents to a trusted friend or family member
 - Notify schools, doctors, dentists, other community contacts of the changes and risks
 - Contact state Safe-At-Home program to establish a confidential relocation
 - Contact Los Angeles County Sheriffs for VINE program (if batterer is incarcerated)

Restraining Orders/Protective Orders

A restraining order is never a guarantee of safety for the at-risk parent and children—it is only one possible tool. Deciding upon the appropriateness of a restraining order is an important step. They are frequently misunderstood and improperly sought as a magic shield for safety. A restraining order through Family Law (Civil) Court must meet specific legal requirements, in particular there must be a recent violent assault or threat (usually within 30 days) and the parent seeking the order

must write a declaration detailing a history of the abuse and exactly why she/he fears the abuser. If the at-risk parent, for any reason, does not feel afraid or does not want the order, a Protective Order will not be granted. Therefore, if DCFS mandates a parent to go to Family Law Court for a restraining order when the parent does not see a need or is too fearful to document fully the danger, a restraining order will not be granted since it does not meet the legal requirements.

Once a temporary restraining order (TRO) is obtained the parent must go back to court for a permanent order. Maneuvering through the Family Law Court is very difficult for an individual without some sort of guidance. Moreover, unless DCFS keeps the referral open the CSW will not, or may not, be informed as to what happened at the Civil, or Family Law Court hearing—e.g., whether the parent did not follow through or the court failed to grant the restraining order. Lastly, DCFS should be aware that some Family Law Court judges will strike the names of the children off the restraining order even when the abused parent asks for the children to be included, thus providing less protection for the children. Further, in Family Law Court the parents must mediate any custody and visitation issues.

If filing a petition in Dependency Court is necessary to keep the children and at-risk parent safe, DCFS can recommend that the hearing officer at the detention hearing consider a restraining order for further protection.

Once a Restraining Order is granted, only the restrained (aggressive) party can violate the order. The protected (at-risk) party does not violate the order in circumstances when they agree to allow the aggressor near them. It may be unwise but is not illegal.

Utilizing Child and Family Team Meetings and Core Practice Model

The shared Core Practice Model (CPM) is a set of values that supports the central role of the child and family engaged in the child welfare system. It emphasizes the collaboration and support of professional and community partners as well as the informal supports of the family itself when assisting the child and family in navigating the child welfare and Dependency Court systems. A key element in the CPM is the Child and Family Team (CFT), through which decisions and planning for the family are made. The goal is to approach all families from a more respectful position acknowledging their strengths and valuing their culture. The belief is that families are experts of their own family system and need to have the opportunity to voice their own concerns and find their own workable solutions to increase the likelihood of success. In addition, community involvement and participation in this process is crucial so they can share their expertise through early assessments in the areas of substance abuse, mental health and domestic violence and in providing resources and linkages to services to assist in keeping the children safe and the functional members of the families together.

Welfare and Institutions Code (WIC) §16500.1(d)(1) specifically requires that county child welfare agencies incorporate family conferencing into the service delivery process. A more comprehensive form of family conferencing is the Child and Family Team (CFT). In WIC 16501(a)(4) a CFT is defined as a group of individuals who are convened by DCFS, the family itself, or a mental health agency in order to engage through a variety of team-based processes to identify the strengths and needs of the child or youth and his or her family, and to help achieve

positive outcomes for safety, permanency, and well-being. The child's family, friends, teachers, counselors, or any other professional or community partner involved with the family, or who is a potential resource for the family, may be invited to participate to develop a plan for the child and family. The development of a CFT begins as soon as a child becomes known to DCFS. The goal is to help guide the child and family to greater stability and safety by setting up reasonable action plans that link the family to needed services or outline protective guidelines for daily challenges.

The engagement of a family experiencing domestic violence will require participation of both the at-risk parent and the parent who batters. But this can be very dangerous. It is critical to remember that for all CFT meetings for families with domestic violence, there will need to be two separate meetings to maintain the safety of the at-risk parent and children as well as to prevent the dominant aggressor from exerting undue pressure and control over the at-risk parent and children during the meeting. Separate meetings are a legal requirement if one parent has a restraining order against the other.

Domestic violence advocates, batterer's program staff, and other community agency representatives, who provide services for families experiencing domestic violence, should be invited to participate in the CFT, or be asked to develop a plan with the family and DCFS to link the at-risk or dominant aggressor to their services. For a safe and effective CFT process, the at-risk parent and the dominant aggressor should not attend the same CFT meetings and it is probably not a good idea to have them back to back for safety reasons. In fact, all caution should be maintained in scheduling the times, dates, entry and exit plans to avoid confrontation or stalking. Any occasion when the CSW, SCSW or the CFT facilitator feels that the at-risk parent and dominant aggressor should attend the same meeting, this must be done with *extreme caution* and in consultation with domestic violence experts before having such a CFT meeting.

DCFS Community-Contracted Up-Front Assessments

DCFS has also contracted several family preservation and mental health agencies to provide a series of assessments of families for substance abuse, mental health status, and domestic violence. The goal is to identify and assess the extent of these risks in a home. After the assessment, the agencies link the families as needed to substance abuse and mental health programs and notify the case carrying CSW of the findings and linkages. Domestic violence is a more complex assessment and not all of the contracted agencies have expertise in domestic violence so the findings and linkages may not be sufficient. The CSW must pay close attention to the Up-Front Assessments with families with domestic violence so that the information remains safe and confidential and referrals to *experienced* domestic violence victim and/or batterer's treatment programs are completed.

DISPOSITIONS OF DOMESTIC VIOLENCE REFERRALS

In high and very high-risk cases, filing a petition in Juvenile Dependency Court (Dependency Court) may be necessary and, therefore, part of the safety plan.

If the family members have been thoroughly assessed for levels of danger, the referral may be determined to be low risk and DCFS may decide to offer alternative services and interventions and not file a petition in Dependency Court. In such cases when the family is assessed to be at low risk, the CSW should engage in safety planning and education with the at-risk parent to prepare for any future need. In particular, the dominant aggressor should be out of the home and/or the victim parent must have the necessary support services in place in order to implement the safety plan and protect herself or himself and the children from the aggressor.

Initiating a voluntary family maintenance (VFM) case when there is suspicion or threat of DV is probably not appropriate. However, if this option is taken, it will require senior administrator approval when the dominant aggressor is still in the home or is actively harassing or threatening the at-risk parent or children. A VFM case is not safe and does not provide adequate power to hold the aggressor accountable or prevent future threats or assaults. The only time that it might be appropriate is when it can be well-established that a single incident of intimate partner violence has occurred, that there are no signs of a pattern of coercive control, and the dominant aggressor is remorseful, cooperative, and enrolls in counseling.

Deciding If Protective Custody Is Necessary

In assessing the ability of the at-risk parent to keep the children safe from the aggressive parent, the CSW should not solely focus on the fact that the parent did not leave the home of the abusive partner. The assessment should identify and evaluate the broader range of actions they have taken and/or challenges they have met before filing a petition.

One of the most difficult dynamics of domestic violence for many to understand is why the at-risk parent stays in an abusive relationship. Such parents face both internal pressures (e.g., love, loyalty, guilt, and/or fear) and external pressures (e.g., lack of money and housing, social isolation, child's attachment, family, culture, religion, etc.) to stay or to reunite. Many parents do eventually leave but usually after making several attempts. It is often extremely difficult or risky to leave. The danger remains even when DCFS files a petition in Dependency Court and requires the victim parent and children to leave their home and relocate.

It is important to remember that the period of highest risk of serious injury or death to the at-risk parent and children is when the at-risk parent tries or manages to leave, or when the dominant aggressor feels that the relationship is truly over and no longer can control the at-risk parent. The at-risk parent often senses this danger. It is very important to note that the choice to remain in the relationship and in the home can be a protective decision. Because of these challenges, removing the children from the at-risk parent should not be based solely on their not having left the aggressor.

In taking children into protective custody, all efforts should be made to maintain them in the home of the at-risk parent unless there is sufficient evidence that the children will remain at risk with that parent. It is also crucial for the CSW to understand that the primary risk to the children in homes where there is domestic violence is the threat posed by the controlling, intimidating and possibly violent actions of the dominant aggressor. This fact should be kept in the forefront of the assessment and in all subsequent documented notes. Although the CSW needs to assess whether

or not the parent can reasonably keep the children safe, the focus needs to be squarely placed on the behaviors and attitudes of the battering parent.

When DCFS is formulating a conclusion that protective custody is necessary and a petition needs to be filed under the WIC §300 in Dependency Court, the following should be considered:

- Have the children been injured, physically abused or severely neglected by either parent?
- Is there consistent evidence that domestic violence is so pervasive that it has profoundly affected the child's ability to function?
- Which parent demonstrates behaviors and attitudes consistent with being the dominant aggressor or using coercive control?
- Were the reasonable efforts provided to protect the family members ignored or ineffective?
- Does the dominant aggressor still have access to the at-risk parent/child?
- Does the dominant aggressor exhibit high-risk, violent and stalking behaviors?
- Does the at-risk parent have sufficient psychological strength, resources and support to remain safe and protect the children?

Once the decision is made to take the child into temporary protective custody from one or both parents, the Emergency Response (ER) CSW should clearly outline in the detention report:

- The dynamics of power and coercive control observed in the family
- Identification of the dominant aggressor
- All safety and risk concerns
- Any previous child welfare involvement
- Family strengths and resources

In cases of domestic violence, the CSW should provide the information to court in a manner that (1) places the blame on the dominant aggressor and does not blame the at-risk parent for the violence and (2) clearly documents the manipulative and controlling behaviors of the dominant aggressor.

Decisions of Relocation or Entering a Shelter

There are very few openings in shelters in Los Angeles County and the CSW needs to work very closely with shelter staff advocates to find workable solutions. Then, once a shelter is found, it is customary for safety reasons that the staff will have the parent stop going to work, have the children change schools and medical/dental providers as well as discontinue their regular social activities. Such a radical change in life circumstances is a terrific struggle for anyone. If the at-risk parent manages at some point to leave, the dominant aggressor may follow, stalk, make

threats to harm or abduct the children, or use other strategies to pressure the other parent to reunite. This is a very dangerous time.

If entering a shelter is not possible or recommended, similar precautions and potential dangers as mentioned above will also need to be considered if the decision is to relocate to any other location.

Whenever a CSW recommends or requires the at-risk parent to take the children to a secure location away from the aggressive parent, the CSW must also immediately link them to a DV victim organization to assist them in filing the appropriate legal documents (commonly referred to as “Good Cause” filing) in a timely manner. Per PC §278.5, concealing children in an undisclosed location away from the other parent is abduction. In cases of DV, however, there is a legal exception provided the victim parent notifies the Child Custody Division of the District Attorney within 10 days and initiates a plan for visitation [PC §278.7].

Decisions of Out-of Home Placement

In cases of domestic violence when the children need to be removed from the custody of one or both parents, the CSW must carefully consider whether it is in the best interests of the children to be placed in the homes of the relatives of the aggressive parent. Placement with relatives of the non-abusive parent or even in other out-of-home foster care options may be more emotionally appropriate over time. This is especially true in cases where one parent has murdered the other. Although the children may be well-acquainted with the relatives of the abusive parent, they may inflict undue pressure on the children to view the victim parent as the cause of the violent attack or they may minimize the trauma experienced by the children and not seek mental health or grief counseling.

OTHER SAFETY CONSIDERATIONS

At Dependency Court

If a petition is filed, safety planning for the victim and children also needs to be considered while at Dependency Court.

The CSW should explain to the at-risk parent what to expect at court—from the logistics of the parking structure, to the large waiting room where they might encounter the other parent—and give ideas how they might remain safe. Suggestions might include: having friends, family and/or a domestic violence advocate accompany them to the hearing; making the bailiff aware of any danger or risk when they check in to the courtroom in the morning; having them wait on a separate floor from the courtroom after notifying the bailiff; or asking the bailiff to call security for an escort to their car in the parking lot after the hearing.

It is also important to notify the court if an existing restraining order has been issued against either parent by either Family Law Court or Criminal Court bench officers so that neither party is placed at risk or is forced to violate the order.

If possible, the CSW should inform the court officer of the case and the potential risks or court restraining orders.

Monitored Visits

DCFS has existing policies on the departmental expectations for conducting supervised, or

monitored, visitations. The policies include the need to prepare the selected monitor thoroughly on the expectations for safety and confidentiality of the visits as well as restrictions from discussing the court case or other family members.

However, for cases with DV, the preparation and expectations for the DCFS or non-DCFS monitor must be well-planned to provide the utmost safety for the child and victim parent.

Effective monitoring is a very difficult endeavor. In usual social interaction everyone engages in conversation together; however, in supervised visits the monitor must not do so. The monitor must exclude themselves from the ongoing chatter while paying strict attention to everything the monitored parent says and does. Monitoring a visit, especially with coercive and abusive parents, is not babysitting. The monitor should never be focused on other activities such as writing up other case notes, picking up emails, reading other materials (soft or hard copies), and so forth. All of the monitor's attention must be on the activity of listening, watching and scrutinizing the visit so that all of the rules are followed.

This is critical in cases of domestic violence in order to maintain present and future safety for the child and victim parent. The safety of the children and victim parent must always be guarded.

Basic safety practices that must be adhered to are:

- The victim parent should never be involved in the exchange or monitoring process when the abusive parent visits the children.
- The children need to be and to feel safe at all times.
- Because the victim parent and the abusive parent should have no telephone or physical contact, the visitation plan needs to be communicated by the CSW, other DCFS staff, or mutually agreed upon through a third party.
- The location must be safe and not in the home or residence of the victim parent. It should be in a place where the monitor can sit close to the child and parent so that all conversation can be heard. Parks, arcades and other amusement centers are often not good choices because of the temptation for the child to go off with the abusive parent away from the monitor.
- If the home of the victim parent is confidential, then the transportation to and from the visit must be done in a manner that does not allow the abusive parent to follow or track the driver back to the victim parent's home.
- Monitors must speak the language used by the parent and the child fluently.
- Monitors (DCFS staff, other professionals, or selected family, friends or acquaintances) must be thoroughly informed and instructed on the DCFS rules of monitored visitation in addition to the specific directives for monitoring domestic violence batterers (alleged, sustained or convicted).

In DV cases, the CSW should abide by or prepare the selected monitor to abide by the following directives:

- Be informed of the exact reason the visits are to be monitored and not just because it is "court ordered."
- Prior to the visit, inform the parent of the rules and expectations of the visit as outlined in the DCFS policy on monitored visits (e.g., no gifts, no whispering, not leaving the area of

the monitor even to go to the bathroom, no discussion of the court case) or specific to domestic violence (e.g., no discussion of new residence, new school, victim parent's activities, messages to be passed on by the child to the other parent or any other information that must remain confidential for safety reasons).

- Always remain in a position that you can hear all conversation.
- Be prepared to warn the parent whenever they violate any of the rules of visitation and then stop the visit completely if there is another violation.
- Never perform other activities during the visit. Only listen, watch, and perhaps take notes on the visit activities and conversation.
- Remember batterers are known to use the children as pawns to collect information on or pass along intimidating messages to the victim parent. Often the children are not aware of this strategy. The monitor is to prevent such behaviors or attempts to use the children even in an apparently benign way.
- Be mindful that batterers often try indirect conversational ways to have the child inadvertently reveal the new location where the child and victim parent are living (e.g., city where the shelter is, landmarks around the new home/safe location, etc.). Monitors must listen for this type of conversation so that they can stop the questions and redirect the topic, or stop the visit altogether.
- Understand that the child may feel sad that his parents are separated and wish for them to reunite. This desire may make the child vulnerable to revealing information that should be kept confidential for safety reasons. Therefore, paying close attention to the conversation at all times is important.
- Report any violations or concerns to the CSW, or if the CSW is the monitor, document all violations and concerns in the case file.
- Notify the victim parent if any information was given to the abusive parent that might result in a breach of safety (e.g., hints about new residence, plans for new job, new boyfriend or girlfriend.)

OTHER DCFS ASSIGNMENTS - BEYOND EMERGENCY RESPONSE

All DCFS staff needs to know and apply the principles and standards described above whenever they work with children and families where domestic violence is alleged. In particular, Hotline Intake Evaluators, Intake Detention and Control (IDC) social workers and Court Officers all should incorporate the dynamics of domestic violence into their portion of the process in order for DCFS to implement consistent responses to families that come under their jurisdiction who are experiencing domestic violence. In particular the language used in writing petitions and court reports needs to reflect accurately the details of the case and should clearly identify the risks posed by the dominant aggressor and the coercive tactics that he or she has used. CSWs writing such reports and petitions should take care to distinguish the behaviors of the batterer from those of the victim. Unnecessarily characterizing the abusive and controlling behaviors as "mutual" when the facts indicate otherwise or not taking the time to delineate the abusive dynamics in the home, subjects the abused parent to re-victimization.

NON-MINOR DEPENDENTS AND TRANSITIONAL AGE YOUTH

Non-minor dependents (NMD) and Transitional Age Youth (TAY) are both very vulnerable to intimate partner abuse. More details can be found below in Chapter 7 “Diverse and Underserved Communities.” For DCFS staff who are working with this population, it is important to provide the youth with the DCFS Youth Development Services website www.iplonline.org for current and former foster youth where they can find links to services including housing, legal aid, transportation, and health care.

SPECIAL CIRCUMSTANCES: DV HOMICIDES AND SUICIDES

In cases where one parent kills the other and perhaps also takes their own life, DCFS should be called so that they can provide safe interventions and healing support services to the children.

The decision of where the children go to live after the homicide can have great impact on the child’s long-term physical and emotional well being. Therefore, it is important to assess the home thoroughly for safety and quality of care.

If there is a surviving parent, it is usually the one who committed the murder of the other. Unless the DCFS is there to intervene, this parent can designate where and with whom the children go.

Often batterers who kill their spouses or partners do not get convicted of murder but rather for a lesser manslaughter charge. In such a case, the batterer will have a shorter sentence and unless other court custody orders are in effect, the children will be returned if they are still minors. Otherwise, when released from prison, the abusive parent will be legally able to resume full custody of his/her children.

On the other hand when both parents are deceased, then the children may go to those relatives or family friends who live in closest proximity to the children. Unless the deceased parents had made prior legal arrangements for the custodial care of their children, the relative's decision to take custody of the children is often made with feelings of guilt or pity and without considering the tremendous financial obligations of raising children.

Further, going to live with relatives of either parent can pose emotional risks to the children. When the relatives do not deal directly with their own beliefs or feelings about the violent deaths, they can consciously or unconsciously take it out on the child. That is, relatives of the victim may not be able to handle it when the child also mourns the loss of the parent who did the killing. Some relatives, on the other hand, may scapegoat a child who reminds them of the person who killed their loved one. Similarly, the relatives of the perpetrating parent may talk badly about, or even blame the victim in front of the child for causing the murder; thus further complicating the child’s grieving process. Or they may deny the trauma, not talk about it, and just “move on.”

A second area of concern in DV homicides is ensuring that the children get access to appropriate treatment for the trauma and grief. If left up to the discretion of the relatives, they may not guarantee that the children receive such counseling. Children should not be left to work out the feelings on their own. In fact, for a healthy transition, the relatives themselves would benefit

from counseling. They have also lost a loved one. Complex grief that is not treated can result in

unresolved emotional distress.

Sometimes in the DV homicide where there are children, law enforcement or other mandated reporters do not contact DCFS. This is not helpful to the families. A report to DCFS should be made. Although a report to DCFS cannot always guarantee a smooth transition to appropriate placement or effective treatment services in these complex cases, the children have a better chance of being linked to these services and finding nurturing homes.

In addition, DCFS involvement alone is not sufficient. Consulting and collaborating with local domestic violence agencies is a critical step to ensuring the children are referred to professionals experienced in working with children who have witnessed domestic violence.

The GERDA fundamental principles would expect that DCFS should assist in, or when legally appropriate make, placement decisions for these children whether it is in the home of family, friends or even foster care. The homes and suitability of the caregivers should be assessed for safety and their ability to meet the physical and emotional needs of the children affected by domestic violence. The caregivers, if extended family or friends, should be given information regarding custody options and how to contact DCFS if they have concerns about any risks posed to the child by a parent.

In some cases, it may be best for DCFS to open a case, even file a petition in Dependency Court, to make sure the emotional and custodial transition for these children addresses their needs.

Whether or not a case is opened, DCFS should link the children to therapists who specialize in the treatment of trauma surrounding domestic violence as well as appropriate grief support services.

Likewise, DCFS should also refer the caregivers to trauma and grief services. Doing this will enable the caregivers to handle their own reactions to the homicide, opinions about the victim or the perpetrator, or the children themselves separate. This is to prevent the caregivers from imposing their beliefs on the children and/or failing to get them adequate professional assistance.

CHAPTER 5

JUVENILE DEPENDENCY COURT

Juvenile Dependency Court (Dependency Court) handles all of the petitions filed by DCFS on behalf of children who are alleged to have been victims of abuse and neglect and require court supervision to remedy the risks. This section focuses on effective approaches that Dependency Court hearing officers and staff can take in cases involving domestic violence.

The main purpose of dependency court is the protection of the children. Once a petition with allegations of domestic violence has been filed in Dependency Court, special considerations come into play. When allegations of domestic violence are made, efforts should be made to preserve the children with the abused parent while empowering and protecting that victim. Empowering and protecting could include such actions as:

- obtaining a restraining order
- securing a safe shelter or residence for the victim and the children
- keeping the location of that shelter or residence confidential
- verifying that the batterer is in an approved Batterer Intervention Program (BIP)
- ensuring the visitation plan does not place the victim at risk

This, however, cannot be done at the expense of the safety of the children. Family dynamics are usually complex, and often domestic violence is not the only child-welfare issue of concern. Whatever the circumstances are, keeping the children safe, both physically and emotionally, is always the number one priority for the Dependency Court.

GENERAL ISSUES

Physical Considerations

Once a case with domestic violence allegations has come to Dependency Court, there are physical considerations to keep in mind. Opportunities for intimidation by the batterer should be minimized. Attempts should be made to keep the parties separated. All counsel and social workers should be vigilant in informing victims that, while waiting to talk with their attorney or waiting for the hearing to begin, they should not sit near the batterer or allow the batterer to approach. (The investigating social worker should advise the victim about safety precautions prior to sending the victim to the courthouse.) Where practical, the victim and the children should be directed to wait on another floor or in a safe area so that they will not be forced to sit in close proximity to the batterer. Having the victim wait on another floor would also mean that the batterer would be less able to seek them out while they wait for the case to be heard. The court and the attorneys should make bailiffs aware of domestic violence matters to maintain the victims' safety. The court should

attempt to hear these matters as quickly as possible to keep the possibility of contact between the victim and the batterer to a minimum.

Once the parties enter the courtroom, victims should not be forced to sit next to the batterer. Counsel should be aware of the allegations/facts of the case and actively place themselves, or establish some space, between victims and batterers at counsel table. When both the victim and the batterer require the assistance of an interpreter, best efforts should be made to obtain individual interpreters for each party. Too many times, victim and batterer are required to lean in very close, almost cheek to cheek, in order to hear the single interpreter provided by the court. This proximity of the victim and batterer can create an unnecessary opportunity for intimidation.

Domestic Violence Shelters and Confidentiality

If the victim goes to a domestic violence shelter, some special considerations must be kept in mind. The court must make sure that the name and address of the domestic violence shelter is kept strictly confidential on all court documents and reports and not disclosed in the open courtroom. Also, domestic violence advocates must not be required to identify themselves in the courtroom other than as advocates. Specifically they should not be required to state out loud in court their name, the name of the shelter they are affiliated with, the address of that shelter, or their role in the case. Revealing such information in open court is problematic for many reasons. It may result in the necessary relocation of the abused parent and children to another shelter for safety; it may violate WIC §18291 that requires the location of a shelter to remain confidential; and it may also place the advocate at risk of personal threat and harassment by the batterer.

Domestic violence shelters do not provide anyone with the address of the shelter and have a post office box associated with them that can be used for a permanent mailing address for the party. Despite the confidentiality practices of the shelters, sometimes the name and address is known to the DCFS and victim's attorneys; therefore, the court needs to make sure that they order the name of the shelter and the address to remain confidential and that the face of the legal file reflects this order. The name and address should not be confidential from either DCFS or the child's attorney. In addition, DCFS must assure that the victim's address does not appear in any of the reports sent to the batterer. This caution would include information that would identify even the area in which the victim lives. If the children also are living with the battered party, DCFS and the court need to be cautious in revealing addresses of schools, doctors, therapists, etc. The court may want to address limiting the educational rights of the batterer in order to keep the school address confidential. These confidentiality considerations apply any time that the victim is living in a location that they want kept confidential.

If the children are living with the battered party in a shelter and the court must determine a visitation arrangement, the court and DCFS must keep in mind the confidentiality of the placement. The visits cannot take place at the shelter. Arrangements also need to be made to minimize the risk to the victim of being followed to or from the shelter before or after a visit.

These concerns extend to a batterer following a DCFS social worker to or from a visit or even a home call. Many shelters are resistant to the idea of social workers coming to the shelter for any reason, including assessing the shelter for possible release of the children to the battered parent.

While efforts are underway between the shelters and DCFS to ease this tension, it would be beneficial if both the court and DCFS were aware of these confidentiality concerns.

HEARINGS

Initial Hearings

In cases where there are allegations of domestic violence, the Department of Children and Family Services will make a recommendation regarding placement of the children. Ideally, those recommendations will be supported by a detention report that discusses the facts specific to each case. The children's attorney will interview their age-appropriate clients and also make recommendations for placement. Finally, attorneys will advocate on behalf of the parents' desires. However, final placement orders remain the domain of the dependency bench officer.

When making the determination about whether to remove a child from the custody of a battering parent, the court should consider the batterer's use of violence against the victim. The court should also consider the risk to the children from being physically injured during the course of a domestic violence incident as well as the emotional abuse suffered from seeing or hearing the domestic violence incidents. Emotional abuse might also result from dealing with the aftermath of a domestic violence incident, such as not being able to go to school because the child is assisting the abused parent, or that abused parent not being able to properly care for the children following a battering incident based on physical or emotional injuries. Keeping in mind that domestic violence is as much about control as it is the physical battering, the parenting style of a batterer is often harsh and uncompromising. The court should be looking at not only physical abuse to the children perpetrated by the batterer, but also a parenting style that is demeaning and emotionally abusive.

In making the determination of whether a child can safely remain with a parent where there are domestic violence issues, the bench officer must first try to identify whether there is a dominant aggressor [PC §13701(b)]. A bench officer should never blame the victim for the abuse; however, it still is imperative to determine whether the abused parent has the willingness and capability to protect the children when provided with appropriate supportive services. In making this determination, the court must consider what services (i.e. domestic-violence shelters, counseling, child support orders) and protections (i.e. confidential placement, restraining orders, restrictive visitation orders) could be put in place to assist the abused parent in protecting the children. The court may also want to consider:

- The severity of the abuse.
- The length of abuse history.
- Whether the victim is physically abusing the child and, if so, what are the circumstances?
- Whether this is the first time the victim has been victimized in a relationship.
- Whether services have been offered previously, what the services offered were and whether the victim was willing to participate in those services.
- Whether the victim has previously left and then returned to the batterer and the reason for the return.
- Whether there is family or friends available to support the victim.

- Whether the victim has removed themselves from the situation prior to coming to court.
- Whether the victim currently is in a shelter or safe place.
- Whether relatives are a viable resource to keep the “victim” parent and children safe so they can remain a unit.
- The victim’s willingness to participate in services now.
- Cultural factors the victim must overcome that may make it difficult to leave.
- Financial factors that limit efforts to leave.
- Impact of the 2-3% rental housing vacancy rate in Los Angeles County.

In assessing risk to the children, the court also should look at:

- Whether substance/alcohol abuse also is an issue for one or both of the parents.
- Whether either parent has mental-health issues.
- The degree to which the children have been exposed to the dynamics of domestic violence.
- Whether the children have been physically injured during the domestic violence episode.
- Whether the perpetrator is also physically, sexually, or emotionally abusing the children, including undermining the visits.
- Whether the perpetrator has threatened to harm or abduct the children.
- Whether the children are manifesting emotional effects of living in a home with domestic violence.

In determining what reasonable efforts have been made or could be put in place by the agency in preventing removal from the abused parent, the court should look at whether efforts have been made to exclude the batterer from the home either by agreement or through the use of a restraining order, which may include an order excluding a perpetrator from the home. If that is not a possibility, the court should consider whether the agency attempted to get the victim parent and the children into a domestic violence shelter or situated with a family member or family friend. In determining what reasonable efforts have been made by the agency to prevent the removal, the court and the agency must consider the legalities of differing actions. For instance, the agency cannot require a parent to disobey a valid Family Law Court order regarding custody and visitation. A parent must petition the court to legally change a valid court order and not just refuse to obey it. Also the agency cannot require a parent to get a restraining order in Family Law Court or Civil Court without a recent incident of violence or threat of violence or abduction. Similarly, the court may also consider that obtaining a permanent “kick out” order in Family Law Court may be difficult, particularly if there is a long marriage and/or the parties own the home together, and/or the abusive party owns the home or is on the lease. Many times, if the residence is large, and the abusive party claims to have no other place to live, the court may craft an order that splits up the house, permitting both parties to remain in the divided home until one party files for dissolution of marriage.

After examining all the considerations regarding the level of danger and the abused parent’s ability and capacity to protect the children, the court must determine whether the children can be maintained safely in the abused parent’s home or whether detention from the abused parent is necessary to protect the physical and emotional safety of the children.

If the court makes the decision that the children can be maintained safely with the victim, the court

should consider the issues of whether the victim has a safe place to reside with the children. This issue must be addressed before the family leaves the court at the detention hearing. Possible solutions are the use of the California Law Enforcement Telecommunications System (CLETS) restraining orders, which include an order making the perpetrator move out of the “family” home (see TRO section), or the use of domestic violence shelters or the homes of relatives or friends. The court needs to remember that a simple order for a batterer to “stay away” from the victim or even the children is not an order that is truly enforceable by law enforcement. A restraining order is a better choice to protect the victim and the children.

Visitation

In determining visitation for the perpetrator, the court should take into account any possible detriment to the child as it considers:

- The wishes of the child.
- Input from the abused parent.
- The degree to which the child has been exposed to, or suffered the aftermath of, the abuse.
- The severity and the length of abuse history.
- Any previous injury to the child during a domestic violence incident.
- Any previous physical abuse of the child by the batterer.
- Any existing order for no contact or restricting visits.

In making the actual visitation orders, the court should consider:

- A safe place for visits to happen.
- A safe monitor for those visits if the court is ordering monitored visits.
- The safety of the victim during visits.
- A safe place where exchange of the child may take place where parties would have no contact with each other.
- How the children will get to those visitations.

The court must also consider any previous threats of abduction by the batterer in making safe visitation orders.

In determining whether to allow unmonitored visits with the victim, if the children are not in the home of that parent, the court should consider the willingness and capability of the victim to protect the children from the batterer during the course of a visit.

If the children are not living with either parent, the court should verify that the parents are not visiting the children together so as to minimize the risk of the children being exposed to any further domestic violence and to assure that the abused parent’s safety is maximized.

If the children are residing with the victim, the court should assure that the batterer’s visits are being monitored by someone other than the victim. The court should also confirm that the visitation plan is set up to minimize or eliminate both the physical and telephonic contact between the parents.

Pleading and Sustaining Language

The language pled by DCFS in a domestic violence count and sustained by the court should reflect the true state of things in a household. If a dominant aggressor can be ascertained, the language should reflect that. Although in Dependency Court bench officers concentrate on the impact on the children versus the conduct of the parents, in domestic violence cases, it is important to identify the dominant aggressor, where possible, so as not to re-victimize the battered party. Instead of sustaining language that indicates that the parents exposed the children to domestic violence placing the children at risk, the court and the litigants might want to consider language that indicates the actual facts. There is no one standard language for domestic violence counts. Each needs to be crafted on the facts individual to the case. However, one example might be: stating that the father has slapped and beaten the mother for three years in the presence of the children and then stating that the mother has been unable to take appropriate actions to protect the children and list the specific reasons. This puts the onus for the abuse squarely on the shoulders of the parent doing the battering. It is not equally both parents' fault that the children have been exposed to and suffered the consequences of being in a house filled with domestic violence. It is not adequate to state, "the children have been exposed to domestic violence."

When considering risk to the children, the court must also keep in mind the differing kinds of risk to children when living in a home where domestic violence is present. The children are at physical risk of being injured during a domestic violence incident either by being purposefully injured during the incident or by being injured while trying to intercede in the battering incident. In addition, the children also have to deal with the emotional abuse of the battering as well as its aftermath.

The emotional impact could include:

- Having to hide in closets fearing for their own safety and/or for the safety of the abused parent.
- Listening to the beating and imagining the severity and possible outcome.
- Having their special clothes, toys, belongings or other household items broken or damaged.
- Hearing the victim (their parent) scream or moan in terror and pain.
- Witnessing their parent being struck, pushed, choked, and restrained.
- Feeling helpless and powerless.
- Having guilt that they might have caused the battering incident or could have done something to stop it.
- Hearing the victim blamed for not having "kept the house clean enough" or "dinner warm enough" and/or parroting these blaming statements.
- Seeing the battering parent as powerful and as a role model.
- Feeling the need to protect siblings from the experience.

The aftermath could include:

- The victim not being physically/emotionally available to the children because of the assault.
- The victim being unable to care for the children due to the battering.
- The children missing school because they took care of the injured victim or the siblings.
- The children feeling too tired after being up during the night dealing with the fighting.
- The children modeling aggressive behaviors with their siblings or friends.
- The children blaming the victim or alternatively trying to protect the victim.

There is a large range of outcomes for the children exposed to domestic violence in their homes. Some of these outcomes are more obvious than others but they all need to be considered when assessing risk.

Mediation

Pursuant to Rule 5.518 of the California Rules of Court, Dependency Court mediation is not mandatory but if parties agree to mediation, it can help to establish fairness, accountability, and a high quality of service to children and families. It can also improve the safety, confidentiality, and consistency of the court process. Mediators must assist the participants in reaching a settlement of the issues consistent with preserving the safety and best interests of the child, first and foremost, and the safety of all family members and participants.

Specifically under Rule 5.518, a differential domestic violence assessment is to be done by the mediator so that they may conduct the mediation in such a way as to protect any victim of domestic violence from intimidation and to correct for power imbalances created by past violence and the fear of prospective violence. They are to discourage participants from blaming the victim and from denying or minimizing allegations of violence against any family member.

Dependency Court mediation protocols for domestic violence cases must include specialized procedures designed to protect victims of domestic violence from intimidation by perpetrators as well as address all family violence issues by encouraging the incorporation of appropriate safety and treatment interventions in the settlement. The protocol must include a domestic violence assessment to determine the nature of the violence in order to:

- Assess the ability of the victim to fully and safely participate and to reach a non-coerced settlement.
- Clarify the history and dynamics of the domestic violence to determine the most appropriate manner in which the mediation can proceed.
- Assist the parties, attorneys, and other participants in formulating an agreement following a discussion of appropriate safeguards for the safety of the children and family members.

The mediation protocol for a domestic violence case must be designed to meet the needs of the victim of violence and encourage full and non-coerced participation. It must also include an option for the victim to attend the mediation session without the alleged batterer being present and permission for the victim to have a support person present during the mediation process, whether she or he elects to be seen separately from or together with the alleged batterer. Unless otherwise invited or ordered to participate under the protocols developed by the court, a support person may not actively participate in the mediation except to be present as a source of emotional support.

However, at this time [ca. 2014] mediation has been suspended in Dependency Court due to fiscal reasons.

Jurisdictional Hearings

DCFS Dependency Investigators, in investigating domestic violence allegations, should investigate the victim's medical and hospital visits, as a result of any domestic violence - if the victim discloses that she or he was seen by a medical professional for injuries due to a domestic violence episode and if she or he signs a release for this information. They should check with local law enforcement regarding any incidents where law enforcement was called and if they responded to the residence. They must attach that any previous police reports and incident/injury reports, and medical reports to the jurisdictional report for the court's consideration.

Dispositional Hearings

Orders for Services

Services for Batterers

When allegations of domestic violence have been sustained, the court should assure that the proper orders for services are made. Appropriate services for the perpetrator should include a full 52-week Batterer Intervention Program (BIP). This program is mandated in the criminal system if the perpetrator is convicted of even a misdemeanor domestic violence incident. It would be consistent for the juvenile dependency system to order no less when finding a parent has perpetrated the same acts. In addition, the curriculum for BIPs is governed by strict PC §1203.097 guidelines and are approved by and overseen by the probation department. The Probation Department publishes a list of approved BIPs regularly and should be utilized by the Dependency Court and DCFS.

Although the 52-week programs encroach upon reunification time frames, not ordering them, or trying to order reduced or accelerated sessions is not the appropriate remedy. Likewise, it may not be appropriate to delay reunification until the full 52 weeks have elapsed, though it is the case that any parent making progress in the case plan can have Family Reunification services ordered for 18 months and is not strictly limited to six or twelve months. That is, the solution is not to rule out the full approved program, but, instead, to monitor the batterer's progress diligently, both in the program as well as their behavior during visits. Of course, any visitation plan must consider the safety of the children and the abused parent.

Anger management is an inappropriate treatment modality for batterers. Anger does not cause abuse, but is frequently used as an "excuse" for domestic violence. Anger may also stem from abusive attitudes held by the batterer. Batterers often have an inflated sense of privilege that allows them to believe they have the right to control their partner. Such an attitude of entitlement can easily produce fury when the batterer perceives that the victim did not meet her or his immediate needs. Further, battering is not a random set of angry explosions but rather a pervasive pattern of emotional and social control and intimidation against an intimate partner. The traditional cognitive

approaches used in anger management counseling do not address the issues that underlie domestic violence. Further, because anger management counseling is shorter in duration than batterer's intervention programs, it is often seen as a quick fix. Recommending anger management for battering can increase the likelihood that the risk will continue for the victim and have no effects whatsoever on the batterer's behavior. Furthermore, anger management programs have no state-approved guidelines for curricula. The 52-week batterer's intervention programs differ from anger management in curricula and emphasis and are governed by strict Penal Code guidelines.

BIPs are not clinical group therapy. They are peer groups designed to address the participants' acting out behavior. The groups are facilitated by a person or persons who are deemed to be expert at conducting such groups (as defined in Penal Code 1203.098) without allowing them to cross the line into something clinical. To allow BIPs to become clinical would be unethical and potentially dangerous. Expert facilitation requires the ability to hold members of the group accountable for their actions and words, calling members out every time they fail to comply and not falling for their charm (which can be considerable and powerful).

Batterers may not be violent and abusive because they have been traumatized some time in their lives. Many people are traumatized throughout their lives and do not become violent and abusive toward others. Many women and men who have sexual abuse histories, domestic violence in their homes growing up, and abusive partners suffer from Post Traumatic Stress Disorder (PTSD) and depression but do not act out in a violent way.

In addition to, and not in lieu of, an order for individual counseling to address the domestic violence might also be appropriate. While the most important intervention for a batterer when addressing domestic violence is to be in a group setting in order to experience the impact of group confrontation, it might also be helpful for that person to address other personal issues in individual counseling as well. It is possible that batterers might use the venue of individual counseling to further their own agenda, so it is important to look at each case individually when making this determination. Therefore, when making an order for individual counseling, it is crucial to order DCFS to provide the therapists with all relevant court reports and petitions.

Psychotherapy and psychotropic medication are not interventions for battering. Serious mental health conditions might intensify the battering but they are rarely the cause. If individual therapy is ordered, it is imperative that the individual therapist be trained in the dynamics of domestic violence and maintain collateral contact with the batterer's intervention counselor so as not to work at cross-purposes. As with the victim, the batterer may have pre-existing mental health issues that may need to be addressed in psychotherapy or through a psychiatric evaluation. However, this is separate from any intervention specific to the abusive relationship. Any mental health condition that might cause the abusive parent to place themselves or their children at risk may need therapeutic intervention. If individual therapy is recommended, the therapist must be trained in the dynamics of domestic violence.

Similar to mental health conditions, substance abuse does not cause battering, but serious substance abuse may increase the severity or frequency of the problem. Therefore, participation in a substance abuse program should not be ordered in lieu of an approved BIP, though if actively using drugs the batterer should be clean and sober for at least 30 days before entering the BIP. In addition, domestic violence meetings or "counseling" that are included in some substance abuse

programs are not officially recognized by the Probation Department and may not meet the criteria for official BIPs.

Services for Adult Victims

Appropriate services for the victims might include on-going participation in a domestic violence support group for victims as well as individual counseling as it also is important for the victims of domestic violence to understand the dynamics of domestic violence. In addition, the victims might be able to use the individual counseling to work on issues of self-esteem, building a support network, employability, education, protection of the children, etc.

Domestic violence is not mutual combat. Victims should never be sent to an anger management program unless there is independent evidence that supports such a recommendation separate and apart from the domestic violence. Defensive actions used by the victim to fend off or deflect the onslaught of a battering episode, either verbal or physical, do not constitute evidence of an anger problem.

As with the batterer, the adult victim may have pre-existing mental health issues that need to be addressed in psychotherapy or through a psychiatric evaluation. However, this is separate from any intervention specific to the battering relationship. Again, any mental health condition that might cause the victims to place themselves or their children at risk may need therapeutic intervention. If individual therapy is recommended, the therapist must be trained in the dynamics of domestic violence.

Although substance abuse often is a response to having been in a traumatic and abusive relationship, batterers make allegations that their partner is a substance abuser in order to gain further control. The batterer's word never should be taken without additional evidence regarding substance abuse on the part of the victim. Should the victim parent actively be abusing drugs or alcohol, a substance abuse program should be the initial intervention. It is also important to note that most shelters are not equipped to take in actively substance abusing victims. Should the victim need to detoxify, an inpatient substance abuse program may be required. When the victim appears to be abusing drugs or alcohol, every effort should be made to refer the victim to a treatment provider, including residential treatment, with expertise in both domestic violence dynamics, safety of the victim and the children, as well as substance abuse treatment. However, such programs are not designed to maintain a victim's safety from the batterer. This gap in services for the dually-diagnosed domestic-violence victim and substance abuser poses a dilemma in safety planning and appropriate service delivery.

Since batterers often undermine the relationship between the victim parent and the children (and among the children themselves), family therapy for the victim parent and the children (especially teens) may be an appropriate order. That is, research on the effects of domestic violence on children indicates that the closer the relationship is between the victim parent and the child, the less likely it is that the child will suffer serious long-term negative effects. The batterer should not be included in the family conjoint therapy at the onset of the case.

It is not appropriate to order conjoint counseling or couples therapy at the onset of a case. It must

be understood that not only is power **not** balanced between these couples but that this could be a physically dangerous situation. Couples or family therapy should not be ordered unless:

- The couple has made progress in their group and individual therapy.
- All treating therapists (who need to be experts in domestic violence) feel that it is safe to work on issues as a couple.
- Both parties intend to reunite as a couple.

While the goal is to reunify "the family," this is not always possible or practical in families where domestic violence is an issue.

However, unlike the caution of no conjoint therapy for the batterer and the victim parent, conjoint therapy for the children with the abused parent may be beneficial. One dynamic observed in homes where there is domestic violence is the batterer's systematic undermining of the mother/child and sibling/sibling relationships.

If the court is ordering the "Parents beyond Conflict" program offered by Dependency Court for either parent, the court should also order them to attend separate sessions so as to maintain the safety of the victim.

Services for Children

In regards to orders for the children, individual counseling (e.g., play therapy or art therapy) is often appropriate so they may talk about what they have seen, heard and learned. Children need help to deal with the trauma. For children who might already be showing signs of domestic violence patterns, a program to address those patterns might be appropriate. Since the greatest damage to a child who has experienced domestic violence in his or her home is the disruption of the parent/child attachment, a crucial treatment intervention is conjoint therapy with the abused parent. This type of therapeutic intervention is one of the most effective methods to help the child recover from the negative effects of domestic violence.

Placement

When the court is determining placement of the children at disposition, the court should first consider whether the children can be returned to the abused parent. If allegations besides domestic violence have been sustained, the court will have to review the entire case. However, if the only sustained allegations involve one parent battering the other, the court needs to again, as they did at detention, determine whether the children can be maintained safely in the abused parent's home. If the court originally detained the children from the abused parent, the court must consider whether, during the time from the detention hearing to the disposition, services and/or a safety plan have been put in place that would allow the children to return home. For example, has the batterer moved out of the family home? Is the abused parent now residing in a safe residence without the batterer, such as a relative's home or a shelter? The court should look at whether services are now in place to assist the abused parent in protecting herself or himself as well as the children.

If the children cannot be maintained in the home of the abused parent, the court needs to make

sure that the home where the children are placed is safe and secure. Assuring that the placement is safe may entail keeping the placement confidential under WIC §308. If the children are placed with a relative, the court needs to make sure that the relatives are willing and capable of protecting the children. The court can issue restraining orders against the batterer to protect the relatives and/or the children if necessary.

Finally, the court needs to think about the visitation schedule to make sure to keep both the children and the abused parent safe during visits.

Review Hearings

Reunification Considerations

What should the court consider when deciding whether to allow a batterer to return to his family? The court needs to look at whether actual progress has been made in programs instead of just looking at participation. Most letters from BIPs include how many sessions have been done and paid for. If any information is given by the group facilitators, it is minimal. The court needs to look at whether the perpetrator actually has made progress. The court should get information from the perpetrator about what they have learned (and it shouldn't be that the victim is really aggravating). Remember that domestic violence is as much about control as it is about battering, so the issue is not learning to count to ten when one is angry. The court needs real input from the group and individual counselor about what has changed and what has been learned.

The court may want to consider whether the perpetrator has:

- Made full disclosure of the history of abuse or still is minimizing it
- Recognized abusive behavior is unacceptable
- Recognized abusive behavior is a choice
- Shown empathy for the effects of the abuse
- Identified the pattern of control and entitlement
- Replaced abuse with respectful behaviors and attitudes
- Been willing to make amends in a meaningful way
- Accepted the consequences of these actions

This information can be obtained from the perpetrator, her or his treatment provider, or both.

The court also should look at what progress has been made by the victim. The court can look for things like:

- What has the victim learned about the control issues?
- Has the victim developed a support system?
- Is the victim attending support group meetings regularly?
- Is the victim employed?
- Does the victim have the ability for self-care without the perpetrator thereby shifting the control?
- Has the victim improved her self-esteem?

If the couple wants to reunite, the court should look at why the family wants to reunite:

- Does the victim wish to reunite because the victim feels pressured to or has been threatened?
- Does the victim wish to reunite because the victim lacks financial stability or independence?

In evaluating the progress or decision to reunite, we should make sure that DCFS has made available services like getting a California ID, setting up a budget and a caregiving schedule, job/vocational training, stable shelter, etc., that would allow the victim to make an informed decision out of a position of power and not necessity.

The court also needs to keep in mind that the batterer frequently presents a better “face” than his victim does. Batterers often look very together while a victim may appear scattered. The court needs to look past the facade when making reunification decisions.

Termination of Jurisdiction

Family Law Orders

If the family cannot be fully reunified, the court will probably be looking at terminating jurisdiction at some point with a Family Law Court order. Some of the issues to consider when making a Family Law Court order in a domestic violence case is, again, the control issues. If the perpetrator has made real progress in his or her counseling, the court would consider a more normalized family law order. However, if the Dependency Court is exiting the case because the children are safe with the victim and the perpetrator has not made progress, the court may want to consider that in making the Family Law Court orders. While one might think that joint legal custody would be in the best interest of the children and would allow both parents to make decisions on the well being of the child’s health and education, in domestic violence cases it can create a situation where a batterer can continue to control the victim using the children as pawns. It can give control to the batterer to continue battering the victim using issues like counseling, schooling, or dental treatment because the batterer can fight the primary parent on every issue when there is joint legal custody.

Dependency Court Orders Filed in Family Law Court

If the family cannot be reunified, the court may consider terminating jurisdiction and issuing an order, also called an exit order, that will be filed in the Family Law Court or, if there is a family law case pending, in the family law case. In drafting this order, the court should assess control issues. If the court is terminating the case because the children are safe with the victim and the perpetrator has not made progress, the court’s order should continue monitored visitation.

The order must be specific and provide the time, date, place and manner of transfer to limit the children’s exposure to potential domestic violence or conflict and to maintain the safety of all

family members. If there is a protective order, the court should make the visitation order consistent with that order. It should indicate who will be the monitor. The victim can never be the monitor. Often, family members grow tired of this task and may refuse to continue doing it, creating a dangerous void. If the court orders a professional monitor, it should indicate who will pay the cost.

In any case, the order should state that the victim must approve the monitor and how this approval will occur. When the perpetrator's visitation is monitored, the court should order safe exchanges at locations where the batterer and victim do not have contact, i.e. from daycare or school, from a third party's home or from some other safe location. In the event that no other safe exchange location is available, the court may consider exchanges in the lobby of the local police department, with the party without the children ordered to leave 15 minutes after the other. Of course, the court may consider ordering the parties to go to mediation to work out visitation or a parenting plan.

The court also must consider the impact of domestic violence on physical and legal custody orders. In most instances when the perpetrator has monitored visits, the victim will be awarded sole physical custody. Although it may seem as if joint legal custody is in the children's best interest because it encourages the participation of both parents, it may be detrimental to children because the batterer may try to continue his control over the victim by manipulating legal custody decisions. Joint legal custody may empower the batterer, rather than the victim, and hurt the children because the batterer may use issues like counseling, schooling, and/or medical treatment as a tool to control the victim, not in a good faith effort to work in the children's best interests.

In addition, the court should make efforts to make specific visitation orders that minimize the risk to both the children and the victim. If the perpetrator's visitation is unmonitored, set up the drop-offs and pick-ups in a neutral location or delineate a neutral party to do the pick-ups. If one parent's visits continue to be monitored, the court may want to delineate who the monitor should be or clarify that the custodial parent needs to approve the monitor or that it has to be a professional monitor. If the court does not want the victim to monitor the visitations without further court order, the court may want to clarify that the victim should not be the monitor to avoid confusion in the future. The court should be as specific as possible in making visitation orders so as to minimize the need for contact between the parties. It is imperative that such orders be as detailed and clear as possible. The court may want to consider sending the parties to mediation to develop a specific visitation and parenting plan.

Further, if the Dependency Court has made a monitored visitation order, the court should make sure that they fill out the Addendum to Custody Order (form JV 200/JV 205) that informs the Family Law Court of what orders were made in the Dependency Court and whether the perpetrator has complied with those orders or made progress in any ordered treatment. By filling out this attachment to the Family Law Court order, the Dependency Court is alerting the Family Law Court to the domestic violence issues in the case which affect their custody determinations. In addition, this gives the Family Law Court a base in determining whether there has been a change of circumstances upon which to modify the family law order.

RESTRAINING ORDERS

Emergency Protective Orders (EPOs)

A parent already may have received an emergency protective order from law enforcement at the time of a domestic violence incident. This EPO is good for five court days or seven calendar days from the time it is issued. The protected party must then go to Family Law Court or Dependency Court within those seven days if they wish to seek a more permanent order.

An EPO is a protective order issued by law enforcement, often issued at the scene of the domestic incident, but many times may be issued after the incident at another location. The law enforcement officer must contact a judicial officer (JO) who is on call 24/7 for that purpose. If the JO finds that there must be a protective order to stop another incident of domestic violence, or the kidnapping of the children, the JO authorizes law enforcement to write it up. The EPO is effective for five court days or seven calendar days, whichever is shorter.

Criminal Protective Orders (CPOs)

If the perpetrator has been criminally charged with domestic violence, they might be in Criminal Court within those seven days and the Criminal Court will address the need for a criminal protective order (CPO). If a criminal protective order is issued, that order takes precedence over any Family Law Court or Dependency Court protective order. Because the child may be a witness to the violence, the Criminal Court can make a no contact order between the perpetrator of the domestic violence and the children while allowing the Family Law Court or the juvenile court to modify those orders if it is in the best interests of the children. If the Criminal Court has not checked the box to allow the family or juvenile court to modify those visitation orders, the family or juvenile court can, through Los Angeles Superior Court Local Rule 2.6, ask the Criminal Court to modify those visitation orders by submitting to the Criminal Court a request to change orders, using a Request to Modify Criminal Court Protective Order (UCF002). Even if the Criminal Court has issued a criminal protective order, the victim still may want/need to go to the Family Law Court or the juvenile court to get a restraining order because they will not know when and if the CPO was lifted.

Temporary Restraining Orders (TROs)

If the perpetrator does not appear in Criminal Court within seven calendar days, the victim will need to seek a temporary restraining order in either Family Law Court, or a juvenile Dependency Court. If a juvenile dependency petition has already been filed, the temporary restraining order should be sought in the juvenile Dependency Court. If no petition has been or will be filed, the victim may need to seek protection from the domestic violence or Family Law Court.

In making a determination of whether a petition should be filed in juvenile court, when the children have been detained, DCFS should consider:

- Whether a restraining order can adequately protect the children;
- Whether services are needed and in place for the perpetrator, the victim and the children;
- Whether follow-up is needed regarding those services;

- Whether the victim is willing and capable of protecting the children – including having the necessities of life such as a safe place to live and a way to support the children; and,
- Whether a safe and appropriate visitation plan for the children has been set up.

If all of these issues can be adequately addressed by the Family Law Court, a petition may not need to be filed. However, if the domestic violence is serious enough to need to seek a restraining order, DCFS should consider the need for quick and on-going intervention by the Dependency Court.

If no EPO was given to the victim, the need to get a TRO prior to the 72 hours before the case goes in front of a juvenile court dependency bench officer might necessitate the victim having to seek a TRO from the domestic violence or Family Law Court. With the current protocols in place in Los Angeles County, the TRO can be issued by the domestic violence or Family Law Court and then the matter can be transferred to the Dependency Court to hear the permanent restraining order hearing.

Regardless of which court may issue the temporary restraining order that court needs to make sure that the order is inputted into the CLETS that same day.

Any of the courts can fashion protective orders to meet the specific needs of the protected parties. A protective order may protect the victim, the children, and anyone else that lives in either of those homes. The court can prohibit the perpetrator from harassing, threatening, striking, assaulting, etc. those persons protected by the order and order them to stay a certain distance away from the protected persons. The court can terminate all contact between the parties or limit that contact to brief and peaceful contact as required to facilitate court ordered visitations of the children or in order to serve legal papers on the other party. In issuing a restraining order, the court must order the restrained persons to give up all firearms in his or her control. Sometimes, most importantly, the court has the ability to order the restrained person out of his or her home if: the court can make the findings that the protected person has a right to the property under color of law; that the party to be excluded has assaulted or threatened to assault the other party or any person under the control of that party; and that physical or emotional harm would otherwise result to the other party or any person under the control of that party.

If the court makes orders requiring the restrained person to move from the residence, the court should also consider whether the protected person can afford to continue paying the rent or mortgage on that property and support the children. Currently, the Dependency Court does not make orders for control of property or child or spousal support and so the protected person may need to go to the Family Law Court to get those orders to assist them in providing for themselves and their children.

Permanent Restraining Orders (OAH – Order After Hearing)

Twenty days (or 25 if good cause is found) after a temporary restraining order has been issued, a hearing will be set for the parties to present evidence regarding whether a permanent restraining order should be issued. If the restrained person was present and ordered back at the issuance of the TRO, no further notice is necessary. However, if the order was granted on an ex-parte basis

or the person was not present, the protected person must have notice served on the restrained person at least five days before the hearing, unless the court issues an order to serve the restrained person in a shorter time. If the protected person is not able to have the restrained person served or served timely, the court can order a reissuance of the temporary restraining order to get notice served correctly. If service is good and the court issues a permanent order the permanent order can be mailed to the restrained person if the restrained person does not appear at the permanent hearing as long as the orders are the same as requested in the temporary restraining order and the address is listed on the temporary order. If the restrained person is present in court for the permanent order then no further service is needed.

Once notice is correct, the court will proceed to hear the evidence regarding the restraining order. This evidence may include, but it is not mandated, testimony from witnesses as well as documentary evidence. Denying a TRO will still require a full hearing on the restraining order. The court may then issue a permanent restraining order for up to three years in the Dependency Court and five years in the Family Law Court. The court may make the same orders as addressed in the TRO section above. Dependency Court restraining orders take precedence over all other orders except Criminal Court restraining orders.

Modifying or Quashing Previously Issued Permanent Restraining Orders

The court may modify or even quash previously issued permanent restraining orders as long as those orders were not issued by the Criminal Court. As mentioned previously, the only way to modify a Criminal Protection Order is to use the procedures set forth in Rule 2.6.

When modifying in part, or quashing in whole, a permanent restraining order, the court may want to consider who is asking for the modification and the reasons behind the request. There is no legal requirement for the court to either ask or not ask the requesting party why they want the restraining order quashed or modified. However, it might be necessary or appropriate to inquire further into the reasons to determine whether it is in the parties' or the children's best interests to modify or quash those orders.

CHAPTER 6

COMMUNITY SERVICES FOR DOMESTIC VIOLENCE

DOMESTIC VIOLENCE VICTIM SERVICE ORGANIZATIONS (VSO)

A domestic violence victim service organization (VSO) as defined in EC §1037.1(b) is a nongovernmental organization/entity that provides shelter, programs, or services to victims of domestic violence and their children. There are two main types of these service organizations:

(1) Domestic violence shelter-based programs, as described in WIC §18294. Domestic violence shelter-based programs are the most prevalent VSOs in Los Angeles County.

(2) Other programs with the **primary mission** to provide services to victims of domestic violence whether or not that program exists in an agency that provides additional services. Los Angeles County has a few VSOs that do not operate shelters but have as their primary mission the delivery of services to victims of domestic violence such as case management, community outreach, and emergency response teams.

Although an agency may offer counseling, support or even advocacy to victims of domestic violence, if these services are not the primary mission of the agency, then they do not meet the legal definition of a domestic violence victim service organization.

Does It Matter if an Agency Isn't a VSO?

Yes, it matters. Referring victims of domestic violence to a non-statutory agency (i.e., one not meeting the legal definition) goes against the GERDA fundamental principles. It can cause undue confusion and compromise safety.

First responders should be wary of non-statutory agencies. As they do not have domestic violence services as their primary mission, they cannot provide optimal advocacy and protection to the victims. They cannot assert privilege on behalf of the victims nor do they receive other legal protections that are given to a VSO complying with the statutes.

Non-statutory agencies may include mental health counseling centers, substance abuse treatment programs or family preservation organizations. They may have knowledge, even training, on domestic violence but the staff does not meet the legal definition of a domestic violence counselor, which requires many hours of training and supervision specifically under the auspices of an official domestic violence VSO.

First responders in law enforcement or child protective services should have updated resource lists of the organizations that qualify as domestic violence VSOs or, more importantly, have an

established relationship with one or two VSOs to which they can refer the victims and children they assist.

LEVELS OF ASSISTANCE AND ADVOCACY

What is an “Advocate”?

The word advocate is commonly used to describe any person who provides assistance to victims and perpetrators of domestic violence, even though the type of service, the level of assistance, and the legal definitions and limitations on confidentiality vary widely. Generically, “advocates” work for a variety of different public, private, or not-for-profit agencies that are defined by California law.

The purpose of this section is to clarify the roles and responsibilities of the many types of providers, such as counselors, advocates, social workers, therapists, or community service providers that often surround victims of domestic violence and their children.

Not understanding the differences among the many types of providers can be dangerous. It can result in the victim and children being confused, overwhelmed and vulnerable for further risk of abuse.

Domestic Violence Counselors

The EC §1037.1(a) defines a domestic violence counselor as a person who:

- Is employed by, or volunteers with, a domestic violence victim service organization (VSO) for the purpose of rendering support or assistance to victims of domestic violence;
- Has completed 40 hours of training on a specified set of topics relevant to domestic violence;
- Has undergone at least six months of supervision.

Both the 40 hours of training and the six months of supervision must be overseen by a domestic violence counselor with at least 1 year experience working with victims at a domestic violence victim service organization. Holding a recognized mental health license such as an LCSW, MFT or Ph.D. is not sufficient by itself under California law for someone to be considered a domestic violence counselor.

PC §679.05 allows domestic violence counselors to act as a domestic violence advocate (see below) and be present during police or attorney interviews in order to provide support and assistance to the victim regarding the interviewing process.

Privileged Communication

Most importantly, domestic violence counselors facilitate the empowerment of the victim and are not beholden to anyone but the victim. In that light, EC §1037.2 asserts the communication (verbal or written) between a domestic violence counselor and a domestic violence victim in the course of

their relationship is privileged and cannot be disclosed by the counselor to another party unless the victim waives that right. Such information would include details involving all incidents of domestic violence, information about the children of the victim or abuser and the relationship of the victim with the abuser. An exception to this privilege is the mandated reporting of child abuse and neglect per PC §11164.

Domestic Violence Shelter-based Agency Advocates

WIC §18296 mandates that domestic violence shelter programs work with social service agencies, schools and law enforcement in an “advocacy capacity” for those served by their programs. In addition, WIC §18291(c) requires that their staff members be trained domestic violence counselors as defined in EC §1037.1(a)(1-2). They are covered by the code with respect to privilege. They act as an ombudsperson for victims and their children and are knowledgeable of, and have established links to all public and private systems that might impact a domestic violence victim.

Domestic Violence Emergency Response Programs

In some areas of Los Angeles, domestic violence counselors provide emergency response services to domestic violence victims either at the scene of the violent incident once the police have secured it, or at another safe location if more appropriate. These counselors operate in conjunction with either a domestic violence shelter-based agency or a domestic violence advocacy program. Since these emergency responders are domestic violence counselors as defined by EC §§1037.1 and 1037.2, the information that the victim shares with them is privileged.

Victim Service Representative (VSRs)

PC §13835 outlines state requirements for the delivery of comprehensive services to all victims and witnesses of crime in order to reduce the trauma and insensitive treatment. Survivors of domestic violence and their children qualify for these services whether or not the prosecution is successful. By law the victim is entitled to Victim Compensation Funds. Access to VSR case managers in Los Angeles County is through the District Attorney’s Office at 800-380-3811 or the Victim’s Assistance Programs at the office of the City Attorney that is prosecuting the incident.

The VSR case manager (often referred to as a “victim witness case manager” or “advocate”) acts as an interface between the criminal justice system and the victim to orient them to this system, and to provide court escort and support services. But beyond court and case-related assistance, the victim witness assistants are required by law to provide direct services such as: crisis intervention, emergency assistance, resource referrals, Victims of Crime claims assistance, and services to help the victim manage personal, financial, medical and employment difficulties stemming from the crime.

PC §13835 does mandate that VSRs receive training based on local professional standards. Like domestic violence counselors, PC §679.05 allows them to act as domestic violence advocates (see below) and be present during police or attorney interviews in order to provide support and assistance to the victim regarding the interviewing process. It is important to note that communications between VSRs working for prosecutorial agencies and victims are not privileged

which differs them from domestic violence counselors whose communications are privileged. (See Section 12 Miscellaneous Special Services below).

Domestic Violence Advocate

PC §679.05 provides that a victim of domestic violence has the right to have a “domestic violence advocate” present at any interview by law enforcement authorities, prosecutors, or defense attorneys. Further PC §679.05(b)(1) and (2) require law enforcement to notify the victim orally or in writing about this right. A domestic violence advocate is defined in PC §679.05 as either a domestic violence counselor as defined in EC §1037.1 (see above) or a person employed by a victim witness assistance program as defined in PC §13835.2 (see above). They have privileged communication and cannot be excluded from the interview.

Support Person

PC §679.05 also provides that a victim of domestic violence has the right to have a support person of their own choosing to be present for interviews with law enforcement, prosecutors, defense attorneys or anyone in their employ. They can also be present during court hearings. However, unlike the domestic violence advocate, that support person may be excluded, according to the law, from the interview by law enforcement or the prosecutor if they determine the presence of the support person would be detrimental to the purpose of the interview. For example, if the victim had chosen the alleged batterer, such a support person would not be allowed to be present. Their communications are not privileged.

Police and Prosecution Community Liaisons

Some law enforcement and prosecutorial agencies hire civilian staff to act as community liaisons for child abuse and/or domestic violence victims in their city. Such liaisons are often referred to as “advocates” or “counselors” even though they are neither. They help educate their community members about the local criminal justice system as well as other family safety issues. In jurisdictions that have such liaisons, they might be expected to link victims to domestic violence service programs and counselors, educate the victims about the police investigation or court case, or even assist in the investigation itself. These people do not fall under the definition of domestic violence counselor in EC §1037.1 and do not necessarily have any training. Therefore, their communications are not privileged. Often what a victim might disclose to the liaison will be shared or reported to the investigating officer.

Legal Services

Throughout Los Angeles County, various legal services agencies and clinics provide assistance to victims of domestic violence, in particular to those of low income. Those agencies may assist victims of domestic violence through civil court by advising or assisting with the paperwork for restraining orders. Some legal services agencies may also provide advice or assistance in filing divorce or paternity actions. Since the legal services are supervised by an attorney, the attorney – client privilege exists.

Batterers' Intervention Program (BIP) Facilitators

BIP facilitators conduct the 52-week intervention programs as approved by the Probation Department. The duties and requirements of BIP facilitators are outlined in PC §1203.098. They must successfully complete a minimum 40-hour basic training on domestic violence with at least 8 hours of the training to be done by a shelter-based or shelter-approved trainer. They also must work as a trainee in a 52-week approved batterer's intervention program for no fewer than 52 weeks (or 104 hours in 6 months) and be supervised by an experienced facilitator. In addition, they need to co-facilitate with an expert facilitator, be observed by an expert via a one-way mirror or video-tape, or participate in consultation/supervision with the expert at least twice a week in a six-month program or once a week in a 52-week program.

Although one might hear BIP facilitators referred to as "advocates" or "counselors" they are not domestic violence counselors as defined in EC §1037.1(a) and do not have the same privileges. Presently no statute specifically protects the communication between a BIP facilitator and a participant as privileged. However, PC §1203.097(c)(1) does stipulate that although the BIP must provide information to the court and/or Probation Department on the batterer's attendance, progress and any re-violations, the participants in the BIP are required to sign a confidentiality agreement not to share information shared by fellow participants in the group with anyone outside the group.

Hospital Social Workers

Hospital social workers or other medical staff provides emotional support for victims of domestic abuse who present at the health facility. They also frequently act as liaisons to local domestic violence victim organizations. However, per PC §11160(a) the information given to the hospital social worker or medical staff by the victim about the violence is not privileged. These staff must inform the police. The social worker or medical staff would be required to document the suspected domestic violence in the victim's medical record. Under the federal Health Insurance Portability and Accountability law (HIPAA), the actual medical records are still confidential but the report of the suspected violent assault is a mandatory disclosure exception and must be reported (See Medical Mandated Reporting below).

Court Appointed Special Advocates (CASA)

CASA volunteers have been trained and are subsequently supervised to advocate on behalf of a child in the Dependency Court system. CASA volunteers are appointed by judges to advocate for a child in particular need of advocacy. The CASA volunteers make special recommendations to the judge on the child's behalf. CASA volunteers visit with the child or children to whom they are appointed, a minimum of one time each month. CASA volunteers are responsible for:

- Gathering information and reporting the circumstances of the child to the court.
- Monitoring compliance with orders of the court.
- Advocating in court and the community for the best interests of the child.

CASA volunteers operate under professional standards and California law, specifically the California WIC §100 - 109, and the California Rules of Court, Rule 1424. The Judicial Council also sets forth program policies and procedures for California CASA Programs. All CASA volunteers are bound by strict laws of confidentiality. They are required to undergo a 36-hour initial training as well as 12 hours of continuing education each year. A segment on the dynamics of domestic violence is included in the initial CASA training.

Although a CASA volunteer advocates for the child, when appropriate, the volunteer may assist in helping the victim parent in linking to services needed to maintain the safety of her children. The CASA volunteer may also monitor whether the children receive the appropriate counseling services to deal with the trauma of witnessing domestic violence and/or being a direct victim of the violence.

DOMESTIC VIOLENCE SHELTER-BASED AGENCIES

Domestic Violence Crisis Shelters

WIC §18294 defines a domestic violence shelter as an undisclosed and secure location where victims of domestic violence and their children can receive specified mandated services from trained domestic violence counselors as defined in EC §1037.1. The stay is limited to 30, or occasionally 45 days.

The mandated services outlined in WIC §18294 are: a 24 hour - 7 day a week shelter, a 24 hour - 7 day a week hotline for crisis calls, temporary housing and food facilities, psychological support and peer counseling by domestic violence counselors, referrals to existing community services, a drop in center that operates during business hours to assist victims of domestic violence needing support services, a means to arrange continued education for children during their stay, and emergency transportation. Note: Although each shelter will have a 24-hour hotline, not all are able to provide intake services around the clock.

Shelter-based programs should, per WIC §18295-6, also assist victims and their children in obtaining necessary medical care, legal assistance, psychological support and counseling as well as information regarding other available social services. In addition, the shelter program must work in an advocacy capacity for all victims and children served by the shelter with schools, law enforcement and community social service agencies.

Crisis Shelter Operations

Domestic violence shelter-based agencies are comprehensive victim service providers who can communicate with one another throughout Los Angeles County, surrounding counties, and with other such providers in the State of California and other states to link callers with resources on a 24/7 basis. Full-service shelter-based VSOs are the single most important lifeline for victims of domestic violence. Calling one of these agencies' hotlines will put a victim or someone attempting to aid a victim in touch with an array of services and options such as: crisis intervention and peer counseling, general information, legal information and advocacy, social services information and

advocacy, medical services advocacy, law enforcement, assistance with restraining orders, emergency food and transportation, and emergency shelter - all available to the victim free of charge. Clients of domestic violence emergency shelters are referred by the shelter-based agency to services (including transitional shelters) upon exit.

A domestic violence emergency shelter is not a placement. It is merely one possible option and must be sought voluntarily by the victim who will be interviewed by the hotline advocate to assess the victim's needs. The location of domestic violence emergency shelters is confidential and protected by law [PC §273.7].

While domestic violence shelters tend to be operated in a similar fashion, each, nevertheless, is unique with regard to some intake criteria, policies and procedures.

A victim seeking shelter may be declined for a specific reason which may or may not be shared with the caller. It is often necessary, therefore, to telephone the hotline at an agency that does not have intake restrictions and/or will advocate for the victim until placement is located.

Once placed, the victim becomes a client of the shelter-based agency. Even when a professional is instrumental in getting the victim and children into a shelter, it is important to emphasize that no other communication regarding that client is permitted by law (unless the client gives express, written permission). In other words, the staff of the shelter-based agency will not confirm the presence of the client in the shelter or discuss the client's case and may, indeed, move the client to another shelter if the client wishes the location to be confidential.

Domestic Violence Transitional Shelters

Some domestic violence shelter programs have transitional shelters where a victim and children can relocate safely for a few months. However, transitional shelters are also very rare and are not always a resource. Expecting such a transition is not a realistic option for most domestic violence victims.

Homeless Shelters

Homeless shelters and transitional housing *should not* be confused with domestic violence shelters. Although they may be a resource for some homeless domestic violence victims and children, they do not provide security, support services, or domestic violence case management. Without the safety measures and planning, it can be very dangerous for a domestic violence victim to go into a standard homeless shelter, particularly one in the victim's own area.

DOMESTIC VIOLENCE EMERGENCY RESPONSE PROGRAMS

Evidence has shown that in the response to domestic violence, it is more effective to have law enforcement to initiate social service interventions for the victim and children as soon as possible.

Patrol officers responding to a domestic violence call should notify domestic violence service organizations immediately to facilitate a timely social service intervention to provide support services while the victim is vulnerable and needs protection. Such services are critically important, independent of the ultimate prosecution of the batterer. The most effective way to have an effective response is through a collaborative emergency response program with law enforcement and local domestic violence victim organizations. Regrettably, Los Angeles County has very few emergency response programs. Due primarily to funding constraints, many police departments and divisions in Los Angeles County do not have this service option for first responders.

The emergency response programs currently in operation in the county have somewhat different models of response. They all, however, link the victim with domestic violence counselors who provide crisis counseling, advocacy, support and resource information to victims of domestic violence at the time when they are most vulnerable, just after a physical assault or threat. Although each emergency response program in Los Angeles County has slightly different procedures, there are two main models.

DART Model

One model is a Domestic Abuse Response Team (DART) which usually consists of one DART police officer (a specially trained patrol officer or detective) and two DART domestic violence counselors from a local domestic violence victim organization. The DART receives radio calls from patrol officers that have responded to a report of domestic violence. The DART arrives at the scene and relieves the patrol unit after the scene is secured, allowing the first unit to return to the field after they brief the DART officer and counselors. The DART officer then assumes responsibility for conducting the investigation. The DART domestic violence counselors provide crisis assistance and safety planning to the victim and children at the scene. They interview the victim alone. Any information the victim shares with the DART DV counselor is confidential unless the victim signs a waiver allowing the information to be shared with law enforcement and to become part of the record.

VSO and Police Model

In the second model, a specific domestic violence victim service organization links with a specific police division to provide emergency services to victims reporting domestic abuse. In this model, however, the domestic violence counselors do not respond alongside police officers at the scene. Instead, after the patrol officers have secured the scene and completed that part of the investigation, either the patrol officer will call the designated domestic violence VSO hotline on behalf of the victim, or provide the victim with the contact numbers and information for the domestic violence VSO. In this model, once notified, a domestic violence counselor will either respond to the secured scene or meet the victim at a different safe location. When they meet, the domestic violence counselor will interview the victim and any children but not in the presence of law enforcement. At this meeting, the domestic violence counselor can provide crisis counseling, advocacy, support, resource information and possible case management to the victim and any children.

When there is no program in an area of Los Angeles County, the victim or someone assisting the victim should call the hotline of a domestic violence shelter-based agency so a counselor can speak

with the victim, provide crisis intervention and peer counseling, and advise the victim of options and resources.

ROLE OF COMMUNITY ADVOCATES IN DCFS ASSESSMENTS

WIC §16500 outlines how county child welfare agencies organize and deliver services to children and their families. In particular, per WIC §16500.1(a) the intent of the law is to use the strengths of families and communities to serve the needs of children who are alleged to be abused or neglected in order to:

- Reduce the necessity for removing these children from their homes.
- Encourage speedy reunification of families when it can be safely accomplished.
- Locate permanent homes and families for children who cannot return to their biological families.
- Reduce the number of placements experienced by these children.
- Connect children leaving the foster care system to supports within their communities.
- Improve the quality and home-like nature of out-of-home care.
- Foster the educational progress of children in out-of-home care.

WIC §16500.1 emphasizes using the “strengths of families.” With regard to cases of domestic violence, it is important to understand what is meant by “family.” Although the legal definition of the word “family” can be complicated, child welfare agencies use the word generally to describe a child and the adults who have legal custody of that child. In particular “family” refers to a child, his or her parents (e.g., biological, adoptive, step) or legal guardian, siblings and any domestic partner or live-in companion of the child’s parent or guardian living in the home. A child’s family may include one or more households as in cases where the parents are separated or divorced. A “family” does not have to fit a traditional model. When talking about strengthening or reunifying a family, it is not intended to mean that parents must live in the same household or even have any particular contact with one another beyond establishing a safe parenting plan. In child welfare cases, each parent or guardian is considered separately. There is also recognition of extended family members, relatives or close family friends. They will be included, if appropriate, in working out safe and supporting case plans for the child and his or her parent/s or legal guardians.

Beyond the strengths of families, WIC §16500.1 also emphasizes the strengths of “communities.” An important feature in this statute is that child welfare agencies are mandated to include community partners in the service delivery system. In particular WIC 16500.1(b)(4) requires that they use “a team decision making process in doing case planning” with at risk children and families. In meeting these objectives, the Los Angeles County child welfare agency, DCFS, employs a service delivery process that encourages collaboration and teamwork among all of the professionals, communities, family and friends providing support to the child and family.

DCFS Shared Core Practice Model for Service Delivery

The shared Core Practice Model (CPM) is a set of values that supports the central role of the child and family engaged in the child welfare system. It emphasizes the collaboration and support of

professional and community partners as well as the informal supports of the family itself when assisting the child and family in navigating the child welfare and Dependency Court systems. A key element in the CPM is the Child and Family Team (CFT) in which decisions and planning for the family take place. One goal is to approach all families from a more respectful position acknowledging their strengths and valuing their culture. The belief is that families are experts on their own family system and need to have the opportunity to voice their own concerns and find their own workable solutions to increase the likelihood of success.

Likewise, community involvement and participation in this process is crucial. In particular, the invaluable assistance of community partners includes the sharing of their expertise through early assessments in the areas of substance abuse, mental health and domestic violence. It is also crucial in providing resources and linkages to services to assist in keeping the children safe and the functional members of the families together.

Child and Family Team (CFT) Meetings

WIC §16500.1(d)(1) specifically requires that county child welfare agencies incorporate family conferencing into the service delivery process through a Child and Family Team (CFT). The development of a CFT begins as soon as a child becomes known to DCFS. CFTs are conducted and facilitated by DCFS, the family itself, or any one of the professional agencies working with the family and are part of the CFT. The members include the child and the family but can also extend to friends, caregivers, DCFS workers, teachers, counselors, therapists, community advocates, and so on. The goal is to help guide the child and family to greater stability and safety by setting up reasonable action plans that link the family to needed services or outline protective guidelines for daily challenges.

Community Partner Roles in CFT Meetings

In order to create a supportive network to address the risks in the family, either DCFS regional office staff or other professional or community providers involved with the child and family can reach out to other individuals, agencies or groups interested in providing resources for the family in question. The CFT may change members over time as the family moves through the system. But it always has the long term goal of moving the child and family towards strength and self-sufficiency so they can exit the child welfare system and, if appropriate, continue their established connections with the community after they exit the system.

Some community partners are invited to a CFT because they are already providing services to a member of the family and can give support and background information. Other community partners, not known to the family, may be invited to share their expertise, their awareness of local resources and/or their advocacy or support for one or more of the family members. Examples would be domestic violence counselors, batterer's intervention facilitators, substance abuse counselors, special services and disability advocates, and/or mental health liaisons.

When a community partner is invited for their expertise and professional knowledge, they may be asked to provide general information about the problem facing the family and/or ways to

ameliorate the problem. It may be advisable that the community partner let the CSW or CFT facilitator (whoever invited them) know before the meeting what type of advocacy, support or assessment she or he is willing or able to provide.

The CFT is a confidential meeting and is not designed to be a method for investigation. Some professionals and community partners invited to participate may already be providing services and, therefore, are bound to legal restrictions of privilege or confidentiality. Should they choose to participate, they are not expected to violate their professional standards. A professional may attend only to provide support to their client who has invited them. Letting the facilitator of the CFT know the limitations before the meeting will help make it go more smoothly.

Specific Guidelines for CFT Meetings where DV is Alleged

In cases where there are alleged or known incidents of domestic violence, the DCFS CFT policy (0070.548.01) reminds the CSW that the best way to protect a child exposed to domestic violence is to help the abused parent stay safe by setting up extensive safety/action plans.

When there is domestic violence, the batterer and the abused parent are to have separate meetings. The CFT policy reminds the CSW of the importance of setting up a secure location for the meeting and to consider the security needs of the parties, including arrival and departure from the meeting. It also reminds the CSW to inquire if there is a current criminal or civil protective order (e.g., EPO, TRO or Stay Away) in place. Such orders would legally prevent the restrained party from being in the same room as the protected party. A protective order (i.e., restraining order) can only be changed or altered by a judge; waivers are not legal. The policy also recommends that a domestic violence advocate or counselor be invited to the meeting, if the abused parent agrees.

This policy should be in place for all DCFS initiated CFT meetings. However, if a CFT is organized by another agency, for example, the Foster Family Agency where the child is placed, it is a good idea for any domestic violence advocate or counselor to inquire about the attendees and structure of the CFT to determine if it will be conducted in a safe location and in a safe manner.

CRISIS HOTLINES

A crisis hotline operates 24 hours a day, 7 days a week. A crisis hotline must be answered directly by a domestic violence counselor. A crisis hotline will not have a recorded message or ask for the caller to leave a voicemail.

Just because an agency advertises a “hotline” does not mean it is a crisis hotline. It is important to know which hotlines are crisis hotlines and which are for general information. In an emergency, it is not acceptable for a victim to leave a voicemail, connecting with a hotline counselor is critical.

Although language, culture or sexual orientation appears to be a barrier to services, victims do not have to call hotlines for gender specific populations. All national and county crisis hotlines will accommodate language, culture, gender identification and sexual orientation. In Los Angeles County, domestic violence victim service organizations that operate 24-hour crisis hotlines work closely together and assist callers in accessing any special support services needed. Agencies, such as LAPD, with access to language interpretation services (e.g., AT&T) can be very helpful to shelter-based hotlines which do not have the resources to pay for such services. In any event, a victim never should be dissuaded from calling a crisis hotline in an emergency due to reasons of language, culture, gender identification or sexual orientation.

The crisis hotlines are not only for emergencies. They also can be used by victims of domestic violence, their family or friends to receive ongoing peer counseling, seek advice or obtain referrals for resources.

Local Agency Domestic Violence Crisis Hotlines

All shelter-based agencies are required by WIC §18291 to operate a 24-hour, 7 day a week crisis hotline. Some non-shelter-based domestic violence organizations also have a 24-hour hotline. When calling a hotline, it does not matter where the victim is located in Los Angeles County as the shelters and hotline agencies cooperate with each other to meet the needs of victims and children. They share information in order to assist a victim in finding a safe bed or obtain assistance in any part of the county.

Los Angeles County Domestic Violence Hotline: 800-978-3600

This hotline is a 24-hour, 7 day a week automated line with a variety of language options, specifically designed to link a caller to an appropriate domestic violence hotline. It is a project of the Los Angeles County Department of Public Social Services (DPSS). This hotline is for domestic violence victims only and it is not a service to help someone report a crime. It does not link with police agencies.

National Domestic Violence Crisis Hotline: 800-799-7233 (TTY: 800-787-3224)

The national hotline is a solid back-up to a local 24-hour crisis hotline. This crisis hotline is always staffed and has quick access to interpreters. It can be helpful to first responders, particularly DCFS staff, looking for services for victims who may have left the Los Angeles area and need assistance or referrals.

MEDICAL MANDATED REPORTING

Mandatory Reporting of Injuries from Domestic Assault

Per PC §11160 (a), any health practitioners employed in a health facility, clinic, physician's office, local or state public health department who, in the course of their professional capacity or within the scope of their employment, provides medical services for a physical condition to a patient who

they know, or reasonably suspect, is a person suffering from any wound or other physical injury inflicted as a result of assaultive or abusive conduct must report that injury immediately to law enforcement. They are required to make a telephone call and follow it up with a written report. In such cases, an injury does not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug. The social worker or medical staff would be required to document the suspected domestic violence in the victim's medical record. Under the federal HIPAA law, the actual medical records are still confidential but the report of the suspected violent assault is a mandatory disclosure exception and must be reported to law enforcement.

Coordination with Domestic Violence Counselors or Advocates

Hospital social workers or other medical staff can provide emotional support for victims of domestic abuse who present at the health facility, but they are not experts in domestic violence and do not have privileged communication; they are mandated to report the abuse. Therefore, in order to provide the victim/patient with an advocate who can provide support and a confidential relationship, hospital staff must liaison with their local domestic violence victim organizations. Although linking domestic violence victims with local domestic violence counselors or advocates is advised, only some health facilities and even fewer private medical offices in Los Angeles County have an established relationship with local domestic violence counselors or emergency response programs.

Because not all hospital social workers or medical staff will be able to facilitate connecting the victim with a domestic violence counselor or advocate, and not all hospitals or health facilities will advocate to be present with the domestic violence victim without authorization from law enforcement, the police officers who respond to the report should be prepared to arrange for a domestic violence counselor to be present to provide advocacy.

The health facility also has a responsibility to develop an effective protocol that will link any victim of domestic violence who seeks services to a domestic violence counselor or advocate as soon as possible and be able to receive support while in the facility. Doing so will require outreach and collaboration with local domestic violence victim organizations.

BATTERERS' INTERVENTION PROGRAMS (BIPs)

Batterers' Intervention Facilitators

BIPs provide services to batterers; in particular, the 52-week intervention programs approved by the Probation Department. Although one might hear BIP facilitators referred to as "advocates" or "counselors" they are not domestic violence counselors as defined in EC §1037.1(a) and do not have the same privileges.

The duties and requirements of BIP facilitators are outlined in PC §1203.098. They must successfully complete a minimum 40-hour basic training on domestic violence with at least 8 hours

of the training to be done by a shelter-based or shelter-approved trainer. They also must work as a trainee in a 52-week approved batterer's intervention program for no fewer than 52 weeks (or 104 hours in 6 months) and be supervised by an experienced facilitator. In addition, they need to co-facilitate with an expert facilitator, be observed by an expert via a one-way mirror or video-tape, and participate in consultation/supervision with the expert at least twice a week in a six-month program or once a week in a 52-week program.

Approved 52-week Batterers' Intervention Programs

PC §1203.097(c) (1) outlines the required components to a BIP. These required components include (but are not limited to):

- Strategies to hold the batterer accountable for the violence.
- Requirements to attend ongoing same-gender group sessions and be free of chemical influences.
- Receipt of written definitions of and techniques on how to stop emotional, physical, sexual, economic and verbal abuse.
- Lessons on gender roles, socialization, the nature of violence, the dynamics of power and control, and the effects of abuse on children.
- Content on cultural and ethnic sensitivity.

This statute also requires that the batterer enter into the program with a written referral from the court or probation department stipulating the number of sessions required. They must also, upon entry into the program, get a written agreement that outlines the rules and expectations including the types of information the program is allowed to report back to the court or probation department. The participant must also sign a confidentiality statement prohibiting the disclosure of any information obtained in the group sessions about other participants.

The program must be staffed with experienced and trained staff, have a sliding scale and fees based on the participant's ability to pay, and be prepared to suggest an alternate plan if they find that the participant would not benefit from the program. Finally, an approved program must have procedures to inform the victim regarding these various requirements as well as referrals to victim services. The victim needs to be informed that attendance in any program does not guarantee that the abuser will not be violent.

PC §1203.097(2) – (7) further outlines the manner in which programs must handle the behaviors and needs of the participants and places sole authority to approve the BIPs on the Probation department.

Anger Management

Misunderstanding the differences between anger management classes and 52-week BIPs is common, even among judges and clients. Distinguishing the objectives of these two programs is crucial.

Anger management classes are not an intervention for domestic violence. Batterers should never be mandated to attend anger management classes, and it is entirely inappropriate to classify BIPs as “anger management classes.” Rather, they are an intervention for behavioral problems such as general irritability, road rage or impulsive verbal outbursts in the work place. They are not designed to address the deeply rooted attitudes and beliefs underlying domestic violence. On its own, anger management is never an appropriate intervention for domestic violence, though some batterers may benefit from an anger management program in addition to the 52-week BIP.

There are no short cuts to the treatment of the dynamics of coercive control. Attempting to do so can place the victim at continued risk and provide a false sense of safety to all involved (See Part 10, Mental Health Services above).

DEPARTMENT OF PUBLIC SOCIAL SERVICES (DPSS)

CalWORKs

For victims of domestic violence it is best to connect with a local domestic violence victim service organization for support and assistance in the process. Many domestic violence victim service organizations have staff that will act as liaisons between the victim and DPSS. Domestic violence victims and their children who already receive or are eligible for the CalWORKs program and meet welfare-to-work requirements may receive special domestic violence services through the GAIN program of the DPSS. Even with the extended services, navigating the welfare system can be very challenging and confusing.

Exemption to the 48-month limit

In WIC §11454, an individual is allowed only 48 months of CalWORKs cash aid in their lifetime; however, under WIC §11495.1 survivors of domestic violence can seek an exemption to this rule. If a survivor cannot participate in the CalWORKs – GAIN program for any month as a result of domestic violence or if they are suffering from the effects of past abuse, they only need to report this to their eligibility worker or GAIN services worker at DPSS to obtain the exemption.

Special Services through CalWORKs

Beyond the special services through DPSS, CalWORKs eligibility workers and GAIN services workers can provide victims of domestic violence referrals to domestic violence victim services organizations as well as to legal services.

Eligibility and GAIN workers can also assist in getting vouchers for emergency food or housing and access to health services through MediCal. Case management may be available to help link the victim to legal services, independent living skills, and/or other counseling.

Once in the GAIN program, the victim will be further assessed by the GAIN services worker and/or by collaborating agencies to see what other services may be needed including individual or group counseling, parenting education, child care services, transportation, substance abuse treatment, job skills training, college or GED classes for high school equivalency diploma, and so forth.

General Relief (GR)

Victims without children who already receive or are eligible for the General Relief Opportunity to Work (GROW) program may also receive some special domestic services. GR is a County-funded program that provides financial assistance to indigent adults who are ineligible for federal or state programs. The General Relief Opportunities for Work (GROW) program offers employment and training services to individuals able to work and is designed to help GR participants obtain jobs and achieve self-sufficiency. Substance abuse treatment and domestic violence services are also available if necessary.

Undocumented Victims and Children

Undocumented immigrants are not normally eligible for CalWORKs benefits because of their immigration status. However, under the Violence Against Women Act (VAWA), some may be eligible. To find out, the victim may be linked to a domestic violence counselor who will facilitate an opportunity for the victim to be interviewed by an attorney, most likely from the Legal Aid Foundation.

VAWA allows certain non-citizens who are in abusive situations, to petition, without the abusive spouse or parent (self-petition), for lawful permanent residency. These persons may be:

- The spouse of a US citizen or legal permanent resident who is the abuser, legal resident spouse or a member of his/her family and the spouse resided with the abuser.
- The child of a US citizen or legal permanent resident when the abuser is the parent/parent's spouse or a family member of the parent or parent's spouse and the child resided with the abuser.
- The child of the battered spouse.
- The parent of the battered child.

Filing a petition to adjust their immigration status, may make a CalWORKs participant able to obtain cash benefits and domestic violence services while the petition is being reviewed by the Immigration and Customs Enforcement (ICE) Agency, (See the Special and Underserved Population Section of the GERDA Protocol).

Undocumented victims who do not meet the definitions above cannot receive services, however, their children may be able to qualify. Therefore, a referral to a domestic violence victim service organization should be made to assist the victim in exploring this option and making an application to DPSS. Furthermore, undocumented victims of domestic violence who are cooperating with investigation of the crime against them may be eligible for a U-Visa. Either their domestic violence counselor or the prosecutor's VSR should direct the victim to the local legal aid services or the Los Angeles District Attorney's Office Victims of Crime Program.

MENTAL HEALTH SERVICES

Mental Health Professionals

Psychiatrists, psychologists, licensed clinical social workers, marriage and family therapists, and chemical dependency counselors do not fall under the legal definition of “domestic violence counselor” in EC §1037.1, even if they are well-trained in the dynamics of domestic violence and its treatment. Therefore, they cannot claim confidentiality under that statute. However, per EC §1010, they are defined as psychotherapists and, per EC §1012 must maintain the confidentiality of the communications between themselves and their clients. EC §1013 - 1027 outlines the limits of the client-psychotherapist relationship and privilege.

Domestic Violence Counseling for CalWORKs Case Management

Some mental health agencies have entered into contracts with the DPSS to provide counseling for victims of domestic violence who are eligible for the CalWORKs Welfare-to-Work GAIN program (see Part 7, Department of Public Social Services above). This is a voluntary program for victims of domestic violence. The providers and clinicians working in this program are not necessarily domestic violence counselors as defined under EC §1037, but maintain the same privilege as the psychotherapists described above.

Types of Therapeutic Services

Individual Treatment - Survivors

It may be helpful for a survivor of domestic violence who is dealing with trauma to receive individual clinical therapy. But it should be sought voluntarily and with mental health practitioners who are experienced in providing treatment to victims of domestic violence and who have been vetted by VSR agencies.

Individual Treatment - Children

Children from families with domestic violence may also benefit from treatment from therapists trained in the dynamics and dangers of domestic violence and the effects on children. However, such treatment should be initiated with extreme caution. Batterers who are a custodial parent to the children or who have joint legal custody will have the legal right to the children’s mental health records and will need to sign the agreement for treatment. This legal requirement can place the children, or the victim parent, at great emotional and physical risk. Knowing the location of the counseling center and the times of the sessions allows the batterer access to them. Many counseling centers experienced in domestic violence will not treat children under such conditions. In such cases, seeking a court order is advised in order to make the counseling facility confidential and/or giving the batterer no legal custody.

Whenever Dependency or Family Law Court orders individual treatment for children or abused parents, or when DCFS requires it in a voluntary case, the mental health practitioner selected

should be trained and experienced in domestic violence and vetted by a VSR agency.

Occasionally, a court will order visitation between batterers and their children in a “therapeutic setting.” It would be incumbent upon any domestic violence case managers, DCFS staff, or other relevant parties to set up a safety plan to prevent any chance of stalking or access to the child and the victim parent on the way to or from the counseling session.

Conjoint Counseling - Couples or Family with the Batterer

Under PC §1203.097(c)(1)(G), BIPs overseen by the Probation Department have a requirement to exclude any couple counseling or family counseling, or both.

Couples Counseling

In general, couple’s counseling with the victim and batterer when there is active or prior history of domestic violence is contraindicated. The underlying philosophy of couples counseling asserts that both partners are equal, and equally able to share responsibility for fixing problems in the relationship. In domestic violence, there is no equality by definition—it is a relationship where one partner is intentionally controlling and dominating the physical, emotional, sexual and/or economic freedom of the other through violence or the threat of violence. Such an imbalance in power makes couples counseling at best ineffective, but more likely very dangerous for the victim. If after months of approved batterer’s intervention treatment by an experienced group facilitator where the facilitator indicates that the batterer has made measurable positive change and if the victim willingly on her or his own wants to continue the relationship, then couples counseling may be appropriate—but again only with a therapist fully trained in the dynamics and risks of domestic violence.

Family Counseling with the Batterer

As with couples counseling, it is contraindicated to have the batterer included in family conjoint therapy until the successful completion of an approved BIP and court orders making it a necessity. All of the safety planning listed above should be followed.

Family Counseling with the Victim

Family counseling with the victim parent and the children can be an extremely important intervention if done by clinicians well-trained in the dynamics of domestic violence and its effects on children. Since a common feature of families who have experienced domestic violence is a disruption, if not outright damage, to the bond between a child and the victim parent, conjoint sessions can provide the emotional repair and realignment of this critical relationship.

LOS ANGELES COUNTY OFFICE OF EDUCATION (LACOE)

Traditionally, the issue of domestic violence has not been a major focus for teachers and administrators. In this arena, schools are more focused on child abuse and how the child can be protected. There are no official directives on how school personnel might deal with domestic violence or teen dating violence other than that which would come under the child abuse reporting laws. Every school district has a policy to comply with the mandatory reporting of child abuse. If any certified school personnel have a reasonable suspicion that a child is at risk at home due to domestic violence, then a child abuse report needs to be made.

Schools frequently have the opportunity to link students and their parents to community resources. To that end, school personnel have access to a variety of contacts or links that would connect the parent to local domestic violence organizations or shelters. This information is available from either the school site or the district office. If a parent or student desires to have a phone number to call, a pamphlet to read or to find out what they can do or where they can go, they can contact the local school office or the district office and request assistance or a pamphlet.

Changing Schools, Maintaining Confidentiality, and Keeping Credits

When children must suddenly leave their school in order to relocate to safe location (e.g., a shelter or other confidential address), the new school can assist in getting the child officially enrolled while maintaining the family's confidentiality by not sharing the fact that the children have been enrolled there and not sharing the new address of the family. The standard way of handling this sudden transfer is to have the new school district contact the old school district in order to obtain the student's records. For students in grades K-8, there is usually no problem in this transfer of records.

This issue is more problematic for high school students in Grades 9 through 12 because of the classes and grades that the student has taken and received in high school. The California Education Code (EDC) §48645.5 and 49069.5 address the issue of transcripts and partial credit for students that leave school during the school year.

These Education Code sections (derived from AB 490) are clear that the intent of the law is that districts must calculate partial credits for all students for work completed in any public, county office of education, or nonpublic, nonsectarian school and, in addition, must transfer a record of partial credits earned to the next school that the student will attend. This provision applies to all students, not just to foster students. All students must be given partial credit for any and all work that they complete within any length of time (two weeks, mid-semester, etc.). Past practices of not awarding credits when a student is leaving in the middle of the semester are no longer legal.

It is very important, however, for the parent to contact the new school as soon as practicably possible so that this process can start timely. Each school and district has a Foster Liaison that can assist the student and parent(s) in maintaining their enrollment at their school. Also EDC §49069.15(f) states that the local educational agency shall assign a person who is competent to (a) handle the transfer procedure, (b) be aware of the danger to the children and the need to keep their transfer confidential, and (c) know the specific educational recordkeeping needs of homeless, foster and other transient children who transfer between schools.

Maintaining the Confidentiality of Address

School personnel can maintain the confidentiality of the students' address under the CAL SAFE program. Under this program, only the principal of the school knows the exact address of the family in case of emergency. The parent can request that his or her address remain confidential under CAL SAFE from the California Department of Education and then give this documentation to the school.

MISCELLANEOUS SPECIAL SERVICES

Victim Information Notification Everyday (VINE)

VINE is a free and anonymous telephone service that provides victims of crime two important features: inmate status information and notification about an inmate's release, escape or death. The Los Angeles County VINE service is provided by the Los Angeles County Sheriff's Department. It monitors the custody status of offenders in the Los Angeles County Jail. It is updated every 15 minutes. Information is available 24 hours a day, 365 days a year.

Victims and the general public register directly with VINE by calling the toll-free number 1-877-VINE 4 LA (877-846-3452). Victims may call VINE from any touchtone phone, any time and use basic information (e.g., the name—or alias—of the offender or their identification number) to search the VINE database to check on an inmate's custody status and location. VINE will provide the current custody status, offender number, location of offender and a list of victim service agencies. Callers may then choose to register for an automated notification call when an inmate is released or transferred. To register, callers simply enter the phone number, including the area code, where they want to be reached. Callers will then be asked to enter a Personal Identification Number (PIN) for use during notification. The service will automatically call when one of the above events occurs.

Registrations for phone or email notification can also be made from the public VINE website: www.vinelink.com.

If there is a change in custody status to "release" or "escape," the registered victim will be notified every 30 minutes (for the first 24 hours) until they respond and give the correct PIN for confirmation. Messages will be left on voicemails, but the calls will continue until the victim calls to confirm the message. If there is no confirmation call back in the first 24 hours, then the notification calls will be made every 2 hours for 24 hours.

If the change in custody status is non-emergent, such as a "transfer" or a "15 day advance release," then the calls are every 30 minutes from 7:00 AM to 9:00 PM for 48 hours, or until the correct PIN is entered to confirm and stop the notification. If no confirmation is received, the calls will continue every 2 hours for 48 hours.

SAFE-AT-HOME Program

There is a confidential mail-forwarding program administered by the California Secretary of State's Office that helps Californians escape abusive partners. The SAFE AT HOME program can help keep a victim's whereabouts confidential. SAFE AT HOME will give them an official, substitute address to use in place of the real home address. All first-class mail, legal documents and certified mail will come to the Secretary of State's office in Sacramento. They will forward the mail to the victim and keep the real address absolutely confidential. Mail is forwarded within 48 hours.

For most participants, this is a no-cost mail forwarding service. Doctors and other health care professionals pay just a small service fee for this unique service. The survivor can sign up with an enrolling agency, such as domestic violence shelters or reproductive health care facilities. An enrolling agency will work with the survivor on the evidence of abuse or threats required for enrollment. As a participant in SAFE AT HOME the survivor can also protect herself or himself and their family by suppressing DMV records, registering as a confidential voter and applying for a confidential name change. For more information go to: www.sos.ca.gov/safeathome.

State Victims of Crime Compensation Programs

Under California Government Code (GC) §§ 13950-13966, qualifying victims of crime may receive financial assistance for losses resulting from a crime when they cannot be reimbursed by other sources. The Victim Compensation and Government Claims Board, administers the California Crime Victims Compensation Program. The following losses may be covered by the Program:

- Medical/Dental
- Mental Health Counseling
- Wage/Income Loss
- Financial Support
- Funeral/Burial
- Job Retraining

Personal property losses, including cash, are not eligible for reimbursement under the program. The program also cannot reimburse applicants for expenses related to the prosecution of an alleged perpetrator or compensate applicants for "pain and suffering."

However, losses not covered by the program may be recoverable, either through court-ordered restitution as a part of a convicted perpetrator's criminal sentence or through the enforcement of a judgment obtained in a civil lawsuit against the alleged perpetrator.

Eligibility goes to:

- A victim of the crime who suffers physical and/or emotional injury or a survivor of a victim who dies as a direct result of the crime.
- Anyone legally dependent upon the victim for support.
- Anyone who was present during the crime and who has a close relationship with the victim.
- Anyone who must receive psychological treatment as a result of the crime or who should be included in the psychological treatment of the victim.

- Anyone who takes legal responsibility and/or pays for a victim's medical or burial expenses.

In most cases, the crime must be reported to law enforcement and the victim must cooperate in the investigation and prosecution of any known suspects. However under GC § 13956(b)(2) domestic violence victims will not be denied eligibility solely because no police report was made. Instead they can use other evidence including medical records, mental health records, and/or the fact that the victim obtained a temporary or permanent restraining order.

The District Attorney's Claims Verification Program is responsible for verifying and processing Victims of Crime Compensation Claims. The claims process is fully automated. For more information, a toll-free call can be made to (800) 492-5944. For more information concerning the Victims of Crime Compensation Program, the victim may contact the Victim Compensation and Government Claims Board at the toll-free number, (800) 777-9229 or access program information on the Internet at: <http://www.vcgcb.ca.gov/>.

Los Angeles County District Attorney's Victim-Witness Assistant Program

The Victim-Witness Assistance Program's mission is to alleviate the trauma and devastating effects of crime on the lives of victims and their families. VSR advocates guide victims through the court process, help victims receive restitution, and provide referrals to counseling and community services. Because VSRs are located at numerous sites throughout the county efforts are made so that crime victims and their families can be assisted as close as possible to their home area.

VSRs can also assist victims in filing Victims of Crime Compensation claims and can provide information about other methods of loss recovery.

In Los Angeles County, contact the District Attorney's Office at: <http://da.lacounty.gov/vwap/default.htm> or contact at: Victim-Witness Assistance Program, Los Angeles County District Attorney's Office, 3204 Rosemead Blvd., Suite 200, El Monte, CA 91731, Phone: (626) 927-2500 or (800) 380-3811.

Legal Assistance in Civil Court

Legal assistance is a key component to enable victims of domestic violence to permanently escape a violent home. Legal services organizations often work closely with domestic violence counselors and domestic violence emergency response teams to assist all victims; however, a focus of many of these organizations is to provide legal assistance to poor and low income people.

In some courthouses, there is a legal clinic to help victims of domestic violence, usually staffed by one of the many legal aid agencies in Los Angeles County. The services vary depending upon the legal aid agency, but either volunteers or staff interview clients, prepare forms and declarations and discuss legal options. Frequently, these clinics help prepare requests for restraining orders under the Domestic Violence Prevention Act (DVPA) and under the DVPA they can also assist in obtaining orders for child custody and visitation, child support and other Family Law Court orders.

These clinics also guide clients through the Family Law Court process. In addition, they can make referrals to counseling, medical and supportive shelter services.

These clinics may be the first place a victim of domestic violence seeks assistance in an attempt to break the gripping cycle of violence. It is an important moment in the difficult transition from victim to survivor, and successful navigation of the court process can make the difference between leaving safely or returning to the violent home. Many of these agencies also help clients with their divorces or actions to establish paternity once they have achieved stability and desire to permanently leave their abusers.

These clinics have different hours and may have different eligibility requirements. Moreover, the complete process can be very intimidating and confusing, even in the best of circumstances and with thorough preparation. Therefore, it is often best to contact a domestic violence VSO for assistance and accurate information regarding hours and eligibility.

Family Law Court

Victims of domestic violence may seek to obtain restraining orders under DVPA and/or file for dissolution or paternity through the Family Law Court. To facilitate clear communication between courts and forestall conflicting court orders, Los Angeles County has set up a Unified Court Protocol to identify and properly track “cross over cases” between Dependency Court and Family Law Court. The protocol is designed to track both restraining orders and Dependency Court exit orders on a daily basis.

Families with children that experience domestic violence often find themselves in both Family Law Court and Dependency Court. Although, Dependency Court orders regarding the children’s custody take precedence over family law orders, once jurisdiction is terminated in Dependency Court, the case returns to (or enters) the Family Law Court system.

It is important for the first responder to remember, referring a victim of domestic violence to Family Law Court to seek remedy may result in a challenging and, perhaps frustrating, experience. It would be advised to refer the victim to a domestic violence VSO so the victim can obtain support and help in managing his or her case as it moves through the various processes.

DOMESTIC VIOLENCE COUNCILS AND TASK FORCE

Los Angeles County Domestic Violence Council

On April 29, 1979, the Board of Supervisors established the Los Angeles County Domestic Violence Council (DVC). Its mission is to provide leadership in the creation and support of a survivor-centered, countywide approach to address intimate partner violence.

Comprised of representatives from shelter agencies, community groups, the courts, law enforcement, the District Attorney’s Office, the City Attorney’s Office, the Public Defender and Health Services, the DVC facilitates interdepartmental coordination of services, reviews

legislation, and serves as a forum to raise public awareness about available domestic violence related services and to develop strategies within the public and private sectors to stem the incidence of domestic violence.

The DVC conducts public awareness campaigns and offers domestic violence trainings for professionals in the field. It also provides an opportunity to study the problem of domestic and family violence in Los Angeles County, and makes recommendations regarding public information, training, legislation, education, and subsequent program development in these areas.

In addition, the DVC identifies funding to strengthen existing programs and bring services into communities that lack them. Standing committees of the Council focus on health, legal issues, legislation, LGBT, shelter services, training, and religion as each pertain to domestic violence. The DVC welcomes and elects members who demonstrate substantial involvement in domestic violence issues, and each member has the endorsement of an organization devoted to serving people affected by domestic violence in Los Angeles County.

For further information, contact the Domestic Violence Council, 500 West Temple Street, Room B-50, Los Angeles, CA 90012, (213) 974-2799, email: dvc@bos.lacounty.gov.

The DVC website, dvcouncil.lacounty.gov, is a source of information, training and links to resources and special services for domestic violence victims and their children.

Community Domestic Violence Councils and Networks

Throughout Los Angeles County, several communities have developed their own grassroots domestic violence groups. In some communities they are connected with the Community Child Abuse Councils.

Los Angeles City Domestic Violence Task Force

In June 1994, then City Council member Mark Ridley-Thomas and former Council members Rita Walters and Marvin Braude introduced a motion to establish the Domestic Violence Task Force to coordinate domestic violence policy and program development among city departments and agencies and other public and private partners.

The Task Force members reflect a broad range of expertise within the area of domestic violence and community organization. Voting membership of the Task Force consists of one primary voting member and an alternate from each Council Office, the Mayor's Office, City Attorney and other key City departments.

The mission of the Task Force is to assist City officials and managers in developing and coordinating domestic violence programs and making recommendations to the City Council on legal advocacy, legislation and other policies related to domestic violence. Standing committees address specific issues pertinent to law enforcement, legislation, grant funding and children. The Task Force meets the second Monday of each month.

For further information, contact the Los Angeles Housing and Community Investment Department website, <http://lahd.lacity.org>, under the Community section, to find the Los Angeles City DV Task Force and other important links to hotlines and resources.

DOMESTIC VIOLENCE DEATH REVIEW TEAM (DVDRT)

The Los Angeles County Domestic Violence Death Review Team (DVDRT), created pursuant to PC §§1116.3 et. seq., meets monthly to review a selected number of domestic violence-related deaths in a multi-agency forum. It is co-chaired by the Los Angeles County District Attorney's Office and the Los Angeles County Coroner's Office. The team is comprised of representatives from the Los Angeles County Domestic Violence Council, Los Angeles Sheriff's Department, Los Angeles Police Department, local law enforcement agencies, the Los Angeles City Attorney's Office, Los Angeles County Coroner's Office, Los Angeles County Department of Children and Family Services, Office of County Counsel for Los Angeles, Department of Public Health, interested medical professionals, Los Angeles City Office of Disabilities, domestic violence shelter-based service agencies, domestic violence advocates, Southern California Injury Prevention Research Center, Inter-Agency Council on Child Abuse and Neglect, Los Angeles County Probation Department, and the California Department of Corrections and Rehabilitation.

The team reviews an array of cases: adult victims, murder/suicides, suspicious suicides and child murders related to incidents of domestic violence.

The team reviews cases that have either been closed by the police or through prosecution. The DVDRT process examines system failures that contribute to domestic violence related fatalities and examines how institutions and agencies can improve their responses to prevent future deaths. The central objective of the multi-agency review process is to enhance community awareness of domestic violence through the collection of data on the prevalence of fatalities and through recommendations for improved protocols and policies for prevention and intervention. The review also assists local agencies in the identification and understanding of homicides and suicides performed in the context of domestic violence.

PC § 11163.3 allows the members to share information in order to facilitate a comprehensive understanding of the facts in the case as well as detection of the dynamics of domestic abuse. The information shared remains confidential and is not subject to disclosure or discovery. All participants in the review are required to sign a confidentiality agreement.

CHAPTER 7

DIVERSE AND UNDERSERVED COMMUNITIES

“Community” not only refers to the geographic area where a person resides, it also refers to a social network--people who share a similar culture, ethnicity, language, race, sexual orientation, gender identity, age, disability, religion, or economic status. Most people, in fact, belong to multiple communities, especially in Los Angeles County which has the most diverse set of communities found anywhere else in the world. The development, therefore, of strong cultural competency for first responders throughout Los Angeles County is a necessity. Solid training in diversity and cultural awareness is essential.

In terms of domestic violence, the way a victim or abuser will perceive the violence in his or her relationship is greatly influenced by the community or communities with whom she or he is affiliated. Likewise, the community can shape the way the victim or abuser responds to the violence. For example, the attitudes and beliefs held in the community can determine the degree of support or disapproval the victim or batterer is likely to receive.

Certain underserved communities have historically faced undue social prejudice and victimization from the dominant community. Many have also experienced disproportionate involvement in both the criminal justice and child protection systems that have resulted in deep feelings of distrust and suspicion. Members of these underserved populations often view connection with these systems, even when in need of assistance, as a potential threat to themselves or family members. This apprehension may make them less likely to report abuse, cooperate with investigations or reach out for support services, leaving them at greater risk for continued victimization within the relationship.

Victims of domestic violence from an underserved community are highly vulnerable—not only from their abusive partners, but also from discrimination by the criminal and social services systems, and sometimes even from biases internal to their own community. This vulnerability can increase exponentially when domestic violence victims belong to more than one socially diverse community.

Nonetheless, getting through these layers of miscommunication and mistrust is the key to uncovering the accurate facts of any committed crimes and to determining the best safety plan. When working with domestic violence victims and batterers from one or more of these underserved communities requires much more patience, flexibility and diligence to identify the dynamics of the domestic abuse, collect relevant evidence and to better link the victims to appropriate services.

GERDA Protocol fundamental principles would suggest having domestic violence experts from multiple diverse populations provide periodic training on the special needs of these populations to all first responder staff in order to enhance their knowledge, skill and sensitivity. Six divisions of commonly underserved communities are presented here. Provision of information on these six

underserved communities is not meant to be an exhaustive list or review of the significant diversity in Los Angeles County, but they are communities that have been identified as needing specialized services for domestic violence related concerns.

LINGUISTIC DIVERSITY AND USE OF INTERPRETERS

Access to proficient speakers of the numerous languages spoken in Los Angeles County remains an extremely concerning problem in the County's response to, and investigation of, incidents of domestic violence.

Not being able to investigate an incident of domestic violence in the language of the victim or batterer can lead to misunderstandings of the facts of the case and can place a victim at greater risk for future abuse and retaliation.

There are at least 224 identified languages in Los Angeles County. This does not include differing dialects. Local publications may be found in nearly 180 of these languages. According to the 2010 Census, nearly 57% of the people in Los Angeles County who responded reported that they spoke a language other than English in their home. The 10 languages (besides English) most commonly spoken are Spanish, Chinese (Mandarin and other dialects), Tagalog, Korean, Armenian, Farsi, Vietnamese, Japanese, Russian, and French. American Sign Language and other signing languages add to this overall linguistic diversity.

The need for fluent speakers trained in interpretation and translation for these many languages is substantial. Most investigatory agencies have a difficult time meeting this need. Although police agencies attempt to have officers and detectives fluent in the languages found in their jurisdiction, they often have to rely on paid interpreters. DCFS also attempts to have CSWs who can communicate in the family's preferred language, but it is not always possible to do so in emergency situations. Often law enforcement and DCFS will work together to find someone who speaks the language of the family.

In immigrant families, the children are often more proficient in English than the parents, but it is **never** appropriate to use a child as an interpreter. In addition, having the batterer or the victim translate for each other is unacceptable. The GERDA protocol would expect that investigating agencies make every effort to find a trained interpreter. AT&T provides interpreters for a fee. Some law enforcement agencies contract with outside interpreters.

The problem of not having enough interpreters extends to the courtrooms and service providers in Los Angeles. Sometimes in a courtroom there may be only one interpreter available or only one interpreter for a specific language. Having an interpreter sit between the batterer and the victim during the proceedings is not acceptable. It places the victim at risk for threat and intimidation – emotional as well as physical – which may interfere with effective prosecution or litigation. In smaller ethnic communities, the court interpreter may have knowledge of an existing social relationship with the batterer or victim resulting in an awkward or even unprofessional situation. It is always a good practice to ask the batterer and victim if they know the interpreter and, if so, how well.

Further, when court orders are made for a non-English speaking batterer (or occasionally victim) to complete certain programs, it often places the batterer (or victim) in the position of possibly being in contempt of court because he or she cannot locate or reasonably access services in his or her native language. This situation is particularly problematic for the deaf community where a second spoken language is not an option. To comply with the orders, many non-English speakers will attend programs in a second language which may or may not be effective for them and undercuts the purpose of the ordered intervention altogether.

Access to services for the victim may also be limited because of linguistic needs. Shelter-based agencies may not be able to afford AT&T interpreters; however, some of these agencies have staff fluent in the most commonly spoken languages in Los Angeles County, and in an emergency can assist another shelter.

UNDOCUMENTED IMMIGRANT COMMUNITY

Immigrants to the United States often come from countries where they have fewer civil rights and are subjected to strict governmental controls. Even after a significant amount of time in the United States--whether or not they are documented--immigrants may not be aware of their rights and the laws that protect them. If they are not fluent in English, they may be even less aware of any legal protections afforded to them.

A person's immigration status should never be assumed. There are many undocumented immigrants living in Los Angeles from all parts of the world, even from English speaking countries like Australia, Ireland or the United Kingdom.

When an immigrant is undocumented, distrust of government systems is heightened by the fear that they could face deportation, lose their homes, or even have to separate from their children. Such fears can keep undocumented victims of domestic violence from reporting the abuse or seeking safety and can also be used by their abusers as another form of intimidation and threat, keeping them trapped in the relationship. This is especially true if the abuser has legal status, is more proficient in English, or is a member of the dominant culture.

There are some legal remedies for undocumented victims of domestic violence. The Violence Against Women Act (VAWA) allows an undocumented victim who is married to an American citizen or permanent resident (or is the child of a US citizen or permanent resident or the parent of a US citizen) to self-petition for permanent residence. Linking undocumented victims to appropriate legal assistance is important.

Those undocumented victims who are not married to a citizen or permanent resident do not qualify to self-petition under VAWA. However, if they cooperate (or cooperated in the past) in the investigation or prosecution of a crime in which they were the victim, they may be eligible for temporary legal status and be granted a "U-Visa." To apply for a U-Visa, they need to have a U-Visa certification form signed by a law enforcement officer. The main criteria for obtaining this signature are that the person was a victim of a qualifying crime and has been or is likely to be helpful to a federal, state or local law enforcement official, prosecutor or judge investigating or

prosecuting the criminal act. A victim should be referred to a local legal aid agency that can assist in this request process. If a law enforcement official signs a U-Visa certification for the victim, the victim must submit it to the Department of Homeland Security as part of the victim's U-Visa petition. If the Department of Homeland Security finds the victim eligible, the victim will be granted a U-Visa and work authorization for up to four years. The victim may then apply for permanent residence after three years.

First responders must consider the victim's fear of being identified as undocumented and not let the immigrant status negatively influence the investigation of the crime or the interventions offered. For all immigrants, particularly those who have limited skill in English, having access to trained interpreters, taking the time to explain clearly to the victim the investigation process, including a reassurance that deportation is not in the offing, may be necessary to build trust and obtain the necessary information for a complete investigation. It is not acceptable to use family members, particularly the children, as interpreters.

If possible, it is helpful to find out what the victim's needs are from the victim's perspective. For example, asking questions such as, "How will the people who are important to you react to this incident?" or "What will help you feel safe right now?" will help to provide important information and insight into how best to assist the victim. Providing referrals to appropriate service agencies and offering assistance in contacting these agencies is also effective.

LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT) COMMUNITIES

Current research confirms that battering is just as prevalent, just as harmful and just as dangerous among LGBT people as among non-transgender heterosexual people (*occurring in 25-33% of relationships*). One of the biggest differences is that there are fewer resources for individuals experiencing domestic violence in LGBT relationships, and that the abuser may use threats to reveal their partners sexual orientation and/or gender identity in order to gain power and control over their partner. The abuse can also be exacerbated because it is occurring in the context of bias and discrimination.

It is important to note that gay, lesbian and bisexual identities relate to a person's sexual orientation, whereas transgender identity relates to a person's gender identity. Everyone, not just LGBT individuals, has a sexual orientation and a gender identity. Analyzing domestic violence in the context of LGBT relationships highlights the need for service providers to identify a pattern of abusive behavior used to maintain power and control without relying on stereotypes and assumptions made in relation to heterosexual relationships. The most effective way to investigate domestic violence in LGBT communities, as with all communities, is to take a thorough and detailed approach to information gathering; however, it will also be necessary to understand many of the barriers and challenges confronting victims of domestic violence in LGBT relationships.

Like other underserved communities, LGBT victims often do not report domestic violence for many reasons. LGBT communities have historically been met with challenges when coming out and in accessing services. For this reason, it may not be safe for someone to disclose their sexual orientation and/or gender identity in a situation of domestic violence. For many LGBT people,

disclosing their identity has had negative effects on their jobs, housing, custody of their children, church membership and/or family connections. Being open and out publicly also can increase vulnerability to verbal and physical assaults, even hate crimes.

Additionally, LGBT people may fear unfair treatment from the criminal justice system, and LGBT batterers can capitalize on these fears by threatening to reveal their partner's sexual orientation and/or gender identity as a means of maintaining coercive control over their partner, keeping the victim in the relationship. LGBT domestic violence victims may also choose not to report their abusive partner because they fear the extreme risk of discrimination their partner may face if arrested and put in jail. If police are called, and/or if there is a DCFS investigation, LGBT couples may not disclose their sexual orientation and/or gender identity, or the nature of their relationship, and may fear working with government agencies, resulting in the perception that they do not want to cooperate with the investigation. The fear of unfair treatment may also result in difficulty in determining the batterer from the victim and collecting accurate information.

As in all investigations of domestic violence it is absolutely critical that the parties be interviewed separately. The investigators must be patient and look carefully for signs of systematic abuse and control used by one partner over the other by examining the context, intent and effect of the patterned behaviors.

It is important that first responders remain unbiased and not draw quick conclusions about who is the dominant aggressor. When responding to violence in LGBT relationships it also is important not to make assumptions about individuals based on mistaken stereotypes of gender roles. For example, external characteristics such as dress, demeanor, size, or behavior should not be used as indicators of who is the abuser, or who is the victim (i.e. assuming the more masculine partner is automatically going to be the abusive partner). Such characteristics are not a reliable gauge in determining how power and control operates in LGBT relationships (and often not in heterosexual couples as well).

Instead factors related to power should be examined such as imbalances in economic control, social privilege, history of violence, stalking or threats in the relationship, and so forth – as should be used for all couples from any population.

As first responders interview each person, they should ask what would make them feel safe. If either discloses the nature of their relationship, the responders might ask if the person has any concerns about the possibility of their sexual orientation and/or gender identity being revealed, and, to the extent possible, those concerns should be considered in the providers' response.

Additionally, first responders should not assume that where one (or both) of the partners is transgender that the couple is in a same-sex relationship. Sexual orientation and gender identity are not mutually exclusive; transgender people may be heterosexual, lesbian, gay, bisexual, or identify their sexual orientation in other ways. Being non-judgmental and asking the partners how they identify themselves can be very helpful to the investigator and empowering to the transgender partner. For example, asking transgender partners which pronoun they prefer be used when referring to them is a good first step in creating trust and facilitating the investigation.

When working with couples in LGBT communities, having referrals to appropriate advocacy services is also important, and specific training on domestic violence in the LGBT community should be a regularly scheduled component of any training regime.

MALE VICTIMS

Although the majority of reported victims of domestic violence are women, men in both same sex and opposite sex relationships also suffer abuse. The forms of domestic abuse are similar to those experienced by women, including physical, sexual, emotional and financial abuse as well as systematic threats, harassment and intimidation. Many men also face social isolation from family, friends or the community at large.

As with female victims, males can find themselves in relationships under the coercive control of their partners and believe that they have somehow caused or deserve the abusive treatment. They can fear retaliation if they report the abuse or try to leave the relationship. The fears are that the violence will escalate or that their partner will leave with the children.

Due to the social stigma that a man may possibly be viewed as someone “who cannot protect himself,” many male victims suffer a great deal of shame and embarrassment. These feelings prevent them from reporting the abuse or trying to find assistance. Men often do not know where or how to seek assistance or intervention. This situation can increase their sense of helplessness.

The problem is exacerbated when first responders or social service agencies encounter men in families where there are reports of abuse. They often fail to ask the man if he has been victimized, or they fail to believe him if he does in fact disclose. The result is that a man can be arrested based on the false assumption that because he is male, he must be the aggressor. Men can find themselves removed from their own homes and have their children remain with the abusive parent with no one to protect them.

With these many barriers, men rarely disclose domestic abuse. Not unlike female victims, males will try to maintain a false sense of stability to keep their families and homes intact.

The Los Angeles County Domestic Violence Council aims to raise public awareness of the existence and needs of male victims of domestic violence and abuse; to work with government and non-government services alike to provide assistance to male victims; and to reduce the incidence and impact of family violence on men, women, and children. Information, resources, services and referrals are available through various agencies in Los Angeles County for male victims seeking assistance. Men can also find information readily available on the Internet.

PERSONS WITH DISABILITIES

The Federal Americans with Disabilities Act (ADA) of 1990 as amended prohibits discrimination on the basis of disability. “Disability” is defined under the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities (e.g., walking, hearing, seeing, eating, sleeping, caring for oneself, breathing, learning and operations of major bodily functions of the immune, respiratory, circulation, and elimination systems); a person who has a history or record of such impairment; or a person who is perceived by others as having such an impairment. There are many classifications of disability: mobility, communication, cognitive, developmental, health and mental health. A disability can affect an individual’s mental functioning (e.g., to reason or make good judgments), their physical abilities (e.g., to see, hear, or move), and/or their overall physical health or mental health (e.g., HIV/AIDS, clinical depression).

People who have one or more of these disabilities are usually covered under the ADA. The ADA gives civil rights protections to individuals with disabilities and, under Title II, requires the government (including law enforcement and child protective services) to make reasonable modifications in their policies, practices and procedures for the disabled. In addition, they must provide auxiliary aids and services for effective communication so that persons with disabilities are not put at risk or subject to unequal treatment; for example, providing a qualified sign language interpreter to allow for effective communication instead of using written words or lip-reading.

One out of every 5 people in the U.S. has some mental or physical impairment, and for half of these people the disability is severe. Disabilities come in many forms. Some are visible, yet many are hidden. An individual may have more than one disability. Assumptions should not be made about the person’s abilities based on having a “disability.”

The risk of criminal victimization for people with disabilities is much higher than for people without disabilities. The U.S. Bureau of Justice Statistics reports in the National Crime Victims Survey of 2009-2012 that people with disabilities are victims of crimes three times more than people with no disabilities: 60 per 1000 and 22 per 1000, respectively.

Most of the issues that confront victims who have a disability, however, are issues that affect all crime victims. The way people cope as victims, for instance, depends largely on their experiences immediately following the crime. Law enforcement officers are usually the first officials to approach a victim. This fact puts law enforcement officers in a unique position to both help a victim cope with the immediate trauma of the crime and to help in restoring a victim’s sense of security and control over his or her life.

Often people with disabilities do not receive public awareness education because it is not distributed in accessible formats (e.g., Braille, disk, large print and audio tape) or in places where people with disabilities can access it. Not much research has been done on victims of domestic violence with disabilities. However, in his article, “Partner Violence Against Women with Disabilities,” (*Violence Against Women*, 2006) Douglas Brownridge reports that women with disabilities are 40% more likely than women without disabilities to be victims of violence, especially severe violence, at the hands of their male partners. Yet, these crimes are less likely to be reported and usually are handled administratively, within service programs, rather than reported to law enforcement or through the criminal justice system.

What is important to remember is that the signs and symptoms of domestic violence for people with disabilities are similar to those of other populations. That is, they experience a pattern of behaviors used to exert coercive control by someone with whom they have a relationship.

However, when one partner has a disability, the type of relationship between batterer and victim and the behaviors used to exercise control are more complicated than in other households experiencing domestic violence. That is, the abuser may not only be an intimate partner, parent, or child, but also a paid or unpaid caregiver with whom the victim has developed a personal relationship. Whether these caregivers are family members or significant others, the relationship can be defined predominately as one of dependence, making people with disabilities even more vulnerable to threats by the abuser. For example, the abuser may be the sole sign language interpreter for a victim who may have no other means of, or access to, communication. Or the abuser may have total control over the victim's mobility (e.g., wheelchair, walker) or transportation to appointments or shopping for basic necessities. Some abusers exert control by withholding medical treatment, denying personal care, denying access to information that will help increase independence, rough handling when providing care, not allowing the person to make decisions, and other forms of emotional and physical abuse.

The consequences of reporting domestic violence for a victim who is a person with a disability includes all of those faced by a victim without a disability. But people with disabilities may experience additional barriers when seeking services. These barriers and fears include:

- Total abandonment and helplessness.
- Loss of their children (as people with disabilities are often viewed as having less adequate parenting skills).
- Loss of their basic decision-making rights (since a person with a disability may be viewed as unable to make decisions apart from their abusive partner, relative or caretaker).
- Being institutionalized (especially if the primary caretaker is the abuser and no other caretaker is available).

People with disabilities are often perceived as less credible and are not empowered to live independently. People both communicate and attain their independence in a variety of ways. People with disabilities often are stripped of their basic right to make decisions for themselves by those in positions of authority (judges, social service agencies and law enforcement). A person with a disability is less likely to be believed when they disclose they are a victim of domestic violence than a person without a disability. When filing for a civil protective order under the Domestic Violence Protection Act, some (especially those with cognitive disabilities and/or mental illness) are given the protective order based on their disability and not on the domestic violence.

In cases of reported domestic violence, a crucial area of concern (as mentioned above) is the fact that victims with disabilities are more likely to have their children removed from their care and placed in the home of the abusing parent. First responders, particularly DCFS workers, should make sure that they do not re-victimize the non-abusive parent because of an observed disability. It can result in greater trauma for the child as well as the victim parent. It is important to work closely with local service agencies to assist the victim parent with disabilities in making the necessary accommodations so they can keep their children with them.

It is important to note that in some households, both partners may have one or more disabilities, e.g., a deaf couple. Although it is likely that the person with the disability is also the victim of the domestic violence, that is not always the case. Depending on the circumstances, the abuser may also be a person with a disability. As in all reports of domestic violence, a full assessment of the dominant aggressor and the pattern of control are necessary.

People with disabilities often are unable to receive appropriate services due to a service provider's refusal to comply with federal law and provide accommodations and/or have facilities that are accessible. Limited resources, lack of transportation (especially in rural or large urban communities), policies, laws and funding sources that limit services, in addition to competition for limited resources, are often cited as reasons why appropriate services are not offered. However, these claims would not be effective defenses for violating the law. Making court orders for services does not help to ameliorate the fact that services are limited, if available at all. People with disabilities are often placed at risk of being in contempt of court for failure to comply with court orders. Furthermore, first responders and service providers often lack understanding about the many differences in needs for people with disabilities. Not all people with disabilities have the same needs. People with cognitive disabilities have different needs than people with mobility disabilities. Each person is unique. First responders and court personnel are required to have all of their programs, services and activities accessible for people with disabilities, especially those that are court-ordered.

Information on Some Specific Disabilities

Many first responders not familiar with individuals who have a disability may feel awkward and uncertain about how best to respond to these individuals. It is important for the first responder to rethink any negative attitudes about people with disabilities. It is also expected that the first responder not hesitate to ask persons with a disability if they have any individual needs, how they wish to be characterized and/or how best to communicate with them most effectively. It is important not to speak down to people with disabilities or view them as victims of their disability. It is also inappropriate to unnecessarily praise them "for their accomplishments despite their disability." Professional respect and awareness of the individual's needs are what is most appropriate. Make note of any individual needs or requests with regard to communication, transportation, medication or other accommodations.

Persons with Mobility Disabilities

In working with a person who uses a wheelchair or a scooter, it is helpful to sit or crouch down to the approximate height of that person. Never touch or lean on a person's wheelchair, scooter, cane or other assistive device. It is that person's personal space. In an investigation, allow people who use such assistive devices to keep their mobility aids with them. Some people who use mobility devices have use of their arms, some don't. Approach each individual the same as you would any other; that is, extend your hand for a handshake; the person with the disability will tell you if he or she cannot shake your hand and will appreciate being treated with respect.

Persons with Speech Disabilities

Listen patiently and carefully. Don't complete sentences for a person with a speech disability unless he or she specifically asks you for help. Don't pretend to understand what this person is saying just to be polite. Go to a quiet room or location if necessary. Don't let able-bodied people interrupt a person with a speech disability just because they can talk louder. Repeat what you do understand. Ask the person to say something in a different way if you are not sure what he or she is saying. Keep good eye contact. If a person with a speech disability is using a revoicer, speak to and keep eye contact with the person, not the revoicer. If the person uses an assistive device, don't touch the device as that is part of his or her personal space. Some people have speech disabilities that result in their having slurred speech and one should not assume it to be a sign of intoxication or other infirmity.

Deaf Persons or the Hard of Hearing

If you need to attract the attention of a person who is deaf or hard of hearing, touch him or her lightly on the shoulder or arm. Talk directly to them, not the interpreter. Face them so they can see your mouth. Speak clearly and increase your volume if requested. Shouting is not helpful. It is important to make sure you are in a well-lit area. Not all people who are deaf or hard of hearing can read lips. For those people, you may need to write messages back and forth, use gestures, provide visual aids, use assistive technology or find an assistive listening device. For some, American Sign Language (ASL) is their first language and they may require an ASL interpreter to communicate effectively. It is important to establish which method of communication is preferred by the person with the disability. It never is appropriate to have a child be the interpreter or to communicate to the victim through the abuser (or vice versa). The 2010 Census indicated that there were over 300,000 deaf or hard of hearing individuals in Los Angeles County, but this is an underestimated count as some individuals may not have completed the Census or American Community Survey.

Persons with Visual Disabilities

You don't have to speak loudly to people with visual disabilities. Most of them can hear just fine. Offer to read written information for a person with a visual disability, when appropriate. If you are meeting or approaching a blind person, identify yourself. If you have met before, remind them of that previous context. It is okay to say such statements as, "I see what you mean." However, when talking with a person with a visual disability, be descriptive and describe what is going on in the surroundings, and be sure to point out any obstacles to a blind person. You may have to help orient people with visual disabilities and let them know if anyone or anything is approaching and/or what is happening in the environment. Be their assistant, not their director. If you walk with them, let them take your arm as a guide. Tell them if they have to step up or down; let them know if the door is to their right or left; warn them of possible hazards. You may need to assist them with filling out forms.

Persons with Developmental and Intellectual Disabilities

Do not assume that a person is not listening simply because you are not getting any verbal or visual feedback, such as eye contact or some acknowledgement of understanding. Ask them whether they understand or agree. Don't assume you have to explain every little detail. They do not necessarily have a problem of general comprehension. Sometimes in an investigation, it may be necessary to locate a local expert who is experienced in working with people with developmental disabilities, such as a Regional Center counselor, in order to collect accurate information.

Persons with Hidden Disabilities

Not all disabilities are apparent or visible. A person may have trouble following a conversation, may not respond when you call or wave them over, or may say or do something that seems inappropriate. They may have a hidden disability such as poor vision, a seizure disorder, a hearing loss, a learning disability, a brain injury, a mental disability, or a health condition (this list is not exhaustive). Don't make assumptions about the person or what disability he or she may have.

TEENAGERS AND TRANSITIONAL AGE YOUTH (TAY)

Like domestic violence in adult relationships, teen dating violence runs across race, gender, sexual orientation and socio-economic lines. Teens are very vulnerable to dating violence. Both males and females are victims, though males are more likely to inflict greater bodily injury and to employ sexual assault. Adolescents and adults are often unaware that teens experience dating violence. In a nationwide survey, 9.4% of high school students reported being hit, slapped, or physically hurt on purpose by their boyfriend or girlfriend in the 12 months prior to the survey (Centers for Disease Control and Prevention, *2011 Youth Risk Behavior Survey*).

About 1 in 5 (22%) women and nearly 1 in 7 (15%) men who have experienced rape, physical violence, and/or stalking by an intimate partner, first experienced some form of partner violence between the ages of 11 and 17 (Centers for Disease Control and Prevention, *2010 National Intimate Partner and Sexual Violence Survey*).

Dating violence is a widespread issue that has serious long-term and short-term effects. Many teens do not report this violence because they are afraid to tell friends and family.

A 2009 survey by the Liz Claiborne, Inc and the Family Violence Prevention Fund reported that despite the fact that the majority of parents say they have discussed dating violence with their teens, 74% of teen boys and 66% of teen girls say they have not had a conversation about dating abuse in the past year. Startlingly, the majority of teens who are in abusive relationships reported they had not talked to their parents about the abuse. Of the less than one-third who did confide in their parents, 78% of them reported staying in these abusive relationships despite their parents' advice.

Similarly Transitional Age Youth between the ages of sixteen and twenty-four bridge the gap between adolescents and early adulthood and are also at higher risk of intimate partner violence. Rates of DV are, in fact, highest for persons ages 18 to 24, according to Estes and Wiener (2001) *The Commercial Sexual Exploitation of Children*. Although many TAY are technically adults,

they are still vulnerable to domestic abuse and sexual exploitation, especially those who have a history of child abuse and neglect, including domestic violence in their families and/or were dependents under child welfare or juvenile justice systems.

Teens are particularly vulnerable because of developmental limitations and attitudes. They lack relationship experience and knowledge. Many parents and adults do not talk to teens about healthy relationships; and teens don't ask. Teens are less likely to speak openly to adults. They get information mainly from peers; in fact, many teens only talk and confide in peers who perpetuate unhealthy and naïve views on relationships. They are likely to hold dramatic views of romance and have rigid gender stereotypes. Teens can also be confused and minimize the severity of the threat and violence in their relationships. Teens are more desensitized to violence in general. They are more likely to see physical incidents in a dating relationship as normal or justified—sometimes as an extension of childhood playful rough-housing. Many teens also believe that sex is a requirement in a relationship and consent even when they do not feel comfortable with it.

The dynamics of teen dating violence mirrors the control behaviors seen in adult domestic violence, such as physical abuse and threats, verbal put downs, sexual aggression, and isolation from family and friends. Specific to teen dating violence are threats by the abusive partner to tell the secrets of the victim to his or her peers and parents as well as cyber stalking and cyber abuse.

Even though dating violence among teens is a crime, it often falls between the cracks of the criminal and child protection systems. It is under-reported because teens do not, as a general rule, turn to adults for assistance, especially adults in authority such as law enforcement. Moreover, if a teen is identified as a victim of intimate partner abuse, it often is minimized by law enforcement unless there is substantial evidence of assault and the teen victim is cooperative. In addition, the child protection hotline frequently does not take reports on teen dating violence because the abuser is not the teen's parent or caregiver. DCFS does not respond to physical, sexual or emotional abuse between teens unless the allegations include that the teen's parents are aware of the abuse and are not protecting their child. The weaknesses in the response by law enforcement and DCFS often does not give teen victims the protection they need and does not hold the teen batterer accountable.

Further, community services for teen victims are also limited. Only a few domestic violence shelters can take in a teen victim since legally her or his parents must authorize this relocation. Similarly only a few domestic violence service organizations have special case management programs for teen victims. Often these special service programs are the only community support for teens experiencing dating violence. There are also a few agencies that specifically provide free legal services for teens, such as providing assistance in filing for protective orders for teens.

When reported, first responders should investigate and assess complaints of teen dating violence and/or sexual assault thoroughly. Whenever working with teens, it is most effective to take a non-judgmental attitude and accept the fact that the teen will likely be reluctant to disclose abuse for fear of retaliation from the abuser and from peers. It often is helpful to presume the teen is “in love” with the abuser and may be likely to defend him or her. Use of direct questions can be less successful with teens. It is more effective to talk to teens about the relationship using open-ended

questions, looking for signs of coercive control. The teen victim, as with adult victims, will often minimize the incidents of violence during the disclosure itself.

Finally, first responders also need to pay attention to the teen's home environment to verify that the teen is not at risk from his or her parents in addition to the dating partner. Some teens have been victims of child abuse in their homes by a parent or a parent's companion. Getting deeply involved in a dating relationship outside the home is sometimes an attempt to get away from an abusive family. Beyond prior child abuse in the home, it is extremely important for first responders to determine whether the disclosure of the dating violence will place the teen at risk for physical or severe emotional punishment by the parents. This is especially true if the teen has been a victim of sexual activity or assault by her or his dating partner. It is not uncommon for the parents to blame the teen victim for her or his own victimization. This blaming can escalate to corporal punishment or severe name-calling that increases negative reactions such as running away and/or suicidal behaviors.

GANG AND GANG-AFFILIATED COMMUNITY

Investigation, assessment and intervention in cases of gang-affiliated domestic violence can be even more complicated than the already-complicated domestic violence cases. Identifying the manner in which a batterer exerts power and coercive control over their partners is made more difficult when viewed in a gang setting where power and intimidation are an inherent part of all aspects of the gang culture. Many youths entering the gang culture are escaping other forms of violence or abuse in their homes or communities. Many victims of gang-related domestic violence have a complex history of abuse and neglect.

There is little data on the prevalence of domestic violence victims who are abused as a result of gang-related violence. The data often is not reported separately but combined with all gang-related violent crimes. Nonetheless, it is extremely important for responders to consider the special circumstances facing a domestic violence victim who is gang-affiliated.

Gang members often victimize new members as part of an initiation process. For example, male gang members will force a female to have sex with one or more male gang members. They are often victimized by more than one person from the gang. Some accept the sexual assault as part of their new gang "family." If she reports the incident as a rape, however, she is in greater danger of continued retaliation from the gang.

Some women who are not official gang members but are in an intimate relationship with a gang member are also at risk of violence. Intimidation and victimization are part of the gang culture. They are often subjected to strict geographical limitations and isolation. They may experience violence at a high rate because sexual and physical assaults are methods used by the abusive gang-member to exhibit power within the gang.

As with all victims of domestic violence, it is most dangerous when trying to leave the relationship. This risk is even greater for victims trying to extricate themselves from an abusive relationship with a gang member. They may face extreme violence because of the inside information they

know about gang activities, secrets, code names and so on.

This greater risk also applies to gang members who try to leave the gang itself. They may also be subjected to sexual and physical assault, stalking, threats, and continual harassment via social media or technological tracking. The threats are often real and deadly.

Reporting domestic violence to authorities or cooperating with investigations will increase the likelihood of future violence for the victim and, therefore, increase the need for responders to work very closely with advocates in developing safety plans.

The risk extends beyond the victim and children to other family members and to the community in general. Many domestic violence shelter organizations are not able to admit victims with known gang-affiliation in order to maintain safety within the shelter. Occasionally, members of the gang will stalk the victim by trying to get admitted into the same shelter.

Because of these facts, victims of gang members have unique and often unmet service needs because providers of services often have to turn them away due to fear of retaliation from a gang member. Many agencies do not have sufficient knowledge of the gang culture to allow them to assess safety needs or provide safe services. It is also not uncommon for victims of gang-related domestic violence to have their own criminal record, perhaps even for domestic violence, further impeding their ability to get adequate support services.

BACKGROUND REFERENCES

The GERDA task force utilized a number of sources to build its foundation. In particular, *The Guidelines for Public Child Welfare Agencies Serving Children and Families Experiencing Domestic Violence* became a primary source of inspiration for the Los Angeles County GERDA

protocol. It was drafted by the National Association of Public Child Welfare Administrators in 2001. Other sources that underlie the GERDA protocol were a selection of response protocols developed by communities across the country.

- Santa Clara County, California:
 - (1) Police Chief's Association—Domestic Violence Protocol for Law Enforcement
 - (2) Probation Department—Domestic Violence and Family Violence Protocols
 - (3) Social Services Dept. of Family & Children Services—Family Violence Prevention Best Practice Guide
- Pinellas County, Florida *Inter-Agency Working Agreement* with the local Sheriff's Department of Child Protection Investigations, DV Advocates, Department of Child Protective Services, Family Preservation agencies, Religious Services, Special Multi-disciplinary Assessment Centers, and Child Protection Hotline
- Illinois State Department of Children & Family Services *Domestic Violence Protocol for CPS personnel*
- Massachusetts Department of Social Services *Domestic Violence Protocol*
- Jefferson City, Missouri Department of Social Services Division of Family Services, *Introduction of Domestic Violence Policy, Protocol, and Best Practice Regarding Families that Demonstrate Indicators of Domestic Violence*
- New Jersey Division of Youth and Family Services Domestic Violence Case Practice Protocol
- Montgomery County, Ohio, Artemis Center for Alternatives to Domestic Violence *Domestic Violence Protocol A Guide for Child Protective Service Worker and Domestic Violence Advocates*
- Chula Vista, California, *Response Protocol with Law Enforcement, Community Partners, & Child Protective Services* as reviewed by the American Bar Association Center for Children & the Law and the San Diego Association of Government