



# Recommended Guidelines and Practices for Improving the Administration of Justice in Domestic Violence Cases

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FINAL REPORT OF THE DOMESTIC  
VIOLENCE PRACTICE AND  
PROCEDURE TASK FORCE

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ADMINISTRATIVE OFFICE  
OF THE COURTS

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CENTER FOR FAMILIES, CHILDREN  
& THE COURTS

Judicial Council of California  
Domestic Violence Practice and Procedure Task Force  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688  
*www.courtinfo.ca.gov*

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Chief Deputy Director

Ms. Diane Nunn  
Director, Center for Families, Children & the Courts

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Executive Officer  
Superior Court of California, County of  
San Bernardino

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Superior Court of California, County of  
Yolo

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County of Contra Costa

## **Domestic Violence Practice and Procedure Task Force Staff**

**Ms. Bobbie Welling, Lead Staff**

Supervising Attorney  
Center for Families, Children & the Courts  
Administrative Office of the Courts

**Ms. Carly Lindberg**

Administrative Coordinator  
Center for Families, Children & the Courts  
Administrative Office of the Courts

**Ms. Tamara Abrams**

Senior Attorney  
Center for Families, Children & the Courts  
Administrative Office of the Courts

**Ms. Julia Weber**

Supervising Attorney  
Center for Families, Children & the Courts  
Administrative Office of the Courts

**Ms. Penny Davis**

Senior Court Services Analyst  
Center for Families, Children & the Courts  
Administrative Office of the Courts

**Mr. Joshua Weinstein**

Former Senior Attorney  
Office of the General Counsel  
Administrative Office of the Courts

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Presiding Judge in the Administration of Domestic Violence Cases**

## Introduction to Recommended Guidelines and Practices

On September 6, 2005, Chief Justice Ronald M. George appointed the Judicial Council Domestic Violence Practice and Procedure Task Force to recommend improvements to court practice and procedure in cases involving domestic violence allegations. As Chief Justice George stated when he initially appointed the task force members, “Our goals are to ensure fair, expeditious, and accessible justice for litigants in these critical cases and to promote both victim safety and perpetrator accountability.”

The task force charge also included the review and implementation, as appropriate, of court-related recommendations contained in the June 2005 report to the California Attorney General from the Task Force on Local Criminal Justice Response to Domestic Violence, entitled *Keeping the Promise: Victim Safety and Batterer Accountability*.

### **Areas of Inquiry**

A significant component of the task force’s work has involved the development of a series of recommended guidelines and practices. These guidelines and practices were derived from statutory and other mandates as well as suggestions for improvements in the administration of justice relating to cases alleging domestic violence. In general, the guidelines and practices fall into the following categories of inquiry:

- Court leadership;
- Restraining orders;
- Firearms relinquishment;
- Entry of restraining and protective orders into the Domestic Violence Restraining Order System (DVROS) and access to that system; and
- Criminal law procedures.

### **Methodology**

Over a period of two years, the task force met eight times and conducted a series of conference calls, both to develop and discuss the proposed guidelines and practices and to review the comments, public hearing testimony, and regional court meeting summaries received. In crafting its recommendations, the task force relied on the expertise and experience of its members, an extensive literature search, recommendations submitted by presiding judges and court executive officers, suggestions from attendees at judicial education programs in subject areas relating to domestic violence, and survey results from court staff and family law judicial officers. In addition, the task force conducted two invitational forums designed to develop proposals in the difficult areas of firearms restrictions and relinquishment and access to and entry of orders into DVROS.

In March 2007, the task force conducted public hearings in San Francisco and Los Angeles. In May and June 2007, Chief Justice George invited local courts to conduct community meetings designed to determine how the proposals would work practically in local jurisdictions. Regional court meetings were then convened in Sonoma, Burlingame, and Torrance to bring court leaders together to share the results of the local meetings and to further develop the proposals. Finally, the task force conducted focus groups with specific stakeholders and interactive meetings with the following Judicial Council



advisory committees: Family and Juvenile Law Advisory Committee, Criminal Law Advisory Committee, Collaborative Justice Courts Advisory Committee, Trial Court Presiding Judges Advisory Committee, and Court Executives Advisory Committee.

### **Guiding Principles**

Development of the task force proposals was guided by the following key principles, as well as by goals previously established by the Judicial Council:

- Promote the safety of all court participants;
- Ensure accountability of domestic violence perpetrators;
- Improve accessibility to the courts for the parties by maximizing convenience, minimizing barriers, and ensuring fairness for a diverse population;
- Promote the use of technology to enhance the administration of justice in cases involving domestic violence allegations; and
- Emphasize the need for court leadership and adequate resources.

These overarching principles are consistent with and derived from the Judicial Council's strategic plan and three of its primary goals: Access, Fairness, and Diversity; Quality of Justice and Service to the Public; and Modernization of Management and Administration. Moreover, these principles fit squarely within several of the thematic areas targeted by the council as part of its continuing efforts to improve public trust and confidence in the California courts: removing barriers to court access, recognizing the needs of a diverse population, and ensuring fairness in procedures and outcomes.

The task force, in developing its recommended guidelines and practices, recognizes that improving the administration of justice in cases involving allegations of domestic violence must be a systemic endeavor. Many of these proposals are detailed and technical in nature because systemic problems often require a detailed analysis and approach. The task force wishes to emphasize that implementation of some of its proposals will require additional resources. The members believe, however, that scarce resources should not limit the courts in determining how to improve the administration of justice in domestic violence cases, and that courts should be encouraged to examine and evaluate how resources are allocated.

## Court Leadership

Local court leadership is a critical component of any effort to improve the administration of justice in domestic violence cases. More importantly, court leadership is necessary for both maintaining and institutionalizing improvements that have been already achieved. As stated in the Report to the California Attorney General from the Task Force on Local Criminal Justice Response to Domestic Violence, *Keeping the Promise: Victim Safety and Batterer Accountability*:

To redress most of the problematic practices we have identified, there must be close collaboration among multiple agencies in each local criminal justice system. In most of those collaborative efforts, perhaps the most significant agency—certainly a necessary agency—is the judiciary.<sup>1</sup>

Cognizant of this crucial court leadership role, the task force consulted with numerous presiding judges and court executive officers and invited testimony on the issue of court leadership at its public hearings. The task force determined that its proposals relating to court leadership in the administration of domestic violence cases should further the following goals:

- Urge allocation of adequate resources to domestic violence cases;
- Provide for ongoing evaluation and monitoring;
- Encourage local court participation in domestic violence councils or court-convened committees made up of all interested justice system entities and community organizations;
- Encourage participation in a statewide registry of protective and restraining orders;
- Recommend that the creation of specialized domestic violence courts or calendars be considered;
- Discourage the use of temporary judges in domestic violence cases; and
- Ensure that judicial officers who perform duties in domestic violence matters receive regular education in this subject area.

The Executive Committee of the Judicial Council’s Trial Court Presiding Judges Advisory Committee, on behalf of the full committee, submitted to the task force for consideration a white paper entitled, *The Role of the Presiding Judge in the Administration of Domestic Violence Cases in Our Courtrooms*. In this document, attached at page 45, the advisory committee supported the task force recommendations and emphasized the importance and role of the presiding judges in partnership with court executive officers in ensuring implementation of these recommendations. As stated in the white paper:

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<sup>1</sup> Report to the California Attorney General from the Task Force on Local Criminal Justice Response to Domestic Violence, *Keeping the Promise: Victim Safety and Batterer Accountability* (June 2005), p. 84.

To ensure that courts comply with mandates promulgated to increase safety and accountability, the presiding judge and court executive officer should maintain a system of internal self-assessment and audits so that the court is continuously monitoring its own progress. Perhaps more important, the local courts themselves, if they pursue a course of internal assessment, will be able to develop sound practice and procedures to voluntarily improve the administration of justice in these cases consistent with unique local structure and needs.

Task force recommendations relating to court leadership are as follows:

1. ***Court leadership.*** In order to improve public safety and promote public trust and confidence in the justice system, the presiding judge and court leaders should allocate adequate resources, including those for staffing and education, to ensure the fair and accessible adjudication of cases involving domestic violence allegations. The courts should engage in an ongoing process to develop, monitor, and evaluate procedures and protocols designed to improve the administration of justice in these critical cases.
2. ***Working with justice system entities and community organizations.*** As ethically appropriate, the court should participate in domestic violence coordinating councils or court-convened committees that provide an opportunity for justice system agencies and community organizations to comment on court practices and procedures relating to domestic violence cases, as well as providing a mechanism for improving these practices and procedures. Ethically appropriate councils or committees, at a minimum, (1) are inclusive in that representatives from all interests and sides of the litigation are invited to participate, (2) do not involve discussion of pending cases, (3) do not involve judicial officers in fundraising, and (4) do not involve judicial officers in lobbying for the adoption of legislative measures.
3. ***Use of temporary judges.*** To the extent feasible, the use of temporary judges to adjudicate cases that typically involve domestic violence allegations is discouraged. In no event should temporary judges preside over such cases unless they have received education concerning domestic violence cases.
4. ***Judicial education.*** Presiding judges should ensure that judges and subordinate judicial officers who perform duties in domestic violence matters receive regular training and education in this subject area. They should also ensure, under rule 10.462 of the California Rules of Court, that (1) each new trial court judge and subordinate judicial officer with an assignment in criminal, family, juvenile delinquency, juvenile dependency, or probate attend an orientation course in his or her primary assignment that contains a domestic violence session within one year of taking the oath of office and (2) unless he or she is returning to an assignment after less than two years in another assignment, each judge or subordinate judicial officer who is beginning a new primary assignment in criminal, family, juvenile delinquency, juvenile dependency, or probate complete a course in the new primary assignment that contains a domestic violence session within six months of beginning the new assignment.

5. ***California Courts Protective Order Registry (CCPOR)***. Each presiding judge and court executive officer should make accessible to judges the CCPOR, a Web-based, statewide centralized system for viewing protective and restraining orders and related information.<sup>2</sup>
  
6. ***Court structure and calendars***. Each court should consider whether to create dedicated domestic violence courts or specialized calendars based on the unique circumstances and characteristics of that jurisdiction and the resources available to it. In making the determination, the court should consider the optimal ways to:
  - a. Ensure ongoing evaluation and monitoring of practice and procedure in domestic violence cases;
  - b. Provide for trained staff and judicial officers;
  - c. Foster collaborative efforts to improve the administration of justice in domestic violence cases within the court and among other justice system agencies;
  - d. Promote procedural consistency; and
  - e. Enhance and increase accessibility to services for victims of domestic violence.

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<sup>2</sup> A project under way at the Administrative Office of the Courts, the CCPOR is designed to make the full text of restraining and protective orders easily accessible to the judiciary, law enforcement, and other justice system partners.

## Domestic Violence Prevention Act Restraining Orders

The task force circulated for comment draft recommended guidelines and practices for Domestic Violence Prevention Act (DVPA) restraining orders, focusing on those civil restraining orders issued by family courts in California. In some cases, juvenile and probate courts have issued DVPA orders. Additionally, civil restraining orders may be issued under other code sections, including Welfare and Institutions Code section 213.5.

Under the DVPA, a civil domestic violence restraining order can be a powerful tool to deter future violence, secure safe child custody and visitation arrangements, and provide temporary financial stability. However, a litigant must take numerous steps to secure and enforce a restraining order. Effective court practices play a crucial role in enhancing the ability of parties to obtain, understand, and comply with the orders. Additionally, courts need to ensure that these orders are issued in a timely manner, are accurate, and can be immediately entered into the California Law Enforcement Telecommunications System (CLETS) to assist in enforcement. Without focused attention on the development and implementation of effective court practices, courts can unwittingly be a barrier to instead of a facilitator of public safety.

The practices outlined below were developed from a review of national, state, and local publications; a review of existing court practices around the state; comments received through the public comment and hearing process; and discussions among members and staff of the task force.

The proposals address the restraining order process from the viewpoint of litigants, the court, and law enforcement with the goals of simplifying and streamlining procedures for litigants, improving communication within the court, increasing the availability of information to the judicial officer, and enhancing the enforceability of court orders.

Ultimately, the success of domestic violence restraining orders in reducing violence and increasing public safety depends on the efforts of California's network of public and private agencies. The proposals described here reflect that interdependency and encourage each agency to take steps to promote the courts' ability to improve the administration of justice.

### **Assistance for Parties (General)**

1. ***Removal of barriers.*** Each court should review its practices and procedures generally and make changes designed to reduce barriers to court access for litigants in restraining order proceedings. Each court may consider working with community agencies in identifying barriers and developing practices.
2. ***Access to restraining orders.*** Courts should ensure that only those eligibility requirements required by statute or rule are imposed upon a litigant seeking to obtain a restraining order. To ensure public safety, any person can request a restraining order regardless of unrelated factors such as immigration status or alleged criminal conduct.

3. ***Information/resources for the parties.*** The court should inform the parties about resources that are available in restraining order proceedings in accordance with their requests and needs and under Family Code section 6343. That section requires courts, in consultation with local domestic violence shelters and programs, to develop a resource list of appropriate community domestic violence programs and services. The list must be provided to each applicant for a domestic violence restraining order. The resources should be available in English and other languages to the extent feasible and could include:
  - a. Legal services agencies and pro bono legal resources;
  - b. Child support services;
  - c. Administrative Office of the Courts (AOC) informational pamphlet and video;
  - d. Available victim-witness services or funding;
  - e. Appropriate referrals to community domestic violence programs and services, including batterer intervention programs;
  - f. Self-help services;
  - g. Other community services, including those providing immigration information.
4. ***Legal services.*** Each court should provide information to all parties about the availability of legal services and should explore options with the bar and other agencies to foster increased representation for parties in domestic violence restraining order cases.
5. ***Family law facilitator/self-help center.*** Additional funding should be provided for the family law facilitator or self-help center, if appropriate, to furnish services to all parties beyond those provided by the federally funded child support program. The facilitators and self-help centers should provide information and appropriate assistance to litigants on court practice and procedure in domestic violence cases. So that the parties have access to electronic domestic violence self-help software, facilitators and self-help centers should make every effort to make computers available for use by the parties in restraining order proceedings.
6. ***Counseling.*** Individuals seeking protection in domestic violence cases should not be ordered to attend counseling without careful consideration. Under existing law, a court may not order a protected party to obtain counseling without the consent of the party unless there is a custody or visitation dispute. (Fam. Code, § 3190.) In the event that the court orders counseling under Family Code section 3190, the court must make the requisite findings and should order separate counseling sessions under Family Code section 3192. Nonmandatory referrals to counseling or related services may be made and should be provided under the requirement of Family Code section 6343, which requires that courts develop resource lists for referrals to appropriate community domestic violence programs and services.
7. ***Confidentiality.*** Courts should (1) inform parties that most filed documents are public records and (2) provide information on how to safeguard certain kinds of information

such as addresses or confidential locations. (See for example, the Secretary of State's Safe at Home Program, [www.ss.ca.gov/safeathome](http://www.ss.ca.gov/safeathome).)

### **Obtaining and Perfecting Orders**

8. ***Emergency protective orders (EPOs)***. Each court should have a workable practice for obtaining EPOs to maximize accessibility. Each court should ensure that a judicial officer is available to law enforcement during both business and nonbusiness hours for review of applications for EPOs. Each court should also encourage and support law enforcement's use of the after-hours procedure for EPOs by using a duty judge system of rotation.
9. ***Reasonable and timely access to review of applications for temporary restraining orders***. Each court should have a mechanism for reviewing each application for a restraining order "on the same day that the application is submitted to the court, unless the application is filed too late in the day to permit effective review, in which case the order shall be issued or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court." (Fam. Code, § 6326.) Courts should develop procedures to (1) ensure timely access at convenient court locations so that travel to the appropriate courthouse will not unduly burden the party seeking review of the application and (2) develop electronic mechanisms such as fax, e-mail, or videoconferencing to facilitate prompt review of the application.
10. ***Notice in ex parte proceedings***. Courts should not have a blanket rule or policy regarding notice for every request for an ex parte restraining order. Notifying a proposed restrained person about an applicant's request for a restraining order can trigger a significant risk of harm to the applicant. As provided in Family Code section 6300, the court should determine *on a case-by-case basis*, depending on the circumstances, whether notice of an application for a temporary restraining order should be required, taking into account the level of danger to the applicant. In all cases, applicants should be referred to community services and should be advised of the National Domestic Violence Hotline (1-800-799-SAFE).
11. ***Right to hearing***. A jurisdictionally adequate petition for an ex parte temporary restraining order under the DVPA may not be summarily denied. The court must either (1) grant the temporary orders requested and set the matter for a noticed hearing or (2) defer ruling on the matter pending a noticed hearing, in which case the court should consider whether failure to make any of these orders would jeopardize the safety of the petitioner and children. (*Nakamura v. Parker* (2007) 156 Cal.App.4th 327.) When no temporary order is issued, some petitioners may be concerned that their safety will be compromised if the court sets the matter for a noticed hearing. Therefore, the court should develop a procedure so that the petitioner is informed that he or she may withdraw the petition without prejudice to refile it at another time.

12. **Background checks.** To enhance public safety, wherever possible each court should conduct timely criminal background checks on the restrained party and conduct checks for other restraining and protective orders, involving either party, that can be considered by the judicial officer, both at the temporary restraining order stage and at the hearing on the application, as described in Family Code section 6306. However, lack of sufficient resources makes it impossible for some courts to conduct these checks, and significant challenges are associated with accessing and navigating the California Department of Justice’s (DOJ) databases. Therefore, the DOJ should work with the courts to make records easily accessible and reduce the length of time needed to check records. Courts should access the CCPOR, the statewide database containing images of restraining and protective orders.<sup>3</sup>
13. **Service of process.** Each court should collaborate with law enforcement and processing services to ensure timely and effective personal service of process of restraining orders and entry of proof of service into DVROS.
14. **Preparation and provision of restraining orders.** The court should ensure that an order is prepared and provided as soon as possible to all parties who are present at the proceeding.
15. **Past acts.** In reviewing applications for temporary restraining orders, there should be no rigid time frame for determining what constitutes a relevant “past act of abuse.” Such determinations should be made on a case-by-case basis.
16. **Availability of child and spousal support orders.** In a DVPA proceeding when child or spousal support is requested and financial documentation is submitted, the court should consider the request and order appropriate support at the same time as the restraining order request is considered or as soon thereafter as possible to ensure safety. (Fam. Code, § 6341(a) and (c).) Each court should establish a cooperative relationship with the Department of Child Support Services and take reasonable steps to expedite the award of child and spousal support in domestic violence cases.
17. **Availability of custody and visitation orders.** In a DVPA proceeding when child custody and visitation are requested and appropriate documentation is submitted, the court should consider the request and order custody and visitation to a party who has established a parent-child relationship under Family Code section 6323, as appropriate, at the same time as the restraining order. (Fam. Code, § 6340.) The court must consider whether failure to make any of these orders may jeopardize the safety of the petitioner and the children for whom the custody or visitation orders are sought. Each court should take reasonable steps to expedite the determination of custody and visitation in domestic violence cases.

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<sup>3</sup> See footnote 2.



18. ***Additional protected persons.*** When the court issues a restraining order, it should consider whether the order should apply to other named family or household members if good cause is demonstrated. (Fam. Code, § 6320.)
19. ***Supervised visitation.*** There is a need for greater availability of affordable supervised visitation and safe exchange programs. As a result, every court should encourage the establishment of a facility or provider of supervised visitation and safe exchange services in the county so that in appropriate cases, each party to a restraining order proceeding who has children has access to supervised visitation and safe exchanges. To the extent feasible, the number of multilingual and multicultural programs should be increased.
20. ***Orders generally.*** The court shall consider the application for a DVPA restraining order and may issue all appropriate orders without requiring corroborating evidence. As long as the court does not issue a conflicting order, it should consider the application even when a criminal protective order (CPO) exists. This maximizes safety and enables the court to consider custody and visitation.
21. ***Residence-exclusion orders.*** When a court issues a residence-exclusion order, the court should consider implementing a protocol that allows the respondent to collect his or her belongings without violating the order.
22. ***Termination or modification of a restraining order.*** If a litigant requests termination or modification of a restraining order, the court should conduct a hearing to determine if the request is entirely voluntary and not a result of coercion or duress and to make sure the person making the request is in fact the protected party. The court should consider deferring ruling on the request to allow the protected person time to discuss the request for termination or modification with a support person.

### **Hearings and Services**

23. ***Staffing.*** The court should assign and manage appropriate staff in domestic violence cases to perform the following duties:
  - a. Streamline procedures;
  - b. Promote safety in the courthouse;
  - c. Coordinate court processes and case information;
  - d. Provide information to the court regarding existing protective orders and orders in cases involving child custody or visitation;
  - e. Serve as liaison with law enforcement, treatment services, Children's Protective Services, victim assistance, advocates, probation departments, and other relevant agencies; and
  - f. Participate as ethically appropriate in local family violence coordinating councils or court/community practice and procedure committees.

24. ***Court interpreters.*** Each court should provide interpreters in domestic violence cases, in family court services mediation sessions, and in self-help centers.<sup>4</sup> Each court should analyze its calendaring mechanisms to maximize the availability of court interpreters in domestic violence cases.
25. ***Training for court interpreters.*** Each court should ensure that training for court interpreters includes information about the nature of domestic violence cases and the need for unbiased handling of interpretation in these cases. The AOC should provide support and curricula for developing the training.
26. ***Services.*** The court, in collaboration with community justice partners, should assess community resources, examine any gaps in resources, and inform appropriate officials accordingly, with the goal of increasing available resources for litigants in domestic violence cases.
27. ***Self-represented litigants.*** Each judge hearing domestic violence restraining order proceedings should conduct appropriate dialogue with self-represented litigants to clarify facts and explain the court's procedures as necessary in the specific case.
28. ***Scheduling hearings.*** The court should adhere to the statutory time periods for setting hearings on restraining orders, should endeavor to expedite these proceedings whenever possible to promote public safety, and should avoid unnecessary delays and continuances.

### **Court and Case Management**

29. ***Local procedures.*** To the extent that a court promulgates policies or procedures relating to restraining order proceedings, the procedures should be in written form and made accessible to the public.
30. ***Calendar management.*** If a court determines that a dedicated DVPA calendar is not warranted in the jurisdiction, the court should ensure that:
  - a. There is a mechanism to identify all domestic violence cases to better provide services and staff; and
  - b. Domestic violence matters are given calendar priority to ensure safety and convenience of litigants.
31. ***Court coordination.*** Each court must develop a local rule, as required by rule 5.450 of the California Rules of Court, providing a procedure for communication among courts issuing criminal court protective orders and courts issuing orders involving child custody and visitation. Under rule 5.450, the local rule also must include a procedure for modification of a CPO in consultation with the court issuing a

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<sup>4</sup> Courts should access the Administrative Office of the Courts grant program to fund interpreters in these proceedings. The task force acknowledges that there is a lack of certified interpreters for some languages in some locations.

subsequent child custody and visitation order. The procedures should include methods for safeguarding confidential information and provide a mechanism for identifying related cases, orders, court dates, and information regarding children and for determining how to best provide appropriate information to judicial officers. The information should be integrated into the court's case management system.

32. **Court communication.** Each court should have a mechanism for internal court communication on practice and procedure in domestic violence cases suitable for the court size and caseload. For example, courts may conduct meetings of judicial officers with criminal, juvenile, and family law assignments.
33. **Training.** Each court should endorse and ensure periodic training for all court personnel and judicial officers who are involved in domestic violence cases appropriate to their assignments. The court should also regularly provide information to bench-bar groups about court practice and procedure relating to domestic violence cases.
34. **Statistics.** Each court should maintain domestic violence statistics, including the number of EPOs issued, temporary restraining orders requested and granted, orders granted after hearing, children involved, reissuances, and proofs of service filed. Court case management systems should support collection of this data.
35. **Facility security.** To handle those cases involving domestic violence, each court should develop reasonable safety procedures. These procedures should address, but are not limited to, the following: (1) making reasonable efforts to keep residential addresses, work addresses, and contact information—including but not limited to telephone numbers and e-mail addresses—confidential in all appropriate cases and on all appropriate documents; (2) ensuring that a trained security officer is present in the courtroom; (3) providing safe ways to depart from the courthouse, such as safe waiting areas, elevators, stairwells, hallways, entrances and exits, and parking; and (4) providing escorts for victims when needed and as feasible. Courts should consider the requirements of Government Code section 69920 et seq. and rule 5.215(i)(2) of the California Rules of Court when designing facilities.
36. **CLETS/DVROS.** As required by Family Code section 6380, each court should ensure that all required domestic violence restraining orders and proofs of service as defined under Family Code sections 6218 and 6320 are entered into the DVROS via CLETS within one business day and memorialized on mandatory Judicial Council forms. The statutory scheme contemplates that these orders should be entered into DVROS so that law enforcement agencies will have access to the orders, thus maximizing enforcement. Moreover, under federal law (see generally 18 U.S.C. § 44), any order that purports to prohibit specific threatening conduct carries with it mandatory firearms restrictions that should not be obviated by a state court or by stipulation of the parties.

37. ***Non-CLETS domestic violence restraining orders.*** Courts should decline to approve or make domestic violence<sup>5</sup> restraining orders that cannot be entered into DVROS or CLETS, commonly referred to as “non-CLETS” orders.

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<sup>5</sup> Domestic violence in the civil context is defined as abuse or conduct that is described in Family Code sections 6203 and 6320 that has been perpetrated against an intimate partner, as defined by Family Code section 6211.

## Firearms Relinquishment

California and federal law bars persons subject to restraining orders, as well as defendants convicted of certain crimes, from possessing or purchasing firearms or ammunition,<sup>6</sup> and compliance with these laws can reduce domestic violence homicides.<sup>7</sup> Court orders to relinquish firearms, however, are not self-implementing. Persons protected by restraining orders may erroneously believe that when the court orders the restrained person to relinquish firearms, either law enforcement or the courts will take steps to ensure that the order is followed. But under California law, the onus is on the restrained person to comply by relinquishing firearms to law enforcement or selling them to a licensed gun dealer.<sup>8</sup> Experts report that some gun owners are extremely reluctant to comply.<sup>9</sup>

The following proposals were developed by the task force from a review of national and state publications; task force staff discussions with law enforcement officials; and a colloquium held in April 2006 by the California AOC involving judicial officers and court staff, justice system entities, and domestic violence victim advocates. The proposals reflect the limited reach of the courts, particularly in family law cases.

Clearly, implementation of these proposals and, for that matter, enforcement of firearm prohibition laws will require the concerted actions of law enforcement officers, prosecutors, the defense bar, the courts, probation and parole officers, and victim advocates. It is important to note, however, that California's courts are severely circumscribed by legal and practical considerations in their ability to ensure that restrained persons do not possess or have access to firearms or ammunition.

Ultimately, public safety is best served when law enforcement and the entire justice system take immediate action to remove firearms, whether registered or not, from the hands of a person who is statutorily barred from possessing them. The courts have a necessary and important role in achieving this goal, but because they are not investigative or enforcement agencies, the courts must rely on justice system entities to provide necessary information and to enforce compliance with firearm relinquishment orders.

It is with these factors in mind that the task force proposes the following guidelines and practices.

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<sup>6</sup> See, for example, Family Code section 6389; Penal Code section 136.2; 18 U.S.C. 922(g)(8); and 18 U.S.C. 922(g)(9).

<sup>7</sup> Saltzman, L. et al. "Weapon involvement and injury outcomes in family and intimate assaults" (1992) *Journal of the American Medical Association* 267(22):3,042–3,047.

<sup>8</sup> See section 6389(c)(2) of the Family Code.

<sup>9</sup> Testimony provided at the task force public hearing on March 14, 2007.

## **Communication and Education**

1. ***Communication with local justice system entities.*** Each court should regularly communicate with appropriate local justice system entities, including law enforcement, prosecutors and defense attorneys, domestic violence victim advocates, and the bar, to develop and monitor local firearm relinquishment protocols and procedures.
2. ***Communication with state justice system entities.*** The AOC should establish an ongoing working group with appropriate statewide justice system entities to communicate about and support improvements to statewide and local firearm relinquishment forms, protocols, and procedures.
3. ***Identification of law enforcement and gun dealer policies.*** Courts should make reasonable efforts to learn about the existence and location of local gun dealers and about local law enforcement's relinquishment policies and gun dealers' sale policies, including fees for storage.
4. ***Court access to state and federal firearms databases.*** The DOJ should make every effort to encourage and improve court access to state and federal firearms databases.

## **Legislation and Rules of Court**

5. ***Firearms search in Automated Firearms System (AFS) conducted by the prosecutor.*** Legislation should require prosecutors to perform a database search of the defendant's registered firearms and provide that information to the court as currently set forth in Penal Code section 273.75.
6. ***Firearms search in AFS conducted by the court.*** Family Code section 6306 should be amended to provide express authority for the courts to search the firearms database. Funding should be made available to the courts for implementation.

## Procedures

### Emergency protective orders

7. ***Court inquiry.*** Prior to issuing an EPO under Family Code section 6240 et seq., the on-call judge should ask the law enforcement officer who is requesting the order if the officer has inquired of the victim, alleged abuser, or both, whether a firearm is present at the location. (Pen. Code, § 13730.)<sup>10</sup>

### Criminal court protective orders

8. ***Firearms inquiry conducted by the prosecutor in conjunction with law enforcement.*** At or before the time of arraignment, the prosecutor and law enforcement should conduct a firearms search on the defendant through AFS and any other appropriate databases and sources and provide the results to the court at arraignment.<sup>11</sup> Any inability to provide the court with timely information should not delay the issuance of an order. If the court finds reason to believe that the defendant owns or possesses a firearm, the court should instruct the prosecutor to make reasonable efforts to notify the victim or witness of the court's finding.<sup>12</sup>
9. ***Oral advisement of firearm restrictions.*** The court should orally advise the defendant about state and federal firearms and ammunition prohibitions and the requirement for timely relinquishment.

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<sup>10</sup> Penal Code section 12028.5 requires a law enforcement officer to take temporary custody of any firearm or other deadly weapon in plain sight or discovered as the result of a consensual or other lawful search as necessary for the protection of the peace officer or other persons present, when the officer is at the scene of a domestic violence incident involving a threat to human life or a physical assault. Moreover, if the court issues an EPO, the law enforcement officer who requested the order is required to serve the EPO on the restrained person, if the restrained person can reasonably be located, and then use every reasonable means to enforce the EPO, including firearms restrictions. (See Fam. Code, §§ 6271, 6272; Pen. Code, § 12021(g)(2).)

<sup>11</sup> Section 273.75 of the Penal Code currently requires the district attorney or prosecuting city attorney to perform a database search of the defendant's history, including but not limited to prior convictions for domestic violence, other forms of violence or weapons offenses, and any current protective or restraining order. The information shall be presented for consideration by the court (1) when setting bond or when releasing a defendant on his or her own recognizance and (2) upon consideration of any plea agreement. The databases include the Violent Crime Information Network, the Supervised Release File, state summary criminal history information maintained by the DOJ, the Federal Bureau of Investigation's nationwide database, and locally maintained criminal history records. The statute should be revised to require a search in the AFS database.

<sup>12</sup> Section 11106(d) of the Penal Code authorizes prosecutors to release AFS information to victims of domestic violence in some cases.

10. ***Set review hearing.*** The court should ask the prosecutor if he or she has reason to believe that the defendant owns or possesses a firearm or ammunition. If the court finds there is reason to believe that the defendant owns or possesses a firearm or ammunition, the court should set a review hearing within 48 hours of service of the protective order on the defendant to determine whether a relinquishment or sale receipt was filed. (Code Civ. Proc., § 527.9.) The court may wish to set the review hearing within 24 hours of service when logistically feasible. The court should order the restrained person to personally appear at the review hearing unless a sale or relinquishment receipt is filed within the statutory time frame.<sup>13</sup> If the restrained person indicates under oath that he or she no longer owns or possesses any firearms that are entered in his or her name in the AFS database, the court should order the restrained person to submit form FD 4036, *Notice of No Longer in Possession* (NLIP), to the DOJ. The court should order the restrained person to submit a report of an allegedly lost or stolen firearm to local law enforcement and present proof of the report to the court. When the court has reason to believe that the defendant still owns or possesses a firearm or ammunition, even if the restrained person has filed a receipt, NLIP, or other type of sale or relinquishment notice, the court should consider holding a review hearing.

11. ***Appropriate orders at the hearing.*** If no receipt, NLIP, or other notice has been filed or provided and the defendant appears in court at the scheduled hearing, the court should hold a hearing on the firearms issue and (1) issue a search warrant if one is requested, provided the court finds probable cause, (2) increase bail, (3) revoke release on own recognizance (OR), or (4) set a probation revocation hearing. If no receipt, NLIP, or other notice has been filed or provided and the defendant does not appear for the court hearing, the court should issue a no-bail bench warrant.

#### **Civil court restraining orders**

12. ***Database search for registered firearms conducted by the court.*** The court (through sheriff, court, or pretrial services) should conduct a firearms search on the proposed restrained person through AFS or another appropriate database prior to issuing a restraining order (including a temporary restraining order). However, failure or inability to conduct the firearms search should not delay issuance of an order.

13. ***Note of reported firearms on restraining order.*** If firearms, whether registered or not, are reported to the court through an AFS database search or by the protected party, the court should so indicate on the temporary restraining order and order after hearing.

14. ***Oral advisement about firearm restrictions.*** The court shall inform parties of the terms of the restraining order, including notice that the restrained person is prohibited

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<sup>13</sup> This proposal would necessitate an evidentiary hearing to determine whether the defendant owns or possesses a firearm. The defendant could invoke the Fifth Amendment right not to incriminate himself or herself.



from owning, possessing, purchasing, receiving, or attempting to own, possess, purchase, or receive a firearm or ammunition, including notice of the penalty for violation. (See Fam. Code, § 6304.)<sup>14</sup>

15. ***Development of Failure to Relinquish or Sell Firearms notification form.*** Upon the court’s issuance of a DVPA order at a hearing where the respondent has been provided notice and an opportunity to be heard, the court should determine whether the restrained person owns or possesses firearms or ammunition. If the court finds that the restrained person does own or possess a firearm or ammunition, the court should notify law enforcement for appropriate action.<sup>15</sup> The AOC, in consultation with the DOJ and other agencies as appropriate, should develop a form and procedure to ensure the timely notification of law enforcement entities about the court’s finding.

## Forms

16. ***Firearm relinquishment information sheet.*** The Judicial Council of California has developed a statewide information sheet to explain to restrained persons how to safely and legally relinquish or sell firearms when so ordered. To encourage the widest possible use of this form, the AOC should revise the form so that it is locally modifiable and can be used with all types of protective orders, as well as for criminal sentencing following convictions for offenses that require firearm relinquishment.<sup>16</sup> The form should include information about the requirement to file a relinquishment or sales receipt with the court, and it should explain the NLIP form and the method to report a lost or stolen firearm. The court should provide the information sheet to all persons who are prohibited from owning or possessing firearms or ammunition because of a court order or criminal sentence.

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<sup>14</sup> The firearms prohibition of Family Code section 6389(a) “automatically activates . . . when a court imposes or renews any of the enumerated forms of protective orders.” (*Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, pp. 1,294–1,295.) The court is “[unable] to eliminate the firearm restriction while a protective order remains in place” except in very limited circumstances that are specifically authorized by Family Code section 6389(h). (*Id.* at 1,300.)

<sup>15</sup> This practice is intended for a DVPA-noticed hearing that is held after the court has issued temporary restraining orders on *Temporary Restraining Order and Notice of Hearing* (form DV-110). Where the court has not issued temporary orders but has issued restraining orders only after a noticed hearing, the court (at the noticed hearing) should determine whether the restrained person owns or possesses a firearm or ammunition. If the court finds that the restrained person owns or possesses a firearm or ammunition, the court should set a compliance hearing to determine whether the restrained person has sold or relinquished the firearm or ammunition. If the restrained person does not comply with the court’s relinquishment order, the court should notify law enforcement for appropriate action.

<sup>16</sup> See Judicial Council form, *What Do I Do With My Gun or Firearm? (Domestic Violence Prevention)* (form DV-810).

17. ***Revision of restraining and protective order forms to add check box for reported firearms.*** All temporary and permanent restraining and protective orders should indicate whether firearms were reported and whether the report was obtained through a database search or from a protected person's declaration or other information presented at a hearing.
  
18. ***Revision of EPO form to indicate reported firearms.*** The EPO form should be revised to include a check box for law enforcement to indicate whether firearms were reported by any person at the scene (under Pen. Code, § 13730) or discovered in a database search.

Access to and Entry of Orders Into the Domestic Violence Restraining Order Systems (DVROS)/ California Law Enforcement Telecommunications System (CLETS)  
Courts are required either to transmit criminal and DVPA restraining orders to a local law enforcement agency or to directly enter the orders into DVROS within one business day. (Fam. Code, § 6380; Pen. Code, § 136.2.) DVROS is a statewide database maintained by the DOJ that is designed to store restraining and protective order information. DVROS is one of many databases housed in CLETS, and when approved by DOJ, it is accessible by law enforcement personnel, court personnel, and other appropriate agencies 24 hours a day, seven days a week.

The DOJ controls access to CLETS and thus to DVROS, and each superior court must apply to the DOJ for access. Currently, only seven trial courts have direct entry access to DVROS via CLETS. Early in the task force's work, members of the task force expressed concerns about the arduous application process. This process has been somewhat streamlined since the AOC obtained approval from the DOJ to access DVROS and other CLETS databases. However, each court is still required to submit an application requesting access via the AOC's portal. To date, four courts have gained access to DVROS/CLETS in this manner. The AOC will continue to help facilitate the application process to reduce processing time.

The 2005 report from the California Attorney General's Task Force on Local Criminal Justice Response to Domestic Violence, *Keeping the Promise: Victim Safety and Batterer Accountability*, notes that law enforcement cannot enforce a criminal or DVPA restraining order if it cannot determine at the time of an alleged violation whether the order is still in effect. Thus it is imperative that all orders are entered into DVROS accurately and in a timely manner. Because few courts have access to DVROS, the courts, local law enforcement, prosecutors, and probation departments must work together to ensure that restraining orders are entered into DVROS.

In response to the Attorney General's task force report, on June 21, 2006, the AOC hosted a CLETS Access Forum. This forum provided an opportunity for the courts entering restraining orders to demonstrate their individual operations and to explain the obstacles, challenges, and achievements they experienced during the process of obtaining CLETS approval. To maintain a representative balance, additional small, medium, and large courts were invited. Each participating court was encouraged to send a team consisting of the executive officer and representatives from information systems and operations. Information was distributed to the program participants about the role of the AOC in providing technical assistance to the courts interested in improving CLETS access as well as the long-term objective of automating the process of entering orders into CLETS via the case management system.

At the forum, the Superior Court of Orange County presented a Web-based restraining order registry that it has developed. The task force found this registry of particular interest, and as a result, the AOC began an inquiry to determine whether a similar registry could be launched statewide. The AOC is now developing the California Courts Protective Order Registry (CCPOR), a centralized system designed to allow bench officers and law enforcement to view protective and restraining orders and related information. Many other courts have developed countywide restraining order registries, some components of which will be incorporated into the statewide system.

The presentations, small group discussions, and large group plenary sessions in the CLETS Access Forum served as a foundation for the proposals set forth below, which are presented as immediate, interim, and long-term goals. These goals encompass the vast array of ideas, concepts, and needs as discussed by the courts. Courts are encouraged to adopt as many goals as necessary for their operational needs.

### **Immediate Proposals**

1. ***Access to CLETS.*** Each court must have access to the DVROS database and to other databases within CLETS, such as AFS and the firearms registry, as deemed necessary by the court or as required by statute for the purpose of performing data searches and to ensure compliance with rule 5.450 of the California Rules of Court.
2. ***Needs assessment.*** Each court should evaluate current procedures, protocols, and timelines for processing restraining orders, from the granting of the order to its entry into DVROS, and whether the court enters the orders directly or transmits the orders to law enforcement for entry into DVROS. The court should ensure that all orders are being entered into DVROS promptly and are consistent with all statutory requirements. If delays or inconsistencies are discovered, the court should take all necessary steps to eliminate them by enhancing procedures and protocols. Courts should periodically review the assessments to ensure that procedures and protocols remain current.
3. ***Communication: Court and justice partners.*** Courts should hold regular meetings with local law enforcement and other related justice partners to monitor procedures and to review operations to ensure consistency and accountability in handling restraining orders. The courts and the law enforcement agencies responsible for entering the orders into DVROS should develop plans to ensure that orders, proofs of service, and modifications are entered into DVROS promptly and are consistent with all statutory requirements.
4. ***Communication: AOC and DOJ.*** The AOC and the DOJ should establish a user group that conducts regular meetings to review policy and practices regarding entry of restraining orders. This review team could also assist in establishing standards for training, audit practices, and implementation.

5. **Implementation standards.** The AOC and local courts should recommend that the DOJ streamline the CLETS application process and establish implementation standards statewide to eliminate barriers to court access to DVROS.
6. **Audit standards.** Courts that have access to CLETS are subject to periodic audits by the DOJ to monitor how the court safeguards the database information. The AOC and local courts should recommend that the DOJ standardize CLETS audit procedures statewide.
7. **Training standards.** The AOC and local courts should recommend that the DOJ establish a training program unique and specific to the needs of court staff who handle restraining orders. Local courts should ensure that staff receive adequate training, including access to CLETS-related training and informational Web sites.
8. **Data collection.** The AOC should provide the courts with guidelines for collecting domestic violence statistics. Each court should maintain domestic violence statistics to better inform the justice system and to support the development of domestic violence policy. Statistical information should be available regarding the number of EPOs issued, the number of temporary restraining orders requested and granted, the number of restraining orders granted after hearing, the number of children involved, proofs of service filed, and the number of reissuances. The AOC should encourage participation in its Judicial Branch Statistical Information System (JBSIS), and design of the California Court Case Management System (CCMS) should incorporate the required statistical information.

### Interim Proposals

9. **Restraining order registry.** Courts are encouraged to participate in the CCPOR when it becomes available.<sup>17</sup> This will provide the judicial branch and law enforcement with the ability to access and view full-text orders issued throughout the state. CCPOR should be included in the design of the CCMS.
10. **Computer-generated orders.** The AOC should continue to explore the design of computer-generated orders that will be able to interface with the CCMS, and it should also evaluate existing forms for ease and accuracy of data entry. Local courts are encouraged to explore the feasibility of using the Judicial Council's Family and Children's Court Technology (FACCTS) to produce computer-generated orders after hearing.
11. **Service of orders.** Using a collaborative process with justice system partners, each court should evaluate ways to improve procedures for prompt and effective service of orders and take steps to facilitate prompt service and entry of service into DVROS.

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<sup>17</sup> See footnote 2.

## **Long-Term Proposals**

12. *Integration with CCMS.* The AOC and local courts should work together to establish a seamless process from the point that the order is granted to its entry in DVROS, using an automated process that is integrated into the CCMS. AOC staff should work together to ensure that relevant domestic violence information is included in the CCMS data elements.

## Domestic Violence Criminal Procedure

The June 2005 report to the California Attorney General from the Task Force on Local Criminal Justice Response to Domestic Violence, entitled *Keeping the Promise: Victim Safety and Batterer Accountability*, outlines a series of problematic practices and recommendations relating to the adjudication of criminal domestic violence cases. Among these are the following highlights, which point out systemic problems but also pertain primarily to court practice and procedure:

- Arraignment, plea, and sentencing without prosecutors in attendance;
- Sentences that appear to be out of compliance with Penal Code section 1203.097 relating to mandatory terms and conditions of probation;
- Widespread apparent failure to complete batterer intervention programs; and
- Asserted inadequacy of monitoring and follow-up regarding compliance with terms and conditions of probation.

The task force looked at the entirety of criminal procedure in domestic violence cases, from filing through postconviction proceedings. The following proposals are the result of the task force inquiry. They seek to address issues raised in the 2005 report and to improve practices in these cases generally. The proposals include mandatory provisions required by statute or rule as well as advisory practices. The proposals, taken as a whole, form a useful chronology of required and aspirational practices for the criminal law judicial officer in domestic violence cases.

We note that implementation of the statutory framework underlying Penal Code section 1203.097 depends on adequate funding and full functioning of county probation departments as necessary to ensure the defendant's opportunity to successfully complete probation. Because the successful completion of probation directly and positively affects public safety and the safety of domestic violence victims, the presence of fully funded probation services in each jurisdiction is a necessary element of an effective criminal justice response to domestic violence. Although neither the Judicial Council nor the task force has direct authority for the funding of probation services, the task force submits that without increased and adequate funding of this vital component, full accountability for domestic violence offenders placed on probation will remain elusive.

Recommended guidelines and practices in the area of criminal procedure follow.

### **Administration Procedures**

1. ***Administration of criminal domestic violence cases.*** Each court should ensure that the following administrative procedures are followed with respect to domestic violence cases:
  - a. The judicial review of the bail schedule should include consideration of issues relating to domestic violence;
  - b. The court should collaborate with the chief probation officer to ensure that the functions of probation delineated in Penal Code section 1203.097 are adequately

performed, including duties to monitor the defendant's compliance with the terms and conditions of probation and to certify batterer intervention programs; and

- c. In conjunction with the duties enumerated in rule 227.8 of the California Rules of Court, the court should ensure that issues relating to practice and procedure in domestic violence cases are identified and discussed in regular meetings with criminal justice agencies. Additional participants in the regular meetings should include both victim advocacy organizations and local batterer intervention programs to ensure communication and consultation between the court and the organizations involved in probation of convicted batterers.
- d. In accordance with Penal Code section 136.2(e)(1), the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to consider issuance of a protective order on its own motion.

## **Pretrial**

### **Bail release considerations**

2. ***Bail schedule.*** Every county must adopt and review a bail schedule. (Required by Pen. Code, § 1269c.)
3. ***Standardized procedure.*** To enhance public safety in domestic violence cases, local courts should work with probation, pretrial services, and law enforcement agencies to develop a standardized procedure for setting bail so that the court receives the following information: (1) requests for increased bail, (2) indication of relationship between defendant and victim, (3) indication of whether a firearm was involved, (4) description of weapons seized, (5) sources of information regarding crime and firearms present, and (6) indication of whether children were involved or were witnesses.
4. ***Law enforcement policy.*** For all domestic violence arrests, law enforcement should adopt a policy that does not allow own recognizance (OR) or cite and release procedures unless a court hearing is conducted. (Pen. Code, § 1269c, requests for increased bail.)

### **Hearing procedures**

5. ***Hearing purposes.***
  - a. Under Penal Code section 1270.1(a), at arraignment or at any other stage of the proceedings, bail must not be reduced and release on OR must not be granted without a hearing for any person charged with:
    - Penal Code section 136.1: Intimidating a witness;
    - Penal Code section 243(e)(1): Battery against a spouse, cohabitant, person who is the parent of the defendant's child, noncohabitating former spouse, fiancée, or a person with whom the defendant currently has or has previously had a dating relationship;
    - Penal Code section 262: Spousal rape;
    - Penal Code section 273.5: Corporal injury;



- Penal Code section 273.6: Knowing violation of a protective order under specified circumstances;
  - Penal Code section 422: Felony violation of a threat to an immediate family member; or
  - Penal Code section 646.9: Stalking.
- b. The prosecution must be afforded two court days' written notice of the hearing and an opportunity to be heard. (Pen. Code, § 1270.1(b).)
  - c. If bail is otherwise set than is provided in the bail schedule, the record must reflect the reasons for the court's decision and address the issue of threats to the victim and victim safety. (Pen. Code, § 1270.1.)
6. **Local variations.** The timing and procedures for setting bail and the bail amount may vary from jurisdiction to jurisdiction, but the court should nevertheless obtain all relevant information.
  7. **Appearance within 48 hours.** If bail is posted, the defendant should be directed to appear within 48 hours for arraignment.

#### **Arraignment**

8. **Defendant's appearance.** Defendant's presence at arraignment is mandatory. (Required by Pen. Code, § 977.)
9. **Procedures.** Practices recommended to assist the court in determining whether to issue a CPO and in setting bail include the following:
  - a. Defense counsel and prosecution should be present at arraignment;
  - b. All probation violations should be calendared with the arraignment to ensure that the court revokes probation as appropriate;
  - c. Prosecution, OR services, or the probation department, as appropriate, should contact the victim prior to arraignment;
  - d. Gun ownership should be determined from DOJ records;
  - e. Issuance of a CPO should be considered; and
  - f. Firearms relinquishment should be ordered. (Pen. Code, § 136.2(7)(B).)

#### **Setting bail**

10. **Bail sufficient to ensure appearance and protect victim.** If the defendant is arrested for violating a domestic violence restraining order, the court may deny bail or set bail at any amount that it deems sufficient to ensure the defendant's appearance or the protection of the victim or the victim's family members. (Pen. Code, § 1269c.)
11. **Notice to prosecutor.** When a defendant charged with Penal Code section 646.9 is released on bail, the sheriff must notify the domestic violence unit of the prosecutor's office in the county where the victim resides. (Pen. Code § 646.9(a).)

12. **Notice to victim.** If there is a request to lower bail, the prosecutor must make all reasonable efforts to notify the victim, and the victim is entitled to attend the hearing. The court should inquire whether the prosecutor has been successful in notifying the victim. (Pen. Code, § 646.93(b).)
13. **Additional conditions.** The court may consider imposing additional conditions. For example:
  - a. Defendant cannot initiate contact with the victim;
  - b. Defendant cannot initiate contact with the children;
  - c. Defendant must not knowingly go within a specified distance of the victim or his or her workplace or home;
  - d. Defendant must not knowingly go within a specified distance of the children's school;
  - e. Defendant must not possess a firearm;
  - f. Defendant must obey all laws;
  - g. Defendant may be obligated to wear an electronic monitoring device;
  - h. Defendant must notify the court of his or her address and telephone number at home and work (Pen. Code, § 646.93(c));
  - i. Defendant must refrain from the use of alcohol or other drugs; and
  - j. Defendant must report to the court all law enforcement contacts.
14. **Factors in setting, modifying, or denying bail.** The court should consider the following factors:
  - a. Seriousness of offense charged;
  - b. Defendant's character (previous criminal record);
  - c. Probability of defendant appearing at hearing or trial;
  - d. Alleged threats to the victim or to a witness to the crime charged;
  - e. Alleged use of a firearm or other deadly weapon in the commission of the crime charged; and
  - f. Alleged use or possession of a controlled substance by the defendant. (Pen. Code, § 1269b.)
15. **Relevant information.** Whenever bail is set, reduced, increased, or denied, the court should attempt to obtain and review all relevant information. This includes:
  - a. All other pending cases, including probation violations as a result of this case;
  - b. Rap sheet and probation or parole status;
  - c. Existing and previously issued protective or restraining orders where the defendant is the restrained party;
  - d. Any prior failures to appear;
  - e. Statements by victims;
  - f. Whether children were present or if there are visitation issues;
  - g. All information about the status of family, juvenile, probate, or other court orders that may exist;
  - h. Firearms registry information from AFS;
  - i. Prior unreported incidents of domestic violence; and
  - j. Use of alcohol or drugs or prior history of mental illness.

### **Release on own recognizance (OR)**

16. ***Investigative report.*** In all cases involving violent felonies, if there is an investigative staff, a written report is required to be given to the court concerning outstanding warrants, any prior failures to appear, the criminal record of the defendant, and the defendant's residences during the last year. (Pen. Code, § 1318.1.) Funding for such staff should be provided.
17. ***Reasons for deviation from schedule.*** If bail is set in an amount other than that provided for in the bail schedule, the record must reflect the reasons for the court's decision.

### **Issuing CPOs pretrial**

18. ***Grounds for order.*** A stay-away order should be issued when it is shown that there is good cause to believe that harm to, intimidation of, or dissuasion of a victim or witness has occurred or is likely to occur. The order should be issued on the required Judicial Council form (CR 160). (Pen. Code, § 136.2.) (Note that in *People v. Stone* (2004) 123 Cal.App.4th 153, the court required additional evidence that a victim or witness had been intimidated or dissuaded from testifying or that there was a likelihood that it would occur. It is not clear whether this would apply in a case involving a domestic violence crime. Although *People v. Stone* may be distinguishable in domestic violence cases, the question has yet to be addressed in a published opinion.)
19. ***Reasonable restrictions.*** The court must consider issuing protective orders on its own motion. The court may impose reasonable restrictions, including restricting the defendant's access to the family residence and barring communication by the defendant or defendant's agent with the victim, except through an attorney. (Pen. Code, § 136.2(d).)
20. ***No-contact orders.*** No-contact orders may be issued in domestic violence cases as a condition of release on OR and as an independent order. (Pen. Code, §§ 1275, 1318 (a)(2), or 136.2.)
21. ***Additional considerations.*** In addition to the considerations listed above in "Setting bail," the court should consider the following:
  - a. Ascertain whether the defendant has any firearms;
  - b. Determine if the CPO conflicts with the family court order and advise the defendant that the criminal order controls;
  - c. Serve the CPO on the defendant and the victim, if present, in open court. If the protected party is not present in court, the court should request the prosecutor to mail a copy of the order to the protected party; and
  - d. Advise the defendant that violation of the CPO may result in additional charges and in immigration consequences.

## **Trial**

### **Trial setting**

22. **Case management.** After arraignment, the court should set a pretrial conference, at which the court should consider the following:
- a. Settlement;
  - b. Issuance of a stay-away order under Penal Code section 136.2 if there have been new threats or intimidation;
  - c. Changes in bail, if appropriate;
  - d. Any new information disclosed by counsel; and
  - e. Setting the case for preliminary hearing or misdemeanor jury trial.

### **Continuances**

23. **Good cause.** Good cause for continuance in domestic violence cases includes unavailability of the prosecutor because of a conflict with another trial, preliminary hearing, or motion to suppress. The continuance must be limited to a maximum of 10 additional days. (Pen. Code, § 1050(g)(2).)
24. **Facts supporting good cause.** The court must state on the record facts constituting good cause for a continuance. (Pen. Code, § 1050(f).)
25. **Continuances are discouraged.** Domestic violence cases should have high priority. Continuances are strongly discouraged, and motions for continuances must comply with the requirements of Penal Code section 1050.

### **Dismissal/Refiling**

26. **Refiling within six months.** If the court dismisses a misdemeanor domestic violence case because the victim failed to appear in response to a subpoena, the case may be refiled within six months. This section may be invoked only once in each action. (Pen. Code, § 1387(b).)

### **Evidentiary issues**

27. **Confidential communications.** Communications between the victim and the domestic violence counselor are confidential. The following factors are to be considered by the court to determine whether a person qualifies as a domestic violence counselor:
- a. Is the person: employed by an organization under Welfare and Institutions Code section 18294?
  - b. Does the person have any of the following:
    - Master's degree in counseling or a related field;
    - One year of experience in counseling (a minimum of six months must be in domestic violence counseling);
    - Credentials as a psychotherapist under Evidence Code section 1010; or
    - Experience as an intern, trainee, or other person with a minimum of 40 hours of domestic violence training under someone with a master's degree in counseling or a related field or someone who has one year of counseling

experience, of which a minimum of six months is in domestic violence counseling. (Evid. Code, § 1037–1037.7.)

28. ***Evidentiary exclusion of privileged information.*** At the trial or preliminary hearing, the court may exclude privileged information from a domestic violence counselor on its own motion if neither the witness nor the party can claim the privilege. (Evid. Code, § 916.) The court should ask the prosecutor if there is any undisclosed statement for which the privilege is asserted. If the victim has not authorized the prosecutor to assert the privilege or is not present to make the assertion, the prosecutor can assert the privilege under Evidence Code section 916. (Evid. Code, § 1040(b)(2).)
29. ***Burden of proof.*** The claimant of a privilege has the burden of proving (a) the existence of the relationship, (b) standing to claim the privilege, and (c) that the offered evidence is a confidential communication within that relationship. (Evid. Code, § 1037.)
30. ***Disclosure prohibited.*** Disclosure of the address or telephone number of victims and witnesses is prohibited. (Pen. Code, § 1054.2.)
31. ***Special needs.*** The court should ensure that the special needs of certain victims or witnesses are taken into consideration. Examples might include the needs of the elderly, children, or dependent adults.

### **Discovery**

32. ***Medical records.*** In addition to the requirement that the prosecutor turn over all possibly relevant evidence to the defense, any medical record of the victim or defendant related to the domestic violence is discoverable in a domestic violence criminal case. (Pen. Code, §§ 1054–1054.8; Evid. Code, § 998.)
33. ***Protocols for access to information.*** Disclosure to the defendant of the address and contact information of the victim or witness is prohibited. Under Penal Code section 964, courts are to develop protocols with local law enforcement regarding restricting access to victim and witness personal identifying information contained in police reports filed with the courts. (Pen. Code, §§ 841.5(a), 964, and 1054.2.)

### **Jury selection in domestic violence cases**

34. ***Larger juror panel.*** The court should consider calling a larger juror panel than in other types of cases because many potential jurors in domestic violence cases may have been victims of or witnesses to domestic violence, or their family or close friends may have been victims or witnesses.
35. ***Juror privacy.*** The court should respect the privacy of jurors in voir dire. For example:
  - a. The option of being questioned on the record but outside the presence of other jurors should be offered;

- b. Jurors should be informed that questionnaires, transcripts, and juror records are not confidential unless sealed by court order;
- c. For juror safety, the court should not release juror addresses; and
- d. The court should refer to jurors by number rather than by last name.

## **Victims**

- 36. ***Victim's right to a support person.*** The alleged victim is entitled to have a support person or family member present at the hearing. (Pen. Code, §§ 868, 1102.6.)
- 37. ***Victim's right to be present.*** The victim has a limited right to be present at all stages of the criminal proceedings except when subpoenaed as a witness. (Pen. Code, § 1102.6(b)(1).)
- 38. ***Victim protections.*** The court should consider applying the statutory protections available to sexual assault victims to domestic violence cases involving sexual assault charges. If the court does apply these protections, it should state its reasons for doing so on the record.
- 39. ***Hearsay evidence.*** Each court should be cognizant of the limitations of hearsay evidence under the United States Supreme Court opinion in *Crawford v. Washington* (2004) 541 U.S. 36. Under *Crawford*, statements are generally inadmissible if the declarant is not present, if the statement is “testimonial,” and if the victim has not been previously cross-examined. The California Supreme Court has accepted review for numerous cases addressing hearsay issues under *Crawford*.
- 40. ***Testimony of victim.*** If a victim is reluctant to testify, the court should attempt to discover the reasons for the victim's reluctance and to determine whether the victim has been coerced or intimidated. To assist in this process, the court should consider the strategies and questions outlined in the *California Judges Benchbook: Domestic Violence Cases in Criminal Court* (3rd ed., §§ 4.24 and 4.25, pp. 84–86).

## **Compelling participation or testimony**

- 41. ***Contempt.*** The first time a domestic violence victim refuses to testify in a case, the victim cannot be incarcerated for contempt of court. If the court holds a domestic violence victim in contempt for refusal to testify, the order must be stayed pending filing of a petition for extraordinary relief to determine the lawfulness of the court's order. Such orders are given a three-day stay of execution. (Code Civ. Proc., § 128(e).) The court can also order 72 hours of domestic violence counseling or “appropriate community service.” (Code Civ. Proc., § 1219(c).)

## **Dispositions**

### **Sentencing**

- 42. ***Fines.*** Courts must consider whether the defendant is able to pay a fine or restitution to the victim or to the Restitution Fund as a condition of probation, and the amount thereof. (Pen. Code, § 1203(b)(2)(D)(ii).)

43. **Restitution.** Restitution to the victim is primary even if the defendant is ordered to repay other costs such as public defender and probation fees. (Pen. Code, § 1202.4(f)(2).)

### **Probation**

44. **Probation.** If the defendant is convicted and placed on probation for conduct perpetrated against any of the persons defined in Family Code section 6211 and the conduct could be enjoined under Family Code section 6320, the court must impose all of the terms and conditions of probation set forth in Penal Code section 1203.097. Persons defined under Family Code section 6211 are:

- a. Spouse or former spouse;
- b. Cohabitant or former cohabitant;
- c. Person the defendant is dating or has dated;
- d. Mother or father of the defendant's child;
- e. A person related by blood or marriage within the second degree; or
- f. A registered domestic partner or former registered domestic partner (See Fam. Code § 297.5).

45. **Discretionary terms and conditions of probation.** The court also may consider imposing additional terms and conditions of probation, such as:

- a. Prohibiting the use of alcohol and other drugs;
- b. Permitting law enforcement to search and seize all firearms in the defendant's possession; and
- c. Requiring attendance at parenting classes.

46. **Oral advisement.** At the time a defendant is convicted and placed on probation, the court should orally advise the defendant and explain the specific terms and conditions of probation, including all firearms restrictions. This should occur whether or not the defendant has signed a written probation agreement.

47. **Batterer's intervention programs.** A 52-week intervention program must meet the following requirements:

- a. The program must be approved by the probation department;
- b. The defendant must enroll within 30 days of sentencing or release date;
- c. The program must provide periodic progress reports at least every 3 months;
- d. The defendant must complete the program within 18 months of enrollment;
- e. The defendant can have only three unexcused absences; and
- f. The court cannot waive program fees, but the court must consider the defendant's ability to pay and ensure that a program with a sliding fee scale is available. (Pen. Code, § 1203.097.)

48. **Protective orders.** A protective order under Penal Code section 1203.097 is mandatory to protect "the victim from further acts of violence, threats, stalking, sexual abuse, and harassment." (Pen. Code, § 1203.097(a)(2).)

49. **Protective order provisions and procedures.** The protective order:
- a. Must prohibit violence, intimidation, or threats;
  - b. May prohibit contact with the victim;
  - c. May allow contact for visitation allowed by custody order;
  - d. Must be issued on the mandatory Judicial Council CPO form, *Criminal Protective Order—Domestic Violence*, (form CR-160) for any order issuing, modifying, extending, or terminating a CPO, including probation conditions; and
  - e. Must be kept by the court in the original in the court file. (Pen. Code, §§ 136.2, 1203.097.)
50. **Notice.** Penal Code section 1203.097(a)(3) provides that if probation has been granted, the victim is to be notified of the disposition of the case. Prosecutors should provide this notice because they have (or have access to) the victim’s address and the court often does not. Moreover, if the court were to give this notice, the notice, including the victim’s address, could become a publicly accessible court record that may jeopardize victim safety.
51. **Restitution fine.** On probationary sentences, the court may increase the amount of the restitution fine above the statutory minimum, and if all the conditions of probation are satisfied, the court can then waive the elevated fine. On the other hand, if probation is revoked, the court has the flexibility to impose a restitution fine other than the statutory minimum.
52. **Review of other orders.** Before sentencing, the court should review all orders regarding the defendant in any related family law matter and in all other relevant cases.

### **Protective Orders Generally**

53. **Firearms restrictions.** The court must make all applicable firearm restriction orders under state and federal law. (Pen. Code, § 136.2(a)(7)(A).)
54. **Cases involving children.** In a case involving children, a court that issues a CPO either pretrial or as a term of probation should consider whether to provide for peaceful contact between the restrained person and the protected person for the safe exchange of the children under an existing or future family law order. For this purpose, the court may consider whether to check the appropriate box on the Judicial Council mandatory form, *Criminal Protective Order—Domestic Violence* (form CR-160).
55. **Entry into DVROS.** CPOs; orders to modify, extend, or terminate CPOs; and proofs of service of CPOs must be entered in DVROS by the court or its designee within one business day. (Pen. Code, § 136.2(a)(7)(A); Fam. Code, § 6380(a).)
56. **Copies.** All interested parties must receive a copy of the CPO. (Pen. Code, § 136.2(e)(1).)



57. ***Procedure to retrieve belongings.*** Each court should encourage the establishment of a local law enforcement procedure to allow a restrained person who is restricted from his or her residence to safely retrieve personal belongings.
58. ***Modification or termination of a CPO.*** If a protected person or a defendant requests modification or termination of a CPO, the court should consider referring the protected person to a domestic violence advocate or other support person for the purpose of discussing the safety implications of the request. If the request is submitted to the court after sentencing, the prosecutor must be given an opportunity to respond to the request. (Pen. Code, § 1203.3.) The court should conduct a hearing at which the prosecutor and defense counsel are present to determine whether the person requesting the modification or termination is in fact the protected person, whether there is good cause for the modification or termination, and whether the modification or termination request, if made by the protected person, is voluntary and not a result of coercion or duress. Other factors the court should consider include (1) the reason for the request, (2) the existence of a safety plan for the protected person, (3) whether the defendant is participating in a batterer's intervention program, and (4) the impact on any children who are in the home. The court also may wish to consider conducting its inquiry in an alternate setting, such as requesting a waiver of the defendant's appearance and conducting a reported chambers interview with the victim or requesting a probation officer or domestic violence counselor to conduct the interview. If the court modifies or terminates the order, the court should ensure that the modification or termination is memorialized on the mandatory Judicial Council form, *Notice of Termination of Protective Order in Criminal Proceedings (CLETS)*, (form CR-165, and duly entered into DVROS.
59. ***Expiration.*** CPOs issued under Penal Code section 136.2 expire on or before the date that criminal jurisdiction over the defendant terminates. (*People v. Stone* (2004), 123 Cal.App.4th 153.) If criminal jurisdiction over the defendant terminates early, a *Notice of Termination of Protective Order in Criminal Proceedings* (CR-165) must be entered into DVROS within one business day. However, new legislation, effective January 1, 2008, provides for the issuance of a CPO for a period of up to 10 years for conviction of certain specified domestic violence crimes whether or not the defendant is sentenced to probation or state prison. (See Assem. Bill 289; Stats. 2007, ch. 582).
60. ***Local rule for communication.*** The court must promulgate a local rule delineating the procedure for communication among courts issuing or modifying CPOs and courts issuing orders involving child custody and visitation. (Pen. Code, § 136.2(f); Cal. Rules of Court, rule 5.450.) Courts also must delineate a similar procedure for communication among courts issuing or modifying CPOs and courts issuing civil or other restraining orders involving the same parties.

### **Postconviction**

61. ***Assessment.*** As soon as feasible after a defendant is convicted and placed on probation, the court or a designated justice system agency, such as probation program or

a batterer intervention program, should conduct an initial lethality assessment and should determine whether the defendant's ability to comply with the terms and conditions of probation is affected by mental health or substance abuse problems.

**62. *Progress reports.*** The court should order the defendant to appear at a review hearing within 30 days of placing the defendant on probation, at which time the court should determine whether the defendant is in compliance with the terms and conditions of probation. Further, the court must receive "periodic progress reports . . . every three months or less" regarding the defendant's participation in the batterer intervention program. (Pen. Code, § 1203.097(a)(6) and (c)(1)(O)(ii).) Judicial Council form, *Batterer Intervention Progress Report* (form CR-168,), should be used by the probation department or the program provider to periodically inform the court of the defendant's progress in the program.

**63. *Final evaluation.*** The court must receive a "final evaluation that includes the program's evaluation of the defendant's progress" in the batterer's intervention program and the program should also inform the court as to whether the fees for the program and any restitution have been paid. (Pen. Code, § 1203.097(c)(1)(O)(iii).)

**64. *Defendant's appearance during probation.*** The court should consider requiring the defendant to appear for periodic progress reports during the probationary period. This appearance may help increase compliance with the probationary conditions. After an initial appearance, courts may consider waiving the appearance requirement if the defendant is in full compliance.

**65. *Graduated sanctions.*** The court should consider graduated sanctions for probation violations, including the failure to comply with the condition requiring attendance at a batterer intervention program. Graduated sanctions take into account the totality of the circumstances of the defendant's performance and progress while on probation, as well as the impact on the victim. By using graduated sanctions, the court maintains discretion and flexibility in addressing the unique circumstances in each case.

**66. *Role of probation.*** In addition to the statutory duties of the probation department set forth in Penal Code section 1203.097, probation can be helpful to the court in the following ways:

- a. Conducting assessments regarding lethality, mental health, and substance abuse;
- b. Conducting an orientation to the batterer intervention program;
- c. Evaluating the probationer's ability to pay the fee for the batterer intervention program; and
- d. Maintaining regular communication with batterer intervention programs to determine the progress and status of the probationers and to improve the administration of the programs.

The defendant's successful completion of the terms and conditions of probation and therefore the rehabilitation of the defendant, public safety, and the safety of the victim are directly tied to the involvement of the probation department and probation officer.

Accordingly, the court should advocate for adequate funding for probation services needed to appropriately review and certify programs that meet the statutory requirements and those that provide services necessary to monitor, supervise, and counsel the defendant.

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Attachment:

**THE PRESIDING JUDGES' WHITE PAPER  
ON DOMESTIC VIOLENCE**

**The Role of the Presiding Judge in the Administration of  
Domestic Violence Cases**

December 13, 2007

Our goals are to ensure fair, expeditious, and accessible justice for litigants in these critical cases and to promote both victim safety and perpetrator accountability.

Courts must help to ensure that claims of domestic violence can be fully and fairly presented for adjudication, and then, once such claims are found to be true, that victims can receive appropriate assistance, and defendants can be provided the tools to break the cycle.

—Chief Justice Ronald M. George<sup>18</sup>

**W**e commend the Domestic Violence Practice and Procedure Task Force, appointed by Chief Justice Ronald M. George in September 2005, for its leadership and work in developing guidelines and recommended practices and procedures. In the last year the members have done an admirable job of collecting information and input from as many stakeholders as possible from across the state. As presiding judges we support the task force's proposals.<sup>19</sup> We recognize that the proposals, viewed collectively, fit squarely within the Judicial Council's strategic goals of access, fairness, and diversity; independence and accountability; modernization; quality of justice and service to the public; education; and building the requisite infrastructure to support those goals. We also recognize that the proposals are guided by the findings contained in the Judicial Council's study on public trust and confidence in the courts,<sup>20</sup> which emphasize the public's need for an opportunity to be heard and an understanding of court proceedings. In order for the approved task force recommendations to become a reality and achieve implementation in each of our courts, the presiding judges in every county, large and small, must play a leadership role.

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<sup>18</sup> Judicial Council of California News Release, September 13, 2005, *Chief Justice Names New Statewide Task Force on Domestic Violence*.

<sup>19</sup> See Judicial Council of Cal., Advisory Com. Rep., *Domestic Violence Practice and Procedure Task Force Draft Guidelines and Recommended Practices for Improving the Administration of Justice in Domestic Violence Cases* (Jan. 2007).

<sup>20</sup> David B. Rottman & Nat. Center for State Courts, *Trust and Confidence in the California Courts: A Survey of the Public and Attorneys* (Part I: Findings and Recommendations) (Judicial Council of Cal., Admin. Off. of Cts., 2005).

We believe that presiding judges, in partnership with court executive officers, are willing to accept the leadership challenge to advocate for the proper handling of domestic violence cases in our courts. At the same time, we believe we must provide a view of the regular functions and duties of presiding judges through a new lens—one that focuses on the ways presiding judges can improve the administration of justice in domestic violence cases. We join with the task force in its effort to implement standardized procedures and practices in handling domestic violence cases.

## **CRITICAL FOCUS AREAS FOR PRESIDING JUDGES**

### **Leadership**

Many significant legislative and other mandates govern the administration of domestic violence cases. Some of these mandates do not dictate the way in which judicial decisions are made but they do affect court operations. The mandates can range from the duty to ensure that restraining orders are promptly and accurately entered into the statewide Domestic Violence Restraining Order System to the design of court programs that provide adequate self-help services to both parties in a domestic violence proceeding or access to review restraining order applications on a 24-hour basis. Even these few examples demonstrate that the entire administration of the court—from facilities to technology, to employment to security—can be implicated. Mandated responsibilities like these cannot be handled by the individual judge or court employee. Rather, they fall within the authority and responsibility of the court’s executive team—the presiding judge and the court executive officer.

As presiding judges we need to be actively involved in key areas. We recognize that each court must select the appropriate way to implement the task-force’s proposals and that it is a presiding judge’s responsibility to design the court’s individual response to domestic violence cases. We suggest that each court’s approach should maximize services, allocate resources wisely, and maintain accountability.

To ensure that courts comply with mandates promulgated to increase safety and accountability, the presiding judge and court executive officer should maintain a system of internal self-assessment and audits so that the court is continuously monitoring its own progress. Perhaps more important, the local courts themselves, if they pursue a course of internal assessment, will be able to develop sound practice and procedures to voluntarily improve the administration of justice in these cases consistent with their unique local structure and needs. Critical to this process is the gathering of information on a local level so that sound policy decisions will be made. When local courts’ internal monitoring and needs assessments are in place and when they are coupled with communication and outreach to justice system partners, the judicial branch as a whole is in a better position to govern its own affairs in service to the public. Other agencies of government will be far less likely to impose or suggest changes that do not properly or easily fit within the court environment.

## **Providing a Feedback Loop on Practice and Procedure Within the Court, the Justice System, and the Greater Community**

Presiding judges should ensure that the court and the appropriate judicial officers convene regular meetings with domestic violence community stakeholders. Although the models and titles vary slightly by county, many courts have embraced an active and regular relationship with stakeholders for years.

Generally the counties with experience report that these meetings are a good forum for:

- Facilitating communication;
- Collaborating on innovative ideas;
- Educating stakeholders on procedures in domestic violence court;
- Improving ongoing procedures; and
- Enhancing contributions of resources from other than the court.

Judges must be aware of potential ethical issues, but most who have participated in these collaborative meetings report that ethical pitfalls are easily avoided. Judicial leadership helps ensure that agenda items are appropriate and productive and enhance the public's perception of the court.

As ethically appropriate, the court should participate in domestic violence coordinating councils or court-convened committees that provide an opportunity for justice system partners to comment on court practice and procedure relating to domestic violence cases and that provide a mechanism for improving these practices and procedures.

The leadership of the presiding judge is essential in implementing these vital proposals for working with justice system entities and community organizations.

## **Enhancing Courtroom and Court Facility Security**

**Courtroom Security**—Presiding judges must recognize that courtroom violence most commonly occurs in the family law court or the domestic violence court. In order to maximize the safety of litigants and court staff, courtroom security must be the highest priority. This requires a team effort, among the presiding judge, the court executive officer, and the law enforcement agencies responsible for courtroom security.

In these high-conflict courtrooms there is a large percentage of self-represented litigants who have no attorney to express or manage their emotions. These courtrooms often have high-volume calendars, so they are packed with litigants who have a large emotional stake in the proceedings with no barriers to the parties being in close proximity to each other. It is important that the law enforcement agencies responsible for courtroom security implement policies and procedures that enhance safety in these courtrooms.

Therefore the domestic violence courtroom team should have information on potential problems in advance of the proceedings. Courts should provide CLETS access to the courtroom so that information about all parties in these high conflict cases is available.

**Facility Security**—The areas outside the courtroom should also be addressed. These areas may include, for example, hallways, family court services offices, and parking lots. The law enforcement agencies responsible for courtroom security should provide staffing to the extent feasible so that “protected persons” remain protected after they leave the courtroom.

One of the most significant contributions that the presiding judge can make to security in high-conflict courtrooms is the selection of the judicial officer. Ensuring fairness, remaining patient, and maintaining the appropriate demeanor are particularly taxing challenges in these courtrooms. In the courtroom itself, the judicial officer sets the tone. The judge must keep control of the courtroom while giving both sides a chance to be heard and treating all litigants with respect.

Part of the judge’s team is his or her courtroom staff. The court should consider using law enforcement in domestic violence courtrooms. The bailiff should be empowered to call for extra security when needed. The departure of the parties from the courtroom should be staggered. As resources permit, upon request of a protected party, an escort should be provided for a safe departure.

Adequate funding is essential to these security procedures and may not be readily available in some courts. We urge presiding judges to be prepared to advocate for the necessary funding so that every litigant and each member of the court’s staff can have the assurance of safety when they enter the court facility.

### **Determining the Appropriate Court Structure—Domestic Violence Courts or Dedicated Calendars**

Presiding judges have been responsible for developing court proceedings and calendars that focus directly on domestic violence. Specialized calendars in family law and criminal domestic violence cases are becoming the rule rather than the exception in our counties.

We recognize that domestic violence courts do not warrant a “one-size-fits-all” approach; in some counties a dedicated judge and courtroom handle domestic violence cases; others may best be served by using specialized calendars.

These specialized courtrooms and calendars make it easier to:

- Offer victims and children specialized services at the court;
- Ensure that sentences are consistent;
- Obtain critical information before hearing the domestic violence cases (for example, whether any of the parties has a criminal conviction for family violence,



whether a party is currently on probation, and whether a restraining order is currently in force);

- Implement more effective procedures to ensure compliance with court orders, such as periodic reviews for court-ordered domestic violence classes and firearms relinquishment orders;
- Monitor issuance, compliance, and termination of protective orders; and
- Communicate with and leverage valuable resources and contributions by other justice and social service partners.

The challenge for a presiding judge is to embark on a process of analyzing and reviewing his or her current court practices and to embrace the goal of improving the handling of domestic violence cases. Presiding judges and court executives will have to work closely to manage realistic reforms and ensure prompt implementation.

### **Making Appropriate Judicial Assignments and Ensuring Adequate Resources for Judicial Officers Assigned to Domestic Violence Cases**

The presiding judge has ultimate authority to make judicial assignments. This duty is especially critical in domestic violence court.

Presiding judges should take into account:

- The needs of the public and the court as they relate to the efficient and effective management of the court's calendar;
- The knowledge and abilities demanded by the assignment; and
- The judges' interests.

No other assignment challenges a judge's skills like presiding over domestic violence cases, in part because they come through many doors of our justice system: criminal court, juvenile delinquency, juvenile dependency, and family law. These cases often present complicated legal issues and *always* present the sensitive emotional issues that accompany families in crisis.

Judges who are selected to preside over domestic violence cases need to be provided with support that will improve the court's response in domestic violence cases. That may include:

- Domestic violence information and self-help programs and services;
- Additional staff to coordinate the families and their cases (i.e. CLETS, other court orders);
- Victim services;
- Court interpreters;
- Probation officers;
- Clinicians for the evaluation of drug, alcohol, and mental health problems;
- Public health nurses; and
- Other relevant agencies.

Judges need to have trained back-up judges to cover vacations and emergencies. We recommend that temporary judges not be used in domestic violence calendars.

The task force can be helpful in assuring that funding is linked to all best-practices recommendations.

### **Providing Public Information in Response to Press Inquiries Regarding Domestic Violence Cases or Policies**

As presiding judges we are mindful that the news media are conduits to our ultimate target audience: the public. It is important that judges continue to respond to inquiries from the media and that they receive education and training on dealing with the media in domestic violence cases. Domestic violence cases often fall into the category of high-profile cases. These cases may have overtones that attract the media, at times they may have tragic outcomes, and often they are the subject of adverse attention for the judicial officers hearing them.

A judicial officer handling domestic violence cases may look to the presiding judge for support when unjust criticism is leveled at him or her after making an unfavorable call in a domestic violence case. It is necessary for presiding judges to develop a media strategy that will assist and support judges who have these difficult assignments.

In order to help create public trust and confidence in our courts, it is critical that as presiding judges we are open to inquiries from the public and the media about our court operations and policies.

### **Ensuring the Availability of Judicial and Staff Education**

An informed and educated judiciary, assisted by a highly qualified staff, is the cornerstone of ensuring public trust and confidence in our courts. Domestic violence cases, with their unique features, may present challenges to achieving this essential goal. It is with the support and encouragement of both the presiding judge and the court executive officer that the courts can achieve it.

Domestic violence allegations may arise in a wide variety of case types, each with a distinctive statutory scheme and technical requirements. Restraining orders, mandatory terms of probation, child custody and visitation determinations, and child maltreatment issues are all examples of the legal settings in which these allegations arise. Thus, judicial educational needs are comprehensive and interdisciplinary. These needs are rendered even more acute when we consider the varied court calendar mechanisms and judicial assignment procedures that exist and the varied experience of the judicial officers who hear these matters on a daily basis.

Challenges for court staff are equally complex since the litigants in these critical cases are often under stress, may be self-represented, and face safety risks. Because of the prevalence of domestic violence in our society, court personnel themselves may have had

personal experience with domestic violence or know colleagues, friends, neighbors, or family members who have, making the competent and neutral performance of court functions that much more difficult.

With the advent of new educational requirements and expectations recently adopted by the Judicial Council, it is imperative for the presiding judge to support education and enable judicial officers and court staff to participate fully in educational opportunities relating to domestic violence cases. Implementing these vital judicial and staff education proposals will require leadership. While it may require a delicate balancing act to ensure that daily court operations are not compromised when judicial officers and staff are participating in training, the presiding judge and court executive officer should facilitate the achievement of this critical goal.

### **Ensuring Adequate Funding and Resources**

While we applaud many of the best practices urged by the task force, as presiding judges we understand that the key to improvements in our courts is adequate funding. Our ability to implement improvements could be hindered by lack of resources. Thus, many presiding judges may naturally be reluctant to move forward on certain proposals if judicial, staffing, and facilities resources are insufficient. If we want these best practices to become reality in California, then we will need resources—not only additional funding but also those resources, such as additional education, that will yield the needed judicial officers, support staff, and courtrooms to deal with our ever-increasing caseloads.

As presiding judges we must be willing to advocate for these resources at the national, state, and local level. This will include addressing our communities and providing education about what we need and what it will take to get the job done.

We can provide the leadership, but in order for presiding judges to ensure adequate funding and resources we must rely on others to produce the necessary means. Adequate funding for our domestic violence courts and cases sends a message that domestic violence is a community priority.

## **CONCLUSION**

As presiding judges we have the responsibility to make sure that our courts work toward the goals set forth in this paper. These guidelines should be more than just a “call to action”; they should become an integral part of our judicial responsibilities as presiding judges. It is our mission to ensure that as a branch we make an overall commitment to work together to eradicate family violence. As Chief Justice Ronald George has said, “Courts alone cannot solve the problem of family violence—but they truly can make a difference.”<sup>21</sup>

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<sup>21</sup> Family Violence and the Courts: 10th Anniversary Conference, San Francisco, CA, September 10, 2004.

*This inaugural white paper was developed by the Executive Committee of the Judicial Council's Trial Court Presiding Judges Advisory Committee. The underlying intent of this document is to provide a statement of leadership and to emphasize for courts the critical need to support best practices designed to improve the administration of justice in domestic violence cases. This white paper also delineates ways to implement best practices in this arena and outlines a guide for courts to assess and monitor their progress. The Executive Committee is cognizant that an individual court's ability to implement these practices may be affected by the resources available to that court.*