

Report of the
Supreme Court
Ad Hoc Committee
on
Domestic Violence

June 2016

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I. EXECUTIVE SUMMARY

Chief Justice Stuart Rabner constituted the Supreme Court Ad Hoc Committee on Domestic Violence in February 2015. In doing so, the Chief Justice said:

Our State is committed to address the issue of domestic violence and its far-reaching effects. In 1991, the Legislature passed the “Prevention of Domestic Violence Act,” N.J.S.A. 2C:25-17 et seq., and declared that domestic violence is a serious crime against society. Immediately afterward, the Executive and Judicial branches joined together to establish local and statewide working groups to identify and resolve implementation issues. As part of that process, we developed a procedures manual to ensure the proper and consistent handling of domestic violence incidents. The working groups’ ongoing efforts remain invaluable.

The Ad Hoc Committee on Domestic Violence (the Committee) was charged with examining the current system and serving as a forum for all stakeholders to conduct an in-depth review of existing domestic violence laws, procedures and policies.

Membership of the Committee was comprised of the three branches of government, the private sector, advocacy groups, representatives of academia, legal practitioners representing both victims and those charged with acts of domestic violence, and representatives of the New Jersey State Bar Association.

Consistent with the Chief Justice's charge, the Committee explored such topics as current domestic violence laws, policies and procedures, the interaction of the Municipal and Superior Courts in domestic violence matters, the level and degree of domestic violence offenses, resources available to victims of domestic violence, treatment options for adjudicated offenders, education and training requirements for stakeholders and methods of risk assessment.

The Committee's discussions were a strong collaborative effort. Having active participation and frank input from divergent points of view informed and enriched the Committee process. The voice of the advocacy community factored considerably in the work of the Committee.

In the report that follows, recommendations are respectfully submitted for further consideration on a variety of topics, mostly focused on training, education and availability of services. Although some recommendations do suggest modest changes to court management techniques, the actual process of case management and adjudication of domestic violence cases in the court system was found not to be in need of significant amendment, but rather was recognized among the varied stakeholders to be a competent, fair and satisfactory process.

The following recommendations are seen by the Committee in many respects as a starting point for further dialogue and action in various sectors. Indeed, many recommendations, if adopted, may require legislation, change in court rules, additional study and administrative directives to enact meaningful and far-reaching change. The vexatious issue of funding looms large.

A. Methodology

Three subcommittees were formed to address a particularized subject consistent with the Committee's charge:

- Education and Training
- Resources
- Interaction between Municipal and Superior Courts/ Level and Degree of Offenses

Subcommittee membership was structured, where possible, to include a legislator, judge, other senior court personnel, legal practitioner, service provider, law school representative and domestic violence advocate. In this way, care was taken to achieve a cross-section of all pertinent points of view in addressing each subject area. Considerable overlap between and among the subcommittees was noted and is addressed in the final report.

Each subcommittee met multiple times, discussed its assigned subject area and where appropriate and feasible conducted research, analysis and review, ultimately submitting a written subcommittee report to the full Committee for evaluation, comment and approval. In addition, the chair of each subcommittee made an oral presentation of the subcommittee report to the full Committee which, in turn, discussed in an in-depth manner which recommendations should be included in the final report. Thus, the full Committee had input into which recommendations to make, how to articulate those recommendations and the language commenting on and elucidating each recommendation. Those subcommittee reports, as augmented and revised through plenary subcommittee sessions have been consolidated here to constitute the full Committee's final report.

B. Overview of the Domestic Violence Process in New Jersey

New Jersey's existing statutes, case law, policies and court processes are designed to facilitate the prompt resolution of domestic violence matters and provide relief to domestic violence victims. Depending on the nature of the complaint and relief sought, domestic violence matters move various ways through the New Jersey courts, with Family, Criminal and Municipal Courts each playing a role in the handling of domestic violence matters.

1. Civil Temporary Restraining Orders

Many domestic violence matters are initiated with a request for a civil temporary domestic violence restraining order (TRO). A TRO may be authorized during an ex-parte hearing by a Superior or Municipal Court judge. A TRO may or may not involve a companion criminal domestic violence matter (see section II). The TRO lasts until the hearing for a Final Restraining Order (FRO), which is scheduled within ten days of the TRO.

In calendar year 2014, there were 31,459 applications which resulted in 26,473 TROs being issued by the courts.

Victims may seek a TRO through the family division during normal business hours. During all other times, this civil relief may be granted by a Municipal Court judge.

a. Family

When seeking assistance at the family division, a victim's first point of contact is with the Domestic Violence Intake Unit, where the victim is interviewed privately and provided an opportunity to speak with a domestic violence victim advocate. A victim's second point of contact may be with a Domestic Violence Hearing Officer (DVHO), who is a specialized quasi-judicial court officer trained to hear domestic violence matters on an emergent basis. The court may grant temporary reliefs including, but not limited to, no contact provisions, financial support, possession of real and personal property, and custody of children.

b. Municipal

As noted, Municipal Court judges are authorized to handle emergent civil TRO requests during non-business hours – i.e., when emergent relief is needed during nights, weekends and holidays. Domestic violence victims in need of immediate relief contact their local police, who, in turn, contact the on-call Municipal Court judge. Between the municipal and family courts, victims of domestic violence have the opportunity to seek a TRO 24 hours a day, 7 days a week.

2. Civil Final Restraining Orders

All civil FROs are considered by a family division domestic violence judge, and are scheduled within 10 days of issuance of the TRO. On the day of the final hearing, the victim and the defendant wait in separate areas and the victim meets with the domestic violence victim advocate who may accompany the victim to the hearing. During the hearing, the judge hears testimony of the parties and witnesses. Based on the evidence presented, if the judge determines that an act of domestic violence has occurred, a FRO is entered. The granting of a civil FRO precludes the defendant from any contact with the victim. In addition to the reliefs entered in the civil TRO, reliefs available include, but are not limited to: visitation risk assessments, supervised visitation, participation in batterers' intervention programs, drug/alcohol assessments, psychological evaluation, and/or monetary compensation.

Upon entry of the civil FRO, the defendant is fingerprinted and photographed. The civil FRO is recorded in the Domestic Violence Central Registry (DVCR) which

provides real time information on all restraining orders. This registry is available to all law enforcement agencies and family court domestic violence staff and shares information with the National Crime Information Center. New Jersey is one of only a handful of states where civil FRO do not expire. In calendar year 2014, there were 5,739 FROs granted in the State of New Jersey.

C. The Handling of Criminal and Quasi-Criminal Domestic Violence Matters

1. Overview

As a result of a domestic violence act, (1) a victim may file a civil complaint to obtain a TRO and (2) law enforcement may file criminal/quasi-criminal charges against the alleged batterer. The handling of criminal/quasi-criminal complaints is separate and distinct from the civil relief (i.e., the temporary and FROs) available to victims. In addition to the civil procedures associated with processing restraining orders described above, the New Jersey courts also handle a large number of criminal and quasi-criminal complaints against the alleged batterers, as designated under N.J.S.A. 2C:25-19a. The responsibility for prosecuting alleged batterers of criminal acts of domestic violence lies with either the County Prosecutor or the Municipal Prosecutor.

2. Criminal and Quasi-Criminal Complaint Initiation

Complaints against batterers placed on a summons are typically filed with the court by law enforcement. Pursuant to New Jersey statutes and the Rules of Court, law enforcement may determine probable cause when issuing a summons for a criminal domestic violence complaint. During the initial complaint stage, many municipalities utilize domestic violence response teams, which are staffed by domestic violence volunteers. The domestic violence response teams are called to the police station to provide support and information to the victim.

Criminal domestic violence complaints are initially filed by law enforcement in Municipal Court. More than 43,000 criminal domestic violence complaints were filed in the Municipal Courts during the 2014 court year. This total includes 19,722 complaints linked to indictable complaints or a violation of a domestic violence restraining order (N.J.S.A. 2C:29-9b), as well as 23,688 complaints that fell within the initial jurisdiction of the Municipal Courts. Complaints linked to an indictable offense or violations of a domestic violence restraining order are transferred (within 48 hours) to the County Prosecutor for review.

3. Criminal Complaints within the Jurisdiction of the Superior Court, Criminal Part

Criminal domestic violence complaints filed in the Municipal Courts which are determined to be within the jurisdiction of the Superior Court, are transferred to the County Prosecutor within 48 hours of filing for review. Each County Prosecutor's

Office has a Domestic Violence Unit specifically designed to investigate and prosecute criminal domestic violence cases. In reviewing and handling these complaints, the Prosecutor's Office has by constitutional authority significant discretion, including: 1) administratively dismissing it; 2) downgrading it to a non-indictable charge and returning it to Municipal Court; 3) accepting a plea to an accusation; 4) agreeing to send the defendant to a pretrial intervention program; or 5) sending the complaint to the grand jury.

Matters maintained in the Superior Court by the County Prosecutor are subsequently scheduled for court. Most matters are scheduled in the criminal division, although cases involving a violation of a domestic violence restraining order (N.J.S.A. 2C:29-9b) are generally handled by the family division when the violation is a disorderly persons offense. All other indictable domestic violence matters are heard in the criminal division. All criminal and family court domestic violence cases are prosecuted by the County Prosecutor. Indigent defendants are provided with a public defender in the criminal division and represented by assigned counsel from the Madden list¹ in the family division. Throughout the Superior Court process, the County Prosecutor's office and the Victim-Witness Unit assist and communicate with domestic violence victims.

4. Quasi-Criminal Complaints within the Jurisdiction of the Municipal Court

During court year 2014, a total of 31,725 quasi-criminal domestic violence matters were adjudicated by the Municipal Courts. This includes domestic violence complaints initially falling within the jurisdiction of the Municipal Courts, as well as those complaints downgraded by the County Prosecutor and subsequently returned to Municipal Court. (Note: during court year 2014, approximately 42% of all domestic violence complaints sent to the County Prosecutor for review were later downgraded to a disorderly persons or petty disorderly persons offense and returned to Municipal Court.)

Quasi-criminal domestic violence matters adjudicated by the Municipal Court are scheduled for a hearing before a Municipal Court judge. The municipal prosecutor is provided with broad discretion and responsibility for prosecuting the case, while the municipal public defender represents eligible indigent defendants. Additionally, the County Victim Witness advocates and/or victim advocates from the local domestic violence program may be available to Municipal Courts to provide services and support to victims of domestic violence who are testifying in Municipal Court. The extent of available services differ by county and is typically coordinated through the municipal prosecutor.

¹ In Madden v. Delran, 126 N.J. 591 (1992), the Supreme Court reaffirmed the bar's duty to represent indigent defendants without pay where the Legislature has made no provision for the Public Defender to represent defendants who are entitled to counsel. Attorneys are assigned *pro bono* cases through the Administrative Office of the Court's *pro bono* computer system, which maintains an alphabetical list of attorneys eligible for *pro bono* assignment for each county.

Approximately one in five (19.1%) defendants were found guilty in Municipal Court on a domestic violence complaint during court year 2014. The majority of quasi-criminal domestic violence complaints were dismissed (79.6%), which is higher than the dismissal rate for other disorderly persons case types (46%). In Municipal Court, a large majority of dismissals occur upon motion of the prosecutor, often because the victim failed to appear in court, refused to testify, or because the prosecutor advised the court that they could not prove their case.

The Committee conducted an in-depth review of New Jersey's current domestic violence procedures and laws. As a result, the following report contains thirty recommendations to strengthen New Jersey's response to domestic violence.

II. TABLE OF RECOMMENDATIONS

Resources

<u>Recommendation 1</u>	Bar Associations should develop referral procedures to provide low or no cost legal assistance to parties litigating civil domestic violence cases.
<u>Recommendation 2</u>	Law schools should explore the use of law students to provide legal assistance to self or unrepresented parties litigating civil domestic violence cases.
<u>Recommendation 3</u>	The Judiciary should explore the development of court rules and procedures to allow domestic violence victims, in exceptional cases, to testify without being physically present in the courtroom for Final Restraining Order Hearings.
<u>Recommendation 4</u>	The Judiciary should expand the Hospital to Court Safety Assistance Project and the Safe House to Court Safety Assistance Project statewide to facilitate victims obtaining restraining orders.
<u>Recommendation 5</u>	The Judiciary should ensure that interpreting and translation services are provided to domestic violence litigants in both the municipal and Superior Courts.
<u>Recommendation 6</u>	The Judiciary should update the current Risk Assessment form and develop training for Judiciary staff on the utilization of the form.
<u>Recommendation 7</u>	The Judiciary should review and support the expansion of the current existing court ordered supervised visitation and safe exchange programs with a view toward standardized statewide availability and protocols.
<u>Recommendation 8</u>	Statewide expansion of therapeutic programs for children exposed to domestic violence.
<u>Recommendation 9</u>	The Office of Attorney General and the County Prosecutors should review policies for Domestic Violence Response Teams (DVRT) pursuant to <u>N.J.S.A. 2C:25-20(b)(3)(1)</u> and consider the following: 1)mandate automatic call out policies for accessing DVRT advocates; 2) provide more oversight to police departments with respect to their utilization of DVRTs.

Recommendation 10

County Domestic Violence Working Groups should be required to maintain up-to-date information regarding available domestic violence programs and services. Additionally, County Domestic Violence Working Groups should revisit their initial charge and compositions.

Recommendation 11

Create a Technology Task Force through the Supreme Court State Domestic Violence Working Group to explore all issues of technology related to domestic violence. This task force or Committee should include all stakeholders including law enforcement.

Education and Training

Recommendation 12

Municipal and applicable Superior Court judges and staff are required by statute N.J.S.A. 2C:25-20(b)(2) to attend annual domestic violence training. The Judiciary should broaden the content of training provided to judges and staff.

Recommendation 13

Pursuant to N.J.S.A. 2C:25-20(a)(2) law enforcement officers are required to attend four hours of domestic violence training annually. It is recommended that at least once every three years this training requirement be satisfied through in-person training, as opposed to on-line training. Furthermore, Domestic Violence Liaison Officers (DVLO), a sworn member of the department assigned by the municipal chief/public safety director, shall be required to attend additional annual domestic violence training and be a member of their County Domestic Violence Working Group.

Recommendation 14

All Assistant Prosecutors shall receive domestic violence training upon hiring as part of new employee training with refresher training as directed by the County Prosecutor.

Recommendation 15

Consideration be given by the Board on Continuing Legal Education (CLE) to adjust mandatory CLE requirements to provide incentive to private attorneys to obtain domestic violence training.

Recommendation 16

Certified matrimonial attorneys should be required to complete a minimum of three hours of domestic violence training as part of their periodic CLE requirement for re-certification.

- Recommendation 17** **N.J.S.A. 2B:25-10** should be modified to allow the Attorney General and respective County Prosecutor to require that municipal prosecutors attend needed training. This training should include, but not be limited to, domestic violence.
- Recommendation 18** New Jersey should adopt formal standards to govern the operations of Batterers Intervention Programs (BIP).
- Recommendation 19** Once BIP standards are established, the New Jersey Judiciary should only make court referrals to BIPs that are in compliance with State standards.
- Recommendation 20** New Jersey should develop a system wide, coordinated process for assessing risk and danger in domestic violence cases.
- Recommendation 21** The Judiciary should consider the development of a “Bench Guide of Risk in Domestic Violence Cases” that can aid judges in their decisions impacting alleged batterers and victims of domestic violence.

Interaction between Municipal and Superior Courts in Domestic Violence Cases

- Recommendation 22** Domestic Violence cases should be scheduled separately (staggered scheduling), when appropriate, from other municipal offenses.
- Recommendation 23** Municipal Courts should expand the use of domestic violence advocates in court proceedings.
- Recommendation 24** Police should acquire additional and complete contact information on the confidential Victim Notification Form, such as cell phone numbers, for victims, since non-appearance by a victim in Municipal Court is often due to communication difficulties, especially where the victim has relocated to avoid further acts of domestic violence.
- Recommendation 25** Municipal Court administrators should be given access to the Domestic Violence Central Registry (DVCR).
- Recommendation 26** Consideration should be given to including the acts of cyber-harassment and invasion of privacy as predicate acts under **N.J.S.A. 2C:25-19**.
- Recommendation 27** Consideration should be given by the court to allow the filing of a Non-Dissolution (FD) complaint for child support,

custody, paternity or parenting time (Part II relief section of FRO) when there is an active restraining order. This issue should be referred to the Conference of Family Presiding Judges.

Recommendation 28

The Court should be encouraged, in appropriate cases as permitted by law, to enter an order for ongoing child support in a Temporary Restraining Order (TRO) or Amended Temporary Restraining Order. The filing date of the TRO should be preserved for purposes of establishing child support.

Recommendation 29

New Jersey Court Rule 1:38-3(d)(9) should be modified to enable attorneys representing a defendant in a related criminal matter to obtain a copy of the recording or the transcript of the related FRO hearing.

Recommendation 30

Quasi-criminal matters within the jurisdiction of the Municipal Court, arising out of the same incident, should not be joined with the domestic violence civil restraining order for adjudication in Superior Court. Each court should maintain its current jurisdictional authority over domestic violence matters.

III. COMMITTEE FINDINGS AND RECOMMENDATIONS

A. Resources Subcommittee Recommendations

Introduction

The original charge of the Resources Subcommittee was to determine the availability of domestic violence resources for victims and batterers statewide. In order to identify these resources, the subcommittee reviewed the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.), the Domestic Violence Procedures Manual (DVPM), the New Jersey Coalition to End Domestic Violence Member Services, and other pertinent reference materials. Where a determination was made that the resources were inadequate or failed to meet critical needs of domestic violence victims and batterers, the subcommittee made recommendations for improvements.

The subcommittee identified four general areas to assess the availability and sufficiency of resources for domestic violence victims and batterers. Those areas are: 1) Safety; 2) Court Access; 3) Basic Needs; and 4) Counseling.

1. Safety

The New Jersey Prevention of Domestic Violence Act (PDVA) provides some of the most comprehensive protections in the country to victims of domestic violence. Ensuring the safety of the victim is the PDVA's paramount purpose. However, there are resources that could strengthen and augment the current statutory scheme, such as:

- Lethality assessments conducted by trained assessors to assess the danger posed by batterers
- Police accompaniment and protection
- Electronic tracking
- Safety planning in consultation with trained advocates
- Courthouse safety and separate waiting areas
- Emergency shelter
- Comprehensive referral information for victims and batterers to access needed services

2. Court Access

If domestic violence victims and batterers do not have meaningful access to the courts, then the panoply of protections afforded them will be lost. The Committee notes differences in the availability of court related resources from county to county and municipality to municipality. Gaps in services compromise a victim's ability to fully and safely participate in the civil and criminal justice systems. The following issues regarding court access were identified:

- Legal assistance is critical to ensuring that victims avail themselves of all the protections available under the domestic violence laws. It is also important to ensuring that defendants are afforded due process of law. The Family Court system, wherein most of the parties are self-represented, often places judges in the untenable position of assisting the pro se parties while maintaining neutrality and impartiality. Access to no cost or low cost legal representation, particularly in this civil arena, is crucial to both plaintiffs and defendants.
- Alternatives to being physically present in court, particularly in high risk cases should be explored. There should be increased access to and utilization of technological solutions, such as video and telephonic conferencing, for victims unable to appear in person.
- Expansion of the Hospital to Court Safety Assistance project and the Safehouse to Court Safety Assistance project² is needed to facilitate victims obtaining restraining orders while being treated at a hospital for injuries sustained or being sheltered at a safe house as a result of domestic violence.
- Ensuring availability of interpreting services in both municipal and Superior Court.
- There is a lack of availability of victim advocates in both the Municipal and Superior Courts.
- Separate waiting areas for victims and defendants are needed in the courtrooms. Additionally, the development of procedures is needed to ensure that victims and defendants remain separate throughout the entire process, including entering and leaving the courtroom and the courthouse.
- For Municipal Court matters, scheduling of domestic violence cases should be separate from other traffic or town ordinance related offenses. If a municipality is unable to separate the hearing dates for the domestic violence cases from the other case types, then procedures should be developed to

² New Jersey Administrative Directive #05-12, issued June 12, 2012, This program assists domestic violence victims seeking medical treatment for domestic violence-related injuries at hospital emergency rooms or domestic victims sheltered at a safe house by enabling the application for a domestic violence restraining order to be conducted via video connection with the court.

stagger the scheduling of the cases, for example, handle the domestic violence cases first.

- Providing Municipal Court Administrators access to the Domestic Violence Central Registry (DVCR) to aid law enforcement to effectuate proper service to the defendant and to provide the Municipal Court judge with pertinent information.
- Clarification of domestic violence (FV) and non-dissolution (FD) procedures to address issues related to long term relief.
- Strengthening fingerprinting procedures when a default order is entered in the defendant's absence so that essential identification information is entered into the fingerprint database.
- Development of criteria for determining the necessary expertise and training for a court appointed/referred risk assessor.
- Training on trauma informed/risk assessments and the impact on victims and children should be offered annually for court staff.
- Availability of court ordered risk assessments to low income litigants.
- Training on domestic violence trauma informed risk assessments should be available for supervised visitation providers.

3. Basic Needs

The PDVA authorizes the court to order the defendant to provide the plaintiff with affirmative relief to essentially meet the plaintiff's basic needs. Relief available under the PDVA includes: exclusive possession of the residence or rental of alternative housing by the defendant for the victim's benefit; temporary custody of the children; parenting time arrangements which include supervision or suspension pending a risk assessment; possession of household pets and personal property, such as an automobile; emergency monetary relief, including child support; and compensatory damages for losses suffered as a direct result of the domestic violence such as lost wages, repair costs, out of pocket medical expenses, counseling costs, moving expenses, and attorney's fees.

However, if the defendant is recalcitrant or defiant in complying with the court's order or the plaintiff has to seek shelter at an undisclosed location as a result of the domestic abuse, there may be delays in meeting these basic needs that may result in the unintended consequence of a forced reconciliation by the parties. In those circumstances, resources will be needed to meet the following basic needs:

- Child care, including during court appearances
- Housing (affordable, temporary, transitional and permanent)
- Medical and mental health services

- Counseling for the victim and the children
- Transportation
- Job training/education
- Employment
- Financial support, including emergency and temporary financial support as well as financial education and literacy
- Pet care

Domestic violence service providers are oftentimes able to provide the necessities needed to fill these gaps. However, there is wide divergence from county to county throughout the State as to the level of services available to victims to meet these basic needs. Statewide uniformity and consistency in the types and quality of services provided to domestic violence victims is needed to address these deficiencies.

In addition, the statewide domestic violence statistics for the 2014 calendar year demonstrate that approximately 80% of domestic violence victims are female while approximately 20% of domestic violence victims are male. In recognition of the fact that domestic violence victims are both females and males, there has been a national trend for domestic violence service provider agencies to demonstrate that they are non-discriminatory and that they serve victims of both genders. New Jersey domestic violence core service provider agencies should be encouraged to review their current policies and procedures to ensure that they are non-discriminatory and gender neutral.

4. Counseling

Counseling for both domestic violence victims and batterers is a critical component of this State's campaign to eradicate domestic violence. An area of concern identified by the subcommittee is the fact that Batterer's Intervention Program (BIP) standards have never been implemented in New Jersey either through legislation or policy. Therefore, New Jersey should implement statewide standards for BIPs.

Recommendations

The Resources Subcommittee submitted and the full Committee approved the following recommendations.

Recommendation 1 **Bar Associations should develop referral procedures to provide low or no cost legal assistance to parties litigating civil domestic violence cases.**

Legal assistance is critical to both ensuring that victims avail themselves of all the protections available under the domestic violence laws as well as guaranteeing that defendants are afforded due process of law. Most of the parties in these cases are self-represented which may often place judges in the untenable position of assisting pro se parties while maintaining neutrality and impartiality. Representation through Legal Services presents insurmountable restrictions for some litigants. Access to no cost or low cost legal representation in the civil arena, as mandated in the criminal arena, is crucial to both plaintiff and defendant. Currently, the New Jersey State Bar Association is also looking at this issue. They have created a Committee whose goal is to create a referral system whereby unemployed and underemployed lawyers can be brought together with clients who do not qualify for legal services and make too little to pay the traditional hourly rate of established attorneys.

Recommendation 2 Law schools should explore the use of law students to provide legal assistance to self or unrepresented parties litigating civil domestic violence cases.

Increasing opportunities for trained and supervised law students to provide legal assistance to parties is another means to augment scarce resources for legal assistance. Presently, the Family Law Clinic in the Seton Hall Law Center for Social Justice provides pro bono legal representation in restraining order hearings and other family law cases to indigent clients in the New Jersey courts. In addition, Rutgers Law School trains and supervises law students through two separate programs in its Camden location. In one program, trained law student volunteers provide legal information to unrepresented plaintiffs appearing for FRO hearings through a courthouse based program. In a second program, the law school operates a clinic course that allows third year law students to appear in court pursuant to New Jersey Court Rule 1:21-3(b) and provide direct representation to plaintiffs in FRO hearings and related litigation. Using the former program as a model that may be easily replicated, trained law students could intern with lead domestic violence agencies or victim advocates in other counties during summer months. In addition, post-graduate fellowships could be funded at legal services agencies in an effort to replicate the clinic course model. These and similar programs should explore the use of trained law students to also represent defendants in these matters.

Additionally, Rutgers Newark Law School has created a law firm of sorts that operates under the umbrella of the law school. The program hires graduates who have passed the bar and they represent clients for a substantially reduced hourly fee. A critical component of the program is that it is considered a Fellowship program. What this means is that the attorneys can defer their federal loans and receive health insurance coverage through the school.

Recommendation 3 The Judiciary should explore the development of court rules and procedures to allow domestic violence victims, in exceptional cases, to testify without being physically present in the courtroom for Final Restraining Order Hearings.

New Jersey Court Rule 5:7A authorizes a judge to issue a temporary restraining order upon sworn oral testimony of an applicant who is not physically present if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally. Expanded access to and utilization of technological solutions, such as video and telephonic

conferencing, should be explored for domestic violence victims who are unable to testify in person at the FRO hearing, particularly for victims in high risk domestic violence cases (currently, this is permitted and is in use for TRO applications). By way of analogy, in criminal prosecutions for aggravated sexual assault, sexual assault, aggravated criminal sexual contact, human trafficking involving sexual activity, child abuse or any action alleging an abused or neglected child, under N.J.S.A. 2A:84A-32.4, the court may under certain circumstances order the taking of the testimony of a witness 16 years of age or younger on closed circuit television out of the view of the jury, defendant or spectators. An order permitting closed circuit testimony under the statute may be entered if the court finds that the witness would suffer severe emotional or mental distress if required to testify in open court. If this recommendation is adopted, policy makers should consider court rules, laws and procedures for its implementation. Such court rule and procedures should require judges to assess a victim's physical safety and threats of escalating violence by the defendant; the impact of trauma on the victim, specifically Post Traumatic Stress Disorder (PTSD); as well as circumstances related to illness, injury or pregnancy that may prevent a victim from being able to physically appear in the courtroom.

Recommendation 4 The Judiciary should expand the Hospital to Court Safety Assistance Project and the Safe House to Court Safety Assistance Project statewide to facilitate victims obtaining restraining orders.

Hospitals and shelters should be strongly encouraged to participate in either the Hospital to Court Safety Assistance Project (hospital to court) or the Safe House to Court Safety Assistance Project. The hospital to court program allows victims to obtain a TRO while being treated at a hospital for injuries sustained as a result of domestic violence via video conferencing with a Domestic Violence Hearing Officer or Judge. The program allows the victim to obtain a TRO without traveling to the courthouse or police station and without leaving the hospital or shelter and running the risk of encountering the defendant without the protections afforded by the TRO. Hospital staff and law enforcement personnel are trained on the operation of the program. Currently the Hospital to Court program exists in the following counties: Passaic, Camden, Gloucester, Hudson, Middlesex, and Union. The statewide expansion of this program will increase access to the protections provided to domestic violence victims, however the main reason the six counties were able to successfully get the Hospital to Court program established was the cooperation from the hospitals. Many of the counties which do not have the program indicated that the major obstacle was resistance from the hospitals to participate in this program. Prior to statewide expansion, there should be outreach and education to the targeted hospitals. The Safe House to Court Safety program also exists in several counties: Atlantic, Bergen, Burlington, Camden, Cape May, Middlesex, Monmouth, Ocean, Passaic, Somerset and Union. While there are more counties involved with the Safe House to Court program, the issue of technology has been an ongoing problem. Due to technical difficulties, many times staff from these programs have had to use the telephone to connect to the court rather than utilizing the video technology.

Recommendation 5 The Judiciary should ensure that interpreting and translation services are provided to domestic violence litigants in both the Municipal and Superior Courts.

The Judiciary should ensure strict compliance with all existing court interpretation and translating protocols. Nearly one third of New Jersey's population speak languages other than

English at home.³ New Jersey's diversity requires the court system to serve the needs of individuals with a variety of language skills, preferences and proficiencies. There are areas in which limited language services and resources may cause additional safety risks to domestic violence victims, such as when victims are unable to understand the court process or documents or when defendants are unable to understand the restrictions and restraints imposed upon them in restraining orders. The Judiciary should develop strategies to increase the capacity of Municipal and Superior Courts to provide interpreting services to victims and defendants in domestic violence proceedings, including interpretation at court hearings, translation of court documents, as well as access to web-based information and resources via the NJ Courts website.

Recommendation 6 **The Judiciary should update the current Risk Assessment Form and develop training for Judiciary staff on the utilization of the form.**

The current court ordered Risk Assessment Form is in its original form and outdated. Risk assessments are conducted when parties to domestic violence restraining orders have children in common. The Risk Assessment Form should be reviewed and updated with information relevant to assessing the potential risk of harm to their child by the domestic violence defendant. Criteria should be developed for determining the necessary expertise and training for court appointed or referred risk assessors. Risk assessments may be completed by trained court professional staff within the Family Division or an outside professional. However, the parties should be informed that if an outside professional completes the risk assessment, there could be a fee. Further, court ordered risk assessments should be provided without cost to low income litigants.

Recommendation 7 **The Judiciary should review and support the expansion of current the court ordered supervised visitation and safe exchange programs with a view toward standardized statewide availability and protocols.**

The Judiciary receives an Access and Visitation Federal grant from the Administration for Children and Families. This grant is used for supervised visitation and neutral pick-up and drop-off sites. From this grant, New Jersey received \$215,683 for fiscal year 2016. Currently, 14 vicinages receive a portion of the grant monies and one vicinage receives funding from an outside source.

One of the issues with the current court access and visitation program is the lack of consistency and standardization statewide. While there is a program in each vicinage, the services and facilities vary from county to county. The statewide program needs to be evaluated to ensure that the same level of resources are available for all litigants.

Another issue with the court access and visitation program concerns those cases where there is a concurrent open investigation through the Division of Child Protection and Permanency (DCP&P). The court access and visitation program cannot conduct supervised visitation if there is an active DCP&P case. Given the short time frame within which FRO hearings are to be held, FRO hearings are often completed with the entry of the FRO prior to DCP&P completing an investigation. In these instances, domestic violence victims who have custody of their children may not have access to adequate resources to supervised parenting time visits with a

³ *US Census Bureau, 2013 American Community Survey*

batterer/parent. Courts are then left in the position of asking the victim/parent to identify a neutral party willing to supervise visitation. Neutral parties may be unwilling to be in the presence of a person they view as potentially dangerous, or simply may not be available. In other cases, neutral parties may not be readily identified. For these reasons, courts in each county should assess the availability of supervised visitation resources offered by DCP&P funded providers, non-profit organizations or other agencies. Access to these resources should be standardized statewide and protocols developed to ensure that courts are consistent with respect to orders concerning supervised visitation.

Recommendation 8 Statewide expansion of therapeutic programs for children exposed to domestic violence.

Studies show that children who are exposed to domestic violence experience trauma that may adversely affect their development into adulthood. Programs that focus on counseling children exposed to domestic violence should be expanded statewide so that these resources are available to children throughout the State. One example of such a therapeutic program, “Peace: A Learned Solution” or “PALS”, is an evidence based trauma therapy model for children who have experienced and/or witnessed domestic violence. The primary goal of the PALS program is to provide children and the non-offending parent with a safe environment to reduce the impact of domestic violence and improve family functioning. PALS is designed for children ages three to twelve and provides case management, creative arts therapy and related services for six months to a year. According to the 2016 Futures without Violence report, PALS is based upon the hypothesis that both violence and peaceful solutions are learned by children through experience. Just as children may learn to use violence through exposure to domestic abuse in the home, they can be taught to prefer and employ peaceful, problem solving solutions through the experience of an intensive therapeutic process.

An evaluation study of PALS compared children exposed to domestic violence who received six months of intensive treatment through PALS to children who participated in a 10-week psychoeducation group but did not receive the intensive treatment. At the end of the six-month intervention, children in the PALS intervention group demonstrated substantial improvement in emotional and behavioral functioning after the intervention compared to children who did not receive the intensive treatment.⁴ Programs such as this should be replicated statewide.

Recommendation 9 The Office of the Attorney General and the County Prosecutors should review policies for Domestic Violence Response Teams (DVRT) pursuant to N.J.S.A. 2C:25-20(b)(3)(1) and consider the following: 1) mandate automatic call out policies for accessing DVRT advocates; 2) provide more oversight to police departments with respect to their utilization of DVRTs.

⁴ *Promising Futures Best Practice for Serving Children, Youth and Parents Experiencing Domestic Violence*, retrieved April 11, 2016, <http://promising.futureswithoutviolence.org>

Law enforcement agencies are mandated through the New Jersey Prevention of Domestic Violence Act⁵ to establish or participate in an established domestic violence crisis response team. While most agencies, including the New Jersey State Police, participate in the DVRT program, there are significant inconsistencies in how and when the services of the DVRT are offered to victims of domestic violence. The Attorney General and the County Prosecutors should review the policies utilized by municipal and state law enforcement agencies regarding the DVRT program, mandate that departments utilize automatic call out policies and provide oversight to agencies in the administration of the program. An automatic call out policy would require law enforcement to contact the DVRT program each time they respond to a domestic violence situation that meets the criteria of a DVRT intervention.

Recommendation 10 County Domestic Violence Working Groups should be required to maintain up-to-date information regarding available domestic violence programs and services. Additionally, County Domestic Violence Working Groups should revisit their initial charge and compositions.

On September 24, 1991, then Chief Justice Wilentz and then Attorney General Del Tufo charged each Presiding Judge and County Prosecutor to convene or reconvene a County Domestic Violence Working Group to assist in the design of a county implementation and monitoring strategy, and provide an ongoing forum for identification and resolution of problems in the domestic violence prevention and protection process in each county. The working group meetings are a productive resource for discussing domestic violence processes and procedures. The group shall also consist of the Family Division Manager; Domestic Violence Team Leader; the DVHO; the Sheriff; the President of the Municipal Prosecutor's Association; the President of the County Chiefs' Association; a Criminal Division Liaison; a Municipal Court Liaison; the Director and Court Liaison of the local domestic violence program; a representative from each Municipal Court and County Prosecutor's Office (who handles domestic violence cases); the County Victim Witness Coordinator; the local batterer's group; DCP&P; the County Bar Association Family Law Section; and any other appropriate service provider. Working Groups shall meet at least quarterly. The Presiding Judge (or Family Division judge, in a multi-county vicinage) and County Prosecutor should serve as co-chairpersons.

County Domestic Violence Working Groups should be required to maintain up-to-date information regarding available domestic violence programs and services such as legal assistance to victims; counseling and mental health services for survivors, children and batterers; substance abuse treatment programs; available shelter beds for victims and children; extended services to include child care, transitional housing, emergency financial support, location of food pantries; medical insurance application assistance; transportation for court appearances; availability of separate waiting areas for municipal and Superior Court appearances; and availability of DVRTs in each municipality. The initial charge and composition of the County Domestic Violence Working Group should be the subject of renewed focus and, where needed, revised to include additional members, such as the DCP&P domestic violence liaison, Municipal Court judge, and Municipal Division Manager. Additionally, the Co-Chairs of each county working group should provide a yearly written report to the Administrative Director, Assignment Judge, and the Family

⁵ N.J.S.A. 2C:25-20 (b)(3)(1)

Presiding Judge, summarizing accomplishments and obstacles. Currently, the vicinage working groups are not required to provide any type of report recapping their yearly meetings. The successes and ideas in these reports could assist other counties who may have similar domestic violence issues.

Recommendation 11 Create a Technology subcommittee through the Supreme Court State Domestic Violence Working Group to explore all issues of technology related to domestic violence. This task force or Committee should include all stakeholders including law enforcement.

A subcommittee should be created to research issues such as the use of technology to capture evidence and transmit that evidence to courts for use by parties in FRO proceedings. The subcommittee should develop applications to allow police reports and photos taken by police officers, hearing officers or hospital staff to be provided to the court and the parties.

B. Education and Training Subcommittee

Introduction

The charge of the Education and Training Subcommittee was to focus on the minimum training requirements stakeholders involved in domestic violence matters should receive. In addition to that initial focus, the subcommittee expanded its mission to two other critical areas: the possible adoption of standards for Batterers Intervention Programs (BIP) and whether the Judiciary should develop a domestic violence risk assessment bench card and related protocol.

Recommendations

Education and Training

The subcommittee undertook a systematic review of the applicable legislation and available agency protocols associated with domestic violence training provided to law enforcement, judiciary staff, judges, prosecutors, service providers, attorneys, and others. That review focused on both the amount of training provided and, where available to the subcommittee, the training content. As a result of that review, the subcommittee presented for the full Committee's consideration the following recommendations which were adopted by the full Committee⁶.

Recommendation 12 Municipal and applicable Superior Court judges and staff are required by statute, N.J.S.A. 2C:25-20(b)(2), to attend annual domestic violence training. The Judiciary should broaden the content of training provided to judges and staff.

⁶ The Resources Subcommittee specifically joins and endorses all recommendations of the Education and Training Subcommittee having found substantial overlap in the areas under review by each subcommittee. The Resources subcommittee also had considerable discussion on these and related topics and reached substantially the same conclusions. Comments include Resource subcommittee and Education and Training subcommittee comments.

As indicated above, the Committee reviewed the legislative requirements and general Judiciary protocols for providing training to judges and staff. All Judges and appropriate staff responsible for handling domestic violence cases receive comprehensive domestic violence training shortly after appointment as well as statutorily mandated annual training

The Committee recognizes that the minimum training requirements (amounts) set forth in the legislation and various Judiciary protocols are appropriate for helping to insure that judges and staff involved in the handling of domestic violence cases remain up-to-date with regard to applicable legislation, case law, general procedures and evolving trends. Where the Committee believes that additional focus is warranted, however, is in the breadth and content of that training. Specifically, it is recommended that the Judiciary continually strive to incorporate domestic violence topics that include the most up-to-date research and domestic violence literature. In addition to current training initiatives, the subcommittee suggests that the Judiciary continually add training topics focusing on the below areas:

- Basic domestic violence dynamics
- The impact of domestic violence on children
- Trauma informed danger assessments
- The distinction between BIP and anger management programs
- Domestic violence risk factors and lethality

Additionally, the Committee concludes that Judiciary domestic violence training curricula should continue to be developed based on the needs and responsibilities of the involved participants. While certain core concepts should continue to be offered to all participants, the Committee believes that not all training topics are applicable to all parties. For example, training provided to judges should sometimes differ from training provided to staff. Similarly, Municipal Court judge training should differ from training offered to Family Division Judges. Family Division judges, for example, are required to receive in-depth training regarding the issuance of FROs. Such comprehensive training on that topic need not be taken by Municipal Court judges because those judges do not preside over FRO hearings. The training provided to judges and domestic violence hearing officers should reinforce procedures for hearing applications for TROs, including inquiring whether victims have had an opportunity to speak with a DVRT member. Trauma informed danger assessments should also be included in all domestic violence training.

Recommendation 13 Pursuant to N.J.S.A. 2C:25-20(a)(2) law enforcement officers are required to attend four hours of domestic violence training annually. It is recommended that at least once every three years this training requirement be satisfied through in-person training, as opposed to on-line training. Furthermore, Domestic Violence Liaison Officers (DVLO), a sworn member of the department assigned by the municipal chief/public safety director, shall be required to attend additional annual domestic violence training and be a member of their County Domestic Violence Working Group.

Law enforcement officers are statutorily mandated to satisfy four hours of domestic violence training annually. This requirement is satisfied through a variety of means, including in-house training, county-level training, and on-line training through *New Jersey Learn*⁷. Of significance is that, for many officers, this annual training is oftentimes satisfied solely through on-line training methods, as opposed to on-site training where instructors may be better able to respond to critical questions.

The above recommendation is intended to insure that law enforcement officers are periodically required to attend in-person, instructor-led training. The training provided to police officers should emphasize the need for police officers to document a history of abuse as appropriate within the TRO complaint and to fully set forth the victim's allegations of domestic violence in the TRO complaint, including past domestic violence history. Moreover, the Committee recommends that the general training topics identified in the commentary for recommendation number twelve above should be considered, as appropriate, when developing law enforcement training.

Recommendation 14 All Assistant Prosecutors shall receive domestic violence training upon hiring as part of new employee training with refresher training as directed by the County Prosecutor.

All Assistant County Prosecutors should receive domestic violence training upon being hired and should receive domestic violence refresher training as directed by the County Prosecutor. The Committee recognized that not all Assistant County Prosecutors who handle domestic violence matters receive refresher training. The following topics should be considered for inclusion in the training curriculum:

- Basic domestic violence dynamics
- The impact of domestic violence on children
- Trauma attributable to domestic violence
- The distinction between BIP and anger management programs
- Domestic violence risk factors and lethality

County Prosecutors periodically hold in-house domestic violence training attended by County Assistant Prosecutors. Select Assistant Prosecutors may also be required to attend training offered by other entities. Although domestic violence training is currently being provided to most, if not all, Assistant County Prosecutors, the Committee recommends that there be a minimum of four hours training annually for all County Assistant Prosecutors who handle domestic violence cases. This four hour requirement is consistent with training required by other stakeholders (e.g. judges and law enforcement).

⁷"NJ Learn" is a complete e-learning management system (LMS) managed by the New Jersey Office of Homeland Security and Preparedness for New Jersey Certified and Sworn First Responders.

Recommendation 15 Consideration be given by the Board on Continuing Legal Education (CLE) to adjust mandatory CLE requirements to provide incentive to private attorneys to obtain domestic violence training.

This recommendation is designed to help promote a greater awareness of domestic violence issues.

All New Jersey attorneys are required to complete four credits of ethics training over a 24 month cycle as part of their general CLE requirements. Satisfying these requirements, however, is not always easy, as only a limited number of trainings are deemed ethics related. One option for consideration may be to allow domestic violence credits to be substituted for some ethics credits. Another option may be to allow double credit or credit and a half for private practitioners attending domestic violence training.

The Committee believes that encouraging the Bar to become more knowledgeable about domestic violence and related issues would provide a significant system benefit.

Recommendation 16 Certified matrimonial attorneys should be required to complete a minimum of three hours of domestic violence training as part of their periodic CLE requirement for re-certification.

Due to the prevalence of domestic violence in matrimonial matters, the Committee recommends that certified matrimonial attorneys be required to attend a minimum of three hours of domestic violence training every two years as part of their CLE obligation. The Committee believes this will help insure that all certified matrimonial attorneys maintain an understanding of the dynamics of domestic violence in matrimonial matters. The following topics should be considered for inclusion in the training curriculum:

- Basic domestic violence dynamics
- The impact of domestic violence on children
- Trauma attributable to domestic violence
- The distinction between BIP and anger management programs
- Domestic violence risk factors and lethality

Recommendation 17 N.J.S.A. 2B:25-10 should be modified to enable the Office of the Attorney General and respective County Prosecutor to require that municipal prosecutors attend needed training. This training should include, but not be limited to, domestic violence.

Municipal prosecutors play a vital role in the handling of all Municipal Court cases. That role is never more important, and the societal impact never greater, than in the handling of domestic violence cases. Presently, domestic violence training is mandatory for police, judges and other involved court personnel. The recommendations previously identified by the Committee would enhance and extend that requirement to law enforcement, Assistant County Prosecutors and select private attorneys. Consistent with those recommendations, the Committee believes that domestic violence training should be mandatory for all municipal prosecutors, given their responsibility for

representing not only the interests of the State, but also domestic violence victims, at Municipal Court proceedings.

The major impediment to requiring municipal prosecutors to complete domestic violence training is the statutory language of N.J.S.A. 2B:25:10 which states:

The Attorney General in consultation with the county and municipal prosecutors may develop curricula for training programs for all municipal prosecutors. Participation in such training programs shall be voluntary. An attorney successfully completing a training program shall receive such certification or recognition as deemed appropriate by the Attorney General (emphasis added).

That statute specifically precludes the Attorney General or respective County Prosecutor from mandating that municipal prosecutors attend any type of training, including domestic violence training. The Committee recommends that the statute be modified as follows:

The Attorney General in consultation with the county and municipal prosecutors [may] shall develop curricula for training programs for all municipal prosecutors, which shall include domestic violence training. Participation in such training programs shall be [voluntary] mandatory. An attorney successfully completing a training program shall receive such certification or recognition as deemed appropriate by the Attorney General.

Batterers Intervention Programs

Batterers Intervention Programs (BIP) play an important role in New Jersey and nationally in helping reduce the number of incidents of domestic violence. BIPs typically consist of educational classes or treatment groups for batterers, but can include other intervention elements, such as individual counseling or offender evaluation. New Jersey is one of only a handful of states that has not formally adopted or implemented standards by which BIPs must operate. The Committee presents the following recommendations involving BIPs.

Recommendation 18 New Jersey should adopt formal standards to govern the operations of Batterers Intervention Programs.

The Committee believes the development of common standards for BIPs is necessary to establish a uniform structure and process by which all programs can attain the following goals: prevent future incidents of domestic violence, enhance victim safety, and require offender accountability. BIP standards will promote a consistent approach among service providers, while at the same time promoting program accountability for services provided and general outcomes. BIP standards will also help establish an important level of expertise necessary within New Jersey's programs, as well as the need for ongoing training and research. Finally, the development of specific BIP standards will serve to provide an important distinction between BIPs and anger management programs. Anger management programs, while helpful in certain situations, have been found to actually increase incidents of domestic violence in others.

Other states and jurisdictions have taken varying approaches when adopting BIP standards. The Committee feels strongly that standards would best be adopted through legislation. This

would reaffirm New Jersey's commitment to domestic violence victims, as well as help provide much needed structure regarding what entity(s) would be responsible for monitoring and enforcing the adopted standards. The collaborative legislative process also best enables important input by all stakeholders. Finally, only through legislation can essential funding be allocated to aid in the overview and enforcement of these standards. Any requirement for batterers to undergo a BIP, particularly if included with the imposition of a sentence, should address financial implications and ensure that lack of means will not prevent the batterer from accessing these programs.

Finally, the Committee identified the five factors it believes all BIPs should contain. The Committee believes that any adopted standards must contain these elements:

1. The primary purpose of the program shall be victim and child safety. To help accomplish this objective, the program must include ongoing risk assessments.
2. Offender accountability shall be a central component of the BIPs content. Offenders are to be held accountable for their behavior and provided with services geared towards behavioral change.
3. An essential element of BIPs content must address the tactics of power and control and the understanding of domestic violence as a domination and control issue. BIPs are not to be confused with anger management programs or substance abuse programs.
4. All successful BIPs shall have a swift and certain compliance protocol, including prompt and effective court review for noncompliance. Programs shall be required to refer noncompliant participants to the court, and the courts should be mandated to promptly address the noncompliance. Compliance and accountability with consequences are an essential standard that will improve outcomes and victim safety.
5. All programs shall be accountable for the effective implementation of the standards, and be subject to periodic compliance reviews.

Recommendation 19 Once BIP standards are established, the New Jersey Judiciary should only make court referrals to BIPs that are in compliance with State standards.

Recommendation 18 above makes reference to the adoption of statewide standards for BIPs, through legislation. Once adopted, it is recommended that the Judiciary, either through its rule making authority or through an administrative directive, enact policy requiring Superior and Municipal Court judges to make referrals only to BIPs deemed to be in compliance with established standards. The Committee acknowledges, however, that not every jurisdiction has a BIP and this needs to be contemplated in the development of any such policy.

Domestic Violence Risk and Danger Assessment

A review of the available literature concerning the development of a domestic violence risk assessment and lethality measuring tools was conducted. In general, the literature illustrates that the development and use of such tools can provide decision makers with key information on which to make decisions that can better protect today's victims of domestic violence from also being tomorrow's victims. The Committee approved the following recommendations concerning this area of study.

Recommendation 20 New Jersey should develop a system wide, coordinated process for assessing risk and danger in domestic violence cases.

The objective for developing a system wide approach to assess risk and danger in domestic violence cases is to ensure that there is common language across all system stakeholders with the overriding goal of preventing domestic violence homicides and serious injury, while at the same time assisting victims and stakeholders in the implementation of risk planning. A sound risk and danger assessment strategy begins at the first responder level and continues through all stages of the criminal justice and service provider process. In short, it is an ongoing process that can result in better safety planning strategies for victims.

A risk and danger assessment strategy provides guidance as to which cases of domestic violence have an increased likelihood of risk that requires greater judicial intervention and more careful monitoring. It also assists in the prioritization of limited resources for high risk cases. A coordinated program can result in improved safety for victims and children.

A number of states have already adopted a system wide risk and danger assessment program. However, many of these programs are locally based and not available statewide. For example, Connecticut and Delaware have statewide programs while Missouri, Oklahoma, Indiana, Massachusetts, Vermont and Virginia all have county or regional based programs.⁸ In New Jersey, the development of a statewide coordinated approach should include participation by all key stakeholders, particularly the Supreme Court Statewide Domestic Violence Working Group, the Attorney General and the Judiciary. Once fully vetted, the implementation of this comprehensive strategy should be included in the Domestic Violence Procedures Manual.

Recommendation 21 The Judiciary should consider the development of a “Bench Guide of Risk in Domestic Violence Cases” that can aid judges in their decisions impacting alleged batterers and victims of domestic violence.

Judges and court staff should be in a position to recognize the red flags of potential high risk domestic violence cases. In 2009, the state of Minnesota, developed a research-based “Bench

⁸ Review of Lethality Assessment Programs (LAP), retrieved April 11, 2016, <http://postandcourier.com/tilldeath/assets/d1-25.pdf>

Guide of Risk in Domestic Violence Cases”⁹ that can aid in that regard. This guide could help judges identify domestic violence cases that have an elevated level of risk. The Minnesota bench guide can provide the framework for the development of a similar tool for use in New Jersey.

In conjunction with the development and implementation of a domestic violence risk/danger assessment, a Bench Guide of Risk in Domestic Violence Cases can aid judges in making decisions impacting domestic violence victims and batterers. These decisions may include authorizing electronic monitoring and alternatives to in person courtroom testimony.

In order for the court to make informed decisions regarding the risks posed to victims the following factors should be considered: escalating violence in terms of frequency and severity, abuse during pregnancy, strangulation, stalking, presence of children during incident, substance use/abuse and mental health issues. The proposed bench card would assist this inquiry. The development should include input from all relevant stakeholders, including the Conference of Family Presiding Judges. Finally, use of such a tool, if developed, at any hearing other than a FRO hearing requires further analysis and consideration of constitutional implications.

C. Interaction between Municipal and Superior Courts/Level and Degree of Offenses Subcommittee

Introduction

The primary purpose of the subcommittee was to look at Municipal, Family and Criminal Courts to examine what currently exists, what is working, and what may need to be enhanced. The subcommittee also considered the current domestic violence laws and the degree of offenses. The subcommittee submitted the following recommendations which were approved by the full Committee¹⁰.

Recommendations

Interaction between Municipal and Superior Courts in Domestic Violence Cases

The subcommittee focused on the variety of issues regarding the scheduling of domestic violence cases in both the Municipal and Superior Courts.

⁹Domestic Violence Risk Assessment Bench Guide, retrieved April 11, 2016, http://www.bwjp.org/assets/documents/pdfs/domestic_violence_risk_assessment_bench_guide.pdf

¹⁰ The Resource Subcommittee specifically joined and endorsed Recommendations #22, 23, 25, 27 and 28 having found substantial overlap in a number of areas under review by each subcommittee. The Resources Subcommittee also had considerable discussions on these and related topics and reached substantially similar conclusions.

Recommendation 22 Domestic Violence cases should be scheduled separately (staggered scheduling), when appropriate, from other municipal offenses.

Concern was expressed that victims who appear in Municipal Court to testify against the defendant have to wait with litigants involved in a variety of other cases, i.e. traffic, disorderly conduct and ordinance offenses. Some victims are required to remain in the same Municipal Court room or waiting area with the defendant on their own case for extended periods before their case is called. Many larger Municipal Courts have been able to schedule domestic violence cases on separate days or to stagger the time set for the court appearance so these cases are not mixed in with other pending cases. However, smaller jurisdictions do not have the administrative ability to separate the domestic violence cases. Many of these smaller jurisdictions schedule court sessions once per month, and for limited court sessions. The Committee recommends that all Municipal Courts be sensitive to the needs of victims in regards to both secure waiting areas and that the scheduling of these cases be done in a manner to minimize the impact of a court appearance upon the victim of domestic violence.

Recommendation 23 Municipal Courts should expand the use of Domestic Violence advocates for court proceedings.

Domestic Violence advocates are regular attendees and participants in Superior Court proceedings. However, these important resources are not always available to the victim who appears in Municipal Court. The role of the domestic violence advocate at Municipal Court hearings is important to the structure of these hearings. The advocates give the victim support and are able to answer their questions. Their supportive presence enhances the ability of a victim to give testimony. The court process at all levels is smoother for all involved when the domestic violence advocate is available. These advocates are often trained volunteers. Not every municipality has access to a network of advocates, and even if there are advocates available to accompany a victim to court, the advocates are often not made aware of the pending case involving allegations of domestic violence.

The Committee suggests that the Office of Victim Witness Advocacy in each county Prosecutor's office should explore expanding the role of the domestic violence advocate in the Municipal Court, including assistance in coordinating and communicating with advocates to accompany victims to Municipal Court proceedings.

Recommendation 24 Police should acquire additional and complete contact information on the confidential Victim Notification Form, such as cell phone numbers, for victims, since non-appearance by a victim in Municipal Court is often due to communication difficulties, especially where the victim has relocated to avoid further acts of domestic violence.

Effective notice to victims of Municipal Court proceedings is a significant issue. Many times the victims address provided to the Municipal Court is invalid because the victim has relocated and left his/her prior residence. The inability of the State to produce the victim for testimony often causes delays in scheduling and ultimately dismissal of a complaint. Notification by the prosecuting authority of a victim by cell phone (or to a designated cell phone number) will

reduce adjournments for non-appearance and further the goal of a just disposition of a case on the merits.

Recommendation 25 Municipal Court Administrators should be given access to the Domestic Violence Central registry (DVCR).

There are defendants who appear in Municipal Court who have not been served with a restraining order issued against them. Currently, the Municipal Court administrator does not have the ability to look in the DVCR to see if a restraining order exists and, if so, whether it has been served. If the DVCR denotes there is an unserved order, the Municipal Court administrator may alert court and law enforcement so that proper service could be effectuated by law enforcement.

This will have the effect of reducing the number of cases in the Superior Court that are adjourned for lack of service, and will also decrease the number of court appearances at all levels by victims who are required to come back on another date due to lack of service upon the defendant. This will also enhance the scope of remedies and relief available to a victim, since unless a defendant is served, the Court may not enter a FRO. This includes Part II relief(s) under the restraining order, for example, to set child support, medical coverage and other relief permitted by law.

Recommendation 26 The subcommittee recommends that consideration be given to including the acts of cyber-harassment and invasion of privacy as predicate acts under N.J.S.A. 2C:25-19.

The Committee believes there is a need for additional predicate acts under N.J.S.A. 2C:25-19 for victims to have a basis to file for a restraining order. While most of the acts were covered under existing law, the Committee recommends that the Legislature consider adding cyber-harassment and invasion of privacy. These additional predicate acts would reflect the current trend of using electronic and social media based harassment as an avenue for committing acts of domestic violence.

On January 17, 2014, cyber-harassment was defined as a criminal act under N.J.S.A. 2C:33-4.1, but the amendments to the harassment statute did not specifically include this conduct as a basis for obtaining a domestic violence restraining order. Cyber harassment includes acts, conduct or communication by which, while online using any electronic device or a social networking site and with the purpose to harass another, that person:

Threatens to injure or harm a person or that person's property:

1. Knowingly sends, posts, comments, requests, suggests, or proposes lewd, indecent, or obscene material to or about a person with the intent to emotionally harm a reasonable person or place a reasonable person in fear of physical or emotional harm to his person; or
2. Threatens to commit a crime against a person or his or her property. Another violation recommended by the Committee for inclusion in N.J.S.A. 2C:25-19 is "Invasion of Privacy" N.J.S.A. 2C:14-9, which provides:

- a. An actor commits a crime of the fourth degree if, knowing that he is not licensed or privileged to do so, and under circumstances in which a reasonable person would know that another may expose intimate parts or may engage in sexual penetration or sexual contact, he observes another person without that person's consent and under circumstances in which a reasonable person would not expect to be observed.
- b. An actor commits a crime of the third degree if, knowing that he is not licensed or privileged to do so, he photographs, films, videotapes, records, or otherwise reproduces in any manner, the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, without that person's consent and under circumstances in which a reasonable person would not expect to be observed.
- c. An actor commits a crime of the third degree if, knowing that he is not licensed or privileged to do so, he discloses any photograph, film, videotape, recording or any other reproduction of the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, unless that person has consented to such disclosure.

The foregoing recommendations reflect that the experience of the members of the Committee support a need to address the use of the internet, electronic communications and social media as a mechanism for causing embarrassment; trauma and emotional distress to victims of domestic violence.

Superior Court Case Management Process

Recommendation 27 Consideration should be given to allow the filing of a Non-Dissolution (FD) complaint for child support, custody, paternity or parenting time (Part II relief section of FRO) when there is an active restraining order. This issue should be referred to the Conference of Family Presiding Judges.

The current protocol and policy under section 1103 of the Non-Dissolution (FD) manual states the following:

“A new Family Case should not be established when the client filing has an active FV (Domestic Violence) case, (TRO, extended TRO, or FRO) the party should be referred to the Domestic Violence Team/Unit for further service. (If parties have been involved in a Domestic Violence action, Non-Dissolution is prohibited from taking a complaint for custody, visitation or child support unless all Domestic Violence complaints and/or reliefs have been dismissed). If all complaints and reliefs of an FV action have been dismissed, a Non-Dissolution complaint may be taken.”

This provision was included in the FD manual to avoid establishing two dockets for the same parties. This also avoids different judges entering orders that may conflict relative to custody, parenting time, child support and other reliefs for the same parties.

However, there is a benefit in permitting a concurrent non-dissolution case to be filed when a restraining order exists. A large percentage of domestic violence cases are dismissed, either for lack of proof, prosecution or at the request of the victim. An order entered under the non-dissolution docket is more likely to endure, creating greater stability for custody, parenting time and child support orders. A later filed non-dissolution complaint would carry a later filing date than the domestic violence order. However, in the discretion of the Court the earlier date could be preserved. The domestic violence docket lacks a mechanism for dealing with complex custody and parenting time issues. Recognizing the evolution of the family unit in modern society, the Supreme Court has recently permitted the establishment of a complex track in the non-dissolution case type. Additionally, a concurrent dissolution complaint may be filed with an existing domestic violence restraining order. The Committee therefore recommends this same practice be allowed for non-dissolution when a domestic violence restraining order exists.

Recommendation 28 **The Court should be encouraged, in appropriate cases as permitted by law, to enter an order for ongoing child support in a Temporary Restraining Order or Amended Temporary Restraining Order. The filing date of the TRO should be preserved for purposes of establishing child support.**

Upon entry of a FRO, the Court may enter an order for ongoing child support. However, the issue discussed by the Committee was whether an order for ongoing child support should be entered as part of the TRO, since in some cases there is an extended time period between the entry of the TRO and the final hearing and entry of the FRO. During this time period between the TRO and the FRO, the victim may not be receiving ongoing support (although the statute permits emergent interim financial relief). Provided both parties are present in Court, for example, if there is an emergent hearing on an FRO or there is an application to modify an FRO, the Court should be permitted to take testimony relative to calculating child support under the guidelines, without prejudice to a final determination. The effective date of the interim child support order would preserve the date for any later modifications or changes to the child support amount if a FRO is entered, or if a non-dissolution complaint for family support is later filed. This will enable the victim to receive ongoing child support and the benefits of enforcement of that support obligation by the Vicinage Probation Division.

Recommendation 29 **New Jersey Court Rule 1:38-3(d)(9) should be modified to enable attorneys representing a defendant in a related criminal matter to obtain a copy of the recording or the transcript of the related Final Restraining Order hearing.**

Criminal defense attorneys are not entitled to the transcript of the FRO hearing if they were not the attorney of record during the FRO proceedings. R. 1:38-3(d)(9) excludes domestic violence records and reports from the public. The practice among counties is not consistent. Committee members reported some counties will give an attorney of record access to transcripts of the domestic violence hearing, whereas others do not release the transcript. Effective representation

is compromised in the absence of a uniform policy. The Committee recommends that the conflict be resolved and a uniform policy on access to these records be established.

No Specialized Domestic Violence Court

Recommendation 30 Quasi-criminal matters within the jurisdiction of the Municipal Court, arising out of the same incident, should not be joined with the domestic violence civil restraining order for adjudication in Superior Court. Each court should maintain its current jurisdictional authority over domestic violence matters.

A criminal domestic violence charge may be filed in the Municipal Court and simultaneously a civil complaint for a restraining order may be filed in the Superior or Municipal Court. Current practice is that the victim addresses these cases in two separate courts. In both the subcommittee and full Committee, an extensive discussion ensued on whether the Superior Court should hear and decide municipal cases that arise out of the same incident at the time of entry of a restraining order. This would allow the victim to go to one court for both the civil restraining order and the criminal charge(s) instead of going to different courts potentially multiple times. Concerning the issue of tethering the criminal charge to the restraining order and having everything heard in Superior Court, the following concerns were recognized as barriers:

- The Superior Court does not always know a criminal charge is filed.
- The quick return date for FRO hearings (ten days).
- The prosecutor is not involved nor are they present for restraining order hearings in the Superior Court (Would the state prosecutor now take on all of these cases?)
- Differing standards of proof
- Generally there is no discovery in restraining order matters
- Representation of the defendant (Who would represent the defendant, the municipal public defender or the state public defender?)

A related issue concerns a victim's request to dismiss a restraining order prior to or at the FRO hearing. Some of these cases may have an associated municipal charge. Streamlining this process for the victim by having the Superior Court judge adjudicate the municipal charges at the same time as the dismissal of the TRO was also discussed in detail. Regarding the issue of the Superior Court hearing both the dismissal of the TRO and adjudicating the municipal charges the following were identified as barriers:

- The prosecutor is not involved in these restraining order proceedings.
- Representation of the defendant (Who would represent the defendant, the municipal public defender or the state public defender?)

- Dismissal of the criminal complaint (Does the victim feel pressure to make a decision to dismiss the criminal complaint just because they dismissed the restraining order?)
- If the victim is dismissing the TRO prior to the FRO hearing, the defendant would not be present and therefore another hearing date would have to be scheduled.

The subcommittee did not reach consensus and submitted these two issues for further analysis and discussion by the full Committee. Following a full elucidation of the issues and considerable discussion, the Committee weighing the pros and cons of merging Municipal Court matters with domestic violence hearings and dismissals, concluded that the barriers outweighed the benefit of merging Municipal Court and Superior Court matters. Therefore, the Committee recommends that the status quo procedure be maintained and no such merger of courts should take place, each court continuing its current jurisdictional authority over domestic violence matters.

IV. CONCLUSION

The Committee, through its three subcommittees and discussion in plenary sessions has reviewed and evaluated the multiple facets of current domestic violence laws and policies, taking into account the point of view of all stakeholders. The results of the Committee's deliberations are the foregoing recommendations some of which require legislative action, court rule changes and other policy initiatives and directives as well as sufficient additional resources. All of the recommendations are proffered as a means of furthering the commitment of the state of New Jersey to address the critical issue of domestic violence and its far reaching effects.

Respectfully Submitted,

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APPENDIX

Minnesota Domestic Violence Risk Assessment Bench Guide

****NOTE: This is a suggested tool that has not formally been implemented statewide nor adopted by the Supreme Court but may be helpful to you in your practice. It was drafted by the MN Gender Fairness Implementation Committee.**

Domestic Violence Risk Assessment Bench Guide

*A research-based bench guide for use by Minnesota judges
at all stages of family, Order for Protection, civil or criminal involving domestic violence*

Note: The **presence** of these factors can indicate **elevated risk** of serious injury or lethality. The **absence** of these factors is not, however, evidence of the absence of risk of lethality.

1. Does alleged perpetrator have access to a **firearm**, or is there a firearm in the home?
2. Has the alleged perpetrator ever used or threatened to use a **weapon** against the victim?
3. Has alleged perpetrator ever attempted to **strangle** or choke the victim?
4. Has alleged perpetrator ever **threatened to or tried to kill** the victim?
5. Has the physical **violence increased in frequency or severity** over the past year?
6. Has alleged perpetrator **forced** the victim to have **sex**?
7. Does alleged perpetrator try to **control** most or all of victim's **daily activities**?
8. Is alleged perpetrator constantly or violently **jealous**?
9. Has alleged perpetrator ever threatened or tried to commit **suicide**?
10. Does the **victim believe** that the alleged perpetrator will re-assault or attempt to kill the victim? *A "no" answer does not indicate a low level of risk, but a "yes" answer is very significant*
11. Are there any pending or prior Orders for Protection, criminal or civil cases involving this alleged perpetrator?

These risk assessment factors are validated by a number of studies. See Campbell, Jacquelyn, et al., "Intimate Partner Violence Risk Assessment Validation Study: The RAVE Study Practitioner Summary and Recommendations: Validation of Tools for Assessing Risk from Violent Intimate Partners", National Institute of Justice (December, 2005); Heckert and Gondolf, "Battered Women's Perceptions of Risk Versus Risk Factors and Instruments in Predicting Repeat Reassault", Journal of Interpersonal Violence Vol 19, No 7 (July 2004).

How To Use The Domestic Violence Risk Assessment Bench Guide

- **Obtain information regarding these factors through all appropriate and available sources**
 - Potential sources include police, victim witness staff, prosecutors, defense attorneys, court administrators, bail evaluators, pre-sentence investigators, probation, custody evaluators, parties and attorneys
- **Communicate to practitioners that you expect that complete and timely information on these factors will be provided to the court**
 - This ensures that risk information is both sought for and provided to the court at each stage of the process and that risk assessment processes are institutionalized
 - Review report forms and practices of others in the legal system to ensure that the risk assessment is as comprehensive as possible
- **Expect consistent and coordinated responses to domestic violence**
 - Communities whose practitioners enforce court orders, work in concert to hold alleged perpetrators accountable and provide support to victims are the most successful in preventing serious injuries and domestic homicides
- **Do not elicit safety or risk information from victims in open court**
 - Safety concerns can affect the victim's ability to provide accurate information in open court
 - Soliciting information from victims in a private setting (by someone other than the judge) improves the accuracy of information and also serves as an opportunity to provide information and resources to the victim
- **Provide victims information on risk assessment factors and the option of consulting with confidential advocates**
 - Information and access to advocates improves victim safety and the quality of victims' risk assessments and, as a result, the court's own risk assessments
- **Note that this list of risk factors is not exclusive**
 - The listed factors are the ones most commonly present when the risk of serious harm or death exists
 - Additional factors exist which assist in prediction of re-assault
 - Victims may face and fear other risks such as homelessness, poverty, criminal charges, loss of children or family supports
- **Remember that the level and type of risk can change over time**
 - The most dangerous time period is the days to months after the alleged perpetrator discovers that the victim
 - might attempt to separate from the alleged perpetrator or to terminate the relationship
 - has disclosed or is attempting to disclose the abuse to others, especially in the legal system