RESOLVED, that the American Bar Association encourages courts to ensure that counseling, treatment, advocacy and other assistance are made available to child victims of abuse and domestic violence through all available means including the imposition of fines, restitution, and court orders;

FURTHER RESOLVED, that the American Bar Association encourages courts, in appropriate circumstances, to require the perpetrators of child abuse and domestic violence to undergo counseling and other treatment;

FURTHER RESOLVED, that in those jurisdictions where courts do not presently have adequate authority to implement the foregoing recommendations, the American Bar Association encourages state and territorial legislatures to enact enabling legislation.
REPORT

1. Background

Domestic violence and child abuse are horrifying realities in today's world. The collected data on domestic violence reveals that

- [approximately] six million women are beaten each year by the men in their lives, four thousand of whom are killed;
- [i]ncidents of domestic violence occur approximately every 18 seconds in the United States;
- [b]attering sends more women to the emergency room each year than auto accidents, muggings, and rapes combined;
- 20 percent of all murders in this country are committed within the family, 15 percent of which are committed by spouses. The data on child abuse is equally disturbing. Over one million instances of child abuse, neglect and maltreatment are reported each year; figures are not available for the total number of children who are assaulted or killed each year. The horror of this violence is all the more real due to the documentation establishing that a majority of those who commit acts of domestic violence or child abuse were themselves victims of some form of violence within the home. In recognition and response to the epidemic of family violence, the American Bar Association created a task force to study the issues involved. In August of 1994, the Impact of Domestic Violence on Children Report ("the Report") was submitted to the President of the

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1 Child abuse is distinguished from other assaults upon children in that it involves injury to a child by "a person entrusted with the care of the child, such as the parent, stepparent, adult relative, paramour of the parent, babysitter, or, in certain situations, day-care provider, teacher, or minister." C.F. Brown, First Get Mad. Then Get Justice 107-108 (1993) [hereinafter cited as First Get Mad].

2 Dan Walkenhorst, Domestic Abuse: Curbing a Widespread Epidemic in Missouri, 51 J. Mo. Bar 9, 10 (January/February 1995) [hereinafter cited as Domestic Abuse].


4 See Domestic Abuse supra note 2. ("[c]hildren are emotionally traumatized by witnessing family violence, a large number of them grow up to either become an abuser or a victim themselves.

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Violence in all its ugly manifestations is now recognized as one of the most serious societal problems facing our nation. Violent behavior is not limited to the streets; it occurs regularly behind closed doors of households, among family members, relatives, and others who share intimate relationships. Violence within the home is referred to as family violence. Domestic violence is a "serious social issue that affects all communities. It cuts across race, ethnic, religious and economic lines."

In recognition of the destructive impact family violence has on children and other family members, the American Bar Association has long been involved in identifying legal responses to family violence. And, as the Report notes, the legislative and judicial systems need to focus on the

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2 The Report was prepared and submitted by the following ABA entities: the Steering Committee on the Unmet Legal Needs of Children; Young Lawyers Division, Children and the Law Committee; the Section of Family Law, Domestic Violence committee; the ABA national Conference of Special Court Judges, Domestic Violence Committee; the Litigation Section Task Force on Children and the Criminal Justice Section Victim’s Committee.


5 A National survey of domestic violence disclosed that nearly 40% of domestic violence incidents against wives involved serious violence—punching with a fist, kicking, biting, beating, or an attack with guns or knives. Murray A. Straus and Richard Gelles, How Violent Are American Families? Estimates From the National Family Violence Resurvey and Other Studies, in Family Abuse and Its Consequences 17 (Gerald Hotaling, et al., eds., 1988).

When the term "serious" is used in this report in the context of domestic violence, we mean behavior beyond one or two instances of assaultive behavior throughout the course of a relationship (such as a shove, a push, or a slap not resulting in a puncture or bruise, or not requiring medical attention).

"Domestic violence" is not meant to describe those actions that a victim of assaultive behavior may take to protect him or herself from abuse (i.e., when there is evidence of self-defense). Indeed, this resolution is not intended to punish the individual who may have committed abusive conduct as a self-defense measure. If the individual commits child abuse, the Court should review the evidence and determine that the individual engaged in such conduct independently or as a self-defense action. If the abuse is related to battering suffered by that parent by his/her spouse or partner, then the battered individual should not be punished. In other words, a determination must be made as to who the "real perpetrator" is and what precipitated the child abuse.

8 The American Bar Association has long supported the work of both the ABA Center on Children and the Law and the ABA Commission on Legal Problems of the Elderly which have, respectively, addressed a variety of issues related to child abuse and elder abuse by way of developing model projects and publishing voluminous materials.
Family violence has on the child victims — those who are actually physically abused and those who are psychologically affected by abuse inflicted upon others in the home.

Little attention has been paid to the traumatic effects of domestic violence on children. Many ignore the implications of a child’s exposure to domestic violence in his or her own home. As a result, the impact of domestic violence on children has not always received the attention it warrants within the legal system.

It is unclear how many children annually witness domestic violence, but experts estimate the range between 3.3 and 10 million children. An estimated 87 percent of children in homes with domestic violence witness that abuse. There is no doubt that children are harmed in more than one way — cognitively, psychologically, and in their social development — merely by observing or hearing the domestic terrorism of brutality against a parent at home. Experts

Several ABA entities have committees addressing domestic violence education and policy issues. In early 1995, the ABA formed a multi-disciplinary Commission on Domestic Violence comprised of various lawyers and judges involved in addressing domestic violence issues in the legal arena as well as other professionals faced with domestic violence issues. Its members include the President of the American Medical Association, the President of the National Education Association, the Chief of Police of the City of Chicago, a high ranking corporate executive for the Walt Disney Company and other individuals in the psychology and health care fields. The Commission’s mandate is to develop a multi-disciplinary response to the domestic violence epidemic that can be applied at the “grass roots” (i.e., local community) level. The Commission’s resolution urging Congress, the states, local governments and agencies, and non-governmental victim services programs to support efforts to pass legislation and to secure funding for the development of multi-disciplinary, community-based programs to respond to the domestic violence epidemic was passed by the ABA House of Delegates at the 1995 Annual Meeting. Other resolutions on domestic violence have been approved by the ABA House of Delegates as far back as the Association’s 1978 Midyear and Annual Meetings.


Children who do not directly witness domestic violence also are strongly affected by it. Most of the children affected by domestic violence, even at very young ages, are aware of the violence — whether they observe it first-hand or not. To cite a conclusion of the State Justice Institute funded 1993 national conference on domestic violence: “children are not unaware of violence just because they don’t see it; toddlers are not too young to understand what is happening.” Courts and Communities: Confronting Violence in the Family 27 (Hereinafter Conference Highlights)
report that the immediate impact of children's exposure to domestic violence "can be traumatic -- fear for self, fear for their mother's safety, and self-blame."12

Lawyers within the Association have not been alone in recognizing the prevalence of domestic and family violence. The Honorable Janet Reno, United States Attorney General, has stated, "It's imperative that we really focus on the whole issue of domestic violence and family violence in its larger context. On many occasions, the child who sees his mother being beaten accepts violence as a way of life."13 The National Council of Juvenile and Family Court Judges has, in the introduction to its Model State Code on Family Violence, acknowledged that "children...learn from (domestic violence) that violence is an acceptable way to cope with stress or problems or to gain control over another person."14 This sentiment is echoed by the authors of the Report.

Family violence experts worry that children who live in homes where there is domestic violence are more likely than others to become batterers of their partners when they become adults, or to view violence among intimate companions as an acceptable or inevitable

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14 See Model State Code on Family Violence.
Such detrimental effects of domestic violence on children have been noted at the federal level. Many state legislative provisions and trial court decisions now recognize the adverse impact on children living with an adult who is, or has been, brutal in their treatment in the home.

Moreover, one of the major national studies of domestic violence found that men who had witnessed their fathers hit their mothers were three times more likely to hit their wives than those who had not seen such abuse in the home while growing up. Murray A. Straus et al., Behind Closed Doors: Violence in the American Family, [Hereinafter Behind Closed Doors] (1980). Another study found only one historical variable — witnessing domestic violence — to be strongly associated with men's later use of violence against female partners. Gerald Hotaling and David Sugarman, An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge, 2 Violence and Victims 1, at 11 (1986).

Domestic violence witnessed at home by children has been found to often be repeated later in life. Jeffrey Fagan and Sandra Wesleu, Family Origins of Violent Delinquents, 25 Criminology 643, 651 (1987). Seventy-five percent of boys who witnessed domestic violence have been found to have demonstrable behavior problems. Peter G. Jaffee et al., Promoting Changes in Attitudes and Understanding of Conflict Resolution Among Child Witnesses of Family Violence, 18 Canadian J. of Behavioral Science Review 356-366 (1987).

In 1982, the U.S. Civil Rights Commission, in its report The Federal Response to Domestic Violence, concluded that children in spouse abuse situations suffer at least as much as other family members. The 1984 report of the U.S. Attorney General's Task Force on Family Violence stated that children who "live in the houses where parents are battered carry the terrible lesions of violence with them into adulthood."

In 1990 a concurrent resolution (H. Res. 172) was unanimously passed by both the U.S. House of Representatives and U.S. Senate. It expressed the sense of the Congress of inadequate recognition of the effects on children who witness domestic violence and the emotional and physical harm to children who live in violent households. It suggested that "for the purposes of determining child custody, credible evidence of physical abuse of one's spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse."

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15 Mental health professionals express concern that children from homes with domestic violence have a tendency to identify with the aggressor and lose respect for the victim. Laura Crites and Donna Coker, What Therapists See That Judges May Miss: A Unique Guide to Custody Decisions When Spouse Abuse is Charged, Judges J. (Spring 1988).

16 In 1982, the U.S. Civil Rights Commission, in its report The Federal Response to Domestic Violence, concluded that children in spouse abuse situations suffer at least as much as other family members. The 1984 report of the U.S. Attorney General's Task Force on Family Violence stated that children who "live in the houses where parents are battered carry the terrible lesions of violence with them into adulthood."

In addition, some children caught in the "cross-fire" of domestic violence become the accidental victims of serious injuries. Children are harmed by blows or flying objects aimed at someone else, or while trying to protect their assaulted parent. 18 Statistics establish that children in homes where there is domestic violence are themselves abused in those homes at a rate much higher than the national average for child abuse generally. 19

Child abuse and other assaults upon children have reached absolute epidemic proportions. Yet it is not the sheer number of such crimes which poses the greatest concern to our society — it is the aftermath. And that aftermath is that children who are abused or assaulted in the home are more likely to act out violently as adults.

The primary cause of crime in America is also the worst crime in America: child abuse. The fact that prisons are full of child abuse victims should come as no surprise. Imagine a child terrorized in the one place where the feeling of security should be absolute: the home. If the home, and those who live with the child, create a terrorized state rather than a safe haven, it is not surprising that some adult survivors wreak their vengeance on their own children, or on others in society. Therefore, fighting child abuse must be the top priority of any crime-fighting effort. 20

The fight against domestic violence and child abuse must consist of not only prosecuting those who assault and abuse, but also of counseling and treating victims, their families, and the aggressor so that the effects are minimalized and the cycle of violence can be stopped.

This resolution seeks to accomplish three goals. The first is to encourage courts to use all
of their authority and resources in matters involving domestic violence and child abuse, including when appropriate the imposition of fines to fund child advocacy and counseling centers, restitution to cover the medical and counseling expenses of all victims, and orders of protection to enjoin the aggressor from contacting the victim(s). The second goal is to encourage courts to use all of their authority and resources to require, when appropriate, the perpetrators of domestic violence and child abuse to undergo counseling and other treatment. The third goal is to encourage state legislatures, in those jurisdictions where courts do not presently have the authority and/or resources referred to in the previous goals, to enact legislation to provide for such authority and resources.

II. Need for Specialized Mental Health Services for Children Who Have Been Exposed to Family Violence or Victimized by Child Abuse

As the Report notes, there is a recognized need for the provision of mental health counseling for children who are victims of family violence. Some children who have been exposed to domestic violence develop serious behavioral, cognitive, and affective problems and need evaluation and treatment. Still other children not only witness domestic violence, but are abused themselves. Shelters and courts are increasingly identifying children and adolescents who are now perpetrating assaults on family members, dating partners or other peers. Many of these children could benefit from more specialized mental health services.

The medical community, as well as the legal community, has recognized that there is also a need to treat the aggressor or perpetrator of the violence. First and foremost, the child needs professional counseling. The event must be dealt with by the child immediately or at some time in the future. Adult survivors of child abuse often realize that, like all matters of cognitive dissonance (an event that is so totally inconsistent with other aspects of life that it cannot rationally be dealt with), that reality must be integrated into the rest of their life or distanced from it.23

While all may agree that counseling and treatment for child victims and their families is a necessity, the funding for such is not always available.

Children who have lived in homes with domestic violence, as well as their abused parents,

23 First Get Mad, supra at n. 1, at 109.
should be able to have easily accessible, affordable, special mental health services. One jurisdiction -- Dade County, Florida -- has a domestic violence court which emphasizes helping children who have been subjected to such violence. In partnership with a local medical school's child development center, the Court provides free counseling for children who have witnessed violence in their homes. The program includes a ten-week curriculum for children (ages 5-15) designed to help remedy the adverse impact of domestic violence on their lives. Another program, in Honolulu, has developed two psychodynamic group counseling curricula for child witnesses (ages 3-13) and teenage witnesses (ages 14-17) of family violence.

The Report encourages attorneys to work with the courts that hear domestic relations, juvenile, and domestic violence matters in order to assure that children impacted by domestic violence, have access to education, treatment and support. The Report notes, "one state legislature has directed the state's chief court administrator to establish programs for children affected by domestic violence. State bars should encourage other states to follow this example. Moreover, as urged by the Report, "where a child requires private counseling or therapy to help overcome the trauma of domestic violence, the court should have authority to order such treatment and to provide for reimbursement by the perpetrator of such violence. In cases where the perpetrator is unable to pay, the state should provide adequate resources."

Of course, court-ordered counseling and other therapeutic activities for children should in no way create an opportunity for the abuser to punish the non-abusive custodial parent. There will be times when the custodial parent's employment or other responsibilities create barriers to the child's participation in court-ordered rehabilitation. Judges should be sensitive to these obstacles and aware that psychological abuse and manipulation does not cease merely because the court has punished the wrongdoer and legally separated the parents. In fact, many perpetrators become more abusive after separation takes place in an attempt to reassert control. Following a legal separation, oftentimes the only way an abuser can continue to control the non-abusive parent is through the manipulation of child-centered issues. Care must be taken not to permit the judicial system to become another arrow in the abusive parent's arsenal.

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22 See, Judge Cindy S. Lederman, Dade County Domestic Violence Court: A Responsible Approach to the Treatment of Family Violence, in Defending Battered Women in Criminal Cases, Section I (American Bar Association, Section of Criminal Justice and Division for Professional Education 1993).

23 Aloha Nui Na Kamalii (With Great Love for the Children), curricula available from the Family Peace Center, 1370 Kapahulu Boulevard, Suite 201, Honolulu, HI 96814.


III. Implementation

All states now have victim compensation legislation which provides for the coverage of basic medical expenses incurred by those persons who are victimized by crime; the funds are created and maintained by state and/or local governments. While such compensation funds are helpful to victims, they are often insufficient. They are insufficient because of the usually low limit on the awards allowed, the type of expenses covered, and because it requires a reporting and substantiation of the crime. When appropriate, court orders or sentences requiring persons convicted of domestic violence or abusing children to pay either restitution, to cover medical or counseling expenses, and/or a fine, the proceeds of which would fund child abuse and exploitation counseling centers and child advocacy programs, would expand upon the base of assistance available for child victims. This increase in available assistance would allow for more complete treatment of child victims, and would -- along with required treatment of the offenders themselves, when appropriate -- begin to stop the cycle of domestic violence and child abuse.

The adoption and implementation of this resolution would require minimal funding by federal, state or local governments. Any government funding required would be available from existing sources, although such funding is limited. However, most of the goals would be accomplished, if deemed appropriate by the trial court in its exercise of discretion, through the payment of monies by the perpetrator.

IV. Conclusion and Summary

Domestic violence and child abuse is responsible for the destruction of millions of lives -- the lives of those who are victims, those who are family witnesses, and those who commit the abuse. They are crimes which, in a majority of cases, turn the victims into the perpetrators of violent crimes themselves.

26 See e.g., S.C. Code Ann. Section 16-3-110, et seq. (Cum. Supp. 1994) (authorizes the award of money of up to $10,000.00 per reported crime to cover medical expenses, burial expenses, and/or loss of income provided a crime was committed, the crime directly resulted in physical or psychic trauma to the victim, the crime was promptly reported to the authorities, the victim has cooperated with all investigating agencies, and the victim was without fault).


27 The maximum award allowed in most states for medical expenses and mental health counseling is $1,000.00 each. Id.
Violence in American homes is a fundamental societal ill, one that is linked with the much larger problems of crime and violence generally. We must, as attorneys, judges, and others who have influence in changing governmental policies related to violence and in altering the legal system's response to violence, better recognize and address the inherent links between child abuse, domestic violence, dating violence, juvenile delinquency, and violent crime in general. Assuring that we improve our understanding of and reactions to violence in the home must become one of our top priorities.28

Steps must be taken to stop the cycle of violence by providing medical attention for children who have experienced or witnessed such abuse and the perpetrators of such abuse. Through the Report, the Association has been encouraged to take affirmative steps to insure that the cycle is stopped. This resolution is such a step, albeit a modest one.

This resolution would encourage courts to require, when appropriate, through the use of existing authority and resources, that the perpetrator of domestic violence or child abuse:

1. pay the cost of counseling, therapy or other treatment for children affected by that violence or abuse;
2. contribute by way of court imposed fine to child advocacy or counseling centers; and/or
3. undergo treatment or counseling.

The resolution also encourages, in those states where the courts do not have the authority and/or the resources to require a perpetrator to take the above actions where appropriate, legislatures to enact legislation providing for such authority and resources.

Respectfully submitted,

Raquel A. Rodriguez, Chair
Young Lawyers Division

Abby Rubenfeld, Chair
Section of Individual Rights & Responsibilities

August 1996

Ellen Godbey Carson, President
Hawaii State Bar Association

28 Child Abuse at p. 373.
GENERAL INFORMATION FORM

Submitting Entity: Young Lawyers Division, Section of Individual Rights & Responsibilities, Hawaii State Bar Association

Submitted By: Raquel Rodriguez, Chair, Young Lawyers Division, Abby Rubenfeld, Chair, Section of Individual Rights & Responsibilities, Ellen Godbey Carson, President, Hawaii State Bar Association

1. Summary of Recommendation(s).
   Encourages courts to use all authority and resources available to them in matters involving child abuse and domestic violence, including imposition of fines, restitution, and court orders, to ensure that the needs of child victims of such abuse and violence are met for counseling, treatment, advocacy and other assistance.

2. Approval by Submitting Entity.
   This recommendation was approved by the Council of the Section of Individual Rights and Responsibilities in April, 1996. It was approved by the Hawaii State Bar Association on May 16, 1996. It was approved by the Young Lawyers Division Executive Council in May 1996.

3. Has this or a similar recommendation been submitted to the House or Board previously?
   No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?
   There are no relevant Association policies.

5. What urgency exists which requires action at this meeting of the House?
   This is an important issue that should be addressed at this time.

6. Status of Legislation. (If applicable.)
   Currently there is no applicable legislation pending.

7. Cost to the Association. (Both direct and indirect costs.)
   None

8. Disclosure of Interest. (If applicable.)
   N/A

9. Referrals.
   This recommendation was referred to the Family Law Section, the Steering Committee on Unmet Legal Needs of Children, the Criminal Justice Section, the Litigation Task Force on Children and the Commission on Domestic Violence.
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10. **Contact Person.** (Prior to the meeting.)
    Bo Landrum, YLD Staff Director
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    Chicago, IL 60611
    ph: 312/988-5608  fax: 312/988-6231
    email: jlandrum@attmail.com

11. **Contact Person.** (Who will present the report to the House.)
    To be determined.

12. **Contact Person Regarding Amendments to This Recommendation.**
    There are no known amendments at this time.