RESOLVED. That the American Bar Association urges that federal, state, territorial, tribal, local governments and private entities make the establishment of programs addressing domestic violence a priority. Moreover, the Association strongly urges that such responses to domestic violence make victim safety a primary concern, and that such programs should be developed publicly and with input from all entities and agencies having experience in handling issues of domestic violence. The Association urges the federal government, Congress, state legislatures and territorial, tribal and local governments, and private domestic violence programs adopt the following standards:

1. Ensure that victims of domestic violence have access to legal counsel and trained advocates, regardless of income, especially for divorce, custody, visitation, support, juvenile, child welfare, public benefits, protection orders and other family law and safety matters. The Association also urges the private bar to work with other entities to develop effective domestic violence programs. Any program providing legal services to a victim of domestic violence also should be prepared to conduct safety planning with the victim, whether or not the legal services provider takes the case.

2. Develop and offer training programs to lawyers about domestic violence and encourage law schools to incorporate training on domestic violence issues, particularly programs developed in conjunction with national and local domestic violence programs. Such training programs should offer information about screening for domestic violence, interviewing clients effectively, and offering

3. Support and fund the establishment and maintenance of comprehensive domestic violence programs or other temporary residential facilities serving victims of domestic violence and their children, including counseling, support, safety planning, and transitional services designed to enhance or ensure the safety of victims and their children.

4. Support and fund programs to offer basic and continuing training about domestic violence to law enforcement personnel, prosecutors, lawyers, judges, administrative law tribunal judges and personnel, clerks, juvenile advocates, mental health professionals, probation officers, educators, human resources staff, and military, medical and social services personnel, particularly training programs developed in conjunction with local domestic violence programs. Such training programs should contain information about screening for domestic
violence, interviewing clients and co-workers experiencing domestic violence, and offering safety planning where necessary.

5. Develop law enforcement statutes, policies, and procedures that will prevent further violence against victims of domestic violence and their children. These law enforcement statutes, policies, and procedures may address the following:

a) encouraging or mandating the arrest of perpetrators where a law enforcement officer has probable cause to believe domestic violence has occurred;

b) requiring responding officers to determine who the primary aggressor was in the case and then make the appropriate arrest, except in cases where the law enforcement officer makes a full investigation and finds probable cause to believe that neither party was acting in self-defense and makes written findings to that effect;

c) discouraging dual arrests in domestic violence cases;

d) requiring responding officers to ensure the safety of victims of domestic violence and their children by separating them from the perpetrator as quickly as possible and conducting confidential interviews in the course of investigation;

e) requiring responding officers to provide victims of domestic violence with appropriate referrals to shelters and support services, including: providing victims with the number for the national domestic violence hotline (1-800-799-SAFE); safety planning (with the help of victim advocates); and transport to a safe place;

f) requiring responding officers to investigate the incidents, collect evidence, including all weapons, and prepare thorough written reports to facilitate follow up proceedings, such as the prosecution of criminal actions;

g) requiring law enforcement agencies to serve and enforce protection orders, including those issued by other states, territories, localities, and Indian tribal authorities, as required by the Violence Against Women Act of 1994;

h) developing strategies for responding effectively to domestic violence cases, including, but not limited to, setting up specialized domestic violence units, training for all members of the force, and specialized resources such as computerized databases.

6. Ensure that prosecutors' offices develop specialized units to handle domestic violence cases or provide specialized training for personnel designated to handle domestic violence cases. Additionally, prosecutors offices should adopt the following policies and procedures to ensure victim safety:
a) prosecute domestic violence cases "vertically" (i.e., assign the case to one prosecutor from beginning to end);

b) considering the use of "no drop" policies when prosecuting domestic violence cases, and, so long as victim safety permits, take cases to trial without the victim's testimony;

c) state in writing the reasons for declining to file criminal charges in domestic violence cases; and

d) whether or not the case is prosecuted, conduct safety planning with victims, provide referrals to shelters and support services, and inform victims about additional procedures to prosecution, such as petitioning for a civil protection order.

7. Ensure that specific data related to the frequency, seriousness, and other characteristics of domestic violence, including disposition of complaints and the stated reasons for the particular disposition, as well as data on existing programs designed to respond to such violence, be collected, analyzed, disseminated, and used by appropriate government agencies, whether federal, state, local, territorial, or tribal.

8. That the courts develop strategies for responding effectively to domestic violence cases, including, but not limited to, setting up specialized domestic violence divisions or courts, training for all court personnel, and specialized resources, such as computerized databases, to assist in the effective disposition of domestic violence cases. Additionally, it is recommended that courts take steps to ensure victim safety, for example:

a) a prohibition against issuing mutual protection orders, except in cases where each party has filed a separate claim and the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense, consistent with the Violence Against Women Act of 1994;

b) a prohibition against any requirement, in connection with the prosecution of any misdemeanor or felony domestic violence offense, that the abused bear the costs associated with the filing of criminal charges or the service of such charges on an abuser, or that the abused bear the costs associated with the issuance or service of a warrant, protection order, or witness subpoena, consistent with the Violence Against Women Act of 1994;

c) the development of appropriate policies, procedures, and information systems to ensure that protection orders are effectively enforced, including orders issued by other states, territories, localities, and Indian tribal authorities, as required by the Violence Against Women Act of 1994;

d) a requirement that courts, in the determination of divorce, custody, visitation, pretrial release, sentencing, or imposition or revocation of probation and parole, carefully weigh and select those options most likely to protect the
safety of the victim and the victim's family and ensure perpetrator accountability, and not treat the relationship between the parties as a reason for failing to consider or impose the most rigorous safety protections possible;

e) ensuring that victim advocates are available at the courthouse to assist victims of domestic violence in developing a safety plan; and

f) the development of an information-sharing system that ensures that every judge assigned to handle any domestic violence case has access to a full history of the civil, criminal, and juvenile proceedings completed or pending which are relevant to the domestic violence issues of the case.

9. That states and territorial and tribal authorities respond to domestic violence by providing and funding counseling and other support services for victims of domestic violence and their families, and appropriate intervention programs for abusers.

10. That statutes providing for arrest for violation of protection orders (civil or criminal restraining orders) be enacted and enforced without regard to the relationship between the parties.

11. That victims of domestic violence not be excluded from coverage under victim compensation legislation where they demonstrate that they have met the conditions for compensation.
BACKGROUND

The American Bar Association ("the Association") has demonstrated a consistent commitment to addressing domestic violence for nearly two decades. The first policy resolution adopted by the Association regarding this issue, in February 1978, constituted a general call to arms, offering Association support to a broad-based effort to address family violence. At the following Annual Meeting, the House of Delegates adopted a more detailed resolution, this time offering far more specific proposals for reform of the justice and support services systems in order to improve the safety of victims of domestic violence. This resolution contained eight recommendations for improvements which addressed systems offering support services, law enforcement, prosecution, governmental data collection, judicial responses, counseling, legislative reform, and victim compensation.

BE IT RESOLVED, that the American Bar Association supports federal, state and local efforts to combat the incidence, cases and effects of family violence, and supports the implementation of programs to protect the victims of family violence.

BE IT RESOLVED, that the American Bar Association recommends the following:

1. That shelters or other secure temporary residential facilities, together with counseling and other support services, be established for the victims of domestic violence.

2. That law enforcement officers who respond to domestic violence calls, after ensuring that the victims of domestic assaults and their dependents have been removed to safe places as provided in #1, investigate the incidents, prepare written reports, and in the event they conclude no criminal charges are appropriate, file written statements of the reasons for the decisions.

3. That prosecutors who decline to file criminal charges in domestic assault cases referred to them by the police, state in writing the reasons for their decision not to prosecute, and provide the complainant with information as to alternative procedures.

4. That specific data related to the frequency, seriousness, and other characteristics of spousal assaults, including disposition of complaints and the stated reasons for the particular disposition, as well as data on existing programs designed to respond to such assaults, be collected and analyzed.
Nearly twenty years have passed since the Association adopted these policy resolutions. In that time, many changes have taken place, and domestic violence has emerged as an area of urgent concern in many parts of the justice and victim services delivery systems. The Association itself has responded to this national emergency by creating the Commission of Domestic Violence in November 1994, whose mandate is to develop nationally applicable multidisciplinary responses to domestic violence.

Thanks to increased training of judges, lawyers, police, and victim services professionals, across the country and an increased public awareness of the severity of domestic violence, our expectations regarding the justice system’s response to this national epidemic have grown much greater, even as the number of victims of domestic violence seeking relief has increased. The justice system and support services for victims have had to develop new and innovative means of handling domestic violence cases because of increased reporting and a greater understanding of the nature of the problems created by domestic violence. As a result, the 1978 policy resolutions which once provided an innovative and firm foundation for Association action in this field no longer reflect some of the most widely accepted standards and trends now operational as a matter of course in the field of domestic violence. The ABA Commission on Domestic Violence, in recognition of these system-wide changes — and in recognition of one of the Association’s latest policy resolution archiving policy resolutions more than ten years old — therefore offers this

5. That the courts, in the determination of pretrial release, sentencing or imposition or revocation of probation or parole, not treat the relationship between the parties as the primary factor.

6. That the state create a mechanism for responding to intrafamilial violence by establishing diversion programs and by providing counseling (sic) and other support services.

7. That statutes providing for arrest for violation of protective orders (civil or criminal restraining orders) be enacted and enforced without regard to the relationship between the parties.

8. That the victims of domestic violence not be excluded from coverage under victim compensation legislation where they demonstrate the requisite quantum of injury and where they actually live separate and apart from assaulting spouses.

Passed in August 1996 at the Association’s Annual Meeting in Orlando, Florida. The relevant language is as follows:

RESOLVED, That the American Bar Association adopts a procedure to archive policies which are 10 years old or older and which are outdated, duplicative, inconsistent or no longer relevant. Such archived policies will be retained for historical purposes but shall not be considered current policy for the Association and shall not be expressed as such.
policy recommendation as a restatement of the original resolutions adopted by the House of Delegates in 1978.

In drafting this recommendation, the Commission has followed the basic outline of issues articulated in the 1978 policy. This accompanying report identifies changes which have been made to the original 1978 policy to reflect more up-to-date philosophies and protocols currently existing in the justice system and victim support services. While our new policy recommendation contains ten recommendations, two more than the 1978 resolution, the same systems issues are addressed. The new, more expansive, recommendations in no way subtract from the content of the earlier policy, but instead provide more detail, in order to ensure that the Association’s policy concerning the justice system’s response to domestic violence is comprehensive and accurately reflects current wisdom and experience in the field. We address the proposed amendments to the 1978 policy and the rationale for those changes below.

NEW POLICY RECOMMENDATIONS

Nearly every subheading of this policy restatement makes

1. The 1978 policy recommendations failed to address the need for increased representation of victims of domestic violence not only in protection order cases, but in all proceedings in which issues of domestic violence are relevant (e.g., custody, visitation, support, divorce, separation, child welfare, public benefits, etc.). Unfortunately, victims of domestic violence often proceed unrepresented, and as a result, are less likely to receive the relief they need to prevent further danger.

2. Training in domestic violence issues is not offered to lawyers on a regular basis anywhere in this country. Not only should relevant issues arising out of domestic violence cases be addressed as part of basic legal training, but as many members of the private bar as possible should have the opportunity to learn more about the impact these cases have on their regular work through pro bono and continuing legal education training programs. Far too many victims of domestic violence experience increased violence because of the dearth of trained lawyers in the field. Trainings for lawyers are currently offered by entities within the Association, state,

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territorial and local bar associations, local offices of the Legal Services Corporation, and state and local domestic violence advocacy groups. It is very important that any group conducting such training develop ongoing relationships with existing domestic violence programs in their communities, not only to ensure that their training materials are accurate and up to date, but also to develop a regular system of information exchanges that can benefit all of the entities involved.

3. The language of this recommendation differs only slightly from the original 1978 policy. It still encourages the establishment of shelters and similar refuges from the suffering caused by domestic violence, but it identifies more clearly the players who have taken on increasing responsibility for funding these critical support services: the federal government, and state, local and private agencies and entities. This revised language also makes this particular policy statement comport more closely with existing Association policy. In August 1995, the Association adopted a broad-based policy recommending community-based, multidisciplinary support -- enlisting the help of lawyers, judges, victim advocates and victim services personnel, physicians, nurses, psychiatrists, psychologists, social workers, police, military personnel, the media, and members of the business community -- for victims of domestic violence. The

For example, the Violence Against Women Act, 42 U.S.C. 13701 (1994) (hereinafter, "VAWA"), and the Family Violence Prevention and Services Act, 42 U.S.C. 10401 (1992), provide federal funding for various domestic violence programs, including funding for shelters and other support services.

Passed by the House of Delegates in August 1995, the text of the policy resolution reads as follows:

RESOLVED, That the American Bar Association urges Congress, the states and territories, local governments and agencies, and nongovernmental victim services programs to support efforts to pass legislation and secure funding for the development of multidisciplinary, community-based programs to respond to the current epidemic of domestic violence.

BE IT FURTHER RESOLVED, That the American Bar Association recommends that any government or private entity developing multidisciplinary programs in response to domestic violence ensure that such programs contain the following essential elements:

(1) Participation by the various professionals having services to offer victims of domestic violence, including, but not limited to, judges, lawyers, advocates from local and state domestic violence coalitions and programs, physicians, nurses, psychiatrists, psychologists, social workers, victims services professionals, law enforcement personnel, military personnel, members of the business community, and the media;

(2) Coordinated information-sharing among the offices of prosecutors, public defenders, probation officers, courts, victim services programs, relevant government agencies, and law enforcement officials to ensure that all aspects of the justice system are adequately informed about each other's actions in domestic
revised language incorporates the current consensus in the field of domestic violence law that all levels of government and the private sector must become involved in supporting solutions to this problem.

4. Training has become a key component in the mechanism for effecting change in the community to ensure victim safety and reduce perpetrator recidivism. Well-trained police, prosecutors, defense lawyers, judges, and medical and social services personnel can respond more appropriately to cases of domestic violence than those who lack an understanding of the psychological and coercive dynamics and available remedies. The National Council of Juvenile and Family Court Judges, which has taken a national leadership role in addressing domestic violence, has made the training of justice system personnel one of the main components of their proposals and work in response to domestic violence. The Association itself has adopted policy recommending training for judges on issues of domestic violence. Making training a priority for prosecutors, defense lawyers, judges, medical, law enforcement and social services personnel will improve the efficacy of professional responses to domestic violence, while improving victim safety. It is crucial that domestic violence experts, particularly victim services personnel, participate in the development of and implementation of these training programs to ensure that the material presented is accurate and helpful in developing appropriate responses in domestic violence cases, so long as the information-sharing process protects the privacy, confidentiality, and safety of the victim and the victim's children;

(3) Multidisciplinary public education programs about domestic violence;

(4) Multidisciplinary domestic violence prevention and intervention through employee assistance programs and programs based in hospitals, schools, medical clinics, social service agencies, and military bases;

(5) Enhanced legal representation for victims of domestic violence and their children and expanded attorney training through pro bono and legal services programs, university legal clinics, and private bar continuing legal education programs;

(6) Data collection regarding numbers of victims, disposition of cases, services utilized to resolve the violence, and victim fatalities, so long as procedures are adopted to protect the privacy, confidentiality, and safety of the victim and the victim's children; and

(7) Policies, procedures, and practices which place primary emphasis on the safety of the victim and the victim's children.


* Passed in February 1996 by the House of Delegates.
violence cases.

5. Some of the most significant changes in law and policy in the area of domestic violence in the past twenty years have occurred in law enforcement. Police officers respond to domestic violence cases before judges and lawyers do. Yet police response to domestic violence historically has been less than adequate. Several new philosophies about policing methods in these cases have been shown to have a profound effect on the efficacy of police responses, and as a result legislatures and police departments have taken steps to implement new protocols that provide better protections for the victim of domestic violence.

The Association’s 1978 policy, while still basically sound, fails to address some of the most innovative changes adopted by many law enforcement departments in the past few years. Moreover, law enforcement procedures encouraged by the federal Violence Against Women Act of 1994 should be added to the list of standards police departments should meet in handling domestic violence cases. These new trends include:

a) Pro-arrest policies. Pro-arrest policies, whether in the form of statutes, internal department policies, or procedures insculpted via training, send a strong message to the community that domestic violence is a crime and will not be tolerated. Pro-arrest policies may manifest themselves in a number of ways: the institution of a mandatory arrest policy or a policy that encourages arrest, and laws which give the responding officer the authority to make an arrest based on probable cause. The latter provision is designed to take the onus of pressing charges off the victim of domestic violence; victims are frequently reluctant to press charges, particularly when the perpetrator is present, for fear that the perpetrator will exact retribution later.

b) Determining the identity of the primary aggressor prior to arrest and c) Discouraging dual arrests. Pro-arrest policies, when adopted alone, have been shown to “backfire” against the victim when untrained law enforcement officers, either out of frustration or an inability to determine who the primary aggressor was in a particular case, arrested both parties. By the time the police arrive on the scene, the victim may have been forced to fight back in self-defense, making it initially difficult for the responding officer. Officers trained to investigate domestic violence cases properly are able to discover how the violence really began and which party should be arrested. A police force that does not have a prohibition against dual arrests can send the wrong message to the perpetrator, the victim, and even the community, implying that law enforcement is not interested in punishing the perpetrator.

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10 VAWA, 42 U.S.C. 3796hh(b)(1) and (c)(1); MODEL CODE, SEC. 205(A) and (B), SEC. 206.
11 MODEL CODE, SEC. 205(A).
12 VAWA, 42 U.S.C. 3796hh(c)(2); MODEL CODE, SEC. 204.
d) Separating the domestic violence victims and their children from the perpetrator as quickly as possible and conducting confidential interviews. A victim of domestic violence has difficulty speaking frankly or feeling safe when the perpetrator is in the same room or within hearing distance. A law enforcement officer will have difficulty conducting a full and effective investigation if the victim refuses to speak out of fear of the perpetrator. For this reason, an emerging trend in police training is to recommend that the responding officer immediately separate the victim and perpetrator (for example, by taking the perpetrator outside of the home). Police training can also encourage officers to utilize information shared by the victim only where absolutely necessary or where helpful to improving the victim’s safety.

e) Providing referrals to shelters and support services; providing victims with the new National Domestic Violence Hotline number, and transporting the victim to a safe place.

Many resources exist to aid the victim of domestic violence and enhance family safety. These resources include shelters, counseling programs, medical services, and other social services. Too often, victims are unaware of the range of support available from the community. Because the police are so often the first (and only) professionals called in to help, they can provide an extremely useful service by alerting victims to the National Domestic Violence Hotline (1-800-799-SAFE) or to local domestic violence programs. By helping victims to find assistance, officers may be able to reduce the likelihood of a repeat call to the same household.

f) Investigating incidents; collecting evidence, including all weapons; preparing thorough written reports to facilitate follow up proceedings, such as the prosecution of criminal actions. The police have an important role to play in collecting evidence that will facilitate follow up proceedings, such as criminal prosecution. Photographs of bruises or written reports describing the victim’s injuries and excited utterances, the extent of property damage in the home, and statements from witnesses to the violence will all be useful in ensuring that appropriate legal action can be taken. Equally importantly, a responding officer should check for weapons used in the violent episode or around the home. If the officer has authority to do so, all such weapons should be removed from the home prior to the police leaving.

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12 Nashville Police Department (1995); MODEL CODE, SEC. 204.

13 Nashville Police Department (1995); MODEL CODE, SEC. 204, 207.
g) Serving and enforcing intrastate and out of state protection orders. Since the passage of the Violence Against Women Act, police and courts are under a mandate to enforce valid protection orders, whether or not the order in question has been entered into a registry in the issuing state, territory, or tribal jurisdiction. This may require police officers to make calls to the issuing jurisdiction to determine if the protection order is (a) valid, and (b) has been properly served on the perpetrator. Even if such information is not immediately available, it seems clear from the language of the statute that law enforcement officers are responsible for enforcing any protection order presented to them that seems valid on its face. Where a violation of a protection order has taken place, the police must act immediately, according to the enforcing laws of their own jurisdiction to respond to the perpetrator’s actions — or perhaps face liability for a failure to protect the victim as required by law.

h) Establishing specialized units to respond to domestic violence calls. As we learn more about how the system needs to respond to domestic violence, it becomes increasingly clear that the complexity of these cases requires that it is better to have specially trained domestic violence professionals respond to calls for help. This amendment to the 1978 policy tracks this new trend in the law enforcement field. The examples which are provided by San Diego and Nashville demonstrate that specialized units have far more impact on the number of domestic violence cases in their areas and can help to reduce fatalities significantly. Many police departments across the country are therefore moving in the direction of their more successful peers and developing specialized domestic violence units. However, in small or rural jurisdictions, resources may be insufficient to develop a specialized domestic violence unit. In that case, it is recommended that each law enforcement department instead designate a “point person” with specialized training to respond to domestic violence calls.

6. Like many police departments, individual prosecutors’ offices have been making significant changes in how domestic violence cases are handled. The goal of these improvements is not only to address victim safety, but also to take steps to reduce perpetrator recidivism. The essence of these changes is to develop case management protocols that give domestic violence cases a sense of priority and urgency that has been historically lacking.

One of the most important changes now being adopted by a large number of prosecutors’ offices across the country is the development of specialized units to handle domestic violence

\textsuperscript{16} In August 1996, the Association’s House of Delegates adopted a policy resolution urging law enforcement personnel and legal system professionals to aid the U.S. Department of Justice in the implementation of the VAWA provision giving full faith and credit to all protection orders issued in the states, territories, or Indian tribal lands. VAWA, 18 U.S.C. 2265.

\textsuperscript{17} Nashville Police Department (1995); Mary P. Koss, \textit{et al.}, \textit{AMERICAN PSYCHOLOGICAL ASSOCIATION: NO SAFE HAVEN: MALE VIOLENCE AGAINST WOMEN AT HOME, AT WORK, AND IN THE COMMUNITY}, 250 (1994) (hereinafter, “NO SAFE HAVEN”).
cases. The sharp focus given to domestic violence cases through these specialized units is enhanced by "vertical" prosecution policies. Traditionally, domestic violence cases have been reassigned at different stages of the proceedings or shifted back and forth between prosecutors. A "vertical" prosecution policy requires that one prosecutor be assigned to one case from beginning to end. This is an extremely important change, for it makes it easier to establish consistency in prosecution. Using a vertical prosecution strategy also reduces victim confusion and demoralization.

"No drop" policies represent another significant trend in this field. Instead of placing the sole responsibility for deciding whether or not to go forward with a case on the victim—who might hesitate to instigate a case for fear of retribution from the perpetrator—the prosecutor goes forward with the case, keeping paramount the safety of the victim as the prosecutor decides whether to go forward with the victim as a witness or whether to rely on other evidence to make the case. No matter how the prosecution is handled, it is of the utmost importance that prosecutors utilize victim advocates to ensure that every victim has access to emotional and victim services support as the case progresses. The victim advocate can be especially helpful in developing a safety plan for the victim. No matter which of the policies outlined above are adopted by any prosecutors office, it is essential that the prosecutors office work with local domestic violence programs to ensure that all procedures are developed with the best interests and safety of the victims in mind.

This provision, which originally appeared as #4 in the original 1978 policy, is still terribly relevant in improving the justice system's response to domestic violence. Nearly twenty years later, the need for data about the number and type of domestic violence cases which reach victim services programs, the police, the prosecutors, the defense bar, private lawyers, and the courts is still great. Moreover, a thorough analysis of such information is still lacking. To improve system responses, more statistical information about who is receiving help (and who is not), what kinds of services are available, and how effective these programs are in addressing domestic violence is needed. The Commission therefore recommends that the original intent of

14 Sarah Buel, Prosecution, in THE IMPACT OF DOMESTIC VIOLENCE, Ch. 7; No SAFE HAVEN, 250; STATE OF THE ART COURT PROGRAMS, 57.
16 Sarah Buel, Prosecution, in THE IMPACT OF DOMESTIC VIOLENCE, Ch. 7; STATE OF THE ART COURT PROGRAMS, 57.
17 No SAFE HAVEN, 236-237; AMERICAN TRIAL LAWYERS ASSOCIATION, PREVENTING VIOLENCE TO WOMEN: INTEGRATING THE HEALTH AND LEGAL COMMUNITIES, 3 (1993). See also, 42 U.S.C. 13961 (VAWA mandate to develop a national research agenda on domestic violence).
8. The court system is an absolutely integral piece in a community’s response to domestic violence. The role of the courts in these cases has expanded considerably since 1978, as both civil and criminal protections for victims increased. In 1979, this section of the ABA policy simply recommended that the courts not treat the relationship between parties as the primary factor when making pre-trial release, parole or probation determinations. Since that time, national experts, including judicial and legislative bodies, have developed a series of standards for courts to employ in criminal and civil proceedings involving domestic violence, which primarily focus on ensuring victim safety and offender accountability. This policy restatement reflects these current and emerging standards and protocols.

The policy restatement maintains the 1978 policy’s requirement that courts should not make pre-trial release, sentencing, probation or parole decisions based on the relationship between parties. However, the new policy recommendation urges that courts carefully weigh and select options which are most likely to protect the safety of the victim and the victim’s family, and ensure perpetrator accountability. The policy restatement recognizes that courts prioritize victim safety in the civil arena as well. This recommendation, that courts should base their civil and criminal decisions on the underlying goals of increasing victim safety and ensuring perpetrator accountability, has been repeatedly emphasized by judicial experts.

The policy restatement also recommends that courts develop strategies for responding effectively to domestic violence cases, in order to reduce recidivism and enhance victim access to the courts. This can be accomplished in a number of ways: by the establishment of specialized divisions or courts to address domestic violence cases; by the establishment of information systems that provide judges with a full history of previous or concurrent civil, criminal and juvenile proceedings relevant to the domestic violence case at hand; or by providing in-depth training for all judges and court personnel. This section of the policy restatement also incorporates the principles of the Association’s Unified Family Court Policy enacted by the

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The Association’s House of Delegates adopted relevant policy in August 1995, which recommended that multidisciplinary, community-based groups develop systems for “data collection regarding numbers of victims, disposition of cases, services utilized to resolve the violence, and victim fatalities, so long as procedures are adopted to protect the privacy, confidentiality, and safety of the victim and the victim’s children.”

Victim safety should always be a priority in the court system. There are a number of ways to accomplish this. For example, courts may provide separate waiting areas for victims of domestic violence to prevent their batterers having access to them prior to their hearings. As a matter of case management, victim safety can be enhanced when judges have access to any information regarding other pending or former cases related to domestic violence.  

The remainder of this section tracks the Violence Against Women Act, which requires courts to implement extensive policies and procedures to reduce violence against women and promote effective intervention strategies. The policy thus prohibits courts from issuing mutual protection orders, except in cases where each party has filed a separate claim and the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense. Among other reasons, the Violence Against Women Act precludes courts from issuing mutual protection orders because such orders are ineffective in preventing further abuse, fail to hold perpetrators accountable for their acts, and create difficulties for law enforcement officers attempting to enforce court orders. In addition, to maintain consistency with the requirements of the Violence Against Women Act, this policy urges courts not to require victims of domestic violence to pay filing and court costs associated with criminal proceedings, nor for proceedings in which a protection order is issued and served. Finally, the amended policy recommendation urges courts to develop procedures and data systems which would allow for the effective enforcement of protection orders pursuant to the statutory mandate of the Violence Against Women Act.

9. The 1978 policy recommended that states respond to family violence by establishing diversion programs and by providing counseling and other support services. The

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26 See also 42 U.S.C. §§ 3796hh (1994) (providing grant authority for computer communication between police, prosecutors, criminal and family courts).
28 Model Code, Sec. 310 (1994).
30 In August 1996, the Association’s House of Delegates adopted a policy resolution urging law enforcement personnel and legal system professionals to aid the U.S. Department of Justice in the implementation of the VAWA provision giving full faith and credit to all protection orders issued in the states, territories, or Indian tribal lands. VAWA, 18 U.S.C. 2265.
proposed restatement continues to recommend that states provide counseling and other support services for victims of domestic violence and their families, though it removes the passage addressing diversion (see paragraph after next for explanation). During the past eighteen years, both state and federal laws have emphasized the need to provide victims and their families with the appropriate resources to physically and emotionally recover from domestic abuse.29

Experience shows that counseling programs for batterers, victims, and their children must be developed very carefully if they are to be effective. "Couples counseling," for example, has proven to be dangerous for victims of domestic violence, because the theoretical underpinnings of this kind of counseling assume that both parties are responsible for actively maintaining the relationship. In domestic violence cases, such assumptions can lead batterers to believe they are justified in their behavior, while victims believe they must take on responsibility for "preventing" further violence. Current psychological theories about the dynamics of domestic violence suggest that this counseling model does nothing to end the violence, and in fact may promote it by making the batterer feel justified. This result can impact victim safety adversely, especially if the victim is made to feel that the responsibility for ending the violence rests entirely on her shoulders. Any organization developing or utilizing a counseling program for batterers, victims, and their children should be sure that the counseling program was designed specifically to address domestic violence issues and was developed with the help of domestic violence service providers and mental health professionals who have a strong background of success in responding to domestic violence.

This restatement also reflects a changed view of the most effective intervention strategies to deter perpetrators of family violence from re-offending. As the former policy demonstrates, two decades ago, diversion programs for perpetrators, which removed domestic violence crimes from the reach of the criminal justice system, were favored. Experts now concur that diversion programs fail to treat domestic violence as a serious crime, compromising both victim safety and perpetrator accountability.28 The updated policy espouses the current view that abuser intervention programs which meet certain standards are far more useful than diversion programs.29

10. This section of the updated policy repeats the exact language of the former policy, which recommended that statutes which require the arrest of perpetrators who violate civil or

29 NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, FAMILY VIOLENCE: A MODEL STATE CODE, SECTION 508 (1994); MICHAEL PAYMAR, VIOLENT NO MORE, HELPING MEN END DOMESTIC ABUSE (1993).
criminal protection orders be enacted and enforced without regard to the relationship between the parties. Currently, civil protection orders are available to domestic violence victims by statute in all fifty states, the District of Columbia, Puerto Rico, and all United States Territories. During the past eighteen years, both civil and criminal statutes have expanded the reach of their protection orders, making relief available to additional persons, such as unmarried dating partners or same-sex partners. This policy continues to reflect the determination of experts that perpetrators are more likely to be deterred from committing further violence if they are promptly arrested and held accountable when they violate orders of protection.

The 1978 policy recommended that victims of domestic violence should not be excluded from coverage under victim compensation legislation where they demonstrate that they have met the conditions for receiving compensation and live separate and apart from assaulting spouses. The restatement continues to provide that injured victims of domestic violence should not be excluded from coverage under victim compensation legislation. However, the updated policy removes the previous requirement that victims must live separate and apart from their assaulting spouses in order to seek relief, reflecting the current state of the law.

CONCLUSION

The laws governing domestic violence have changed significantly in the eighteen years which have passed since the Association first addressed this issue as a policy matter. Additionally, the numbers and types of professionals currently identified as key players in helping to resolve this national epidemic have expanded considerably in this time. The landscape of domestic violence law has changed — in large part, for the better — and the Association’s policy on the standards and protocols to be used in these cases should reflect the nature of these changes and prepare us for the future trends which will emerge in this field. For this reason, the Commission on Domestic Violence recommends that the House of Delegates adopt this restatement of the Association’s original family violence policy.

Respectfully submitted,

Catherine Klein & Leslye Orloff, Civil Protection Orders, in The Impact of Domestic Violence, Ch. 4.
February 1997
GENERAL INFORMATION FORM

Submitting Entity: COMMISSION ON DOMESTIC VIOLENCE

Submitted By: CHRISTOPHER L. GRIFFIN AND MARNA S. TUCKER, CO-CHAIRS

1. Summary of Recommendation(s):

The Commission on Domestic Violence recommends a restatement of the Association’s 1978 family violence policy to reflect the current state of the law and trends in the field of domestic violence law and support services.

2. Approval by Submitting Entity:

The Commission on Domestic Violence met on November 22, 1996 and voted to approve the recommendation with certain amendments (which are included in the current version submitted).

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?

The Association has recent policy relevant to specific issues raised in this policy recommendation. The existing policies are:

(a) Policy urging a multidisciplinary response to domestic violence (August 1995)
(b) Policy recommending judicial training on issues relating to domestic violence (February 1996)
(c) Policy urging the Association to help the U.S. Department of Justice implement the new provision of the Violence Against Women Act of 1994 concerning the enforcement of out of state protection orders (August 1996)

The proposed policy recommendation, if adopted, would complement the existing policies outlined above. The new policy recommendation has been designed so as not to affect the above policies adversely. Care has been taken to avoid duplicating any points covered in the above policies.

5. What urgency exists which requires action at this meeting of the House?

This policy recommendation replaces an earlier Association policy adopted in 1978.
The goal of the original policy is still good, but it no longer reflects the state of the law nor current methods for handling domestic violence. Additionally, in August 1996, the House of Delegates adopted a policy requiring the archiving of policies more than 10 years old. For these reasons, the Commission is submitting this updated policy recommendation at this time.

6. Status of Legislation. (If applicable.)
N/A

7. Cost to the Association. (Both direct and indirect costs.)
N/A

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

9. Referrals.
To be referred to all ABA Sections and Division, the Commissions on Women in the Profession, Homelessness and Poverty, the Legal Problems of the Elderly, and the Steering Committee on Unmet Legal Needs of Children, as well as the National Association of Women Judges and the National Association of Women Lawyers.

10. Contact Person. (Prior to the meeting.)
Roberta L. Valente
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11. Contact Person. (Who will present the report to the House.)
Christopher L. Griffin
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Tampa, FL 33602
(813) 229-3223
FAX: (813) 223-9067
12. **Contact Person Regarding Amendments to this Recommendation.** (Are there any known proposed amendments at this time? If so, please provide the name, address, telephone, fax and email address of the person to contact below.)

This policy recommendation and report was originally submitted prior to the meeting of the full Commission on November 22, 1996 due to internal Association deadlines. The Commission has met and approved a final version of the recommendation on November 22, 1996. At that meeting, the Commission recommended making certain amendments to the original policy recommendation; all of those changes are incorporated in the current version submitted.

Contact:

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