JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Domestic Violence Practice and Procedure Task Force
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DATE: January 16, 2008

SUBJECT: Domestic Violence: Final Report of the Domestic Violence Practice and Procedure Task Force (Action Required)

Issue Statement
On September 6, 2005, Chief Justice Ronald M. George appointed the Domestic Violence Practice and Procedure Task Force to recommend changes to improve court practice and procedure in cases involving domestic violence allegations. The task force was further instructed that its recommendations should address the fair, expeditious, and accessible administration of justice for litigants in domestic violence cases.

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

The task force, in fulfilling its charge, developed and revised a series of 139 guidelines and recommended practices over the last two years. These guidelines and practices relate to court leadership, restraining orders under the Domestic Violence Prevention Act (DVPA), firearms relinquishment, entry of restraining and protective orders in the Domestic Violence Restraining Order System (DVROS), and criminal law procedures.

The proposals, viewed collectively, fit squarely within the Judicial Council's six strategic goals of Access, Fairness, and Diversity; Independence and Accountability; Modernization of Management and Administration; Quality of Justice and Service to the Public; Education for Branchwide Professional Excellence; and Branchwide Infrastructure for Service Excellence. They also are guided by the findings contained in

the Judicial Council's study on public trust and confidence in the courts, emphasizing the public's need for an opportunity to be heard and an understanding of court proceedings.

Task force recommendations and highlights from the proposed guidelines and practices are presented below. Background information, methodology, and the full text of the proposed guidelines and practices are set forth in the attached final report, *Guidelines and Recommended Practices for Improving the Administration of Justice in Domestic Violence Cases: Final Report of the Domestic Violence Practice and Procedure Task Force.* Many of the proposed guidelines and practices will require specific implementation and oversight. As a result, the task force recommends that a new task force be formed to focus on the implementation process, including appropriate referrals to existing Judicial Council advisory committees.

Recommendation

The Domestic Violence Practice and Procedure Task Force recommends that the Judicial Council, effective February 22, 2008:

1. Receive and accept the final report from the Domestic Violence Practice and Procedure Task Force;

2. Request appointment of an implementation task force to ensure that the recommendations are referred to the appropriate advisory committees, Administrative Office of the Courts (AOC) division, or other entity for review and preparation of proposed legislation, rules, forms, or educational materials to be considered through the normal judicial branch processes;

3. Direct the implementation task force to work collaboratively with the Judicial Council's Governing Committee of the Center for Judicial Education and Research (CJER) to revise the rules relating to minimum educational requirements so that domestic violence issues are mandatory components of courses that meet the minimum requirements for new judges and judges new to a family law, juvenile law, criminal law, or probate assignment;

4. Direct the implementation task force to undertake a study to determine the additional resources that courts may require to ensure that implementation of the proposed guidelines and practices can be achieved; and

5. Request the implementation task force to report progress to the council on implementation of the recommendations by June 2009.

Rationale for Recommendation

After developing draft guidelines and practices, the Domestic Violence Practice and Procedure Task Force engaged in a comprehensive process to obtain statewide comment and evaluation of its proposals.

The task force then engaged in a detailed examination and analysis of the comments received, the public hearing testimony, the regional meeting summaries, and the suggestions derived from other Judicial Council advisory committees. In reviewing this data, the task force focused on the following overarching principles:

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

Recently, Judge Leonard P. Edwards (Ret.), an AOC judge-in-residence, expressed concern that the task force recommendations did not directly address domestic violence as it relates to child custody mediation, juvenile delinquency court, and juvenile dependency court. The task force agrees that the issues raised by Judge Edwards are of critical importance in the domestic violence arena but believes this work is beyond its charge. The task force notes that the Family and Juvenile Law Advisory Committee is working on projects that involve these issues.

A discussion of the rationale for the salient proposals, the areas of controversy, and the task force's response to suggestions derived from the comment process follows.

Court leadership

Although the 2005 report to the Attorney General listed a series of problematic practices relating to courts and other justice system agencies, that report dealt primarily with the gap between requirements and performance and focused only briefly on the systemic factors that might be contributing to these questionable practices and the strategies needed to replace them with more effective procedures. The Judicial Council's task force found that the absence of effective practices in some courts was primarily due to a lack of communication and coordination within the various justice system agencies that affect the administration of justice in domestic violence cases; the need for minimum judicial education requirements relating to domestic violence; the need for ongoing evaluation and assessment of practices in domestic violence cases; the need for both the appropriate allocation and, potentially, the augmentation of resources; and the need for calendaring mechanisms and court structures that maximize performance.

As a result, the task force proposed that presiding judges, in partnership with court executive officers, should shoulder the responsibility to ensure ongoing monitoring in domestic violence cases, allocate sufficient resources and advocate for increased resources, work with other justice system agencies and community organizations to improve the system of justice in domestic violence cases, and assign to domestic violence cases judicial officers who are required to complete courses that include components about domestic violence. These recommendations were supported by those who commented or testified and by the Trial Court Presiding Judges Advisory Committee. The advisory committee's executive committee, under the leadership of Presiding Judge Nancy Wieben Stock, Superior Court of Orange County, developed a policy statement in support of the task force recommendations and called on court leaders to ensure ongoing assessment of the administration of justice in domestic violence cases.[1]

Domestic Violence Prevention Act (DVPA) restraining orders

Recommendations for Domestic Violence Prevention Act (DVPA) orders cover a range of issues, including improving access for those seeking orders, the need to address safety concerns and make referrals or orders to appropriate services, and the importance of crafting safe, effective, and responsive orders. The report to the Attorney General focused on criminal domestic violence matters but in several areas also discussed civil restraining order procedures. The report discussed the importance of maximizing the use of emergency protective orders, which the task force addresses in proposal No. 8 of the restraining order recommendations. The report also recommended that family courts and law enforcement stop requiring domestic violence victims to carry restraining orders to the agency that will enter the orders into DVROS. A recent amendment to Family Code section 6380 now places that responsibility on the court or its designee. The following recommendations highlight several of the areas task force members discussed in detail and that members of the public also addressed in writing or through testimony.

Notice in Ex Parte Proceedings

The task force recommends that no blanket rule or policy regarding notice for every ex parte motion should be required. To some extent, court practice and procedure in this area appears to vary, with some courts always requiring notice and others determining whether notice is needed on a case-by-case basis. As the recommendation indicates, notifying a proposed restrained person about an applicant's request for a restraining order can trigger a significant risk of harm to the applicant, as abuse often increases at the time of separation. As provided in Family Code section 6300, the court should determine on a case-by-case basis whether notice of an application for a temporary restraining order should be required, taking into account the level of danger to the applicant. Additionally, applicants should be referred to appropriate domestic violence services so that they may receive assistance with safety planning or other needs as early in the process as possible.

[1] This policy is attached to the final task force report at page 45.

Right to Hearing

The task force discussed the practice in some courts of denying jurisdictionally appropriate requests for temporary orders and then not setting the matter for hearing and the risk this may pose to a petitioner or victim. A related concern arises when temporary orders are denied at the ex parte stage and the petitioner has concerns about the risks associated with providing notice for the upcoming hearing when there is no restraining order in place in the interim. As a result, the task force recommends the following: When a jurisdictionally adequate petition is presented at the ex parte stage, the court may not summarily deny it. The court must either (1) grant the temporary orders requested and set the matter for hearing or (2) defer ruling on the matter pending a noticed hearing, in which case the court should consider whether failure to make any of these orders would jeopardize the safety of the petitioner and children. When no temporary order is issued, some petitioners may be concerned that their safety will be compromised if the court sets the matter for a noticed hearing. Therefore, the court should develop a procedure for informing the petitioner that he or she may withdraw the petition, without prejudice to refiling it at another time.

California Law Enforcement Telecommunications System/Domestic Violence Restraining Order System

As required by Family Code section 6380, each court should ensure that all required domestic violence restraining orders as defined under Family Code sections 6203 and 6320 are entered into the Department of Justice Domestic Violence Restraining Order System (DVROS) via the California Law Enforcement Telecommunications System (CLETS)[2] within one business day and memorialized on mandatory Judicial Council forms. The statutory scheme contemplates that these orders should be entered into DVROS so that law enforcement agencies will have access to the orders, thus maximizing enforcement. Moreover, under federal law (see generally 18 U.S.C. § 922(g)(8)), any order that purports to prohibit specific threatening conduct carries with it mandatory firearms restrictions that should not be obviated by a state court or by stipulation of the parties.

Non-CLETS Domestic Violence Restraining Orders

The task force recommends that courts decline to approve or make domestic violence restraining orders that cannot be entered into DVROS or CLETS, commonly referred to as “non-CLETS” orders. Domestic violence is defined by statute in the civil context as abuse that has been perpetrated against an intimate partner, as defined by Family Code section 6211. Abuse is further defined as types of conduct described in Family Code sections 6203 and 6320. Restraining orders in the family law context that do not fit within these statutory definitions would not be affected by this proposal.

[2] CLETS comprises many databases, including but not limited to DVROS for restraining and protective orders, criminal histories, warrants, and registered firearms.

For example, in family law proceedings, parties sometimes request the court to approve agreements for domestic violence restraining orders that are not on Judicial Council forms and are not intended to be entered into CLETS. As a product of settlement negotiations, such proposed orders are sometimes offered by counsel for the parties. Sometimes, the proposed orders are styled as mutual restraining orders in that they purport to bilaterally restrain both parties in exactly the same ways. Family Code section 6305 prohibits mutual restraining orders absent several prerequisites outlined in that section, and the parties may not have complied with these requirements.

Domestic violence restraining orders presented to the court that are not intended to be entered into CLETS create a false sense of security for the protected person and a false expectation of enforcement by police. Since the orders are not in CLETS, law enforcement agencies do not usually enforce them. The only remedy courts can offer for a violation of such orders is contempt of court. This remedy is expensive, time-consuming, and technically difficult to prosecute, offering limited remedial response to the violation.

Since these orders may fail to recite firearms restrictions, even though these provisions may in fact be required by federal law,[3] the orders may leave protected persons exposed to potentially lethal circumstances and restrained persons unaware of the firearms provisions.

The statutory scheme underlying the DVPA does not appear to contemplate a relaxation of its mandatory provisions such as firearms relinquishment under Family Code section 6389, and thus, arguably, non-CLETS orders are not permitted under the existing statutory framework. Moreover, the Department of Justice indicates that when these orders are called to their attention, staff instructs law enforcement to enter the orders regardless of any text on the orders stating that they are non-CLETS orders.

Although these orders are an outcome of efforts to carefully balance attempts at resolution with the need to have some kind of restraining order in place, the absence of the protections that CLETS orders offer places victims at too great a risk. This risk simply does not justify the advantages, if any, of non-CLETS orders. When parties do seek to stipulate to allowable restrictions on contact, the court should advise the parties of the limitations wherever possible and make reasonable efforts to ensure that such agreements are not entered into as a result of the duress of any party, especially when one or more of the parties is not represented by counsel.

[3] See generally 18 U.S.C. § 922(g)(8).

Court Coordination

For a given set of facts, several different courts in the same jurisdiction may be involved and may be asked to issue a variety of orders that may duplicate or conflict with each other. Most often, this occurs when a criminal court and a court handling child custody matters both have cases involving the same family. In recognition of this issue, the Judicial Council adopted rule 5.450 of the California Rules of Court, requiring, in part, that courts adopt by local rule a procedure for communication among courts issuing criminal court protective orders and courts issuing orders involving child custody and visitation regarding the existence and terms of these orders. Under rule 5.450, the local rule also must include a procedure for modifying a criminal protective order, in consultation with the court issuing a subsequent child custody and visitation order. The procedures should include methods for safeguarding confidential information and provide a mechanism for researching related cases, orders, court dates, and information regarding children as well as indicate how to best provide appropriate information to judicial officers. If needed, the court should reallocate existing funds or seek new funds to support this activity as a critical function of the court. The information should be integrated into the court's case management system. The task force recommends that courts proceed expeditiously with adoption of their local rules to comply with rule 5.450 and improve coordination among and between criminal courts and those handling child custody matters.

Firearms relinquishment

California and federal law prohibit persons subject to restraining orders, as well as defendants convicted of certain crimes, from possessing or purchasing firearms or ammunition.[4] However, the onus is on the restrained person to relinquish any firearms or ammunition to law enforcement or sell them to a licensed gun dealer.[5]

Ultimately, public safety is best served when law enforcement and the entire justice system take immediate action to remove firearms, whether registered or not, from the hands of a person who is statutorily barred from possessing them. The courts have a necessary and important role in achieving this goal, but because the court is not an investigative or enforcement agency, it must rely on justice system entities to provide the necessary information and to enforce compliance with firearms relinquishment orders. However, it is imperative that courts recognize that they have no discretion, except in extremely limited circumstances, to eliminate the mandatory firearms restrictions.[6]

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[4] See, e.g., Fam. Code, § 6389; Pen. Code, § 136.2; and 18 U.S.C. §§ 922(g)(8)–(9).

[5] *Ibid.*

[6] The 2005 report to the Attorney General found that some judicial officers crossed off the mandatory firearms prohibitions on the Judicial Council forms. Case law clearly prohibits this practice **(***Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275). The 2005 report to the Attorney General also cited as problematic a legal loophole in criminal domestic violence cases that the absence of a court-issued protective order under Penal Code section 136.2 deprives the court of any independent basis to issue a firearms

The task force conducted a chronological assessment of firearms relinquishment procedures in criminal and family law protective order cases. The task force concluded that the key elements of court policies and procedures intended to remove firearms and ammunition from persons who are legally prohibited from owning or possessing them are: local and statewide agency communication, comprehensive inquiry procedures, and compliance review. These elements are reflected throughout the firearms relinquishment proposals and are summarized below.

Local and Statewide Communication About Firearms Relinquishment Procedures
The task force recommends that local courts and the AOC convene local and statewide working groups to develop and monitor firearms relinquishment protocols and procedures. This proposal garnered universal public support. One commentator indicated that this was one of the most important proposals made by the task force. Although not controversial, the proposal will require ongoing leadership, both locally and within the AOC. The task force believes that communication among the various justice system entities is critical to improving public safety.

Inquiry About Ownership or Possession of Firearms
The task force recommends a group of proposals that focus on improving the information available to the court about a prohibited person's possession or ownership of firearms or ammunition in cases where a protective or restraining order was issued. The task force focused on four sources of information: (1) the Automated Firearms System (AFS), administered and maintained by the California Department of Justice (DOJ), (2) the protected person, (3) the restrained person, and (4) the prosecution in a criminal case. All of these sources present challenging issues, which the proposals address.

Most of the public comment on this group of proposals centered on the challenges of asking either the protected person or the restrained person about firearms. Although the protected person may appear to be one of the court's best sources of information about firearms, many victim advocates pointed out that the protected person might not disclose such information in open court due to fear or threats of retaliation by the restrained person. The task force notes that a protected person may choose to disclose the presence of firearms in a DVPA petition, sua sponte in a court hearing, or to the prosecution in a criminal case. The task force recommends that courts consider the evidence provided and make findings accordingly.

The task force and several commentators noted that even before the court issues a protective or restraining order, the defendant or respondent may have a felony conviction

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relinquishment order. Recent legislation and a new Judicial Council form implementing that legislation have addressed the issue. (Assem. Bill 1288 (Stats. 2005, ch. 702); Pen. Code § 136.2(a)(7)(B); *Order to Surrender Firearms in Domestic Violence Case* (form CR-162).)

or may be otherwise legally prohibited from owning or possessing a firearm or ammunition. Therefore, asking at a hearing whether that person owns or possesses firearms could implicate his or her right against self-incrimination under the U.S. Constitution. The task force concluded that the best approach in a criminal case is for the court to ask the prosecution if there is reason to believe that the defendant owns or possesses a firearm, rather than directly questioning the defendant.

Compliance Review

A proposal for courts to schedule review hearings in all cases where a DVPA order or a criminal protective order has been issued was considered by the courts and the public as overly burdensome on courts' resources. The task force revised the proposals to recommend specific procedures in criminal and civil cases intended to ensure compliance with firearm prohibition and relinquishment orders in those cases where there is reason to believe that firearms have been involved or are accessible to the defendant.

In a criminal case where the court has issued a protective order under Penal Code section 136.2, the task force recommends that a court schedule a review hearing only when the court finds reason to believe that the defendant owns or possesses a firearm or ammunition. The court should order the defendant to personally appear at the review hearing unless a sale or relinquishment receipt, or the DOJ *Notice of No Longer In Possession* form (NLIP) or other DOJ-approved notice is filed with or provided to the court within the statutory time frame. If no receipt or DOJ-approved document is filed or presented to the court by the hearing date, the proposals provide guidance for appropriate court orders.

In a family law case where the court has issued a temporary restraining order under the DVPA, the first opportunity for the court to review compliance with the firearms relinquishment order is at the noticed hearing. On the date of the hearing, the restrained person already should have relinquished any firearms or ammunition and filed a receipt or DOJ-approved nonownership notice with the court. The task force recommends that the court determine whether the restrained person owns or possesses a firearm and—if the requisite receipt or notice was not filed by the time of the noticed hearing, or if the court nevertheless finds reason to believe that the restrained person owns or possesses firearms or ammunition—notify law enforcement for appropriate action.

Access to and entry of orders into Domestic Violence Restraining Order System (DVROS)

By law, courts are required to ensure that restraining and protective orders are entered into DVROS within one business day (Fam. Code, § 6380; Pen. Code, § 136.2). Courts may enter those orders directly with approval from the DOJ or may designate local law enforcement as the entering agency.

The 2005 report to the Attorney General cited as a problematic practice the apparent failure of some courts to ensure that all restraining and protective orders are entered into DVROS accurately and in a timely fashion. Moreover, when timely and accurate entry into DVROS does not occur, the enforceability of these critical orders can be compromised.

The task force guidelines and practices relating to the improvement of the domestic violence restraining and protective order system are designed to respond to the concerns expressed in the 2005 report. The ideas underlying the proposals are partially the result of meetings with former Attorney General Bill Lockyer and members of his staff and discussions conducted at a court forum sponsored by the task force. The court forum reflected an understanding of the complexity of the restraining and protective order system and the need to engage justice system entities in a collaborative process to improve the system. The task force proposals in this section reflect the range and diversity of courts and their various approaches to compliance with this statutory duty. The task force recognized that courts may meet these mandates in a variety of ways.

Highlights of several areas discussed in detail and an update on current AOC projects relating to improving the restraining and protective orders system follow.

Restraining Order Registry

The AOC has initiated efforts to develop the California Courts Protective Order Registry (CCPOR), a judicial branch statewide centralized system for viewing the full text of restraining and protective orders and related information. CCPOR will be an effective tool for the judicial branch to reduce conflicting orders and for law enforcement to quickly review and access the orders in the field. When fully implemented, it will provide for timely and accurate entry into DVROS as well. To determine how best to create a statewide registry of restraining and protective orders, an examination of local court methods for entering orders into DVROS and local court registries was conducted. Through written surveys, conference calls, and site visits, information was gathered on local restraining and protective order practices, types of restraining and protective order registries currently in use, and technical requirements. The AOC expects to develop a business model and a deployment plan within the next six months, with full deployment of the pilot courts in late 2009.

Access to CLETS

From the early stages of the task force, members expressed that obtaining access to CLETS from the DOJ can be a long and arduous process. Currently only seven courts are approved by the DOJ to enter restraining and protective orders directly into DVROS. Most courts transmit their orders to one or more local law enforcement agencies for entry by the agencies. For this system to be effective, the courts and law enforcement must work collaboratively to establish procedures and protocols to ensure that the orders are timely and accurately entered as mandated by law. The task force learned that in some courts there is a delay between the date the orders are issued and the date of entry into DVROS. As a result, some courts have assumed the responsibility to enter orders directly in order to improve the timeliness of the system.

To assist in streamlining this process, the AOC applied for and the DOJ approved direct access to CLETS via the California Courts Technology Center and allowed courts the same access through the AOC's portal. However, individual courts are still required to submit an application in order to use the AOC portal. On the plus side, the complexity of the application process has been reduced because courts can now obtain technical assistance from the AOC.

The task force recommends that all courts have access to DVROS and other databases within CLETS, as deemed necessary. Other databases include, for example, the Automated Firearms System, the firearms registry that lists gun ownership. Through CLETS access, courts will be able to perform data searches and thus support compliance with rule 5.450, the provision that requires a communication protocol among courts issuing criminal protective orders and those issuing orders involving child custody and visitation.

Data Collection

The collection of relevant restraining order data and statistics is important for the judicial branch to support the development of domestic violence policy. In the 2005 report to the Attorney General, restraining and protective orders entered into DVROS were compared in some instances to population data because the number of orders granted by the courts was not readily available. The AOC should provide courts with guidelines to improve collection of this crucial information.

Integration With CCMS

The task force emphasizes that CCPOR is an initial approach and only a segment of the seamless process that ultimately will be incorporated into the statewide California Court Case Management System (CCMS). The task force stresses the extreme importance of including relevant domestic violence information in the CCMS data elements.

Domestic Violence Criminal Procedure

The recommended series of guidelines and practices relating to criminal procedure in domestic violence cases essentially tracks the chronology of a criminal proceeding. The recommendations memorialize both statutory requirements and effective procedures. The 2005 report to the Attorney General asserted that criminal protective orders, whether issued pretrial to protect the complaining witness or at the time of disposition as a term of probation, were being entered into DVROS in disproportionately small numbers, that prosecutors were agreeing and judges approving plea bargains that did not uniformly conform to the statutorily mandated terms and conditions of probation,[7] and that systems designed to monitor and enforce probationary terms were lax and inconsistent.

Criminal Protective Orders

The task force learned that prosecutors and defense attorneys were not always present at the time a criminal protective order was issued pretrial. As a result, the order might not necessarily be memorialized on mandatory Judicial Council forms,[8] and thus, the order would not be included in those slated for entry into DVROS. This also could occur at disposition when a criminal protective order is issued as a term of probation. The task force recommends, therefore, that counsel be present at arraignment and whenever a plea is entered to ensure that the proper forms are prepared and entered into DVROS within one business day as required.[9]

Mandatory Terms and Conditions of Probation

In testimony presented to the task force, primarily at the regional court meetings, judicial officers questioned the wisdom of the one size fits all structure of Penal Code section 1203.097 that sets forth the mandatory terms and conditions of probation. Of particular concern to judicial officers was the imposition of attendance at a mandatory 52-week batterer intervention program made more problematic by the asserted lack of research about the efficacy of these programs as a remedial tool. The statute triggers the mandatory terms and conditions not just when a domestic violence offense is the basis for the criminal conviction, but whenever the abusive conduct constituting that offense occurs and the requisite relationship is present. Penal Code section 1203.097(a) provides that a series of mandatory terms and conditions of probation apply "for a crime in which the victim is a person defined in section 6211 of the Family Code." The task force unanimously agreed that under these circumstances, the law clearly requires that the mandatory terms and conditions be ordered. Sometimes, the task force learned, a prosecutor and defense counsel may agree to a plea to a lesser included offense in order to avoid the mandatory terms of probation. The task force believes this to be contrary to the clear intent of the legislation. The task force does agree, however, that there are instances where the rigidity of the statutory scheme may create injustices or be difficult to

[7] Pen. Code, § 1203.097.
[8] See Judicial Council form *Criminal Protective Order—Domestic Violence* (form CR-160).
[9] Fam. Code, § 6380(a).

implement in busy misdemeanor calendars. For example, a person may be unsuitable for the batterer intervention programs available in the jurisdiction. The consequences of a conviction for a domestic violence offense with its attendant firearms restrictions and the effect of those restrictions on employment may have the unintended consequence of thrusting a family into poverty.

We note, however, that the AOC Office of Court Research was awarded a research grant from the National Institute of Justice to study batterer intervention systems in California in five counties: Los Angeles, Riverside, San Joaquin, Santa Clara, and Solano. The outcome of the study is anticipated in summer 2008.

Compliance With Mandatory Terms

In addressing concerns that domestic violence probationers comply with the mandatory terms and conditions of probation imposed, the task force emphasized two aspects of its recommended guidelines and practices. First, the task force emphasized the need to conduct a prompt review hearing at which the defendant is required to appear in order to determine compliance with the probationary terms. The review hearing would be followed by periodic progress reports to further monitor compliance. While cognizant that neither the task force nor the Judicial Council has authority over the duties and responsibilities of the probation department, the task force members observed that the entire statutory scheme articulated in Penal Code section 1203.097 relies on the existence of a fully funded probation department with sufficient resources to carry out the functions outlined in the statute. Testimony presented to the task force, and summarized as part of the report to the Attorney General, suggests that this is not universally true in each jurisdiction. As a result, the task force recommends that courts advocate and support efforts to increase resources available to probation and that all necessary services be performed.

Alternative Actions Considered

The task force members determined that, in general, imposing new mandates and requirements without attendant resources would not necessarily improve the administration of justice in domestic violence cases. Rather, the task force believes that the requirements of existing law together with the best practices of those courts with sufficient resources can and have resulted in excellence in the administration of these critical cases. The task force goal is to make these requirements and practices, tailored when necessary to the needs of local jurisdictions, accessible and feasible throughout the state.

Comments From Interested Parties

The task force sought comment on its draft guidelines and recommended practices from a wide array of persons, including judges, commissioners, and referees, practitioners, probation officers, advocates, service providers, and members of the public. The

invitation to comment was posted on the judicial branch Web site, and the comment period was from January to June 2007. Specifically, the task force:

- Distributed its draft report for statewide written comment in January 2007, with comments due on June 30, 2007;
- Conducted two public hearings, one in Los Angeles on March 14, 2007, and one in San Francisco on March 21, 2007;
- Conducted three regional court meetings in Santa Rosa (May 14–15, 2007), Burlingame (May 21–22, 2007), and Torrance (June 6–7, 2007); and
- Held interactive meetings with Judicial Council advisory committees.

The task force received more than 200 comments, all of which were reviewed and analyzed and which, in many cases, led to revisions of the draft guidelines and recommendations. A chart summarizing the comments received follows this report at page 53.

Implementation Requirements and Costs

The following resources will be required to accomplish the task force's recommendations.

Implementation task force

Many of the proposed guidelines and practices will require specific implementation and oversight. Accordingly, the task force suggests that an implementation task force with budgetary, rule making, legislative, and judicial expertise, monitor implementation of these practices, refer proposals to relevant Judicial Council advisory committees or internal committees for consideration of needed legislation, rules, forms and educational materials. This task force would report progress to the Judicial Council, helping to ensure that the task force proposals become a regular part of practice and procedure in domestic violence cases. The implementation task force should also undertake a study to determine what specific additional resources may be required to implement specific proposals.

Judicial education

The task force wishes to underscore the importance of ensuring that every judicial officer who may potentially adjudicate these cases has sufficient education about their unique features and therefore recommends that the implementation task force work with the CJER Governing Committee to mandate education as appropriate.

Resources

The task force submitted 139 recommendations. Some of them are based on existing legislation and case law. Others go further. Throughout its inquiry, the task force was impressed by the need for appropriate augmentation and allocation of staff resources in

these critical cases. On many occasions, those who testified at the public hearings or who participated at the regional court meetings spoke about the desire to implement best practices and the barriers presented to achieving goals by a lack of available resources. Accordingly, one of the duties of the implementation task force should be to undertake a staffing study of the resources needed to carry out the best practices recommended in this report.

Attachment