THE STATUS OF THE IMPLEMENTATION OF THE 1989 REPORTS AND RECOMMENDATIONS

THE COURT'S RESPONSE TO VIOLENCE AGAINST WOMEN

DOMESTIC VIOLENCE

Gender Recommendation V-1: Every prosecutor's office should have written policies and procedures that encourage aggressive prosecution of domestic violence cases. They should provide that:

a. **Domestic assaults will be charged at the appropriate level of seriousness, based on the nature of the criminal conduct.**
b. **The victim is not required to sign the formal complaint against the assailant.**
c. **The assailant and the victim are to be told that it is the responsibility of the prosecutor to proceed with the case and that no case will be dropped simply because the victim so requests.**
d. **Waiting or "cooling off" periods are not required before warrants are issued.**
e. **Peace bonds will not be utilized in domestic violence cases.**

Summary of conditions prompting 1989 recommendation:

Although many prosecutors have exhibited increasing sensitivity to gender issues, particularly in domestic violence cases, much remains to be accomplished. Despite the fact that domestic violence is a crime, some prosecutors believe that these incidents should be left to social service agencies or domestic relations courts for resolution. The 1989 Task Force recognized that issues such as attrition, availability of evidence and victim credibility are very real problems in the prosecution of domestic violence cases. However, domestic violence is no less a crime because it is hard to prosecute.

The Michigan Department of Civil Rights Task Force on Domestic Violence, in cooperation with the Domestic Violence Prevention and Treatment Board, and the 1989 Task Force, conducted a survey of all police agencies, county sheriffs and prosecutors in Michigan. Its purpose was to capture statistics and obtain copies of policies on domestic violence, which are required to be maintained under Michigan law. A review of the statistics collected from prosecutors' offices is informative.

Thirty-seven out of eighty-three surveys sent to county prosecutors were returned, a thirty percent (30%) response rate. Eighty-six percent of those responding had not established written policies or procedures concerning the handling of domestic violence cases. Only eight percent of those reporting kept statistics on the number of domestic violence cases referred. Sixteen percent of the offices kept statistics on the number of cases in which charges were brought; 210 total cases were reported in 1987. Out of those 210 cases, a total of 92 resulted in some form of adjudication, including 25 in which the assailant received jail time. Ninety-four defendants were placed in pretrial diversion and the charges were dropped against 17 others.

Concerns about the consistency of policy and the uniformity of standards were raised. One director of a program servicing five counties outlined differences in approaches taken by each of the five prosecutors. These included allowing the victim to withdraw the complaint, allowing the charges to be dropped only after contact of a shelter for education, prosecuting victims for filing false police reports, recruiting a police officer to sign the complaint, and using a "no-drop" provision for all domestic violence complaints.

The most serious concern for prosecutors was the frequency with which victims of abuse dropped charges or failed to appear in court for trial or preliminary hearing. Reasons for the dropping of charges included: fear of reprisal by the batterer, failure to understand the justice system, the difficulty of testifying, and emotional or economic attachment to the batterer. As a result, prosecutors anticipated case attrition and discouraged victims of abuse from filing criminal charges by insisting upon a "cooling off" period. One prosecuting attorney noted that, "The consensus of the system was that these were people that were going to back out. All you have to do is give it ten days. And most of the time that would happen." As a result, prosecutors would "systematically set out to discourage them from prosecuting" to prevent them from getting to court on criminal cases.

Many criminal cases involving domestic violence were reported as being charged below the proper level. Many assault and battery charges involved documented injuries and should have been charged as aggravated assaults. Similarly, assaults with weapons were sometimes charged as misdemeanors. National crime survey data showed that one-third of domestic violence incidents against women, including rape, robbery, and aggravated assault, were considered to be felonies, while two-thirds were classified as misdemeanor-level assault. However, victim injury occurred at nearly the same rate in both classes of crime: namely, in forty-two percent of simple assault cases and in thirty-six percent of felonies. As many as half of all incidents of domestic violence that police would classify as misdemeanors were as serious as or more serious than ninety percent of all the violent crimes that police would classify as felonies.

One enforcement problem resulted from the practice of some prosecutors of authorizing peace bonds in domestic violence situations rather than issuing criminal charges. These bonds often provided little deterrent to further abuse of a victim. In some cases, a batterer might be willing to accept the monetary loss in exchange for the opportunity to retaliate physically against the victim in an abusive manner.

Research Methodology in 1997:

Review of "Prosecuting Attorneys Association of Michigan Statement of Principles Regarding Domestic/Family Violence," adopted by the Board of Directors of the Prosecuting Attorneys Association of Michigan on June 16, 1994 (published in the *Michigan Bar Journal*, September, 1994, p. 911

Review of Michigan Domestic Violence and Anti-Stalking Statutes

Review of State of Michigan, Domestic Violence Law Implementation Task Force Recommendations published by the Prosecuting Attorneys Association of Michigan and the Michigan Domestic Violence Prevention and Treatment Board, July 1996

Prosecuting Attorney Questionnaires

Discussions with Representatives of the Prosecuting Attorneys Association of Michigan, the Prosecuting Attorneys Coordinating Council (Department of Attorney General, State of Michigan), and the Michigan Domestic Violence Prevention and Treatment Board

Interviews with Domestic Violence Shelter Providers, Victim Advocates, and Shelter Residents including Representatives from First Step, My Sister's Place, HAVEN, Women's Resource Center,

Capitol Area Family Violence Coordinating Council, Harbor House, Women's Justice Center, and the U of M Family Law Project

Status of the implementation of the recommendation in 1997:

Significant numbers of prosecutor offices now have formalized their domestic violence policies in writing. Of the forty-two county prosecutors responding to the 1997 questionnaire, fifty-two percent (52%) indicated that they have written policies. In the region containing large counties with large minority populations, five of the five responding prosecutors indicated that they have written policies.

The breadth of intrastate agency cooperation is further strengthened by the extraordinary efforts of prosecutors and local shelter personnel to meet and discuss local issues and procedures. Over eighty percent (80%) of the prosecutors reporting indicated that they have ongoing contact with their local domestic violence shelters. Many stated that they have extensive interaction on victim assistance and advocacy, training of prosecutors, staff, victim advocates, and police, as well as joint planning and safety planning for victims. Others cite the development of expert witnesses for trial from local shelter personnel. A significant number of prosecutors either chair or have organized local domestic violence task forces or continue to serve on task force boards.

New statutes providing enhanced sentencing for subsequent violations of domestic violence, as well as increased penalties for first offenses, have provided a more comprehensive charging scheme for prosecutors. Also, the recent anti-stalking legislation has enabled prosecutors to address the type of conduct present in many forms of domestic violence. These additional charging mechanisms have diminished the complaints that prosecutors were undercharging in domestic violence cases. In fact, no complaints were heard from domestic violence advocates that this continues to be a major concern.

Improvement in this area is largely due to cooperative efforts by the governor, legislature and judiciary which prompted statutory changes in 1994. Of particular note is the contribution made by Governor Engler's Task Force on Domestic Violence. Countless hours of volunteer time were contributed by Chair, Henry Baskin, attorney, along with members, Judge Wendy Potts, Judge Jeffrey Collins and reporter, Margaret Carroll Alli, attorney. This Task Force produced numerous recommendations which were largely responsible for the enactment of new domestic violence and personal protection laws. The changes adopted in 1994 fully realized the intention of the 1989 recommendations and have given Michigan a progressive, effective and efficient system with which to combat domestic violence. As a result, Michigan law is a model for the other states in this area.

All prosecutors responding to the questionnaire report that they no longer require the victims to sign complaints and have abolished the earlier practice of requiring a "cooling off" period before the authorization of a complaint. Although a majority have written formalized policies if a victim is reluctant or refuses to testify, the clearly stated attitude was a recognition of the concept that domestic violence is a crime against the people of Michigan and must be prosecuted if at all possible. Several expressed the need for effective intervention by the criminal justice system to reduce reoccurrences of abuse. Many also indicated a desire to use counseling and diversion for assailants rather than outright dismissals.

All of the responding prosecutors in the large urban counties either do not use peace bonds, or have abandoned the practice if they relied on them in the past. The questionnaires indicate some continued

use in rural areas of the state. This practice may be due to limited resources and a lack of options available in the more marginal cases.

Recommended Action:

This recommendation has been substantially implemented. Continued implementation of the recommendation is required. In addition, the State Bar of Michigan Task Force recommends:

- The legislative changes recommended in the *Domestic Violence Law Implementation Task Force Recommendations* prepared by the Prosecuting Attorneys Association of Michigan and the Michigan Domestic Violence Prevention and Treatment Board should be adopted by the Legislature.

- The Prosecuting Attorneys Association of Michigan and the Domestic Violence Prevention Treatment Board should encourage, initiate, monitor, and report on the development of local coordinating councils to provide an integrated approach to domestic violence cases in those counties where such groups have not yet formed.

- The Prosecuting Attorneys Association of Michigan should encourage all counties to formally adopt its "Statement of Principles Regarding Domestic/Family Violence" of June, 1994 and to rely on these principles in establishing written local policies and procedures, as well as any public education efforts.

DOMESTIC VIOLENCE

Gender Recommendation V-2: The Prosecuting Attorneys Association of Michigan and the Prosecuting Attorneys Coordinating Council should be encouraged to work with the Domestic Violence Prevention and Treatment Board and the Michigan Coalition Against Violence to develop model policies and procedures and to encourage the collection of statistics on domestic violence cases.

Summary of condition prompting 1989 recommendation:

In 1989 the Task Force noted a wide variety of policies and procedures for the handling of domestic violence cases. Serious concerns were raised about the lack of consistency in policies and standards applied in these cases. One director of a program servicing five counties outlined differences in approaches taken by each of the five prosecutors. These included allowing the victim to withdraw the complaint, allowing the charges to be dropped only after contact of a shelter for education, prosecuting victims for filing false police reports, recruiting a police officer to sign the complaint, and using a "no-drop" provision for all domestic violence complaints.

At that time, new policies had been adopted by some counties to reduce the number of charges being withdrawn in domestic violence cases. This had been accomplished by means of a "no-drop" policy which required the police officer, not the victim, to sign a criminal complaint once charges had been filed. The responsibility to press forward with charges then rested upon the prosecutor or police officer, thus reducing the threat of retaliation by the batterer against the victim.

Research Methodology in 1997:

Prosecuting Attorney Questionnaires

Discussions with representatives from the Prosecuting Attorneys Association of Michigan and a variety of domestic violence advocate agencies

Review of "Prosecuting Attorneys Association of Michigan Statement of Principles Regarding Domestic/Family Violence," adopted by the Board of Directors of the Prosecuting Attorneys Association of Michigan on June 16, 1994 (published in the *Michigan Bar Journal*, September 1994, p. 911)

Status of the implementation of the recommendation in 1997:

This 1989 recommendation has been successfully achieved through the adoption of the Prosecuting Attorneys Association of Michigan Statement of Principles Regarding Domestic/Family Violence in June 1994.

The document states:

The Prosecuting Attorneys Association of Michigan, in continuing its historical commitment to the prevention of domestic/family violence, provides the following statement of principles for Prosecuting Attorneys:

Prosecuting Attorneys are encouraged to:

1. Maintain a leadership role in promoting a coordinated community approach to address the issue of domestic/family violence through the development of a county coordinating council. The council should include representatives from the criminal justice system, law enforcement, judges, private attorneys, the medical profession, schools, clergy, social service providers, and domestic/family violence professionals.
2. Assist police agencies in the development and implementation of their written domestic/family violence policies, including assistance in developing an appropriate training program.
3. Assist in the development of a countywide investigative protocol, which accounts for the dynamics of domestic/family violence, ensures the safety of the victim, and enables effective prosecutions.
4. Develop or refine policies and procedures which are designed to: (a) treat domestic/family assaults as serious crimes; (b) hold the offender accountable for his or her actions; (c) provide services for the victims; and (d) ultimately reduce the incidence of domestic/family violence.
5. Ensure that all victim rights informational materials accurately reflect the resources available to the victims in the community.
6. Continue to provide education to their staff regarding the specialized issues of domestic/family violence.
7. Ensure that sufficient information is made available to the court in order to allow the judge to make an informed decision regarding bonds and sentencing, with particular emphasis on the safety of the victim.
8. Develop the necessary interagency cooperation to coordinate the civil injunctive process and criminal procedures.
9. Maintain adequate records to determine the level of domestic/family violence in the community.
10. Promote the development and coordination of treatment and education programs for offenders.
11. Participate in public education regarding the issues concerning domestic/family violence.

Responses from prosecutors and victim advocates reflect the success of this Statement of Principles. Although not all prosecutors' offices are in compliance, it appears that most have adopted the spirit of these principles and are moving towards fuller participation in this process. The overwhelming evidence that prosecutors are in constant contact with local shelter personnel permits an optimistic view that these principles will be adopted in all counties.

Recommended Action:

This recommendation has been fully implemented. In addition, the State Bar of Michigan Task Force recommends:

- The Prosecuting Attorneys Association of Michigan should encourage statewide compliance with its "Statement of Principles Regarding Domestic/Family Violence" of June, 1994, through formal adoption by counties, public education, and local prosecuting attorney coordination with local domestic violence agencies. It should further collect information, monitor, and report on the progress of this compliance.

DOMESTIC VIOLENCE

Gender Recommendation V-3: The Prosecuting Attorneys Association of Michigan and the Prosecuting Attorneys Coordinating Council should be encouraged to work with the Domestic Violence Prevention and Treatment Board and the Michigan Coalition Against Domestic Violence to develop training programs for prosecutors on the nature of domestic violence, the characteristics of victims and assailants, the impact of domestic violence on children in the home, the effectiveness of arrest and prosecution of assailants, and issues of self-defense as pertaining to women who kill their batterers.

Summary of condition prompting 1989 recommendation:

Numerous witnesses and experts told the 1989 Task Force that participants in the justice system needed a sound understanding of basic data on family violence. They believed that such understanding was a necessary first step toward the eradication of this serious problem. Battered females often have been socially conditioned to believe that it is a woman's responsibility to maintain a "successful" marriage, even if it entails physical abuse. These women frequently possess a very poor self-image and a low level of self-confidence. The negative psychological state of a victim is compounded by feelings of fear, guilt, and entrapment due to physical and mental abuse. This syndrome can be likened to that experienced by hostages.

In many cases, a victim's physical, economic, or psychological dependence on her batterer will make escape from an abusive situation extremely difficult. Threats of retaliatory violence or loss of access to her children may further inhibit the victim from leaving her batterer. Moreover, the victim is likely to be in the greatest danger at the time she tries to leave the home and the relationship. Participants in the justice system often fail to recognize these dependencies and conclude that women who remain in domestic violence situations either enjoy or invite the violence or exaggerate the degree of abuse. When victims encounter such misconceptions in the justice system, their sense of isolation, low self-worth and frustration are exacerbated.

Equally important to an understanding of domestic violence is the profile of the assailant. As with victims of domestic violence, aspects of a batterer's behavior may be attributed to learned social factors. According to expert opinion, batterers are generally fearful, insecure men who feel compelled to control or manipulate their partners by means of abusive force. Their violence is generally rewarded because it frequently forces accommodations by the victim and others. Further, if the batterer is successful in shifting the responsibility for the assault from himself to the victim, his physical aggression is justified or condoned by society and/or the courts, and the victim's blameworthiness is again reinforced. Societal acceptance of male violence against women consequently contributes to the assailant's belief that he is operating within the boundaries of accepted community standards.

A victim-precipitated homicide occurs when a woman, after prolonged domestic abuse or sexual attack, defends herself or her children by killing her assaultive intimate partner. According to the National Center on Women and Family law, approximately twenty percent of all homicides occur within the family and over one-half of those involve one spouse killing the other. Although husbands and wives kill each other with almost equal frequency, wives are motivated by self-defense almost seven times more frequently than husbands.

The tragic reality, often referred to as the "battered woman syndrome," is that a battered woman "unprotected by an ineffective legal network, often sees no choice but to kill or be killed." When the woman stops the man herself, she is likely to find that the criminal justice system is a powerful instrument of law and order and the same sex biases that earlier denied her protection now ensure her prosecution.

Women charged in the death of a mate have the least extensive criminal records of any female offenders. However, they often face harsher penalties than men who kill their mates. FBI statistics demonstrate that fewer men are charged with first or second-degree murder for killing a woman they have know than are women who kill a man they have known. And women convicted of these murders are frequently sentenced to longer prison terms than are men.

Many jurisdictions have allowed expert testimony on the "battered woman's syndrome" to explain why the behavior of battered women is at variance with assumptions about ordinary behavior. This establishes a basis for a jury determination that a defendant perceived herself to be in imminent danger at the time of a killing which was committed in self-defense. In 1989 no Michigan appellate cases were identified which admitted or rejected the applicability of the "battered woman's syndrome" to self-defense cases involving prolonged prior battering.

Research Methodology in 1997:

Prosecuting Attorney Questionnaires

Discussions with representatives of the Prosecuting Attorneys Association of Michigan, the Prosecuting Attorneys Coordinating Council (Department of Attorney General, State of Michigan), and the Michigan Domestic Violence Prevention and Treatment Board

Interviews with domestic violence shelter providers, victim advocates, and shelter residents, including representatives from First Step, My Sister's Place, HAVEN, Women's Resource Center, Capitol Area Family Violence Coordinating Council, Harbor House, Marquette Women's Center, Women's Justice Center, and the U of M Family Law Project

Status of the implementation of the recommendation in 1997:

The Prosecuting Attorneys Association of Michigan, together with its Coordinating Council in the Attorney General's Office, and the Michigan Domestic Violence Prevention and Treatment Board are to be congratulated for their remarkable success in attaining this 1989 recommendation. Their leadership and hard work has spawned a network of very effective educational programs on domestic violence not only reaching all Michigan prosecutors, but also local workshops including law enforcement, affiliated local agencies, shelter personnel, and victim assistance advocates. In recent years, federal funding through the Violence Against Women Act has accelerated these efforts tremendously.

These extensive educational programs for prosecutors on domestic violence recently have included two Homicide Prevention seminars of three-day duration in 1994 and 1995, eight personal

protection order seminars, each for two days, held at various locations across the state in 1996 and 1997, and a three-day Trial Advocacy seminar in May, 1997.

The Prosecuting Attorneys Association of Michigan has entered into a contract with the Domestic Violence Prevention Treatment Board to provide further training to prosecutors in the area of domestic violence. From June 1, 1997 to September 30, 1998, the following programs will be offered: (1) one seminar on criminal sexual contact and/or prosecution of date rape; (2) four cross-professional regional conferences on domestic violence with nationally recognized speakers and in cooperation with the Domestic Violence Prevention Treatment Board and the Michigan Law Enforcement Officers Training Council; (3) three cross-professional seminars on personal protection orders; (4) one domestic violence trial advocacy workshop for prosecutors; and (5) one criminal sexual conduct trial advocacy workshop for prosecutors.

Questionnaire responses from prosecutors unanimously reflect several years of education and training on domestic violence. For example, one hundred percent (100%) of all prosecutors responding indicated that they have received training on the nature of domestic violence, the characteristics of the victims and assailants, and the impact of domestic violence on children. Only seven percent (7%) of prosecutors in Region IV (rural and semi-rural) found that they had not been trained on the effectiveness of the arrest and prosecution of assailants, whereas all others reported they had received such training. The only significant percentage (twenty percent [20%] to twenty-five percent [25%]) where no training was reported was on the issue of self-defense by victims.

A majority of prosecutors responding (sixty-six percent [66%] to one hundred percent [100%]) found the training to be excellent or above average in its effectiveness, and also indicated a high level of interaction with local domestic violence shelters (eighty percent [80%] to one hundred percent [100%]). Some counties report that this cooperation at the local level includes joint training of support staff, victim support and safety planning, as well as local law enforcement training. Several prosecutors have separate domestic violence units and provide their own in-house education, particularly those with local coordinating councils. The number of hours of training received varies with the extent of time and resources available, and may improve with the influx of federal money to support attractive seminar offerings.

The use of expert testimony on the "battered woman's syndrome" where self-defense is alleged received some mixed reviews from prosecutors. Some have used it successfully and most believe it should be available as a defense in domestic violence cases. Others cite difficulties in admitting such evidence in court due to factors such as judges' reluctance or refusal to allow such evidence, or in some cases, the severe limitations placed on the scope of such evidence by the judge. The cost and/or resources available to present such expert testimony was reported by some prosecutors to be a stumbling block to its frequent use. However, most of them did not find such testimony necessary in most cases. They were quite clear that charging decisions were either not affected by such a possible defense, or if they were, the victim would not be charged.

Shelter personnel and victim advocates generally gave prosecutors high marks for their responses to domestic violence situations. Most felt that there had been a significant improvement in their contacts with prosecutors, especially where coordination efforts had been undertaken, and overall, felt that prosecutors were doing an excellent job. One advocate offered the insight that they were now being invited by prosecutors and others to provide training and services, whereas traditionally

domestic violence advocates had had to struggle to get anyone in the criminal justice system to listen to them or accept offers of help.

Although the prosecutors' responses indicated that a fair percentage of them were involved in police training and education on issues of domestic violence, shelter personnel and victim advocates reported several problems with police bias, inappropriate responses and/or inaction, and too many victim arrests. A contract between the Domestic Violence Prevention Treatment Board and Michigan Law Enforcement Officers Training Council has been developed this year to provide extensive police training. However, prosecutors are in a unique position to strengthen and reinforce appropriate police action in domestic violence cases, and should be encouraged to do so.

Recommended Action:

This recommendation has been fully implemented. In addition, the State Bar of Michigan Task Force recommends:

- The Prosecuting Attorneys Association of Michigan and Prosecuting Attorneys Coordinating Council should encourage the continuation of the Prosecuting Attorneys Association of Michigan Domestic Violence Prevention Treatment Board educational programs currently underway and suggest more training on self-defense issues relating to the use of expert testimony, charging decisions, victim recantation, and victim-precipitated homicide.

- The Prosecuting Attorneys Association of Michigan should develop ways to increase the establishment of statewide coordinating councils to provide more training and education on domestic violence for all segments of the criminal justice system, including law enforcement. The Prosecuting Attorneys Association of Michigan should gather annual statistics on the number of existing and new local councils established, and report its findings annually.

DOMESTIC VIOLENCE

Gender Recommendation V-4: Prosecutors should establish special prosecution units for domestic violence cases in those jurisdictions where the volume of those cases permits. These units would make it possible for the same prosecutor to handle cases from intake through final disposition.

Summary of condition prompting 1989 recommendation:

Victims, their lawyers and their advocates lose confidence in the legal system when prosecution is inconsistent, courtroom interaction is degrading, questions are uninformed, and cases are prolonged through continuances and unnecessary delay.

Research Methodology in 1997:

Prosecuting Attorney Questionnaires

Interviews with domestic violence shelter providers, victim advocates and shelter residents

Status of the implementation of the recommendation in 1997:

Numerous large counties have responded well to this recommendation; five of the six counties responding to the questionnaire (out of a universe of ten large counties) indicated that they now have special prosecution units for domestic violence cases. Four of the large counties did not respond. Of the eight large counties with high minority populations in the survey, four have the units. In the universe of smaller counties, four of the thirty-seven responding indicated that they have such units.

Victim advocates failed to comment on special prosecutor units except to state that services are best in those counties with coordinated efforts.

Recommended Action:

This recommendation has been partially implemented. Continued implementation of the recommendation is required. In addition, the State Bar of Michigan Task Force recommends:

- The Prosecuting Attorneys Association of Michigan should identify and report on the number of special prosecuting attorney units currently operating in the state. Further, it should encourage those offices that may be too small or with too few resources to establish local coordinating councils instead of special units.

DOMESTIC VIOLENCE

Gender Recommendation V-5: Prosecutors should inform victims how they can obtain spouse abuse injunctions and referrals to domestic violence programs and social services and should prepare victims to participate in prosecutions by explaining the functions of courts and prosecutors, steps in the process between charging and disposition, the number of hearings which may be required and the possible outcomes.

Summary of condition prompting 1989 recommendation:

A domestic violence victim is offered several legal options. They include: suing for legal separation or divorce; petitioning for emergency injunctive relief/civil order of protection; and pursuing criminal charges, i.e., assault and battery, aggravated assault, or felony assaults. The 1989 Task Force found that there was general confusion within the court system about these different civil and criminal procedures. Many judges, lawyers and prosecutors apparently believe that victims must choose a single remedy.

Research Methodology in 1997:

Review of Michigan personal protection orders and related statutes

Prosecuting Attorney Questionnaires

Interviews with domestic shelter providers, victim advocates, and shelter residents

Domestic Violence Law Implementation Task Force Recommendations, co-chaired by the Prosecuting Attorneys Association of Michigan and the Michigan Domestic Violence Prevention and Treatment Board, July, 1996

Input from the Domestic Violence Prevention and Treatment Board

Status of the implementation of the recommendation in 1997:

A very high percentage of responding prosecutors indicated that they have implemented this recommendation by providing special services for victims of domestic violence. In Regions I through III, compliance was one hundred percent (100%). Region IV reported an eighty-four percent (84%) compliance rate.

Even more impressive is the range of services reported. Since most prosecutors' offices employ victim assistance specialists as a result of the Michigan Victims Rights legislation, these individuals have been assigned the responsibilities for responding to domestic violence victims' needs as well. However, some counties are also employing additional staff or using trained volunteers to fill this need. The services reported include providing basic written materials and information; referrals to community agencies, information on case status; accompanying the victim to court, if requested; explaining court processes; providing assistance with obtaining

personal protection orders; discussing safety plans; crisis intervention counseling; arranging police escorts and transportation; conducting home visits when necessary; and 24-hour follow-up.

Most of these services are either provided by or supplemented by domestic violence shelter personnel, particularly if funding is not available to handle the demands in the prosecutor's office. Clearly, the domestic violence shelters have initiated and responded to the needs of overburdened prosecutors in handling these complex cases. The level of interdependence between the two has increased dramatically since 1989.

Although the new personal protection order legislation requires the county clerks to provide uniform instructions and forms to pro se petitioners, it appears that more assistance is needed and prosecutors' offices are "stepping into the breech" to address these needs. The increased volume in both criminal and civil proceedings involving domestic violence has undoubtedly put a strain on all affected parts of the legal system and underscores the need for additional resources and support.

This current diffusion of duties regarding personal protection orders has caused a great deal of confusion and should be clearly defined. County clerks should only be required to provide the instructions and forms, as well as perform their statutory duties of service notification and Law Enforcement Information Network entry of original and amended orders. Prosecutors should provide legal assistance to applicants to obtain and enforce the orders. Victim assistants already in place within most prosecutors' offices should provide all non-legal assistance required to process these complex forms of relief. It makes sense that these services should remain in the prosecutors' offices given the fact that most of them are presently providing this assistance, and have already established the necessary interaction with supportive victim advocates. Further, most prosecutors already are funded to provide victim assistance under the Michigan Victims' Rights Act and are currently in contact with victims and providing these services. To move domestic violence victim assistance to the county clerk offices, and hence, the courts, would entail establishing and training a whole new segment of personnel at more cost and effort.

Input from the Chair of Michigan's Domestic Violence Prevention and Treatment Board suggested that the prosecution's duty to obtain such orders should not be absolute: if a conflict arises from potential prosecution of the person seeking protection, the person should obtain assistance elsewhere. She added that the Board "continues to support increased availability of lay persons to assist with PPOs, and that the local community can determine the model best suited to their needs."

The Prosecuting Attorneys Association of Michigan/Domestic Violence Prevention Treatment Board Task Force Recommendations recognize that this problem of inadequate victim assistance has resulted in the filing of frivolous personal protection order requests, incompletely or inaccurately completed forms, and misunderstandings about the process. They recommend several models, which could be used by the courts to provide this assistance including public or private agencies or organizations that have a record of service to victims of domestic/family violence. They further recommend immunities to protect such assistants from claims of practicing law without a license and civil liability.

These legislative recommendations should be adopted except for the directive that makes courts responsible for providing non-legal assistance to personal protection order applicants. Although the statutory role of court clerks to provide forms and certain ministerial functions exists, that role

is limited and should be limited only to those specific duties. Courts have not ever had any extensive role in administering to the needs of one party over the other and in fact should not be responsible for guiding any group of litigants through the court process due to the extrajudicial contact and conflicts such practices would engender.

The inadequacy of the current statutory scheme relating to personal protection orders has already placed many judges in the untenable position of providing direct legal assistance to one party in a legal action before him or her, particularly in one-judge courts where the judge is expected to interview and advise applicants seeking *ex parte* orders. Where prosecutors or other legal advocates are not providing this legal assistance in preparing legally sufficient petitions, judges are understandably reticent to act since they would be required by law to hear any respondent motions or alleged violations of the order.

Recommended Action:

This recommendation has been substantially implemented. Continued implementation of the recommendation is required. In addition, the State Bar of Michigan Task Force recommends:

- Personal protection order statutes and court rules should be amended to provide that prosecuting attorneys be encouraged and allowed to assist applicants in obtaining personal protection orders in addition to their statutory obligation to enforce personal protection order violations, when other assistance is not available and unless a conflict exists.

- The Legislature should provide additional funding and/or the Prosecuting Attorneys Association of Michigan should seek federal monies to support prosecutors' offices in performing these additional duties of assisting in the obtaining and the enforcement of personal protection orders.

- The Prosecuting Attorneys Association of Michigan should continue to encourage local prosecutors to utilize their cooperation with local coordinating councils to enhance the quality of non-legal victim assistance in obtaining personal protection orders.

DOMESTIC VIOLENCE

Gender Recommendation V-6: Whether criminal action and/or a violation of a spouse abuse injunction occurs, the prosecuting attorney should be responsible to go forward with the action.

Summary of condition prompting 1989 recommendation:

A domestic violence victim is offered several legal options. They include: suing for legal separation or divorce; petitioning for emergency injunctive relief/civil order of protection; and pursuing criminal charges, i.e., assault and battery, aggravated assault, or felony assaults. The 1989 Task Force found that there was general confusion within the court system about these different civil and criminal procedures. Many judges, lawyers and prosecutors apparently believed that victims must choose a single remedy.

Research Methodology in 1997:

Prosecuting Attorney Questionnaires

Review of Michigan personal protection orders and related statutes

Input from the Domestic Violence Prevention and Treatment Board

Status of the implementation of the recommendation in 1997:

Although Michigan law does not currently require prosecutors to provide any services in obtaining injunctions against alleged abusers, the extensive array of victim assistance services offered by prosecutors' offices across the state have resulted in many personal protection order petitioners seeking help from these same victim advocates. Further, the amount of cooperation already in place between prosecutors and shelters has led to the assumption of these non-mandated duties by a majority of prosecutors. The climate of victim services in Michigan today reflects the inadequacy of the laws which require prosecutor intervention only to enforce personal protection order violations rather than entry at the initiation of the petition.

Sixty percent (60%) to eighty percent (80%) of the responding prosecutors indicated that they already provide assistance to petitioners seeking personal protection orders. In some cases, this includes only the provision of forms and some information. But many also provide help in filling out the forms, assistance in presenting petitions to judges, and training of clerks and police agencies in processing the requests.

As discussed under Gender Recommendation V-5, the current personal protection order statutes should be amended to encourage and allow prosecuting attorneys to assist in the obtaining of personal protection orders in addition to enforcing all alleged violations. This delineation of the prosecutor's role would correct the present confusion by assuring that applicants for *ex parte* orders would receive appropriate legal advice and curtail the assumption of these duties by the judge issuing the order.

Input from the Chair of Michigan's Domestic Violence Prevention and Treatment Board suggested that the prosecution's duty to obtain such orders should not be absolute: if a conflict arises from potential prosecution of the person seeking protection, the person should obtain assistance elsewhere. She added that the Board "continues to support increased availability of lay persons to assist with PPOs, and that the local community can determine the model best suited to their needs."

Recommended Action:

This recommendation has been fully implemented. In addition, the State Bar of Michigan Task Force recommends:

- Personal protection order statutes and court rules should be amended to provide that prosecuting attorneys be encouraged and allowed to assist applicants in obtaining personal protection orders in addition to their statutory obligation to enforce personal protection order violations, when other assistance is not available and unless a conflict exists.

- The Legislature should provide additional funding and/or the Prosecuting Attorneys Association of Michigan should seek federal monies to support prosecutors' offices in performing these additional duties of assisting in the obtaining and the enforcement of personal protection orders.

- The Prosecuting Attorneys Association of Michigan should continue to encourage local prosecutors to utilize their cooperation with local coordinating councils to enhance the quality of non-legal victim assistance in obtaining personal protection orders.

DOMESTIC VIOLENCE

Gender Recommendation V-7: The Supreme Court and State Court Administrative Office should issue appropriate procedural guidelines to ensure that spouse abuse injunctions permitted under civil law are available in every circuit. They should also take steps to guarantee that all administrative orders and local rules comport with statutory requirements (MCR 8.112) before approval.

Summary of condition prompting 1989 recommendation

In 1989 in Michigan, a victim of domestic violence may seek relief from abuse by petitioning for a civil order of protection. In most circumstances it is necessary for an attorney to prepare and file a petition to the court to obtain an injunction. A protective order or injunction is generally effective for one year from the filing date, the maximum permitted under the statute.

The lack of uniform procedures for obtaining an injunction is also a barrier which victims of domestic violence face when approaching the courts for help. The 1989 Task Force was told of one judge who would not issue a TRO because the wife was in a shelter. An attorney stated that, "There is far too much variance from circuit to circuit, and from judge to judge regarding these matters." Several attorneys and professionals in the field who work in multi-judge courts or in multi-county jurisdictions expressed a need for consistent and clear guidelines governing the issuance of injunctions. In some jurisdictions, judges have refused to issue any injunctive orders containing criminal contempt language as a matter of express court policy. In others, injunctions were limited by local court rule to less than the permissible statutory maximum of one year. This caused victims to incur additional expense and more court appearances when protection is required for longer than 90 or 180 days.

Research Methodology in 1997:

Review of Michigan Statutes and Court Rules including amendments from 1992 to 1996

Review of Proposed new Court Rule MCR 3.701 published for comment on September 10, 1996 and currently under consideration by the Michigan Supreme Court

Review of *State of Michigan, Domestic Violence Law Implementation Task Force Recommendations* published by the Prosecuting Attorneys Association of Michigan and the Michigan Domestic Violence Prevention and Treatment Board, July 1996

Judicial and Prosecuting Attorney Questionnaires

Discussions with Representatives from the Michigan Supreme Court; the Michigan Judicial Institute; State Court Administrative Office Michigan Domestic Violence Prevention and Treatment Board;

Interviews with Domestic Violence Shelter Providers, Victim Advocates, and Shelter Residents including Representatives from First Step; My Sister's Place; Women's Resource Center; Capitol

Area Family Violence Coordinating Council; Women's Justice Center; and the U of M Family Law Project.

Status of the implementation of the recommendation in 1997:

Significant progress has been achieved concerning the availability of personal protective orders across the state primarily due to: 1) leadership on the issue demonstrated by Governor Engler, whose 1993 Task Force recommended statutory changes; 2) the state legislature's willingness to make statutory changes and provide funding for victim support services; 3) the Supreme Court's amendment of relevant court rules; 4) the production of uniform petitions, orders, and instructions for *pro se* applicants developed by the State Court Administrative Office; and 5) the efforts of the Prosecuting Attorneys Association of Michigan/ Domestic Violence Prevention Treatment Board Task Force and shelter personnel and advocates. As a result, procedures and standards to obtain and enforce these orders have been developed, and statutes, court rules, policies and standardized forms are in the continuous process of being improved and refined.

Individuals may file these actions in circuit court without legal counsel provided they follow the rather extensive steps accurately. The State Court Administrative Office was mandated to develop and make these forms available to *pro se* litigants by October 1, 1994, and courts are required to provide them without charge. MCL 600.2950b; MSA 27A.2950(2); See Forms CC 375 through CC 381 with Instructions. Courts are further permitted but not required to provide non-legal assistance to complete the forms and effect proper service. No provision is made for financial or personnel resources to provide this assistance.

To facilitate the efficacy of the personal protection order, these statutes also impose affirmative responsibilities on the clerk of the court. Upon issuance of the order, the clerk is required to immediately file a true copy of the order with the law enforcement agency designated on the face of the personal protection order and provide two true copies to the petitioner. The clerk is further ordered to immediately notify the appropriate law enforcement agency when proof of service of the respondent has been effected, or if the personal protection order has been rescinded, modified, or extended by the court. Similar duties are expressly given to the designated law enforcement agency to immediately enter all personal protection orders received into Law Enforcement Information Network and to promptly enter all changes in the status of the order including proof of service.

MCR 3.207, revised in 1993 and 1996, further clarifies and adds consistency to these statutory procedures. It provides for the issuance of *ex parte*, temporary, and protective orders with regard to any matter within the jurisdiction of the court. Pursuant to this court rule, *ex parte* orders are effective upon entry and enforceable upon service. Such orders remain in effect until modified or superseded by a temporary or final order.

The 1989 Recommendation that personal protection orders be made available in every circuit court has been attained, according to the responses of judges and victims across the state. Personal protection order forms and instructions are available in every jurisdiction at each county clerk office. This accomplishment is due to the efforts of the State Court Administrative Office in carrying out the mandates of the enabling legislation. It was completed by the due date specified in the statute. It also appears that most clerk's offices are providing the non-legal assistance required by law.

However, domestic violence victims and their advocates claim that, in reality, personal protection orders are still difficult for *pro per* applicants to obtain. Forms are difficult to prepare and process, and not "user-friendly." It often takes 7-10 days to get *ex parte* orders in multi-judge jurisdictions. They report that judges sometimes add other requirements not provided for in the statutes. For example, some judges dismiss personal protection orders when a divorce is pending or if service is not effected within ninety days. One judge reportedly requires personal protection order petitions to be notarized. Others require hearings where the respondent does not request one or refuse to state reasons for denial of the order. Since the Supreme Court and the State Court Administrative Office report no problems with improper local court rules being submitted for approval pursuant to MCR 8,112, it appears that these practices are imposed by individual judges on an informal and not courtwide basis.

The non-funded burdens placed on the courts and clerks in dealing with the very real problems these extraordinary forms of relief pose is substantial. A court must provide adequate, trained personnel to interview applicants and help them prepare the petitions and follow through the many steps required. Because of the extremely high volume of personal protection order requests, responses to victims' requests, in many instances, have been less than acceptable. Domestic violence shelter providers, advocates and victims report impatient, disdainful, and sometimes rude treatment from clerks or those assigned to provide the forms, instructions, and non-legal assistance.

Judges also respond that the high volume of personal protection order requests has severely overburdened their staffs and time. The variety of actions taken by courts across the state to accommodate this new caseload attests to the frustration felt by the courts and clerks. For example, some courts have designated existing personnel such as law clerks or judicial clerks, or hired personal protection order coordinators or sought funding through grants to staff these needs. In many courts, volunteers from local shelters provide these services or work with courts and clerks to train their personnel on the issues these orders present.

Although a majority of the prosecutors surveyed are providing help to victims seeking such orders there are several courts, particularly in one-judge counties, where the judge is the sole provider of these services. Many prosecutors also rely on volunteers from shelter personnel to overcome the lack of funding for this necessary assistance. It should also be noted that the emergency nature of the *ex parte* orders adds to the courts' difficulties since the requests cannot be estimated in advance and must be addressed at the earliest availability of the judge, usually between court hearings or during trial breaks.

Further, victims and advocates continue to complain about police bias and that many police officers fail to arrest violators. As one advocate stated, "Some wonderful things have happened but unfortunately it hasn't trickled down to the cop on the street." Another persistent complaint is that too many victims are being arrested as assailants. Judges also criticize the police, citing improper referrals for personal protection orders by police officers, which has led to an unnecessary increase of cases and the suspicion that such referrals allow police to avoid their responsibilities.

Recommended Action:

This recommendation has been substantially implemented. Continued implementation of the recommendation is required. In addition, the State Bar of Michigan Task Force recommends:

- Mutual assistance projects between state agencies and domestic violence providers should continue. The new Michigan Judicial Institute Benchbook on Domestic Violence for judges is expected to establish appropriate procedural guidelines. The Michigan Supreme Court should establish by fall of 1997 a new court rule for personal protection orders and the State Court Administrative Office should revise the personal protection order Forms and Instructions.

- Recommended legislative changes set forth in the 1996 Prosecuting Attorneys Association of Michigan/Domestic Violence Prevention Treatment Board Task Force to implement domestic violence laws should be adopted.

- The State Court Administrative Office and/or the Michigan Judicial Institute should be encouraged to develop effective, accessible training programs for clerks and others providing non-legal assistance to personal protection order petitioners.

- The Domestic Violence Prevention Treatment Board and/or Michigan Coalition Against Domestic Violence should seek federal, state and/or local funding to provide adequate personnel for screening and providing assistance to petitioners for dealing with courts, prosecutors, and police. Supplemental plans for the use of trained volunteers to assist petitioners should also be encouraged and developed.

- The Supreme Court and the State Court Administrative Office should regularly and actively monitor all local court rules and administrative orders to assure compliance with MCR 8.112.

- A conference to foster and maintain such local coordinated efforts is scheduled for October 1997 in Detroit. Sponsored by the Domestic Violence Prevention Treatment Board and hosted by the Wayne County Coordinating Council to Prevent Domestic Violence, it is entitled, "Summit III: Sustaining a Coordinated Community Response to Domestic Violence." Attendance should be vigorously encouraged by all of the state agencies involved in these cases.

DOMESTIC VIOLENCE

Gender Recommendation V-8: Mutual injunctions should not be issued prohibiting physically abusive behavior unless the record justifies a finding that both parties have exhibited physically abusive behavior.

Summary of condition prompting 1989 recommendation:

The 1989 Task Force found that mutual orders of protection were sometimes concurrently issued, ostensibly to prevent harassment or assault between two parties. Often judges entered these orders without prior notice to the party petitioning for an order of protection, and despite the fact that the defendant had not sought an order. The issuance of mutual orders of protection implies that both parties have acted violently, even though there is no proof of such behavior by the petitioner.

Research Methodology in 1997:

Circuit Court Questionnaires

Chief Judge Questionnaires

Interviews with Domestic Violence Victims and Advocates

Review of Michigan Statutes and Court Rules

Status of the implementation of the recommendation in 1997:

Questionnaires report that forty-three percent (43%) to fifty-four percent (54%) of judges responding never issue mutual personal protection orders, with almost half of them acknowledging that they may sometimes or always grant such requests. Domestic violence victims and their advocates claim that mutual orders continue to be issued regardless of the statutory and court rule prohibition against such practice. Since the question asked of judges did not include reporting why or when such orders are granted, it is possible that these figures may include instances where mutual petitions are properly sought, or may indicate a misunderstanding of the question. It is also plausible that such mutuality is attractive to judges as a way to reduce the number of hearings requested and, therefore, to lessen demands on the courts.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- The Michigan Judicial Institute should include this issue in training programs for judges.
- The State Court Administrative Office should include the mutual personal protection order prohibition on the face of Forms CC 375 through CC 381.

- Petitioners encountering such improper orders should be encouraged to report this practice to domestic violence advocates, the Chief Judge in the jurisdiction where it occurred, the State Court Administrative Office or the Judicial Tenure Commission.

DOMESTIC VIOLENCE

Gender Recommendation V-9: Judges should consider violence or threatened violence by one spouse toward another in making custody and visitation decisions. Violence should be specifically included in the "best interest" standard for custody decisions.

Summary of condition prompting 1989 recommendation:

The battered spouse seeking a divorce may encounter extreme manipulation by the batterer concerning custody and/or visitation of the children. Again, this is an area where the domestic violence victim may find herself in an unfair bargaining position unless the judge, referee, and attorneys understand the dynamics of the violent relationship. The batterer may use flight to a shelter, lack of financial resources and fear as leverage with which to seek custody of the children or expanded visitation rights. One woman testified that she was advised by her attorney to drop felonious assault charges against her husband lest the judge put her children in foster care. A friend of the court referee stated he did not think there would be problems with unsupervised visitation with the batterer since once the parties were apart the violence would probably stop. Several women testified that custody of the children was given to the batterer, sometimes by an *ex parte* order. In one instance it was reported that an abusive husband was awarded custody because he had a "stable income."

There were numerous other allegations brought to the attention of the 1989 Task Force. These included reports of referees not allowing advocates for battered women to stay in the hearing room during custody/visitation determinations and reports of judges and friend of the court referees minimizing or ignoring the consequences of the violent relationship on the children in the home. In one instance a judge referred to a husband's physical abuse as "misbehavior."

In 1989 there were no direct references to a party's violent tendencies or actions in the statutory requirement to be considered by the judge in making custody decisions. With respect to visitation, the law has been recently amended to permit the court to consider "the reasonable likelihood of abuse of a parent resulting from the exercise of visitation." In 1989, responding to the question whether "Incidents of domestic violence are valid reasons to withhold child custody or visitation," thirty-one percent (30.5%) of judges responded "usually or always" while fifty-one percent (50.8%) said "sometimes."

Research Methodology in 1997:

Review of Michigan Statutes and Court Rules

Circuit Court Chief Judges Questionnaires

Circuit Court Judges Questionnaires

District Court Chief Judges Questionnaires

Recorder's Court Judge Questionnaires

Interviews with Domestic Violence Shelter Providers, Victim Advocates, and Shelter Residents

Review of *State of Michigan, Domestic Violence Law Implementation Task Force Recommendations* published July 1996

Input from Domestic Violence Prevention and Treatment Board

Status of the Implementation of the Recommendation in 1997:

The implementation of this Recommendation has been given impetus by the 1993 amendment to the "best interests of the child" statute which requires judges to consider certain factors in determining custody and visitation matters. MCL 722.23; MSA 25.312. The amendment requires consideration of domestic violence as one of these factors "regardless of whether the violence was directed against or witnessed by the child." See Section 3(k).

A mixed picture is presented on whether judges actually follow the statutory mandate. Of the judges responding to the question about whether they consider violence or threatened violence when making custody and visitation decisions, eleven percent (11%) said that they never considered it, with fifty-eight percent (58%) indicating that they always considered it, and the remainder falling between the two extremes. Self-reporting by judges suggests that the problem persists, though it was not raised by victims or their advocates. The Domestic Violence Prevention and Treatment Board reports "considerable anecdotal evidence" that some judges are not complying with the statutory requirement.

Recommended Action:

This recommendation has been partially implemented. In addition, the State Bar of Michigan Task Force recommends:

- The requirements of the statute should be emphasized at all future training seminars of family court judges including Michigan Judicial Institute seminars on Court Reorganization and Domestic Violence.

- Educational programs for attorneys handling domestic relations cases should emphasize the importance of this portion of the statute where domestic violence is alleged.

DOMESTIC VIOLENCE

Gender Recommendation V-10: Procedures should be put in place that permit victims to obtain spouse abuse injunctions regardless of their education or economic status. They should include:

a. **Statewide availability and use of pro per injunctions with instructions for their use.**
b. **Judges should effectively enforce injunctive orders through use of jail and/or fines, and should separate the couple if violence is a continuing thing.**

Summary of condition prompting 1989 recommendation:

A victim of domestic violence must overcome several obstacles to get a civil order of protection in this state. Access to legal assistance presented a significant difficulty for the victim of domestic violence. Women, who generally have fewer financial resources and must often rely on their male partner for support, were often unable to afford legal assistance or support themselves or their children outside the abusive home. Reduction in legal aid services due to federal funding cutbacks further limited the availability of legal representation. The 1989 Task Force received testimony that the financial vulnerability of the victim was a key factor in preventing access to the court and counsel. An attorney who handled many domestic violence cases stated: "The economic disparity between men and women in these situations has effectively made women powerless in obtaining court assistance."

Another obstacle to obtaining a civil order of protection was the time it takes. The 1989 Task Force heard testimony about the long delay before some requested injunctions become effective. One witness told of disparities across Michigan with regard to the availability of *ex parte* injunctions: "The judges and the courts are giving assailants extra shots at their victims by not giving these injunctions *ex parte*."

Once a civil order of protection has been granted, the victim of domestic violence must further overcome the many obstacles, which interfere with the enforcement of the order. Proceedings for violating a "civil" order of contempt because of spouse abuse are usually "criminal" in nature because the sanction imposed is punishment for a violation of a court order. The 1989 Task Force was provided copies of administrative orders which prohibit the use of criminal contempt language in orders issued pursuant to MCLA 600.2950: MSA 27A.2950; MSA 25.94; and MCLA 552.14. This practice limited the effectiveness of these orders. Additionally, some attorneys have indicated concern at being placed in the position of "prosecuting" criminal contempt violations although they were representing the victim in the civil divorce case. A representative of a large legal services office stated: "[The victim does not] get the same protection from the prosecutor that [the victim] would get from other crimes." She based this statement on the disparity in expertise of counsel, expense to the victim and impact on a jury or judge.

Research Methodology in 1997:

Review of Michigan personal protection order statutes and related court rules

Prosecuting Attorney Questionnaires

Circuit Court Chief Judges Questionnaires

Circuit Court Judges

District Court Chief Judges Questionnaires

Review of *State of Michigan, Domestic Violence Law Implementation Task Force Recommendations* published by the Prosecuting Attorneys Association of Michigan and the Michigan Domestic Violence Prevention and Treatment Board, July 1996

Discussions with Representatives from the Michigan Judicial Institute; the State Court Administrative Office; Michigan Domestic Violence Prevention and Treatment Board; and the Prosecuting Attorneys Association of Michigan

Interviews with Domestic Violence Shelter Providers, Victim Advocates, and Shelter Residents including Representatives from First Step; My Sister's Place; Women's Resource Center; Capitol Area Family Violence Coordinating Council; Women's Justice Center; The Women's Center; and the U of M Family Law Project

Status of the implementation of the recommendation in 1997:

The substantial advances in the implementation of this 1989 Recommendation have been greatly facilitated by major cooperation between the Governor, Michigan legislature, Michigan Supreme Court, the State Court Administrative Office, the Michigan Judicial Institute, the Prosecuting Attorneys Association of Michigan, the Michigan State Police, and various domestic violence advocate groups such as the Domestic Violence Prevention Treatment Board and the Michigan Coalition Against Domestic Violence. This era of coordinated interaction began with the development of comprehensive amendments to existing legislation and continues on a formal as well as individual basis today. The results are impressive. Domestic violence providers and advocates report great improvements in the response of the legal system to this complex form of relief.

Since 1989, extensive legislative action has dramatically expanded the scope and access of emergency relief. Courts may now issue *ex-parte* orders for victims of domestic violence independent of any pending action to prohibit all types of conduct including stalking behavior and purchasing or possessing firearms. See MCL 600.2950a; MSA 27A.2950(1).

The enabling legislation for personal protective orders specifically sets forth the types of conduct prohibited, the standards required for issuance, the required content, the duration, service requirements, and entry into Law Enforcement Information Network. Other protections, specific to the needs of domestic violence victims, are also contained in these statutes. These include the ability to omit the petitioner's address from the court documents; a provision for enforcement at the time of service if the respondent is in violation of the order and refuses to immediately comply with its terms; and the prohibition of mutual orders unless both parties have properly petitioned the court. Courts are also expressly prohibited from refusing to issue orders based solely on the

absence of physical evidence and must state immediately in writing or on the record the reasons for refusing to issue a personal protection order.

Extensive procedural requirements are included in these statutes for the issuance and enforcement of these extraordinary remedies. For example, an *ex parte* order is effective when signed by the judge, and is valid for a minimum of 182 days. No hearing is required unless the respondent files a motion to rescind or modify the order within fourteen days after service or actual notice. Although late motions may be allowed for good cause shown, this provision has the effect of causing the *ex parte* order to become a temporary order for at least six months automatically. This legislation also establishes an enhanced criminal contempt penalty (93 days and $500) and immediate arrest for violations. Further, it permits contempt convictions to be imposed in addition to other criminal offenses arising from the same conduct.

Another statute amended in 1994 as part of this statutory scheme provides immediate arrest and arraignment procedures for the enforcement of personal protection order violations. MCL 764.15b; MSA 28.874(2). This statute authorizes immediate warrantless arrest of personal protection order violators provided the statutory requirements are followed. Detailed arraignment procedures for individuals arrested for violations are found in this law. Specifically, those persons arrested for violations must be brought before a circuit judge within 24 hours after arrest, or if the circuit judge is not available, before a district court within 24 hours. At the arraignment, a reasonable bond shall be set and the matter scheduled for a hearing within 72 hours, unless extended by the court. It should be noted that the current statutes do not provide for release on an interim bond prior to arraignment. The court is required further to notify both the petitioner and the prosecuting attorney of the criminal contempt proceeding scheduled. The prosecuting attorney is ordered by statute to prosecute the criminal contempt unless the petitioner chooses to retain his or her own counsel for this purpose. This statute also repeats the affirmative duty of the appropriate law enforcement agency to enter all personal protection orders into Law Enforcement Information Network.

As comprehensive as these statutes and court rules are, however, the surveys and interviews conducted by the State Bar of Michigan Task Force reveal significant inconsistency and confusion concerning the implementation of these laws. Not only do victims of domestic violence and their providers report serious discrepancies in their application, but judges, court personnel, and prosecutors report many problems with processing personal protection order requests and the ongoing difficulties these complex orders present.

Judges expressed concerns about the quality of the petitions they review, especially the lack of specific facts alleged and lack of needed information such as the name and address of the respondent or supporting records. They report being confronted with false or exaggerated statements and very minor complaints. One judge was asked to sign a personal protection order on behalf of a person other than the petitioner. These complaints are ones usually associated with *pro per* applicants who have not been screened properly or given adequate assistance. These problems are further exacerbated by the assumption that lay persons are able to understand complicated legal proceedings with minimal assistance. Acknowledgement of this weakness in obtaining personal protection order orders should lead to a more formalized structure of victim assistance and may be dependent on federal, state, or local funding to support this critical need.

Despite these problems, judges report that eighty-nine percent (89%) to ninety-nine percent (99%) of all personal protection orders requested are issued. A majority of the courts have developed

written procedures for the judges to apply. However, in addition to those difficulties referred to above, judges expressed several other more specific complaints regarding personal protection order requests, many of which are related to lack of resources as well as *pro se* applicants. The most common criticism was that personal protection orders were often requested to resolve minor disputes between neighbors or teenagers and their parents. Although the personal protection order statute to protect against stalking type behavior was not intended to apply in these situations, MCL 600.2950a does not specifically require that the facts alleged in a stalking personal protection order constitute the legal definition of stalking behavior. This lack of specificity has caused confusion among judges about their ability to deny such requests.

Similarly, minors should not be able to seek personal protection orders against a parent since the Juvenile Code has adequate and appropriate protections; however, such requests are not prohibited by statute. Further, if a minor requests protection against another who is not a parent, or, the assailant is a minor, again, jurisdiction should lie with the Probate Court. These concerns will probably be resolved through the planned court reorganization to merge circuit and probate courts into family courts, but it remains a current problem for judges.

Another concern of judges is the attempted use of personal protection orders to remove individuals from the home or to affect custody and/or visitation orders. The stalking personal protection order does not contain the same language as the domestic relations personal protection order which prohibits such action if the following facts are present: the parties are not married; the respondent has a property interest in the premises; and, the petitioner does not have a property interest in the premises. Thus, this absence causes difficulties in denying petitions requesting this protection under the stalking type personal protection order. Similarly, both personal protection order statutes fail to address the issue of preexisting orders, particularly those regarding custody and visitation. Current information retrieval systems in most courts would not provide immediate access to this type of information. Also the personal protection order forms in use do not ask the movant whether any custody/visitation orders have been issued involving the parties.

A high percentage of judges responding (sixty-two percent [62%] to seventy-five percent [75%]) believe that violations of personal protection orders are effectively enforced, and prosecutors are handling the prosecutorial duties of enforcement in most jurisdictions (eighty percent [80%] to one hundred percent [100%]). The incarceration of violators occurs in twenty percent (20%) to fifty-five percent (55%) of the cases, according to the judges, but domestic violence victims and their advocates complain that sentences are still too lenient and that judges often fail to take first violations seriously. Some also report poor communication between the courts and probation/parole officers regarding the existence of personal protection orders against probationers. One agency asserted that if a probation officer had been aware of an outstanding personal protection order against one of his probationers, the murder of the petitioner by the respondent may have been avoided.

Recommended Action:

This recommendation has been substantially implemented. Continued implementation of the recommendation is required. In addition, the State Bar of Michigan Task Force recommends:

- Mandatory education programs for judges on personal protection orders should be increased, such as the sessions scheduled at the circuit and probate courts' annual conferences this

August, 1997; and Michigan Judicial Institute seminars on Court Reorganization and Domestic Violence scheduled for March, 1998.

- The Michigan Judicial Institute should develop innovative education programs to enhance the success of local domestic violence coordinating councils and consider the possibility of designing training events in each community or region to provide flexible, more cost-effective judicial education programs. Such locally based programs would assure better attendance of judges, and would address local domestic violence issues more effectively.

- Current mutual assistance projects between state agencies and domestic violence providers should continue: such as the development of the new Michigan Judicial Institute Benchbook on Domestic Violence for judges; the establishment of a new court rule on personal protection orders by the Michigan Supreme Court; the revision of personal protection order Forms and Instructions by the State Court Administrative Office expected early fall, 1997; and the establishment of the Governor's Task Force on Batterer Intervention Standards in July, 1997 supported by the Michigan Domestic Violence Prevention and Treatment Board and the Batterers Intervention Services Coalition of Michigan.

- Extensive training contracts between the Michigan Domestic Violence Prevention and Treatment Board and the Michigan Judicial Institute, the Prosecuting Attorneys Association of Michigan and its Prosecuting Attorneys Coordinating Council, and the Michigan Law Enforcement Officers Training Council through federal grants should be continued and attendance by the various constituent groups encouraged.

- Access to and retrieval of personal protection order records and information should be improved for courts and related agencies such as probation/parole officers, law enforcement agencies, and prosecuting attorneys.

- Local coordinating councils should be required in every county to establish effective procedures to process and enforce personal protection orders and provide additional training and information to local police agencies, including Law Enforcement Information Network operators, prosecutors, clerks, and shelter personnel and advocates.

- Efforts by the State Court Administrative Office to work with local Community Dispute Resolution agencies should be encouraged to develop and establish referral policies of matters not appropriate for personal protection petitions.

DOMESTIC VIOLENCE

Gender Recommendation V-11: The Michigan Supreme Court should monitor the sentencing practices of judges, including the factors used to determine the sentences imposed and the reliance upon diversion/expungement and counseling as an alternative to incarceration in domestic violence cases, in order to determine effectiveness and to effectuate desired changes.

Summary of condition prompting 1989 recommendation:

Many perceive, often on the basis of widely reported individual cases, that inappropriately lenient sentences are given to batterers. Among the reasons for such sentences are misplaced optimism about the effectiveness of therapy, the belief that the victim is somehow responsible for the crime, or lack of adequate training for the judge and personnel making sentencing recommendations.

Research Methodology in 1997:

Review of the State Court Administrative Office status report, dated October 1996

Input from the Sentencing Commission

Inquiry of the State Court Administrative Office staff

Input from Domestic Violence Prevention and Treatment Board

Status of the implementation of the recommendation in 1997:

It does not appear that any tracking or monitoring of sentencing practices in these cases has been done.

Individual cases in which sentences are seemingly light continue to draw media attention and protests. One, in which a judge literally "slapped the wrist" of a defendant he was sentencing, drew considerable community protest. See "Opposite camps demonstrate over verdict in spousal abuse case," The Detroit News, January 27, 1996, page 1-B.

Recommended Action:

This recommendation has not been implemented. The 1989 Task Force recommendation should be implemented as written. In addition, the State Bar of Michigan Task Force recommends:

- The State Court Administrative Office should conduct a study of sentences given to defendants convicted of domestic assault, to determine whether any inappropriate factors are routinely considered, to determine the rate at which diversion or expungement are relied upon as alternatives to incarceration, and to review how courts are using batterer intervention programs as part of a sentence imposed.

- The Legislature should adopt the guidelines for felony domestic assault and stalking cases which have been recommended by the Sentencing Commission.

DOMESTIC VIOLENCE

Gender Recommendation V-12: When an alleged assailant is released, judges and magistrates should restrict the assailant's access to the victim, as a condition of bond or sentence.

Summary of condition prompting 1989 recommendation:

No-contact bonds are not used consistently and, even when used, are inadequately enforced, exposing domestic violence victims to further risks before trial.

Research Methodology in 1997:

Prosecuting Attorney Questionnaires

Circuit Court Chief Judges Questionnaires

Circuit Court Judges Questionnaires

District Court Chief Judges Questionnaires

Interviews with Domestic Violence Shelter Providers and Victim Advocates

Status of the implementation of the recommendation in 1997:

Judges responding to the 1997 questionnaire report that no-contact bonds are consistently imposed in a high percentage of cases (from eighty percent [80%] to ninety-six percent [96%], depending on region). However, the procedures to be used to enforce violations of bond conditions are still not clear and result in uneven practices across the state.

Although no-contact bonds are usually issued in domestic violence cases, some counties are not using the proper bond forms. The information contained in these forms is required to be entered into the Law Enforcement Information Network so that violation of a bond condition can result in the warrantless arrest of the defendant, thus affording greater protection to the victim. (State Court Administrative Office Form MC 240). Also, more training is necessary for judges concerning the proper procedure for enforcing such bond condition violations, whether an arrest has occurred or not. In this instance, the court rule (MCR 6.106) is less specific than the statute (MCL 765.6b) and causes some confusion as to whether a hearing is required automatically or only at the request of the defendant.

A third enforcement problem is that many jurisdictions are not holding arraignments within 24 hours of arrest and are instead setting an interim bond, which is not provided for in the statute. This results in a lapse of time between arrest and arraignment where the victim does not have the necessary protection of warrantless arrest, and also fails to immediately impress upon the defendant the terms of the no-contact provision. This appears to be a major enforcement problem that needs to be addressed.

Practices vary across the state regarding how violations are reported and who initiates the required paperwork. In some jurisdictions the reported violation is referred to the judge directly and the court then issues a show cause order or bench warrant. In other counties the violation is referred to the prosecutor for the preparation of any petitions, affidavits, and proposed orders for the court to review and sign. Also, some courts require immediate hearings on any violations, whereas others schedule hearings only at the request of the defendant.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- The Michigan Judicial Institute should continue to educate judges and magistrates on the need for no-contact bonds in domestic assault cases. This training should include: clarification of the differences in procedures between no-contact bond conditions and violations of personal protection orders, and the importance of using the correct bond form (State Court Administrative Office Form 240) to assure the potential of warrantless arrest if bond conditions are violated.

- District courts should also be encouraged to hold 24-hour arraignments and not set interim bonds in these cases. This assures the proper entry of the conditions of bond into the Law Enforcement Information Network and a face-to-face meeting with the defendant to emphasize the consequences of disobeying the conditions.

- Procedures for initiating and enforcing bond condition violations should be developed and applied consistently by all courts.

- Prosecutors and police should be encouraged to consistently and promptly seek to enforce violations of bond conditions in domestic violence cases. Additional training programs are needed for both groups and should be addressed in the training sessions planned under the Domestic Violence Prevention Treatment Board contracts with the Prosecuting Attorneys Association of Michigan and Michigan Law Enforcement Officers Training Council.

DOMESTIC VIOLENCE

Gender Recommendation V-13: The Supreme Court should mandate education for all judges, magistrates and referees on the nature of domestic violence, the characteristics of victims and assailants, the impact of domestic violence on children, the impact of economic decisions on abusive relationships and the effectiveness of arrest and prosecution of assailants.

Summary of condition prompting 1989 recommendation:

Pervasive misconceptions exist about domestic violence. These include that is not a very serious crime (especially when compared to stranger assault) and that it is a "private family matter."

An attorney survey conducted by the 1989 Task Force indicated that thirty-three percent (33%) of responding female attorneys and twenty-nine percent (29%) of responding male attorneys believed that judges would hesitate to intervene in domestic violence cases because they are private family matters.

A judicial survey conducted by the Bar confirmed the attorneys' view that victims were often blamed for initiating the violence. The survey indicated that twenty-two percent (21.6%) of the judges stated that the victim provoked the violence "always" or "usually," compared with fifty-one percent (50.8%) who stated the victims "seldom" provoked it, and eight percent (7.7%) who stated they "never" provoked it.

The 1989 Task Force also found that judges questioned the credibility of the victim often enough that it indicated a lack of understanding about domestic violence.

Research Methodology in 1997:

Questionnaire to Michigan Judicial Institute

Questionnaire to Institute of Continuing Legal Education

Circuit Court Chief Judges Questionnaires

Circuit Court Judges Questionnaires

District Court Chief Judges Questionnaires

Recorder's Court Judges Questionnaires

Input from the Domestic Violence Prevention and Treatment Board

Status of the implementation of the recommendation in 1997:

This 1989 Recommendation has been partially implemented. The Michigan Judicial Institute has integrated domestic violence education into its curriculum for new judges, new district court

magistrates, and juvenile court referees. All new judges receive mandatory training on the nature of domestic violence including the characteristics of both the victim and the assailant, the effects on children, the effectiveness of arrest and prosecution of the assailant, and counseling and diversion programs. New magistrates are also trained with an emphasis on the use of bond conditions and lethality considerations in domestic violence cases in addition to the general nature of domestic violence, its characteristics and effects. Referees also receive general education on the nature of domestic violence with an emphasis on the impact on children.

Although not mandatory for all judges, the Michigan Judicial Institute has offered several other domestic violence seminars for judges and other court personnel over the past few years due to the federal grants available pursuant to the Violence Against Women Act, administered by the Domestic Violence Prevention Treatment Board. Considering the time and money involved in trying to reach so many judges and other court professionals across the state, these programs have been well attended. For example, from March through June 1997, one hundred twenty district court judges received a half-day of training on bond considerations in domestic violence cases during the two-day Michigan Judicial Institute Regional Seminars.

The judges' surveys assessing their own understanding of domestic violence contained wide-ranging responses. Most said, however, that they had received enough training on this issue. Magistrates and referees were not surveyed.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- The Michigan Supreme Court should mandate comprehensive training in family violence for all judges, district court magistrates, and family court referees.

- Such training may be more effective if it is local or regional, and in half-day segments, rather than one or two day-periods in a central location. The Michigan Judicial Institute should consider a new training method: sending trainers to teach small clusters of individual judges and judicial personnel in a more personalized format.

DOMESTIC VIOLENCE

Gender Recommendation V-14: Domestic violence cases should receive a high priority and be granted calendar preference. The timeliness of case handling should be monitored.

Summary of condition prompting 1989 recommendation:

The 1989 Task Force found that victims, their lawyers and their advocates lose confidence in the legal system when prosecution is inconsistent, courtroom interaction is degrading, questions are uninformed, and cases are prolonged through continuances and unnecessary delays. These actions all communicate a lack of understanding of the dynamics of domestic violence.

Another obstacle to obtaining a civil order of protection is the time it takes. The 1989 Task Force heard testimony about the long delay before some requested injunctions become effective. One witness told of disparities across Michigan with regard to the availability of *ex parte* injunctions, "The judges and the courts are giving assailants extra shots at their victims by not giving these injunctions *ex parte*."

Research Methodology in 1997:

Review of Michigan Court Rules

Circuit Court Chief Judges Questionnaires

Circuit Court Judges Questionnaires

District Court Chief Judges Questionnaires

Recorder's Court Judge Questionnaires

Discussions with State Court Administrative Office and the Domestic Violence Prevention Treatment Board

Interviews with domestic violence advocates and victims

Status of the implementation of the recommendation in 1997:

This Recommendation has essentially been met through other means, rather than specific priority or calendar preference for domestic violence cases. MCR 6.004(B) grants general calendar preference for all criminal cases over civil trials. If the defendant is in custody or if the defendant's pretrial liberty presents unusual risks, then those criminal cases take precedence over other criminal trials.

Michigan Court Rules place case management responsibilities on both the Chief Judge in each court, and the State Court Administrator. MCR 8.103 directs the State Court Administrative Office, under the supervision and direction of the Supreme Court, to "examine the status of court

calendars, determine the need for assistance to a court, and report to the Supreme Court," as well as to investigate each case to determine the reason for delays, recommend actions to eliminate delays, and recommend further action to expedite process to insure speedy trials of criminal cases. The State Court Administrative Office also monitors all court caseloads through monthly reporting requirements. MCR8.110 (E)(3)(a) requires the Chief Judge of each court to monitor, supervise, and manage the judges' caseloads of that court, and to report those judges who fail to comply with a Chief Judge order or directive to the State Court Administrative Office, and ultimately to the Supreme Court. These rules effectively control case processing and adequately insure that corrective action will be taken when necessary.

The judicial questionnaire responses indicate that over half of those responding (fifty-six percent [56%] to seventy-one percent [71%]) grant calendar preference to domestic violence cases without any requirement to do so. Most of the judges report that they process their cases expeditiously and have no backlog. Some cited the effectiveness of no-contact bond conditions as reducing any need for calendar preference. The Domestic Violence Prevention and Treatment Board reports anecdotal evidence that courts are not uniformly giving calendar preference to domestic violence cases.

Domestic violence advocates and victims reported no specific problem with delays in criminal cases, but did indicate that in multi-judge counties it may take 7-10 days to get an *ex parte* personal protection order.

Recommended Action:

This recommendation has been partially implemented. Continued implementation of the recommendation is required. In addition, the State Bar of Michigan Task Force recommends:

- Increased education for Chief Judges at the annual Chief Judges' seminar sponsored by the Michigan Judicial Institute to watch for this problem and take corrective action if warranted.

- Increased funding to provide adequate, trained personnel to assist petitioners with preparing and processing personal protection orders.

- Encourage the State Court Administrative Office to be especially alert to any reported backlog of cases involving domestic violence, and to take any corrective action necessary.

DOMESTIC VIOLENCE

Gender Recommendation V-15: Court personnel should receive training on the nature of domestic violence, the characteristics of victims and assailants, the impact of domestic violence on children, and the effectiveness of arrest and prosecution of assailants.

Summary of condition prompting 1989 recommendation:

Pervasive misconceptions exist about domestic violence. These include that is not a very serious crime (especially when compared to stranger assault) and that it is a "private family matter."

An attorney survey conducted by the State Bar of Michigan indicated that thirty-three percent (33%) of responding female attorneys and twenty-nine percent (29%) of males believed that judges would hesitate to intervene in domestic violence cases because they are private family matters.

A judicial survey conducted by the Bar confirmed the attorneys' view that victims were often blamed for initiating the violence. The survey indicated that twenty-two percent (21.6%) of the judges stated that the victim provoked the violence "always" or "usually", compared with fifty-one percent (50.8%) who stated the victims "seldom" provoked it, and eight percent (7.7%) who stated they "never" provoked it.

The 1989 Task Force also found that judges also questioned the credibility of the victim often enough that it indicated a lack of understanding about domestic violence.

Research Methodology in 1997:

Questionnaire sent to Michigan Judicial Institute

Questionnaire sent to Institute of Continuing Legal Education

Circuit Court Chief Judges Questionnaires

Circuit Court Judges Questionnaires

District Court Chief Judges Questionnaires

Recorder's Court Judge Questionnaires

Status of the implementation of the recommendation in 1997:

Moderate progress has been made on this 1989 Recommendation, particularly during the past year when federal monies became available through the Domestic Violence Prevention Treatment Board grants to the Michigan Judicial Institute. For example, in October 1996 and March 1997, the Michigan Judicial Institute held Advanced Counseling Seminars on Domestic Violence Issues for District Court, Friend of the Court, and Juvenile Court Professional staff.

The hundreds of employees involved with Michigan courts present a major logistical problem in terms of time, cost and resources to carry out this recommendation.

Local training programs have been initiated in some jurisdictions and innovative, more decentralized programs could be more effective for this large group of employees.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- In addition to yearly large seminars held in a central location, local in service training should be offered. Smaller, local education events have several advantages. Attendance is better because participants do not have to travel to a central location. Absence from work is minimized, and particular concerns that directly affect the specific community can be emphasized.

DOMESTIC VIOLENCE

Gender Recommendation V-16: The State Bar through the Family Law and Criminal Law sections and other appropriate agencies should provide continuing legal education to family law and defense attorneys on the nature of domestic violence, the characteristics of victims and assailants, the impact of domestic violence on children, the impact of economic decisions on abusive relationships and the effectiveness of arrest and prosecution of assailants as well as criminal and civil remedies, the availability of community resources, and issues related to self-defense for women who fight back.

Summary of condition prompting 1989 recommendation:

1988 and 1989 research by the 1989 Task Force revealed that "a sound understanding by participants in the justice system would be a dramatic forward step toward the eradication of this serious problem." Final Report of the Michigan Supreme Court Task Force on Gender Issues in the Courts 22 (December 1989) [1989 Task Force Gender Report].

In 1989 it was difficult for abused women seeking injunctive relief to be treated seriously and courteously by police, prosecutors, and judges. Prosecutors were frustrated that women frequently decline to participate in vigorous prosecution of their abusers: "The consensus of the system was that these were people that were going to back out. All you have to do is give it ten days." 1989 Task Force Gender Report 28.

Domestic violence was mischaracterized as being a private family matter. Attorneys had indicated concern at being placed in the position of "prosecuting" criminal contempt violations at the same time that they represented victims in civil divorce cases.

Research Methodology in 1997:

Questionnaire sent to Michigan Judicial Institute

Questionnaire sent to Institute of Continuing Legal Education

Questionnaire sent to State Bar committees/organizations

Circuit Court Chief Judges Questionnaires

Circuit Court Judges Questionnaires

District Court Chief Judges Questionnaires

Recorder's Court Judge Questionnaires

Interviews with victims and lawyers involved in family violence

Status of the implementation of the recommendation in 1997:

In response to the question of whether additional training would be helpful to judges and appropriate court personnel and if so, to describe it, many judges said they believed training is currently sufficient. One judge commented: "...training staff is not the answer. Our staff should not be tied down helping answer questions on how to practice law. That's what lawyers are for." This comment illustrates the court's view that lawyers should be responsible for directly dealing with clients affected by domestic violence.

Domestic violence anecdotal information indicates that there is a present need for more training. Battered women involved in divorce proceedings offered anecdotal information indicating that lawyers are still often unsympathetic to their fears. Victims felt that their lawyers were not accessible, did not want to listen, and did not aggressively represent their claims. This was especially true in property and custody matters.

Example: A woman seeking a divorce from a violent spouse reported that her attorney, her husband's attorney, and the judge were listening to tapes of threats left by her husband on the answering machine. The husband was describing how he had cut her face out of all family pictures. The judge and attorneys (all men) were laughing in chambers as they listened to the tape. It was audible through the door of the judge's office.

This same woman was also concerned because when household articles were being divided, the judge awarded the tools to the husband. This was done in spite of the fact that she had physical custody of the children and was living in the marital home, where the husband was living in an apartment. In making his decision, the judge seemed to subscribe to stereotypical notions that women cannot use tools, observing that "she would not need them [the tools]." The client felt that she would have been much better represented if her attorney had a better understanding of the dynamics of domestic violence and more sensitivity to gender bias issues.

In targeted interviews with agency lawyers handling domestic cases, the State Bar of Michigan Task Force was uniformly and repeatedly told that much more training is needed, especially as regards that the new domestic violence legislation package. Some attorneys stated that the laws are touted as being much more effective than they actually are. The laws cannot be fully effective without accompanying training for lawyers and court staff. This training was not provided for in the legislation. Lawyers' reports, like those of clients, indicate that empathy training is also necessary for a great number of attorneys representing battered women.

The response of State Bar of Michigan organizations to the most recent survey underscores the need for more training. Of four responding state regions, none indicated that training had been conducted which was devoted exclusively to domestic violence in the preceding three-year period.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- Continuing legal education training, focused on the psychological result of systematic family violence, impact on children, and empathy, especially, should be required for all Michigan

attorneys who practice family or criminal law. At least one seminar, with regularly required updates, should be mandatory.

- The Michigan Supreme Court should reconsider the 1987 State Bar of Michigan Task Force on Professional Development proposal to require a program of mandatory continuing legal education for Michigan lawyers.

- Michigan law schools should be encouraged to establish legal classes, clinics, and student internships on domestic violence issues.

DOMESTIC VIOLENCE

Gender Recommendation V-17: The State Bar should develop programs to provide legal assistance to victims of domestic violence. This should entail further efforts toward the adoption of the proposed mandatory IOLTA Program which is essential to secure additional funding for indigent legal services, particularly in light of recent federal funding reductions. Additionally, the State Bar should adopt a pro bono program to provide legal representation for domestic violence.

Summary of condition prompting 1989 recommendation:

Women are typically not able to afford attorneys to assist in obtaining and enforcing injunctions, custody orders, and equitable property settlements. They are often the non-working party in the marriage.

Because they do not have funds to hire lawyers, they cannot obtain an enforceable court order, which mandates police intervention when abuse occurs. Making these orders financially accessible is also critical to ensuring that battered women do not have their children seized from them through the use of ex parte orders obtained by their husbands

Research Methodology in 1997:

Questionnaire sent to Michigan Judicial Institute

Questionnaire sent to Institute of Continuing Legal Education

Questionnaire sent to State Bar committees/organizations

Circuit Court Chief Judges Questionnaires

Circuit Court Judges Questionnaires

District Court Chief Judges Questionnaires

Recorder's Court Judge Questionnaires

Interviews with victims and lawyers involved in family violence

Status of the implementation of the recommendation in 1997:

IOLTA money (ten percent [10%] of proceeds) was allocated to the Supreme Court specifically for use in implementing 1989 Task Force recommendations. Further, forty-five percent (45%) of IOLTA funds was allocated to support the delivery of civil legal services to the poor and another forty-five percent (45%) is to be used for indigent criminal defense services. See Administrative Order No. 1990-2, 434 Mich cv (C)(1)-(3).

Presently, the State Bar encourages attorneys to participate in pro bono activities (see President's Page, *Michigan Bar Journal*, October 1992). Also, the State Bar regularly publishes a list of law firms which participate in pro bono legal programs.

Problems exist within the present system. It is notable that the response of judges as to whether judges and court personnel received adequate education and/or training in the handling of personal protection orders was wide-ranging. Eighty-two percent (82%) of responding Region 1 judges stated that adequate training had been given. This figure dropped as low as thirty-three (33%) in Region 2.

In response to the question of whether additional training would be helpful to judges and appropriate court personnel and if so, to describe it, many judges offered comments as to why they thought education was currently sufficient. One Oakland County judge commented: "Domestic violence has been the subject of every conference, seminar, and publication for the last 2 years. Believe me — we get it." A significant number of comments came from courts responding to the survey that there "is no problem" or that the court has "other things to worry about." It is of interest also that one judge responding to the survey stated that " . . . training staff is not the answer. Our staff should not be tied down helping answer questions on how to practice law. That's what lawyers are for."

Judges' comments responding to the recent survey emphasize the frustration at trying to assess claims made by pro per victims and the great need for legal assistance. A judge in Region 2 observed: "Ill-Drafted (sic), unclear, illegible complaint which assumes that the judge learned all the background, Prior (sic) civil and criminal case records, police reports, hospital ER reports, etc. Which we do not have! Partial names, NO DOB, incorrect address, incomplete or absent identifications. Do you have any idea how many 'Bill Johnson's there are. . . (sic)." Another judge specifically complained of poor descriptions of the need for a personal protection order, along with public misunderstanding of correct purposes for such an order. Further, even if assistance in filling out the forms is provided, this does not address judicial concern that personal protection orders are sometimes sought for the wrong reasons, i.e., to evict a partner from the marital home without a hearing, or to address problems with an "obnoxious neighbor or roommate." One judge noted that factual allegations are also frequently inadequate. When this happens, the entire process has to be repeated, using double the time and effort. Clerical help does not substitute for legal judgment in how to select and frame allegations of abuse.

Some judges also noted that the orders are used by police to "get them (the victims)...off their backs." The judge made the observation that personal protection orders have become, in his or her view, "the answer to societal ills." Proper filing and service are also problems, according to some judges. This makes enforcement by police impossible. These comments demonstrate the high level of frustration some courts are experiencing with the current process allowing for pro per representation.

The availability of assistance is clearly inadequate. In many counties, those seeking protection are given packets of forms but do not receive assistance in filling them out. The view of agency lawyers from the Women's Justice Center and the University of Michigan Family Law Project, among others, as well as the State Bar of Michigan Domestic Violence Committee, coincided with that of many judges and administrators. Without aid in filling out the forms to obtain personal protection orders, the availability of these orders has questionable value. Not only are literacy and

written communication skills a problem for many applicants, but claim selection and providing the correct supporting information is also difficult.

Many pro per litigants are demeaned and intimidated by court personnel, and wholly frustrated by the process of trying to obtain and serve a personal protection order. Having more lawyers properly trained and assisting with protective orders will lessen judicial frustration and resulting resistance from the bench. It will also make the process less cumbersome and inefficient for courts. Without assistance in actually obtaining and serving personal protection orders, the mere existence of the orders as part of the new legislation is arguably meaningless.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- Strong encouragement by the Bar for private attorneys to render pro bono services to those suffering from the effect of domestic violence is critical to increasing delivery of services to the segment of the public that needs it. Increased funding to support representation and legal assistance for those seeking protective orders is also clearly necessary.

- Law schools should be approached to begin clinical programs, which serve litigants whose cases involve domestic violence. The Family Law Project of the University of Michigan has such a clinic and could serve as a model for other law schools.

DOMESTIC VIOLENCE

Gender Recommendation V-18: The Crime Victims Compensation Act should be amended to allow payments to victims residing in the same household as the assailant.

Summary of condition prompting 1989 recommendation:

Victims may be intimidated by abusive domestic partners from filing civil suits or enforcing their rights to restitution. They often labor under the same myths and attitudes which discourage criminal prosecution of abusers, namely, that domestic violence is not a serious crime, that the victim could have left and avoided the abuse, and that the victim loves the abuser and somehow likes the abuse. 1989 Task Force Gender Report 38.

If an abusive partner is indigent, it is meaningless to file a civil suit. Civil suits against police who fail to provide proper protection also are a difficult remedy, given the great difficulties victims encounter in filing and proving such claims. In many cases, victims of domestic violence crimes lack access to medical treatment, location expenses or funeral expenses. Many are forced to leave their homes, often with their children.

Research Methodology in 1997:

Legal research

Status of the implementation of the recommendation in 1997:

MCL 18.354(2); MSA 3.372(4), amended in 1990, eliminated the language prohibiting payments to crime victims who are members of the same household as the assailant.

Recommended Action:

This recommendation has been fully implemented. No further action is required.

WOMEN AS CRIMINAL DEFENDANTS

Gender Recommendation V-19: All participants in the criminal justice system should receive education on "the battered woman's syndrome" to ensure an understanding of the complex nature of the problem and why such victimized women should not necessarily be held criminally responsible.

Summary of condition prompting 1989 recommendation:

A battered woman, "'unprotected by an ineffective legal network, often sees no choice but to kill or be killed.'" 1989 Task Force Gender Report 30. Yet, these women often face "harsher penalties than men who kill their mates." Id. This appears to be rooted in a systemic abhorrence of a woman who fights back when facing a lethal threat. Rather, it appears women are to be "soft-spoken, non-assertive, and vulnerable." Id.

It is critical that judges, prosecutors, and defense lawyers understand that a woman who kills in self-defense cannot, in most cases, simply remove herself from the home and avoid a need to respond to an abuser with deadly force.

Requiring all involved in the criminal justice system to be aware of the psychological processes resulting from ongoing physical and mental abuse would help to create the necessary level of understanding. These processes become manifest as a number of symptoms including internal exaggeration of the abuser's abilities to find and control her; "traumatic bonding" with the abuser in order to survive in the abusive environment; and the genuine belief that he can and will kill her. These symptoms are referred to as the "battered women's syndrome," which underlies her perceptions at the time of a self-defense (victim-precipitated) killing and renders those perceptions both honest and reasonable.

Research Methodology in 1997:

Targeted interviews with lawyers and victims who have been involved in domestic violence cases

Prosecuting Attorney Questionnaires

Circuit Court Chief Judges Questionnaires

Circuit Court Judges Questionnaires

District Court Chief Judges Questionnaires

Recorder's Court Judge Questionnaires

Questionnaire to Michigan Judicial Institute

Questionnaire to Institute of Continuing Legal Education

Status of the implementation of the recommendation in 1997:

There remains a real need for training of judges, prosecutors and defense attorneys on the issue of the "battered woman's syndrome." Despite appellate rulings that expert testimony on the subject is admissible, several prosecutors responding to the questionnaire reported that judges would not allow the testimony. Several also indicated that the syndrome would have no effect on a charging decision, and twenty-one percent (21%) of those responding disagreed or somewhat disagreed that expert testimony should be admissible to develop a self-defense claim. Of the prosecutors who responded that they had received training on how to handle domestic violence cases, twenty-eight percent (28%) indicated that they had not been trained on self-defense asserted by victims who fight back. Training prosecutors on the syndrome not only helps them to recognize valid self-defense claims, but also helps them to understand a victim's reluctance to follow through with prosecution of the batterer. A thorough understanding of such phenomena as separation assault and traumatic bonding with the batterer is key to comprehending this apparent reluctance. Separation assault means that the potential for being seriously injured or killed is greatest for a battered spouse or partner at the time she tries to leave the relationship. Traumatic bonding is the psychological bonding with the batterer and is a component of the survival process for many women.

Of the judges responding that they had received domestic violence training, twenty-eight percent (28%) indicated that it had not included training on the characteristics of victims and assailants. A significant number (twenty-seven percent [27%]) responded "never" to whether expert testimony on the syndrome is admitted on behalf of the defense, with the nearly the name number (twenty-four percent [24%]) indicating that they never admitted it on behalf of the prosecution.

Training for criminal defense attorneys on the subject has been very limited, largely because there is no and state-funded training agency for trial attorneys. Relatively few training events take place annually, and they are often attended by only a small percentage of those who handle criminal cases. Between 1990 and 1997, only three events addressed the issue of defending battered women, and under fifty attorneys were trained.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- Individual jurisdictions must have at least one in-service local program per year focusing on domestic abuse for local attorneys and court personnel involved in criminal practice. Participation in such a program is mandatory.

- Intensive training on domestic violence as it relates to the criminal justice system (in contrast to the more frequently offered context of family law) should be part of law school curricula and also of ongoing training offered to lawyers.

WOMEN AS CRIMINAL DEFENDANTS

Gender Recommendation V-20: The standard criminal jury instructions should be revised to add defense against sexual assault as a situation in which the use of deadly force may be justified.

Summary of condition prompting 1989 recommendation:

Many in the criminal justice system perceive sexual assault as a crime of passion, rather than one of violence. This supports the view that rape is less serious than a "physical assault," and that self-defense theories should not be fully applicable.

Research Methodology in 1997:

Legal research

Status of the implementation of the recommendation in 1997:

The Michigan Supreme Court held in *People* v *Barker*, 437 Mich 161 (1991) that serious bodily harm includes forcible sexual penetration, and that a judge errs if he or she refuses to instruct that deadly force may be used to repel an imminent forcible penetration. The Standard Criminal Jury Instructions, CJI2d 7.15, were amended in 1991 to incorporate this holding.

Recommended Action:

This recommendation has been fully implemented. No further action is required.

WOMEN AS CRIMINAL DEFENDANTS

Gender Recommendation V-21: Expert testimony concerning the battered woman's syndrome should be admissible in Michigan courts to develop a self-defense claim and provide the trier of fact with guidance as to why a defendant perceived herself to be in imminent danger or death or serious bodily injury at the time of the killing.

Summary of condition prompting 1989 recommendation:

Death at the hands of an abusive partner is a genuine danger to women in the United States. In 1989, the Task Force observed that twenty percent of all homicides occur within the family. Of those, one-half involved a killing of one spouse or partner by the other. "Although husbands and wives kill each other with almost equal frequency (fifty-two percent [52%] to forty-eight percent [48%]), wives are motivated by self-defense almost seven times more frequently than husbands." 1989 Task Force Gender Report 30.

Women tried for self-defense killings have a difficult time explaining their actions to fact-finders. Jurors and judges often do not understand seemingly paradoxical behavior, such as staying with an abusive partner, continuing to have children with him, and even expressing love for him. Many believe that women who remain in a home after being abused actually like being abused. 1989 Task Force Gender Report, at 30-33. Many wonder why the charged incident was different from other incidents in which abuse was suffered without striking back.

Experts can help to explain paradoxical behavior and to dispel incorrect perceptions. If the fact-finder can understand a battered woman's perceptions of why she must defend with deadly force, through concepts of separation assault and traumatic bonding, for example, it can then properly apply the law of self-defense. When actions which are seemingly contradictory are explained within the context of battered woman's syndrome, jurors can fairly evaluate the pivotal question of whether the defendant's conduct occurred because she both reasonably and honestly believed she was in danger of being killed or seriously injured.

Research Methodology in 1997:

Legal research

Prosecuting Attorney Questionnaires.

Circuit Court Chief Judges Questionnaires

Circuit Court Judges Questionnaires

District Court Chief Judges Questionnaires

Recorder's Court Judge Questionnaires

Status of the implementation of the recommendation in 1997:

Expert testimony concerning the battered woman syndrome is admissible in Michigan following the decision in *People* v *Christel*, 449 Mich 578 (1995). There the Supreme Court held that such expert testimony is admissible when it is relevant and helpful to the jury in evaluating a defendant's credibility and the expert is properly qualified. The expert may not opine whether the defendant is a battered woman, that the victim is or was a batterer or guilty of that charge, nor comment on the defendant's truthfulness. Expert testimony may be prohibited when its probative value is substantially outweighed by unfair prejudice. In another leading case, *People* v *Wilson*, 194 Mich App 599 (1992), the Court of Appeals held that, where the defendant was charged with shooting her husband, and claimed self-defense, expert testimony of battered spouse syndrome was admissible under the same parameters set forth in the *Christel* case.

Although the testimony is legally admissible, there are signs that it is not regularly admitted on behalf of the defense. Approximately thirty-eight percent (38%) of the judges responding to the questionnaire indicated that they *never* allow this type of testimony. Further, among prosecutors who responded to the 1997 questionnaire, most felt that such testimony should be allowed, but approximately eighteen percent (18%) either somewhat or strongly disagreed that such testimony should be admissible to support a self-defense claim. Prosecutors also reported that, generally speaking, use of syndrome testimony is limited by insufficient funds for hiring experts, insufficient time to locate qualified experts, and lack of expertise in their locales. Some reported that the testimony was not effective when used. Some attorneys reported their belief that defense attorneys sometimes fail to investigate the defense, or fail to properly prepare a "battered women case" as one involving self-defense.

Recommended Action:

This recommendation has been substantially implemented. In addition, the State Bar of Michigan Task Force recommends:

- Organizations which train criminal defense attorneys (the Criminal Defense Attorneys of Michigan, the Criminal Advocacy Program of Wayne Circuit and Recorder's Courts, the Institute of Continuing Legal Education) should include training on the topic in programs and written manuals.

- The Michigan Judicial Institute should ensure that training of judges on domestic violence includes instruction on how to handle admissibility of expert testimony and when to recognize that counsel has been ineffective for failing to recognize or raise the self-defense claim.

WOMEN AS CRIMINAL DEFENDANTS

Gender Recommendation V-22: Sentencing guidelines should be amended to allow mitigation based on the dire circumstances present in many cases involving battered women.

Summary of condition prompting 1989 recommendation:

In 1989, sentencing issues were considered to be the most difficult problem in criminal cases involving battered women. Sentencing judges sometimes deviated from the sentencing guidelines and imposed a harsher sentence when a woman was the defendant. The 1989 Task Force Report described an incident where a judge departed upward from guidelines "as an example for other battered women so that they will leave their husbands." 1989 Task Force Gender Report 33. Although mitigating variables (avoiding harm, provocation, passion and mistake/inadvertence) were factored into the sentencing guidelines prior to 1988, they were subsequently eliminated. As a result, the guidelines no longer permitted the sentencing court to take into consideration the circumstances, which are so often present in these cases.

Research Methodology in 1997:

Legal research

Interview with members of legislative Sentencing Commission

Questionnaire sent to the legislative Sentencing Commission

Status of the implementation of the recommendation in 1997:

Sentencing guidelines, which previously were determined by a Supreme Court commission, are in the process of re-development and re-drafting by a legislative commission which will seek legislative approval. Presentation to the legislature is expected in fall of 1997.

In the existing guidelines, the only mitigating factor is Offense Variable 3 in the Homicide Group, which allows for mitigation "where a killing is intentional within the definitions of murder second degree or voluntary manslaughter but the death occurred in a combative situation or in response to victimization of the offender by the decedent." It is as yet undecided whether this, or a more general "mitigating factors" guideline will be included in the final draft of the new guidelines.

Recommended Action:

This recommendation has been partially implemented. The 1989 Task Force recommendation should be implemented as written. In addition, the State Bar of Michigan Task Force recommends:

- The legislature should adopt the Sentencing Commission's recommendation of a specific mitigating factor for persons who were battered by the complainant/decedent, allowing judges to adjust a sentence downward for battered defendants. The factor should be applicable in any crime context, and not be limited to homicides. The mitigating factor currently contained in OV3-Homicide should be contained in the new guidelines.

WOMEN AS VICTIMS OF SEXUAL ASSAULT

Gender Recommendation V-23: Judges, attorneys and court personnel should receive education in the following areas:

a. **Michigan Criminal Sexual Conduct Code and related law;**
b. **dynamics of criminal sexual conduct, options for and efficacy of various treatment modalities for sex offenders and the long and short-term impact of sexual assault on victims; and**
c. **the use of pre-trial techniques and courtroom controls to limit inappropriate trial tactics and intimidation of the victim.**

Summary of condition prompting 1989 recommendation:

Sexual assault is widely under-reported; reported rapes in 1988 numbered 6,380 in Michigan. About one-third of these assaults resulted in arrests.

Rapes are sometimes not successfully prosecuted because victims frequently experience physical and emotional trauma as a result of the rape. They are negatively impacted a second time by the judicial process. Pre-trial intimidation by the assailant or the defense, humiliation concerning private and irrelevant sexual history, civil lawsuits, and lack of adequate victim support are reasons that some victims refuse to proceed with the prosecution.

The 1989 Task Force found that the court system is not adequately sensitive to the frustration and anger these victims experience as a result of the way these cases are handled. The lack of awareness of rape dynamics and victims' experiences create obstacles that a substantial number of victims are not willing to surmount.

Research Methodology in 1997:

Targeted interviews with lawyers and victims who have been involved in domestic violence cases

Questionnaire sent to Michigan Judicial Institute

Questionnaire sent to Institute of Continuing Legal Education

Circuit Court Chief Judges Questionnaires

Circuit Court Judges Questionnaires

District Court Chief Judges Questionnaires

Prosecuting Attorney Questionnaires

Status of the implementation of the recommendation in 1997:

The Michigan Judicial Institute and the Institute of Continuing Legal Education have offered training on the above subjects for judges and lawyers, but it is not mandatory. The Institute of Continuing Legal Education's training has been limited to the Criminal Sexual Conduct statutes.

In order to reduce victim intimidation, separate waiting facilities for victims should exist in courtrooms. The survey response indicates that between twenty percent (20%) and thirty-nine percent (39%) of responding courts do not have separate waiting areas. This is largely due to lack of existing space and insufficient funds to construct waiting areas.

Special services for victims of CSC are not uniformly available. Services include victim witness assistants, individual meetings with prosecutors, and ongoing contact with local crisis centers. Regions I and II reported special services in all responding offices, while Region IV reported such services in thirty-five percent (35%) responding offices. Region III did not provide an answer to this question.

The above answers indicate that more support is needed by victims. In order to provide this support, lawyers and judges will have to participate in additional education and training to fully understand the dynamics of sexual assault.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- The Michigan Judicial Institute must make training on criminal sexual assault mandatory for all judges. Referees should also be required to be further educated on the laws and the dynamics of criminal sexual assault.

- Lawyers should be required to attend training on both the laws and psychological dynamics of sexual assault. This could be included in training on gender-based violence (domestic violence and sexual assault).

- In addition to large, centralized training events, in-service presentations should be scheduled to take place locally. Smaller, local education events are often an improvement. Attendance is improved because participants do not have to travel to a central location. Seminars can also be tailored to the concerns of the local community. Empathy training must be a focus of these events.

WOMEN AS VICTIMS OF SEXUAL ASSAULT

Gender Recommendation V-24: Courts should be provided with separate waiting areas for victims and other prosecution witnesses and should utilize all available mechanisms to protect such individuals from harassment and intimidation.

Summary of condition prompting 1989 recommendation:

Many courts in Michigan do not possess the facilities necessary to provide separate waiting areas for victims. During testimony in Grand Rapids, it was reported that, "There are courthouses in this county that, if you went in as a victim of a domestic violence situation or sexual assault, you could still be sitting across from the perpetrator." Placing the victim in this setting may make her vulnerable to intimidation, stress and fear of the process.

Research Methodology in 1997:

Circuit Court Chief Judges Questionnaires

Circuit Court Judges Questionnaires

District Court Chief Judges Questionnaires

Discussions with the State Court Administrative Office

Status of the implementation of the recommendation in 1997:

This recommendation has a fairly high implementation rate with seventy-one percent (71%) to eighty percent (80%) of the largest courts reporting that they provide such facilities for victims. In the rural northern courts, compliance was reported by sixty-one percent (61%) of the judges. The reasons given for this lack of facilities are understandable, primarily financial or lack of space in existing buildings. Judges expressed a lot of frustration with this lack of resources and undoubtedly would prefer to have such facilities. Many expressed that they do the best they can with what the funding unit provides. It should be noted that many court facilities are still severely overcrowded.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- The Michigan Supreme Court should provide leadership in educating local and state funding units on the need to provide adequate court facilities. The court should direct funding units to the State Court Administrative Office and the National Center for State Courts for assistance with planning improvements in court facilities.

WOMEN AS VICTIMS OF SEXUAL ASSAULT

Gender Recommendation V-25: Jury instructions should be reviewed to ensure that bias is addressed to the end that juror biases will be minimized. Jury instructions should reflect the spirit and intent of the Criminal Sexual Conduct Code. A jury instruction for the elimination of the marital rape exception should be developed.

Summary of condition prompting 1989 recommendation:

The 1989 Gender Report revealed that some common societal attitudes and stereotypes may reinforce the idea that a woman invites abuse and rape. Jurors not only tend to be biased against rape prosecutions, but will be lenient with defendants if there is any suggestion that the victim contributed in some way. There is a disturbing juror attitude that the woman "asked for it."

Research shows that jurors "will go to great lengths to be lenient with defendants if there is any suggestion of 'contributory behavior' on the part of the victim." 1989 Task Force Gender Report 37.

Research also supports the need for clear admonitions to jurors concerning possible prejudice. In a 1987 study, 216 subjects were tested regarding stereotypes about battered women. Some sixty-four percent (63.7%) believed that if a woman is abused, she should "simply leave" to stop this from happening. Ewing and Aubrey, "Battered Women and Public Opinion: Some Realities About the Myths," 2 *Journal of Family Violence*, 257, 261-264.

Research Methodology in 1997:

Legal research

Status of the implementation of the recommendation in 1997:

Although expert testimony on battered woman syndrome is currently admissible in a criminal case, *People* v *Christel*, 449 Mich 578 (1995), no jury instruction addresses the way in which such testimony is to be considered by jurors.

Jury instructions do currently reflect the legislative determination that there is no marital rape exception in criminal sexual conduct cases. CJI2d 20.30.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- The Standard Criminal Jury Instruction Committee should adopt an instruction instructing jurors on the manner in which expert testimony on battered woman syndrome is to be considered.

- "Battered woman" instructions should be consolidated into one area, identified as such, containing:

  Cross-references to standard self-defense instructions (CJI2d 7.15 to 7.22);

  CJI2d 7.23, on past violence by the complainant/decedent;

  New charges on expert testimony on battered woman syndrome.

- Jury instructions should consolidate charges and clearly identify Battered Woman/Self-Defense, in the "Defenses" chapter. This will assist judges and attorneys with proper understanding and treatment of the claim.

WOMEN AS VICTIMS OF SEXUAL ASSAULT

Gender Recommendation V-26: Legislation should be adopted which prohibits the filing of a civil damage action until completion of any related criminal sexual conduct case during the pendency of which the statute of limitations would be tolled.

Summary of condition prompting 1989 recommendation:

In 1988, two civil suits were filed against CSC victims by the alleged perpetrators. The lawsuits were based on claims of character defamation. These lawsuits tended to intimidate victims who are actively involved in the prosecution of their crimes. As a result, the effectiveness of the prosecution was lessened in some cases.

This tactic is "overtly predicated" on the attitude that women lie about rape, and may be used to "sidestep" the rape shield protections of the Criminal Sexual Conduct Act. 1989 Report, at 38.

Civil suits brought by women victims may be influenced by the same myths and attitudes which impact on criminal prosecutions. The concern was expressed that the emotional and physical trauma which women experience when they are victimized may be minimized by the trier of fact, resulting in lower damage awards or denial of their claims.

Research Methodology in 1997:

Legal research

Status of the implementation of the recommendation in 1997:

MCL 600.1902; MSA 27A.1902 (effective 3-28-91) provides that a CSC defendant shall not commence or maintain a civil action against a crime victim based on statements or reports made by the victim that pertain to the criminal charges while the criminal action is pending, and a lawsuit in violation of this section shall be dismissed without prejudice. The statute of limitations for these actions is tolled while the criminal action is pending. This section does not apply to civil actions filed by the victim based on the same incident as the criminal action.

Recommended Action:

This recommendation has been fully implemented. No further action is required.