



THE LOUISVILLE METRO SYSTEM RESPONSE TO DOMESTIC VIOLENCE: ASSESSMENT, EVALUATION, AND RECOMMENDATIONS

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EXECUTIVE SUMMARY

This report on the Louisville Metro System Response to Domestic Violence is designed to assist the justice system's agencies and community partners achieve their goal of reducing and preventing domestic violence in the Louisville community. Based on an examination of written materials, numerous interviews of system and partner personnel, a focus group conducted with victims, and on-site observations in fall 2017 and winter 2018, this report reviews and assesses the system's operations, policies and practices in the handling of domestic violence cases.

This report documents system changes since prior studies were completed in 1998 and 2005, highlighting developments and progress in system response. It also identifies continuing needs as well as new challenges and offers recommendations for addressing these issues. It focuses on several aspects of the system-wide handling of domestic violence, including: services and advocacy for victims of domestic violence; data collection, information coordination and access; the protective order process; defendant accountability for court-ordered participation in batterer intervention programs; enforcement of domestic violence firearms regulations; the criminal justice process; interagency coordination and planning; domestic violence training needs; public awareness of domestic violence dynamics and community resources; and the security and environment of the courthouse.

I found many strengths in the system's response to domestic violence. These include the implementation of innovative programs such as the Lethality Assessment Program, which screens victims at the domestic violence crime scene to determine if they are at high risk for lethality, and links them to emergency victim services; the Arise to Safety program which identifies domestic violence victims at hospital emergency rooms and connects them with

services; the Domestic Violence Advocacy Program of the Legal Aid Society which provides legal representation to domestic violence victims at protective order hearings; and the Domestic Violence Intake Center in which advocates, prosecutors, and court clerks assist victims obtain protective orders, file criminal complaints and obtain safety planning and other services. The development of an electronic system for processing protective orders enables judges to review petitions and issues orders quickly on a 24/7 basis, improving access for victims. There also are several promising new initiatives, such as the beginning of utilization of the Ontario Domestic Assault Risk Assessment, a tool for judges to evaluate defendant risk of future acts of domestic violence. Many parts of the system are functioning well to help victims of domestic violence. And there are lots of agencies and individuals who are working very hard to address domestic violence in their community.

However, despite these many strong pieces, there are gaps in how they link together and coordinate to serve victims and hold batterers accountable. In my interviews, two words I heard frequently were fragmentation and inconsistency. Partners often do not share relevant information and do not routinely work together to monitor abusers or provide wraparound services to victims. There are too many places for both victims and offenders to fall through the cracks. Louisville Metro is certainly not alone in facing this challenge; it is a common concern for large urban jurisdictions dealing with a high volume of cases and involving many government agencies and community partners.

This report makes several recommendations throughout, which are collected in the last section. Almost all of them relate to these themes of collaboration and consistency, and the need to institutionalize procedures. Some key recommendations are:

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- to address the highest priority needs for domestic violence victims, including additional shelter and transitional housing space, and wraparound victim advocacy throughout the civil and criminal justice process;
 - to provide non-profit safe supervised visitation for children in families with domestic violence histories;
 - to consider the implementation of a specialized domestic violence docket in the District Court that would increase the focus of the court on domestic violence cases, and provide better links to victim services;
 - to undertake a thorough review of the coordination between courts, the Court Monitoring Center and batterer intervention programs, to ensure that there is more affirmative monitoring of defendant compliance and imposition of consequences for failure;
 - to improve data collection to capture meaningful information on domestic violence that follows the trajectory of cases as they move through different stages of the court process;
 - to strengthen enforcement of current domestic violence firearms laws and develop a formal protocol for surrender of prohibited weapons;
 - to review security protocols at the courthouse to promote victim safety;
 - to strengthen the Domestic Violence Prevention Coordinating Council by creating subcommittees that will facilitate working collaborations among partners in certain areas, such as victim advocates from multiple agencies;
 - to expand training programs for all personnel involved with domestic violence cases, including judges, and;

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- to encourage several legislative changes, including legislation to make strangulation a separate felony crime, and to encourage strangulation and stalking prosecutions.

While there are numerous issues to be addressed, there are many key partners from diverse parts of the system who are deeply committed to improving domestic violence response. The reduction and prevention of domestic violence is an ongoing and challenging process. It is my hope that this report generates discussion, brainstorming, collaboration and ultimately action to move forward in making victim safety a priority, holding batterers accountable for their conduct, and sending a message to the community that domestic violence will not be tolerated.

Introduction

A comprehensive review of the Louisville Metro's system response to domestic violence was completed in 1998 and culminated in a draft report, which was circulated among system partners. However, due to a change in local government, the draft was not released as a final report and there was no further action taken on it. In 2005, the Mayor released a System Snapshot (Snapshot), conducted as a joint initiative of the Domestic Violence Prevention Coordinating Council (DVPCC) and the Mary Byron Project, to identify progress as well as areas that continued to need attention since the 1998 report. As the 2005 Snapshot noted, its purpose was both to recommend items for an action agenda for the DVPCC, as well as provide a baseline for future evaluation.

The Snapshot concluded that “[t]he findings . . . suggest that significant progress has been made since 1998 in improving court procedures and system outcomes. Findings also suggest that positive strides have been made in increasing awareness about the dynamics of domestic violence crime, improving interagency cooperation and coordination, and improving access to data and information.”

However, the Snapshot also identified areas that required continued attention across a number of categories. These included: strengthening system resources, such as funding, personnel and office space; improving access to timely and accurate domestic violence data and increasing system integration; implementing court procedures to enhance victim safety while providing due process to defendants; ensuring that the Domestic Violence Intake Center operates as originally envisioned; continuing efforts to raise public awareness and provide training to professionals who respond to domestic violence crime; and expanding the

availability of specialized treatment along with necessary oversight to ensure quality and appropriate intervention.

In 2017, the DVPCC recognized that it again was an appropriate time to conduct another comprehensive evaluation of system response to domestic violence, since it had been 12 years since the Snapshot and almost 20 years since the comprehensive assessment. I was hired in the summer of 2017 to undertake this new assessment of system response to domestic violence. This assessment is composed of four components: review of relevant written materials and data; on-site interviews with key personnel from a variety of stakeholder agencies; on-site observations of courtroom and program operations; and follow-up and preparation of a written report to document findings and make recommendations.

Over the summer and early fall of 2017, I received and reviewed substantial materials and data from numerous agencies, including laws, policies, protocols, forms, descriptions of operations, and statistics on domestic violence cases. In fall 2017 and winter 2018, I conducted two multi-day site visits to Louisville Metro, where I had the opportunity to meet and interview representatives from multiple government agencies and community organizations, as well as observe courtroom proceedings, operations at the Domestic Violence Intake Center (DVIC), the Court Monitoring Center (CMC), and the Center for Women and Families (CWF) shelter. I shadowed prosecutors and went on a ride-along with Louisville Metro Police Department (LMPD) patrol officers. I also conducted a focus group with domestic violence survivors at the shelter and attended two meetings of the DVPCC. I conducted further follow-up interviews by phone and corresponded by email with multiple partners, and received additional data and materials through the spring, summer, and fall of 2018.

In all, I was able to obtain information and speak with representatives from a wide range of partners relevant to this assessment, including: the Administrative Office of the Courts, the Arise to Safety Program, Appriss, facilitators of Batterer Intervention Programs, the Center for Women and Families, the Office of the Circuit Court Clerk, judges and court personnel from the Circuit Court, Family Court, and District Court, including the chief judges from all three courts, the Office of the Commonwealth's Attorney, the Court Monitoring Center, ElderServe, the Home of the Innocents, the Jefferson County Attorney's Office, Jefferson County Pretrial Services, Jefferson County Public Schools, Jefferson County Sheriff's Office, Jeffersontown Police Department, Kentucky Cabinet for Health and Family Services, the Kentucky Coalition Against Domestic Violence, the Kentucky Department of Corrections, Division of Probation and Parole, the Legal Aid Society of Louisville, Louisville Bar Association, Louisville-Jefferson County Public Defender's Office, Louisville Metro Department of Corrections, the Louisville Metro Police Department, Louisville Metro Office for Women, the Mary Byron Project, Metro Criminal Justice Commission, MetroSafe, Shively Police Department, St. Matthews Police Department, the University of Louisville Law School Clinic, as well as other concerned community members who reached out to me.

This report is the culmination of these reviews, interviews, and observations. The Louisville Metro Government, the state and local agencies and the multiple community partners were uniformly gracious in giving me their time and assistance in conducting this assessment. Their desire to undertake this evaluation, and their willingness to work with me to ensure that this report was as complete and accurate as possible demonstrates their commitment to reducing and preventing domestic violence in their community.

This report reviews changes since the prior studies, highlighting improvements in system response, documenting continuing system gaps, and identifying new needs that have

emerged in the intervening time period. In addition, the report offers recommendations and suggestions for meeting these challenges, informed by best practices nationally in the field that have developed over the past decades. Each section covers particular aspects of the system response, and provides specific recommendations, which are then compiled in the final section. In this way, it is my hope that the report will provide guidance for action by system partners and serve as a starting point for any future assessment.

I. **Highlights of Progress Since the 1998 Community Assessment and the 2005 Snapshot Report**

There is no question that there has been substantial progress in domestic violence response since the last studies in 1998 and 2005. The many innovations that have been implemented demonstrate the ongoing commitment of Louisville's Metro Government and community organizations to strengthen their response to domestic violence. I list below some highlights of these improvements, which are discussed in more detail throughout this report:

- The opening and expansion of the Domestic Violence Intake Center (DVIC) to handle criminal complaints, process civil protective orders and link victims to services in one centralized location;
- The expansion of protective order eligibility to include victims of dating violence, sexual assault and stalking;
- The creation of the Domestic Violence Advocacy Program of the Legal Aid Society to provide legal representation of domestic violence victims at DVO (and now IPO) hearings;
- The development of the Lethality Assessment Program, a collaboration between CWF and LMPD to reduce the number of domestic violence homicides in Louisville;
- The beginning of the implementation of the Ontario Domestic Assault Risk Assessment (ODARA), a tool for the court to evaluate the risk of future acts of domestic violence, by the LMPD in conjunction with Pre-Trial Services (PTS);
- The consolidation of the LMPD DV detectives into one DV unit to improve cohesion and consistency;

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- Development of an electronic system for processing EPOs and IPOs so that petitions can be sent to judges electronically, who can also sign and return orders, thus speeding up the process and permitting judges to review cases and sign orders off-site on a 24/7 basis;
 - The creation of the Arise to Safety program, a partnership between the Center for Women and Families, the Mary Byron Project, and University of Louisville SAFE Services, to screen for domestic violence victims at hospital emergency rooms and link them to victim services;
 - The institutionalization of the DVPCC, which gathers key justice system partners to work together on improving domestic violence response, including the development of the Fatality Review Committee, and;
 - The contracting of monitoring and certification of Batterer Intervention Programs (BIPs) by the Kentucky Cabinet for Health and Family Services to the Kentucky Coalition Against Domestic Violence, which has the potential to increase program accountability and consistency.

II. Services and Advocacy for Victims of Domestic Violence

Louisville Metro is fortunate to have a strong community-based victim advocacy organization, the Center for Women and Families (CWF), which provides multiple services to victims of domestic violence and sexual assault. These services include a large emergency shelter in Louisville, a 24/7 crisis phone line for immediate safety planning and assistance, case management and referrals to other services, children's services, transitional housing, and court advocacy.

CWF also partners with other agencies on several programs, including; the Lethality Assessment Program (LAP), where CWF collaborates with the LMPD to link high risk victims to services immediately; the Arise to Safety program in which emergency room patients are screened for domestic violence and linked to CWF services; Ride to Safety, in which TARC, the public bus service, provides free transportation to individuals who want to get to the CWF shelter; and the Community Shield initiative, a collaboration among 40 agencies to raise awareness and coordinate community-wide efforts to improve the response to children exposed to violence. As will be examined in more detail below, some of these partnered programs have been the most promising in reaching and serving domestic violence victims in the community.

In addition to CWF, there are victim advocates based at other key partner agencies, including the LMPD, the DVIC and County Attorney's Office, and the Commonwealth's Attorney's Office. There are also victim advocates from ElderServe to assist clients to obtain protective orders, and provide short term shelter. Attorneys from the Domestic Violence Advocacy Project of the Legal Aid Society, and law students from the Robert and Sue Allen Ackerson Law Clinic at the Brandeis School of Law, University of Louisville, provide civil legal assistance. The Louisville Metro Office for Women further provides a strong voice for victims

of domestic violence and oversees the Louisville Metro Visitation and Exchange Center program (LMVEC), which is designed to provide supervised visitation and exchanges of children for families with a history or risk of domestic violence between the parents. Further, there are multiple other governmental and community-based agencies that assist victims in specific areas. Louisville Metro is also home to the Victim Information Notification Everyday (VINE) system, first implemented in 1994, a collaboration between Appriss and the Commonwealth of Kentucky to develop the first statewide notification system. VINE, which is now used in 48 states, makes critical information available regarding inmates housed in local jails or correctional facilities.

All of this provides a strong foundation from which to work on improved domestic violence response. Many of those interviewed, including victims in the focus group and advocates themselves, however, expressed a strong need for additional victim services. The number of victims served by CWF, particularly in its crisis response has been rising steadily for the past several years; for example, there were 3,836 hotline calls in FY 2015; 4220 in FY 2016; and 6,055 calls in FY 2017. Victims seeking walk-in services rose from 144 in FY 2015; to 308 in FY 2016; to 355 in FY 2017. The number of victims and children in the shelter also rose through this period: 324 in FY 2015; 453 in FY 2016; and 513 in FY 2017. The average length of stay in the shelter has risen somewhat during this period: 29 days average in FY 2015; 31 days in FY 2016; and 36 days in FY 2017. Meanwhile the time spent in transitional housing has also risen; the average length of stay in both FY 2015 and FY 2016 was 1.5 years but rose to 1.9 years in FY 2017. Fewer clients were able to be served in transitional housing; 157 victims and their children were in transitional housing in FY 2015; that number was 150 in FY 2016, and then declined to 103 in FY 2017. These figures indicate a growing

demand for services, along with a longer period necessary for clients to move out of shelter or transitional housing, and fewer clients served in transitional housing.

A. Service Needs for Domestic Violence Victims and Their Children

Additional Shelter Space and Community Based Housing Alternatives. As indicated in the statistics above, there is a growing need for additional shelter space. CWF reports that its shelter is virtually always completely full. There is also need for additional housing for domestic violence victims seeking to transition out of the shelter. CWF reports that in earlier years, it had an HUD-funded transitional housing program that permitted placement for victims throughout CWF's area of service. The program is now more limited; CWF can place survivors from the shelter into a nearby apartment complex if and when a unit becomes available, offer some financial help for a year, and provide case management from a CWF advocate.

Participants in the victim focus group also echoed this, listing better housing options as their top priority for services. Several of those interviewed expressed concern that though the police are supposed to offer shelter services to any victim who wants them, there is not always room at the shelter to take in the victim. Judges interviewed also noted the lack of public housing available, with long waiting lists.

Treatment Spaces for Victims Addicted to Opioids, and Addiction and Mental Health

Specialists. The opioid epidemic has not spared domestic violence victims or shelters.

Those familiar with the CWF shelter, including victims who participated in the focus group, indicated that drugs and overdoses were issues. And, for those victims working on overcoming their addiction, the presence of opioid users at the shelter was challenging.

CWF staff have reported that about 60% of women in the shelter are addicted to heroin and,

at the time I met with them in fall 2017, there had recently been four overdoses (non-fatal) in the shelter. Louisville is certainly not alone in facing this issue; as an example, one domestic violence shelter in Dayton, Ohio reported that every month or so, a woman dies from an overdose in the shelter, and that there was an ongoing search for more treatment beds for women to address their addiction.¹

There is a need for in-patient treatment beds, as well as outpatient services for domestic violence victims in Louisville Metro. There is also a great need to for mental health treatment for victims, and to have addiction and mental health specialists available at the shelter. Since my site visits, CWF was awarded a \$350,000 grant from the Office for Victims of Crime to support a specially trained therapist and advocate on CWF staff to work with victims with mental health issues. CWF also has an agreement with Our Lady of Peace Hospital to accept any CWF clients that need immediate treatment for drugs, alcohol or mental health issues. These are very positive steps; the need for additional services, however, continues.²

Supervised Visitation Options. The Office for Women oversees the Louisville Metro Visitation and Exchange Center (LMVEC) program which had operated at two sites: the Safe Exchange Program at Home of the Innocents, and the Visitation Center at Family & Children's Place. From FY 2014 through FY 2017, there have been well over 20,000 supervised visits and safe exchanges completed by the LMVEC program. Both of these programs' primary source of funding since 2003 has been grants through the federal Office of

¹ *Women Dying Monthly of Overdoses in Ohio DV Shelters*, Nat'l Bull. on Domestic Violence Prevention, Vol. 24, January 2018.

² There is also a need for additional therapists for domestic violence victims generally.

Violence Against Women. However, in 2017, the federal grant was not renewed. Though Home of the Innocents has found additional resources to continue its Safe Exchange Program, Family & Children's Place sold its property and ended operations in fall 2017. There is currently no non-profit supervised visitation alternative available in the area.

Family Court Judges have handled this in a variety of ways. Some have decided not to order supervision in domestic violence cases, expressing the belief that monitoring is not necessary. Other judges are not permitting any visitation at all, in the absence of viable supervision alternatives. Some had been utilizing a for-profit entity that was both expensive, and did not have clear security protocols for domestic violence cases. None of these options is viable. Unsupervised or unsafe supervised visitation endangers both victims of domestic violence and their children; denying visitation completely bars parents from seeing their children at all. And for this clientele, costly services are not feasible.³ When interviewed about this issue, some Family Court judges expressed concern and a desire to reach out to try to locate other alternatives, while other judges felt that this was not their job and may lead to an appearance of partiality if they were to try to solicit groups to serve as supervised visitation monitors.

However, the Chief Family Court Judge and Family Court program coordinator, together with the Office for Women, the Exploited Children's Help Organization (ECHO) and the Bridges of Hope Neighborhood Place, have formed a working group on this issue. Bridges of Hope has agreed to serve as the location for supervised visitation, and ECHO has agreed to recruit and train supervisors. The working group applied for a grant to provide the

³ Demographic data from Home of the Innocents Safe Exchange program indicates that 94.1% of its clients are at 200% of the poverty line or below.

necessary funding. The grant request was denied, and as of September 2018, the group is continuing to try to identify other funding sources. This is a critical need that must be a top priority for the court and the community.

Expansion of the Arise to Safety Program to Additional Louisville Hospitals. As a partnership among CWF, the Mary Byron Project, and the University of Louisville SAFE Services, with funding from the Jewish Heritage Fund for Excellence, the Arise to Safety program was first implemented at the University of Louisville hospital and as of February 2018, was being fully implemented at Jewish Hospital. The program is designed to identify victims at highest risk of being seriously injured or killed by an intimate partner and connecting them immediately with services, safety planning and shelter. As part of the Arise program, all Emergency Department (ED) staff at both hospitals were trained by CWF educators on identifying and responding to domestic violence in patients. ED nurses screen all patients using domestic violence screening questions. If a patient screens positive for experiencing domestic violence currently, the ED staff notifies CWF; a CWF advocate will come to the hospital to meet with the patient and offers services, as well as conduct a lethality assessment. The CWF advocate makes a follow-up call to each of the patients with whom she has met.

Notably, 84% of those given a lethality assessment were identified as at high risk. When the CWF advocate identifies a victim as at high risk of lethality, the victim is offered emergency shelter and transportation. Patients who report that they are not currently experiencing domestic violence, but had been exposed to it in the past 12 months, are given information about CWF services and the ED nurse offers to connect the patient to the CWF phone crisis line. If a patient wants to make a report to the police, the ED will notify law enforcement, but otherwise will not do so. If there is a visible physical injury or the patient

reports strangulation in addition to answering yes to any of the screening questions, or a patient discloses sexual assault, the nurse will contact SAFE Services, a forensic nursing program at University of Louisville Hospital that specializes in the care of victims of domestic violence and sexual assault. SAFE Services will offer a forensic exam to document injuries regardless of the patient's decision to report to law enforcement.

From April 2016 to May 2017, 382 patients at the University of Louisville ED screened in for domestic violence, an average of 27.3 victims per month, though in general the numbers rose as time went on and the screening became more institutionalized. Data from the Jewish Hospital from September 2016 to May 2017, identified 45 domestic violence victims, an average of 5 victims per month.

Importantly, 16% of patients screening in for IPV were not in the ED for domestic violence-related injuries. This means that the universal screening protocol is identifying victims who would otherwise most likely not be receiving services or making contact with an advocate, and may be permitting earlier intervention with these clients.

The Arise to Safety Program is identifying domestic violence victims, most of them high risk, and linking them immediately to services. This includes victims who are coming to the ED for reasons unrelated to domestic violence. University of Louisville Hospital and Jewish Hospital have institutionalized the Arise to Safety screen, which will continue regardless of grant funding. CWF has requested funding for continuation of their hospital victim advocacy at the two hospitals. In addition, the University of Louisville Hospital has requested grant funding to expand the domestic violence screening to all hospital admissions, not just patients in the ED. The grant would also support a full-time hospital domestic violence social worker to respond to inpatient victims, and provide them with safety

planning, counseling, and other services. These are all important steps, and the Arise to Safety program should be expanded to other hospitals in the area, particularly those serving a largely indigent population; this would include additional advocate staffing to provide the on-site services.

Monitoring Trends in the Lethality Assessment Program. In 2012, the LMPD and CWF began the Lethality Assessment Program (LAP). This is based on a model created in Maryland in 2005, which the Mary Byron Project, through its efforts to find innovative solutions to ending intimate partner violence, brought to the attention of the LMPD and CWF. In all cases between intimate partners where there is evidence of physical injury, LMPD officers responding to the call administer a lethality screen at the scene to all victims who consent. Those victims who screen in as high risk are immediately connected to CWF counselors through the Crisis Hotline for shelter and safety planning services. After the officer relays the assessment responses that resulted in the call to CWF, the officer asks the victim to speak with a counselor; CWF sets aside several beds for short-term stays so there will be a space available if a victim who has screened in at high risk wants to come into shelter. If the victim does not want to speak to a counselor, the officer will still call the Hotline and pass on any safety information to the victim. The lethality screens are forwarded to the DV Unit at LMPD daily.

According to LMPD data, from September 2012 through end of 2016, there were 9,907 LAP screens and of these, 70% were screened in as high risk; 66% of the high-risk victims spoke to a CWF counselor. This is consistent with LAP programs implemented in other jurisdictions. For example, in Maryland, which first utilized the program, between 2006 and

2012, there were 56,000 victims screened; 53% screened in at high risk.⁴ The high risk percentages in some other jurisdictions have been even higher.⁵ The Maryland Network Against Domestic Violence attributes a decline in domestic violence homicides of 41% to the LAP program, and other jurisdictions have reported similar declines.⁶

In addition to the goal of reduced domestic violence homicides, the LAP Program has many benefits. It connects high risk victims to CWF services immediately at the scene of the incident. According to CWF data, the program is accessing domestic violence victims with whom they previously had not had contact; only a small number of victims connected to CWF in the LAP Program had previously received services from CWF (320 victims out of 1,728 calls in FY 2017; 74 victims out of 1,220 calls in FY 2018). Further, it raises patrol officers' awareness of the services available for victims. LAP represents the kind of collaboration between two key agencies, LMPD and CWF, that improves system domestic violence response, and its implementation throughout Louisville Metro is a significant achievement.

However, both LMPD and CWF need to monitor trends in the data to ensure that LAP is engaging as many high-risk victims as possible to receive services. According to CWF data, in FY 2015, it received 1,559 LAP calls from the scene; in FY 2016 it received 1,776 of these LAP calls, and in FY 2017, it received 1,716 LAP calls. In FY 2018, CWF reported receiving 1,220 LAP calls. LMPD domestic violence-related calls for service also went down

⁴ Maryland Annual Report summary, January – December 2014, Lethality Assessment Program: Maryland Model (LAP).

⁵ See Andrew R. Klein and Jessica L. Klein, *Abetting Batterers: What Police, Prosecutors, and Courts Aren't Doing to Protect America's Women 196 -- 197* (2016) (68% high risk in Anoka County, MN; 69% in Kansas City, MO; 71.6% in Pittsburgh, PA).

⁶ See Klein & Klein, *Abetting Batterers 196 – 197*.

between 2016 and 2017, which may explain the drop in LAP calls to CWF during a roughly similar period.⁷ However, it will be important to continue to track this drop in LAP calls.

Further, according to CWF data, the percent of high-risk victims who spoke with an advocate also seemed to decline in recent years. As cited above, LMPD reports that 66% of high-risk victims spoke to a CWF counselor during the September 2012 – December 2016 period. According to CWF, 49.8% of high-risk victims spoke to a CWF counselor in FY 2017, and 36% spoke to a counselor in FY 2018.⁸ Looking at the 8,265 total LAP calls to CWF from June 2012 through July 2018, 1,754 callers, or 21.2% received further services; 416 of the callers offered shelter during that period actually came into the shelter. In comparison, according to reports on the Maryland program, 57% of high-risk victims spoke to a victim advocate from the scene; 31% followed up with services. Interestingly, when advocates got back to victims who did not enroll in services initially, the proportion of those engaged in services rose to 56%.⁹ Therefore, it appears that a lower percentage of high-risk victims in the Louisville Metro LAP program may be speaking with the CWF counselor, and a lower percentage are engaging in services. Again, CWF and LMPD need to monitor these numbers to determine if in fact there is a trend of fewer victims speaking to a CWF counselor at the scene; and also, to determine how the percentage of victims receiving services can be

⁷ LMPD DV-related calls for service were 40,011 in 2016 and 36,889 in 2017.

⁸ The comparisons between LMPD and CWF cannot be exact because they capture different blocks of time.

⁹ Maryland Annual Report summary, January – December 2014, Lethality Assessment Program: Maryland Model (LAP).

increased. CWF may particularly want to explore follow-up procedures that may increase the number of victims engaging in services, as in Maryland.¹⁰

B. Need for Expanded and Wraparound Victim Advocacy Services

There are currently victim advocates located at multiple agencies at different points in the system, including not only CWF, but the LMPD, the DVIC, and the Jefferson County Attorney and Commonwealth's Attorney's Offices. Each of these groups is working hard to serve victims of domestic violence, and there is a need for expanded resources and services at many, if not most, of these points. However, the number of agencies involved also means that victims can have a disjointed experience where they may work with a number of different advocates. At its best, the current structure means that victims must retell their histories repeatedly and navigate a complicated and confusing system, with several different advocates, who may provide different services and serve different functions. And, with all these transitions, there are time lags, as well as information and victims that fall through the cracks. It is critical that the various advocacy agencies work together to coordinate their services, effectively transfer information, and confer on best practices to address their clients' needs. They should work on ways to structure a victim's experience so that the number of transitions is minimized. The following discussion highlights some of the needs and challenges in the current structure and makes some suggestions for better coordination.

Louisville Metro Police Department Advocate. There is currently one LMPD- based victim advocate, who is an employee of the Department and based at Department headquarters. In earlier years, there were grant-funded positions that were filled by CWF

¹⁰ According to CWF data, in FY 2017, CWF attempted to follow up with 1,121 victims but was successful with only 434 (38.7%); in FY 2018, CWF attempted to follow up with 752 victims, but was successful with only 295 (39.2%).

employees; however, when that funding ended, the positions could not be sustained. LMPD was able to create one position and has been seeking additional funding to support more positions; it currently has a grant application pending.

Currently, the advocate only reviews domestic violence cases where patrol officers have determined that a crime has been committed, but there has been no arrest because the perpetrator was not on the scene. This is because when patrol from a particular division makes an arrest, the case does not go to the detectives at the DV Unit, and patrol handles the case itself. There appear to be some issues for the advocate with accessing relevant information on the cases she is handling. There can be a several day delay before the advocate receives information about cases from the JC-3 reports completed by patrol on domestic violence incidents. Though timing has improved somewhat, the JC-3 reports must go first to the Kentucky State Police before they are sent back to the LMPD data system, creating a time lag before the advocate gets the information, and attempts to get in touch with the victim. In addition, the advocate does not get a copy of the LAP screening form.

Further, the lack of staffing for advocates means that there are many victims who do not link with an advocate until much later in the criminal process. The patrol officer on the scene will conduct the LAP assessment, and if the victim screens in at high risk, she will be connected with a CWF advocate.¹¹ Some victims may be referred to the DVIC to obtain a

¹¹ It is clear that men are sometimes the victims of domestic violence. See Bureau of Justice Statistics, U.S. Dep't of Justice, *Criminal Victimization, 2009* (2010) (in 2009, 117,210 men were victimized by an intimate partner, accounting for 5% of all violent victimizations committed against men). However, research continues to show that women are vastly disproportionately the victims of domestic violence and that women suffer more serious injuries as a result of this violence. See, e.g., Bureau of Justice Statistics, U.S. Dep't of Justice, *Family Violence Statistics* (June 2005) (females were 84% of spouse abuse victims and 86% of victims of abuse at the hands of a boyfriend or girlfriend); Bureau of Justice Statistics, U.S. Dep't of Justice, *Criminal Victimization, 2009* (2010) (in comparison with the 2009 statistics for male victims cited above, in 2009, 538,090 women were victims of a violent crime committed by an intimate partner, accounting for 26% of all violent crimes committed against women). In order to acknowledge the gendered dimensions of domestic

protective order or file a criminal complaint. However, where an arrest has been made, many victims may not connect with an advocate until the County Attorney's Office gets involved in the case; often they will not meet with an advocate until the first court date. And even for those victims whose cases do get referred to the LMPD advocate, there can be a several day delay before the advocate receives the information and contacts them.

If more extensive staffing were available, best practices would include an on-call program, where advocates would be available to come to the scene of a domestic violence crime and make immediate contact with a victim and any children on the scene, particularly in the most serious cases. Additionally, it appears that though the advocate interacts with the domestic violence detectives, there is no real contact between the advocate and patrol officers, and many in the Department do not know of the advocate's existence or the services she provides. Ideally, it would be helpful to have advocates based at some of the divisions with the highest rates of domestic violence crimes, who can work with the patrol officers in those divisions.¹² They could be on-call to go to the scene and pick up cases with a much shorter time lag to increase victim engagement. Further, the advocates and their services would be more visible within the Department.

violence, I have chosen to use female pronouns to refer to victims. See *Using Female Pronouns to Refer to Victims of Intimate Violence*, Domestic Violence in Historical and Social Context, in Schneider, Hanna, Sack, and Greenberg, *Domestic Violence and the Law: Theory and Practice* 13 (3rd ed. 2013).

¹² New York City has just funded a project to put victim advocates in every precinct. Most will have two advocates, one dedicated to domestic violence and one focused on general crimes. The victim advocates program is designed to help victims get access to a range of services, and to reduce the time between when a crime occurs and victims get services; advocates will also make home visits to reach victims who distrust the police and won't come to a police station. The City is providing the funding and the advocates are employees of Safe Horizon, a nonprofit that provides services to victims of violence. Ashley Southall, *In Police Stations, Help for Crime Victims Is Closer to Home*, *The New York Times*, August 27, 2018. In the article, Mai Fernandez, the executive director of the National Center for Victims of Crime states that this program is a model of best practices for law enforcement agencies; she says, "In order to really be able to investigate a case, they're going to need the cooperation of the victim . . . And they're more likely to cooperate if they have somebody advocating for them." *Id.*

There is a critical need for additional LMPD-based advocates, whether funded through LMPD or employed by a community-based agency, who can become involved with domestic violence cases at the earliest point possible. It is at this moment that victims are in crisis, in great need of services and may be in the greatest danger from their abusers. It is also been shown that victims who link with advocates at this early point are more likely to remain engaged with the criminal case.

The Domestic Violence Intake Center and Link to Court Advocacy. The creation and expansion of the DVIC has been an enormous step forward in the processing of domestic violence cases at the courthouse, providing access to advocates and services for victims, and delivering assistance for bringing a protective order petition and initiating a criminal case. A small version of the DVIC was created based on one of the recommendations in the 1998 Community Assessment and officially opened in 2001. After the 2005 Snapshot, with the support of both state and local officials, it was expanded and consolidated into one physical space in 2009. The DVIC is fully staffed for extended hours (6 AM – 12:30 AM weekdays; 10 AM – 6 PM weekends) and is staffed 24/7 by the Office of the Circuit Court Clerk for the processing of protective order petitions.

The space itself is welcoming, and easy to access. Located just off the main entrance to the courthouse where numerous security personnel are stationed, it is also secure. Located in one space are victim advocates to assist with the protective order process and provide services and safety planning, court clerks to process protective order petitions and criminal complaints, and prosecutors from the Jefferson County Attorney's Office as well as police if a victim wants to proceed with a criminal case. The prosecutor will meet with the victim to see if there is sufficient evidence to file a citizen's complaint and will work with domestic violence detectives in filing appropriate charges in domestic violence cases.

At the DVIC, there are currently three victim advocates employed by the County Attorney's Office that are funded through a Victims of Crime Act (VOCA) grant and cash matches; three Assistant County Attorneys and one Division Chief; and four Intake Clerks. For over a year, one of the victim advocates has been focusing on victims who after completing a lethality assessment, screen in at high risk of lethality. She provides more follow up and enhanced case management services to these high-risk victims than the other DVIC advocates are able to provide, due to the high volume of cases.

Advocacy in Criminal Cases. With the exception of this high-risk advocate, the County Attorney's Office victim advocates in the DVIC typically are able to work with the victim only on intake. If a criminal case goes forward, the case is transferred to a different set of advocates from the County Attorney's Office. With a new set of individuals working with the victim, all of the information from the intake must be transferred and the victim must interact with a new prosecutor and advocate and re-tell her story. Further, it is unclear how long after intake the new prosecutor and advocate are able to connect with the victim; though the advocates try to reach all victims before the court date, they may not be able to do this until just shortly before or even on the day of the first court appearance, which is typically two to three weeks for a misdemeanor, ten days for a felony if the defendant is in custody, and 20 days if he is out of custody.

If there has not been an arrest at the scene because the defendant has fled, though he is charged, and a warrant is issued, the victim may be reached by the LMPD advocate; but otherwise she will not have contact with an advocate until the perpetrator is arrested and scheduled for his first court appearance. And even if she has been working with the LMPD advocate, she must transfer to the prosecutor's advocate once her case goes to court. Similarly, though the LAP program does connect many victims at the scene to CWF services,

these victims will still have to transfer to a prosecutor's advocate upon the case going to court. And, there are also many victims who will not screen in for the CWF contact through LAP. All of this results in a piecemeal process where there may be a gap in advocate contact with the victim at a critical point in the criminal process – both in terms of danger to the victim and her engagement with the justice system. And, if a case proceeds as a felony, it is transferred from the County Attorney's Office to the Commonwealth's Attorney's Office for indictment and prosecution. At this time, the victim advocates change as well. The advocate from the Commonwealth Attorney's Office will try to make contact with the victim before indictment, after the file is forwarded from the County Attorney's Office. Therefore, in the course of one criminal case, a victim could have had multiple different advocates.

There is no doubt that all of the staff involved in this process are both dedicated and extremely busy. The question is how best to utilize staff in a way that will be most effective for victims and for prosecution. The advocates from all of the agencies involved would benefit from a discussion as to how best to structure advocacy services. Informed by the recommendations from these advocates, the heads of each agency that has advocates should work together to better coordinate services for domestic violence victims. For example, the County Attorney's Office may want to consider restructuring their advocates so that they remain with criminal cases picked up at the DVIC throughout the criminal process.

Advocacy in Protective Order Cases. There is a similar break in the protective order process between intake and the court hearing on the final order. As noted, the DVIC advocates who assist with petitions for orders are from the County Attorney's Office; however, CWF handles court advocacy for hearings on the final orders. Previously, there were CWF advocates located at the DVIC who would assist victims with petitions for protective orders, so that assistance at intake and court assistance was covered by the same

agency. However, these positions were grant-funded and have not been able to be sustained. Therefore, the switch in personnel between intake and court appearance is also a change in agencies, making the transfer of information even more difficult. In my interviews, there was also a concern raised that due to victim confidentiality, the DVIC County Attorney advocates could not provide individual contact information to the CWF advocates. The advocates from the two agencies do connect more regularly when a victim screened in as high-risk is involved, and CWF will reach out to the victim before court. For other victims, however, the CWF advocate may just have to appear for the court calendar and try to connect with the victims then.

DVIC personnel report that 811 victims in 2015 and 920 victims in 2016, who came through the DVIC, obtained a court advocate from CWF. CWF's numbers were similar, though not identical, to the DVIC number. In 2015, the number of cases in which CWF provided court advocacy was 758; in 2016, the CWF number of court advocacy cases was 948. In 2017, CWF provided court advocacy to 1,316 victims.¹³ Though the number of clients receiving CWF court advocacy has increased, it still has not been able to approach the numbers of protective order filings, which have risen in recent years, particularly with the addition of IPOs.¹⁴

¹³ CWF has changed its definition of "legal advocacy" over the years, resulting in data that can be somewhat hard to interpret. CWF notes that the definition of advocacy services changed during 2009 – 2013, and again in 2017. Between these two periods, there was a broader definition used; it counted any mention of court advocacy by shelter staff or the crisis line. As a result, the numbers captured by CWF under this broad definition are: 2,648 in 2015; 2,193 in 2017. Then in 2017, CWF went to a more narrow definition that counted only those cases where CWF staff actually provided court advocacy; the number for 2017, as reported above, was 1,316. Therefore, while in their data, it appears that court advocacy numbers declined, this seems to be due to the narrowing of the definition starting in 2017. CWF was able to provide me with the numbers in 2015 and 2016 using the narrower definition that is now used; as explained in the text, this shows a rise in court advocacy numbers during those years.

¹⁴ AOC reports that the number of protective order filings in 2015 was 4,290; in 2016, was 4,797, and in 2017, was 5,044.

CWF also recognizes this challenge; its court advocates are attempting to cover 19 court dockets (the 10 Divisions in Jefferson County Family Court; the two IPO calendars in Jefferson County District Court; and dockets in several surrounding counties). There are only three CWF employees in court advocacy positions, and CWF tries to fill in coverage gaps with volunteers. As mentioned above, most of the victims seeking protective orders have not been referred to CWF by anyone and have not connected with CWF prior to the calendar date. The CWF advocate or volunteer comes to the protective order calendar and though she connects first with victims who have contacted or been referred to CWF prior to the court date, she will try to speak with and assist as many victims as possible. CWF does try to provide follow-up services and case management for victims who have appeared for the final hearing. However, they are not able to follow up with victims who do not appear for the DVO/IPO hearings to learn what may have caused their failure to proceed with the order.

There is a need for more court advocacy positions, and DVIC and CWF advocates should discuss a smoother way of transferring information. If there is a confidentiality issue with releasing victim information, perhaps DVIC advocates could explain to the victims that an advocate from a different agency will be helping them for the court hearing and ask permission to forward on their contact information. If CWF advocates could receive this victim information from DVIC, they could reach out to victims prior to the final protective order date, rather than first connecting with them on the spot at the court date. This would permit victims access to CWF services more quickly and help them remain engaged in the process prior to the court date.

Ideally, it would be best not to have to transfer victims from agency to agency; but given the limited resources of each organization, it likely is not possible for either of these agencies to expand its role in the process at this moment. However, as with the advocacy for

criminal cases, the agencies should work together to make this transition as smooth as possible for the victim, and to ensure more continuous services.

The DVIC high risk advocate does make outreach to the in-court advocates, as well as prosecutors in criminal cases. Very recently, a small number of criminal justice agencies has formed a high-risk team and anticipates that it will be meeting soon. Its goal is to increase communication and collaboration of agencies working with high risk victims and the corresponding offenders. This type of collaboration is an excellent step and should be expanded. Further, in addition to a high-risk team, there should be ongoing collaboration among all of the victim advocates to provide wraparound advocacy and services throughout both the criminal and civil justice process.

Stability of Victim Advocacy Funding. One need identified in the 2005 Snapshot was the location of more stable funding sources for victim advocates. This continues to be a need. As discussed throughout this report, in many areas, advocates originally funded through federal grants have not been able to be sustained when the grants ended. This has resulted in the loss of CWF advocates at the LMPD and DVIC. While agencies have tried their best to make up the difference, there has been a loss in advocacy services after some initial gains. The size of advocacy staff, for example at the LMPD or the CWF court advocates, are simply not adequate to cover the demand. There are also the continuing challenges discussed above regarding victim access to services in a timely manner, and transfer of cases among several different agencies.

Several of these agencies continue to seek federal funding and are trying hard to expand advocacy staff. Though of course outside funding would be helpful, one of the highest priorities for Louisville Metro Government, as well as state government, is to try to

institutionalize more of the advocacy positions located in agencies such as law enforcement or prosecution offices. CWF is doing good work on a number of fronts to help serve victims. However, it too is stretched thin, and needs to work with the other system partners to explore ways the system can become more victim-friendly, by providing more complete coverage and continuous advocacy during a victim's journey through the system, whether she makes contact first through the CWF shelter, through the DVIC, or through the LMPD.

C. The High Percentage of High-Risk Victims

It is noteworthy that both the LAP lethality assessments and the hospital-based Arise to Safety Program screening protocol are yielding large numbers of domestic violence victims at high risk of lethality. As noted in the discussion of the LAP program, the LMPD reports that from September 2012 through the end of 2016, there were 9,907 LAP assessments; 70% of those assessments screened in as high danger. Of those patients who received a lethality screening by the CWF advocate responding to the hospital (those victims whose screening by the Emergency Department nurse identified as currently experiencing domestic violence), 81% were found to be at high risk of lethality. For 50% of the victims seen at the hospital by CWF, this was their first time in contact with CWF.

This indicates the critical need for these screenings; in both settings, these high-risk victims may not otherwise have been linked to services and safety planning.¹⁵ It also raises the question of how many undiscovered high-risk victims remain in the community. For example, the 2015-2016 Fatality Review Committee Report noted that in 11 of the 16 cases

¹⁵ A DVIC advocate is also conducting assessments for high risk victims; we do not yet have figures for the percentage that have screened in as high risk.

reviewed in that period, there had been no known prior system contact related to domestic violence. Further, the average number of system contacts in fatality cases has declined from 6.4 in 2009 -- 2010 to 2.9 in 2015 – 2016. The system and community partners need to work together to identify other locations where they can reach and serve these undiscovered victims, such as places of worship, health providers, and businesses frequented by women, such as hair and nail salons.¹⁶

Another important finding so far from the Arise to Safety Program is that the victims identified in this hospital setting as high risk were not likely to want to go to shelter. Those involved in the program speculated that it was not likely that those victims identified in this non-criminal setting were ready at the moment to leave their situation for shelter. This raises another question: assuming we can identify more high-risk victims in non-criminal contacts throughout the community, what services are most likely to reach them, address their needs, and prevent lethality?

¹⁶ For example, CUT IT OUT: The Beauty Community Against Domestic Abuse is a project that “is dedicated to mobilizing salon professionals and others to fight the epidemic of domestic abuse in communities across the U.S. by building awareness and training salon professionals to recognize warning signs and safely refer clients, colleagues, friends and family to local resources.” <https://probeauty.org/cutitout/>.

Recommendations

- **Address highest priority needs for domestic violence victims, including additional shelter and transitional housing spaces, and additional opioid and mental health treatment services.**
- **Continue efforts to identify funding sources urgently needed to provide non-profit, safe supervised visitation of children in families with domestic violence histories.**
- **Expand the Arise to Safety Program to other area hospitals.**
- **Examine trends in the LAP program to maximize the number of high-risk victims connected to services.**
- **Expand the LMPD advocacy program and consider placing advocates locally at divisions with high domestic violence rates.**
- **County Attorney's Office should consider restructuring of its advocacy staff at DVIC and in the District Court to improve victim coverage, reduce delays in accessing services, and make the system more victim-friendly.**
- **DVIC and CWF should discuss the transfer of victim information between agencies in protective order cases.**
- **Expand the court advocacy program: to assist victims before and during DVO/IPO hearings; to reduce or eliminate a gap in services between the DVIC and the court appearance date for the final order; to provide follow up both to the victims who appear, but also to the victims who do not appear at the final hearing, to see if they are in need of services, or have been intimidated not to appear.**

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- **CWF, DVIC, LMPD, County Attorney and Commonwealth’s Attorney staff should meet to discuss the best way to structure continuous and wraparound victim advocacy throughout the civil and criminal justice process.**
 - **Louisville Metro Government and state government should work to institutionalize as much victim advocacy as feasible in government agencies, including the LMPD, so that advocacy will not be dependent on fluctuations in outside funding.**
 - **All system and community partners should work together to identify other points, including places of worship, health providers and beauty professionals, to reach out to “undiscovered victims” and engage them in services to promote their safety.**

III. Data Collection, Information Coordination and Access, and Utilization of Information Across Agencies

One of the most important steps in any system response to domestic violence is to be able to capture and report data in a way that permits relevant partners to easily understand what is currently happening with domestic violence cases, and to measure the results of any system changes in a meaningful way. In gathering of materials for this report, it became clear that the collection of data relating to domestic violence cases by many system partners was not optimal. I want to emphasize that all of the agencies, and in particular, the Administrative Office of the Courts (AOC) and the Circuit Court Clerk's Office, were very cooperative and made every effort to provide the data I requested. However, it was clear that data was not collected in a way that provided the most meaningful information on domestic violence cases, either for the individual agency involved, or for tracking domestic violence cases across agencies.

There are some critical steps in developing a more useful data collection process. First, each relevant system partner must identify the questions that it needs answered in order to easily and meaningfully measure domestic violence case progress and outcomes.¹⁷ Second, each partner must then organize its data collection to capture directly the answers to these questions, rather than requiring translation or interpretation of data from categories or labels that are not designed to answer the relevant questions. Third, and perhaps most difficult, relevant system partners must work together to coordinate data categories, so that it

¹⁷ Of course, a preliminary step is to ensure that the data collected are reliable. Though this did not appear to be a widespread issue, there were some areas in which this needs to be a focus. For example, the 2017 Annual Report on the Kentucky Batterer Intervention Program, issued by the Kentucky Coalition Against Domestic Violence, noted that their data were not conclusive because at this time there was no oversight to ensure that all BIP providers were uniformly collecting demographic information from clients.

is possible to track domestic violence cases across agencies. This may mean that definitions of “domestic violence” must be analogous, or whatever differences exist must be clear. It also means that when thinking about how to construct its individual data collection system, each agency must also contemplate what data is important to other system partners and then collect it in a way that makes sense to all of the parties involved.

It is quite understandable that agencies will tend to create categories that capture data of most importance to them, but this creates two problems. First, in a large agency, where domestic violence is only part of its work, what is important agency-wide may not be what is most important for the unit that is focused on domestic violence cases. Second, it means that agencies cannot communicate with each other in a way that permits the system as a whole to assess how it is doing in domestic violence response.

A few examples illustrate aspects of the problem.

Pre-Trial Services. The current Pre-Trial Services (PTS) system captures under “domestic-charged cases” only those cases in which “domestic violence” is in the charge itself (e.g. Assault 4th degree Domestic Violence). The PTS system then is able to capture a broader category of cases, “domestic violence-related cases,” of which “domestic-charged cases” is a much smaller subset. The category “Domestic violence-related cases” also includes charges where domestic violence is indicated by the citation narrative and/or a JC-3, even if “domestic violence” is not in the charge itself (e.g., a disorderly conduct where the citation narrative indicates it involved an argument between defendant and spouse).

Further, PTS categorizes offenses into a violent A or B felony, or all other offenses. Cases are categorized by their highest charge, so there may be cases with domestic charges, which also contain a violent A or B felony, such as a drug crime, and so they would

not be captured in the “domestic–charged cases” though they would still be included in the “domestic violence-related cases.”

For all of these reasons, PTS statisticians believe that the broader category, “domestic violence-related cases,” is a more accurate measure of the cases involving domestic violence that are handled by PTS. However, the current system does not routinely capture release, failure to appear, or re-arrest rates for this category, but only for the more narrow “domestic-charged cases” category. Though PTS statisticians believe that the rates are likely similar between the narrower and the broader category, they do not have an easily accessible way of verifying that.¹⁸

Particularly with the implementation of the ODARA instrument, PTS as well as other system partners will need to be able to measure these releases, failure to appear and re-arrest rates in order to evaluate the impact of ODARA. PTS may be implementing a new data system shortly and it would be helpful to: 1) clearly identify all domestic violence-related cases; and 2) track and produce regular data on release, failure to appear and re-arrest rates for these cases.

County Attorney’s Office. The County Attorney’s Office categorizes its statistics by courtroom on a monthly basis; though there are annual cumulative statistics, they do not track cases as they move from arrest through disposition. It is therefore difficult to track case outcomes, such as dismissal rates, or types of dispositions. It is also difficult to track ultimate success rates in diversion cases. The County Attorney’s Office also does not track the recidivism rates for domestic violence offenders, a rate that also is not captured by the

¹⁸ They may be able to produce a special report to capture this information upon request, but it is not routinely produced.

LMPD. All this information is useful to the Office itself, and it is also helpful to system partners trying to understand the broader system response in domestic violence cases.

Commonwealth's Attorney's Office. The Commonwealth's Attorney's Office has been in the process of implementing a new case management system since 2016. As issues are worked out with migrating data from the old to new systems, it has been difficult to break down data in 2014, 2015, and 2016 into more refined categories and track domestic violence felony case processing. The Office is not able to provide a breakdown into numbers indicted, screened out, or remanded to District Court. The new case management system should now be fully implemented, so that hopefully future statistics will be more complete. However, there still seems to be little detail in the data captured. There is a total number of cases "processed" in a year, which includes both new cases and cases closed during the same period. However, this is a static number that does not permit tracking of cases as they move from indictment through disposition, as well as cases screened out prior to indictment. This kind of tracking of cases is important to fully understand case outcomes. The lack of accessible information has made it difficult to assess the Commonwealth's Attorney's case processing and makes it difficult for the Office to measure its own outcomes.

The Court Monitoring Center. Currently, the Court Monitoring Center (CMC) has an old case management system and representatives from Metro Corrections noted that due to the age of the database, it could not be sure if all tracking numbers were accurate. The system also does not have a way to easily track re-referrals, so that CMC can be aware when cases have been re-referred multiple times after failures to comply. Further, as discussed in the section on Accountability, the court and CMC continue to rely on the physical movement of hard copies of orders from place to place in order to communicate important information. Metro Corrections is currently working on a replacement for this case management system,

which is scheduled for completion in June 2019, and which will have greater capacity for capturing data and electronic communication. The new system provides an opportunity to improve communication and coordination among the court, the CMC and the BIPs.

Legal Aid Society Domestic Violence Advocacy Program. The Domestic Violence Advocacy Program of the Legal Aid Society (DVAP) categorizes and tracks cases by amount of time spent on them by staff attorneys. For example, the categories group cases by whether the client just received counsel or advice, whether the case proceeded to court, and how many court appearances there were. However, there is no easy way to determine the actual case outcomes; for example, in how many protective order cases, was the order granted? The way that cases are organized may make sense generally for the Legal Aid Society in order to determine staff output on various cases; but it is important in domestic violence cases for DVAP to know its success rate and if possible, to track the reasons for any denials.

Administrative Office of the Courts and Local Court Data Collection. Circuit Court administrators have noted that there are functional limitations in the KYCourtsII database which permit only limited data compilation searches. Therefore, large or more complicated data requests often can only be completed by Administrative Office of the Courts (AOC) directly, upon special request. The AOC data reports often do not capture data in meaningful categories for system partners trying to measure domestic violence case outcomes. For example, there is no easy way to track the trajectory of protective order cases from the number of petitions, to the number in which: a) an EPO/T-IPO was granted and a summons was issued for a hearing on a final order; or b) an EPO/T-IPO was not granted but a summons was issued for a hearing on a final order; or c) there was a complete denial – no EPO/T-IPO was granted and no summons was issued. And for those cases in which a

summons was issued, it is difficult to obtain the outcome at final hearing – whether the DVO/IPO was granted or denied.

Definition of “Domestic Violence.” The way that different agencies define domestic violence, and thus the way they categorize their cases is not always identical. This makes it difficult to compare data across agencies. Further, the statutory definition of domestic violence (and now dating violence) includes many types of relationships, not all of which are intimate partner relationships. Therefore, many agencies appear to use a broad definition that may include parent on child violence, and their scope of work also may include not only intimate partner violence, but child abuse. Therefore their data may include both of these types of cases, and several agencies do not have an easily accessible way of breaking out the two types of cases. This can make it difficult to track intimate partner violence cases or interpret the data.

Snapshot vs. Tracking Case Trajectory Over Time. As noted above, many key agencies, including the court system, and both the County and Commonwealth’s Attorneys appeared to capture data only as a “snapshot” of cases at a particular moment. The data system did not track the history of cases as they moved through different stages, so that there could be a reliable breakout of cases by dispositions: how many cases resulted in pleas; how many went to trial; how many were dismissed, and at what stage of the case.

Access and Coordination of Information. Another important component of effective data collection is ensuring that it is available in real time to relevant partners. The 2005 Snapshot identified a need in this area: “Gaps continue to exist in the ability to access accurate and timely data related to domestic violence cases, although improvements have been made in agency databases and systems over the last decade. Lack of real-time access

to data poses a major challenge for agencies in the justice and domestic violence service systems.”

There have certainly been additional improvements since the 2005 Snapshot. For example, one key development is the movement of creating and processing protective orders from a manual paper system to an electronic one, creating greater accessibility, speed in the decision-making process, and in the service of orders.

However, issues in access and coordination remain. For example, it appears difficult for LMPD patrol officers to access historical information on a particular victim or defendant quickly from their car computer system when they are travelling to a domestic violence call. Though my understanding is that it is theoretically possible, the process of calling up prior JC-3s for example, makes it infeasible to attempt while on the way to the scene. This can be critical both for officer safety and understanding the dynamics of the situation at the scene. As JC-3 forms are now completed electronically, the Kentucky State Police and the LMPD should explore the feasibility of creating an online database, or working with existing databases, to permit easy searches for prior reports involving the same parties.¹⁹

Another example is the transfer of information from different victim advocate agencies, which is discussed in the section on Victim Services. Currently at the DVIC, this information is in hard copy and physically left in a basket for CWF advocates to retrieve; this causes delay and for some cases to be missed. Ideally, a technology system that could communicate between agencies, while retaining necessary confidentiality, would permit such

¹⁹ New York State’s Division of Criminal Justice Services created such a statewide online repository of domestic violence incident reports in 2011 that police can access while responding to a domestic violence incident. Michael Virtanen, *NY data show uptick in 2012 domestic violence*, The Chronicle, August 5, 2013.

information-sharing electronically. This would save both effort and time and ensure more complete transfer of relevant information.

Utilization of Relevant Information Across Courts. Another related issue is utilizing the information that is accessible. This appears to be a particular issue for courts. For example, I received multiple different answers on whether information on pending cases involving one or both of the same parties was accessible across different courts. For example, is it possible for a Family Court judge hearing a DVO case to learn whether there is also a criminal case pending against the respondent for the same incident? Conversely, can a District Court judge hearing a criminal DV case learn whether there is a DVO hearing scheduled, or a DVO issued against the defendant? Ultimately, it appears that it is possible for the different courts to access this type of information, but whether or not that is done varies tremendously.

The Family Court has case specialists assigned to these cases, who gather a tremendous amount of information, including related cases in other courts.²⁰ In my observation, some of the judges reviewed this material from the case specialists, while others relied on the parties to inform them about other cases. In District Court, again, it was not completely clear whether some of the judges handling domestic violence criminal cases were reviewing information about related cases, but it appeared that they were relying on the parties to inform them about other cases. In criminal cases, the County Attorney's Office did make it a practice to check on protective order history, but it was not clear how routinely judges accessed this type of information.

²⁰ KRS 403.735 states: "(1) Prior to or at a hearing on a petition for an order of protection: (a) The court may obtain the respondent's Kentucky criminal and protective order history and utilize that information to assess what relief and which sanctions may protect against danger to the petitioner or other person for whom protection is being sought, with the information so obtained being provided to the parties in accordance with the Rules of Civil Procedure."

One of the District Court judges I observed expressed frustration because of the lack of connection between Family and District Courts. Another judge said it was common for there to be conflicting orders. There are situations where a prosecutor will bring a criminal charge for violating a no contact order in a release condition; however, there will be a DVO in Family Court that does not have the no contact provision, providing an obstacle for prosecution. Conflicting orders also make it difficult for those serving and enforcing these orders. Others interviewed noted that some litigants try to take advantage of the lack of communication between courts and deliberately attempt to manipulate the system by going in the evening hours to seek an order when the on-call judge may not check the records to discover a conflicting order.

Recommendations

- **Review data collection at each agency to ensure that it captures data that is easily interpreted and tracks case trajectories over time in order to accurately measure outcomes.**
- **Explore how technology could ease access to information by individual agencies and improve transfer of information across agencies.**
- **Address the underutilization of information accessible across courts so that judges routinely consider relevant information from related cases and minimize conflicting orders.**

IV. The Processing of Protective Orders

Domestic Violence Orders (DVOs) are heard in Family Court, and the parties must be “family members” or “members of an unmarried couple.”²¹ These relationships are defined in KRS 403.720: “family members” include “a spouse, including a former spouse, a grandparent, a grandchild, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim.”²² “Member of an unmarried couple,” is defined as those who have a child in common or who are living together or who have formerly lived together.²³

One of the most significant developments in recent years is the Kentucky legislature’s expansion of the relationships eligible for domestic violence protective orders. Effective January 1, 2016, “[a] petition for an interpersonal protective order may be filed by: (a) A victim of dating violence and abuse; (b) A victim of stalking; (c) A victim of sexual assault; or (d) An adult on behalf of a victim who is a minor otherwise qualifying for relief under this subsection.”²⁴ “Dating relationship” is defined as “a relationship between individuals who have or have had a relationship of a romantic or intimate nature,” and the statute lists factors to assist courts in determining which relationships are included in the definition.²⁵ There is no relationship requirement with the respondent for victims of stalking or sexual assault.

²¹ KRS 403.750.

²² KRS 403.720 (2).

²³ KRS 403.720(5).

²⁴ KRS 456.030.

²⁵ KRS 456.010.

Kentucky law provides for broader jurisdiction than many states in that a victim can file a petition for an order both in her county of residence or in the county where she has fled to escape the violence.²⁶

In 2015, there were 4,290 petitions for protective orders filed; in 2016, the first year that IPOs were available, the total number of filings rose to 4,797 (4,174 DVOs and 623 IPOs). The number rose again in 2017 to a total of 5,044 (4,322 DVOs and 722 IPOs).

The Emergency Protective Order Process. Emergency protective orders (EPOs or T-IPOs) are available on a 24/7 basis through the DVIC and via technology which permits judges to receive petitions and sign orders electronically. The technology, launched in 2010, also permits the signed orders to be immediately accessible by Sheriff's deputies who are responsible for entering the orders into LINK and serving them on respondents.

The judge can grant the EPO/T-IPO and issue a summons for a hearing on the final order; deny the EPO/T-IPO, but issue a summons for the hearing; or both deny the emergency order and refuse to issue a summons. This last situation typically arises only when it is clear that the court lacks jurisdiction to hear a petition. Otherwise, whether or not the emergency order is granted, if a review of the petition indicates that domestic violence and abuse exists, the judge will issue a summons for a hearing on the final order.

If the court finds an "immediate and present danger" of domestic violence or abuse, the court shall issue an ex parte EPO which may also include all of the conditions permitted in a final order, except for awarding temporary support or counseling.²⁷ These conditions

²⁶ KRS 403.725(1).

²⁷ KRS 403.730.

include a catch-all “in order to assist in eliminating future acts” of violence, and judges may use this authority to prohibit gun possession and purchase. The T-IPOs also require a finding of “immediate and present danger;”²⁸ some conditions, including firearms prohibitions, are not available for T-IPOs (or IPOs).

With the new technology, EPOs/T-IPOs can be reviewed very quickly, with the goal being to review all emergency orders within an hour of their presentation. The full hearings are scheduled within 14 days of the emergency order petition. The hearing takes place only after the respondent has been served. If the respondent has not been served by the time of the hearing date, the court has the power to keep the emergency order in effect for up to six months, while regularly reviewing the case, usually every two weeks.

As noted in the section on Data Collection, it was not possible to track success rates of protective order petitions with confidence. Numbers that should be tracked include outright denials of DVO petitions (no EPO granted, and no summons issued for a follow up hearing) and IPO petitions (no T-IPO granted, and no summons issued for a follow up hearing), and these rates should be compared to see if there is any difference in outright denials of DVOs and IPOs. This comparison should be done at each step: rate at which EPOs and T-IPOs denied but summons granted; rate at which DVOs are granted after a hearing; rate at which IPOs are granted after a hearing; rate at which petitions for both types of orders are dismissed for lack of service. If possible, the data should also track petitions that are dismissed because the victim does not appear or does not want to proceed. As a first step, the AOC and court personnel should consider pulling a random sample of both EPO and T-

²⁸ KRS 456.030.

IPO cases and following them throughout the court process to obtain some preliminary data; ultimately, the data collection system should be augmented to gather this information routinely.

From existing AOC data, it did appear that outright denials of DVO petitions (no EPO granted, and no summons issued for a follow-up hearing) were low in the 10/1/2014 – 9/30/17 period, in a range from 5.6% to 6.2%. It appeared that the outright denial rate for IPO petitions (no T-IPO granted, and no summons issued for a follow up hearing) was higher: 8.2% in 2016 and 13.0% from 1/1/2017 – 9/30/2017. If these numbers are accurate, the higher outright dismissal rate for IPOs may be related to their novelty. Petitioners, or clerks, or advocates may not be clear on eligible relationships or judges may not have settled on a definition of “dating relationship.” Further, because the on-call duty to hear petitions late at night and in the early morning hours rotates among many judges, it can be difficult to achieve such consistent definitions. These rates should be monitored in future years, to see whether the petition denials of the two types of orders become more similar.

Service of Orders on Respondents. The Jefferson County Sheriff’s Office serves all ex parte orders on respondents. The Warrant and EPO Unit, which handles service of these orders, domestic violence warrants, and warrants from other counties, operates 24/7 with three shifts of six deputies and a sergeant. The Unit’s goal is to have an emergency order processed and available for service within two hours after it is issued. The Unit typically serves these orders in a half-day to two-day period and will attempt service several times per day until served. In 2014, they served 5,131 of 6,223 received (82.4%); in 2015, they served 4,934 of the 6,435 they received (76.7%); in 2016, they served 5,195 of 7,209 (72.0%); and in 2017, they served 5,116 orders out of 7,351 received (69.6%). While these service rates are relatively good, the downward trend is concerning. There was some variation in earlier years

(the service rate was 76% in 2010; 80.3% in 2011; 83.5% in 2012, and 76.4% in 2013), but the 2016 and 2017 service rates are the lowest in the entire period from 2010 – 2017.

As of yet, the reasons for this downward trend have not been identified; however, the lower rates in the two most recent years coincide with the additional responsibility of serving IPOs along with EPOS. In 2016, 4,655 of 6,462 EPOs were served (72.0%); while 540 of 747 IPOs were served (72.3%); in 2017, 4,517 of 6,507 EPOs were served (69.4%); 599 of 844 IPOs were served (71%). The Sheriff's Office does not receive an additional budget for service of orders, and it may be that the extra responsibilities have stretched Sheriff's Office resources and are impacting service rates.²⁹ Interestingly, in the limited data for 2016 and 2017, it appears that service rates for the IPOs are slightly better than for the EPOs. It is something to continue to track and to address the service and resource issue if rates continue to decline.

Entry of Orders into Database and Access to Orders. The Sheriff's Office's Administrative Unit is responsible for entering all protective orders into the LINK/NCIC system, where they are then available to law enforcement on a statewide basis. The Administrative Unit also is tasked with maintaining the database and communicating with other law enforcement agencies to verify orders and their conditions. In Louisville Metro, LMPD patrol officers can now access LINK from their patrol car computers, so that they can verify orders and their terms on the scene.

²⁹ The Sheriff's Office suggests several other factors that may be at play in the increased workload: a large increase in EPOs issued on behalf of a minor, which can at times involve Sheriffs in seeking childcare assistance; court orders for Sheriffs to retrieve property for either the petitioner or the respondent, which can be very time-consuming; service of DVO orders with invalid addresses, or which have been dismissed at the request of the petitioner.

The Unit also processes other court documents related to protective orders, such as show cause orders, orders of appearance, domestic violence bench warrants and out of state protective orders. As of September 2017, the Unit maintained 39,868 active files for Jefferson County.

DVO Hearings in Family Court and IPO Hearings in District Court. In Kentucky, the Family Court is part of the Circuit Court. In Jefferson County, there are 10 Family Court divisions; each division has its own judge, secretary, clerk, case specialist, staff attorney and sheriff's deputy. Cases are assigned alphabetically by the female's last name, or if there is no female, then the petitioner's last name. Each week, every division of the Family Court hears protective orders, paternity, child abuse, neglect and dependency as well as divorce and other cases, but dockets for each division vary by day of the week. Therefore, DVO hearings are held in different divisions each day of the week. Each division operates on a "one family, one judge" model, so that if a subsequent action is filed regarding the same litigants, it is assigned to the judge handling the original matter.

The District Court has two dockets for IPO hearings. They are held on two afternoons, assigned to one specified judge. During these sessions, a case specialist is on loan from the Family Court.

Follow up with Victims. In my observations of both Family and District Court protective order hearings, there were cases where petitioners did not appear. There could be a number of reasons for this; the victim may not want to proceed with the order, but it may also be a sign of danger or intimidation by the respondent. However, no one in the courtroom knew why a particular petitioner had not come to court. Some judges expressed frustration that they could not find out why a victim was not appearing. As explained above, CWF court

advocates are stretched very thin, and report that they do not have the resources to follow up with victims who do not appear for the DVO/IPO hearings. There is a strong need for expansion of the court advocacy program. As resources are sought for such expansion, the Court and CWF need to work together to devise a protocol for trying to ascertain the reasons a victim has not appeared for a DVO or IPO hearing.

Domestic Violence Advocacy Program, Legal Aid Society and Clinical Law Student Program. The Domestic Violence Advocacy Program (DVAP) was created to provide free legal representation to low income domestic violence victims seeking protective orders. According to statistics provided by the program, in 2015, DVAP assisted 1,498 domestic violence victims by seeking protective orders, handling custody and divorce actions, or providing some kind of counsel and advice; in 2016, 1,316 clients were assisted in this way; and in 2017, there were 1,877 clients assisted in this way.

Legal Aid did state generally that its loss rate for representing domestic violence victims was 7.5% in 2015; 4.6% in 2016; and 4.9% for the first ten months of data received for 2017; it states, “in all other cases, Legal Aid secured a protective order or obtained some other positive result for the clients.”

Legal Aid was able to partially breakdown the statistics for protective order cases in 2017. In 2017, though the categories are not precise, there were 96 DVOs granted through an uncontested court decision. DVAP handled 162 contested court cases; of these, in 123 cases, the DVO was granted; in 19, the petitioner lost and the DVO was not granted; in nine there was a mixed result, which Legal Aid defined as getting only part of the desired result (this may be a no unlawful contact order when the client wanted a full no contact order, or a mutual no contact order was issued); and 11 were in an “other” category. Additionally, there

were 72 protective order cases in 2017 in the category that Legal Aid interpreted as extensive legal services provided, but the respondent had not been served; typically this would be a situation where the client asked for dismissal of the case after repeated court appearances where the respondent had not been served.

These DVAP statistics show positive results, but it would help the agency as well as community partners to know more precisely what the loss rate (or success rate) is for protective order cases.

Law students from the Robert and Sue Allen Ackerson Law Clinic at the Brandeis School of Law, University of Louisville work with domestic violence victims under the supervision of a law professor and represent them as petitioners in EPO hearings in Family Court, as well as petitioners in IPO hearings in District Court. If the petitioner also is seeking a divorce or has housing needs, the clinic will handle these issues for them as well.

Both DVAP and the clinical law program are extremely important for victims seeking orders; they also both go beyond protective orders to offer other civil legal assistance.

Jefferson County Public Schools and the Protective Order Process. With the initiation of IPOs in the past two years, juveniles now may seek protective orders in dating violence cases. Jefferson County Public Schools (JCPS) estimates that in this period, there have been approximately 75 juveniles with IPOs against other juveniles in dating relationships and expects the annual numbers to increase as IPOs become more institutionalized.

Under the amended protective order law, if one of the parties is a minor, the judge is required to determine if the parties attend school in the same school system and impose conditions that will have the least disruption of the parties' education while providing

appropriate protection to the petitioner.³⁰ JCPS has developed protocols for IPO hearings. Because of the specialized IPO dockets in District Court, JCPS is able to send a representative to these dockets on cases where a juvenile is seeking a protective order against another student. By attending the hearing date, JCPS can learn of the outcome and conditions so that the school can develop an effective policy for separating the respondent from the victim, sometimes by requiring the respondent to change schools. There is a BIP for juveniles and they are monitored through the CMC. There is a date set for juveniles to return to court to determine if they have completed the program.

There are some issues with communication of information to JCPS about new cases. JCPS may get alerted about cases before the IPO docket is heard, through hard copies that DVIC leaves in a pick-up mailbox for them. However, this is not always consistent, and so if JCPS has not learned of cases through DVIC, the clerk who prepares the IPO docket will inform them. However, without receiving the early paperwork, there could be a T-IPO in place for four or five days of which the school is not aware.

There is some inconsistency in how judges handle juveniles seeking protective orders. One judge will require a parent to petition on behalf of the child; another will permit the juvenile to file on her own behalf but does require the parent to be present. This is a protocol that should be consistent. Moreover, the court may also want to consider that in some situations a juvenile may not want to inform the parent about a dating violence relationship,

³⁰ KRS 456.050 (1)(b).

so that there should be an option for juveniles to proceed without parental presence or involvement.³¹

There does not appear to be as direct a link between JCPS and the Family Court on DVOs between adults that name children as protected parties. However, if parents bring into the school a protective order that bars contact of the other parent with children, it will be noted in the school computer.

³¹ This may require an amendment to the statute, because KRS 456.030 (1) (d) appears to require that an adult file the petition on behalf of a victim who is a minor. However, this is ambiguous because KRS 456.030 (1)(a) says that a “victim of dating violence and abuse” may file a petition, and KRS 456.010 (1) defines a “dating relationship” as “a relationship between individuals who have or have had a relationship of a romantic or intimate nature,” without specifying any age requirement, so that a juvenile could be included in this definition. The court clerks have been instructed that if a minor wishes to file a petition on his or her own behalf, that the clerks should accept it.

Recommendations

- **AOC and court personnel should consider tracking a sample of protective order petitions throughout the court process to obtain preliminary data on success rates and to compare data on DVOs and IPOs.**
- **The Court, including court personnel such as case specialists, as well as CWF advocates should consider a protocol for ascertaining a victim's safety if she does not appear in court for a DVO or IPO Hearing.**
- **Legal Aid should review the way in which it captures data for the DVAP program.**
- **DVPCC and system partners should explore additional avenues for victims to obtain civil legal assistance.**
- **JCPS and DVIC staff should meet to discuss better communication of new court appearances that are relevant to JCPS.**
- **The statute permitting minors to seek protective orders should be clarified so that juveniles can proceed without a parent acting on their behalf or being present.**
- **JCPS should develop a protocol with Family Court case specialists to be alerted when a DVO case involving a child of school age is on the docket.**

V. Accountability of Court-Ordered Participants in Batterer Intervention Programs

In the context of domestic violence cases, individuals are court-ordered to participate in BIPs either as part of a protective order, or as part of a sentence after a domestic violence conviction. There are also BIP sessions for offenders who are in custody.³²

According to numbers provided to the Metro Criminal Justice Commission, in 2017, there were 2,073 BIP referrals made from the CMC; this number is the lowest in the past several years (between 2010 – 2017, the highest number of referrals was 2,817 in 2011, and the lowest before 2017 was in 2014 at 2,149).³³ This decline does not seem to be related to the opportunity for the court ordering BIP as a condition of a protective order or a criminal conviction. The number of protective orders has risen in the past two years, with the addition of the IPOs. Though domestic violence misdemeanor numbers in 2016 and 2017 have declined since the earlier years of the decade, they are higher than in 2013 and 2014.³⁴ This decline in BIP referrals should be tracked to see whether or not it becomes a trend, and there should be an analysis of referral sources to try to ascertain the reason for the decline.

The Court Monitoring Center (CMC) was created in the early 1990s, and it has been important in improving the follow-up for respondents/defendants who are court-ordered to

³² The Corrections-based program is contracted out to a private provider. Those offenders who are court-ordered to the program receive these services while at the jail; if released, they transfer to a BIP in the community. There currently appears to be enough space available for in-custody defendants in the Corrections-based program.

³³ The numbers I received directly from the Metro Department of Corrections were lower; however, the trends in the data from the two sources appeared consistent. For example, according to the Metro Department of Corrections, the number of individuals ordered to BIP from either District or Family Court totaled 1,675; in 2015, this number was 2,019; and in 2016, it was 1,774; the number from January through September 2017 was 1,091, and the Department of Corrections forecast a slightly negative trend for this data.

³⁴ The number of new domestic violence cases handled by the County Attorney did rise in 2015 to 3,810, and so somewhat declined in 2016 (3,658) and 2017 (3,779), but these recent numbers are still higher than the numbers from 2013 (3,517) or 2014 (3,542).

participate in BIPs and other programs. It remains a crucial piece of system response, linking respondent/defendants, BIPs, and the Courts.³⁵ However, the 2005 Snapshot noted several issues both in CMC's procedures and in judicial oversight of the BIP conditions. There still exist numerous challenges in this linked system that includes the Court, the CMC, and the BIPs.³⁶

A. Imposition of BIP Participation as a Condition

There is no law or court-wide policy mandating the ordering of domestic violence respondents or offenders to BIP. According to those interviewed, judges vary in their practices. Though most judges do order BIP much of the time, there are some who do not order it at all. Therefore, respondents/defendants are treated differently depending on the

³⁵ Though a full review of the efficacy of BIPs in reducing recidivism is beyond the scope of this report, it is fair to say that after multiple evaluations, the results have been mixed. See Ferraro, K.J., *Current Research on Batterer Intervention Programs and Implications for Policy*, Battered Women's Justice Project (2017); Klein, A.R., *Practical Implications of Current Domestic Violence Research Part III: Judges*, National Institute of Justice, U.S. Dep't of Justice (April 2008). However, many of the BIP evaluations have not considered program efficacy as part of a coordinated community response to domestic violence. Ferraro, K.J., *Current Research on Batterer Intervention Programs and Implications for Policy*, at 13. Monitoring of BIP participation and sanctions for non-compliance are useful tools in this coordinated response. As discussed later in this section, ordering BIP participation as a condition of a protective order or a sentence provides the courts a way to conduct regular compliance reviews and ensure that layers of monitoring are in place. See Ferraro, K.J., *Current Research on Batterer Intervention Programs and Implications for Policy*, at 16 ("The most successful BIPs are embedded in communities with a highly functioning, well-resourced coordinated community response that holds men accountable and supports victim safety, autonomy and dignity."). Further, as one overview of the research on BIPs found, offenders who complete BIPs are less likely to re-abuse than those that fail to attend, are non-compliant, or drop out, and BIP attendance rates can be increased through court monitoring. Klein, A.R., *Practical Implications of Current Domestic Violence Research Part III: Judges*, at 51-52 (citing studies). After conducting this overview, Klein noted that "[c]ompliance with mandated batterer programs provide[s] judges with a dynamic risk instrument based on defendant's on-going current behavior. Re-abuse can be reduced if courts respond appropriately and expeditiously to batterers who fail to attend or comply with court referred batterer programs." *Id.* at 52. Research suggests that the converse is also true: "Multiple studies have found that doing nothing in regard to noncompliant court referred abusers results in significantly higher rates of re-abuse. Two studies involving jurisdictions across four states suggest that vigorous enforcement of conditions is the key in deterring re-abuse." *Id.* at 56. The discussion in this section focuses on the use of court-referred BIP participation as a measure to increase batterer accountability.

³⁶ The CMC is part of the Metro Department of Corrections. In many justice systems, this monitoring function is the responsibility of a department of the Court itself, with Court employees.

judge who is handling their case. One of those involved in the process believed the failure to consistently order BIP as a condition was “saddening,” because there was a lost opportunity to monitor offenders. In addition, there appeared to be little to no communication between all of the involved parties; judges, the Metro Department of Corrections, CMC and BIPs did not meet together to discuss the process. Judges did not discuss their reasons for imposing or not imposing the condition, and few had ever attended a BIP or had a sense of the monitoring process.

Consistency in the process would work to hold batterers more accountable. It would also be a more fair and just system for these respondents/defendants. And that in turn, can improve batterer compliance.³⁷

B. Enrollment Process

When respondents/defendants are court-ordered to participate in a BIP, they must go to the CMC in the basement of the Hall of Justice to sign up for services ordered by the court within two business days. CMC staff receive paperwork from the court that informs them of these orders; if an individual never appears for this initial enrollment, CMC completes a non-compliance form which it delivers to a basket in the clerk’s office; from there, each non-compliance form is directed to the particular judge who handled the case. At this point, unless contacted by a judge, the CMC typically does not know what occurs in a particular case.³⁸ Further, this communication via physical movement of paper has built-in time delays.

³⁷ Deborah Epstein, *Procedural Justice: Tempering the State’s Response to Domestic Violence*, 43 Wm. & Mary L. Rev. 1843, 1875 – 1884 (2002); Raymond Paternoster et al., *Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault*, 31 Law & Soc’y Rev. 163, 167 (1997).

³⁸ The CMC staff may see the respondent/defendant’s case again if he is re-referred to a BIP. See the discussion later in this section of defendant non-compliance and re-referrals.

Finally, ordering defendants to enroll at a separate location creates the opportunity for failures to appear.

One way to alleviate these problems would be to have a CMC representative physically at the courtroom calendars to sign up individuals. This would reduce failures to enroll, and also permit the CMC and the Court to track any failures immediately. This may not be feasible when domestic violence cases are spread throughout many calendars. However, currently IPOs are heard before one District Court judge two afternoons a week, so the Court and the CMC could experiment with this in-person enrollment process. If other domestic violence cases become docketed in fewer courtrooms, CMC could expand this in-person presence. The section on The Criminal Justice Process later in this report discusses and recommends the development of a dedicated domestic violence docket in the District Court; with such a specialized docket, the CMC representative could also be available to report on failures to comply.³⁹ As a further benefit, judges would become more familiar with the CMC and its work.

Under the current system, once enrolled at the CMC office, defendants have 10 days from the court order to enroll in a program. They receive a physical sealed envelope that contains paperwork to be completed by the treatment provider. The provider then has to return the enrollment form to the CMC by fax or mail within 15 days. This seems like a cumbersome and paper-laden process, and also is too passive for effective compliance. The defendants need to get a sealed envelope to a BIP, and then the BIP is responsible for returning it to the CMC. The CMC has to first recognize that an envelope has not been

³⁹ See the section on The Criminal Justice Process later in this report for a detailed discussion of a specialized domestic violence docket.

returned within the 15 days; it then has to determine if this failure is due to the defendant's failure to enroll in a program, or a program's failure to return the materials.

Much of this process could be done electronically. But part of the problem is that because defendants can choose which program to attend, the CMC does not know which program will be receiving the paperwork and then be required to return it. The Court and CMC should consider a process where it is CMC staff who initially place an individual in a particular program. The CMC could then email the paperwork directly to the specific program, and alert them that a defendant is required to be assessed and enrolled there. If CMC fails to receive the completed paperwork via email, it would know at which program the defendant had not appeared. Failures to enroll in a program would be identified both quickly and easily.

Another benefit of assignment of programs is that it would not permit defendants to select programs that are rumored to be less rigorous. Further, to the extent that programs specialize in certain populations, CMC staff, who are familiar with the different BIPs, could select a program that is the best fit for a specific defendant. Perhaps equally important, CMC would have more leverage over the BIPs. By being in charge of selecting the programs for referrals, they could avoid those that are not responsive in reporting failures. Rather than putting the control in the respondent/defendant's hands, the CMC would be in control of the process.

Administrative regulation 920 KAR 2:020, promulgated by the Kentucky Cabinet for Health and Family Services, governs the certification and operation of BIPs in the Commonwealth. This regulation clearly contemplates that the BIP providers, rather than

another entity such as the CMC, will screen and assess potential program participants.⁴⁰ For this reason, before implementing a referral process, CMC and the courts would need to consult with the Cabinet about the interpretation of the regulation, and some revision of the regulation may be necessary to effectuate this suggestion. However, the referrals from CMC would not involve the type of screening and psycho-social assessment of individuals that is performed at the BIP program; the CMC referrals simply would identify the particular BIP where such screening and assessment will occur. Further, the regulation also notes that a provider may “consult with a court, prosecutor, law enforcement official, mental health provider, and others regarding the assessment of and intervention with a client.”⁴¹ Therefore, the CMC and Court should consult with the Cabinet to determine if CMC referrals to specific programs could be accomplished under the current regulation or would require an amendment.

Finally, taking on this additional role of referring individuals to specific programs for assessment would require more resources for the CMC. However, the gains in monitoring, compliance, and efficiency make it worthwhile to explore the feasibility of augmenting the scope of CMC in this way.

C. Monitoring Progress of Defendants at the BIPs

The process by which the court obtained information on participants in the BIPs appeared to vary by judge; some were more aggressive in reaching out to the CMC to obtain

⁴⁰ 920 KAR 2:020, Sections 5, 8.

⁴¹ 920 KAR 2:020, Section 5. The regulation also states that “[c]ooperation and service coordination between the criminal justice system, the department, a victim’s advocate, a domestic violence shelter, and a chemical dependency or mental health professional may be required to assure effective treatment and the safety of a victim or a potential victim.” 920 KAR 2:020, Section 6.

information prior to court appearances; others relied on the CMC to inform them if there was any problem, with the idea that no news meant that there had been no problem. And even if a judge reached out to the CMC, this would be just before or the day of a court appearance, so there would be a delay in learning information about non-compliance. CMC could and did at times reach out to a BIP for verification of compliance and could request that a respondent/defendant's case be re-docketed before the court if the respondent/defendant had failed to comply. However, in interviews, it seemed that the CMC process was structured so that typically, unless a judge specifically requested information on a particular individual, the CMC would wait for the BIP to send any information regarding failures or problems.

Therefore, there was one passive procedure on top of another; the courts waited to hear from the CMC about any problems, and the CMC waited to hear from the BIPs. This “no news is good news” approach raises many concerns. Given that the courts and CMC are primarily dependent on the BIPs to report any failures, they may not know how many participants have simply “fallen through the cracks” – i.e., failed to comply or complete the program without knowledge by the CMC or the court and therefore without any consequences.

The court and the CMC should develop more affirmative and consistent outreach procedures.

D. Court Reviews of Defendant Compliance and Use of Intermediate Sanctions for Failures to Comply

The Cabinet maintains statewide statistics on respondent/defendant compliance with BIPs.⁴² In FY 2016, 41% of men and 33% of women in BIPs were discharged for failure to complete the program; this is defined as failure to attend more than three of the required 28 sessions, or failure to participate in BIP classes. In FY 2017, 43% of men and 30% of women were discharged for failure to complete the program.

Though the Cabinet does not maintain data by County, I did receive data from the Metro Department of Corrections related to compliance of those referred to BIPs through Jefferson County's CMC. With the caveat that the numbers may not be exact, in 2014, roughly 40.7% were non-compliant; in 2015, this number was 49.7% and in 2016, it was 54.2%. This seems relatively consistent with data I received from one large BIP in Jefferson County; in FY 2017, 61.5% of male and 47.1% of female participants were involuntarily discharged due either to excessive absenteeism or not participating in the sessions.⁴³ Many of those interviewed believed anecdotally that there were high numbers of participants that failed to comply with court-ordered BIP requirements. Though all of these numbers must be taken cautiously, it is clear that the numbers of non-complying BIP participants is significant

⁴² In January 2017, the oversight of the Kentucky Batterer Intervention Program began an administrative transition from the Cabinet for Health and Family Services to the Kentucky Coalition Against Domestic Violence (KCADV). The FY 2017 statistics were provided by the KCADV.

⁴³ The data from the Jefferson County program for prior years shows some variability in the numbers but suggests a trend of rising non-compliance figures for male participants. In FY 2016, 47.8% of men and 52.4% of women were involuntarily discharged due to excessive absenteeism or failure to participate; in FY 2015, 36.8% of men and 52.9% of women were involuntarily discharged for these reasons.

and appears to be growing. These data do not break down how many of these cases are re-referrals with records of repeated non-compliance.

As described above, there are challenges in obtaining information on non-compliance, and there may also be a lag between when information is known by CMC and when it is scheduled for a court hearing. Several years ago, it was routine practice for Family Court judges to schedule automatically at least one show cause hearing at the time of imposing a treatment condition, to ensure that there was at least one follow up to check on compliance. However, with the large turnover in Family Court judges in recent years, it does not appear that these automatic compliance appearances occur regularly.

When there is a compliance review, many of those interviewed reported that often there was little result, other than the court just setting another court appearance, so that more information could be obtained, or the defendant could have more time to comply. This is consistent with my observations. In one case I observed in Family Court, the respondent had lost the envelope that he was supposed to take to the CMC and so could not enroll in a program as ordered by the court over six weeks earlier. He was scheduled to come back to court in another six weeks to see if he had enrolled and been assessed. In another case, the judge issued a bench warrant for a no-show respondent and noted “do not release” so that if picked up, he would be detained, since he had had two prior no-shows. Another respondent who was due to appear had been arrested on criminal charges and was not produced for this appearance; he was given a new date for the Family Court appearance.

In District Court, several years ago, there had been an enhanced supervision docket for first-time offenders ordered to treatment, who were required to make regular court appearances over two years; however, that was eliminated when the judge who spearheaded

the project was elected to the Circuit Court. Some judges do set a post-conviction review date to check on compliance, but it was not clear that this was done uniformly, or that if there were such an appearance, if adequate information on compliance was available. These examples demonstrate the need for institutionalized procedures that are not dependent on the practices of individual judges.

The issues in obtaining information on compliance and bringing it before the court promptly could be alleviated through the scheduling of a regular compliance calendar that required review of each defendant's attendance and any issues with participation in the BIP. This would hold both offenders and the BIPs more accountable, as they would be required to provide information to the court on a regular basis. The review hearings could also be used to monitor compliance with any other court orders and conditions, including a no contact order, protective order, or firearm surrender.

In the current system, the court typically only becomes aware of problems if there has already been a failure. According to many of those interviewed, the most common "sanction" appeared to be simply re-referring the participant, often multiple times, to a BIP. The judges themselves recognized that in many cases there were multiple re-referrals. This issue was noted in the 2005 Snapshot and continues as a challenge. The exact number of re-referrals was not available, because it was not data collected by the Cabinet statewide, nor tracked locally by the CMC.

It is not clear why the re-referrals are so widely used. There may be several reasons for this, including lack of precise information for the court as to the cause of the failure, so judges were unable to distinguish between serious and technical infractions, and lack of sanctions available to the court, other than the most severe sanction of jailing respondents

who failed to comply with the court order. Some judges also expressed lack of confidence in the BIP providers or the information they reported, so that they were not comfortable finding a defendant in violation. Some BIP providers felt that the quality of BIPs was inconsistent and that higher quality programs were being hurt by judges' assumptions based on experiences with BIPs that were not reliable reporters.

Rather than waiting until a respondent/defendant has missed three sessions (under the state regulation, this triggers a mandatory discharge from the BIP), the court could address problems earlier, with interventions designed to prevent failure. It would be more effective to develop a program of intermediate sanctions, which can be instituted before official "failure" and graduated according to the type of issues encountered. These sanctions can range from more frequent check-ins at CMC, to more frequent court appearances; and ultimately to jail time for failure to comply with the court order. This program of graduated sanctions would be made clear to all respondents participating in the BIPs as well as the BIP administrators themselves. When an offender is complying with treatment, the judge can order less frequent monitoring appearances; further, praising a defendant for complying with the court order also "sends a powerful message to everyone in the courtroom about the seriousness of the compliance order."⁴⁴

Compliance review and the use of intermediate sanctions is a best practice in domestic violence case handling, both for civil protective orders and criminal cases.⁴⁵ As one

⁴⁴ Judicial Oversight in Domestic Violence Cases, Indiana Court Times, October 3, 2014.

⁴⁵ See, e.g., Judicial Review Hearings: Keeping Courts on the Case, Enhancing Responses to Domestic Violence: Promising Practices from the Judicial Oversight Demonstration Initiative, Vera Institute of Justice, 2006; the National Council of Juvenile and Family Court Judges, *Civil Protection Orders: A Guide for Improving Practice* (2010); Enhancing Enforcement of Orders of Protection in New Mexico: A Best Practices Guide for Law Enforcement, Prosecution and Courts (2009); The

judge quoted in a Vera Institute of Justice report on the practice noted, “Where judicial review is in place, offenders see that they are being held accountable, and victims and the community see the court is serious about its orders. Judicial review hearings help send an important, consistent message: domestic violence is a crime that will not be tolerated in our community.”⁴⁶ Studies have demonstrated that consistent judicial review and imposition of sanctions and rewards in this setting can reduce domestic violence recidivism.⁴⁷

Effective use of these intermediate sanctions requires coordination of all the relevant players in the Court-CMC-BIP network. The BIPs must provide detailed and accurate information about any issues with defendant participation quickly to the CMC; the CMC must convey that information on an ongoing basis to the judges; the judges must respond quickly by imposing sanctions. There are several benefits to this process. There would be distinctions made between failures to comply due to lack of payment, for example, and failures relating to threats or actual commission of a new domestic violence crime or violation of a protective order. The closer monitoring by all involved, including more frequent appearances before the judge whenever there are issues or infractions, reinforces that batterers will be held accountable, and that there will be consequences for these infractions. And, courts would have alternatives available to sanction respondents, so that their choice

North Carolina Administrative Office of the Courts publication, *North Carolina Domestic Violence Best Practices Guide for District Court Judges* (July, 2010; updated June 2012).

⁴⁶ Vera Institute report, p.1, quote by Hon. Elizabeth Pollard Hines, District Judge, 15th District Court Ann Arbor, Michigan (Washtenaw County).

⁴⁷ Harrell et al., *The Evaluation of Milwaukee’s Judicial Oversight Demonstration*, Urban Institute Justice Policy Center, 2006 (compliance hearings, graduated sanction and award system, and other measures lowered dv offenders’ re-arrest rates to half of those for their counterparts in non-Judicial Oversight Demonstration courts).

would not be simply to let them re-start a program or send them to jail. It will also avoid a repeated loop of batterers cycling through programs without addressing any underlying issues.

All of these issues would benefit from an ongoing working group that included representatives from the BIPs in the area, the CMC and the Family and District Court. The working group should include an exploration of how use of technology, including the new case management system that Metro Corrections plans to implement later this year, could assist in speeding and increasing communication among the relevant partners. Some interviewees mentioned that such a working group formerly existed, but stopped meeting several years ago, largely due to turnover in the staffs of the various entities.

E. Accountability of Batterer Intervention Programs

The 2005 Snapshot noted that since the 1998 Community Assessment, the Commonwealth had put in place a certification process for BIP providers. KRS 403.7505 requires that the Cabinet for Health and Family Services establish minimum standards for BIPs regarding curriculum components, number of sessions required and the credentials of providers. As discussed above, a regulation promulgated under the statute provides detailed requirements for BIP policies and procedures.

However, the 2005 Snapshot also noted that regulation and monitoring of the BIPS to ensure compliance with these standards was not robust. Unfortunately, this has continued to be an issue. While the Cabinet monitors basic certification requirements, it lacks the resources to proactively check on quality and consistency among the programs and is only able to investigate programs for which there have been complaints.

As discussed above, the inconsistency among programs is exacerbated by the fact that defendants select their own programs from the list approved by the Commonwealth and provided by the CMC to them and can also switch among programs. Various partners familiar with the process felt that it was easy for word to get around among respondents as to which programs were less rigid either in monitoring attendance or in providing the curriculum, and it was not uncommon for respondents to select or transfer into the programs that they had learned were less demanding. Given that the BIPs are for-profit entities, this creates a disincentive for them to be rigorous. Without closer monitoring of the programs, the higher quality programs are at a disadvantage in attracting and retaining clients.

Recently, the Cabinet has contracted with the Kentucky Coalition Against Domestic Violence (KCADV) to undertake the certification and monitoring of BIPs. KCADV plans to review both certification requirements and monitoring procedures. The transition to KCADV is still in process, but it is hoped that KCADV will be able to more aggressively monitor programs and ensure that all requirements are met. Some of those interviewed noted that there is a client population for whom English is not the primary language, and that BIPs were not available in multiple languages to serve these clients' needs. KCADV may also want to explore whether there are an adequate number of programs with groups tailored to specific populations, such as different language fluency, gender, and LGBTQ offenders.

F. Payment for BIP Services

For court-ordered BIPs to be both effective and equitable, individuals must have the opportunity to comply. There is currently no public funding used to support the BIPs and

certified providers must collect fees from their clients to fund their programs.⁴⁸ As discussed above, this can create disincentives to conduct high quality programs that do not cut any corners and promptly report failures; it also breeds a competitiveness among programs that is not conducive to coordination of services.

More fundamentally, it can set up many participants for failure due simply to inability to pay. Statewide, 69.6% of BIP clients had an annual income below \$20,000. Data from one BIP in Jefferson County for 2016 – 2017 indicated that 91% of its participants had an annual income below \$20,000 (45% had annual income below \$10,000). The total cost of completing a BIP is \$20/session for 28 sessions (\$560) in addition to the \$25 assessment fee, totaling \$585. Given that a very high percentage of BIP clients are indigent, the system needs to address the lack of available funds. Under the state regulations, providers cannot deny eligibility solely due to inability to pay. Therefore currently, the BIP providers are forced to deal with this problem on their own on an ad hoc basis, such as offering reduced fees in individual hardship cases, or giving participants additional time in which to pay.⁴⁹

It is true that some clients may plead poverty, and yet seem to have funds available for cell phones, cigarettes, etc. Some BIP providers argue that forcing defendants to pay helps to hold them accountable. And many in the domestic violence advocacy community fear that, in a world of tight government budgets, funds directed toward BIPs would mean a reduction in

⁴⁸ The 2005 Snapshot noted that there was a non-profit BIP providing services in Jefferson County at that time, but it does not seem to be active currently.

⁴⁹ Current data collection does not permit an analysis that correlates involuntary discharges with participant income, a question identified by the Kentucky Coalition Against Domestic Violence in their 2017 Annual Report on the Kentucky Batterer Intervention Program, p. 8 (“A better way of tracking the progress of individual BIP clients might later allow for a deeper analysis to determine if, for example, men earning less than \$20,000 a year are more likely to be involuntarily discharged due to excessive absenteeism.”).

much-needed funds for victim services. These are fair concerns, and any decision on funding of programs is a policy choice. But providing a more secure avenue for truly indigent clients to successfully complete a BIP seems to be important in an equitable justice system, and it should at least be explored as an option. Some states do provide funding to reduce the cost of BIP services, or provide at least one government-run program, often through the Division of Probation and Parole.

Judges raised this as an important problem and felt there must be either a non-profit provider or a fund for indigent clients established. Further, some judges are reluctant to order a BIP for some offenders, particularly on a first offense, due to the high cost. Division of Probation and Parole officials also noted that the BIP costs were a challenge for their population, which was largely indigent. The cost of these programs does present barriers to success for offenders under their supervision. The Division of Probation and Parole officials said that they would require an additional funding source to create their own BIP, as current staff levels do not make it feasible.

The Louisville Metro Department of Corrections has made this commitment for clients who are not able to pay the initial \$25 fee to the CMC; this is called a “fee waived by Bolton,” after Corrections Director Mark Bolton. CMC calculated that in the 12 months prior to September 28, 2017, there had been 530 fees waived in this manner, for a total of \$13,250. The Commonwealth or the County should consider a government-run BIP, perhaps through the Division of Probation and Parole, which would provide an option for truly indigent court-ordered offenders. Alternatively, the BIP regulations may want to provide official sliding-scale policies, to ensure consistency among programs.

Recommendations:

- **A working group that includes representatives from the Family Court and District Court, the CMC, and the BIPs should be reinstated to discuss multiple issues, including consistent imposition of BIP as a condition where appropriate, coordination of information and compliance policies.**
- **Monitor and investigate decline in court referrals to BIPs.**
- **The Court and CMC should examine the enrollment process and consider, where feasible, the in-person presence of a CMC representative at the courtroom to sign up defendants immediately, making it more difficult for defendants to fail to enroll, and enabling CMC and the Court to track any failures immediately.**
- **In consultation with the Kentucky Cabinet for Health and Family Services, the Court and CMC should consider assigning defendants to specific BIPs, updating its enrollment process to reduce reliance on hard copy paper and mail, and moving to an electronic system that is quicker and more efficient.**
- **Explore a compliance calendar for regular judicial review of defendant participation in BIPs and development of intermediate sanctions to impose consequences.**
- **Explore options for a government-run BIP, or some funding to offset costs for truly indigent BIP participants.**

VI. Domestic Violence Firearms Regulation and Protocols Throughout the Justice System

The Louisville Metro Fatality Review Committee biennial reports have documented a significant increase in the percentage of domestic violence fatalities involving the use of a handgun. In 2009 - 2010, 21% of the fatalities involved handguns; this rose to 58% in 2011-2012, 71% in 2013 – 2014, and 81% in 2015-2016. In the 2015-2016 report, the Fatality Review Committee highlighted this dramatic increase. These local data are consistent with national studies which have found that access to a firearm was the highest risk factor present in fatality cases. The presence of a firearm in a domestic violence situation increases the risk of homicide by at least 500%.⁵⁰

In national homicide data from 2015, Kentucky ranked 8th in the country for the rate of females murdered by males.⁵¹ In the national data, for those homicides in which the victim to offender relationship could be identified, 97% of female victims were murdered by someone they knew. Of the victims who knew their killers, 63% were wives, common-law wives, ex-wives or girlfriends of the offenders. And of these female intimates who were murdered, 77% were killed with guns.⁵²

⁵⁰ Campbell, J., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 Am J. Pub. Health 1089 (2003). Fifty-one percent of all intimate partner homicides in the United States involved the use of a firearm in 2008. U.S. Department of Justice, Bureau of Justice Statistics, *Homicide Trends in the U.S.: “Intimate Homicide.”* (2011).

⁵¹ Violence Policy Center, *When Men Murder Women: An Analysis of 2015 Homicide Data*, at 9 (September 2017). The study examined homicides in single victim/single offender incidents, analyzing data from the FBI’s Supplementary Homicide Report Data from 2015.

⁵² *Id.* at 18.

Firearms are also commonly involved in nonfatal domestic violence.⁵³ And, even when firearms are not directly involved in an incident, when an abuser has access to a firearm, nonfatal domestic violence may escalate in severity.⁵⁴

Police officers are put in grave danger when domestic violence offenders have access to firearms.⁵⁵ The National Law Enforcement Officers Memorial Fund has reported that in 2017, more officers were shot responding to domestic violence than any other type of firearm-related fatality. FBI data show that from 1988 to 2016, 136 officers were killed while responding to domestic violence incidents. As of April 2018, six police officers have been killed in domestic violence calls this year.⁵⁶

Researchers also are finding links between domestic violence and mass shooters. Recent incidents provide examples of shooters who had a history of domestic violence. For example, Devin Kelley, who in November 2017 killed 26 people at a Texas church, had been court-martialed from the Air Force for assaulting his wife and fracturing his baby stepson's skull.⁵⁷ Seung-Hui Cho, who killed 32 people at Virginia Tech, had previously been

⁵³ April M. Zeoli, *Domestic Violence and Firearms: Research on Statutory Interventions*, Battered Women's Justice Project, <https://www.preventdvgunviolence.org/assets/documents/relevant-research/domestic-violence-and-firearms-research-on-statutory-interventions.pdf>.

⁵⁴ Zeoli, A.M., Malinski, R., & Turchan, B., *Risks and Targeted Interventions: Firearms in intimate partner violence*, 38 *Epidemiologic Reviews*, 125 (2016).

⁵⁵ See e.g., *Brave Ohio Cops Murdered by Suspect Abuser with Banned Firearm*, Nat'l Bull. on Domestic Violence Prevention, Vol. 24, April 2018.

⁵⁶ Natalie Schreyer, *Domestic abusers: Dangerous for women — and lethal for cops*, USA Today, April 9, 2018.

⁵⁷ Alex Johnson, *Air Force Failed to Report Texas Church Gunman Devin Kelley's Domestic Violence Convictions*, www.nbcnews.com, November 6, 2017. The case revealed a breakdown in Air Force compliance with federal gun laws, when it had failed to enter Kelley's domestic violence convictions into the NICS (FBI's National Instant Criminal Background Check System) database that would have prohibited him from purchasing firearms.

investigated for stalking two female classmates. Omar Mateen, who killed 49 people at the Pulse nightclub in Orlando, physically abused his wife.⁵⁸

Moreover, a study of mass shootings from 2009 – 2016 has found that the most common types of mass shootings (defined as those cases in which four or more people were killed), are those involving domestic violence. Though these often don't receive the same amount of media publicity, the study found that 54 percent of mass shootings were committed by intimate partners or family members.⁵⁹ In the period between 2009 and 2016, 422 victims were killed in these domestic violence mass shootings, of which more than 40 percent were children.⁶⁰

⁵⁸ Nancy Leong, *Commentary: What mass shooters often have in common: domestic violence*, Washington Post, June 15, 2017. Another recent example is the case of Esteban Santiago, who pled guilty to killing five people at the Fort Lauderdale, Florida airport in January 2017. Santiago had a history of prior domestic violence incidents in Alaska, including arrests for strangling his girlfriend, and for violating a no contact order. However, the strangulation charge was reduced to a misdemeanor and the no contact violation was dropped. Police responded to further disturbance calls including another alleged strangulation, but none were prosecuted. Anchorage police did take his gun when he was hospitalized for a mental evaluation after presenting himself to the FBI and telling them he was hearing voices. However, the police returned the gun to him when he left the hospital; the same gun was used in the shooting. See By Discounting DV, Alaska Prosecutors and Judges Complicit in Florida Mass Murder, Nat'l Bull. on DV Prevention, Vol. 23, March 2017; Megan O'Matz, et al., Numerous red flags arose in months leading to Fort Lauderdale airport shooting, Los Angeles Times, January 8, 2017.

⁵⁹ Everytown for Gun Safety, *Mass Shootings in the United States, 2009—2016*, <https://everytownresearch.org/reports/mass-shootings-analysis/>. See also Kerber, R., *Firearm Homicide-Suicides in North Carolina: Evidence from the North Carolina Violent Death Reporting System, 2004 – 2014*, (April 22, 2016), https://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/12036/Kerber_MP%20Final%20Draft.pdf?sequence=1 (mass shootings that target family members are far more common than those that kill strangers).

⁶⁰ Everytown for Gun Safety, *Mass Shootings in the United States, 2009—2016*, <https://everytownresearch.org/reports/mass-shootings-analysis/>. There is also a connection between extremist ideology and domestic violence. See Daryl Johnson, *Extremists unleash deadly domestic violence attacks during holiday season*, Southern Poverty Law Center, January 4, 2018. The article's author notes that in December 2017, there were several deaths involving domestic violence that received national media attention, but few reporters noted how extremist ideology likely played a role in the suspects' violence.

A critical step in making the community safer is to more effectively enforce existing firearm laws, develop clear search and surrender protocols, and consider further measures to increase regulation of firearms accessible to abusers.

A. Protective Orders, Firearms Provisions and Surrender Protocols

Conditions in Protective Orders. Under federal law, 18 U.S.C. 922 (g)(8), all respondents subject to protective orders satisfying due process and meeting the statutory conditions are prohibited from the possession or purchase of firearms.⁶¹ This firearm prohibition is mandatory and lasts as long as the protective order is in effect.⁶²

Under current Kentucky law, a judge is permitted, but not required, to prohibit firearms as a condition of an EPO or DVO. This is under the judge's authority to prohibit actions that the court believes will assist in eliminating future acts of domestic violence.⁶³ On the protective order form, there is no specific box to check prohibiting firearms; instead, judges must use a "catch all" box, and then use a stamp to note the firearms condition on the form. Though there has been some discussion about adding the condition as a printed option on

⁶¹ Under the federal law, 18 U.S.C. §922(g)(8), a protective order must: 1) Have been issued after a hearing of which respondent/defendant received actual notice and at which respondent/defendant had an opportunity to participate; 2) Restrain respondent/defendant from harassing, stalking, or threatening an intimate partner of respondent/defendant or a child of the intimate partner or respondent/defendant or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or the partner's child; and 3) Include a finding that respondent/defendant represents a credible threat to the physical safety of the intimate partner or child or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury. "Intimate partner" is defined for purposes of §922(g)(8) as a spouse or former spouse of respondent/defendant, a person who is a parent of the child of respondent/defendant, or a person who cohabits or has cohabited with respondent/defendant. 18 USC §921(a)(32).

⁶² Under federal law, there is an exception from this prohibition for service weapons used on the job by military or law enforcement personnel (the "official use exception"); however, there is no bar on prohibiting personal weapons for members of armed forces or police. 18 USC §925(a)(1). Cases involving perpetrators in the military or law enforcement are often highly dangerous, precisely because the abuser has access to and is trained in the use of weapons.

⁶³ KRS 403.740(1)(b).

the form, these are forms issued by the Commonwealth and there has not been agreement to make this change.

According to those interviewed, judges typically do add this condition when the petition for the order identifies that the perpetrator has a gun, and particularly if it was used in the incident at issue. However, many of those interviewed believed that judges varied in their willingness to order this as a condition. They believed that some judges may impose the firearm prohibition only if a firearm was used or threatened in the incident that led to the granting of the order; others may not order the condition even in this circumstance.⁶⁴ Further, they believed that the court does not routinely question a petitioner about a respondent's access to guns.

Kentucky's recent protective order legislation that makes orders available to dating partners, and victims of sexual assault and stalking, explicitly excludes subjects of these orders from any firearms prohibition; therefore respondents who are subject to an IPO or T-IPO cannot be prohibited from weapon possession.⁶⁵ It is true that the federal definition for relationship does not include all dating partners, though there is currently federal legislation pending to expand that definition. However, there is substantial research that dating partners are an increasing proportion of offenders in domestic violence fatalities.⁶⁶ As of 2014, 47% of

⁶⁴ There has been legislation proposed in the Kentucky Legislature to require judges to consider whether there is a substantial risk that a respondent in a protective order case may use or threaten to use firearms against the subject of the order; if the court finds that such a substantial risk exists, the court would be required to prohibit firearm purchase or possession. 2018 Kentucky House Bill No. 502, Kentucky 2018 Regular Session.

⁶⁵ See 456.020 (2) ("Nothing in this chapter is intended to trigger the application of the provisions of 18 U.S.C. sec. 922(g) as to an interpersonal protective order issued on the basis of the existence of a current or previous dating relationship").

⁶⁶ Zeoli, Domestic Violence and Firearms, p. 4; see also Sorenson, et al., *New data on intimate partner violence and intimate relationships: Implications for gun laws and federal data collection*, 107 Preventive Medicine (February 2018), <https://www.ncbi.nlm.nih.gov/pubmed/29395249> (finding that in 31,206 IPV incidents responded to by Philadelphia

all intimate partner homicides were committed by dating partners and 41% of these homicides were committed with firearms.⁶⁷

Several states, including New Jersey, Massachusetts and California, make firearm prohibitions mandatory as under federal law; they also go beyond federal law to include temporary emergency orders in these prohibitions, when danger to a victim may be at its height.⁶⁸ Several states also are more expansive than federal law in extending the firearm prohibitions to current or former dating partners with a protective order against them as well as persons subject to an anti-stalking protective order.⁶⁹ For example, Oregon recently enacted a new law to bar offenders from possessing firearms that applies to dating partners as well as anyone with restraining order against them, and those offenders convicted of stalking.⁷⁰

There is a great deal of research demonstrating that victims petitioning for protective orders are in a moment of particular danger. They often file for orders only after severe abuse, and are often attempting to separate from the abuser, which increases the risk of

police in 2013, over 80% involved individuals in non-marital relationships). Further, incidents involving current boyfriends or girlfriends had the highest percentage of violent behaviors, such as punching or strangling. Former unmarried partners had the highest odds of stalking their former intimate and of violating a restraining order. *Id.*

⁶⁷ USDOJ, FBI, Uniform Crime Reporting Program Data: Supplementary Homicide Reports, 2014 (2016).

⁶⁸ Cal. Penal Code §§ 136.2, 1524(a)(11), 18250, 29825(d), 30305; Cal. Civ. Proc. Code §§ 527.6(u), 527.9; Cal. Fam. Code §§ 6211, 6218, 6304, 6306(a), 6389; Mass. Gen. Laws ch. 209A, section 3B; N.J. Stat. Ann. §§ 2C:25-19, 2C:25-28(f), (j), 2C:25-29(b), 2C:39-7(b)(3), 2C:58-3(c)(6).

⁶⁹ See Lindsay Nichols, *State Laws to Prevent Domestic Abusers From Having Access to Guns*, Domestic Violence Report, October/November 2014, at 4. See, e.g., California, Hawaii, Massachusetts, Utah, cited in Domestic Violence & Firearms, Giffords Law Center to Prevent Gun Violence, <http://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/#state>.

⁷⁰ See *Oregon Enacts Model Abuser Firearm Ban*, Nat'l Bull. On Domestic Violence Prevention, Vol. 24, April 2018, at 4.

homicide.⁷¹ There is evidence indicating that domestic violence protective order firearm restriction statutes do reduce intimate partner homicide rates.⁷² Several studies have found a decrease in the rate of intimate partner homicides committed with firearms and intimate partner homicides in total. As one researcher explains, “[t]hat each of these studies found a decrease in total intimate partner homicide is significant. It suggests the absence of a ‘substitution effect’ whereby other weapons are used to kill when firearms are not available.”⁷³ One study focused on the city level, as opposed to state level impact; it analyzed 46 of the largest cities in the U.S. from 1979 to 2003 and found that the firearms statutes were associated with a 19% decrease in total intimate partner homicide and a 25% decrease in intimate partner homicides committed with firearms.⁷⁴

Given this data, as well as the statistics cited above that demonstrate the connection between guns and domestic violence fatalities, it is important that judges consistently utilize the existing laws permitting firearms prohibitions in EPOs and DVOs. Legislation should be considered to make these prohibitions mandatory as in federal law, and to expand the prohibitions to T-IPOs and IPOs.

Gun Surrender in Protective Order Cases. The Jefferson County Sheriff’s Office is responsible for operating the gun surrender program that began in 1997. There is currently

⁷¹ April Zeoli, *Domestic Violence and Firearms*, at 3 (citing studies).

⁷² Diez, et al., *State Intimate Partner Violence–Related Firearm Laws and Intimate Partner Homicide Rates in the United States, 1991 to 2015*, 167 *Ann. Intern Med.* 536-543 (2017); See also Daniel Nass, *State Gun-Surrender Laws Linked to Lower Rates of Fatal Domestic Violence*, *The Trace*, Sept. 18, 2017.

⁷³ Zeoli, *Domestic Violence and Firearms*, at 6 (discussing the studies).

⁷⁴ Zeoli, A.M., & Webster, D.W., *Effects of domestic violence policies, alcohol taxes and police staffing levels on intimate partner homicides in large US cities*, 16 *Injury Prevention*, 90- 95 (2010).

no written procedure for this operation, but typically if a judge orders firearm prohibition as a condition of the order, the Sheriff who serves the EPO will ask the subject if he has firearms in his possession. If firearms are provided by the respondent, they are seized and inventoried, and a property receipt is issued to the respondent. If firearms are available to the respondent but not in his immediate possession, he is given 24 hours to turn them in. Sheriff's deputies will also drive to pick up firearms from respondents if they have possession of them. The weapons are stored until the protective order is dismissed or has expired. Prior to releasing any firearm, the Sheriff verifies that the order is no longer in effect. The numbers of firearms surrendered to the Sheriff has been increasing: in 2014, there were 348 firearms surrendered; in 2015, 415; in 2016, this number rose to 460; and in 2017, the number was 502. Since the program started, the Sheriff's office has taken possession of over 8,000 weapons.

The Sheriff's deputies are diligent in following up when judges make prohibition a condition of an emergency order, and the surrender program has been an excellent step in removing firearms from abusers. However, several challenges remain. First, as discussed, the court must specifically order this as a condition. Further, the Sheriff is dependent on the respondent's voluntary provision of information about any weapons; there is currently no search and seizure power associated with firearm surrender in Kentucky. If the Sheriffs have probable cause to believe that the respondent possesses a firearm which is banned by the order, they do have the possibility of getting a search warrant, but this does not appear to happen routinely. There is also no affirmative requirement that the respondent notify the court by sworn affidavit either that they do not possess firearms, or that they have surrendered them. When a DVO is issued and served on a respondent who is present in court, the Sheriff's deputy in the courtroom informs the defendant of any condition prohibiting firearm

possession, and that he must surrender any firearms within 24 hours.⁷⁵ However, just as with the EPOs, the Sheriff has to rely on the voluntary disclosure of the respondent regarding weapons, and has no search and seizure power to enforce the firearm surrender condition.⁷⁶

There also is not a clear protocol for following up when at some point while the order is in effect, there is cause to believe that the respondent does possess guns that he may not previously have revealed to the court or the Sheriff. At least anecdotally, there is also an issue with abusers who are able to evade service of a protective order, and thus not be subject to any gun surrender. One victim in the focus group noted that her abuser had not been served with the order, but then posted several videos on Facebook with a gun in his lap and pointed at the phone while he threatened the victim.

Some states have strengthened court and police authority to enforce weapons prohibitions in protective orders. Some authorize the court to order the search and seizure of any firearms not voluntarily surrendered.⁷⁷ For example, under Nevada law, a court may issue a search warrant for a firearm if the respondent has not surrendered his or her firearms within

⁷⁵ If the judge issues a DVO when a defendant has had notice of the hearing, but does not appear, that order is valid upon issuance and does not have to be served on the defendant to take effect. However, frequently the Sheriff's deputies are asked to serve the order and associated paperwork on the defendant, due to various conditions, such as referral to a BIP.

⁷⁶ Oregon had a similar system in which judges could check a box to ban firearms for those issued domestic violence protective orders. In 2014, a man who had had such an order for two years, shot and killed his ex-wife and then killed himself, though he was not supposed to have any firearms. No one had made sure that he had surrendered his guns, though his ex-wife had repeatedly informed the court that he still had them. The lawyer for the ex-wife called it "an honor system;" "no-one really checks that you comply. There didn't seem to be an efficient way to follow up and verify compliance." Maxine Bernstein, *Lax enforcement leaves guns in hands of Oregon abusers*, <http://blog.oregonlive.com>, November 15, 2014. In reaction to this tragedy, Multnomah County adopted new court reporting and tracking processes, and Oregon recently passed a statewide law to implement a model domestic violence gun protocol.

⁷⁷ Under New Jersey law, a judge issuing a domestic violence protective order may direct the police to search and seize any firearms possessed by the defendant at any location where the judge has reasonable cause to believe the weapon is located. N.J.S.A. 2C:25-28 (j).

the specified time period.⁷⁸ California also explicitly authorizes courts to issue a warrant to search for and seize firearms from those subject to a protective order if he or she fails to surrender them.⁷⁹ In New Jersey, as part of an ex parte protective order, the judge may bar the defendant from possessing any firearm and may order the search and seizure of any firearm at any location where the judge has reasonable cause to believe the weapon is located.⁸⁰ Kentucky should consider legislation that provides search and seizure authority. It is not effective or sensible for courts to have authority to order conditions on weapons possession and fail to give them or law enforcement the ability to ensure compliance with their orders.

Violations of Protective Orders. If there is a violation of the firearms prohibition as a condition of the protective order, by statute, it may be followed up either as a contempt or a criminal prosecution. However, Rule 402 of the local rules of practice in Family Court make it mandatory that certain types of violations including firearms provisions, be treated as contempts.⁸¹ Firearms provisions are grouped with violations relating to visitation, child support, or counseling for which contempt, rather than criminal prosecution, is the mandatory remedy.

⁷⁸ Nev. Rev. Stat. Ann. § 33.033(5) (“If there is probable cause to believe that the adverse party has not surrendered, sold or transferred any firearm in the adverse party’s possession or under the adverse party’s custody or control within 24 hours after service of the order, the court may issue and deliver to any law enforcement officer a search warrant which authorizes the law enforcement officer to enter and search any place where there is probable cause to believe any firearm is located and seize the firearm.”).

⁷⁹ Cal. Penal Code § 1524(a)(11).

⁸⁰ 2016 Bill Text NJ S.B. 2483 (enacted January 9, 2017).

⁸¹ Rule 402, Rules of Court, Practice and Procedure, Commonwealth of Kentucky, Jefferson Circuit Court, Family Division, http://courts.ky.gov/Local_Rules_of_Practice/C30FAMILYRULES.pdf.

B. Domestic Violence Misdemeanors, Firearm Prohibitions and Surrender

Under federal law, 18 U.S.C. 922(g)(9), all offenders convicted of qualifying domestic violence misdemeanor crimes are permanently prohibited from possessing firearms. There is no “official use exception” for military or law enforcement personnel.⁸² Recent research suggests that the federal firearm ban for domestic violence misdemeanants has significantly reduced homicides for female intimate partners and male children.⁸³

Kentucky offenders are subject to this federal law. However, because there is no comparable state law, there is no mechanism for state law enforcement to enforce this prohibition or order surrender. The Violence Against Women Reauthorization Act of 2005 does require that to be eligible for VAWA grants, the state must certify that its judicial policies and practices include notification to domestic violence offenders of all applicable federal, state and local firearms laws.⁸⁴ However, according to those interviewed, when judges are reciting the consequences of a domestic violence conviction, several do not tell the defendants that they are not permitted to possess guns under federal law. The prohibition is

⁸² 18 USC §922(g)(9) makes it a crime for persons who have been convicted of qualifying misdemeanor crimes of domestic violence to purchase, receive, ship, transport, or possess firearms and ammunition. 18 USC §921(a)(33) defines a qualifying “misdemeanor crime of domestic violence” as an offense that is a misdemeanor under state, federal or tribal law and: 1) Has, as an element, the use or attempted use of physical force or the threatened use of a deadly weapon; 2) Is committed by a current or former spouse of the victim; parent or guardian of the victim; a parent of the victim’s child; a person who is cohabiting or has cohabited with the victim as a spouse, parent or guardian; or a person similarly situated to a spouse, parent or guardian of the victim; 3) Defendant was represented by counsel or knowingly and intelligently waived counsel; and 4) If defendant was entitled to a jury trial, the case was tried to a jury or defendant knowingly and intelligently waived the right to jury trial. Several courts have interpreted the phrase “similarly situated” to the spouse of the victim to apply where there is an intimate personal relationship and no cohabitation. *See, e.g., Eibler v. U.S. Dept. of Treasury*, 311 F. Supp.2d 618 (N.D. Ohio 2004); *U.S. v. England*, 2014 WL 4988149 (S.D. Ohio 2014); *White v. Dept. of Justice*, 328 F.3d 301 (Fed. Cir. 2003).

⁸³ Rassian, K., *Hold your fire: Did the 1996 Federal Gun Control Act expansion reduce domestic homicides?*, 35 *Journal of Policy Analysis and Management*, pp. 67 – 93 (2016).

⁸⁴ 42 U.S.C. 3796gg – 4(e).

printed on the plea form, but it is included in small print along with multiple other collateral consequences of a guilty plea. Because there is no state law that bars gun possession for domestic violence misdemeanants, there is currently no gun surrender procedure in place to remove guns from those convicted of these crimes.

Coordination with Federal Law Enforcement. In the absence of a corresponding state law, local law enforcement and prosecutors could work with federal law enforcement (ATF and FBI) and prosecutors (U.S. Attorney's Office) to coordinate and develop a protocol for referrals to federal authorities when there are potential federal gun law violations.

Federal authorities typically are not aggressive in this area. Nationally, the number of federal prosecutions under the federal domestic violence firearms laws are low; for example, according to a study in The New York Times, in 2012 prosecutors filed fewer than 50 cases under section 922 (g)(8).⁸⁵ While there likely are a number of reasons for this, the fact is that misdemeanor crimes and protective orders typically come from state courts; gun possession in violation of an order or a state conviction is most likely to come to the attention of state, rather than federal, authorities. A critical step in the process is coordination between state and federal law enforcement, particularly when state laws do not mirror the federal firearm bans.

There currently is some cooperation between state and federal authorities in Jefferson County on an ad hoc basis; for example, when a violation of a protective order involves use of a gun, the state prosecutors may refer the case to the U.S. Attorney's office to review for prosecution. However, this does not seem to be routine. Several years ago, a federal

⁸⁵ Michael Luo, *In Some States, Gun Rights Trump Orders of Protection*, The New York Times, March 17, 2013.

program, Project Backfire, existed in Jefferson County for this type of more formalized federal-state cooperation in gun cases, though not limited to domestic violence.⁸⁶ Though no longer under the aegis of a federal program, representatives from the LMPD, the ATF, the U.S. Attorney's Office, the County Attorney's and Commonwealth's Attorney's Offices do still meet on a regular basis to review gun arrests, share information and to determine the best venue for case adjudication. The relevant partners should work together to see if they can use such a process to put more focus on domestic violence cases and prioritize referrals for federal prosecutions under both 922 (g)(8) and (g)(9).

C. Gun Seizure at the Scene of a Domestic Violence Arrest

Under state law, officers responding at the scene of a domestic violence incident may seize a weapon when it is evidence because of its involvement in the incident; however, they are not explicitly empowered to seize firearms for other reasons, such as public safety concerns.

Some jurisdictions have expanded law enforcement's authority to seize weapons at a crime scene. For example, Indiana permits an officer to seize a firearm if the officer has probable cause that a domestic violence crime occurred, the weapon is in plain view, and the officer has a reasonable belief *either* that the firearm was an instrumentality of the domestic violence crime, *or* exposes the victim to an immediate risk of serious bodily injury."⁸⁷ In Maryland, an officer may remove firearms from the scene of a domestic violence incident if

⁸⁶ McKay Chauvin, *Project Backfire: The Beginning of the End of Gun Crime in Kentucky*, United States Attorneys' Bulletin, January 2002, at 36.

⁸⁷ Burns Ind. Code Ann. 35-33-1-1.5(b) – (c) (emphasis added).

s/he “has probable cause to believe that an act of domestic violence has occurred,” and “the law enforcement officer has observed the firearm on the scene during the response.”⁸⁸

The legislature should consider a law that provides police with authority to remove a weapon in plain view at the scene of a domestic violence arrest when officers believe that it is a danger to the victim or the public, even where the weapon was not used in the crime.

D. Gun Searches and Seizures for Domestic Violence Offenders on Probation and Parole

Kentucky Division of Probation and Parole policy permits an officer to conduct warrantless searches and seizures at offender homes, if there is reasonable suspicion to believe that the offender is in possession of contraband in violation of the conditions of his supervision.⁸⁹ “Contraband” is defined as “an article or thing that an offender under the jurisdiction of Probation or Parole is prohibited from obtaining, possessing, or exercising control over.”⁹⁰ Under “Information for Offenders” on the agency’s website, there is notification of warrantless search and seizures based on reasonable suspicion of illegal drugs, alcohol or “other contraband”, though there is no specific mention of firearms that may be prohibited. On the same page, there is notice that convicted felons may not purchase or possess firearms. However, there is no notification that offenders will be subject to

⁸⁸ Md. Code, Family Law, 4-511. There is a process for the defendant to repossess the firearm after the proceeding on the alleged domestic violence is concluded, if he is not otherwise ordered to surrender the firearm. *Id.*

⁸⁹ Kentucky Department of Corrections, Policies and Procedures, Policy 27-16-01, Search, Seizure, and Processing of Evidence.

⁹⁰ *Id.*

warrantless reasonable suspicion searches for firearms; nor is there any mention of federal domestic violence firearms laws.⁹¹

The Court or Parole Board does have the power to issue special conditions, including specific limitations for domestic violence offenders, such as a prohibition on firearms for probationers convicted of domestic violence misdemeanors. However, it is not clear how frequently these special conditions are imposed in domestic violence cases, and whether firearms searches based on reasonable suspicion are regularly conducted.

In its notice provisions, the Division of Probation and Parole should list firearms as items that may be prohibited as “contraband” and subject to a reasonable suspicion search. Further, when firearms are not already prohibited (e.g., for felons), the Division should recommend firearm prohibitions as special conditions for domestic violence offenders put on Probation or Parole. Whenever firearms are prohibited, the Division should aggressively utilize reasonable suspicion searches for these weapons. The Division also should consider the possibility of obtaining offender consent to these searches, which would not require reasonable suspicion. Finally, possession of firearms by these offenders will often be a violation of federal law. As with state law enforcement and prosecutors, the Division should work with federal law enforcement when offenders under their supervision are in violation of the federal domestic violence firearms laws.

⁹¹ <https://corrections.ky.gov/depts/Probation%20and%20Parole/Pages/InformationforOffenders.aspx>.

E. Other Relevant Firearms Laws in Kentucky

There are two other Kentucky firearms laws that may be useful tools in domestic violence law enforcement and enhancing victim safety. Under KRS 237.095, when an agency having the responsibility of entering domestic violence records into LINK receives notice that a person barred from purchasing a firearm under the federal law, 18 U.S.C. 922(g)(8) (person subject to a qualifying protective order barred from purchase or possession of firearm while order is in effect), has purchased or attempted to purchase a firearm, the agency “shall notify” the court where the domestic violence order was issued, and the law enforcement agencies that have jurisdiction where the order was issued and in the county of the victim’s residence if different from where the order was issued. Further, when a law enforcement agency as designated above receives this notice, it “shall make reasonable efforts to ensure that the petitioner who obtained the domestic violence order is notified that the respondent has purchased or attempted to purchase a firearm.”⁹²

In Jefferson County, the Sheriff is the arm of law enforcement responsible for the LINK entry, and so is the agency required to notify the court and appropriate law enforcement if a respondent barred under Section 922 (g)(8) purchases or attempts to purchase a gun. By the Local Rules of Family Court 402, discussed above, the Family Court judge is assigned the role of handling a violation of a firearm condition on its contempt docket.⁹³ According to those interviewed, the Sheriff (or sometimes the FBI) does notify the Family Court in this circumstance. The Family Court Clerk then notifies the judge that issued the DVO. The judge

⁹² KRS 237.095.

⁹³ Local Rules of Family Court, Rule 402 (B) (“Alleged violations of Domestic Violence Orders pertaining to visitation, child support, counseling, or *firearms provisions* shall be initiated through the Jefferson Family Court and scheduled for contempt hearings on the appropriate the Jefferson Family Court docket.”) (emphasis added).

has the discretion as to how to proceed; judges may act on their inherent authority to enforce the orders and either schedule a show cause date, which would require the respondent to appear and show cause why he should not be held in contempt of court or issue a bench warrant to arrest the respondent for violation of the order. Based on my interviews, it appeared that some judges do follow up in this way, but it was unclear whether this was the routine process of all of the Family Court judges.

It is also not completely clear how the victim notification portion of KRS 237.095 is implemented. KRS 237.100 appears to amplify or update the victim notification portion of KRS 237.095. KRS 237.100 states that “upon receipt of notice that a person barred from purchasing a firearm under 18 U.S.C. sec. 922(g)(8) has purchased or attempted to purchase a firearm, the Justice and Public Safety Cabinet shall make a reasonable effort to provide notice to the petitioner who obtained the domestic violence order, that the respondent to the order has attempted to purchase a firearm.” The law also states that the Cabinet may contract with a private entity in order to provide notification, and the notification shall be limited to petitioners who have “provided the Justice and Public Safety Cabinet or the entity with a request for notification.”⁹⁴ CWF has reported that it does not receive these notifications and is not aware of this protocol. There does not seem to be much information available on if or how frequently this notification occurs.

A second law, KRS 527.090, makes it a criminal offense to knowingly solicit a licensed dealer or private seller of firearms to transfer a firearm under circumstances which the person knows would violate either state or federal law; it is also a crime to knowingly provide to a

⁹⁴ KRS 237.100.

licensed dealer or private seller of firearms what the person knows to be materially false information with intent to deceive the dealer or seller about the legality of a firearm transfer. Violation of this statute is a class D felony.⁹⁵

Nationally, from November 30, 1998 to July 31, 2013, the two federal domestic violence firearms prohibitions made up 14% of rejected federal firearms transfers.⁹⁶ KRS 527.090 provides an avenue for state prosecution of a defendant who is barred under federal domestic violence firearms laws from purchasing a firearm, but who attempts to do so by providing false information on the background check form.⁹⁷ State prosecutors have on some occasions brought charges under this statute. Again, this requires coordination of federal and state law enforcement, so that state prosecutors are aware of the attempted illegal transfer and can move forward with this charge.

F. Additional Suggestions for Removal of Firearms from Abusers

Extreme Risk Protective Orders. As of July 2018, 13 states have created a separate type of protective order, known as an Extreme Risk Protective Order (ERPO), or “Red Flag” law, that is designed to temporarily prohibit a person from purchasing or possessing a firearm if he or she is a danger to him/herself or others. These laws authorize law enforcement and sometimes family members to file petitions for the orders. Though these laws have existed in a few states since the late 1990s, the February 2018 mass shooting in Parkland, Florida spurred states to enact this legislation. In addition to helping to prevent mass shootings, the

⁹⁵ KRS 527.090.

⁹⁶ *Federal Denials, Reasons Why the NICS Section Denies, November 30, 1998 – July 31, 2013*, <http://www.fbi.gov/about-us/cjis/nics/reports/federal-denials-083113.pdf>.

⁹⁷ It is also a federal crime to lie on a gun background check form, but it is rarely prosecuted federally unless it involves large scale fraudulent gun purchases.

ERPOs may provide an avenue for law enforcement to remove weapons from abusers in states which do not have domestic violence firearms laws equivalent to the federal prohibitions. As with other protective orders, final ERPOs can only be issued after the subject has due process protections of notice and an opportunity to be heard. Such legislation was filed in Kentucky earlier this year but was not brought up in committee and did not receive a vote. There has been bipartisan support in many states enacting the law, and Kentucky should reconsider such an order.

Model Firearms Protocols in Domestic Violence Cases. Without new legislation, Louisville Metro can increase effectiveness and enforcement of existing laws through the implementation of a firearm protocol for domestic violence cases. There are several model protocols available that cover a range of topics, including the surrender orders and conditions, the mechanisms for surrender, storage, and return where appropriate, and procedures for monitoring respondent/defendant compliance with these orders.⁹⁸

Several elements are common to any effective protocol: clear firearm surrender procedures and deadlines for the firearm surrender, typically between 24 – 72 hours; a court compliance date when the defendant/respondent must file an affidavit or return to court to prove that he has surrendered any prohibited guns in his possession; sanctions for failure to

⁹⁸ See, e.g., A Klein, *Enforcing DV Firearms Prohibitions: A Report on Promising Practices*, Office on Violence Against Women & National Center for Full Faith and Credit, 2006, http://www.bwjp.org/assets/documents/pdfs/enforcing_domestic_violence_firearm_prohibitions.pdf; Domestic Violence and Firearms: A Model Protocol, Rhode Island Coalition Against Domestic Violence, 2011, <http://www.ricadv.org/en/343-legislative-achievements/204-firearms-report-2011>; see [Firearm Removal/Retrieval in Cases of Domestic Violence \(Prosecutors Against Gun Violence & The Consortium for a Risk-Based Firearm Policy, February 2016\) \(reviewing promising practices nationwide\)](#). The National Domestic Violence and Firearms Resource Center has a variety of helpful resources on its website to assist communities develop stronger gun prevention strategies in domestic violence cases. See <http://www.preventdvgunviolence.org/resources.html>.

file the affidavit or appear for the compliance date; clear storage procedures; a detailed procedure before return of firearms to owners, including proof of legal ownership;⁹⁹ coordination with federal authorities when there is a suspected violation of federal firearm laws or federal domestic violence/stalking laws; development of forms used by courts and law enforcement in firearm seizure and surrender. Protocols can also review different scenarios in which a firearm is determined to be present and clarify police procedure that is authorized under either state or federal law (e.g., response to a domestic violence incident, seizures pursuant to protective order, seizures when there is no current protective order and firearm was not used or threatened to be used).

The development of such a protocol in Jefferson County must be cognizant of KRS 65.870, which prohibits local governments from enacting local firearms control ordinances.¹⁰⁰ Though this should be examined carefully, the development of an effective protocol does not have to entail new regulation, which is the focus of the statute. Rather, it can be a way to increase coordination and enforcement of existing law. Work on a firearms protocol requires commitment from several diverse entities. All of the involved parties, including the Courts, Sheriff's Office, LMPD, ATF, and federal and state prosecutors should work together to

⁹⁹ Officials in Miami-Dade County have noted that under their protocol, most of the surrendered firearms are never reclaimed; they believe that the fact that a respondent must prove that he legally owned the firearm prior to surrender is a significant barrier for some; he must also attest that he is not subject to any other firearm prohibition. Klein and Klein, *Abetting Batterers* pp. 178-179. Victims are also notified if a firearm can be legally returned. *Id.* at 179.

¹⁰⁰ KRS 65.870 states that "no existing or future city, county . . . [or] consolidated local government . . . may occupy any part of the field of regulation of the manufacture, sale, purchase, taxation, transfer, ownership, possession, carrying, storage, or transportation of firearms" KRS 65.870 (1). The statute refers to bans on executive or legislative action in this area, but does not include judicial orders or actions. KRS 65.870 (2). Another section of KRS 65.870 states that its provisions shall not apply where a statute specifically authorizes or directs an agency or person from the local government to regulate firearms. KRS 65.870(7).

develop a protocol that is appropriate for Jefferson County and consistent with state and federal law.

Recommendations

- **The AOC protective order form should be changed to add a check box specifically for the condition of firearm prohibition, so that judges do not have to affirmatively stamp this on the form.**
- **Train judges on the particular dangers of military and police involved domestic violence and the need for firearm prohibition conditions in orders involving them.**
- **Consider amending current law to make gun prohibition for qualifying protective orders mandatory and expand to include those who are subject to IPOs/T-IPOs.**
- **Institute a protocol for the judges at protective order hearings to ask both the petitioner and the respondent if the respondent possesses guns. Advocates can also ensure that petitioners are asked about this prior to filing for an order so that this information can be inserted into the petition for an EPO/T-IPO.**
- **Explore legislation to provide courts with the authority to order search and seizure of prohibited weapons not voluntarily surrendered.**
- **Explore legislation to explicitly bring state firearm laws into conformity with federal law, to ban firearm possession for those who are convicted of a domestic violence misdemeanor.**
- **Explore legislation to authorize law enforcement to remove weapons at the scene of a domestic violence arrest when they are in plain view and pose a threat to victim or public safety.**

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- **Police, prosecutors and the Division of Probation and Parole should coordinate with federal law enforcement to empower enforcement of the federal domestic violence gun laws.**
 - **The Division of Probation and Parole should specify to domestic violence offenders that firearms may be prohibited “contraband” and subject to warrantless reasonable suspicion searches.**
 - **The Division of Probation and Parole and the Courts should review the process for imposing special conditions on domestic violence offenders and for exercising the right to search and seize weapons based on reasonable suspicion.**
 - **Enforce existing law that permits the Family Court to hold the subject of a DVO in contempt for attempting to purchase a firearm under KRS 237.095.**
 - **Investigate victim notification that is authorized under KRS 237.100 when a respondent attempts to purchase a firearm to determine if this has been implemented and is regularly utilized.**
 - **Enforce existing laws that permit state prosecution for KRS 527.090, providing false information in a federal background check for firearms purchase.**
 - **Explore Extreme Risk Protective Order legislation.**
 - **Investigate model gun surrender protocols from other jurisdictions and implement a protocol in Louisville Metro that is consistent with state and federal law.**

VII. The Criminal Justice Process

A. Louisville Metro Police Department

LMPD officers' handling of domestic violence incidents is guided both by statute and Department operating procedures. Under KRS 209A.120, KRS 403.785 and KRS 456.090, law enforcement officers are required to complete a JC-3 report on all actual or suspected cases of "domestic violence and abuse", and "dating violence and abuse." The definitions for qualifying relationships track those for obtaining DVOs and IPOs: family members, including children; unmarried couples; and people in a dating relationship. "Domestic violence and abuse" and "dating violence and abuse" are defined as: physical injury, serious physical injury, stalking, sexual assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault occurring between persons meeting the relationship definition. The JC-3 is used to document any information or injuries related to the "domestic violence and abuse" or "dating violence and abuse."

Law enforcement has additional responsibilities in these cases, including: remaining at the location of the domestic violence and abuse so long as the officer reasonably suspects there is danger to the physical safety of individuals present without the presence of a law enforcement officer; assisting the victim in obtaining medical treatment; and advising the victim immediately of the rights available to her. Officers will offer to transport victims to the DVIC to obtain protective orders or to assist the victim in obtaining an arrest warrant if the officer is unable to arrest the perpetrator; the officer may apply for an arrest warrant when there is probable cause to arrest.

Officers are also directed to check the LINK/NCIC system for outstanding warrants or orders of protection and to verify that service has been made; take photos of evidence of physical injury or property damage, and when weapons are involved, collect them as

evidence. Officers shall arrest for domestic violence offenses when there is probable cause to believe the perpetrator committed the offense and he is still on scene; if the perpetrator has fled, they shall canvass the immediate area and/or obtain information from witnesses regarding his location. Officers shall arrest if there is probable cause to believe a defendant has violated the conditions of a valid and served protective order.

Domestic violence calls to police have been increasing over the past several years. From 2005 through 2009, the average number of calls annually to LMPD for domestic violence service was 31,417, though in 2009 the number jumped to 33,988. This upward trend has continued; the average number of these calls annually from 2010 through 2017 was 37,169. Though the annual number has gone up and down during this period, its overall average is significantly higher (an 18.3% increase) than the 2005 – 2009 period. Similarly, the average number of JC-3 reports from 2005 – 2009 was 3,716; though the number jumped around a bit from 2010 – 2017, the trend was higher, with an average of 4,508 reports per year during this period, a 21.3% increase.

The LMPD has achieved several improvements in domestic violence response since the 1998 Assessment and the 2005 Snapshot were completed.

Development of LMPD Domestic Violence Unit. In 2011, LMPD created a Domestic Violence Unit (DV Unit) under a single commander, containing specialized domestic violence detectives. In 2012, the DV Unit became part of the Special Victims Unit in the Major Crimes Division, which also includes the Sex Crimes Squad and the Crimes Against Seniors Squad. The DV Unit has two sergeants and 15 detectives. Originally division domestic violence detectives were based at the patrol divisions and felony domestic violence detectives were located downtown. Recently, the detectives have all been located downtown and merged into

one physical unit which is designed to increase cohesion and consistency. Moreover, all 15 detectives are investigating both felony and misdemeanor cases, and there is an on-call rotation, so they are available overnight.

Patrol officers who make on-scene arrests in domestic violence are responsible for all follow-up and prosecution; if the officer makes a felony arrest, s/he may contact the DV Unit for assistance in documenting the investigation. The DV detectives conduct follow up investigations when an arrest is not made by patrol officers; assist patrol with investigations; and investigate felony domestic violence assaults. The development of a specialized, cohesive detective unit focusing its attention solely on domestic violence crime is a significant achievement for the LMPD.

The Lethality Assessment Program. As discussed in the section on Victim Advocacy, the Lethality Assessment Program (LAP) was implemented by LMPD in partnership with CWF in 2012. Under the program, LMPD officers at the scene of a domestic violence incident must administer a lethality screen in all cases between intimate partners where there is evidence of physical injury, to all victims who consent. From September 2012 through December 2016, there were 9,907 LAP screens conducted by LMPD officers;¹⁰¹ 70% of the screens identified the victim as at high risk. The officer then immediately connects these victims to CWF advocates through the Crisis Hotline for safety planning, shelter and other services. This collaboration has had several positive impacts, including: identification of high-risk victims that may not otherwise have connected to services and shelter; linking victims to services quickly at the scene of the incident; and increasing the partnership between patrol

¹⁰¹ As of August 2018, the total number of LAP screens conducted by LMPD officers had risen to 13,122.

officers and advocates, including greater awareness of each other's responsibilities and the assistance they can provide. The program's ultimate goal is to reduce domestic violence fatalities in the community.¹⁰²

However, there are some areas that could enhance the LMPD's response to domestic violence calls. I discuss these issues below.

Ongoing Training on Working with Domestic Violence Victims. All new LMPD officers receive twenty-four hours of training on domestic violence including: identifying injuries; completing necessary forms; and conducting practice scenarios. The LMPD DV Unit conducts much of the training, but there is also a review and interpretation of laws by the County Attorney's Office. Every two years, there is a one-hour refresher course for all officers at an annual mandated training.

However, several of those interviewed believed that there was a continuing need for training both of patrol officers and the domestic violence detectives, particularly because there has been quite a bit of turnover in staff of both these groups. Beyond more formal annual trainings, these could take the form of brief roll call trainings on specific issues on a regular basis.

¹⁰² According to the Fatality Review Committee reports, the number of domestic violence homicides spiked at 21 in 2008 and then declined on average between 2009 – 2013 (11 in 2009; 13 in 2010; 6 in 2011; 8 in 2012; 5 in 2013; average over this period is 8.6). Since 2014, the numbers have gone up and down, though the average is slightly higher than in the earlier period (13 in 2014; 7 in 2015; 12 in 2016; 6 in 2017; average over this period is 9.5). For the year 2018 through October, there have been 14 domestic violence-related homicides. There are potential claims of self-defense in three of these cases, which could reduce the total number of cases, depending on the final charging decisions of the Commonwealth's Attorney's Office. Seven of the 2018 homicides defined as domestic violence occurred in January, out of total of 10 homicides that month, a higher proportion than the 10% that is more typical. Five of the seven domestic violence homicides in January occurred in two multi-victim incidents (3 victims killed in one incident; 2 victims killed in another incident).

In addition, the training should go beyond a review of laws in the area to discuss issues such as the dynamics of abuse, and challenges faced by victims. Some participants in the victim focus group gave examples of their treatment by police; one called the police “complacent” because they think to themselves, “She’s just gonna go back.” Another related that an officer told her at the scene that she should not go back to the perpetrator; “if we leave and have to go back, you’re going to jail.” These of course are isolated anecdotes, but they demonstrate the need for all patrol officers to be trained on the dynamics of domestic violence and greater sensitivity toward victims, so that there will be a consistent response to domestic violence incidents.

Another concern reported by participants in the victim focus group was the lack of follow up if the perpetrator had fled the scene. One victim reported that police came to the scene after her abuser came to the house and violated an EPO she had; the abuser had left by the time police arrived and they told her that “if he’s gone, we can’t do anything,” that they have to “catch him in the act.” Again, while this may be an individual incident, it is important for training to emphasize that officers must follow up when the perpetrator is not present and convey to the victim that they are doing so.

Utilizing Data to Identify and Address Issues and Improve Domestic Violence

Response.

From 911 Calls to JC-3 Reports to Arrests. In the three-year period from September 2014 through September 2017, LMPD reports there were 115,290 calls to MetroSafe that were coded as “domestic trouble.” According to the LMPD, these calls resulted in 19,569 JC-3 reports, and 8,624 arrests. This means that 17% of the “domestic trouble” calls generated a JC-3 domestic violence incident report; 44% of the cases with JC-

3 reports resulted in arrest (7.5% of the original 911 “domestic trouble” calls). Looking at LMPD data for the full year of 2017, there were 36,889 domestic violence calls for service, resulting in 4,742 JC-3 reports filed, and 1,788 arrests. This means that 12.9% of the domestic violence calls resulted in a JC-3 domestic violence incident report, and 37.7% of the cases with JC-3 reports resulted in arrest (4.8% of the original 911 calls).

MetroSafe was able to provide more detailed information on the 911 calls for 2017. According to MetroSafe data, the total number of “domestic trouble” calls in 2017 was 36,923, a number similar but not identical to LMPD’s number of 36,889.¹⁰³ MetroSafe also keeps data on when a case number is requested by patrol at the scene of the 911 call, in order to open a case and write a report. Officers would have to request a case number from MetroSafe when writing a JC-3 report. MetroSafe does not capture data on whether a report is actually written or if so, what type of report it is. However, the number of requests for case numbers in “domestic trouble” calls does at least indicate a likelihood that a JC-3 report was written. According to MetroSafe, out of the 36,923 “domestic trouble” calls in 2017, there were 8,389 requests for case numbers; this number is significantly higher than 4,742, the number of JC-3 reports filed in that year, as recorded by LMPD. Using this data, the JC-3 reports would be completed only 56.5% of the time that a case number is requested.

This raises the question of why there is such a large difference between MetroSafe’s case number requests, and LMPD’s number of JC-3 reports completed. There are likely to be some cases where case numbers are requested, but JC-3 reports are not completed. This could be because no report is actually completed, or a different type of report is filed (e.g.,

¹⁰³ This general category of “domestic trouble” calls is coded as “1031” calls by MetroSafe.

police answer a “domestic trouble” call and find drugs, so that a narcotics report, rather than a JC-3 report is filed, but the original 911 call remains in the “domestic trouble” category). MetroSafe and LMPD need to explore this to determine if this is the explanation for the difference, or there is an issue with the way the 911 calls are coded, or if there is some other data collection issue to explain the discrepancy. More specifically, the two agencies should first try to determine why the total number of 911 calls in the “domestic trouble” category are not identical; according to MetroSafe, the data on how an incident is coded belongs to MetroSafe (CAD data) which LMPD is not able to change, so there should be no difference in these numbers. Second, the two agencies should compare the MetroSafe data on case numbers requested with the LMPD data on JC-3 reports completed; LMPD enters the report into I/LEADS, which is a data system that is not accessible by MetroSafe.

Even assuming that 100% of the “case number requested” number reported from MetroSafe results in JC-3 reports, according to the MetroSafe data, the percentage of 911 “domestic trouble” calls resulting in JC-3 reports would be 22.7% (8,389 out of 36,923); this is significantly higher than the 12.9% figure based on the 2017 totals in the LMPD data, but it still raises concerns that more than three-quarters of 911 “domestic trouble” calls are not resulting in a JC-3 report (or request for case number).

MetroSafe has a further breakdown of data that is helpful. MetroSafe divides the general category “domestic trouble” calls into four subcategories: “Belongings,” where police are called to help someone remove items from a home in a domestic situation; “Report Only Time Lapse,” where a past assault is reported in the call and the alleged perpetrator is now gone, or the victim is at the hospital or at the DVIC calling for a report to be made; “Trouble,” where the caller is reporting a domestic argument, but no violence; and “Violence,” where the caller is reporting violence in a domestic situation.

Clearly some of these subcategories are more likely to generate JC-3 reports than others. LMPD Standard Operating Procedure (SOP) 8.6 defines when officers must take a JC-3 report: “A JC-3 report will be completed on all actual, or suspected, cases of child abuse, adult abuse, or domestic/dating violence and abuse.”¹⁰⁴ The JC-3 must be completed by patrol whether or not the incident results in an arrest. The SOP defines “Domestic Violence and Abuse” as “physical injury, serious physical injury, stalking, sexual abuse, assault or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple.”¹⁰⁵ “Dating violence and abuse” is defined in the same way, except that the assault is occurring between “persons who are, or have been, in a dating relationship.”¹⁰⁶ Given these definitions, according to MetroSafe, it seems that a JC-3 report would be most likely in the “Violence” and “Report Only Time Lapse” subcategories.

MetroSafe was able to provide data on the number of 911 calls and the number of requests for case numbers (indicating the intent by the officer to write a report), for each of the subcategories. In 2017, of the 36,923 total 911 calls in the general “domestic trouble” category, 1,231 calls were in the “Belongings” subcategory; there were 58 requests for case

¹⁰⁴ LMPD Standard Operating Procedures 8.6.1. There has been a recent change in the law regarding the reporting of spouse abuse to the Cabinet for Health and Family Services; since 1978, there had been mandatory reporting of this abuse via the JC-3 reports. In 2017, the law mandating the reporting of spouse abuse was repealed. Under KRS 209A.120, if the JC-3 form includes information that only relates to a victim as defined in KRS 209A.020, the form shall not be forwarded to the Cabinet. Under KRS 209A.020, “victim” is limited to intimate partner relationships; it means an individual who is or has been abused by a spouse or former spouse or an intimate partner who meets the definition of a member of an unmarried couple as defined in KRS 403.720, or a member of a dating relationship as defined in KRS 456.010. Only if the JC-3 includes information on known or suspected child abuse or neglect or the abuse or neglect of an elderly or disabled adult, shall the form be forwarded to the Cabinet.

¹⁰⁵ LMPD Standard Operating Procedures 8.6.2.

¹⁰⁶ LMPD Standard Operating Procedures 8.6.2.

numbers in this subcategory. Therefore, 4.7% of the calls in “Belongings” resulted in requests for case numbers. There were 3,656 calls in the “Report Only Time Lapse” subcategory; there were 1,627 requests for case numbers, making up 44.5% of the total calls in this subcategory. There were 20,136 calls in the “Trouble” subcategory, and 2,602 requests for case numbers; therefore, 12.9% of the “Trouble” calls resulted in requests for case numbers. There were 11,900 calls in the “Violence” subcategory, and 4,102 requests for case numbers, making up 34.5% of the total calls in this subcategory. As anticipated, the higher percentages of requests for case numbers (at least an indicator of a JC-3 report being likely to be completed) came from the “Report Only Time Lapse” and “Violence” subcategories. Broken down in this way, the data show a higher percentage of JC-3 reports (or at least case numbers requested) in the subcategories that would seem most likely to have reports, than if we look at either the MetroSafe general percentage (22.7% of 911 calls in the general “domestic trouble” category result in request for case numbers) or the percentage from the LMPD data (12.9% of calls in the general “domestic trouble” category result in JC-3 reports). LMPD and MetroSafe should work together to ensure that LMPD receives the call data divided into these subcategories. This would enable LMPD to get a more refined and accurate picture of the number of JC-3 reports completed in the subcategories most likely to require a report.

However, though the percentages for the “Report Only Time Lapse” and “Violence” categories are higher, they still do not represent a majority of calls resulting in a JC-3 report. To take the “Violence” category, which by definition means that the 911 caller is reporting violence in a domestic situation, only 34.5%, or little more than a third, of the 911 calls resulted in a JC-3 report (case number requested for a report). While not all calls reporting domestic violence will be corroborated when officers are at the scene, LMPD and MetroSafe

should attempt to determine the reasons why the percentage would be at only 34.5%.¹⁰⁷ The JC-3 reports are critical in building a history of domestic violence by a particular offender and in tracking high danger households.

MetroSafe was able to pull and listen to a sample of 911 calls in the “Violence” subcategory in a recent 24-hour period; consistent with the data above, a significant percentage did not result in a request for a case number. Though this information is only anecdotal given the small sample size, MetroSafe and LMPD should work together to conduct a more formal sampling of the 911 calls in the “Violence” category and review the incident from 911 answer time to clear time. This would include listening to the 911 calls, data from MetroSafe on case numbers pulled, data from LMPD on JC-3 reports completed, and bodycam information from the scene. This would help to explain the differences between the number of “Violence” calls, case numbers requested, and completed JC-3 reports; the explanations could range from issues with the coding of the 911 calls, data collection issues, problems with the transfer of data from MetroSafe to LMPD, issues with completion of the JC-3 reports, or some combination thereof.

Further, as noted above, according to LMPD data for the period between September 2014 and September 2017, less than half of the JC-3 reports resulted in an arrest (44%) and

¹⁰⁷ MetroSafe retains data for only two years, so that 2017 was the only full year for which it could provide data on the 911 calls and case numbers requested, and the only year available to compare directly to LMPD data. MetroSafe also ran numbers for the period from 10/1/16 – 10/15/18. In that period there were 74,603 911 calls in the “domestic trouble” category, with a total of 17,042 case numbers requested. Therefore, 22.8% of the 911 calls resulted in case numbers requested, which is similar to the 2017 number of 22.7%. Of the 75,603 911 calls in this general category, 2,405 were in “Belongings;” 7,501 were in “Report Only Time Lapse.” There were 39,808 calls in “Trouble,” and 24,889 in “Violence.” The percentages of calls that resulted in case numbers, by subcategory during this period, were similar to the 2017 percentages: “Belongings:” 91 case numbers requested, or 3.8% of calls; “Report Only Time Lapse:” 3,440 case numbers requested or 45.9% of calls; “Trouble:” 5,063 case numbers requested, or 12.7% of calls; “Violence:” 8,448 case numbers requested, or 33.9% of calls.

arrests were made in only 7.5% of the 911 calls in the general category of “domestic trouble.”¹⁰⁸ While there will always be a drop between reports and arrests, the proportion of resulting arrests here, particularly in comparison to the total number of 911 “domestic trouble” calls, seems fairly low.¹⁰⁹ Many of these may be situations where there is an arrestable offense, but the perpetrator has fled the scene.¹¹⁰ At least one research study has found that those abusers who leave the scene are more dangerous than those who don’t; they are both more likely to have injured the victim, twice as likely to re-abuse their victims, and more likely to have greater criminal histories.¹¹¹

Officers do make an effort to locate the offender. As discussed above, LMPD should work to ensure that patrol officers do take all the steps necessary to aggressively search for the perpetrator, to the extent feasible. Some familiar with the process that were interviewed

¹⁰⁸ MetroSafe does not collect data on the percentage of 911 calls that result in an arrest.

¹⁰⁹ There is not national data available on the percentage of filed domestic violence reports that result in an arrest. However, one recent study using National Crime Victimization Survey data from 2006 -- 2015 found that the offender was arrested during the initial police response in 23% of the nonfatal domestic violence victimizations that were reported to police (arrest rate was 25% for intimate partners, and 20% for other domestic relationships (e.g., parent, child, sibling or other relatives except spouses). An additional 10% of reported nonfatal domestic violence victimizations resulted in an arrest by police during a period following up on the case (12% for intimate partner victimizations and 6% for other domestic relationships). Brian A. Reaves, *Police Response to Domestic Violence, 2006 – 2015*, Special Report, Bureau of Justice Statistics, U.S. Department of Justice, May 2017.

¹¹⁰ Data from 25 police departments in four states (Connecticut, Tennessee, Virginia, and Idaho) showed that slightly over 40% of abusers flee before police arrive on the scene. While police arrested over 80% of those at the scene, they arrested fewer than 50% of those who fled. Hirschel, D., et al., *Intimate Partner Violence Offenders Who Flee the Scene Are Likely to Avoid Arrest*, Domestic Violence Report, Vol 20 (December/January 2015); see also Dunford, F.W., *System-initiated warrants for suspects of misdemeanor domestic assault: A pilot study*, 7 Justice Quarterly 631 – 653 (1990) (study finding that 40% to 50% of suspects absent when the police respond to domestic violence calls).

¹¹¹ Hirschel, D., et al., *Intimate Partner Violence Offenders Who Flee the Scene Are Likely to Avoid Arrest*, Domestic Violence Report, Vol 20 (December/January 2015); see discussion in Andrew R. Klein and Jessica L. Klein, *Abetting Batterers: What Police, Prosecutors, and Courts Aren’t Doing to Protect America’s Women* (2016).

noted that it was also a resource issue; patrol officers do not have extended periods of time to undertake this type of search and must move on to the next call.

If a perpetrator cannot be found, the case is referred to the DV Unit. Having a specialized unit to focus on these cases is a real benefit. However, some of those interviewed noted that the DV Unit also was understaffed and that there were not enough resources to investigate all of these incidents on a timely basis. As discussed throughout this report, staff turnover is an issue in most government agencies (and many other LMPD investigative units) due to the concerns about potential changes in the state pension system.¹¹² LMPD reports that detectives obtain arrest warrants in virtually 100% of these cases and make every effort to locate these defendants on a timely basis. Again, LMPD should continue to monitor this issue and determine whether there is a gap in the system that is resulting in lowered arrest rates.

Female Arrests. LMPD data show that a fairly high proportion of defendants arrested for domestic violence crimes are female. For example, from September 2014 through September 2017, 22.4% of defendants arrested for Assault in the 4th degree with domestic violence injury were female; 22.2% of defendants arrested for Assault in the 4th degree with domestic violence, no visible injury were female; 13.2% of defendants arrested for violations of EPOs/DVOs were females. Further, LMPD does not track the number of dual arrests (arrest of both parties at the scene), so it is not known what proportion, if any, of the females arrests occur in situations where police arrest both parties to a dispute. Though there

¹¹² LMPD has hired hundreds of recruits to replace many of the retirees, but as in any agency, it takes several months for new hires to be trained and functioning effectively.

is training on this topic, it may be that LMPD patrol officers need further training in determining the primary physical aggressor in a domestic violence incident.

However, it is also possible that some of the arrests in this category are child abuse by a parent, a crime in which women may be more likely to be perpetrators than in intimate partner violence. If this is the case, LMPD needs to break out its data differently in order to capture just intimate partner violence numbers and thus determine if there is an issue with over-arrest of females in intimate partner disputes.

Targeting of Recidivists. The Fatality Review Committee reports note that a significant percentage of perpetrators who killed intimate partners had histories of domestic violence offenses. Domestic violence is a high recidivism offense. Moreover, those that have recidivated in the past are most likely to re-offend in the future and escalate in severity.¹¹³ LMPD should explore collecting aggregate rates of recidivism, as well as improving their ability to track and access individual recidivism rates.

The first step is to collect and track data on recidivism. The JC-3 reports and the ODARA assessment when fully implemented, should make this data quite accessible. LMPD can then use this information to create “hot lists” by patrol division. For example, in New York

¹¹³ Several studies indicate that between one-fifth to one-third of domestic violence offenders commit new domestic violence offenses, with many re-offending within six months of the original offense. McCormick, Cohen & Plecas, *Reducing Recidivism in Domestic Violence Cases*, BC Centre for Social Responsibility, at 1, June 2011 (reviewing research literature). Some studies put the recidivism rate higher. Carla Smith Stover, *Domestic Violence Research: What Have We Learned and Where Do We Go From Here?*, 20 J. Interpersonal Violence 448, 450 (2005) (2005 survey of then-available research that gives an overall estimated recidivism rate range of between 40% and 80% “when victims are followed longitudinally and interviewed directly.”). Nearly two-thirds of domestic violence re-offending occurred within six months of the previous offense, and slightly more than one third of the re-offending occurred within three months of the original offense. See McCormick, *supra*, citing Gondolf, *A 30-month follow-up of court-referred batterers in four cities*, 44 International Journal of Offender Therapy and Comparative Criminology 111 – 128 (2000). As the Supreme Court has stated, “[d]omestic violence often escalates in severity over time, and the presence of a firearm increases the likelihood that it will escalate to homicide.” *United States v. Castleman*, 134 S.Ct. 1405, 1408 (2014).

City, each police precinct maintains a “high propensity” list of approximately 12 households because they are believed to have the greatest risk of future violence.¹¹⁴ Patrol officers could have this information available when going on domestic violence calls, so that they would immediately know the history and increased danger in the household.

Further, police could use the “hot list” to reach out further to these high-risk victims. In the New York program, the police conduct home visits to check on victims. During the visits, they work on safety plans with the victims, check for evidence of further abuse, and when an abuser is barred from the home, check to see if he has returned.¹¹⁵ Police in the New York program rely not just on repeat offenders to create the high propensity lists; they use a computer program to scan domestic violence incident reports for specific words, such as “kill,” “suicide” and “alcohol” to assist in identifying high risk cases. They also consider victim fear levels and officers’ own instincts. Moreover, the chief of the prosecutor’s domestic violence unit in Queens, NY views the home visits as a method to reduce the number of defendants returning to the home: “The victim is telling the defendant, ‘The officers keep coming by to ask if you’re here, checking on you,’ ” he said. “That’s got to be a deterrent.”¹¹⁶

Beyond assisting in identifying high risk victims and particularly dangerous offenders, tracking recidivism also allows a law enforcement agency to evaluate its response to domestic violence. This is not the police’s job alone. In Louisville Metro, neither the Commonwealth’s Attorney, nor the County Attorney, nor the courts had a mechanism to track

¹¹⁴ Joseph Goldstein, *Police Take on Family Violence to Avert Deaths*, New York Times, July 24, 2013.

¹¹⁵ *Id.*

¹¹⁶ Scott E. Kessler, quoted in Goldstein, *Police Take on Family Violence to Avert Deaths*.

recidivism, and it did not seem to be a figure easily accessible to any organization interviewed. These figures are critical to evaluating a system-wide response to domestic violence.

Again, recidivism is high in domestic violence, and it would not be expected that re-offending could be eliminated. In fact, recidivism rates may appear to rise in the short term with an increased response to domestic violence because more offenders or failures to comply come to the system's attention. However, the goal should be: 1) to lower recidivism rates by identifying and addressing points in the process where a particular response is not effective; and 2) to target high-recidivist offenders for closer monitoring and greater outreach to victims. Further, as one research study put it, "domestic violence offenders who recidivated against the same victim tended to do so fairly quickly following the initial incident suggesting that the immediate weeks after the call for police assistance are a particularly important time for police and victims services to work with victims of domestic violence."¹¹⁷

Offender-Focused Domestic Violence Initiative. The Louisville Metro community may want to explore an offender-focused initiative, such as the one that was developed in High Point, North Carolina, to address chronic abusers and deter first time offenders from re-offending. "Focused deterrence" is a successful crime reduction strategy that was first developed in the 1990s to address gang gun violence. The concept is to target specific criminal conduct committed by a small number of repeat offenders. In 2009, High Point

¹¹⁷ McCormick, Cohen & Plecas, *Reducing Recidivism in Domestic Violence Cases*, BC Centre for Social Responsibility, at 9. The chief of the domestic violence unit in the Queens District Attorney's office, Scott E. Kessler, estimated that three-quarters of domestic violence defendants violate an order of protection within 72 hours, through phone calls or text messages or by returning to the residence. See Goldstein, *Police Take on Family Violence to Avert Deaths*.

decided to adapt this technique to domestic violence crime, focusing first on chronic offenders, and expanding in 2012 to first time offenders.¹¹⁸

Under the Initiative, the police department developed a four-tiered system to classify all known domestic violence offenders, based on their prior domestic violence arrests, as well as other criminal history. Offenders with at least three domestic violence arrests were classified as Tier A, the highest level. Those with two domestic violence arrests were classified as Tier B; those with one domestic violence arrest were put in Tier C. Tier D, the lowest level, was applied to those who had not been arrested for domestic violence, but police had responded to their homes for domestic violence incidents. The Initiative involves escalating responses to each tier, including personalized warnings from police and meetings with offenders. From Tier C upward, offenders were put into a police alert system, which officers could access when responding to an incident, and police would flag these offenders' files to alert prosecutors and judges. Police and prosecutors make clear to Tier B offenders that if they commit another domestic violence crime, they will be facing high bails, trials rather than plea bargains, and sentencing for jail or prison time, as well as possible federal prosecution if they violated any of the federal domestic violence or firearms crimes. The Initiative also operates by using Tier A offenders and the serious dispositions of their cases as examples and warnings to offenders in a lower category.

This kind of program involves collaboration among a number of criminal justice partners. The High Point Initiative includes a task force made up of multiple agencies which meet frequently to discuss concerns raised about specific offenders and discuss strategies

¹¹⁸ Andre L. Taylor, High Point police domestic violence initiate gaining national attention, www.greensboro.com, August 4, 2018.

for addressing them. The Initiative appears to have lowered recidivism rates for domestic violence offenders as well as reduced the number of domestic violence homicides. The recidivism rate for the program is about 17%, which is lower than typical rates with these offenders.¹¹⁹ Prior to the program, there were three to five domestic violence homicides in the County every year, and from 2004 to 2008, 17 of the 52 homicides were domestic violence-related.¹²⁰ From the start of the program in 2009 to 2013, there was only one domestic violence homicide, out of 16 total homicides in the County; from 2013 to May 2015, there were none.¹²¹ Other police departments have adopted High Point's model and the Office on Violence Against Women of the U.S. Department of Justice is spearheading a demonstration project to replicate the model in three additional cities.¹²² This type of offender-focused initiative can however raise concerns about victim safety, which would need to be addressed, and which require strong coordination and involvement of advocates.

These offender-focused programs can complement a LAP program, which focuses primarily on identifying high-risk victims and connecting them to services. Some jurisdictions, such as Cleveland, Ohio, have been implementing a program that combines the LAP

¹¹⁹ Andre L. Taylor, *High Point police domestic violence initiative gaining national attention*, www.greensboro.com, August 4, 2018. The article notes that according to a 2014 report by local police and university, the typical recidivism rate for this population was 20% to 34%.

¹²⁰ John Buntin, *How High Point, N.C., Solved Its Domestic Violence Problem*, www.governing.com, March 2016; Marty A. Sumner, *High Point, NC Focuses on Offenders to Deter Domestic Violence*, July 2015, <https://www.bwjp.org/resource-center/resource-results/north-carolina-offender-focused-deterrence.html>.

¹²¹ Marty A. Sumner, *High Point, NC Focuses on Offenders to Deter Domestic Violence*, July 2015, <https://www.bwjp.org/resource-center/resource-results/north-carolina-offender-focused-deterrence.html>.

¹²² Press Release, *Justice Department Awards More Than \$3.2 Million to Reduce Domestic Violence Homicides*, June 14, 2016, <https://www.justice.gov/opa/pr/justice-department-awards-more-32-million-reduce-domestic-violence-homicides> (\$1.6 million awarded for this Initiative).

program with a focus on high-risk abusers through monitoring by a high risk team composed of police detectives, prosecutors, advocates, probation and parole officers and the Sheriff's office.¹²³ As discussed in the Victim Services section, it appears that DVIC staff is already starting to put together the beginnings of a high risk team to focus on high risk abusers. This development is a promising start to monitor this population of offenders and Louisville Metro may want to further research the High Point Initiative, to examine whether a version of this approach is appropriate for the community.

B. Pre-Trial Services and Court Release Decisions

Pre-Trial Services (PTS) must make a release recommendation to the court within 24 hours of the defendant being in custody. PTS field staff are trained to identify domestic violence-related arrests at the time of booking, even if the charge is not a specific "domestic violence" offense. PTS must inform the clerk's office of any conditions placed on defendants charged with domestic violence within 24 hours, and the clerks must enter this into the KYCourtsII database.

No Contact Orders as Conditions of Release. Under KRS 431.064, when a defendant has been arrested for assault, a sexual offense, or violation of a protective order, PTS must determine if he is a threat to the alleged victim or other family or household member and if he is reasonably likely to appear in court. The judge must make findings concerning this determination before releasing such a defendant and may impose conditions of release or bail to protect the domestic violence victim and ensure the defendant's appearance at court.

¹²³ Cleveland Police Pilot DV Lethality Program Quickly Overwhelmed, Nat'l Bull on DV Prevention, Vol. 24 (April 2018).

These conditions can include an order enjoining the defendant from contacting the victim, from threatening to commit or committing acts of domestic violence, and an order prohibiting the defendant from using or possessing a firearm; as well as any other order required to protect the safety of the victim and ensure the appearance of the defendant in court.

Under KRS 431.064, the clerk must enter any conditions into the computer system within 24 hours and it shall be accessible to any agency with access to LINK (Law Information Network of Kentucky), so that the conditions will be available to law enforcement and any violations can be charged as a crime. Violation of any condition of an order issued by the judge is a Class A misdemeanor.¹²⁴

However, according to some interviewed, the courts are not treating these no contact orders like protective orders and are not entering them into LINK. As a result, though the police can arrest for a violation of a no contact order on probable cause, if the order is not in LINK or the NCIC, the police have to call a clerk for a manual check as to whether this condition was still valid, before they can arrest.

This issue was raised in the 2005 Snapshot and in some subsequent Fatality Review Committee reports. Court administrators, PTS and other interested partners, such as the County Attorney's Office should meet to address this issue.

Protective Orders in Criminal Court. A further issue with the no contact orders is that, as pre-trial conditions of release, they expire upon the conclusion of the criminal case. In addition, upon conviction, there can be a no contact order issued as a condition of Probation

¹²⁴ KRS 431.064.

or Conditional Discharge, but a violation of such conditions is not a crime, and the prosecution would have to move the court to revoke the defendant's probation or conditionally discharged time.

System partners may want to explore legislation to authorize the issuance of a DVO or IPO, assuming the defendant and victim meet the relationship definitions, both at the time of pre-trial conditions, and at the time of conviction; this would ensure that the order does not expire at the conclusion of the criminal case and any violation would be a crime. Many jurisdictions have created similar criminal protective orders.

Implementation of ODARA. In July 2013, PTS began using the Public Safety Assessment-Court (PSA-Court) statewide, a data-driven risk assessment to inform decisions about defendant release. Though preliminary assessments demonstrate that the tool is accurate for most cases, it does not apply to domestic violence cases. In July 2017, LMPD and PTS began implementation of the Ontario Domestic Assault Risk Assessment (ODARA), beginning with the LMPD DV Unit and then expanding to patrol officers in the Third Division.

ODARA is an evidence-based, validated tool specifically designed to assess the dangerousness of offenders in domestic violence cases. It indicates the likelihood that a person who has already committed a domestic violence assault will do so again in the future. ODARA includes 13 specific questions relating to domestic violence and non-domestic violence criminal history; threats by the offender during the incident; presence of children in the relationship; whether the victim was pregnant; offender substance abuse; and victim fears and barriers to support. It is designed to assess the risk of domestic violence recidivism, and can predict time until a new assault, as well as the number and severity of new incidents.

ODARA can help judges as well as other system partners determine which offenders may be high risk.

ODARA is being utilized for defendants arrested on domestic violence-related charges involving either an act of violence that involved physical contact with the victim, or a credible threat of death with a weapon made in the presence of the victim. LMPD officers making the domestic violence arrest complete part of the assessment in the field, and PTS completes part based on a review of criminal history records. The findings from the assessment are then made available to the court during arraignment for bail and pre-trial release decisions.

The plan is to expand ODARA's use to all LMPD patrol divisions. According to some involved in the process, implementation of the ODARA program seems to be stalled, though this may change in the near future. Currently, it has been rolled out to the DV detectives and to patrol officers in the Third Division. However, the program is structured so that it is the arresting officer who conducts the assessment. DV detectives rarely are the arresting officers, so they have little opportunity to utilize ODARA. With patrol officers in only one division using the assessment, there are only five to 10 cases a month that include the ODARA.¹²⁵

PTS staff has been trained on the assessment tool and does appear to be completing the PTS portion when they see an ODARA form. However, given the relative rarity of cases that include ODARA, it is not clear whether judges are routinely utilizing it when they are making release decisions. There was training when the ODARA was first implemented which

¹²⁵ Due to the high officer turnover referenced earlier, there may also be gaps in police filling out the initial part of the assessment.

was open to judges; at least according to some interviewed, no judges actually attended the training.

The Kentucky State Police are in charge of the JC-3 form for reporting domestic violence incidents. The LMPD has been working with the State Police on changes to the form that would incorporate the ODARA questions, as well as the LAP lethality assessment, so that officers could fill out domestic violence-related information in just one place. The revision of the JC-3 form has been taking several months, but as of this writing, is supposed to be imminent according to LMPD personnel. The LMPD recognizes the need for more extensive training on ODARA. It has determined that it makes more sense to wait until the new JC-3 form is unveiled. It will then conduct trainings through roll calls as the use of the instrument is expanded throughout all patrol divisions.

It was reported to me by those familiar with the process that bail and release decisions in domestic violence cases vary tremendously by judge. Judges are not bound by the risk determinations and PTS recommendations, and though most judges typically follow these, there are judges who do not. There will also need to be judicial trainings on ODARA, which could increase consistency in bail decisions in domestic violence cases.

Data on Release, Appearance and Re-Arrest Rates. From July 1, 2014 through June 30, 2017, PTS identified 9,483 domestic violence-related cases, out of a total 125,921 cases handled by PTS in Jefferson County during that period.¹²⁶ This makes domestic violence-

¹²⁶ “Domestic violence-related cases” includes not only cases in which “domestic violence” was in the charge itself (e.g. Assault 4th degree Domestic Violence), but also charges where domestic violence is indicated by the citation narrative and/or a JC-3, even if “domestic violence” is not in the charge itself (e.g., a disorderly conduct where the citation narrative indicates it involved an argument between defendant and spouse). The “domestic-charged cases” are thus a subset of the “domestic violence-related cases;” For example, in Jefferson County the number of “domestic-charged cases” was 2,018, while the number of “domestic violence-related cases” was 9,483 in this period. Further, cases are categorized by

related cases 7.5% of the total caseload. This is a higher percentage than the statewide numbers; excluding Jefferson County, domestic violence-related cases (30,529) make up 5.6% of the total caseload of 549,537 statewide.

Release, appearance rate and re-arrest rate data is only available for the smaller subset of domestic violence-related cases in which the crime itself contained the label domestic (e.g., Assault 4th Degree Domestic Violence); in Jefferson County, the number of “domestic-charged cases” was 2,018 during this period. Of the 2,018 cases in this category, 1,075 were released (53% release rate), 221 failed to appear (79% appearance rate) and 183 were re-arrested pending trial (83% no new arrest rate). The figures for the broader category of domestic violence-related cases is not routinely produced or easily accessible; however, PTS statisticians believe that the numbers would be similar to the numbers for the narrower category.¹²⁷

Figures provided from the AOC for a slightly different time period did produce some comparable data: from October 1, 2014 through September 30, 2017, there were 9,827 cases that were domestic violence-related, including violations of protective orders; of these, 5,633 defendants were released pretrial, a release rate of 57.3%, a bit higher than the release rate in the narrower domestic-charged cases category. A total of 7,267 of the 9,827

their highest charge, so there may be cases with domestic charges, which also contain a violent A or B felony, such as a drug crime, and so they would not be captured in the “domestic –charged cases” but would still be included in the “domestic violence-related cases.” For all of these reasons, PTS statisticians believe that the larger number, the “domestic violence-related cases” is a more accurate measure of the cases involving domestic violence that are handled by PTS.

¹²⁷ The statewide figures, not including Jefferson County, have 7,253 “domestic-charged cases” in the same period; of those cases, there was a 61% release rate, an 86% appearance rate, and a 81% no new arrest rate.

cases were misdemeanors; of the 7,267, 4656 defendants were released, a 64.1% release rate.

C. Prosecution of Domestic Violence Cases by the Jefferson County Attorney's Office and the Commonwealth's Attorney's Office

The County Attorney's Office Domestic Violence Unit. The Jefferson County Attorney's Office prosecutes criminal cases in Jefferson County District Court. In 1991, the Office formed a specialized Domestic Violence Unit (DV Unit), which includes 10 prosecutors when fully staffed. Prosecutors are trained on the dynamics of domestic violence and the goal is to practice evidence-based prosecution. The County Attorney's Domestic Violence Unit's responsibilities include a range of cases beyond intimate partner violence. It handles cases that meet the statutory definition of domestic violence and or dating violence, including all cases that meet the definition of family member; it also handles all sexual assault cases regardless of relationship, and all stalking cases whether or not the parties are in a domestic relationship. Further, it handles all cases involving child victims under 12 where the child is the primary victim.

Data on Filings, Dismissals and Dispositions. The County Attorney's Office handled 3,779 new domestic violence cases in 2017. The number of new cases annually has ranged between 3,500 and 4,600 since 2009. Since 2013, the number of new cases has been below 4,000 annually. Reviewing more detailed statistics from the Office for 2016, there were 3,697 new domestic violence cases initiated by the County Attorney's Office. There were 3,974 domestic violence dispositions that year; with 2,992 pleas and a conviction rate of 88%. The most common offense charged was Assault 4th degree with injury, with 2,130 charges of this offense in 2016. There were 822 charges for violation of an EPO/DVO; and 550 Wanton Endangerment charges.

As discussed in the section on Data Collection, the County Attorney's Office does not appear to capture dismissal rates on cases that the Office decides not to prosecute once they have been filed in court. Additionally, methods used by the AOC to capture data make it difficult to track both dismissal rates and dispositions in criminal cases. Further complicating this effort is the fact that much of the dismissal data is categorized by charges, rather than by cases, so that it is difficult to determine when all the charges in one case, i.e., the case itself, was dismissed, as opposed to some subset of charges in the case. Therefore, disposition and dismissal rates should be treated with caution.

But to give one example, in the period between 10/1/14 – 9/30/17, according to AOC data, there were 5,899 charges of Assault 4th degree domestic violence minor injury disposed in District Court. Of these charges, 31 went to trial; 5,866 did not. Of the 5,866 charges, 2,604 resulted in guilty pleas; 1,471 of these charges were dismissed; 71 received diversion sentences; 242 charges were indicted; and in 105 of these charges, the defendant was a fugitive. Not counting some charges that were dismissed at the trial stage, and taking only the 1,471 dismissed that did not go to trial, this is a 24.9% dismissal rate. This in itself is not a particularly high dismissal rate, but because these numbers are based on charges, it is difficult to provide an accurate measure of cases that are dropped and completely dismissed.

During the same three-year time period (10/1/2014 – 9/30/2017), according to AOC data, there were 2,621 charges of violations of a Kentucky EPO or DVO disposed in District Court. Of these, six were disposed by trial, and the remaining 2,615 charges were not disposed by trial; 1,405 of the charges resulted in a guilty plea; 210 led to an indictment or information; and 873 of the charges were dismissed. The 873 dismissals out of a total of 2,621 charges is a dismissal rate of 33.3%. Again, for domestic violence cases, this is not a

particularly high dismissal rate.¹²⁸ However, because the data count charges, it is difficult to provide an accurate measure of cases that are dismissed.

The County Attorney's Office and the Courts should refine their data collection methods to address these issues. At present, it is difficult to glean much meaning from the dismissal rates provided.

The DVIC Prosecutors and Link to Court Prosecutors. As discussed in the section on Victim Advocacy, the County Attorney's Office prosecutors located at the DVIC provide assistance to victims seeking to bring criminal complaints. In 2016, the DVIC prosecutors provided services to 4,460 domestic violence victims. In 2015, the DVIC prosecutors served 4,665 victims. However, much like the issue of transferring a victim from the DVIC advocate to the County Attorney court advocate, there can be issues in the transfer of cases between prosecutors. The DVIC prosecutors focus on intake, but do not handle matters in court; if a criminal case is filed, the case is transferred to a County Attorney from the DV Unit. However, they may not connect with the victim until there is a court appearance in the case. The County Attorney may want to consider methods to smooth this transition for victims, including extending vertical prosecution to the intake stage. County Attorneys could staff the DVIC and then continue with cases if they go forward to criminal prosecution.

¹²⁸ Unfortunately, high dismissal rates in domestic violence cases are quite common. For example, a study of these rates in Marion County, Indiana, found that of the cases where case progression was known, no charges were filed in 31% of domestic violence cases that reached the prosecutor's office in 2012. Of those cases where charges were filed, 55% were dismissed. Matt Nowlin, *Reported Domestic Violence Victims Declining, but Most Cases are Dropped or Dismissed*, SAVI, The Polis Center, Indiana University School of Liberal Arts, March 23, 2018, <http://savi.org/2018/03/23/reported-domestic-violence-victims-declining-but-most-cases-are-dropped-or-dismissed/>. An investigation conducted in Iowa of cases filed between 2010 - 2016 found that 40% of all domestic violence charges in the state were dismissed. Kathy A. Bolten, *Thousands of domestic abusers are getting away with it despite Iowa's get-tough laws*, Des Moines Register, June 24, 2017.

The Commonwealth's Attorney's Special Victims Unit. The Commonwealth's Attorney's Special Victims Unit (SVU) is staffed by six prosecutors, three advocates and three paralegals. The SVU handles domestic violence and child abuse cases. Looking only at domestic violence cases, the Commonwealth's Attorney's SVU processed 334 cases in 2017, which includes new case referrals (including those that are indicted, declined for prosecution, or remanded to District Court) as well as cases that are closed out. This includes 193 new indictments, 26 cases declined for prosecution and 114 cases that were closed out during this year. Of the 114 cases closed in 2017, there were seven trials in domestic violence cases, which resulted in six guilty verdicts.¹²⁹ The total number of cases processed also includes one dismissal by the Grand Jury.¹³⁰

The total number of 334 cases processed is up from numbers in 2015 (297) and 2016 (257); however, the 2015 and 2016 numbers were substantially lower than previous years (2011: 490; 2012: 477; 2013: 396; 2014: 409). The Commonwealth's Attorney's Office changed to a new case management system in 2016 and due to some issues with data migration from the old to new systems, data from 2015 and 2016 may not accurately reflect the numbers of cases processed. Given this situation, it is somewhat difficult to analyze felony domestic violence case processing, including trends in the numbers of cases handled as felonies. The Office believes that they have cured the case categorization issue in the new system going forward. However, the data also need to be broken down further to separate new from ongoing cases, and tracking what happens to cases as they move through the

¹²⁹ There were also 11 trials in child sex abuse cases prosecuted by the SVU in 2017.

¹³⁰ The Commonwealth's Attorney's Office believes that the dismissal by Grand Jury number is low, but all that the new data system has been able to capture.

system. What percent are indicted? What percent are declined for prosecution? What percent are remanded to the District Court? Without this type of tracking, the Office cannot easily evaluate case outcomes.

There were 122 domestic violence cases closed by the Commonwealth's Attorney's Office in 2016. Of these, 106 were resolved by guilty pleas, 11 cases were dismissed, and five cases went to trial (4.1% of the disposed cases). Of the five cases that went to trial, 60% resulted in a guilty verdict and 40% resulted in a finding of not guilty. In 2015, there were 161 cases closed. Ten cases were dismissed entirely; 144 were resolved by guilty pleas and seven cases went to trial (4.3% of the disposed cases); of the seven cases, 85.7% resulted in a guilty verdict and 14.3% resulted in a finding of not guilty.

Data on pleas is captured by individual charges rather than cases, and so does not correlate to the case numbers above. In 2016, for example, there were 557 individual charges resolved/closed out, 374 by guilty plea (67.1%) and 142 counts (25.4%) were dismissed; of the guilty pleas, 294 were pleas to the original charge (78.6%) and 79 were pleas to a lesser charge (21.1%).

Of those defendants who were sentenced in 2016, 49.1% received additional jail or prison time; 50.9% were placed on some form of release. The numbers for the past few years seem fairly consistent in this area. In 2014, 54.5% of sentenced defendants were sentenced to additional jail or prison time, while 45.5% were placed on some form of release; in 2015, 48.3% of sentenced defendants were sentenced to additional jail or prison time; 51.7% were placed on some form of release.

According to AOC data, during the period from 10/1/2014 – 9/30/17, there were 651 cases (with a total of 1,097 charges) in the Circuit Court that were labelled as domestic

violence. This domestic violence label in court system data includes child abuse cases; there appears to be no easy way to disaggregate the intimate partner violence cases from the child abuse cases. The greatest number of charges were assaults of different degrees, followed by violation of a Kentucky EPO or DVO. There were 20 domestic violence murder cases and 28 domestic violence attempted murder cases; 19 domestic violence rape cases (either rape in the first degree or rape in the first degree with serious physical injury).

Collaboration between the County Attorney's and the Commonwealth's Attorney's

Specialized Units. The 1998 Community Assessment noted that, though “most national models recognize vertical prosecution as the most effective method of prosecution in domestic violence cases,” because prosecution in Jefferson County is separated between the County Attorney and the Commonwealth’s Attorney, complete vertical prosecution of cases was not possible. The 1998 report further stated that “[t]here appears to be little coordination between the Commonwealth’s Attorney’s Office and the County Attorney’s Office on domestic violence cases,” and recommended that the prosecutors work together on procedures for vertical prosecution.¹³¹

Though there continues not to be complete vertical prosecution because of the divide in case handling between the two prosecutors’ offices, there has been increased collaboration between the County and the Commonwealth’s Attorneys’ specialized units handling domestic violence cases. For example, each morning the Chief of the

¹³¹ See KRS 15.725(3), which authorizes the Commonwealth’s Attorney and the County Attorney to “enter into agreements to share or redistribute prosecutorial duties in the Circuit and District Courts. Any prosecutorial or related duty assigned by statute to the Commonwealth’s attorney may be performed by the county attorney, and any prosecutorial or related duty assigned by statute to the county attorney may be performed by the Commonwealth’s attorney pursuant to these agreements.”

Commonwealth's Attorney's SVU communicates with the Chief of the County Attorney's DV Unit either via phone or text, or by physically making the rounds of the District Court conference rooms to discuss any potential felony cases that should be flagged for indictment, which should go to the Rocket Docket,¹³² and to discuss any other case information.

However, even greater collaboration, as well as coordination of data would be helpful. For example, it would be helpful to both offices to know the types of cases that are most often elevated to felonies, and of those, which do not ultimately result in felony convictions. Further, there are specific domestic violence charges that require the collaboration of the County and Commonwealth's Attorneys' Offices; under KRS 508.032, if a person commits a third offense of assault in the fourth degree (a class A misdemeanor) within five years, and the relationship between perpetrator and victim meets the definition of family member or member of an unmarried couple under KRS 403.720, the person may be convicted of a Class D felony.

This type of repeat offender enhancement is an important tool in domestic violence cases, but it appears to be underutilized. Based on AOC data, in the period between 10/1/14 – 9/30/17, there were only 122 cases that included this charge. Under the statute, the third incident does not itself have to be felonious or any more serious behavior than the prior assault 4th offenses, but the two prosecutors' offices appear to have differing perspectives on what is necessary as a practical matter to secure a felony conviction. The County Attorney's

¹³² The Rocket Docket is a program of the Commonwealth's Attorney's Office to expedite cases through the judicial system. It is not specific to domestic violence cases, but these cases are eligible if appropriate. The Assistant Commonwealth's Attorneys work collaboratively with the Assistant County Attorneys in making referrals to the program. The two prosecutors' offices confer on cases and if appropriate, the Assistant Commonwealth's Attorney will offer a felony plea. If the defendant agrees to the plea, the case is quickly transferred to the Circuit Court for acceptance of the plea.

Office believes that the Commonwealth's Attorney's Office requires the third offense to be serious in order to move forward on a felony charge under KRS 508.032. The Commonwealth's Attorney's Office says that it does not require the third offense to be serious, but only that there be good documentation of injury. Further, there can be issues if the prior assaults do not have the domestic violence label and so it is more difficult to establish the relationship definition. Some of those interviewed reported their concern that repeat offenders are getting charges amended down, so that they would not qualify for the third within five years felony charge.

Data on Domestic Violence Trials in Both District and Circuit Court. The number of domestic violence trials in District Court in the three years from 10/1/2014 – 9/30/17 was 48 (41 bench trials and seven jury trials). In 36 of the bench trials and all seven of the jury trials, the lead charge was assault; in the remaining five bench trials, the lead charge was violation of an EPO. According to AOC data, there were 9,122 total dispositions of domestic violence offenses in District Court during that period, so that 48 dispositions by trial is .53% of all domestic violence dispositions. Though typically trials in urban misdemeanor courts tend to be greatly outnumbered by pleas, this percentage is still quite low.

In Circuit Court during the same three-year time period (10/1/2014 – 9/30/2017), there were 24 trials (all jury trial). Broken down by lead charge, there were eight murder cases; one rape; one sodomy; three spousal sex abuse; two abuse; and nine assault cases. According to AOC data, there were 660 total dispositions of domestic violence offenses in Circuit Court during this period, so that 24 dispositions by trial is 3.6% of all dispositions. This number also is low for felony trials.

It can be particularly important for prosecutors to pursue trials in domestic violence cases, to make clear both to perpetrators and to defense attorneys that cases will not be bargained down routinely and that pressure against victims will not eliminate the chance of trial. There likely are a number of reasons for the lack of trials.

First, turnover in the both prosecutors' offices is an issue. This is due to high student loan debt, budget constraints that mean salaries have not been able to keep pace with the going rate, and most recently, a crisis in the state pension plan, which makes unclear whether pensions of current employees will be fully funded. For new employees, the defined pension plan has been eliminated. There are fewer career prosecutors and thus fewer who are experienced trial attorneys.

Another reason may be the lack of a specialized domestic violence docket. Where domestic violence cases are treated like any others, they are bargained like typical cases, particularly for misdemeanors. But domestic cases are not like typical misdemeanors, and frequently indicate far more dangerous behavior.

Further, it is common in prosecutors' offices for there to be a culture that measures success by conviction rates; if this is what is viewed as the only measure of success, it can lead prosecutors to be cautious about bringing cases to trial that they fear they may not win. But in domestic violence cases, a longer-term success strategy is necessary. If prosecutors have enough evidence to legitimately proceed with a trial, they should feel encouraged to bring these cases to trial. They may not win all of them, but they will be doing several beneficial things: a) training prosecutors in trying domestic violence cases, often without victim participation; b) educating juries about domestic violence; c) making clear to defendants that cases will not disappear or be pled down if the victim is not involved, and; d)

encouraging police officers to gather more comprehensive evidence so that a case can proceed to trial without victim participation.

Ultimately, there likely will be more convictions with this method as well as stronger plea deals, when defendants recognize the real alternative of going to trial. It is critical that both misdemeanor and felony domestic violence prosecutors feel supported in proceeding to trials, even where their conviction rates initially may not be as high as in other types of cases.

D. Focus on Domestic Violence Crime: Strangulation, Stalking, and Violations of Protective Orders

Strangulation. Strangulation is both prevalent in domestic violence relationships and also an indicator of future lethality.¹³³ Locally, the 2009-2010 Fatality Review Committee Report found that there was a history of strangulation in 64% of the fatality cases studied, and that strangulation was the cause of death in 36% of the cases. According to data gathered by the Office for Women, 44.57% of petitioners seeking an EPO reported that there was a history of strangulation or attempted strangulation by the respondent.

However, the grading of traditional criminal codes typically does not reflect the seriousness of strangulation. Because most strangulation injuries are not easily visible and often are internal, it can be difficult to prove the serious bodily injury element present in felony assault statutes. In recognition of the research on strangulation, in just a few years, over 40

¹³³ According to the Pennsylvania Coalition Against Domestic Violence, the odds of becoming a homicide victim increase by 750% for women who previously have been strangled by their partners. http://www.pcadv.org/Learn-More/Domestic-Violence-Topics/Strangulation/#SpotID_16308. More than 100 adults were charged in Allegheny County with strangulation in the first three months of a new Pennsylvania strangulation law. See Liz Navratil, *More than 100 charged under new Pennsylvania strangulation law*, Pittsburgh Post-Gazette, April 10, 2017; Glass, N., et al. *Non-Fatal Strangulation Is an Important Risk Factor for Homicide of Women*, Journal of Emergency Medicine, Vol. 34 (2008) (odds of attempted homicide increased about seven-fold for women strangled by their partner).

states have passed laws that create a separate crime of strangulation, make strangulation a type of serious assault, and/or make strangulation a felony; these have proven to be very effective in domestic violence prosecutions.

Kentucky is among a diminishing number of states without such laws, and is now an outlier in the nation in failing to make this charge available.¹³⁴ Currently in Kentucky, without a separate strangulation law, a defendant who strangles the victim can be charged with simple assault, misdemeanor wanton endangerment, aggravated assault, which requires proof of serious bodily injury, or felony wanton endangerment which requires substantial danger of death or serious bodily injury. It can be difficult to prove the serious bodily injury component for the felonies, despite the fact that strangulation is very serious and a red flag for domestic violence lethality. There have been several attempts to get strangulation legislation enacted in Kentucky, and local prosecutors and other community partners have been actively involved in these efforts. The Louisville Metro domestic violence community is already focused on this issue, and passage of strangulation laws should be one of its priority goals.

In the absence of legislation, system partners still can take measures to better identify and address the increased lethality risk that accompanies strangulation. LMPD officers do have a strangulation worksheet to help guide them in asking a victim questions related to strangulation injuries; however, this is a separate form that it not easy for patrol officers to access and it appears that it is not frequently used. Currently, the police do not track the number of domestic violence arrests that involve a strangulation injury. It would be helpful for

¹³⁴ According to Hope for Alliance International, there are only three states without strangulation statutes or pending legislation. Those three states are Kentucky, Ohio, and South Carolina.

LMPD to capture this number, and to make it easier for patrol officers to document strangulation injuries; this would both help identify victims who may be at most serious risk, and also demonstrate the need for strangulation legislation.¹³⁵

Further, police could prioritize evidence collection in strangulation cases. For example, in New York, domestic violence officers are required to return to see a victim a day or two after a strangulation arrest, to photograph bruises that may not have been visible at the arrest scene.¹³⁶ In addition, where they identify a strangulation injury, a protocol to encourage medical treatment for the victim would be helpful, in order to document results such as vision or hearing loss which can improve the chances of successful prosecution.

There have been strangulation trainings in the past several years. Both prosecutors' offices have been involved in training law enforcement, medical school residents and EMS personnel. In 2010 and 2011, several District and Family Court judges were trained on strangulation as a lethality factor. The community is fortunate to have as a resource Dr. William Smock, Clinical Professor of Emergency Medicine at the University of Louisville School of Medicine, who is an internationally recognized expert in strangulation. In addition, the University of Louisville Hospital houses SAFE Services, whose nurses have advanced training in forensic nursing care, including evaluation of strangulation injuries. Trainings on strangulation need to continue on an ongoing basis, particularly given the high turnover in

¹³⁵ Connecticut tracked strangulation identified in domestic violence lethality assessments conducted by police from October 2012 through September 1, 2017; it found that victims had been strangled in 60% of cases. See *Connecticut Lethality Assessments Go Statewide*, Nat'l Bull. on Domestic Violence Prevention, Vol. 24, January 2018.

¹³⁶ Joseph Goldstein, *Police Take on Family Violence to Avert Deaths*, New York Times, July 24, 2013.

police officers, prosecutors and judges. Judicial trainings should include the Circuit, Family and District Courts.

Stalking. Intimate partner offenders who engage in stalking are significantly more likely to kill their intimate partners than those who did not.¹³⁷ Further, victims of near lethal or lethal violence are significantly more likely to have been stalked than victims of non-lethal intimate partner violence.¹³⁸ There are multiple studies indicating that stalking in domestic violence cases indicates high risk.¹³⁹ Cyberstalking and the use of increasingly sophisticated technology is a growing problem. There are apps on the market that enable abusers not only to track their victims through GPS, but also to access their texts, and record them on video.¹⁴⁰ Abusers can use smart home technology to remotely control internet-connected devices, such as thermostats, lights, security cameras, locks, and other devices to monitor, alarm, and exert power over their victims.¹⁴¹ Victims in the focus group echoed this; they noted that

¹³⁷ Campbell, J.C., et al., *Risk Factors for femicide in abusive relationships: results from a multisite case control study*, 93 Am. J. Public Health, pp. 1069 – 1097 (2003).

¹³⁸ McFarlane, J. et al, *Intimate partner stalking and femicide: Urgent implications for women’s safety*, 20 Behavioral Sciences & the Law, pp. 51- 68 (2002).

¹³⁹ See, e.g., McFarlane, J et al., *Stalking and Intimate Partner Femicide*, Homicide Studies, Vol. 3, 300 – 16 (November 1999) (abusers stalked 76% of femicide victims and 85% of attempted femicide victims were stalked in the year prior to the attempted murders); Logan, T., and Walker, R., *Civil Protective Order Outcomes: Violations and Perceptions of Effectiveness*, Journal of Interpersonal Violence, Vol. 24, 675 – 692 (2009) (abusers who stalk victims who have obtained protective orders against them are particularly dangerous; women stalked by partners after obtaining protective orders against them are four times more likely to experience physical assaults, almost ten times more likely to experience sexual assaults, and almost five times more likely to be injured than women with protective orders who are not stalked); Logan, T. and Walker, R. *Civil Protection Order Effectiveness: Justice or Just a Piece of Paper?*, Violence and Victims, vol. 25, 332 – 348 (2010).

¹⁴⁰ See Jennifer Valentino-DeVries, *Hundreds of Apps Can Empower Stalkers to Track Their Victims*, New York Times, May 19, 2018. (capabilities range from basic location tracking to harvesting texts and secretly recording video; laws and law enforcement struggling to keep up with technology for use in domestic violence cases).

¹⁴¹ Nellie Bowles, *Thermostats, Locks and Lights: Digital tools of Domestic Abuse*, The New York Times, June 23, 2018.

stalking, as well as threats from their abusers through electronic means, was common, but it did not seem to them that these activities were charged or prosecuted.

These victims' experiences seem consistent with the data. Currently there are few stalking prosecutions in Louisville Metro. Under Kentucky law, there are two possible stalking charges: stalking in the first degree (KRS 508.140) which is a felony, and stalking in the second degree, which is a class A misdemeanor (KRS 508.150). The 2011-2012 Fatality Review Committee Report noted the low number of stalking arrests and charges and the need to increase awareness of stalking and encourage use of the law whenever evidence supported the charge. The Report noted that in 2011, there were 32 felony stalking cases and 45 misdemeanor stalking cases; in 2012, the numbers were 34 felony and 28 misdemeanor stalking cases in court. There are still only a small number of charges, and the latest numbers show a decline in charging. In 2017, there were 16 felony stalking charges and 10 misdemeanor stalking charges.¹⁴²

The felony stalking law requires proof that the defendant intentionally stalked and made an explicit or implicit threat with the intent to place the person in reasonable fear of sexual contact, serious physical injury or death. There are certain other requirements; the defendant must have a protective order or criminal complaint involving the same victim pending, a criminal history against the same victim, or have committed the acts while possessing a deadly weapon. The misdemeanor stalking law requires the same level of intent to stalk and intent to place person in reasonable fear; for the misdemeanor, the fear must be

¹⁴² The low numbers of stalking arrests and charges is a national problem. For example, one recent study of Houston, Texas found that though there were 3,756 stalking calls to police over an eight year period, police wrote incident reports on only 66 incidents and there were only 12 arrests for stalking. See Brady, P.Q. et al, *The dark figure of stalking: Examining law enforcement response*, 30 J. Interpersonal Violence 3149-3173 (2017).

of sexual contact, death or physical injury (as opposed to serious physical injury for the felony), and the defendant does not have to meet the prior history or weapon conditions listed in the felony statute. Under the definitions for this section, KRS 508.130, to “stalk” requires an intentional “course of conduct” which is defined as two or more incidents “evidencing continuity of purpose.” The course of conduct must be one that “seriously alarms, annoys, intimidates or harasses” the targeted person. Though there is no separate cyberstalking charge, internet, email and text threats, for example, do count as conduct under the stalking charges (KRS 508.130 (2)).¹⁴³ There is also a lower level harassing communications charge that requires intent to intimidate or annoy, and communication (including electronic) in a manner which causes annoyance or alarm; however, this is a Class B misdemeanor.¹⁴⁴

It is not clear why the numbers are low. Prosecutors feel that law enforcement may need additional training on collecting evidence to meet the “course of conduct” element. Police, however, feel that the most difficult element to prove is the victim’s state of mind, and that prosecutors may be reluctant to pursue cases without victim statements as evidence of this. They feel that officers’ bodycam footage can be helpful in establishing the victim’s state of mind. Prosecutors could try some stalking cases with this bodycam evidence to see how juries react, and see what success they have. Both prosecutors’ offices and the LMPD should discuss further how to address these issues to increase stalking arrests and prosecutions.

¹⁴³ Under 508.130(2), "Course of conduct" is defined as “a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. One (1) or more of these acts may include the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device.”

¹⁴⁴ KRS 525.080.

There have been trainings on the topic in recent years, including a LMPD-hosted regional seminar in July 2015 for police, prosecutors and advocates on identification of stalking behavior, and the use of technology in stalking and stalking prosecution. There was also a Stalking Awareness seminar hosted by the Office for Women and Home of the Innocents. However, given high turnover in all of these agencies, it would be beneficial to conduct another training, focused particularly on evidence collection and use of evidence such as bodycams to establish elements of the crime.¹⁴⁵

Violations of Protective Orders. Under current Kentucky law, protective order violations may be treated as contempt charges brought in Family Court (or in District Court for violations of IPOs)¹⁴⁶ or as misdemeanor criminal offenses brought in District Court. These remedies are mutually exclusive, though if the conduct violating the order is itself a crime, this may be prosecuted as an offense separate from the violation.¹⁴⁷ Though the statutes provide a choice of contempt or criminal charges, the Local Rules of Court for the Jefferson Circuit Court, Family Division, provide guidance on the remedies for particular types of violations:

Rule 402 – Violation of domestic violence orders:

- (A) Without limiting a party’s choice of remedies, alleged violations of Domestic Violence Orders should be referred to the Jefferson District Court for possible prosecution, except as set forth in 402 (B).
- (B) Alleged violations of Domestic Violence Orders pertaining to visitation, child support, counseling, or firearms provisions shall be initiated through the

¹⁴⁵ Klein & Klein, *Abetting Batterers* 129 (2016) (providing example of body cam videos that are capturing “compelling evidence in domestic violence incidents”). The authors describe a Minnesota case where police recorded a woman whispering into the camera; she had been strangled and was spitting blood as she whispered; the camera also captured the suspect continuing to threaten to beat her. However, soon after the police arrival, the victim refused to be photographed or give a statement. With the camera evidence, the police charged the suspect with felony strangulation. *Id.*

¹⁴⁶ KRS 456.180.

¹⁴⁷ KRS 403.763.

Jefferson Family Court and scheduled for contempt hearings on the appropriate Jefferson Family Court docket.¹⁴⁸

Under these rules, the choice of contempt, rather than criminal prosecution for certain types of violations, including firearms provisions, appears to be mandatory. In practice, several of those interviewed believed that the Family Court was not consistent in holding contempt hearings.

There is currently no option for a violation of a protective order to be charged as a felony. Some states do provide for felony violations, either based on certain conduct, or if the violation is a repeat protective order violation or domestic violence offense, recognizing that repeated flouting of a court order or history of criminal domestic violence is an indicator of serious danger.¹⁴⁹

This is something that may be desirable to explore; even though the types of violations that would be considered felonies would very likely be separate crimes, it can be far more efficient to charge a protective order violation, which often will not require any victim testimony. Kentucky has a law recognizing repeat domestic violence offenses; KRS 508.032 permits conviction of a felony if a person commits a third offense of assault in the fourth degree (a class A misdemeanor) within five years, and the relationship between perpetrator and victim meets the definition of family member or member of an unmarried couple under KRS 403.720. However, this only applies to assaults and further, the statute needs to be

¹⁴⁸ Rules of Court, Practice and Procedure, Commonwealth of Kentucky, Jefferson Circuit Court, Family Division, http://courts.ky.gov/Local_Rules_of_Practice/C30FAMILYRULES.pdf.

¹⁴⁹ See, e.g., 720 ILCS-5/12-3.4(d); Ark. 9-15-207; Ct. 53a-223; NYPL 215.51; Neb. Rev. Stat. 42-924; Minn. Stat. Ann. 518B.01.

updated to include those who meet the definition for an IPO under KRS 456.010. A separate felony offense for a repeat protective order violation would apply more broadly and be easier to charge and prove.

Kentucky law does permit a protective order to be amended to require the respondent to be subject to GPS monitoring, if there has been a substantial violation of a DVO, and the court determines that the use of GPS would increase the petitioner's safety. This is a positive but limited step. It requires an order violation before GPS monitoring can be ordered; this must be at the request of the petitioner, and it can be removed upon request of the respondent if he has not violated the order and he has been subject to the monitoring for three months.¹⁵⁰ Judges should have the ability to order GPS monitoring as a condition of the original order for high risk respondents.

E. Criminal Case Processing in District Court

There are 17 District Court judges and currently, criminal domestic violence cases are heard in 10 courtrooms before different judges; these 10 courtrooms are arranged in five two-judge "pods." Judges rotate every twelve months. Because criminal cases are assigned to a particular courtroom (on the basis of defendant's name) not to particular judges, there may be multiple judges who handle the same case throughout the court process. Because the County Attorney's Office has a specialized domestic violence unit, but the domestic violence cases are spread throughout the criminal calendars, the 10 domestic violence prosecutors (when fully staffed) must cover all of these calendars every day; two domestic violence

¹⁵⁰ One article reported that as of August 2018, the GPS monitoring portion of the law had been used in only two cases in Kentucky in the last three years. Jack Brammer, *New domestic violence law not being utilized*, Lexington Herald-Leader, August 19, 2018 (once in Boone County in 2015 and once in Daviess County in 2017).

prosecutors and an advocate from the County Attorney's Office are assigned to each of the five pods. Therefore, the County Attorney's domestic violence prosecutors and the victim advocates are dispersed throughout the multiple courtrooms in different physical locations. Their cases are mixed in with multiple other types of cases, including low level traffic offenses, and are heard on an ad hoc basis whenever the Assistant County Attorney can confer with the defense lawyer assigned to the case, the defendant has appeared, and the victim has been contacted.

This is further complicated by the fact that the public defenders do not specialize by case type, and handle both felonies and misdemeanors. Public defenders are also assigned to pods, but because they also have cases at the Circuit Court, they go to the Circuit Court calendars at the start of the day before arriving at the District Court pods in mid to late morning. This means that District Court calendars often do not really start moving until then. There can also be delay while prosecutors locate and meet with victims and consult with the Commonwealth Attorney's Office on cases that might be charged as felonies.

While this is not ideal for any type of case, for domestic violence it means that victims may be sitting for hours waiting for a case, and risk contact and potential intimidation or confrontation by a defendant. Under the County Attorney's Office's current procedures, victims are subpoenaed to appear at the defendant's first pre-trial appearance after arraignment, so that they can be consulted about any plea. Therefore, victims and defendants may be wandering and hanging around the hallway outside the courtrooms, looking to connect with attorneys (or advocates for the victims) while others wait in the courtrooms. The prosecutors typically are based in the conference rooms adjacent to the courtrooms, where they interview victims, confer with defense attorneys, and consult with the Commonwealth's Attorney on any felony cases. They go into courtrooms to alert the court

when they are ready to hear a case. Defense attorneys may be jumping between different courtrooms where they have cases or waiting for unpredictable periods before their cases are called.

In observing several District Court dockets before different judges, it seemed that there were often appearances in which little happened and there were frequent continuances, for example, because a defendant had not yet gotten an attorney, or the attorney was not present because he or she was supposed to be in multiple places at the same time, or the attorney was not ready to move forward. There were also continuances because defendants could not be found, or the court did not have adequate information about the defendant's status, or the defendant was not present because he was in custody for another charge and had not been produced. This is not good practice for any type of case. It means that there may be multiple wasted trips to the court by both victims and defendants, as well as attorneys. In domestic violence cases, delay can be particularly dangerous and damaging. Multiple appearances mean that domestic violence victims will be discouraged from participating and it provides more time for victims to be intimidated or cajoled by a defendant. In one case, a victim had come to court four times for appearances; the judge commented to me "nothing has happened. Will she lose interest?"

There were also post-disposition cases where there had been bench warrants issued repeatedly when an offender failed to complete a BIP or another program and did not appear at court. For example, in one case I observed, an offender had been picked up two previous times on bench warrants for failure to complete a program and to appear in court. Each time, a different judge had released him without any sanction, other than re-referring him to the program and telling him "not to do it again." At this appearance, the defendant again had not appeared, and the judge issued a third bench warrant. Due to the limited time available for a

case, the mix of domestic violence with other types of cases, and the repeated continuances and delays, another judge noted that “I don’t have a sense of having an impact.”

In my observation of District Court criminal calendars, the net result was a harried, at times chaotic atmosphere. There was nothing that indicated that domestic violence cases, typically the most serious type of cases heard, were receiving any particular focus in the courtroom. And, as demonstrated by requiring victims to be at a defendant’s first appearance, the focus of the attorneys was on making a plea deal. The setting was typical of many urban misdemeanor courts. In the context of domestic violence, this was an inefficient, unfocused, non-victim friendly environment, with the potential of trivializing the seriousness of these cases and increasing the potential for danger.

Because so many different judges handle domestic violence cases, and even the same case can be handled by multiple judges, there was little chance of consistency in the treatment of these cases. Further, since domestic violence was not a significant portion of any individual judge’s caseload, there was not tremendous incentive to invest in rethinking the process for handling these cases.

The National Center for State Courts (NCSC) undertook a District Court case flow and calendaring study in 2017, with recommendations for changing the organization of the dockets, perhaps categorizing cases by level of seriousness and complexity; NCSC will be working further with the District Court to implement some of these proposed changes. This is

an opportune moment to further explore reorganizing the way that domestic violence cases, which would likely fall into a top level of complexity, are scheduled and heard.¹⁵¹

A Specialized Domestic Violence Docket. Many of the current challenges in the Louisville Metro's justice system response to domestic violence – inadequate coordination between the court system and its partners, lack of access or underutilization of relevant information to improve decision-making, failure to monitor and follow up on court orders both in protective order cases and criminal matters, inefficient distribution of personnel, such as prosecutors and advocates who must cover multiple courtrooms, lack of clear policies and inconsistent judicial handling of domestic violence cases, security and safety concerns for domestic violence victims – would be ameliorated by a specialized domestic violence court or docket.

A dedicated domestic violence docket can be both particularly necessary and effective in a high-volume urban court such as Jefferson County District Court. Due to the number of cases, judges, prosecutors, defense attorneys, and other personnel involved, the increase in coordination, consistency, and monitoring that a specialized docket provides can have a critical impact on case processing, as well as offender accountability and victim safety. An urban court also has the number of domestic violence cases to fill a full-time docket, making specialization by case type most efficient in a jurisdiction the size of Jefferson County. As the largest county in Kentucky, Jefferson County is particularly well situated to benefit from a specialized domestic violence docket.

¹⁵¹ Cases in Circuit Court are also allocated throughout all 13 divisions of the Court; there is a specialized drug court and a mental health docket, but there is no specialization of domestic violence cases. However, given the volume of domestic violence cases in District Court, it makes sense to begin a dedicated domestic violence docket there.

While a specialized docket is not the only alternative to addressing these problems, it is an obvious method and should be seriously considered. A specialized docket provides the dedicated staff from a variety of agencies, the intensive focus on a particular case type, and the concentration of cases to create an environment that is best suited to addressing the complexity, seriousness, safety concerns, social service needs and the challenges that arise in domestic violence cases.

The development and implementation of a specialized domestic violence docket requires planning and discussions with the court, as well as key partners, including prosecutors, defense bar, victim advocates, CMC representatives, Sheriff's Office, LMPD, Division of Probation and Parole, and others whose work is important to domestic violence cases. There are a variety of domestic violence docket models and caseloads can be exclusively criminal, exclusively civil or integrate different case types. System partners, and of course particularly the judges, should discuss what type of caseload they think makes the most sense. Given the restructuring of the District Court criminal case calendaring that is in process, a domestic violence misdemeanor caseload, or a portion of it, might make the most sense.¹⁵² The size of that caseload may be too large to contain in an initial docket; the partners may want to consider some subset of cases, either based on case charge, or perhaps the criminal/domestic violence history of the offender, or perhaps cases where both a criminal case and a protective order case are involved. It is most effective for pilot projects

¹⁵² Though in my judgment, the District Court is the best fit for a dedicated domestic violence docket, other courts would benefit from some of the same focus on domestic violence cases. For example, the Family Court should consider implementing a compliance calendar for respondents in DVO cases.

to start with a more narrow focus and gradually phase in additional cases, so that there is time to refine procedures, and assess and correct problems.¹⁵³

Core Values of a Specialized Domestic Violence Docket. Though the caseload and procedure of a specialized docket can vary, all effective specialized domestic violence dockets share some key values which delineate their primary goals and principles:

- Victim and Child Safety – the primary goal of promoting victim and child safety must be actively considered at all times;
- Keeping the Victim Informed – victims must be regularly informed about case status and defendant status, and services available;
- Offender Accountability – domestic violence offenders must be held accountable for their actions, including both the conduct that brought them to court, as well as their activities while the case is pending;
- Information Sharing and Informed Decision-Making – a judge making decisions on bail, protective orders and sentences must have accurate and comprehensive information on defendant/respondent compliance with court conditions, as well as prior criminal and protective order history. In turn, court partners must get timely information from the court on bail or probation conditions, case status and any court orders in order to hold an abuser accountable;

¹⁵³ The discussion of values, best practices and other issues concerning a specialized court docket is based in part on Emily J. Sack, *Creating a Domestic Violence Court: Guidelines and Best Practices* 5 – 23 (Family Violence Prevention Fund, 2002). For a similar discussion of the central values of a specialized domestic violence docket, see Robin Mazur and Liberty Aldrich, *What Makes a Domestic Violence Court Work? Lessons from New York*, 42 *Judges Journal* 5 (American Bar Association, Spring 2003).

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- Institutionalized Coordination of Procedures and Services – specialized dockets must have clear written protocols, job descriptions as well as memoranda of understanding between partners, to ensure that court practice is consistent and will endure beyond the departure of founding partners;
 - Training and Education – all court personnel and partners must be trained extensively on a wide range of issues relating to domestic violence in order to bring knowledge and context to the domestic violence caseload;
 - Judicial Leadership – the judge plays a central role in conveying to litigants and to the community that domestic violence will not be tolerated, and that the court is making serious efforts to address it. The authority of the judge can also be utilized to bring partners to the table to help coordinate effective handling of these cases;
 - Effective Use of the Justice System – while community-based advocacy remains critical, the specialized docket can be a gateway for victims to receive services for themselves and their children and can intervene to hold defendants accountable through monitoring and sanctions for failures to comply;
 - Accountability of Courts and Programs – because the domestic violence docket requires designated partners to perform important tasks, the partners' quality of performance becomes apparent. The specialized docket can use the focus of the court and its partners to ensure that protocols and practices are followed. In addition, the court and its partners must ensure system accountability by developing clear data collection procedures and outcome measures, to evaluate operation strengths and weaknesses.

Best Practices of a Specialized Domestic Violence Docket. The specialized docket adheres to the core values described above by implementing the following best

practices: early access to victim advocacy and services; coordination of community partners; victims and child-friendly court, including security and safety; specialized staff and judges; even-handed treatment in the courtroom; leveraging the role of the judge; integrated information and data collection systems; evaluation and accountability; protocols for evaluating dangerousness; ongoing training and education; compliance monitoring; and sentencing models that promote consistency and serious treatment of domestic violence.

Staffing of a Specialized Docket. A specialized docket does not require much, or even any, additional staff positions. It may mean, however, that some staff will be redeployed. One judge and likely a back-up judge, would be needed to handle all stages of the cases on the docket, including pre- and post-disposition monitoring. A case specialist would serve as the conduit of information for the court and would be responsible for tracking case information, checking records, and reaching out to the CMC to check defendant compliance. Prosecutors from the County Attorney's DV Unit would be selected and dedicated to this court. Victim advocates would also be designated to this court; and if possible, to avoid transferring victims from agency to agency; advocates should stay with the assigned victims for the duration of the case. Representatives from relevant agencies could also be designated to come to court on certain days; for example, the CMC could designate a representative to appear for BIP enrollment and also for offender monitoring.

Though the Public Defender does not have a specialized domestic violence unit or specialized misdemeanor defenders, there should be discussions about whether the agency would designate some defenders to this specialized docket. This would enable far more efficiency as defenders would be able to appear at the start of the morning calendar and would also become familiar with the protocols of the court. Of course, private defense attorneys would also have cases in the court.

Addressing Concerns and Expectations. There was a lot of support expressed for a specialized domestic violence docket by many of those interviewed, representing a variety of partners in the justice system. However, some also raised concerns that should be addressed. Perhaps the greatest concern raised was the selection of the judge or judges handling the specialized domestic violence docket; this is a concern common to all specialized dockets and courts. There can be concern that a judge assigned to this docket would burn out if handling only domestic violence-related matters, or that a “bad” judge could have significant negative impact.

These are certainly legitimate issues and the selection of the specialized domestic violence judge is important. I have worked with numerous judges who preside over specialized domestic violence calendars. In my experience, the most effective domestic violence judges share a few important qualities – an open-mindedness to understanding domestic violence dynamics, to trying new procedures, and to working closely with a number of court partners; a dedication to fairness and the appearance of fairness at all times; a temperament that is respectful to all parties.

A common concern of the defense bar is that a domestic violence court will label defendants. Simply by being assigned to a specialized docket, they will be stigmatized as batterers and will be less likely to get a fair adjudication in a court that is targeting this specific offense. To have long-term success, a domestic violence docket must have credibility with the defense bar. It is understandable that defense attorneys may not be pleased with domestic violence docket procedures. The domestic violence docket is designed to close a number of gaps that have benefited defendants in the traditional court system. However, the court can have a good working relationship with the defense bar. To do this, the adjudication process must be scrupulously fair and the judge and all court personnel must treat both

defense attorneys and defendants with courtesy and respect. In addition, the defense bar must be included in partnership meetings and sessions designed to address operations at the court. Their concerns must be heard and considered. This does not mean that the court will not treat domestic violence seriously and hold offenders accountable for their actions. However, the court must also ensure that the process is fair, and that defendants' due process rights are protected.

Some have raised the concern that the domestic violence docket will be too expensive and require significant additional staffing. However, as discussed above, most of the staffing already exists for such a docket but may just require some reorganization of resources in order to dedicate personnel to the docket. There are important building blocks for such a docket already in place. For example, the case specialist position is one that already exists in the Family Court and is familiar to those in the court system. The DVIC already provides an initial starting point for many domestic violence victims, and perhaps its waiting area could also be used a separate waiting area for victims with cases on the specialized docket.

Given the current specific needs in the Jefferson County justice system, it is situated to benefit greatly from a specialized court process. The court and its partners should conduct a review of the potential of a specialized domestic violence docket, including a review of "best practices" around the country that have addressed many of the same concerns raised in Jefferson County.

F. Supervision of Offenders: Kentucky Division of Probation and Parole and the Louisville Metro Department of Corrections

The Kentucky Division of Probation and Parole, part of the Kentucky Department of Corrections, is responsible for supervision of probationers and parolees. The Division also

provides assistance in rehabilitation to offenders, including assistance in employment and home placement. All offenders receive a risk assessment when first assigned to the Division, and levels of probation supervision are linked to the offender's risk category. For Felony Probation, for example, a high-risk offender would have supervision two times a month; a moderate risk offender would be supervised once a month; low risk would be required to appear once a quarter, and the lowest category would receive administrative probation where the offender simply has to mail in fees.

The Misdemeanant Intensive Probation Program. The Misdemeanant Intensive Probation (MIP) program, which is operated by the Kentucky Department of Corrections, under contract with the Louisville Metro Department of Corrections, supervises participants at a high-risk level for the first two months. At high risk level, probationers must report weekly in office visits, receive weekly records checks and be subject to a night curfew. Officers can also make random home checks. After the first two months, participants are supervised based on assessed subsequent risk level until satisfaction of at least six months supervision and fulfillment of all court sanctions. All MIP participants are subject to graduated sanctions, including potential detention. The range of sanctions is determined by a matrix which combines risk level of offender and type of violation.

The most recent contract for the MIP Program in Louisville states that the number of MIP participants should be capped at 275. As of November 2017, there were 270 participants in the program, close to this maximum. Some of those in the system assigned to MIP have absconded, and so the average number of active participants is about 200. With four officers working on MIP cases, that is typically a caseload of 50 cases per officer, which is quite high for this level of supervision. The 2005 Snapshot had noted that at that time, additional MIP

officers were needed to reduce caseloads per officer, so this issue appears to be longstanding.

Of the 270 participants in MIP, 189 or 70%, were domestic violence offenders. These would typically be repeat domestic violence offenders. The majority of offenders in MIP are assigned to BIP, Substance Abuse or Mental Health Evaluation. The Division monitors their progress and tracks violations, which are reported to the Court. Probation officials felt that the MIP Program was effective at supervising domestic violence offenders, but that other types of cases were taking up slots in MIP which were not meant for this type of victim-sensitive intensive monitoring. They felt that if MIP could concentrate on domestic violence cases, it could be even more effective.

Louisville Metro Department of Corrections. Louisville Metro Department of Corrections (Metro Corrections) runs the local detention facility housing pre-trial defendants and sentenced misdemeanants; based on a snapshot from data captured on September 25, 2017, approximately 87% of the population is pre-trial. Overcrowding at the Metro Corrections jail facility was a primary issue of concern raised by many of those interviewed. The maximum capacity of the jail is 1,793 and it operates at about 2,000 or more inmates on any given day. While this obviously has an impact well beyond domestic violence cases, domestic violence policies and justice response are affected by this challenge.

In the snapshot of data from September 25, 2017, the total number of domestic violence offenders under the auspices of Metro Corrections was 421. A total of 253 of these were housed at the Main Jail Complex (188 sentenced; 65 not sentenced); 98 were on the HIP program (30 sentenced; 68 not sentenced); 66 were at the Community Corrections Center (CCC) (30 sentenced; 36 not sentenced); and four were on day reporting (all not

sentenced). The number of domestic violence offenders booked each year was 2,768 in 2014; 2,910 in 2015; 3,255 in 2016; and 2,494 in 2017.

One technological innovation that has been very helpful in domestic violence cases is that recordings of all calls from the jail are now accessible online to the prosecutors and police. This can be useful in monitoring any threats by the defendant to the victim, or other attempts to intimidate witnesses. This technology also includes voice recognition so that an offender can be tracked even if he attempts to switch pin numbers with another inmate.

In order to implement any special procedures for inmates charged or sentenced for domestic violence offenses, Metro Corrections must receive a court order; this includes any special procedures for monitoring inmate calls or the conditions of protective orders to which inmates are subject. If ordered by the judge, Metro Corrections will restrict phone use so that the offender is not permitted to call the victim. Metro Corrections can also restrict in-person visitors to the jail. However, if it is not part of judge's orders, Metro Corrections may not know if there are restrictions on victim contact, or if there is a DVO or IPO in place. Further, the record for a conviction for Assault 4th, for example, may not always include the notation that it was a domestic violence assault.

There did not seem to be a routine method for all of the interested players to communicate with each other about these types of issues. One partner expressed the belief that, "the system does not communicate, and people fall through the cracks." There is a committee of the Metro Criminal Justice Commission that focuses on jail policy and does include representatives of the three courts, but it is not focused on domestic violence cases. A regular meeting or avenue of communication between Metro Corrections, LMPD, prosecutors and the courts would be helpful at resolving some of these issues.

Louisville Metro Department of Corrections Home Incarceration Program. Metro

Corrections runs a Home Incarceration Program (HIP) that is an alternative to jail incarceration for supervising court-ordered pretrial and sentenced individuals in the community. Participation in HIP is determined by a judge and must be court-ordered; Metro Corrections does not determine eligibility for the program and must accept all individuals ordered to HIP by the court.¹⁵⁴ All HIP participants are required to wear an electronic monitoring device which includes both GPS and Radio Frequency (RF) technology. The electronic monitoring devices assist Metro Corrections officers to monitor program compliance and court-ordered conditions of release.

Top offense categories for HIP participants typically include DUI, assault, theft, robbery, burglary, controlled substances, non-support and contempt. However, with the severe jail overcrowding in recent years, it appears that a growing number of offenders with serious violent histories, including domestic violence, are being released by the court to HIP either as part of their sentences or pre-trial.¹⁵⁵ Some judges are using HIP extensively in setting of bonds. As of February 2018, there were 735 people in HIP, an increase of nearly

¹⁵⁴ However, Metro Corrections may not place court-ordered individuals into HIP who do not meet basic requirements, such as having an acceptable residence. In 2017, there were 7,090 individuals court-ordered to HIP; 6,147 individuals were placed, but 943, or 13.3% of the total of those court ordered, were not placed due to lack of an acceptable residence. Daro Mott & Rebecca Hollenbach, *Home Incarceration Program: An Evaluation by OPI*, August 15, 2018.

¹⁵⁵ Shay McAlister, *A closer look at home incarceration in Louisville, a judge speaks out*, WHAS11, August 7, 2017, <https://www.whas11.com/article/news/local/a-closer-look-at-home-incarceration-in-louisville-a-judge-speaks-out/462628272> (discussing case of person charged with murder while on HIP; he had been put on HIP after arrests for domestic violence and drug charges); see also Mable Cundiff, *Inmates Considered for Home Incarceration*, WVIH, July 21, 2016, <http://www.wvih.com/wp1/index.php/2016/07/21/inmates-considered-for-home-incarceration/> (discussing emergency order signed by Chief Circuit Judge authorizing release of several inmates to HIP due to severe jail overcrowding).

70 since August 2017 and an increase of more than 100 people since February 2017.¹⁵⁶ A study of HIP Outcomes in 2017 found that 42.7% of those placed individuals were returned from HIP.¹⁵⁷ The vast majority of these returns, 31.5% of the total placements, were caused by technical violations, and an additional 1.95% was caused by individuals losing their residence. Individuals returned due to an added charge made up 8.2% of the total; substance-abuse related charges made up the largest number of added charges. The percentage of those returned due to violent crimes or weapon charges was low (Violent Crime: 0.57% (35 out of 6,172 total placements); Weapons Charges: 0.44% (27 out of 6,172 total placements); Murder: 0.02% (1 out of 6,172 total placements)). Though these percentages are low, put in real numbers, they do not seem insignificant (e.g., 1 murder and 35 other violent crimes), and there are those in the community who are concerned about the release of those individuals charged with serious violence, including domestic violence.¹⁵⁸

Through recommendations of the HIP Work Group, a subcommittee of the Jail Policy Committee of the Metro Criminal Justice Commission, Metro Corrections is implementing a small pilot project utilizing a supervision and graduated sanction grid to promote enhanced monitoring when necessary and improve outcomes. The Work Group's goal is to move away from the current "one size fits all" approach to supervision and create levels of supervision based on risk. Based on the proposed supervision grid, all individuals with sex offense or

¹⁵⁶ Shay McAllister & Doug Proffitt, *Should accused killers be released on home incarceration?*, WHAS11, February 20, 2018, <https://www.whas11.com/article/news/investigations/should-accused-killers-be-released-on-home-incarceration/417-520734319>

¹⁵⁷ Daro Mott & Rebecca Hollenbach, *Home Incarceration Program: An Evaluation by OPI*, August 15, 2018.

¹⁵⁸ In September 2018, one HIP participant with domestic violence charges escaped from his electronic monitoring and the next day broke in to the home of his domestic violence victim. She shot and killed the HIP participant. The case has been referred to the Commonwealth's Attorney's Office for review and has not yet been charged.

violent offense charges (including domestic violence) will be assigned automatically to the highest level of supervision.

The subject population for the pilot project are individuals court-ordered to the Day Reporting Center and being monitored by HIP. Though it is recognized that operation of HIP for Day Reporting Center participants is different from the general HIP population, those designing the pilot anticipate that the project can provide data to inform broader implementation of the new supervision and sanction models within the larger HIP population. It would be helpful for those implementing the pilot and any expansion to review specifically the impact on those charged or sentenced with domestic violence offenses.

Recommendations

- **LMPD should conduct ongoing training for patrol officers on working with victims of domestic violence.**
- **LMPD and MetroSafe should work together to ensure their data are consistent and that LMPD can access the subcategories of “domestic trouble” calls coded by MetroSafe in order to obtain more refined data on the number of JC-3 reports filed.**
- **LMPD and MetroSafe should conduct a formal sampling of the “Violence” subcategory of “domestic trouble” 911 calls, in order to review the incident from 911 answer time to clear time, and track numbers of calls, to number of requests for case numbers, to numbers of JC-3 reports completed.**
- **LMPD should monitor the gap between JC-3 reports and arrests.**
- **LMPD should track dual arrest domestic violence cases, and also explore sampling cases with female defendants to determine the context of the arrest.**

- **LMPD and other agencies should collect both aggregate recidivism data and make a hotlist by division of high-recidivism offenders.**
- **Explore the Offender-Focused Domestic Violence Initiative or other programs that target and monitor high risk chronic offenders.**
- **Review protocol for LINK entry and ensure that qualifying no contact orders are entered so that they can be accessible electronically to law enforcement.**
- **System partners may want to explore legislation to create a criminal protective order that can be issued in lieu of a no contact order, to ensure that the order does not expire at the conclusion of a criminal case and that any violation of the order is a crime.**
- **LMPD, PTS and other interested partners should monitor the implementation of ODARA and arrange training sessions for all involved, including the judges making release decisions.**
- **The County Attorney's Office should review protocols for transfer of cases from DVIC prosecutor to court prosecutor.**
- **Commonwealth's Attorney and County Attorney should review data collection methods and revise structure in order to capture more relevant and detailed data in domestic violence cases.**
- **Both prosecutors should look for more options to bring cases to trial.**
- **Both prosecutors should evaluate and address challenges to the utilization of KRS 508.032.**
- **The Commonwealth's Attorney and the County Attorney's Office should track the cases that are sent from District Court to Circuit Court and then sent back to District Court.**

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- **Enact legislation to make strangulation a separate felony crime.**
 - **Create evidence collection protocols and track data in strangulation cases.**
 - **Increase trainings on strangulation for law enforcement, prosecutors, and judges from Circuit, Family and District Court.**
 - **Law enforcement and the Commonwealth’s Attorney’s SVU and County Attorney’s DV Unit should focus on stalking to discuss both the collection and utilization of evidence and increase charges and prosecutions in this area.**
 - **Increase trainings on stalking for police, prosecutors and judges.**
 - **Consider legislation to create a separate crime of “cyberstalking” to focus on increasingly common forms of threats and intimidation.**
 - **Local Court Rules should not mandate use of contempt for certain protective order violations, particularly firearms provisions.**
 - **Amend KRS 508.032 to include perpetrators who meet the relationship definition under the IPO statute.**
 - **Consider legislation to make particular conduct in violation of a protective order a felony, or repeat violation of a protective order a felony.**
 - **Consider legislation to permit imposition of GPS monitoring as a condition of an original protective order for high risk respondents.**
 - **Explore the development of a specialized domestic violence docket in District Court.**
 - **Public Defenders may want to consider specializing public defenders who appear at a specialized domestic violence docket, to promote efficiency and consistency for their clients.**

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- **Evaluate Division of Probation and Parole MIP caseload and investigate the use of MIP for non-domestic violence offenders.**
 - **Metro Corrections, prosecutors, LMPD and the courts should work together to explore ways to more easily identify domestic violence inmates at the jail, so that Corrections is immediately aware of all special conditions, including the terms of any protective order.**
 - **Examine the impact of jail overcrowding on judges' HIP decisions in domestic violence cases, monitor the use of HIP in these cases, and review outcomes of the HIP pilot project specifically for this domestic violence population.**

VIII. Interagency Coordination and Planning

Personnel at virtually all governmental and community agencies with responsibilities in domestic violence cases are committed to their work and dedicated both to reducing domestic violence in the Louisville community and improving system response. However, in many instances, these personnel and individual agencies do not work in any formalized way to coordinate with their counterparts at other agencies, and do not have a process to meet regularly to discuss mutual challenges.

There are of course some examples of programs with strong partnerships between agencies, such as the LAP program and the Arise to Safety program. But there also are many situations where coordination seems like it would be quite helpful and yet has not been considered. This report provides several relevant examples. For instance, virtually all parties interviewed who were involved with imposing court-ordered BIPs, fulfilling the court orders through providing BIP services, and monitoring those conditions, felt that there were gaps in various parts of this process, and that the other parties did not understand their needs or the limitations in what they could provide. The most effective way to address this type of issue is to gather all of the relevant players together (e.g., judges, case specialists, Metro Corrections, CMC, BIPs, and Division of Probation and Parole) to talk candidly about the challenges, so that there can be better understanding of each player's role, and the group can work together on ways to improve the process.

To give another example, there are a number of victim advocates who may be involved in a domestic violence case from different agencies: CWF, County Attorney's Office, Commonwealth's Attorney's Office, and LMPD; however, there was no organized and regular meeting of all victim advocates so that they could discuss such issues as the hand-off of cases, smooth transfer of information, and how to improve the experience for the victim.

Other valuable groups for periodic meetings would be: Sheriff's Deputies, judges who issue protective orders, DVIC clerks, advocates and prosecutors to discuss the processing and service of orders; and Corrections, PTS, and LMPD to discuss tracking of offenders and the ODARA process.

One promising avenue for instigating these types of inter-agency meetings is the Domestic Violence Prevention Coordinating Council (DVPCC). The DVPCC was established by ordinance in 1996 to improve domestic violence responses, strengthen interagency communication and promote effective research-based interventions and prevention of domestic violence in Jefferson County. The ordinance was reauthorized in 2003 under the newly merged government of the former City of Louisville and Jefferson County to form Louisville Metro Government.

By authority of the ordinance, the DVPCC has certain powers and duties, including: to examine the ways that agencies, departments and courts respond to domestic violence in order to improve that response; to improve cooperation and coordination among all participants in the justice system who handle domestic violence cases; and to form committees or other groups to assist in planning, policy, goal, and priority recommendations, as well as other functions that the DVPCC deems necessary. The DVPCC is now an institutionalized part of the community response to domestic violence and has provided a significant foundation for collaboration in several domestic-violence related initiatives, including the DVIC, the LAP program and electronic filing for protective orders. The DVPCC continues to be very valuable for bringing together leaders and supervisors from a multitude of government and community-based agencies. However, it would be beneficial to strengthen the working nature of the DVPCC, by revitalizing existing committees and forming sub-committees to promote interaction on specific issues impacting a subset of partners.

The DVPCC currently has two standing committees: the Fatality Review Committee and the Inter-Agency Committee.¹⁵⁹ The Fatality Review Committee is active and issues bi-annual fatality review reports on domestic violence homicides/suicides, which also provide significant historical and statistical data on domestic violence in Louisville Metro. The Inter-Agency Committee was designed to address the kinds of coordination issues described here. While it is important for agency heads and supervisors to be at the table for the full DVPCC meetings, the Inter-Agency Committee was meant to include representatives from the various agencies who were “in the trenches,” rather than top supervisors, so that they would be intimately familiar with practices and challenges on the ground.

Though the Inter-Agency Committee does meet, it can be difficult to get all of the relevant partner representatives together on a regular basis; it may be too large a group with too large an agenda to handle in a focused way. The DVPCC may benefit from creating smaller, more targeted sub-committees or working groups that focus on specific areas of domestic violence response.¹⁶⁰ Some subcommittees could be made up of partners focusing on the same type of work. For example, one group could be composed of victim advocates from various agencies; another could include BIPs working in Jefferson County. Other subcommittees could be working groups for multiple agencies that work together to develop strategies for cooperation. For example, there could be a subcommittee that discusses

¹⁵⁹ A third committee, the Children Who Witness Committee, was designed to focus on children exposed to domestic violence. However, a collective initiative led by CWF grew out of this committee, and is now called Community Shield: Reducing the Impact of Violence on Children. The project is designed as a community-wide and multi-system response with 40 community partners, focused on mitigating the effects of violence exposure on children and preventing future victimization.

¹⁶⁰ In order to staff some of these groups, DVPCC may want to add additional members or expand participation by non-official members whose activities are relevant to domestic violence community response.

monitoring BIP compliance and could include judges and representatives from District and Family Court, the CMC and BIPs, as well as the Division of Probation and Parole. It would also be helpful to have a working group on training activities and public awareness campaigns.

The DVPCC has been effective for many years at launching several initiatives and raising awareness about domestic violence. Councils such as this, which by definition have multiple partners and significant turnover, constantly need to be revitalized and refocused. This is not at all unique to Louisville, and the creation of these multiple focused subcommittees and working groups may help to strengthen the DVPCC's already-important role in improving domestic violence response in Louisville Metro.

Recommendation

- **Expand the DVPCC's committees and subcommittees to create working groups in a variety of areas and increase coordination and problem-solving among system partners.**

IX. Domestic Violence Training and Resource Needs for System and Community Partners

Although there have been several trainings for many of the system partners over several years, inevitable staff turnover, new areas of law and policy, and best practices in domestic violence cases, all necessitate that training be given on a regular, planned basis for all government and community agencies involved in the handling of domestic violence cases. Particularly with a current crisis in pension funding, some agencies have lost significant numbers of employees recently, including prosecutors, police, corrections officers, probation and parole officers, and sheriff's deputies. Further, this training must be substantive; one or two hours a year or every two years is not adequate, nor is simply an overview of domestic violence laws.

A. Judicial and Court Personnel

There has been a high turnover of judges, particularly in the Family Court, where in recent years, eight of the ten judges are new. According to some judges interviewed from the various courts, though regular domestic violence training used to be required for judges, it is no longer required either as part of new judge training or ongoing education programs for judges, though it may be offered as an optional topic. Further, the training for new judges only is offered after elections; if a new judge steps in to fill an existing term, s/he will receive no training until the next election period.

In the courts as currently constituted, where every judge will handle domestic violence cases, training in this area should be both mandatory and regular. Judges are critical partners in domestic violence response, and training in a multitude of areas is necessary to address both ongoing developments in this area of law and the complexity of domestic violence dynamics. There is a variety of subjects that these trainings could cover, some of which could

also be tailored to judges from specific courts. Topics could include: the dynamics of domestic violence and the types of coercive control that it involves; dangers upon separation from the abuser; dangers to children who witness domestic violence; reasons for victim recantation; lethality factors in domestic violence cases; strangulation; stalking behavior; best practices in bail decisions; and monitoring offender compliance with court orders. In addition, there should be education on both state and federal law in this area, including federal domestic violence firearm laws, and evidentiary issues in the domestic violence context, including prior bad acts evidence and Confrontation Clause issues. Ideally, at least some of this training should be provided by other judges, where possible. It is also helpful when feasible to have judges from other jurisdictions to offer a national perspective.

Though attitudes about handling domestic violence cases varied a great deal among judges, at least some expressed concern that having more information on a particular case, or becoming involved in expanding services or developing more efficient practice would lead to an appearance of bias. For example, some Family Court judges did not believe that they should know about a respondent's criminal domestic violence case because that would bias their decision in a DVO hearing. But a pending criminal case clearly is relevant to making that decision in the protective order hearing, and it is not biased to be aware of all relevant information.

There is a need for clear education and training for judges on how they can be leaders and informed decision makers in domestic violence without violating any rule of professional conduct. In fact, working to make the judicial system more accessible to victims generally, is

part of a judge’s responsibilities.¹⁶¹ Being “against” domestic violence, as any other type of crime, is completely legitimate, and can be distinguished from being impartial in a specific case.¹⁶² Judges are highly respected in the community and are natural leaders; it is very effective for them to leverage this authority to encourage cooperation among all partners. As Judith S. Kaye, then-Chief Judge of the State of New York, once wrote about the judicial role in specialized domestic violence dockets:

For too long, our legal system either ignored the issue of domestic violence or uncritically applied traditional case processing methods without regard to what outcomes these procedures were achieving. Our justice system can and should do better. With a problem-solving attitude, the judicial branch can begin to play a more active role in ensuring that our courts deliver justice that is both fair and effective-- justice that respects rights and saves lives.”¹⁶³

¹⁶¹ As Judge John M. Leventhal, then-presiding judge of the first domestic violence court in New York, stated “‘I see my role as a dual obligation: to preserve and protect defendant’s constitutional and procedural rights, but also to see that the complainant is safe both during the proceedings and after as well.’” Susan R. Paisner, *A Court Grows in Brooklyn: Dedicated Domestic Violence Court Serves as National Model*, Domestic Violence Prevention, Sept. 1999, at 7 (quoting Judge Leventhal). Judge Leventhal now serves on New York’s appellate court.

¹⁶² As then-Chief Judge of New York Judith S. Kaye explained, “With respect to the concerns for judicial neutrality, working to devise a system that will better serve the needs of the public need not affect a court’s ability to judge the merits of an individual case fairly. Defendants in domestic violence courts are unquestionably entitled to the full panoply of due process protections Indeed, problem solving courts seek to improve victim safety not through more partial justice but through more complete justice--decisions that are based on more, not less, information; orders that achieve more, not less, compliance. In the final analysis, the key to these courts’ effectiveness is their ability to get more out of the system, not less out of the Bill of Rights.” Judith S. Kaye and Susan Knipps, *Judicial Responses to Domestic Violence: The Case for a Problem-Solving Approach*, 27 W. St. U. L. Rev. 1, 10-11 (1999 – 2000).

¹⁶³ Judith S. Kaye and Susan Knipps, *Judicial Responses to Domestic Violence: The Case for a Problem-Solving Approach*, 27 W. St. U. L. Rev. 1 (1999 – 2000). The Kentucky Code of Judicial Conduct explicitly acknowledges the special role of judges in problem-solving courts: “In recent years many jurisdictions have created what are often called ‘specialty’ or ‘problem solving’ courts, in which judges are authorized by court rules to act in nontraditional ways. Judges presiding in drug courts and monitoring the progress of participants in those courts’ programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. Such conduct may be permissible under applicable law and not in violation of this Code. Kentucky Code of Judicial Conduct, Application, I. Applicability of this Code, Comment [3]; *See also* Kentucky Code of Judicial Conduct, Canon 2, Rule 2.9, Comment [4] (A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on specialty or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others).

There also is a need for training on the seriousness of protective orders, the long history of abuse that typically proceeds the petition, and the importance of monitoring defendant compliance with conditions in the order. Some of the District Court judges interviewed expressed frustration or resentment that the Kentucky Supreme Court had decided to vest jurisdiction of the new IPOs in District Court, when the Family Court had concurrent jurisdiction and these orders could be handled there. The District Court is very busy and it is understandable that the judges feel that more work is being added to their caseload. However, from some, there also appeared to be a feeling that these were really family type matters that should not be in District Court. Further, some individuals who were interviewed recounted that there were judges in both courts that would try to move protective orders to the other court due to relationship definition, and some cases got bounced back and forth between the courts. The reality is that these cases may have the most serious potential for violence of any cases they handle, and they need to be treated that way.

Trial commissioners, who are usually court staff attorneys, make decisions on emergency EPOs/T-IPOs, as well as bail decisions in domestic violence cases on certain night shifts or weekend hours. These commissioners therefore play a critical role in many domestic violence cases, though they did not appear to be included in training and meetings relating to the handling of domestic violence cases. Some interviewed were concerned about their decision-making and it seems clear that they should be included in all judicial trainings that are relevant to their tasks.

Clerks who handle protective order petitions and interact with victims are critical “first responders” in a domestic violence case. Court staff receive training every two years, of which domestic violence is a piece. Given staff rotations and turnover, there must be ongoing training on domestic violence dynamics, beyond the technical training.

Domestic Violence Benchbook. Many jurisdictions have developed specific domestic violence-focused Benchbooks that are designed to provide in one resource a summary of state and federal domestic violence law, including both relevant statutes and case law. They also can include key issues in domestic violence dynamics and practice aids, such as lethality factor checklists, signs of domestic violence in the courtroom, and topics to address in a protective order.¹⁶⁴ The Benchbooks also typically include judicial ethics and address concerns that some judges may have that taking a stance against domestic violence violates impartiality or the appearance of impartiality. The Benchbook often will include a list of relevant community resources and contact information.

Though some pieces of this information are already available to Jefferson County judges it is helpful to have all of this material available in one place that is easily accessible to a judge while on the bench. The Benchbooks are designed to help judges implement best practices in domestic violence cases and to encourage consistency in handling of domestic violence cases among the judges.¹⁶⁵ Benchbooks can be prepared by the State's Administrative Office of the Courts, local judges and court staff, or some combination of

¹⁶⁴ See, e.g., Domestic Violence Benchbook—Fourth Edition: A Guide to Civil & Criminal Proceedings (Michigan Judicial Institute 2018), <https://mjieducation.mi.gov/documents/benchbooks/21-dvbb/file>; West Virginia Benchbook for Domestic Violence Proceedings (West Virginia Supreme Court of Appeals, 2012), <http://www.courts.wv.gov/public-resources/domestic/DVBenchbook2012.pdf>; The Ohio Domestic Violence Benchbook – A Practical Guide to Competence for Judges & Magistrates, Mike Brigner, JD, Family Violence Prevention Center at the Ohio Office of Criminal Justice Services, 2nd edition, 2003, http://publicsafety.ohio.gov/links/ocjs_benchbook.pdf; Domestic Violence Manual for Judges, 2015, Washington State Supreme Court Gender and Justice Commission, <https://www.courts.wa.gov/content/manuals/domViol/Complete%20Manual%202015.pdf>.

¹⁶⁵ For further information on the purposes and contents of these benchbooks, see Domestic Violence Benchbooks: A Guide to Court Intervention, Center for Court Innovation (January 2015).

judicial and other system partners, such as the local domestic violence advocacy group, local law schools, and others involved in court procedures.

B. Other System Partners and Community Agencies

All personnel from system partners and community agencies that interact with victims or perpetrators should receive regular annual training in domestic violence. This would include all Sheriff's deputies, Probation and Parole officers, LMPD officers, Corrections officers, prosecutors, defense attorneys, Legal Aid lawyers, EMS personnel, and 911 dispatchers.¹⁶⁶ While many of these organizations do provide training for their staff, particularly with new recruits, it may not be institutionalized as an annual requirement. Or, if some annual training is required, domestic violence may be included only as a choice, rather than a mandatory topic.

These trainings should go beyond simply a review of domestic violence laws or procedures for the particular agency; to include specialized topics and national best practices in domestic violence response. It is also effective to conduct cross-trainings where different partners explain to the other system partners what they do, what challenges they face, and what responsibilities they have.

¹⁶⁶ It is important to include groups such as EMS personnel that have frequent contact with domestic violence victims, but often are not considered as part of a system response to domestic violence. See E. Donnelly, et al., *What do EMS personnel think about domestic violence? An exploration of attitudes and experiences after participation in training*, 38 J. of Forensic and Legal Medicine 64 (2016) (even after 5 hours of an online dv training course, a third or more of EMS personnel in study believed that domestic violence is a normal response, that they could not help victims who did not disclose their abuse, and that domestic violence is the victim's fault for staying in the relationship). The researchers note that these attitudes make it less likely that victims will reach out for help.

Interactive trainings, in which participants work through hypothetical situations, are often very effective. After some general information through lecture on a topic, participations can break into small groups to address different scenarios and problem-solve.

It is important to include private attorneys who work with clients in domestic violence cases in these trainings. For example, the Louisville Bar Association could collaborate with the DVPCC on offering Continuing Legal Education (CLE) programs covering domestic violence topics for private family law attorneys, criminal defense attorneys and other lawyers whose practice includes representation of victims or batterers. In October 2010, the Bar and DVPCC hosted two CLE sessions on domestic violence in collaboration with the Administrative Office of the Courts. These should be sponsored on a regular basis and could include such topics as the dynamics of domestic violence, ethical issues for attorneys representing alleged abusers and victims, standards for emergency protective orders, and other legal issues.

In addition, community partners such as school personnel, health professionals, and private businesses that interact with women (hair salons, cosmetics stores) should be a focus for ongoing education about domestic violence and the types of resources available for victims.

Recommendations

- **The Kentucky Supreme Court should require domestic violence training for all new judges and ongoing domestic violence training for all judges on an annual basis.**
- **The AOC and Jefferson County judges and court staff, with assistance from domestic violence advocacy organizations, should develop a Domestic Violence**

Benchbook that can be used by judges handling domestic violence cases in Jefferson County.

- **The DVPCC should create a subcommittee or working group focused on training priorities for system and community partners.**

X. Public Awareness of Domestic Violence and Prevention Efforts

In 2015, at the request of the DVPCC, the LMPD sponsored a city-wide community survey designed to assess public attitudes toward domestic violence and awareness of available services. The goal of the survey was to promote a greater understanding of the dynamics of domestic violence, and to identify potential needs in areas of publicizing resources and services available for victims. Results of the study were released in the spring of 2016.

Of those responding, 74.9% believed that domestic violence was a problem or major problem, and 84.4% said that they were comfortable or very comfortable discussing domestic violence with family or friends. About half of those responding said that they knew what community resources were available for victims of domestic violence. In terms of services, they were most aware of the emergency shelter, children's services, and the 24-hour hotline. Satisfaction with the services was high, with an average of 94.1% based on whether they or someone they knew had used the services. The results suggested confidence in the police as sources of support and assistance for domestic violence victims. While a majority reported that they believed the court system took domestic violence seriously and treated litigants fairly, this confidence was not as strong as that for the police. Awareness of resources did vary by area of the County; respondents in the Third Division reported the lowest level of awareness of resources; however, this division has the highest rates of domestic violence calls in Louisville Metro.

The study recommended concentration on public service announcements and ad campaigns to raise awareness, and to consider informational campaigns that provided more detailed information on the wide range of services available. There could also be campaigns targeted to specific divisions of the city to increase knowledge of specific resources available

there. The study also suggested considering partnerships with neighborhood organizations and churches as another means of sharing information about resources.

The DVPCC and its members are already aware of the importance of increasing public awareness and education on domestic violence issues. Through its Interagency Committee, the DVPCC is planning to produce a short video that will be available for the waiting room of the DVIC and will also be produced as a segment on the Justice for All television program in early 2019. The DVPCC is also adapting an informational campaign developed by the Texas Council on Family Violence called “Break the Silence, Make the Call.”

Focused Public Awareness Campaign on Firearms and Domestic Violence. The DVPCC should consider expanding this public awareness and education activity in the community. For example, it may want to explore more targeted public awareness campaigns that include a focus on the lethality of guns and domestic violence. A survey conducted in Pennsylvania in 2017 found that 82% of 805 registered voters surveyed favored prohibiting gun sales to anyone convicted of a domestic violence crime or anyone with a final protective order. Of those who agreed with the prohibition, 88% came from gun-owning households.¹⁶⁷ The survey found that 78% of those polled agreed that convicted abusers and those with a final protective order should also be required to turn over all firearms to police or a gun dealer.¹⁶⁸ This suggests that those who support gun rights may distinguish between lawful gun use and firearms in the hands of domestic violence abusers. The community may want

¹⁶⁷ Megan Guza, *Poll shows overwhelming support for stricter gun laws for domestic abusers*, www.triblive.com, Sept. 12, 2017.

¹⁶⁸ Guza, *Poll shows overwhelming support for stricter gun laws for domestic abusers*. According to the Pennsylvania Coalition Against Domestic Violence, 102 people died in domestic violence related incidents in Pennsylvania in 2016, including 37 perpetrators who were killed or killed themselves. Firearms were involved in 57 of the deaths, or 56%.

to consider a targeted campaign that makes this distinction. For example, television ads which feature a domestic violence survivor of gun violence by her abuser can be very effective. Currently, the DVPCC is not funded to provide this type of resource; the Louisville Metro Government, as well as the KCADV may be potential contributors and collaborators for this type of campaign, and corporate sponsors may be accessible as well.

Improving Media Accuracy in Reporting Domestic Violence. Another aspect of a public awareness campaign focuses on improving media accuracy in portraying domestic violence incidents in news stories.¹⁶⁹ In order to do that, several domestic violence organizations or government agencies have developed guides for journalists covering domestic violence stories. As one state coalition put it, the purpose of the guide is to “support the media in capturing the realities and context of domestic violence cases. It is important for reporters to understand domestic violence so that their media coverage is accurate and informed rather than inadvertently perpetuating common misconceptions around this issue.”¹⁷⁰ More accurate portrayals of domestic violence (including naming certain acts as domestic violence) help to build and shape public awareness around this issue. The KCADV, CWF, or the DVPCC may want to consider a similar project.

Education and Prevention Efforts in Jefferson County Public Schools. Though this report does not attempt to cover all possible areas in the community in which to focus domestic violence education and prevention efforts, it does highlight one area, the Jefferson

¹⁶⁹ See, e.g., Intimate Partner Violence Media Guide, The NYC Mayor’s Office to Combat Domestic Violence, <https://www1.nyc.gov/site/ocdv/press-resources/media-guide.page>; Telling the Full Story: An Online Guide for Journalists Covering Domestic Violence, Rhode Island Coalition Against Domestic Violence (2015), <http://www.dvonlineguide.org/en/>.

¹⁷⁰ See *Why the Online Guide?*, in Telling the Full Story: An Online Guide for Journalists Covering Domestic Violence, Rhode Island Coalition Against Domestic Violence (2015), <http://www.dvonlineguide.org/en/>.

County Public School system (JCPS), as a good place to expand this type of work.

Currently, there does not appear to be a focused program to educate and target domestic violence awareness throughout the public schools.

There are some aspects of the school's programs that may touch on domestic violence. In March 2014, the Metro Government, through the Office of Safe and Healthy Neighborhoods, in partnership with JCPS, the LMPD Domestic Violence Unit, and the Office for Women, implemented the Trauma-Informed Support Project that was designed to support school efforts to provide early intervention and trauma-informed support to children who have been exposed to violence. There is also a bullying prevention department which offers support for students, professional development for staff, and a bullying tip hotline. Further there is an Academic Supports program which is meant to address several issues, including what it terms relationship skills. It is unclear, however, if that includes any focus on domestic violence. School Resource Officers' responsibilities include classroom presentations, which can include domestic violence. CWF has been involved in implementing the Green Dot bystander intervention program in a few schools. This program is an educational approach with age-appropriate training that aims to prevent violence with the help of bystanders; in a school setting it focuses on dating and sexual violence, stalking, and bullying.¹⁷¹ However, there is no domestic violence program included throughout the school curriculum. Students can receive individual counseling if they are victims of domestic violence, but there is no focus throughout the school system on educating both staff and students on domestic violence and dating violence.

¹⁷¹ <https://alteristic.org/services/green-dot/>.

JCPS should consider expanding its bullying prevention department to provide similar support to students and professional development to staff on domestic violence.¹⁷² This should include domestic violence/dating violence education, awareness and prevention in its curriculum.¹⁷³ JCPS should also facilitate the expansion of the Green Dot program throughout the school system. Schools are an excellent place for domestic violence awareness and prevention efforts.¹⁷⁴ Further, school personnel who interact daily with adolescents should receive training on identifying and addressing dating violence. Nationally, training of school personnel on adolescent dating violence is an unmet need. One recent study found that while most school principals, counselors, and nurses reported assisting students who were dating violence victims, more than half did not know the best practices for addressing it.¹⁷⁵

¹⁷² In February 2013, then-U.S. Secretary of Education Arne Duncan wrote a “Dear Colleague” letter to chief state school officers on addressing gender-based violence. The press release on the letter noted that “while strategies to improve school climate and reduce bullying are critical, they may not be adequate to reduce or respond to teen dating violence, sexual assault, human trafficking, and stalking. The letter urges leaders to take action to specifically address these forms of gender-based violence.” Press Release, *U.S. Department of Education Asks School Leaders to Initiate New Efforts to Reduce Gender-Based Violence*, February 28, 2013, <https://www.ed.gov/news/press-releases/us-department-education-asks-school-leaders-initiate-new-efforts-reduce-gender-based-violence>.

¹⁷³ See, e.g., Rhode Island’s Lindsay Ann Burke Act, named in memory of a 23 year old woman who was murdered by her ex-boyfriend in 2005. R.I. Gen. Laws Ann. §§ 16-85-1, 16-85-2, 16-21-30 and 16-22-24. The law requires each school district to develop and publish a dating violence policy that includes procedures for reporting dating violence, guidelines for responding to dating violence incidents at school, and procedures for disciplining students who commit dating violence. Further, each school district must train all of its administrators, teachers, nurses, and mental health staff on how to address dating violence and mandates a dating violence student education program as part of its grade 7 – 12 health curriculum.

¹⁷⁴ To accompany the “Dear Colleague” Letter from February 2013, the U.S. Department of Education released a “What Schools Can Do” toolkit, providing guidance and resources to school leaders in reducing gender-based violence. The Department of Education also released a training module – Get Smart, Get Help, Get Safe – to help school counselors, psychologists, and nurses, identify and respond effectively to signs of abuse. <http://safesupportivelearning.ed.gov/index.php?id=1511>.

¹⁷⁵ Klubchandani, et al., *Adolescent Dating Violence Prevention: Perspectives of School Personnel in the United States*, Domestic Violence Report, February/March 2018.

Recommendations

- **Consider a focused public awareness campaign on firearms and domestic violence fatalities.**
- **Consider a project to improve media accuracy in reporting of domestic violence, including the development of a guide for journalists.**
- **Consider adding dating violence education and prevention to the JCPS curriculum, as well as expansion of the Green Dot program.**
- **Consider dating violence training for all school personnel having contact with adolescents.**

XI. The Environment of the Courthouse

The Hall of Justice is a five-story building which houses the District Court courtrooms, administrative offices, as well as the Domestic Violence Intake Center, the Court Monitoring Center, and Pretrial Services on its first three floors; the top two floors are a jail facility used by Metro Department of Corrections. The Judicial Center is directly across the street and connected to the Hall of Justice by a pedway; it houses the Circuit Court, the Family Court, one of the Court of Appeals Courts, the jury pool area, the Family Court Clerk's Office and various administrative offices. The Hall of Justice is dark, crowded and relatively old, while the Judicial Center is modern and contains windows, making it more airy and generally quiet. However, both buildings raise safety issues for victims of domestic violence.

A. Security Protocols

Because there is little domestic violence case specialization in either the District or Family Courts and the court calendars are generally crowded, victims of domestic violence frequently may wait in or outside multiple courtrooms for several hours for their cases to be heard. In the District Court, they may be sitting in the courtroom where the defendant also is present, or out in the hallway. In the Family Court, current protocol does not permit a litigant into the courtroom until his or her case is heard.¹⁷⁶ This protocol presumably is due to confidentiality in some types of family court cases, though the exclusion of litigants in other cases when adult protective orders are being heard is not a practice followed in most jurisdictions; this may be a holdover from cases involving children. As a result, domestic

¹⁷⁶ In March 2018, the Family Court announced Project Open Courtroom, a pilot program to open courtrooms for some cases for a period each year, but it was not clear if protective order hearings were included in this project. Caray Grace, *Family courtrooms in Jefferson County now open to public*, WLKY, March 27, 2018, <https://www.wlky.com/article/family-courtrooms-in-jefferson-county-now-open-to-public/19608297>.

violence victims must sit out in the open waiting area outside the courtroom until their cases are called. Respondents may also be waiting there.

Because only one Sheriff's deputy is assigned per courtroom in Family Court, that deputy is most often busy inside the courtroom, both in maintaining security among the parties whose case is being heard, and in assisting the judge, clerk and case specialist. Further, in my observation, the deputies varied in how focused they were on interactions between the parties. In some cases, deputies were either occupied with case processing, or were sitting in the jury box or standing near a witness testifying and were not observing the parties.

In the District Court criminal courtrooms, there were typically two deputies. One was busy assisting the court clerks and judge in assessing the readiness of cases; there was a second deputy focused on transporting defendants in custody back and forth from the holding area. They were not able to monitor contact between victims and defendants, or focus on security, particularly outside the courtroom. It appeared that the judge handling the IPO calendar in District Court only permitted one case at a time in the courtroom, much like Family Court. This carried some of the same issues as Family Court, as petitioners and respondents milled together in narrow hallways and seating areas outside of the courtroom.

The Court Division of the Sheriff's Office is responsible for the security of all courts and the common areas of the courthouses. There are deputies who patrol the hallways both in the Family and District Courts, but they are pulled in many directions and in my observation, they could not be on-site routinely at all of the various waiting areas and halls. The Sheriff's Office also staffs two security control rooms with cameras trained on various parts of the courthouses, and if actual violence were to break out, it is clear that deputies would quickly get to the scene. However, due both to lack of resources and the diffusion of domestic

violence cases throughout the court buildings, there is not adequate security presence to deter such violence before it occurs, nor to prevent more subtle forms of intimidation or harassment that may not be picked up from camera observation.

Sometimes if they feel a victim is being intimidated, Sheriff's deputies will ask her to wait in one of the small conference rooms at the entryway to the courtroom; I witnessed this during one of my court observations. On request, a deputy will escort a victim to her car. But beyond these ad hoc solutions, there are no separate waiting area or separate security for victims. Those interviewed expressed support for this idea if it were feasible.

The relevant parties should meet to discuss how security protocols might be amended to enhance victim safety at the courthouse. Items that should be explored include: separate waiting areas for petitioners/respondents in Family Court and victims/defendants in criminal court; increased security outside courtrooms hearing domestic violence cases; seating arrangements inside the courtroom to minimize abuser's attempts at intimidation; and staggered departures for victims and defendants.

B. Child Care at the Courthouse

The presence of children was noticeable outside courtrooms in District Court and most particularly in Family Court and included both infants and older children who had more understanding of the proceedings. Though it did not appear that children entered the courtroom, this meant that litigants had to bring a friend or relative to watch their children in the waiting area while their cases were heard or leave children to fend for themselves. While waiting for their court appearance, victims often had to sit in the waiting area outside the courtroom with their children for hours. A courthouse is not a very pleasant environment for a child; in the context of domestic violence, this experience can be very anxiety-producing.

Whatever their age, children likely have some awareness of the incident that has occurred, and this environment can only heighten their anxiety.

The presence of children can further the potential for danger and trauma both to domestic violence victims and the children themselves. Because there are not separate waiting areas for petitioners and respondents, children can be exposed to confrontations between parents. Parents who are not supposed to have unsupervised contact with their children could use this situation as an opportunity to interact with them. In my observation, all of this escalated the tension existing in the waiting area.

At the time of my site visits, neither the Hall of Justice nor the Judicial Center had viable accommodations for children to be cared for while their parents were in court. There is a designated child care room located in a corridor behind courtrooms in the Family Court, a staff area that would not be accessible for parents with cases in court. It was unstaffed and locked when I observed it one day during court hours, and neither judges nor staff I asked were sure of whether it was still in regular use. My understanding is that ECHO, the volunteer agency who had staffed the room, either was no longer overseeing the room, or had very limited hours. It may be that the room was being used by prior arrangement when there is a child abuse or custody case, but it was not used or accessible to domestic violence victims who wanted their children in a safe place while their cases were heard.

However, the Family Court has reported that since my visits, there have been some developments in revitalizing of the space. As of September 2018, ECHO was redecorating the room, and had begun staffing it some hours with volunteers from a local church. The plan is to continue to increase hours of operation. This is an excellent start to providing child care at the courthouse. As the Court and ECHO move forward with expanding child care services,

they should focus on creating procedures that will be most helpful and effective for victims of domestic violence and their children.

The child care area must be secure, but it also needs to be accessible to litigants. If it remains in its current location in a staff area, there need to be a protocol for custodial parents to be able to get to the space and reach their children directly whenever the court is open. Ideally, the child care area would be staffed by personnel experienced in working with children exposed to trauma. Many court systems have been able to create pleasant areas that provide toys and activities, and are monitored by well-trained staff or volunteers, so that victims feel comfortable with leaving their children while at court. Further, the child care center must have strict security procedures, so that a parent without the right to custody or unsupervised contact cannot have access to or abscond with a child.

Recommendations

- **Sheriffs, judges, court personnel, and victim advocates should collaborate on tightened security protocols for domestic violence cases at the courthouse, and explore such issues as separate waiting areas, heightened security in hallways, and procedures in court to protect victims.**
- **The Court and interested partners should continue to revitalize a child care area at the courthouse; they should consult with victim advocates to ensure that the area is both secure, but also accessible to domestic violence victims and their children.**

CONCLUSION

The community and system partners of Louisville Metro and Jefferson County have expended a great deal of effort and resources to address domestic violence in their community. There are several innovative programs, as well as staff and leaders dedicated to continuing to improve domestic violence response. This continuing effort is demonstrated by the many changes and improvements since the last comprehensive assessment in 1998 and the system snapshot in 2005. This work over many years has created a strong foundation on which to build.

Domestic violence is a particularly challenging issue for every community. It must be addressed repeatedly and from multiple perspectives; it also requires continuing to adapt as new lessons are learned and best practices discovered. All of this takes place in an environment with constrained budgets and resources for virtually every public and private agency involved in the response. However, even within those constraints, progress is possible.

An overarching theme of the recommendations made in this report is that of increased communication and collaboration among partners. It has been an enduring lesson from the last several decades that the most effective techniques in increasing victim safety, holding batterers accountable, and promoting zero tolerance for domestic violence in the community, involve strong partnerships. One long-time domestic violence court judge likes to say that while we may not “solve” domestic violence, we can “surround the problem,” by ensuring that all components in the system are focused and coordinated. This is the time for Louisville to pull together and make this commitment.

Recommendation

- **Metro Government, the Metro Criminal Justice Commission, and the DVPCC should develop a plan for considering the recommendations in this report and monitoring the implementation of any agreed-upon recommendations.**

RECOMMENDATIONS

Services and Advocacy for Victims of Domestic Violence

- **Address highest priority needs for domestic violence victims, including additional shelter and transitional housing spaces, and additional opioid and mental health treatment services.**
- **Continue efforts to identify funding sources urgently needed to provide non-profit, safe supervised visitation of children in families with domestic violence histories.**
- **Expand the Arise to Safety Program to other area hospitals.**
- **Examine trends in the LAP program to maximize the number of high-risk victims connected to services.**
- **Expand the LMPD advocacy program and consider placing advocates locally at divisions with high domestic violence rates.**
- **County Attorney's Office should consider restructuring of its advocacy staff at DVIC and in the District Court to improve victim coverage, reduce delays in accessing services, and make the system more victim-friendly.**
- **DVIC and CWF should discuss the transfer of victim information between agencies in protective order cases.**
- **Expand the court advocacy program to: assist victims before and during DVO/IPO hearings; to reduce or eliminate a gap in services between the DVIC and the court appearance date for the final order; to provide follow up both to the victims who appear, but also to the victims who do not appear at the final**

hearing, to see if they are in need of services, or have been intimidated not to appear.

- CWF, DVIC, LMPD, County Attorney and Commonwealth’s Attorney staff should meet to discuss the best way to structure continuous and wraparound victim advocacy throughout the civil and criminal justice process.
- Louisville Metro Government and state government should work to institutionalize as much victim advocacy as feasible in government agencies, including the LMPD, so that advocacy will not be dependent on fluctuations in outside funding.
- All system and community partners should work together to identify other points, including places of worship, health providers and beauty professionals, to reach out to “undiscovered victims” and engage them in services to promote their safety.

Data Collection, Information Coordination and Access, and Utilization of

Information Across Agencies

- Review data collection at each agency to ensure that it captures data that is easily interpreted and tracks case trajectories over time in order to accurately measure outcomes.
- Explore how technology could ease access to information by individual agencies and improve transfer of information across agencies.
- Address the underutilization of information accessible across courts so that judges routinely consider relevant information from related cases and minimize conflicting orders.

The Processing of Protective Orders

- AOC and court personnel should consider tracking a sample of protective order petitions throughout the court process to obtain preliminary data on success rates and to compare data on DVOs and IPOs.
- The Court, including court personnel such as case specialists, as well as CWF advocates should consider a protocol for ascertaining a victim's safety if she does not appear in court for a DVO or IPO Hearing.
- Legal Aid should review the way in which it captures data for the DVAP program.
- DVPCC and system partners should explore additional avenues for victims to obtain civil legal assistance.
- JCPS and DVIC staff should meet to discuss better communication of new court appearances that are relevant to JCPS.
- The statute permitting minors to seek protective orders should be clarified so that juveniles can proceed without a parent acting on their behalf or being present.
- JCPS should develop a protocol with Family Court case specialists to be alerted when a DVO case involving a child of school age is on the docket.

Accountability of Court-Ordered Participants in Batterer Intervention Programs

- A working group that includes representatives from the Family Court and District Court, the CMC, and the BIPs should be reinstated to discuss multiple issues, including consistent imposition of BIP as a condition where appropriate, coordination of information and compliance policies.
- Monitor and investigate decline in court referrals to BIPs.

- The Court and CMC should examine the enrollment process and consider, where feasible, the in-person presence of a CMC representative at the courtroom to sign up defendants immediately, making it more difficult for defendants to fail to enroll, and enabling CMC and the Court to track any failures immediately.
- In consultation with the Kentucky Cabinet for Health and Family Services, the Court and CMC should consider assigning defendants to specific BIPs, updating its enrollment process to reduce reliance on hard copy paper and mail, and moving to an electronic system that is quicker and more efficient.
- Explore a compliance calendar for regular judicial review of defendant participation in BIPs and development of intermediate sanctions to impose consequences.
- Explore options for a government-run BIP, or some funding to offset costs for truly indigent BIP participants.

Domestic Violence Firearms Regulation and Protocols Throughout the Justice System

- The AOC protective order form should be changed to add a check box specifically for the condition of firearm prohibition, so that judges do not have to affirmatively stamp this on the form.
- Train judges on the particular dangers of military and police involved domestic violence and the need for firearm prohibition conditions in orders involving them.
- Consider amending current law to make gun prohibition for qualifying protective orders mandatory and expand to include those who are subject to IPOs/T-IPOs.

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- **Institute a protocol for the judges at protective order hearings to ask both the petitioner and the respondent if the respondent possesses guns. Advocates can also ensure that petitioners are asked about this prior to filing for an order so that this information can be inserted into the petition for an EPO/T-IPO.**
 - **Explore legislation to provide courts with the authority to order search and seizure of prohibited weapons not voluntarily surrendered.**
 - **Explore legislation to explicitly bring state firearm laws into conformity with federal law, to ban firearm possession for those who are convicted of a domestic violence misdemeanor.**
 - **Explore legislation to authorize law enforcement to remove weapons at the scene of a domestic violence arrest when they are in plain view and pose a threat to victim or public safety.**
 - **Police, prosecutors and the Division of Probation and Parole should coordinate with federal law enforcement to empower enforcement of the federal domestic violence gun laws.**
 - **The Division of Probation and Parole should specify to domestic violence offenders that firearms may be prohibited “contraband” and subject to warrantless reasonable suspicion searches.**
 - **The Division of Probation and Parole and the Courts should review the process for imposing special conditions on domestic violence offenders and for exercising the right to search and seize weapons based on reasonable suspicion.**
 - **Enforce existing law that permits Family Court to hold the subject of a DVO in contempt for attempting to purchase a firearm under KRS 237.095.**

- Investigate victim notification that is authorized under KRS 237.100 when a respondent attempts to purchase a firearm to determine if this has been implemented and is regularly utilized.
- Enforce existing laws that permit state prosecution for KRS 527.090, providing false information in a federal background check for firearms purchase.
- Explore Extreme Risk Protective Order legislation.
- Investigate model gun surrender protocols from other jurisdictions and implement a protocol in Louisville Metro that is consistent with state and federal law.

The Criminal Justice Process

- LMPD should conduct ongoing training for patrol officers on working with victims of domestic violence.
- LMPD and MetroSafe should work together to ensure their data are consistent and that LMPD can access the subcategories of “domestic trouble” calls coded by MetroSafe in order to obtain more refined data on the number of JC-3 reports filed.
- LMPD and MetroSafe should conduct a formal sampling of the “Violence” subcategory of “domestic trouble” 911 calls, in order to review the incident from 911 answer time to clear time, and track numbers of calls, to number of requests for case numbers, to numbers of JC-3 reports completed.
- LMPD should monitor the gap between JC-3 reports and arrests.
- LMPD should track dual arrest domestic violence cases, and also explore sampling cases with female defendants to determine the context of the arrest.

- **LMPD and other agencies should collect both aggregate recidivism data and make a hotlist by division of high-recidivism offenders.**
- **Explore the Offender-Focused Domestic Violence Initiative or other programs that target and monitor high risk chronic offenders.**
- **Review protocol for LINK entry and ensure that qualifying no contact orders are entered so that they can be accessible electronically to law enforcement.**
- **System partners may want to explore legislation to create a criminal protective order that can be issued in lieu of a no contact order, to ensure that the order does not expire at the conclusion of a criminal case and that any violation of the order is a crime.**
- **LMPD, PTS and other interested partners should monitor the implementation of ODARA and arrange training sessions for all involved, including the judges making release decisions.**
- **The County Attorney's Office should review protocols for transfer of cases from DVIC prosecutor to court prosecutor.**
- **Commonwealth's Attorney and County Attorney should review data collection methods and revise structure in order to capture more relevant and detailed data in domestic violence cases.**
- **Both prosecutors should look for more options to bring cases to trial.**
- **Both prosecutors should evaluate and address challenges to the utilization of KRS 508.032.**
- **The Commonwealth's Attorney and the County Attorney's Office should track the cases that are sent from District Court to Circuit Court and then sent back to District Court.**

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- **Enact legislation to make strangulation a separate felony crime.**
 - **Create evidence collection protocols and track data in strangulation cases.**
 - **Increase trainings on strangulation for law enforcement, prosecutors, and judges from Circuit, Family and District Court.**
 - **Law enforcement and the Commonwealth’s Attorney’s SVU and County Attorney’s DV Unit should focus on stalking to discuss both the collection and utilization of evidence and increase charges and prosecutions in this area.**
 - **Increase trainings on stalking for police, prosecutors and judges.**
 - **Consider legislation to create a separate crime of “cyberstalking” to focus on increasingly common forms of threats and intimidation.**
 - **Local Court Rules should not mandate use of contempt for certain protective order violations, particularly firearms provisions.**
 - **Amend KRS 508.032 to include perpetrators who meet the relationship definition under the IPO statute.**
 - **Consider legislation to make particular conduct in violation of a protective order a felony or repeat violation of a protective order a felony.**
 - **Consider legislation to permit imposition of GPS monitoring as a condition of an original protective order for high risk respondents.**
 - **Explore the development of a specialized domestic violence docket in District Court.**
 - **Public Defenders may want to consider specializing public defenders who appear at a specialized domestic violence docket, to promote efficiency and consistency for their clients.**

- Evaluate Division of Probation and Parole MIP caseload and investigate the use of MIP for non-domestic violence offenders.
- Metro Corrections, prosecutors, LMPD and the courts should work together to explore ways to more easily identify domestic violence inmates at the jail, so that Corrections is immediately aware of all special conditions, including the terms of any protective order.
- Examine the impact of jail overcrowding on judges' HIP decisions in domestic violence cases, monitor the use of HIP in these cases, and review outcomes of the HIP pilot project specifically for this domestic violence population.

Interagency Coordination and Planning

- Expand the DVPCC's committees and subcommittees to create working groups in a variety of areas and increase coordination and problem-solving among system partners.

Domestic Violence Training and Resource Needs for System and Community

Partners

- The Kentucky Supreme Court should require domestic violence training for all new judges and ongoing domestic violence training for all judges on an annual basis.
- The AOC and Jefferson County judges and court staff, with assistance from domestic violence advocacy organizations, should develop a Domestic Violence Benchbook that can be used by judges handling domestic violence cases in Jefferson County.

- The DVPCC should create a subcommittee or working group focused on training priorities for system and community partners.

Public Awareness of Domestic Violence and Prevention Efforts

- Consider a focused public awareness campaign on firearms and domestic violence fatalities.
- Consider a project to improve media accuracy in reporting of domestic violence, including the development of a guide for journalists.
- Consider adding dating violence education and prevention to the JCPS curriculum, as well as expansion of the Green Dot program.
- Consider dating violence training for all school personnel having contact with adolescents.

The Environment of the Courthouse

- Sheriffs, judges, court personnel, and victim advocates should collaborate on tightened security protocols for domestic violence cases at the courthouse, and explore such issues as separate waiting areas, heightened security in hallways, and procedures in court to protect victims.
- The Court and interested partners should continue to revitalize a child care area at the courthouse; they should consult with victim advocates to ensure that the area is both secure, but also accessible to domestic violence victims and their children.

Conclusion

- **Metro Government, the Metro Criminal Justice Commission, and the DVPCC should develop a plan for considering the recommendations in this report, and monitoring the implementation of any agreed-upon recommendations.**