#004

July 29, 2016

The Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments: Ad Hoc Committee on Domestic Violence
Hughes Justice Complex, P.O. Box 037
Trenton, NJ 08625-0037

Sent via email: Mailbox@judiciary.state.nj.us

Dear Judge Grant,

The New Jersey Coalition to End Domestic Violence (NJCEDV) is grateful to have had the opportunity to represent survivors of domestic violence and domestic violence programs on the Supreme Court Ad Hoc Domestic Violence Committee. We were impressed with the number of committed stakeholders that participated, and the process facilitated by The Honorable Georgia Curio. We are fortunate that New Jersey has strong domestic violence laws as well as a strong network of service providers committed to increasing our state's capacity to effectively address domestic violence.

The *Report of the Supreme Court Ad Hoc Committee on Domestic Violence* is evidence of the broad discussions and acknowledgement among the Committee members of the need to strengthen our response to domestic violence in New Jersey. The 30 Recommendations identify specific areas that require further development and coordination to ensure that we provide consistent services and responses to victims and families, as well to increase our capacity to reduce domestic violence homicide. We realize these recommendations are many and no small fete to implement. Based on our work and advocacy on behalf of domestic violence victims, our years working collaboratively with the courts, prosecutors and law enforcement community we offer the following comments in response to the *Report of the Supreme Court Ad Hoc Committee on Domestic Violence*. We have prioritized the recommendations we believe will have the most impact to strengthen our collective efforts to respond to domestic violence and to improve the safety for victims statewide.

Please feel free to contact me if I can offer clarification or additional information on any of the recommendations highlighted below.

Sincerely,

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Comments in Response to the
Report of the Supreme Court Ad Hoc Committee on Domestic Violence

The New Jersey Coalition to End Domestic Violence (NJCEDV) respectfully submits comments in response to the *Report of the Supreme Court Ad Hoc Committee on Domestic Violence*. The recommendations highlighted below are organized by category similar to those outlined in the initial report, and reflect those recommendations we believe will have the greatest impact on our collective efforts to respond to domestic violence and improve the safety for victims statewide.

Resources Subcommittee

Recommendation 1: Bar Associations should develop referral procedures to provide low or no cost legal assistance to parties litigating civil domestic violence cases.

According to the National Network to End Domestic Violence's (NNEDV) Annual Census report, legal services and representation are one of the most unmet services requested by victims of domestic violence. In fact, in New Jersey, legal representation and services were second to only emergency shelter and housing in terms of unmet needs[1]. Research studies have shown that victims who have access to legal representation are more likely to go forward with restraining order applications and proceedings, less likely to dismiss their orders, and more likely to have additional legal remedies included in their orders- indicators that legal representation in domestic violence cases contributes to a reduction in violence experienced by victims[2].

In addition to increasing the availability of low or no cost legal assistance, the Bar Association's referral procedures should include domestic violence training requirements, developed in partnership with the New Jersey Association of Domestic Violence Professionals a part of NJCEDV.

Recommendation 6: The Judiciary should update the current Risk Assessment Form and develop training for Judiciary staff on the utilization of the form.

Leaving or separating from an abusive partner is often the most dangerous time for a victim. As the abusive partner loses control, they begin to escalate the violence and abuse perpetrated against the victim. The violence and abuse may be directed toward the children in the relationship as contact with the adult victim becomes more limited. Updates to the risk

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[1] *Domestic Violence Counts 2015: a 24 Hour Census of Domestic Violence Shelters and Services,* National Network to End Domestic Violence, 2015.
[2] Rosenberg, Jennifer S. and Denise A. Garb. *Supporting Survivors: The Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence.* Institute for Policy Integrity, New York University School of Law, 2015.

assessment form should include and consider the ongoing and escalating nature of power and control that the abusive parent has demonstrated over the victimized parent in order to better understand the potential for further harm and abuse against the victim or children.

Professionals facilitating the completion of such an assessment should have a Domestic Violence Specialist (DVS) certification from the New Jersey Association of Domestic Violence Professionals, or demonstrated expertise in domestic violence as identified by the New Jersey Coalition to End Domestic Violence, or the county-based domestic violence program.

In addition, any updates to the current form should be developed in conjunction with any risk or danger assessment tools that may be developed as a result of Recommendations 20 and 21.

Recommendation 9: The Office of the Attorney General and the County Prosecutors should review policies for Domestic Violence Response Teams (DVRT) pursuant to NJSA 2C:25-20(b)(3)(1) and consider the following: 1) mandate automatic call out policies for accessing DVRT advocates; 2) provide more oversight to police departments with respect to their utilization of DVRTs.

Domestic Violence Response Teams (DVRT) provide a critical service to victims of domestic violence. DVRT advocates provide crisis intervention support, safety planning and a connection to the local domestic violence program where additional services may be provided beyond the initial law enforcement response. Since the inception of the DVRT program, NJCEDV has provided technical assistance to local domestic violence programs as they worked with local law enforcement agencies to establish and maintain active DVRTs available in every municipality. In fact, NJCEDV continues to facilitate a bi-monthly forum of DVRT Coordinators who manage the program in their respective county in collaboration with their local law enforcement community and County Prosecutor's Office. In our experience, there are great inconsistencies in how and when DVRTs are offered to victims of domestic violence as they engage with law enforcement, which at times creates barriers and limitations to accessing the program. We have witnessed that when departments adopt an automatic call-out policy very few victims decline the service of the DVRT, and as a result a greater number of victims obtain the crisis intervention support, safety planning and referral services offered by the responding advocates. In some counties, the increase in the number of DVRT call-outs was significant when comparing year to year statistics for municipalities before and after the implementation of a department automatic call-out policy.

Education and Training

Recommendation 17: NJSA 2B:25-10 should be modified to enable the Office of the Attorney General and respective County Prosecutor to require that municipal prosecutors attend needed training. This training should include, but not be limited to, domestic violence.

Law enforcement officers and judicial personnel are required to participate in annual domestic violence training in an effort to increase their understanding of the law, the dynamics of domestic violence, the impact of trauma on survivors as well as a host of other topics related to

domestic violence. It is unacceptable that municipal prosecutors, individuals who play a critical role in domestic violence cases, are not mandated to participate in training as their colleagues in law enforcement and the judiciary are.

As stated in the Executive Summary of the Ad Hoc Committee's Report, the majority of criminal complaints are resolved within the jurisdiction of the municipal court. However, the majority of quasi-criminal domestic violence complaints were dismissed in 2014 (79.6%), a number that surpasses the dismissal rate for other quasi-criminal court matters (46%). Of course, we don't know with certainty that a lack of training contributes to such a high number of dismissals. However, we have witnessed the positive impact that training of professionals including the mandated training provided to law enforcement and judges has on our collective ability to effectively address domestic violence. At the very minimum, the volume of domestic violence cases that municipal prosecutors represent warrants the need for initial and ongoing training. Mandated training should include, but not limited to, the areas outlined in Recommendations 12, 14 and 16 with at least one addition below:

- Basic domestic violence dynamics
- The impact of domestic violence on children
- Trauma informed danger assessments
- The distinction between BIP and anger management programs
- Domestic violence risk factors and lethality
- *Evidence-based prosecution*

Recommendation 18: New Jersey should adopt formal standards to govern the operations of Batterer Intervention Programs.

In 1998, NJCEDV known at that time as the New Jersey Coalition for Battered Women, worked with Batterers Intervention Program providers across the state to create basic Batterers Intervention Program (BIP) Standards which are currently included in the appendix of the *Domestic Violence Procedures Manual*[3]. In 2006, those standards were revised and are provided at the end of this document.

It is important that the courts order domestic violence offenders to appropriate services. Since BIPs are limited in availability county to county, private counselors and anger management programs are often used as an alternative. However, these options rarely meet the standards determined to be best practice when working with this population.

In addition to the five factors the Committee believes all BIPs should contain, professionals facilitating BIPs should be a Domestic Violence Specialist (DVS) certified by the New Jersey Association of Domestic Violence Professionals, and/or professionals or programs with

[3]*State of New Jersey Domestic Violence Procedures Manual.* Supreme Court of New Jersey and the Attorney General of the State of New Jersey, July 2004: October 2008 Amended Ed.

demonstrated expertise in domestic violence as identified by the New Jersey Coalition to End Domestic Violence or the county based domestic violence program.

The success of BIPs and their ability to hold domestic violence offenders accountable is often contingent on the authority of the ordering or referring body. Therefore, as BIPs should have appropriate standards for providing service, the courts must also be committed to ensuring that domestic violence offenders ordered to participate in a BIP are monitored and held accountable by the court if and when they do not participate as ordered.

Recommendation 20: New Jersey should develop a system wide, coordinated process for assessing risk and danger in domestic violence cases.

In a single domestic violence case, the parties involved often interact with a variety of professionals and systems beginning with first responders all the way through the resolution of their court case, and sometimes beyond. Implementing an evidence-based danger assessment tool would allow for a more consistent and shared understanding of domestic violence risk factors, ongoing assessment over the course of a domestic violence case, as well as help providers identify potentially fatal domestic violence. Studies have validated the Danger Assessment, developed by Jacquelyn Campbell, PhD, RN, FAAN, of Johns Hopkins University, to have the capacity to identify 90% of potentially lethal domestic violence cases, with a false negative rate of less than 5% in cases assessed for "extreme danger", as well has been found to be predictive of severe re-assaults[4].

As suggested in the recommendation, successful implementation will be contingent upon a strong collaboration among providers as seen in the Domestic Violence High Risk Team (DVHRT) Model[5]. Developed in Massachusetts, the DVHRT Model incorporates evidence-based risk assessment into a community's domestic violence response system to identify the most dangerous cases. These cases are monitored by a multidisciplinary team that shares case information and implements case-specific intervention plans to mitigate the danger to victims - each step informed by an ongoing Danger Assessment.

Recommendation 21: The Judiciary should consider the development of a "Bench Guide of Risk in Domestic Violence Cases" that can aid judges in their decisions impacting alleged batterers and victims of domestic violence.

The Judiciary should develop and incorporate the use of a "Bench Guide" to offer judges a reference to help inform judicial decisions that impact the safety of victims and accountability of offenders. As suggested in response to Recommendation 6, the "Bench Guide" should be developed in accordance with any other risk or danger assessment tools that may be used by judges or as a part of a system wide approach. The significance of using a tool like the

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[4] Campbell, et al. *The Danger Assessment: Validation of a Lethality Risk Assessment Instrument for Intimate Partner Femicide.* Journal of Interpersonal Violence, 2009.

[5] For more information, Jeanne Geiger Crisis Center- Domestic Violence High Risk Team http://www.dvhrt.org/ .

suggested "Domestic Violence Risk Assessment Bench Guide" is that it helps to identify perpetrators' behaviors that are often missed or overlooked by courts and law enforcement. While understanding the history and impact of physical violence is important, understanding dynamics of escalating power and control are often stronger indicators of danger and potential lethality in domestic violence. A "Bench Guide" will help the court better understand the breadth and depth of a perpetrator's control over their victim.

Interaction between Municipal and Superior Courts/ Level and Degree of Offenses

Recommendation 23: Municipal courts should expand the use of domestic violence advocates for court proceedings.

Domestic violence advocates are generally available through Family Court to assist victims of domestic violence seeking restraining orders. These advocates are usually staff of the county domestic violence program. Currently, advocates are available on a case by case basis in some municipal courts in a few counties. We agree with the recommendation that there must be an expansion of the use of advocates in municipal court proceedings. Advocates educate victims about the court process, provide support and safety planning.

We ask that the recommendation go further to suggest that the Office of Victim Witness Advocacy work with the county domestic violence program to explore how they may expand the role of the domestic violence advocate. The role of advocates employed by the Office of Victim Witness Advocacy is valuable, however, often different from the role of domestic violence advocates supervised by the local domestic violence program. Therefore, collaboration between these two entities would be helpful to victims, as well will allow counties to determine the best way to implement the use of advocates.

Recommendation 25: Municipal Court Administrators should be given access to the Domestic Violence Central Registry (DVCR).

As discussed in the recommendations above, a strong collaborative approach to domestic violence includes the sharing of critical information across systems. Many domestic violence offenders appear in municipal court in response to criminal and quasi-criminal domestic violence charges. Allowing the court to access the DVCR would provide information regarding any restraining orders issued against the defendant, as well alert the court if service has not been satisfied on an order. Municipal courts could then facilitate service ensuring that defendants are made aware of conditions and restrictions placed on them through the order which contributes to the protection and enforcement of restraining orders.

New Jersey Coalition for Battered Women
Batterer Intervention Program Standards

INTRODUCTION

Batterers Intervention Programs (BIPs) are committed to promoting victim safety and batterer accountability. Offenders must be held accountable for their behavior toward others, therefore, the responsibility for violence in an interpersonal relationship lies solely with the perpetrator. BIPs provide intervention services to court-ordered and voluntary domestic violence offenders with a goal of rehabilitation. In doing so, BIPs shall hold victims' safety and well-being as the primary concern in all program applications, group process, administration operations and any activity with or about the batterer.

BIPs are distinct from anger management programs. BIP curriculum must include an exploration of the abuser's own socialization in regard to learned patterns of domination, issues related to the abuser's parenting and shall teach alternatives to the use of power and control in interpersonal relationships.

BIPs are but one element of a comprehensive community plan to stop domestic violence and shall not exist in isolation. Therefore, BIPs must maintain collaborative working relationships with domestic violence victim services agencies, courts, probation services, mental health and substance abuse providers. Domestic violence lead agencies shall be actively sought for their expertise and leadership on an on-going basis particularly related to victim safety issues.

The Standards set forth below are standards for programs for men. BIPs for male batterers are not appropriate for women. When a woman is court-ordered to a BIP, an assessment shall be conducted to determine the root cause of the violent behavior, and to guide an appropriate intervention referral. A thorough evaluation shall be informed by the differences between men's and women's use of force, as well as the social context of male entitlement and the devaluation of women. The assessment shall consider the history of violence in the relationship, if the act occurred in self-defense or was in reaction to abuse, and if the act is part of a pattern of coercion or force to maintain control in the relationship. Feedback to the court shall be based on the assessment of battering and shall include recommendations for appropriate intervention, including services for victims, if indicated, with a goal of no recidivism.

STANDARDS

1. **Program/Services**
   a. Format
      - Group format
      - Minimum 26 weeks in length, 52 weeks or longer is preferred
      - 1.5 hour minimum for each group session
      - 8-12 individuals in each group

   b. Procedural Guidelines
      - Programs will maintain regular contact with the referring court regarding each court-ordered participant's compliance with court-ordered attendance and participation requirements, including fees.
      - Programs shall develop procedures for batterer's self-report of any physical, sexual, property or psychological violence during the previous week.
      - Programs shall develop procedures for dealing with re-offenses.

2. **Staffing**
   a. Staffing Guidelines:
      - Group co-facilitation by a male and female team, whenever possible.
      - BIP facilitators shall represent the diversity of the communities that they serve.
      - Bilingual staff will be provided as needed.
      - All group facilitators must participate in regular supervision with program supervisor/coordinator.
      - BIP staff shall meet regularly with the county's lead domestic violence program, and shall be encouraged to collaborate with victim services programs.

   b. Qualifications
      - Program Supervisor/Coordinator - Masters level with a NJ Domestic Violence Specialist certification and a license in a related professional discipline is preferred; otherwise the supervisor should have the equivalent 180 hours of domestic violence education and 2,000 hours of experience working in the domestic violence field.
      - Group Facilitators - While qualifications for group facilitators shall be determined by individual programs and supervisors/coordinators, a minimum of 40 hours of domestic violence victim and batterer intervention training is strongly recommended.

3. **Duty to Warn**
   a. Batterers service providers have a duty to warn victims of possible harm in accordance with *N.J.S.A.* 2A:62A-16 and McIntosh v. Milan, 168N.J. 466; 403 A.2d 500 (Law Div 1979).

4. **Victim Contact**
   a. Service providers must remain cognizant that batterers programs can never promise to protect victims, and should encourage victims to have a safety plan.
   b. Every effort should be made by the BIP to contact the victim for the purpose of orientation to the BIP, limitations of the BIP and contact information for future communication with the BIP. Information about services available to the victim shall

always be provided, however, victims should never be pressured to contact or participate in a domestic violence program or to divulge information that may compromise their safety or that they are uncomfortable revealing.

c. Contact and communications with the victim shall remain confidential unless the victim otherwise consents to the sharing of information. (Depending on the nature of a communication between a victim and a BIP staff, and the nature of the relationship between a BIP and a domestic violence service program, a communication with a victim might be considered privileged under New Jersey's victim-counselor privilege statute, *N.J.S.A.* 2A:84A-22.13 et seq., provided the BIP staff person has otherwise met all the requirements of the statute)

d. The BIP should relay to the victim the possible benefits and risks of sharing information disclosed by the victim to her partner in the course of intervention so that the victim can make an informed decision. If the victim chooses not to have information relayed to the partner, such information may assist in informing specific batterer intervention strategies, but never in a manner that would breach confidentiality.

5. **Batterer Confidentiality**
   a. BIPs shall require a waiver of confidentiality from the batterer, as part of program admission, in accordance with the requirements of the BIP.

6. **Intervention Guidelines** – BIPs shall:
   a. Challenge presumptive entitlement thinking.
   b. Challenge person to take responsibility for violent, abusive and controlling behavior.
   c. Help person to understand and accept the consequences of his abusive behavior.
   d. Help person to understand the dangerousness of his behavior and that domestic violence is a crime.
   e. Address substance abuse issues.
   f. Help person develop empathy for his partner.
   g. Help person understand the relationship between violence and sex-role behavior.
   h. Help person develop constructive communication skills.
   i. Help person develop a positive support network.
   j. Help person develop specific strategies to prevent further violence, abuse and control.
   k. Help person to understand the impact of his violence on his children.

7. **Education**

   a. BIPs may be called upon to provide education and should follow the NJ Association of Domestic Violence Professionals *Guidelines for Training* regarding batterer intervention and BIP programming.

8. **Evaluation**

   a. BIPs shall incorporate methods of program evaluation that address the assessment process, intervention issues, program staff, service provision, and standards of professional practice.