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FAMILY VIOLENCE: A MODEL STATE CODE

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

MODEL CODE
ON
DOMESTIC AND FAMILY VIOLENCE

Drafted by the

Advisory Committee

of the

Conrad N. Hilton Foundation
Model Code Project
of the
Family Violence Project



National Council of Juvenile and Family Court Judges
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INTRODUCTION

Domestic and family violence is a pervasive and frequently lethal problem that challenges society at every level. Violence in families is often hidden from view and devastates its victims physically, emotionally, spiritually and financially. It threatens the stability of the family and negatively impacts on all family members, especially the children who learn from it that violence is an acceptable way to cope with stress or problems or to gain control over another person. It violates our communities' safety, health, welfare, and economies by draining billions annually in social costs such as medical expenses, psychological problems, lost productivity and intergenerational violence.

Domestic and family violence must be reduced and prevented. When it occurs we must intervene effectively. Our best hope to do so requires strong public policy against domestic and family violence and begins with appropriate legislation to that end. Leadership, communication and coordination are critical among legislators; government administrators; law enforcement; courts and their gatekeepers; attorneys; the medical and health care community; advocates and providers of services to victims; corrections and providers of treatment for offenders, educators, and volunteers.

Recognizing the critical importance of legislation, in 1991 The National Council of Juvenile and Family Court Judges, with the generous support and commitment of the Conrad N. Hilton Foundation, undertook the challenge of drafting a Model State Code on Domestic and Family Violence through its Family Violence Project. The Model Code was developed with the collegial and expert assistance of an advisory committee composed of leaders in the domestic violence field including judges, prosecutors, defense attorneys, matrimonial lawyers, battered women's advocates, medical and health care professionals, law enforcement personnel, legislators, educators and others. Hard choices and necessary compromises were made during three years of intense work. In two instances alternative solutions were set forth. The commentary accompanying the Code is descriptive while the appendices contain selected source materials. Throughout the discussions and Code itself, due process and fairness were paramount. Because this is a Model Code each chapter and section can be independently assessed and accepted or modified.

The Model State Code on Domestic and Family Violence provides effective and innovative answers to the concerns of public officials and community leaders. This Code will help **protect** victims in a fair, prompt and comprehensive fashion. It will help **prevent** future violence in every family where such violence has been discovered. This Code sets forth procedures for comprehensive civil protection orders consistent with due process. This Code treats domestic and family violence as a crime which requires early, aggressive and thorough intervention. Where the custody of a child is an issue, the Code assures that the child's safety and well-being is of paramount concern. Finally it sets forth ways that each community can coordinate efforts to identify, protect, treat and intervene when domestic or family violence occurs.

Family violence is a wrong that needs righting in every state in this country. The key is community commitment to recognize, address and prevent such violence. Effective and enabling legislation is the cornerstone. This Model Code provides a strong public policy statement of that commitment and a framework for abating the ravages of violence in families. We believe this Code is fair and effective and will result in lives being saved and families helped. Please review it carefully and put it to work.

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MODEL CODE ON
DOMESTIC AND FAMILY VIOLENCE

CHAPTER 1

GENERAL PROVISIONS

Section 101. Construction.

The Model Code on Domestic and Family Violence must be construed to promote:

1. The protection and safety of all victims of domestic or family violence in a fair, prompt, and effective manner; and
2. The prevention of future violence in all families.

COMMENTARY

The Model Code was crafted to facilitate parallel statutory development with respect to domestic and family violence among the States and the District of Columbia. The enactment of similar codes by all jurisdictions will enhance both the uniformity and quality of justice for victims and perpetrators of domestic and family violence throughout the nation.

Sec. 102. Definitions.

Unless the context otherwise requires, as used in the Model Code:

1. "Domestic or family violence" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:
   (a) Attempting to cause or causing physical harm to another family or household member;
   (b) Placing a family or household member in fear of physical harm; or
   (c) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.
2. "Family or household members" include:
   (a) Adults or minors who are current or former spouses;
   (b) Adults or minors who live together or who have lived together;
   (c) Adults or minors who are dating or who have dated;
   (d) Adults or minors who are engaged in or who have engaged in a sexual relationship;
   (e) Adults or minors who are related by blood or adoption;
   (f) Adults or minors who are related or formerly related by marriage;
   (g) Persons who have a child in common; and
   (h) Minor children of a person in a relationship that is described in paragraphs (a) through (g).
3. "Program of intervention for perpetrators" means a specialized program that:
   (a) Accepts perpetrators of domestic or family violence into treatment or educational classes to satisfy court orders;
   (b) Offers treatment to perpetrators of domestic or family violence; or
   (c) Offers classes or instruction to perpetrators of domestic or family violence.

4. "Program for victims of domestic or family violence" means a specialized program for victims of domestic or family violence and their children that provides advocacy, shelter, crisis intervention, social services, treatment, counseling, education, or training.
5. "Safety plan" means a written or oral outline of actions to be taken by a victim of domestic or family violence to secure protection and support after making an assessment of the dangerousness of the situation.

COMMENTARY

Domestic or family violence as defined in subsection 1 identifies the conduct that is commonly recognized as domestic or family violence. The definition incorporates assaultive and non-violent conduct that injures or attempts injury. The term "physical harm" permits a court to exercise broad discretion in evaluating whether the conduct has resulted in an injury that might not typically be identified as a medical injury. The definition recognizes that abusive persons jeopardize partners and family members by threatening physical harm or acting in a manner to instill fear. Use of the word "fear" in paragraph (b) refers to a reasonable person standard, that is which acts would place a reasonable person in fear of physical harm.

Subsection 2 identifies the persons to be protected by the various remedies set forth in the Model Code. The definition of family or household member is broad. Cohabitation is not a prerequisite for eligibility; and the relationship between the victim and the perpetrator need not be current. The Code recognizes that violence may continue after the formal or informal relationship has ended.

Subsection 3 defines a program of intervention for perpetrators. The definition contemplates that the treatment or educational services provided for perpetrators of domestic or family violence pursuant to this Code be those designed specifically and exclusively for this distinct class of offenders.

The programs for victims of domestic or family violence defined in subsection 4 are designed to offer specialized advocacy and assistance. The Code addresses these programs throughout, particularly related to referrals by the justice and health systems, safety planning for victims, supportive services, and advocacy.

Subsection 5 briefly defines a safety plan. The Code anticipates that professionals throughout the justice, health, education and social services systems will educate victims about how to assess risk, to devise effective protection strategies, and to gain community assistance for implementation.

Drafter's Note: States should incorporate the specific terminology for domestic and family violence from their own states.

CHAPTER 2

CRIMINAL PENALTIES AND PROCEDURES

Sec. 201. "Crime involving domestic or family violence" defined.

A "crime involving domestic or family violence" occurs when a family or household member commits one or more of the following crimes against another family or household member:

1. Arson;
2. Assault Offenses (Aggravated Assault, Simple Assault, and Intimidation);
3. Burglary, Breaking and Entering;
4. Destruction, Damage, Vandalism of Property;
5. Homicide Offenses (Murder and Nonnegligent Manslaughter, Negligent Manslaughter, and Justifiable Homicide);
6. Kidnaping, Abduction;
7. Sex Offenses, Forcible (Forcible Rape, Forcible Sodomy, Sexual Assault with an Object, and Forcible Fondling);
8. Stolen Property Offenses;
9. Weapon Law Violations;
10. Disorderly Conduct;
11. Family Offenses, Nonviolent;
12. Stalking;
13. Trespass of Real Property; and
14. State to add any other.

COMMENTARY

This section enumerates the range of criminal conduct employed by many perpetrators of domestic or family violence. The Model Code offers this detailed list to underscore the breadth of violent crimes and fear-inducing or harmful conduct undertaken by perpetrators of domestic or family violence.

Drafter's Note: Crimes were listed using the classifications of Group A and Group B Offenses in the National Incident-Based Reporting System (NIBRS), 1992 edition of the *Uniform Crime Reporting Handbook* (Federal Bureau of Investigation, Uniform Crime Reports, Washington, D.C. 20535). The list of crimes encompassed within the definition of "crimes involving domestic or family violence" may be altered by state code drafters and must be modified to conform to a state's system of classification.

Sec. 202. Violation of certain orders for protection is misdemeanor.

Violation of one of the following orders issued in accordance with paragraph (a), (b), (c), or (d) of subsection 3 of section 305, paragraph (a), (b), (c), (d), or (e) of subsection 2 of section 306, or paragraph (a) of subsection 3 of section 306, respectively, is a misdemeanor:

1. An order enjoining the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner or other family or household member.
2. An order prohibiting the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly.
3. An order removing and excluding the respondent from the residence of the petitioner.
4. An order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named

family or household member.

5. An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the court.

COMMENTARY

The Model Code specifies those violations of orders for protection that subject a perpetrator to arrest and criminal prosecution, in addition to subjecting the perpetrator to other criminal and civil contempt proceedings and sanctions. The provisions in orders for protection tailored to deter violence immediately are those for which a breach is charged as a misdemeanor. They are articulated in subsections l through 5 of this section and reference is made to the relevant sections in Chapter 3. Drafters of the Model Code determined that there were problems with enforcement of penalties for violations of restraining orders in those states that only authorize enforcement of the orders through the court's contempt power. This section of the Model Code authorizes the intervention of the criminal court process for certain violations of orders for protection. See also section 206 which requires a law enforcement officer to arrest an apparent violator of these enumerated orders.

Sec. 203. Enhancement of penalty for second or subsequent crime involving domestic or family violence.

When a defendant makes a judicial admission, pleads guilty to, or has been found guilty of a second or subsequent crime involving domestic or family violence within five years, the penalty is enhanced by one degree above the penalty otherwise provided for that offense in the state statute or as otherwise enhanced for an habitual offender in the state statute.

COMMENTARY

This section requires that the penalty for a second or subsequent crime involving domestic or family violence be enhanced by one degree above the penalty usually provided for the offense or as otherwise enhanced for a habitual offender. Enhanced penalties may deter some perpetrators and serve to persuade those subjected to elevated sanctions that refraining from violence is preferable to further incarceration. Legislatures in several states have enacted various code provisions to enhance penalties for repeat offenders.

Drafter's Note: State to conform phrasing of "judicial admission, pleads guilty, or has been found guilty" to their usage.

Sec. 204. Duties of law enforcement officer to victim of domestic or family violence; required notice to victim.

1. A law enforcement officer who responds to an allegation of domestic or family violence shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:
   (a) Taking the action necessary to provide for the safety of the victim and any family or household member.
   (b) Confiscating any weapon involved in the alleged domestic or family violence.
   (c) Transporting or obtaining transportation for the victim and any child to a shelter.
   (d) Assisting the victim in removing essential personal effects.
   (e) Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility.
   (f) Giving the victim immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic or family violence.
2. As part of the notice required by paragraph (f) of subsection 1, the law enforcement officer shall give a written notice to the adult victim substantially as follows:

"If you are the victim of domestic or family violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency order for protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter, a family member's or a friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the report at no cost from the law enforcement department.

You may ask the prosecuting attorney to file a criminal complaint. You also have the right to file a petition in insert name of court requesting an order for protection from domestic or family violence which could include any of the following orders:

(a) An order enjoining your abuser from threatening to commit or committing further acts of domestic or family violence;
(b) An order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly;
(c) An order removing your abuser from your residence;
(d) An order directing your abuser to stay away from your residence, school, place of employment, or any other specified place frequented by you and another family or household member;
(e) An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the court;
(f) An order granting you possession and use of the automobile and other essential personal effects;
(g) An order granting you custody of your child or children;
(h) An order denying your abuser visitation;
(i) An order specifying arrangements for visitation, including requiring supervised visitation; and
(j) An order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs, and attorney's fees.

The forms you need to obtain an order for protection are available from the insert clerk of the court or other appropriate person. The resources available in this community for information relating to domestic and family violence, treatment of injuries, and places of safety and shelters are: insert list and hotline numbers. You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property. This can be done without an attorney in small claims court if the total amount claimed is less than fill in the amount required by statute."

3. The written notice:
   (a) Must not include the addresses of shelters, unless the location is public knowledge.
   (b) Must be provided in the native language of the victim, if practicable, when the native language of the victim is not English.

COMMENTARY

Law enforcement officers are the gatekeepers of the criminal justice system. The response of law enforcement is pivotal for both the victim and the perpetrator. Subsection 1 enumerates specific responsibilities assigned to officers in a situation where domestic or family violence is alleged.

Subsection 2 sets forth the comprehensive, written notice that a responding officer must give to a victim of domestic or family violence. An officer may be the first to inform a victim that there are legal and community resources available to assist him or her. Written notice is required because a victim may not be able to recall the particulars of such detailed information given verbally, particularly because the information is transmitted at a time of crisis and turmoil. This written menu of options, from law enforcement intervention to filing criminal charges, seeking an order for protection, acquiring safe shelter and counseling, and recovery for the losses suffered from the violence, permits a victim to study and consider these options after the crisis.

Paragraph (a) of subsection 3 makes it explicit that the written notice must not reveal the street address of shelters unless the location is public knowledge. In many communities, shelters are located in confidential or quasi-public locations in order to impede retaliatory violence, stalking, and kidnapping by perpetrators which endangers all residents and staff of shelters. Paragraph (b) of subsection 3 requires that written notice be given to the victim in his or her native language where it is practical to do so. In those states where significant portions of the residents are not English-speaking, it is preferred that these rights and options be translated into their languages.

The drafters of the Model Code offer the following two sections, alternative sections 205(A) and 205(B), concerning arrest of perpetrators of crimes involving domestic or family violence. Alternative section 205(A) provides for presumptive, warrantless arrest when a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic or family violence. Alternative section 205(B) requires mandatory arrest in these cases. Arrest appears to be an important deterrent to future domestic or family violence. The employment of presumptive or mandatory arrest practices may prevent domestic homicide. Arrest also conveys clear messages to victims, perpetrators, and the community that domestic or family violence will not be tolerated and that perpetrators will be held accountable.

The drafters reviewed the research and scholarly articles concerning the debate between proponents of presumptive arrest and the proponents of mandatory arrest which was informative but not conclusive. After much discussion, the drafters decided that the Model Code would be most helpful if the best possible sections were crafted and dealt with both presumptive and mandatory arrest. It is left to individual states to examine local practice, available services, and law enforcement policy to determine which of the two sections would work best within a state.

Sec. 205(A). Powers and duties of law enforcement officers to arrest for crimes involving domestic or family violence; determination of primary aggressor; required report.

1. If a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic or family violence, whether the offense is a felony or a misdemeanor, or was committed in or outside the presence of the officer, the law enforcement officer shall presume that arresting and charging the person is the appropriate response.
2. If a law enforcement officer receives complaints of domestic or family violence from two or

more opposing persons, the officer shall evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer need not arrest the other person believed to have committed domestic or family violence. In determining whether a person is the primary aggressor the officer shall consider:

(a) Prior complaints of domestic or family violence;
(b) The relative severity of the injuries inflicted on each person;
(c) The likelihood of future injury to each person; and
(d) Whether one of the persons acted in self-defense.

3. A law enforcement officer shall not:
   (a) Threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party; or
   (b) Base the decision to arrest or not to arrest on:
      (1) The specific consent or request of the victim; or
      (2) The officer's perception of the willingness of a victim of or witness to the domestic or family violence to testify or otherwise participate in a judicial proceeding.
4. In addition to any other report required, a law enforcement officer who does not make an arrest after investigating a complaint of domestic or family violence or who arrests two or more persons for a crime involving domestic or family violence must submit a written report setting forth the grounds for not arresting or for arresting both parties.

COMMENTARY

Subsection l directs law enforcement officers that warrantless, probable cause arrests for misdemeanor and felony crimes of domestic or family violence is the preferred response. Presumptive arrest means law enforcement officers should arrest alleged perpetrators of domestic or family violence unless there are clear and compelling reasons not to arrest. While many state statutes now permit or mandate law enforcement officers to arrest for enumerated crimes or in specified circumstances, such as injury to the victim or an attempt to place the victim in fear of bodily injury or death, the Model Code adopts broad authority for arrest in all crimes arising from domestic or family violence. The grant of broad authority is based on the policy determination of the drafters that arrest is a critical intervention against violence in intimate relationships and is an intervention that is underemployed in many jurisdictions, even in those with preferred or mandatory arrest laws. Simple and comprehensive arrest authority will cause decisive intervention and reduce the significance of extralegal factors in decisions concerning arrest.

Subsection 2 provides guidance to law enforcement for assessment of the claims of mutual violence. Officers are directed to consider certain factors about whether a person is the primary aggressor and then about whether the presumption in favor of arrest and charging the other person is overcome by the facts and circumstances as the officer understands them to be. In making dual arrests, officers may place victims at accelerated risk and often immunize perpetrators from accountability. See commentary following section 311. Subsection 2 provides instruction for focused investigation and informed decision-making, while continuing to vest discretion in the officer and offering some protection from liability when the officer acts within the parameters of the Code.

Subsection 3 contains explicit injunctions against practices that undermine the policy of presumptive arrest for crimes involving domestic or family violence. Paragraph (a) prohibits threatening or suggesting the possible arrest of all parties to discourage requests for intervention by law enforcement. Paragraph (b) makes it clear that the arrest decision is to be reached by an officer based solely on probable cause, and the decision may not be informed by extraneous, extralegal factors. The two factors are explicitly excluded from consideration in arrest decisions in crimes involving domestic or family violence. These exclusions are articulated in numerous state statutes and law enforcement policies on domestic or family violence.

Subsection 4 requires an officer who has not arrested an alleged perpetrator or who made a dual arrest decision to submit a written report explaining the reasons for that decision. This requirement provides a vehicle for supervisors to monitor the practices of those law enforcement officers who do not arrest alleged perpetrators of domestic or family violence and those who arrest both parties related to a complaint. Such reports will furnish supervisors the information necessary to provide corrective action and to secure consistent compliance with statute and departmental policy. Consistent documentation by responding officers will facilitate adherence to departmental policy. Careful law enforcement practice will reduce exposure to departmental liability and will improve the prevention efforts of the justice system.

Alternate Sec. 205(B). Mandatory arrest for crimes involving domestic or family violence; determination of primary aggressor; required report.

1. A law enforcement officer shall, without a warrant, arrest and charge a person with the appropriate crime if the officer has probable cause to believe that the person has committed a crime involving domestic or family violence, whether the offense is a felony or a misdemeanor, or was committed in or outside the presence of the officer.
2. If a law enforcement officer receives complaints of domestic or family violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer need not arrest the other person believed to have committed domestic or family violence. In determining whether a person is the primary aggressor the officer shall consider:
   (a) Prior complaints of domestic or family violence;
   (b) The relative severity of the injuries inflicted on each person;
   (c) The likelihood of future injury to each person; and
   (d) Whether one of the persons acted in self-defense.
3. A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party.
4. In addition to any other report required, a law enforcement officer who does not make an arrest after investigating a complaint of domestic or family violence or who arrests two or more persons for a crime involving domestic or family violence must submit a detailed, written report setting forth the grounds for not arresting or for arresting both parties.

COMMENTARY

Subsection 1 mandates the arrest of perpetrators in all instances where an officer determines that there is probable cause to conclude that a crime involving domestic or family violence has occurred. See alternative section 205(A) for analysis and commentary on the efficacy of arrest as an intervention against domestic and family violence.

Many jurisdictions have adopted mandatory arrest policies, and a number of states have enacted mandatory arrest statutes. Proponents of mandatory arrest suggest that law enforcement response to domestic and family violence has improved since the advent of mandatory arrest policies and statutes, providing victims immediate protection from the current violence, affording victims an opportunity to consider legal options, and providing victims a window of time for safe relocation or obtaining civil orders for protection. Victims are more likely to be assaulted immediately after law enforcement response to a call where no arrest was made than where arrests were made. Law enforcement executives have embraced mandatory arrest policies in the hope of facilitating consistent, effective practice which may immunize departments from liability for inadequate response to domestic and family violence.

See alternative section 205(A) for commentary on subsections 2 through 4.

Sec. 206. Mandatory arrest for certain violations of orders for protection.

When a law enforcement officer has probable cause to believe that a respondent has violated one of the following orders of the court and verifies the existence of the order, the officer shall, without a warrant, arrest the apparent violator whether the violation was committed in or outside the presence of the officer if the orders are issued in accordance with paragraph (a), (b), (c), or (d) of subsection 3 of section 305, paragraph (a), (b), (c), (d), or (e) of subsection 2 of section 306, or paragraph (a) of subsection 3 of section 306, respectively:

1. An order enjoining the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner or other family or household member.
2. An order prohibiting the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, either directly or indirectly.
3. An order removing and excluding the respondent from the residence of the petitioner.
4. An order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member.
5. An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the court.

COMMENTARY

This section directs law enforcement to make a warrantless arrest of a respondent if the officer has probable cause to believe that the respondent has violated specifically enumerated provisions of orders for protection. Research suggests that perpetrators are best deterred by swift and certain sanctions. Further support for the mandate stems from the conclusion of experts in the field that victims may refrain from seeking justice system intervention if perpetrators violate orders with impunity. See also section 202 which enumerates those violations of orders for protection that are misdemeanors. The arrest mandate is limited to those violations that may be charged as misdemeanors.

Sec. 207. Authority of law enforcement officer to seize weapons.

Incident to an arrest for a crime involving domestic or family violence, a law enforcement officer:

1. Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime.
2. May seize a weapon that is in the plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons.

COMMENTARY

The Model Code grants law enforcement broad authority to seize weapons pursuant to an arrest for domestic or family violence. Weapons seizure is both evidence collection and crime prevention. The prevention element may be significantly higher in crimes of domestic and family violence because the recidivism rate is greater for these perpetrators and the risk for lethal recidivism is highest for victims in the context of domestic or family violence. Recognizing the peril posed by weapons, the Model Code directs law enforcement to confiscate weapons incident to all arrests for crimes involving domestic or family violence. In subsection 1, seizure of all weapons used or threatened to be used in the commission of a crime is mandated.

In subsection 2, when officers conclude that a weapon must be confiscated to protect law enforcement, victims of violence, or others, they are authorized to seize any weapon that is plain view or which is located during a search authorized by a person entitled to consent to the search. The seizure of weapons authorized in this section is without regard to ownership of the weapons; weapons owned by a third party are subject to confiscation pursuant to this section.

Drafter's Note: Conform "weapon" to usage in state.

Sec. 208. Conditions of release.

1. In making a decision concerning pretrial release of a person who is arrested for or charged with a crime involving domestic or family violence or a violation of an order for protection, the court or agency having authority to make a decision concerning pretrial release or agency having custody of the person shall review the facts of the arrest and detention of the person and determine whether the person:
   (a) Is a threat to the alleged victim or other family or household member;
   (b) Is a threat to public safety; and
   (c) Is reasonably likely to appear in court.
2. Before releasing a person arrested for or charged with a crime involving domestic or family violence or a violation of an order for protection, the court or agency having authority to make a decision concerning pretrial release shall make findings on the record if possible concerning the determination made in accordance with subsection 1 and may impose conditions of release or bail on the person to protect the alleged victim of domestic or family violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:
   (a) An order enjoining the person from threatening to commit or committing acts of domestic or family violence against the alleged victim or other family or household member.
   (b) An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly.
   (c) An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be.
   (d) An order prohibiting the person from using or possessing a firearm or other weapon specified by the court.
   (e) An order prohibiting the person from possession or consumption of alcohol or controlled substances.
   (f) Any other order required to protect the safety of the alleged victim and to ensure the appearance of the person in court.
3. If conditions of release are imposed, the court or agency imposing the conditions on the arrested or charged person shall:
   (a) Issue a written order for conditional release;
   (b) Immediately distribute a copy of the order to the agency having custody of the arrested or charged person; and
   (c) Provide the agency with any available information concerning the location of the victim in a manner that protects the safety of the victim.
4. The court or the agency having custody of the arrested or charged person shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.
5. If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the court to review the conditions. Upon such a request, the court shall hold a prompt hearing to review the conditions.

6. When a person who is arrested for or charged with a crime involving domestic or family violence or a violation of an order for protection is released from custody, the court or agency having authority to make a decision concerning release or agency having custody of the arrested or charged person shall:
   (a) Use all reasonable means to immediately notify the victim of the alleged crime of the release; and
   (b) Furnish the victim of the alleged crime at no cost a certified copy of any conditions of release.
7. Release of a person who is arrested for or charged with a crime involving domestic or family violence or a violation of an order for protection must not be delayed because of the requirements of subsection 6.

COMMENTARY

Subsection 1 directs the court or agency charged with making decisions about pretrial release of a person who is alleged to have committed a crime of domestic or family violence to review the facts of the arrest and detention and to evaluate whether the accused poses a threat to the alleged victim, a family or household member, and the general public. The Model Code expands the matters for review beyond those articulated in many state statutes, recognizing the increased risk that a perpetrator of domestic or family violence may pose to the victim and others in their respective families. Perpetrators of domestic or family violence are more likely than assailants who are strangers to their victims to retaliate against their victims and families for intervention by the justice system and to target them for intimidation for their participation in prosecution. As is the practice in many jurisdictions, the Code mandates that courts make a finding on the record concerning the determination required by this subsection.

In consideration of the required assessment of subsection 1 and before the release of the accused, subsection 2 authorizes the court or agency responsible for making decisions about pretrial release to impose enumerated conditions on pretrial release to protect the victim and to ensure appearance at court proceedings in the criminal case. The court or agency is also given broad discretion to craft other conditions to achieve victim-safety and the appearance of the defendant. Thus, where the court or agency concludes that the accused presents a threat to the safety of other family or household members or witnesses for the prosecution, any of the enumerated and other specifically tailored constraints on the accused related to these third parties may be imposed.

Subsection 3 requires the court or agency imposing conditions to issue a written order for conditional release, to distribute a copy to the custodian of the accused, and to provide information concerning the location of the victim in a manner that protects the safety of the victim.

Subsection 4 provides the accused of notice of any constraints imposed on his or her conduct by the conditions of release. Due process is accomplished and compliance is facilitated thereby. If the accused has actual notice of the conditions of release even though a copy is not provided to the accused, he or she is bound thereby and is subject to arrest pursuant to section 209, and the process and penalties that may be established elsewhere in state statutes.

Where conditions of release are imposed pursuant to administrative decision, subsection 5 enables the accused to obtain a hearing before a court to review the conditions imposed. A reviewing court may modify conditions pursuant to the hearing.

Subsection 6 provides a mechanism for prompt notification of victims of the alleged crime of domestic or family violence. It is important that victims be furnished certified copies of the conditions of release, at no cost to the victim, to enable victims to obtain law enforcement intervention upon violations and to facilitate verification by officers. Subsection 7 ensures that the accused's right to liberty not be subordinated to the victim's right to notice.

Sec. 209. Mandatory arrest for violation of conditions of release.

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with section 208 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

COMMENTARY

The Model Code directs law enforcement to effect warrantless, probable cause arrests for violations of conditions of release related to crimes of domestic and family violence, but only where the alleged violator has notice of the conditions. The rationale for mandating, rather than merely authorizing, arrest for violation of conditions of release is comparable to that outlined in the commentary following section 206.

Sec. 210. Written procedures for prosecution of domestic and family violence; purpose.

On or before insert appropriate date, the prosecuting attorney in insert appropriate jurisdictions shall develop or adopt and put into effect written procedures for attorneys who prosecute crimes of domestic and family violence concerning:

1. Effective prosecution of such crimes; and
2. The protection and safety of victims of domestic and family violence.

COMMENTARY

This section requires prosecuting attorneys to establish by an appointed time specialized procedures for the prosecution of crimes involving domestic and family violence. These written procedures may include guidelines for case management, charging and arraignment, advocacy and safety planning for victims, investigation and evidence collection, trial preparation, intervention with reluctant victims and witnesses, plea negotiations, trial strategy, sentencing, interface with batterer treatment programs, post-disposition practice, press relations, task force participation, and data collection and analysis. See Appendices I and VIII.

Sec. 211. Duty of prosecutor to notify victim.

1. A prosecutor shall make reasonable efforts to notify a victim of an alleged crime involving domestic or family violence when the prosecutor has decided to decline prosecution of the crime, to dismiss the criminal charges filed against the defendant, or to enter into a plea agreement.
2. Release of a defendant from custody must not be delayed because of the requirements of subsection 1.

COMMENTARY

Subsection 1 requires prosecutors to give notice of pretrial disposition of an allegation or charge of domestic or family violence to the victim of the alleged crime. This provision does not impinge on the broad discretion of prosecutors in decisions concerning the filing of charges or plea agreements, but it does inform victims about the outcomes of cases in which they have interests. Notice is critical to victims of domestic or family violence who often defer pursuit of other legal safeguards in reliance on the protective remedies they hope to achieve through prosecution. This reliance may be to their detriment if victims are not given timely notice that the safeguards sought will not be obtained through prosecution. The "reasonable efforts" of prosecutors should include the establishment of a system for notice that accomplishes actual notice in a timely manner.

Subsection 2 ensures that the accused's right to liberty not be subordinated to the victim's right to notice of pretrial disposition.

Sec. 212. Record of dismissal required in court file.

When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic or family violence, the specific reasons for the dismissal must be recorded in the court file. The prosecutor shall indicate the specific reason why the witness is unavailable and the reasons the case cannot be prosecuted.

COMMENTARY

The Model Code does not require prosecutors to request victim input before seeking dismissal. It does anticipate that the prosecutor will assess the merits of the case and attempt to communicate with the victim before moving to dismiss a case of domestic or family violence. This section enhances the safety of victims. When victims are reluctant to testify, the formalization of the process for dismissal invites the prosecutor and the court to evaluate the intimidation and risk that may be posed by the defendant. Rather than dismiss cases as a matter of course when a victim under subpoena fails to appear, this provision encourages the prosecutor to ascertain the basis for the victim's absence. Investigation may reveal coercive conduct by the defendant and indicate the necessity of increased protection for the victim, thereby also enhancing the possibility of successful prosecution.

Sec. 213. Dismissal of criminal case prohibited because civil compromise reached.

A court shall not dismiss a criminal case involving domestic or family violence for the sole reason that a civil compromise or settlement is reached.

COMMENTARY

The Model Code rejects state statutes and prosecution practice which permit or compel dismissal of crimes of domestic and family violence when a civil compromise, adjustment, or settlement is presented to the criminal court. While appropriate for tort claims, civil reparation is misused as a dismissal devise in cases involving crimes of domestic and family violence.

Sec. 214. Rights of victims of domestic or family violence; duty of prosecutor to inform victim of rights.

1. A victim of domestic and family violence is entitled to all rights granted to victims of crime including but not limited to the right to:
   (a) Be informed of all hearing dates and continuances.
   (b) Provide the court with a victim-impact statement, victim-opinion statement, and an assessment of the risk of further harm.
   (c) Be present at sentencing and address the court.
   (d) Advise the court of conditions of probation and parole required to ensure the safety of the victim and other family or household members.
   (e) Restitution for losses sustained as a direct consequence of any criminal conduct.
   (f) Apply for victims' compensation and to be informed of procedures for applying.
   (g) Receive notice from the prosecutor in accordance with section 211.
2. An attorney prosecuting a crime involving domestic or family violence shall notify the victim of domestic or family violence of the victim's rights set forth in this section.

COMMENTARY

Subsection 1 enumerates the rights of victims of domestic and family violence crimes related to court or prosecution process and to compensation for losses occasioned by the criminal conduct. It specifies that victims of domestic and family violence are entitled to all the rights accorded other victims of violent crime.

Subsection 2 requires that the prosecutor notify victims of these rights. For notice to be meaningful, it should be actual, timely, and written in a language in which the victim is competent.

Sec. 215. Spousal privileges inapplicable in criminal proceedings involving domestic or family violence.

The following evidentiary privileges do not apply in any criminal proceeding in which a spouse or other family or household member is the victim of an alleged crime involving domestic or family violence perpetrated by the other spouse:

1. The privilege of confidential communication between spouses.
2. The testimonial privilege of spouses.

COMMENTARY

The Model Code specifies that spousal privileges do not apply in criminal proceedings involving domestic or family violence. Drafters of the Model Code do not endorse the imposition of punitive sanctions against victims who refuse to give testimony against their spouses because proper investigation and collection of evidence by law enforcement officers and prosecutors obviate the need for victims to appear in court.

Sec. 216. Advocate-victim privilege applicable in cases involving domestic or family violence.

1. Except as otherwise provided in subsection 2, a victim of domestic or family violence may refuse to disclose, and may prevent an advocate from disclosing, confidential oral communication between the victim and the advocate and written records and reports concerning the victim if the privilege is claimed by:
   (a) The victim; or
   (b) The person who was the advocate at the time of the confidential communication, except that the advocate may not claim the privilege if there is no victim in existence or if the privilege has been waived by the victim.
2. The privilege does not relieve a person from any duty imposed pursuant to insert the state law concerning mandatory reporting of child abuse or neglect. A person may not claim the privilege when providing evidence in proceedings concerning child abuse pursuant to insert state law.
3. As used in this subsection, "advocate" means an employee of or volunteer for a program for victims of domestic or family violence who:
   (a) Has a primary function of rendering advice, counseling, or assistance to victims of domestic or family violence; supervising the employees or volunteers of the program; or administering the program;
   (b) Has undergone insert number of hours of training; and
   (c) Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.

COMMENTARY

The drafters concluded that the confidentiality of communications between advocates and victims is fundamental to the relationship and to the safety planning, education, and counseling that occurs therein, all of which are paramount to the protection of victims of domestic and family violence. Subsection 1 establishes a privilege of confidential communication between advocates and victims and an advocate-victim testimonial privilege. The privilege extends to all oral and written communications between and by either. It encompasses all communications made in the course of the advocacy relationship, including those made in the presence of third parties also participating in the advocacy or

other victim services of the domestic or family violence program. It includes all documents relating to the victim created by either during the course of advocacy and other service delivery. Neither the victim nor the advocate may be compelled to disclose these oral or written communications. The privilege may be waived only by the victim. Any waiver is binding on the advocate. The privilege expires upon the death of the victim.

Subsection 2 carves out an exception to the privilege related to mandatory reporting of child abuse and neglect and testimony or production of evidence in proceedings related thereto. The scope of the exception is to be construed in light of the state law on child abuse and neglect.

Subsection 3 identifies the limited class of advocates for whom the privilege is operative. This class includes persons employed or serving as volunteers in a service and advocacy program for victims of domestic or family violence and those providing assistance to victims in the court-related programs specified in section 314, who provide direct services, support, assistance, or advocacy to victims, who are supervised therein and who have completed the requisite hours of professional training designated in state statute.

Drafter's note: States may need to cross reference with other state statutes concerning privilege.

Sec. 217. Residential confinement in home of victim prohibited.

In cases involving domestic or family violence, a court shall not order residential confinement for a perpetrator in the home of the victim.

COMMENTARY

While many forms of alternative sentencing may be appropriate for perpetrators of domestic and family violence, including but not limited to deferred sentencing as provided in section 218, specialized counseling or education of perpetrators, as described in section 508, or community service, home detention in the residence of the victim is prohibited by this Code because it endangers victims.

Sec. 218. Diversion prohibited; deferred sentencing permitted.

1. A court shall not approve diversion for a perpetrator of domestic or family violence. The court may defer sentencing of a perpetrator of domestic or family violence if:
   (a) The perpetrator meets eligibility criteria established pursuant to subsection 2;
   (b) Consent of the prosecutor is obtained after consultation with the victim, when the victim is available;
   (c) A hearing is held in which the perpetrator enters a plea or judicial admission to the crime; and
   (d) The court orders conditions of the deferred sentence that are necessary to protect the victim, prevent future violence, and rehabilitate the perpetrator.
2. A court or other appropriate authority shall establish criteria for determination of:
   (a) A perpetrator's eligibility for deferred sentencing;
   (b) A perpetrator's successful completion of the conditions imposed by the court; and
   (c) Penalties for violation of the conditions imposed by the court.
3. The case against a perpetrator of domestic or family violence may be dismissed if the perpetrator successfully completes all conditions imposed by the court pursuant to subsection 1.

COMMENTARY

The Model Code departs from state statutes or practices that approve pretrial diversion or deferred prosecution programs for perpetrators of domestic or family violence for many reasons. Pretrial diversion or deferred prosecution programs for these perpetrators convey the notion that domestic or family violence does not constitute serious crime. It is particularly

inappropriate when other violent offenders are not eligible for similar enrollment. Second, domestic and family violence cases are difficult to prosecute successfully after failed diversion; and thus noncompliance may result in charges being dismissed, whereas the immediate imposition of sentence; including possible incarceration, upon failure of the perpetrator to successfully complete a program of deferred sentencing serves as a more powerful deterrent. Third, professionals offering specialized treatment or counseling programs for perpetrators prefer that participants mandated to counseling have acknowledged the use of violence toward the victim.

Subsection 1 precludes courts from approving pretrial diversion and authorizes them to defer sentencing under enumerated circumstances. Absent the consent of the prosecutor who is required to consult with the victim, no deferred sentencing is permissible. The perpetrator also has a choice; should the defendant elect not to plead nor to agree to the conditions proposed, he or she can avoid participation in any deferred sentencing program. The benefits of expedited disposition, including judicial and prosecutorial economies and victim cooperation, are realized by the option of deferred sentencing. The accountability of the perpetrator is also ensured and the safety of the victim is not compromised. The conditions might include the conditions of probation set forth in subsection 2 of section 219.

Subsection 2 requires the development and use of eligibility criteria for deferred sentencing programs. Criteria adopted in many jurisdictions address the history and pattern of the perpetrator's violence, the severity of injuries to the victim, the criminal history of the defendant, the nature of the presenting crime (misdemeanor or felony), and prior diversion or participation in deferred sentencing.

Sec. 219. Conditions of probation for perpetrator convicted of crime involving domestic or family violence; required reports by probation department.

1. Before placing a perpetrator who is convicted of a crime involving domestic or family violence on probation, the court shall consider the safety and protection of the victim of domestic or family violence and any member of the victim's family or household.
2. The court may condition the suspension of sentence or granting of probation to a perpetrator on compliance with one or more orders of the court, including but not limited to:
   (a) Enjoining the perpetrator from threatening to commit or committing acts of domestic or family violence against the victim or other family or household member.
   (b) Prohibiting the perpetrator from harassing, annoying, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly.
   (c) Requiring the perpetrator to stay away from the residence, school, place of employment, or a specified place frequented regularly by the victim and any designated family or household member.
   (d) Prohibiting the perpetrator from possessing or consuming alcohol or controlled substances.
   (e) Prohibiting the perpetrator from using or possessing a firearm or other specified weapon.
   (f) Directing the perpetrator to surrender any weapons owned or possessed by the perpetrator.
   (g) Directing the perpetrator to participate in and complete, to the satisfaction of the court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment.
   (h) Directing the perpetrator to pay restitution to the victim.
   (i) Imposing any other condition necessary to protect the victim of domestic or family violence and any other designated family or household member or to rehabilitate the perpetrator.
3. The perpetrator shall pay the costs of any condition of probation, according to ability.

4. The court shall establish policies and procedures for responding to reports of nonattendance or noncompliance by a perpetrator with the conditions of probation imposed pursuant to subsection 2.
5. The probation department shall immediately report to the court and the victim any assault by the perpetrator, the perpetrator's failure to comply with any condition imposed by the court or probation department, and any threat of harm made by the perpetrator.
6. The probation department shall establish policies and procedures:
   (a) For the exchange of information concerning the perpetrator with the court and the victim; and
   (b) For responding to reports of nonattendance or noncompliance by the perpetrator with conditions imposed pursuant to subsection 2.

COMMENTARY

Subsection 1 requires courts to evaluate whether a victim and members of the victim's family or household can be protected adequately against further violent criminal conduct of the perpetrator by sentencing the defendant to a term of probation which is conditioned by the safeguards set forth in subsection 2. Where a court concludes that one cannot reasonably expect that the defendant will desist, probation should not be granted.

In consideration of the required assessment of subsection 1, subsection 2 authorizes the court to impose enumerated conditions on a suspended sentence or probation to protect the victim and family or household members of the victim, to facilitate perpetrator desistance and rehabilitation, to promote the financial restoration of the victim, and to ensure compliance with the conditions. The court is given broad discretion to craft other conditions to safeguard victims and designated family or household members or to rehabilitate the perpetrator.

Subsection 3 requires perpetrators to pay the costs of any condition imposed to the extent that they are able.

Subsection 4 compels courts to establish guidelines for review of probation violations to ensure accountability of perpetrators participating in probation programs tailored for domestic and family violence offenders. Policies and procedures for responding to reports of noncompliance with conditions of probation enhance the uniformity, formality, consistency, and reliability of probation services and of charging decisions related to reported violations.

Subsection 5 requires the probation department, or another designated office, in each jurisdiction to report to the court and to the victim any assaults, threats, and violations of conditions by the perpetrator. Prompt reporting facilitates both safety and accountability. The drafters of the Code contemplated that probationers in this program are not career criminals or perpetrators of severely injurious violence, but persons who, confronted with the serious, adverse consequences of violence, may choose to desist from violent criminal conduct. Swift, certain, and explicit consequences for violation of the terms and conditions of probation increase the deterrent power of the probation program.

Subsection 6 requires that the probation department or designated office establish a system for communication to enforce the conditions of probation imposed by the court. This mandate necessarily entails a system for monitoring compliance of perpetrators admitted to this specialized probation. Formal, routine monitoring is essential for both safety and accountability. Paragraph (a) directs the agency to establish explicit procedures for response to the data obtained pursuant to the monitoring system. Again, the more public and predictable the response procedures and the more adverse and certain the consequences of noncompliance, the greater the anticipated deterrence. Paragraph (b) requires the agency to develop and implement a system for exchange of communication with the court and the victim about safety, compliance and proceedings related to noncompliance with any terms or conditions of probation. See Appendices I and VIII.

Sec. 220. Conditions of parole for perpetrator convicted of crime involving domestic or family violence; required reports by parole board.

1. In addition to other conditions imposed on a perpetrator convicted of a crime involving domestic or family violence, the parole board or other designated authority may impose any condition of parole upon the perpetrator necessary to protect the safety of the victim and family or household members of the victim, including but not limited to the following conditions:
   (a) Enjoining the perpetrator from threatening to commit or committing acts of domestic or family violence against the victim or other family or household member.
   (b) Prohibiting the perpetrator from harassing, annoying, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly.
   (c) Requiring the perpetrator to stay away from the residence, school, place of employment, or a specified place frequented regularly by the victim and any designated family or household member.
   (d) Prohibiting the perpetrator from possessing or consuming alcohol or controlled substances.
   (e) Prohibiting the perpetrator from using or possessing a firearm or other specified weapon.
   (f) Directing the perpetrator to surrender any weapons owned or possessed by the perpetrator.
   (g) Directing the perpetrator to participate in and complete, to the satisfaction of the parole board or other designated authority, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment.
   (h) Directing the perpetrator to pay restitution to the victim.
   (i) Imposing any other condition necessary to protect the victim of domestic or family violence and any other designated family or household member or rehabilitate the perpetrator.
2. The perpetrator shall pay the costs of any condition of parole, according to ability.
3. The parole board or other designated authority shall report to the court and the victim any assault by the perpetrator, the perpetrator's failure to comply with any condition imposed by the parole board or other designated authority, and any threat of harm made by the perpetrator.
4. The parole board or other designated authority shall establish policies and procedures:
   (a) For the exchange of information concerning the perpetrator with the court and the victim;
   (b) For the protection and safety of the victim, including the release of a perpetrator in a jurisdiction other than where the victim lives; and
   (c) For responding to reports of nonattendance or noncompliance by the perpetrator with conditions imposed pursuant to subsection 1.

COMMENTARY

This section requires parole boards or other designated authorities to consider carefully the continuing risks of violence posed by offenders released from incarceration and to craft conditions of parole to mitigate the risks. Subsection 1 authorizes the parole board or any agency otherwise designated by the state to impose specialized conditions of parole on the perpetrator of domestic or family violence; these conditions are to supplement those otherwise imposed on offenders admitted to parole. The purposes of and the conditions specified in this section of the Code are the same as those

articulated in subsections 1 and 2 of section 219. The agency is authorized to impose conditions other than those listed, and could thus bar the parolee from any presence in the jurisdiction where the victim resides or could release the parolee to a jurisdiction other than where the victim resides or could require the perpetrator to participate in an electronic monitoring program. See commentary following section 219.

As to subsections 2, 3 and 4, the commentary following section 219 is applicable. Note that paragraph (b) of subsection 4 requires parole board or state designated agencies to develop procedures for imposing conditions that release perpetrators to jurisdictions other than where the victim resides. Paragraph (c) of subsection 4, like subsection 6 of section 219, contemplates that the agency will establish a monitoring system to evaluate compliance and to intervene where noncompliance occurs.

Sec. 221. Duties of department of corrections.

1. The director of the department of corrections or other appropriate state agency shall establish or make available:
   (a) Programs of education and counseling for offenders who are also victims of domestic or family violence; and
   (b) Programs of intervention for perpetrators convicted of crimes involving domestic or family violence.
2. The director shall adopt rules or regulations requiring initial training and continuing education for employees of the correctional institutions concerning domestic and family violence. A new employee must receive the initial training during the orientation of the employee to the institution.
3. The rules or regulations must be developed in consultation with public and private agencies that provide programs for victims of domestic or family violence and programs of intervention for perpetrators, advocates for victims, persons who have demonstrated expertise in education and training concerning domestic and family violence, and the statewide domestic or family violence coalition.

COMMENTARY

Subsection 1 requires the department of corrections or other designated state agency to provide educational and rehabilitative services to inmates who are victims or perpetrators of domestic or family violence. As used in this section, "offenders" includes all inmates who are victims of domestic or family violence, not just those who are convicted of crimes involving domestic or family violence. Intervention programs for perpetrators convicted of crimes involving domestic or family violence provide an opportunity for extended education, and development of skills which are essential for abstaining from violent behavior. Most perpetrators who stop violent, coercive, or threatening conduct do so after long-term intervention services. Likewise, programs of education and counseling for offenders who are also victims of domestic or family violence offer them opportunities for education, development of skills, and safety planning. Participation in intervention programs in prison will also assist the offender in the transition to life in the community.

Subsection 2 requires that the director of the state agency establish a system for instruction of all correctional employees, new and veteran, both during orientation and thereafter on a continuing basis, concerning domestic and family violence. All employees, not just guards and treatment staff, are included in this training mandate.

Subsection 3 directs that development of the system for instruction of correctional employees be undertaken in consultation with community experts on domestic and family violence to assure that the curriculum and procedures for intervention included therein promote victim safety, perpetrator accountability, appropriate temporary release and parole decisions, and alliances among correctional staff and community service providers to facilitate a bridge between institutional and community services on domestic and family violence.

Sec. 222. Release of perpetrator permitted under certain conditions; notice to victim; confidentiality of victim's address.

1. The insert all appropriate state agencies and departments and authorities that administer early release programs, intermediate release programs, community-based programs, furloughs, transfers to less secure facilities, and work release programs may release a perpetrator of a crime involving domestic or family violence only under conditions that would protect the safety of the victim of domestic or family violence or other family or household member.
2. The insert all appropriate state agencies and departments and authorities that administer early release programs, intermediate release programs, community-based programs, furloughs, transfers to less secure facilities, and work release programs shall notify the victim of a crime of domestic or family violence of the escape of the perpetrator or of the proposed release of the perpetrator before the date of release of the perpetrator, if the victim has provided the agency or department with an address at which he or she can be notified.
3. The address of a victim of a crime involving domestic or family violence is confidential. The agency or department shall not reveal any address provided pursuant to subsection 2.

COMMENTARY

Subsection 1 authorizes the furlough, temporary release, or transfer to a less secure correctional facility of a perpetrator of a crime involving domestic or family violence, if that change in status can be made under conditions which safeguard the victim or other members of the family or household from further acts of violence by the perpetrator. Every office in the state charged with oversight of the enumerated release or transfer programs preceding parole is bound by this directive.

Subsection 2 mandates that the office which is designated by state statute as responsible for notification of victims of domestic or family violence provide a victim with notice of the escape of a perpetrator or, in advance of the proposed date, of the release, furlough, or transfer of the perpetrator to a less secure facility.

Subsection 3 contemplates that the address of the victim furnished to the designated office will not be revealed. It is imperative that perpetrators and their agents not have access to an address of a victim of domestic or family violence except as the victim chooses to share it. Thus, address information should not be given to any state agency or third party without the explicit permission of the victim.

Sec. 223. Required written policies and procedures.

On or before insert appropriate date, each law enforcement agency shall develop or adopt and put into effect written policies and procedures concerning:

1. The effective response of the agency to cases involving domestic and family violence.
2. Enforcement of the Model Code and other applicable state statutes concerning domestic and family violence.
3. Protection and safety of the victims of domestic violence and other family and household members.
4. Coordination with hospitals and programs for victims of domestic or family violence.

COMMENTARY

The Model Code recognizes the importance of written policies and procedures for law enforcement agencies. Policies and procedures put into operation state law and law enforcement curricula on intervention in domestic and family violence. Protocols inform all employees of a law enforcement agency of the philosophy of the department, of

appropriate standards for practice, and of strategies to avoid liability for improper response in crimes involving domestic and family violence. However, policies and procedures are not self-implementing; thus, the Code requires that the law enforcement agency put them into effect, which entails dissemination, education, and supervision.

Subsection 1 requires an enumeration of guidelines related to response to the crime scene. Such guidelines may include, but are not limited to, dispatch priority and process on domestic and family violence calls, investigation, evidence collection, arrest, notice and assistance to victims, seizure of weapons, procedures when arrest is not made, methods for processing the accused, assessment of risk, methods for input on conditions of release, follow-up with victims, report writing, and strategies to maximize officer safety.

Subsection 2 requires the law enforcement agency to apply the Model Code and state law relevant to law enforcement practices. Direction from the chief executive about application of the law is vital to enforcement of the law.

Subsection 3 instructs that the agency's policies and procedures must detail the breadth of law enforcement assistance to victims. Policies and procedures found in other state statutes and regulations include but are not limited to transportation to shelter or medical treatment, assistance in regaining possession of the home or removing essential personal effects from the home, obtaining telephonic protection orders, enforcing orders for protection, and any other action necessary to ensure the safety of the victim and any family or household member. Written procedures will direct officers in the efficient, yet comprehensive, performance of same. See sections 204 through 207, 209, 305, and paragraph (f) of section 306.

Subsection 4 calls for coordination among law enforcement, programs for victims of domestic or family violence, and hospitals. Coordination is important because each agency and service provider is involved with victims at a time of crisis when victims may require extraordinary assistance for safe and secure survival. Coordination among these agencies promotes early intervention, enhances information and referral, ensures that victims are apprised of legal and community options, reinforces safety planning, maximizes resources, and underscores the fact that the best results are achieved by collective efforts.

CHAPTER 3

CIVIL ORDERS FOR PROTECTION

Sec. 301. Eligible petitioners for order.

1. A person who is or has been a victim of domestic or family violence may file a petition for an order for protection against a family or household member who commits an act of domestic or family violence.
2. A parent, guardian, or other representative may file a petition for an order for protection on behalf of a child against a family or household member who commits an act of domestic or family violence.

COMMENTARY

Subsection 1 broadly defines the class of persons eligible to seek protection from the violence inflicted by family or household members in order to enable courts to intervene effectively in domestic or family violence. Comprehensive inclusion of all those exposed to risk within a family or household gives courts the latitude to construct relief to prevent further abuse and to provide essential safeguards. A person abused by another to whom she or he is related by blood or marriage may petition.

Subsection 2 recognizes that children are acutely vulnerable to the trauma of domestic or family violence. Whether they are the biological children of the victim or perpetrator or any other children residing with either, the Model Code permits petitioning by a child-victim or by a responsible adult, be it a parent, guardian, or other representative, on behalf of the child-victim. Moreover, the class of eligible petitioners is not limited to those victims currently or formerly residing with the perpetrator. This section also recognizes that the risks posed by perpetrators do not end when victims separate from abusers, but rather that some perpetrators are likely to use more severe violence after the separation or divorce.

Sec. 302. Uniform form required for petitions and orders; required statements in petitions and orders; duty of clerk to provide petitions and clerical assistance.

1. The insert name of appropriate state agency shall:
   (a) Develop and adopt uniform forms for petitions and orders for protection, including but not limited to such orders issued pursuant to divorce, custody, and other domestic relations hearings; and
   (b) Provide the forms to the clerk of each court authorized to issue such orders.
2. In addition to any other required information, the petition for an order for protection must contain a statement listing each civil or criminal action involving both parties.
3. The following statements must be printed in bold faced type or in capital letters on the order for protection:
   (a) "Violation of this order may be punished by confinement in jail for as long as <u>insert time period</u> and by a fine of as much as <u>insert amount</u>."
   (b) "If so ordered by the court, the respondent is forbidden to enter or stay at the petitioner's residence, even if invited to do so by the petitioner or any other person. In no event is the order for protection voided."
4. The <u>clerk of the court or other designated person</u> shall provide to a person requesting an order for protection:
   (a) The forms adopted pursuant to subsection 1;

(b) All other forms required to petition for an order for protection, including but not limited to, forms for service and forms required by Uniform Child Custody Jurisdiction Act; and
(c) Clerical assistance in filling out the forms and filing the petition.

5. Except as otherwise provided in section 305, a petition for an order for protection must be in writing, verified, and subscribed to in the manner provided by state law.
6. All orders for protection must be issued on the form adopted in accordance with subsection 1.

COMMENTARY

Subsection l requires that the appropriate state agency promulgate uniform forms for all petitions and orders for protection which are authorized by statute in any family law or domestic relations matter. The agency is, likewise, required to supply the various forms to each court authorized to grant any of the protection orders.

Subsection 2 directs that the form petition require the petitioner to provide notice to the court of all the civil and criminal matters, past and present, involving both parties. With this notice, the court can more readily access court dockets, pleadings or charges and outcomes, including the issuance of any civil protection or criminal restraining orders, the contents of which may be relevant to action taken in the matter currently before the court. This notice will facilitate informed court practice and inhibit the issuance of contradictory court orders.

Subsection 3 is designed to provide the perpetrator of domestic or family violence with clear, unequivocal notice of the potential consequences of violation of an emergency, *ex parte*, or comprehensive protection order. The right of every citizen to due process of law makes it essential that a person against whom an *ex parte* protection order is issued be apprised of the consequences of violation. Beyond this, paragraph (b) of subsection 3 informs the perpetrator that conduct which might otherwise be permissible is precluded by the protection order. This provision gives notice to the respondent, and indirectly to law enforcement officers, that entry into the residence from which the perpetrator is excluded will not be condoned and the order will be valid and enforceable notwithstanding any invitation by the victim.

Subsection 4 enumerates the responsibilities of the person designated by the court to assist petitioners for protection orders. Besides giving petitioners the forms developed by the state agency, the clerk of court must provide all other forms necessary for completion of the application process. In many jurisdictions this may include forms related to service; any form necessary for transmittal of an order to a local or state registry of protection orders; forms related to custody and visitation; forms required by the Uniform Child Custody Jurisdiction Act; and forms related to requests for restitution, child support, and attorney's fees. Court clerks or others providing clerical assistance to petitioners are also charged with helping them complete all forms and file petitions.

Subsection 5 provides that all petitions be written and executed pursuant to state law and creates an exception to the requirement for telephonic orders issued pursuant to the request of law enforcement in section 305.

Subsection 6 directs courts to issue orders only on forms developed by the state agency pursuant to subsection 1. The purpose of this section is to underscore the importance of simple, consistent, and comprehensive orders.

Sec. 303. Jurisdiction; venue; residency not required to petition.

1. The court that has jurisdiction over domestic relations has jurisdiction to issue orders for protection.
2. A petition for an order for protection may be filed in the insert county or district:
   (a) Where the petitioner currently or temporarily resides;
   (b) Where the respondent resides; or
   (c) Where the domestic or family violence occurred.
3. There is no minimum requirement of residency to petition for an order for protection.

COMMENTARY

Subsection 1 assigns subject matter jurisdiction in civil protection order matters to the court with jurisdiction over domestic relations proceedings for several reasons. The drafters concluded that the judiciary handling cases constructing family rights and responsibilities after the separation of the parents or dissolution of the marriage should address the issues involved in applications for civil protection orders, especially the vital issue of safety for victims of domestic or family violence and other family or household members.

Subsection 2 provides for personal jurisdiction and venue in any judicial district where a victim may require the assistance of the court in achieving safety. The drafters of the Model Code recognize that the abused person may require the protection of the justice system in locations other than where the acts of abuse occurred. This subsection also establishes venue in the judicial district where the perpetrator resides.

Subsection 3 specifies that residency is immediately conferred upon a party who is present in a district and seeks at least temporary residency therein. Victims of domestic or family violence may relocate for a variety of reasons such as to acquire family and personal support or safe shelter, and should not be limited to legal protection in the district of origin or abuse. Ready access to the courts is necessary for protection of adult and child victims of domestic or family violence so long as such access does not encroach unduly on the constitutional rights of perpetrators.

Sec. 304. Continuing duty to inform court of other proceedings; effect of other proceedings; delay of relief prohibited; omission of petitioner's address.

1. At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the court of each proceeding for an order for protection, any civil litigation, each proceeding in family or juvenile court, and each criminal case involving the parties, including the case name, the file number, and the county and state of the proceeding, if that information is known by the party.
2. An order for protection is in addition to and not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking an order because of other pending proceedings. A court shall not delay granting relief because of the existence of a pending action between the parties.
3. A petitioner may omit her or his address from all documents filed with the court. If a petitioner omits her or his address, the petitioner must provide the court a mailing address. If disclosure of petitioner's address is necessary to determine jurisdiction or consider venue, the court may order the disclosure to be made:
   (a) After receiving the petitioner's consent;
   (b) Orally and in chambers, out of the presence of the respondent and a sealed record to be made; or
   (c) After a hearing, if the court takes into consideration the safety of the petitioner and finds such disclosure is in the interest of justice.

COMMENTARY

Subsection 1 expands upon the obligation to provide the court with notice of other civil or criminal proceedings involving the party articulated in subsection 2 of section 302. The duty is defined as continuing and is imposed on both the petitioner and respondent. The duty is operative only during court proceedings related to the protection order. The scope of other litigation or prosecution about which notice is to be given is enlarged. It is not only legal proceedings between the parties; it is all litigation involving either party. The drafters concluded that the court should evaluate the

relevance to the protection order deliberations of any civil or criminal case in which either party is involved, rather than articulating a limited list of specific legal actions encompassed within the duty of notice. The Model Code also requires that a party, who has information which will facilitate identification and review of these other proceedings, furnish that information to the protection order court.

Subsection 2 makes it clear that a victim of domestic or family violence is not compelled to elect a single remedy in law or equity and that the protection order application may proceed to disposition notwithstanding any proceeding or outcome in any other legal arena. It rejects the statutory imposition of preemptive and exclusive jurisdiction by divorce courts contained in some state statutes once a divorce complaint has been filed by either party. The Model Code directs the protection order court to proceed immediately to disposition and prohibits deferral of disposition pending the outcome of other pending litigation between the parties.

Subsection 3 enables the petitioner to omit her or his address from all documents filed with the court in protection order applications in order not to reveal the location of the residence, whether or not it is a shelter for abused family members. The petitioner need not seek court approval for non-disclosure in all protection order documents. However, the petitioner must furnish the court with a mailing address, which need not be his or her residence, so that the court can provide the victim with notice of any proceedings and with copies of all orders issued. To determine jurisdiction or consider venue, the court may order disclosure of the address under prescribed conditions.

Sec. 305. Emergency order for protection; available relief; availability of judge or court officer; expiration of order.

1. A court may issue a written or oral emergency order for protection ex parte when a law enforcement officer states to the court in person or by telephone, and the court finds reasonable grounds to believe, that the petitioner is in immediate danger of domestic or family violence based on an allegation of a recent incident of domestic or family violence by a family or household member.
2. A law enforcement officer who receives an oral order for protection from a court shall:
   (a) Write and sign the order on the form required pursuant to section 302;
   (b) Serve a copy on the respondent;
   (c) Immediately provide the petitioner with a copy of the order; and
   (d) Provide the order to the court by the end of the next judicial day.
3. The court may grant the following relief in an emergency order for protection:
   (a) Enjoin the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner and any designated family or household member;
   (b) Prohibit the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;
   (c) Remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence;
   (d) Order the respondent to stay away from the residence, school, place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member;
   (e) Order possession and use of an automobile and other essential personal effects, regardless of the ownership of the essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;
   (f) Grant temporary custody of a minor child to the petitioner; and

(g) Order such other relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member.

4. A judge or other court officer with authority to issue an order for protection must be available 24 hours a day to hear petitions for emergency orders for protection.
5. An emergency order for protection expires 72 hours after issuance.

COMMENTARY

Subsection 1 creates 24-hour access to emergency orders of protection utilizing law enforcement officers as agents for judicial officers who are authorized to issue the order by telephone. In states or jurisdictions where there is a judge on duty 24 hours a day, this section creates an additional avenue of access to the court. The drafters considered the high risk of continuing violence in these cases when determining the standard of proof of immediate danger rather than imminent or present danger.

Subsection 2 requires an officer to reduce any oral order issued by the court to writing on the prescribed form, furnishing a copy to the petitioner immediately and to the court during its next business day.

The scope of relief authorized in emergency orders for protection in subsection 3 is intended by the drafters to ensure that victims are afforded all the relief necessary to curtail access by a perpetrator to the victim and thereby to safeguard against elevated risk of violence, to accord the victim safe shelter in the family residence, and to inhibit conduct by the perpetrator that jeopardizes the employment and personal support of the victim. It also enables courts to award temporary custody of minor children both to protect the children from violence and to impede abduction by the perpetrator. It permits the court to mandate assistance by law enforcement to the victim for effectuating the terms of the order.

Subsection 4 requires 24-hour access for orders of protection, and invites legislators and courts in every jurisdiction to consider authorizing other court personnel to serve in lieu of the judiciary for purposes of issuing emergency orders for protection.

Subsection 5 limits the duration of emergency orders for protection, thus requiring the victim to file a petition with the court, requesting any or all of the relief enumerated in section 307.

Sec. 306. Order for protection; modification of orders; relief available ex parte; relief available after hearing; duties of the court; duration of order.

1. If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic or family violence has occurred or a modification of an order for protection is required, a court may:
   (a) Without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte as it deems necessary to protect the petitioner.
   (b) Upon notice, issue an order for protection or modify an order after a hearing whether or not the respondent appears.
2. A court may grant the following relief without notice and hearing in an order for protection or a modification issued ex parte:
   (a) Enjoin the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner and any designated family or household member;
   (b) Prohibit the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;
   (c) Remove and exclude the respondent from the residence of the petitioner, regardless of

ownership of the residence;

(d) Order the respondent to stay away from the residence, school, or place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member;

(e) Prohibit the respondent from using or possessing a firearm or other weapon specified by the court;

(f) Order possession and use of an automobile and other essential personal effects, regardless of the ownership of the essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

(g) Grant temporary custody of any minor children to the petitioner; and

(h) Order such other relief as it deems necessary to provide for the safety and welfare of the petitioner and any designated family or household member.

3. A court may grant the following relief in an order for protection or a modification of an order after notice and hearing, whether or not the respondent appears:

(a) Grant the relief available in accordance with subsection 2.

(b) Specify arrangements for visitation of any minor child by the respondent and require supervision of that visitation by a third party or deny visitation if necessary to protect the safety of the petitioner or child.

(c) Order the respondent to pay attorney's fees.

(d) Order the respondent to:

(1) Pay rent or make payment on a mortgage on the petitioner's residence and pay for the support of the petitioner and minor child if the respondent is found to have a duty to support the petitioner or minor child;

(2) Reimburse the petitioner or other person for any expenses associated with the domestic or family violence, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property; and

(3) Pay the costs and fees incurred by the petitioner in bringing the action;

4. The court shall:

(a) Cause the order to be delivered to the appropriate authority for service;

(b) Make reasonable efforts to ensure that the order for protection is understood by the petitioner, and the respondent, if present;

(c) Transmit, by the end of the next business day after the order is issued, a copy of the order for protection to the local law enforcement agency or agencies designated by the petitioner; and

(d) Transmit a copy of the order to the state registry.

5. An order for protection issued ex parte or upon notice and hearing or a modification of an order for protection issued ex parte or upon notice and hearing is effective until further order of the court.

6. The designated authority shall provide expedited service for orders for protection.

COMMENTARY

Paragraph (a) of subsection 1 authorizes the *ex parte* issuance and modification of orders for protection. An *ex parte*

order can be issued without notice or a hearing only if the court concludes the order is necessary to protect the petitioner. The risks of recidivism and harm are high in the context of domestic and family violence. See also the commentary following sections 202, 203, 205, 207, 208, 219, 220 222, 301, 302, and 305. There is evidence that the safety, if not the lives, of victims would be jeopardized if they were required to give notice and participate in a full hearing before any legal protection is issued. The Model Code thus requires that a petitioner only make a *prima facie* showing that he or she is eligible for protection and that an order is necessary to protect against future violence before issuing or modifying an order for protection *ex parte*. The Code ensures that respondents be accorded due process, notwithstanding the availability of *ex parte* relief. See subsection 1 of section 307. Paragraph (b) of subsection 1 addresses the situation where a respondent elects not to attend a hearing after requisite notice. The Model Code explicitly authorizes *ex parte* issuance of orders as described in section 307 when a respondent has been given notice, while availing the respondent of ready access to seek modification of an order should the circumstances later warrant it.

Subsection 2 lists the relief that may be included in an *ex parte* order. Much of the relief is that designed to deny the respondent access to the victim. Because of the significant use of weapons in both non-lethal and lethal assaults by perpetrators of domestic and family violence, the Code contains an option prohibiting the use or possession of a firearm or other weapon. See commentary following section 207.

Subsection 3 specifies the relief courts may award after notice and hearing. First, the court may affirm or supplement the relief granted in any temporary order, as well as order any relief granted in accordance with subsection 2 for a petitioner who has not obtained an *ex parte* order. See commentary following section 401. It also requires a court to deliberate about whether the perpetrator should be accorded visitation based on the risks that the perpetrator may pose to the abused parent or the child. Paragraph (b) gives a court three options: denial of visitation, supervised visitation by a third party who is not the victim, and unsupervised visitation. When any visitation is awarded, a court is to enumerate the arrangements for visitation, including conditions to protect the child and the petitioner. Paragraphs (c) and (d) afford additional economic assistance to a victim for costs incurred as a result the violence and monies necessary to achieve economic stability.

Subsection 4 assigns the court several responsibilities necessary for due process and enforcement. Because law enforcement must be able to rely reasonably on the orders furnished to their agencies or the state registry, it essential that the court employ a reliable system that minimizes exposure of law enforcement to liability. The Code directs courts to oversee these functions.

Subsection 5 provides that an order for protection issued pursuant to section 306 or 307 is in effect until a court modifies or rescinds the order. No time limitations are imposed. This does not preclude a court from fixing review hearings to evaluate the continuing need for an order, nor does it preclude a request by either the petitioner or perpetrator to terminate the order. Subsection 5 departs from the duration strictures found in some state statutes because the risk posed to victims is not time limited or certain. The Code seeks to protect victims for as long as that protection is required, which should be determined by the court after hearing; expiration should not occur as a function of the passage of an arbitrary period of time. This provision also limits the unnecessary demand on court dockets required for reissuance or extension of orders when protection is required beyond the time of automatic expiration. This provision also shifts the burden from the victim to the perpetrator who is responsible for seeking court approval to terminate an order that is no longer essential.

Subsection 6 requires the designated authority to provide service in an expedited manner.

Sec. 307. Required hearings; duty of court when order for protection denied.

1. Except as otherwise provided in subsection 2, if a court issues an order for protection ex parte or a modification of an order for protection ex parte and the court provides relief pursuant to subsection 2 of section 306, upon a request by either party within 30 days after service of the order or modification, the court shall set a date for a hearing on the petition. The hearing must be held within insert number of days after the request for a hearing is filed

unless continued by the court for good cause shown. The court shall notify both parties by first class mail of the date and time of the hearing.

2. The court shall set a date for a hearing on the petition within insert number of days after the filing of the petition if a court issues an order for protection ex parte or a modification of an order of protection ex parte, and:
   (a) The petitioner requests or the court provides relief in accordance with paragraph (g) of subsection 2 of section 306, concerning custody of a minor child; or
   (b) The petitioner requests relief pursuant to paragraph (b), (c), or (d) of subsection 3 of section 306.

   Such a hearing must be given precedence over all matters except older matters of the same character.
3. In a hearing held pursuant to subsection 1 or 2 of this section:
   (a) Relief in accordance with section 306 is available.
   (b) If respondent seeks relief concerning an issue not raised by the petitioner, the court may continue the hearing at the petitioner's request.
4. If a court denies a petition for an order for protection or a petition to modify an order for protection that is requested without notice to the respondent, the court shall inform the petitioner of his or her right to request a hearing upon notice to the respondent.

COMMENTARY

Subsection 1 provides the party who did not initiate the *ex parte* petition for relief or modification with the opportunity to challenge any provision of an order or modified order issued. The respondent, whether the victim or perpetrator, must make a timely request for a hearing on matters in dispute related to subsection 2 of section 306; otherwise, all issues that might have been contested are waived. The Model Code provides 30 days from service to make the request for hearing. This window of time gives the respondent adequate time to prepare the request for reconsideration and enables the moving party to rely upon the order issued at a date certain. Due process is thus afforded both parties. The court is assigned the responsibility for notice of both parties.

However, subsection 2 requires that when a court granting the *ex parte* order or modification awards custody of the minor children to the petitioner, when either party desires respondent visitation with the children, or when the petitioner seeks economic relief, the court must schedule a hearing within a time certain of the filing of the petition for protection or modification. The hearing is to be given precedence on the docket over all other matters except order for protection proceedings previously scheduled.

Subsection 3 reaffirms that the relief enumerated in section 306 may be granted at the hearing, even if neither the petitioner nor the respondent has made application for the specific relief orally or in documents filed with the court. This provision enables the court to issue supplemental relief pursuant to section 306 as it deems the relief is necessary to provide for the safety and welfare of the petitioner and family or household members. It permits the petitioner to request relief without the formality of amending the pleadings. It eliminates the requirement for responsive pleading; requiring only that the respondent request a hearing and allowing the respondent to identify any issues in dispute or relief sought at the hearing itself. If the respondent raises issues or asks for relief not addressed or sought by the petitioner, the court may grant a continuance should the petitioner ask for time to prepare to respond to the matters raised by the respondent.

Subsection 4 requires a court to advise the petitioner of his or her right to request a hearing if the court denies a petition. Notice to the respondent is required.

Sec. 308. Effect of action by petitioner or respondent on order.

If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do so does not waive or nullify an order for protection.

COMMENTARY

This section firmly underscores the principle that court orders may be modified only by judges and rejects the notion that any party, by his or her conduct, can set aside or modify the terms and conditions of any order for protection, even by agreement of the parties. The remedy for the victim or perpetrator seeking to be excused from any provision of an order of protection is to petition for modification pursuant to section 306. Likewise, this section gives unequivocal direction to law enforcement officers that orders for protection are to be enforced as written and that no action by a party relieves the duty to enforce the order.

Sec. 309. Denial of relief prohibited.

The court shall not deny a petitioner relief requested pursuant to section 305 or 306 solely because of a lapse of time between an act of domestic or family violence and the filing of the petition.

COMMENTARY

This section recognizes that a perpetrator of domestic or family violence may pose a risk of violence long after the last act or episode of violence and that an order may be necessary to protect a victim from that continuing or recurrent risk.

Sec. 310. Mutual orders for protection prohibited.

A court shall not grant a mutual order for protection to opposing parties.

COMMENTARY

The Model Code explicitly prohibits the issuance of mutual protection orders. Mutual orders create due process problems as they are issued without prior notice, written application, or finding of good cause. Mutual orders are difficult for law enforcement officers to enforce, and ineffective in preventing further abuse. However, the Code does not preclude the issuance of separate orders for protection restraining each opposing party where each party has properly filed and served petitions for protection orders, each party has committed domestic or family violence as defined by the Code, each poses a continuing risk of violence to the other, each has otherwise satisfied all prerequisites for the type of order and remedies sought, and each has complied with the provisions of this chapter.

Sec. 311. Court-ordered and court-referred mediation of cases involving domestic or family violence prohibited.

A court shall not order parties into mediation or refer them to mediation for resolution of the issues in a petition for an order for protection.

COMMENTARY

This section prohibits a court from ordering or referring parties to mediation in a proceeding for an order for protection. Mediation is a process by which parties in equivalent bargaining positions voluntarily reach consensual agreement about the issue at hand. Violence, however, is not a subject for compromise. A process which involves both parties mediating the issue of violence implies that the victim is somehow at fault. In addition, mediation of issues in a proceeding for an order for protection is problematic because the petitioner is frequently unable to participate equally with the person against whom the protection order has been sought. Also see section 407.

Sec. 312. Court costs and fees.

Fees for filing and service of process must not be charged for any proceeding seeking only the relief provided in this chapter.

COMMENTARY

This section underscores and enhances the public policy position incorporated in many state codes, that victims of domestic or family violence must have ready access to the courts and that access must not be constrained by the

economic means of petitioners. The drafters concluded that the determination of indigence by the court or an affidavit of inability to pay fees and costs, required by some codes, unduly burdens victims and court personnel.

Sec. 313. Court-mandated assistance to victims of domestic and family violence.

1. The court system in each jurisdiction shall provide assistance to victims of domestic or family violence. The administrator of the court system may enter into a contract with a private agency or organization that has a record of service to victims of domestic or family violence to provide the assistance.
2. The duties of the provider of assistance include but are not limited to:
   (a) Informing victims of domestic or family violence of their rights pursuant to insert state law concerning victims' rights and assisting victims in securing those rights;
   (b) Informing victims of the availability of orders for protection and assisting victims in obtaining such orders;
   (c) Providing interpreters for cases involving domestic or family violence, including requests for orders for protection;
   (d) Informing victims of the availability of shelter, counseling, and other social services; and
   (e) Providing victims with safety plans and assisting victims in preparing the plans.
3. The provider of the assistance shall coordinate the provision of services with the providers of programs for victims of domestic or family violence.

COMMENTARY

Subsection 1 requires that the court in each jurisdiction establish an assistance program for victims of domestic or family violence. It may be staffed by court personnel or the court may contract with an organization with expertise in serving victims of domestic or family violence to provide the assistance enumerated in subsection 2. Many court programs that serve victims in protection order cases and in other civil or family law matters are located in community-based agencies.

Subsection 2 specifies the minimum of assistance to be rendered. The Code requires the provider of assistance to provide information to victims about legal rights, the protection order process, safe shelter, community services and supports, as well as safety planning to enhance justice system protections. In addition, the assistance program must furnish interpreter services for the hearing impaired and for those who are not able to communicate effectively in English in domestic or family violence cases.

Subsection 3 directs the provider of the assistance to collaborate with those other offices or organizations in the community providing domestic or family violence services.

Sec. 314. Registration and enforcement of foreign orders for protection; duties of court clerk.

1. A certified copy of an order for protection issued in another state may be filed in the office of the clerk of any district or family court of this state. The clerk shall act upon the order in the same manner as the clerk acts upon an order for protection issued by a district or family court of this state.
2. An order for protection filed in accordance with subsection 1 has the same effect and must be enforced in the same manner as an order for protection issued by a court of this state.
3. The clerk of each district or family court shall:
   (a) Maintain a registry in which to enter certified orders for protection issued in other states that are received for filing.
   (b) At the request of a court of another state or at the request of a person who is affected by or has a legitimate interest in an order for protection, certify and forward a copy of the order to that court or person at no cost to the requesting party.

4. A court of this state shall enforce all provisions of a registered foreign order for protection whether or not such relief is available in the state.

COMMENTARY

Subsection 1 explicitly articulates the mechanism for registration of foreign orders for protection. When the order is filed, the clerk of court is required to handle the foreign order as he or she would any order for protection issued by a court within the state.

Subsection 2 directs courts and law enforcement to credit fully and enforce foreign orders filed with the clerk of court.

Paragraph (a) of subsection 3 requires that the clerk of the designated court keep a registry in which foreign orders for protection are to be registered. Paragraph (b) requires the clerk to certify and forward a copy of the order at the request of a court of another state, or at the request of a person who is affected by or who has a legitimate interest in the order for protection. Copies of orders must be provided to appropriate courts and persons at no charge.

Subsection 4 directs courts to enforce foreign orders as written and for the duration specified even if the state statute where the order is registered provides for more limited relief to residents. The provisions of this section do not relieve any party from the requirements of the Uniform Reciprocal Enforcement of Support Act and the Uniform Child Custody Jurisdiction Act for registration and other matters regarding support and custody.

Sec. 315. State registry for orders for protection.

1. The <u>appropriate state agency</u> shall maintain a registry of all orders for protection issued by a court of this state or registered in this state. The orders must be included in the registry within 24 hours after issuance or registration.
2. The information contained in the registry is available at all times to a court, a law enforcement agency, and <u>other governmental agency</u> upon request.

COMMENTARY

This section requires a state agency to maintain a registry of all orders for protection issued or registered in the state and requires that the orders be included in the registry within 24 hours after issuance or registration. State registries of orders for protection typically are located in state criminal justice or law enforcement agencies. The advantages of charging a state's law enforcement agency with this responsibility is that the agency may be able to incorporate orders of protection in its existing system for verification of state warrants, etc., and that system is available around the clock.

CHAPTER 4

FAMILY AND CHILDREN

Sec. 401. Presumptions concerning custody.

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that domestic or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence.

COMMENTARY

Support for the presumptions incorporated in this section, that domestic violence is detrimental to the child and that it is contrary to the child's best interest to be placed in sole or joint custody with the perpetrator thereof, is extensive. This section compels courts, attorneys, custody evaluators, and other professionals working with cases involving the custody of children to consider the impact of domestic and family violence on these children. This mandate is not limited to courts issuing orders for protection but includes courts hearing divorce, delinquency, and child protection cases.

Sec. 402. Factors in determining custody and visitation.

1. In addition to other factors that a court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the court has made a finding of domestic or family violence:
   (a) The court shall consider as primary the safety and well-being of the child and of the parent who is the victim of domestic or family violence.
   (b) The court shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person.
2. If a parent is absent or relocates because of an act of domestic or family violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

COMMENTARY

This section was constructed to remedy the failure of many custody statutes to give courts direction related to appropriate consideration of domestic and family violence in contested custody cases. Paragraph (a) of subsection l elevates the safety and well-being of the child and abused parent above all other "best interest" factors in deliberations about custodial options in those disputed custody cases where there has been a finding of abuse by one parent of the other. It contemplates that no custodial or visitation award may properly issue that jeopardizes the safety and well-being of adult and child victims.

Paragraph (b) compels courts to consider the history, both the acts and patterns, of physical abuse inflicted by the abuser on other persons, including but not limited to the child and the abused parent, as well as the fear of physical harm reasonably engendered by this conduct. It recognizes that discreet acts of abuse do not accurately convey the risk of continuing violence, the likely severity of future abuse, or the magnitude of fear precipitated by the composite picture of violent conduct.

Subsection 2 recognizes that sometimes abused adults flee the family home in order to preserve or protect their lives and sometimes do not take dependent children with them because of the emergency circumstances of flight; because they lack resources to provide for the children outside the family home; or because they conclude that the abuser will hurt the

children, the abused parent, or third parties if the children are removed prior to court intervention. This provision prevents the abuser from benefitting from the violent or coercive conduct precipitating the relocation of the battered parent and affords the abused parent an affirmative defense to the allegation of child abandonment.

Sec. 403. Presumption concerning residence of child.

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by a court that domestic or family violence has occurred raises a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic or family violence in the location of that parent's choice, within or outside the state.

COMMENTARY

This section articulates a rebuttable presumption that the residence of the child in the context of domestic or family violence should be with the non-perpetrating parent in the location chosen by that parent. This presumption builds on the one enumerated in section 401. It is designed to defeat any assertion by a perpetrator of domestic or family violence that custody and residence with the abused parent should be presumptive only if the abused adult remains within the jurisdiction of the marital domicile. It recognizes that the enhanced safety, personal, and social supports, and the economic opportunity available to the abused parent in another jurisdiction are not only in that parent's best interest, but are, likewise and concomitantly, in the best interest of the child.

Sec. 404. Change of circumstances.

In every proceeding in which there is at issue the modification of an order for custody or visitation of a child, the finding that domestic or family violence has occurred since the last custody determination constitutes a finding of a change of circumstances.

COMMENTARY

This section provides that in proceedings concerning modification of an order for custody or visitation of a child, a finding by the reviewing court that domestic or family violence has occurred constitutes a finding of a change of circumstances.

Sec. 405. Conditions of visitation in cases involving domestic and family violence.

1. A court may award visitation by a parent who committed domestic or family violence only if the court finds that adequate provision for the safety of the child and the parent who is a victim of domestic or family violence can be made.
2. In a visitation order, a court may:
   (a) Order an exchange of a child to occur in a protected setting.
   (b) Order visitation supervised by another person or agency.
   (c) Order the perpetrator of domestic or family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation.
   (d) Order the perpetrator of domestic or family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding the visitation.
   (e) Order the perpetrator of domestic or family violence to pay a fee to defray the costs of supervised visitation.
   (f) Prohibit overnight visitation.
   (g) Require a bond from the perpetrator of domestic or family violence for the return and

safety of the child.

(h) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of domestic or family violence, or other family or household member.

3. Whether or not visitation is allowed, the court may order the address of the child and the victim to be kept confidential.
4. The court may refer but shall not order an adult who is a victim of domestic or family violence to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of domestic or family violence as a condition of receiving custody of a child or as a condition of visitation.
5. If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation.

COMMENTARY

Subsection l permits the award of visitation to a perpetrator of domestic violence only if protective measures, including but not limited to those enumerated in subsection 2 of this section, are deemed sufficient to protect the child and the abused parent from further acts or threats of violence or other fear-engendering conduct. The Model Code posits that where protective interventions are not accessible in a community, a court should not endanger a child or adult victim of domestic violence in order to accommodate visitation by a perpetrator of domestic or family violence. The risk of domestic violence directed both towards the child and the battered parent is frequently greater after separation than during cohabitation; this elevated risk often continues after legal interventions.

Subsection 2 lists the protective conditions most routinely imposed on visitation by the perpetrator of domestic and family violence. It is not intended to be exhaustive, nor does this subsection contemplate that each provision should be imposed on every custody order.

Subsection 3 recognizes that it may be necessary to withhold the address of the adult victim and children from the perpetrator and others in order to prevent stalking and assault of adult and child victims in their undisclosed residence. Research reveals that one of the most effective methods of averting violence is denying the abuser access to the victim, which can be facilitated by preserving the confidentiality of the victim's address.

Subsection 4 prohibits a court from ordering a victim of domestic or family violence to attend counseling related to the status or behavior as a victim as a condition of receiving custody of a child or as a condition of visitation. It does not preclude the court from ordering other types of counseling, such as substance abuse counseling or educational classes.

Subsection 5 requires a court to establish conditions to be followed if the court allows a family or household member to supervise visitation. When those supervising visitation are furnished clear guidelines related to their responsibility and authority during supervision, they are better able to protect the child should the perpetrator engage in violent or intimidating conduct toward the child or adult victim in the course of visitation.

Sec. 406. Specialized visitation center for victims of domestic or family violence.

1. The insert appropriate state agency shall provide for visitation centers throughout the state for victims of domestic or family violence and their children to allow court ordered visitation in a manner that protects the safety of all family members. The state agency shall coordinate and cooperate with local governmental agencies in providing the visitation centers.
2. A visitation center must provide:
   (a) A secure setting and specialized procedures for supervised visitation and the transfer of children for visitation; and
   (b) Supervision by a person trained in security and the avoidance of domestic and family violence.

COMMENTARY

Supervised visitation centers are an essential component of an integrated community intervention system to eliminate abuse and protect its victims. Visitation centers may reduce the opportunity for retributive violence by batterers, prevent parental abduction, safeguard endangered family members, and offer the batterer continuing contact and relationship with their children. This section requires a state to provide for the existence of visitation centers but does not mandate that the state own or operate such centers, nor that the centers be operated at public expense. See Appendix III.

Sec. 407. Duty of mediator to screen for domestic violence during mediation referred or ordered by court.

1. A mediator who receives a referral or order from a court to conduct mediation shall screen for the occurrence of domestic or family violence between the parties.
2. A mediator shall not engage in mediation when it appears to the mediator or when either party asserts that domestic or family violence has occurred unless:
   (a) Mediation is requested by the victim of the alleged domestic or family violence;
   (b) Mediation is provided in a specialized manner that protects the safety of the victim by a certified mediator who is trained in domestic and family violence; and
   (c) The victim is permitted to have in attendance at mediation a supporting person of his or her choice, including but not limited to an attorney or advocate.

COMMENTARY

This section requires mediators who receive referrals or orders from courts to screen for domestic or family violence between the parties. Screening must include an assessment of the danger posed by the perpetrator, recognizing that victims of domestic violence are at sharply elevated risk as they attempt to end the relationship and utilize the legal system to gain essential protective safeguards.

Subsection 2 articulates a practice standard for the mediator who discovers that domestic or family violence has occurred. See Appendix III.

Drafters note: Drafters must look to general provisions concerning mediation in their state laws and insert exception as provided in sections 311 and 408.

The Model Code provides alternative sections concerning mediation in cases involving domestic or family violence. Both of the sections provide directives for courts hearing cases concerning the custody or visitation of children, if there is a protection order in effect and if there is an allegation of domestic or family violence. Neither of these sections prohibits the parties to such a hearing from engaging in mediation of their own volition. For the majority of jurisdictions, section 408(A) is the preferred section. For the minority of jurisdictions that have developed mandatory mediation by trained, certified mediators, and that follow special procedures to protect a victim of domestic or family violence from intimidation, section 408(B) is provided as an alternative.

Sec. 408(A). Mediation in cases involving domestic or family violence.

1. In a proceeding concerning the custody or visitation of a child, if an order for protection is in effect, the court shall not order mediation or refer either party to mediation.
2. In a proceeding concerning the custody or visitation of a child, if there is an allegation of domestic or family violence and an order for protection is not in effect, the court may order mediation or refer either party to mediation only if:

(a) Mediation is requested by the victim of the alleged domestic or family violence;
(b) Mediation is provided by a certified mediator who is trained in domestic and family violence in a specialized manner that protects the safety of the victim; and
(c) The victim is permitted to have in attendance at mediation a supporting person of his or her choice, including but not limited to an attorney or advocate.

COMMENTARY

Subsection 1 makes it explicit that referrals to mediation by a court in the context of domestic or family violence, not only mandates for participation, are impermissible. Judicial referrals are compelling and often viewed by litigants as the dispute resolution method preferred by the court. Also see commentary following section 311.

Subsection 2 authorizes courts to require mediation or refer to mediation when there is an allegation of domestic or family violence only where there is no protection order in effect and the three enumerated conditions for mediation are met. First, the court should not approve mediation unless the victim of the alleged violence requests mediation. The second requisite condition for court-approved mediation in the context of domestic violence contains two components: that mediation be provided in a specialized manner that protects the safety of the victim and that mediators be certified and trained in domestic and family violence. Guidelines have been generated by mediators, scholars, and advocates. Paragraph (c) of subsection 2 reflects the policy recommendations, promulgated by the collaborative studies of mediators, advocates, and legal scholars, that at the victim's option, he or she may have another party present during mediation. This person may be the victim's attorney, an advocate, or some other person of the victim's choosing.

Sec. 408(B). Mediation in cases involving domestic or family violence.

1. In a proceeding concerning the custody or visitation of a child, if an order for protection is in effect or if there is an allegation of domestic or family violence, the court shall not order mediation or refer either party to mediation unless the court finds that:
   (a) The mediation is provided by a certified mediator who is trained in the dynamics of domestic and family violence; and
   (b) The mediator or mediation service provides procedures to protect the victim from intimidation by the alleged perpetrator in accordance with subsection 2.
2. Procedures to protect the victim must include but are not limited to:
   (a) Permission for the victim to have in attendance at mediation a supporting person of his or her choice, including but not limited to an attorney or advocate; and
   (b) Any other procedure deemed necessary by the court to protect the victim from intimidation from the alleged perpetrator.

COMMENTARY

Subsection 1 authorizes a court to order or refer parties in a proceeding concerning custody or visitation of a child only under two conditions, that mediation is provided by a certified mediator who is trained in domestic and family violence and procedures are provided that protect the victim from intimidation.

Subsection 2 enumerates the procedures that must be followed by a mediator to protect the victim from intimidation. Paragraph (a) reflects the policy recommendations, promulgated by the collaborative studies of mediators, advocates, and legal scholars, that at the victim's option, he or she may have another party present at mediation. This person may be the victim's attorney, an advocate, or some other person of the victim's choosing. Paragraph (b) authorizes the court to impose any additional procedure deemed necessary to protect the victim from intimidation.

Sec. 409. Duties of children's protective services.

1. The state administrator of children's protective services shall develop written procedures for

screening each referral for abuse or neglect of a child to assess whether abuse of another family or household member is also occurring. The assessment must include but is not limited to:

(a) Inquiry concerning the criminal record of the parents, and the alleged abusive or neglectful person and the alleged perpetrator of domestic or family violence, if not a parent of the child; and

(b) Inquiry concerning the existence of orders for protection issued to either parent.

2. If it is determined in an investigation of abuse or neglect of a child:

(a) That the child or another family or household member is in danger of domestic or family violence and that removal of one of the parties is necessary to prevent the abuse or neglect of the child, the administrator shall seek the removal of the alleged perpetrator of domestic or family violence whenever possible.

(b) That a parent of the child is a victim of domestic or family violence, services must be offered to the victimized parent and the provision of such services must not be contingent upon a finding that either parent is at fault or has failed to protect the child.

COMMENTARY

This section underscores the premise that protection of the abused child and the non-perpetrating parent should be the guiding policy of child protective services agencies. Subsection 1 requires the state's administrator of child protective services to develop both an assessment tool and investigation procedures for identification of violence directed at family or household members in addition to the child alleged to be at risk. Identification of adult domestic or family violence through careful intake screening and preliminary risk assessment, followed by thorough investigation, is essential if parents are to be afforded the life preserving assistance necessary for effective parenting and child protection.

Paragraph (a) of subsection 2 codifies the premise that when a parent or parent-surrogate has abused a child or poses a continuing risk of abuse or violence towards anyone in the family or household, and the agency concludes that safety can be accomplished only if those at risk live separate and apart from the perpetrator, the agency should either assist the non-perpetrating parent in seeking the legal exclusion of the perpetrator from the home or itself pursue removal of the perpetrator from the home. The perpetrator should be removed rather than placing the abused child or children in foster care or other placement. This provision does not require that a perpetrator be removed from the home if both the child and the victim of domestic violence can be adequately protected by other interventions. Paragraph (b) of subsection 2 requires that the agency make services available to parents of abused children under the supervision of the agency, who have been victimized by domestic or family violence. This subsection requires that services for parents victimized by domestic or family violence are to be undertaken whether or not the abused parent is found to bear any culpability for the abuse of a child under the supervision of the agency; findings of neglect, abuse, or any failure to protect by the parent victimized by domestic or family violence are not a prerequisite for service.

CHAPTER 5

PREVENTION AND TREATMENT

Sec. 501. Creation of state advisory council on domestic and family violence; purpose; required report.

1. There is hereby created the state advisory council on domestic and family violence.
2. The purpose of the advisory council is to increase the awareness and understanding of domestic and family violence and its consequences and to reduce the incidence of domestic and family violence within the state by:
   (a) Promoting effective strategies for identification of the existence of domestic or family violence and intervention by public and private agencies serving persons who are victims of domestic or family violence;
   (b) Providing for public education;
   (c) Facilitating communication between public and private agencies that provide programs for victims of domestic and family violence and programs of intervention for perpetrators;
   (d) Providing assistance to public and private agencies to develop statewide procedures and community education, including procedures for reviewing fatalities in local communities;
   (e) Developing a comprehensive and coordinated plan of data collection concerning domestic and family violence for courts, prosecutors, law enforcement officers, health care practitioners, and other state agencies, in consultation with each other and in a manner that protects the identity of victims of domestic and family violence; and
   (f) Promoting the organization of local councils on domestic and family violence and providing assistance and support to established local councils.
3. The advisory council shall report to the highest level of the executive, legislative or judicial branch of government of the state.

COMMENTARY

In subsection 1, the drafters of the Model Code identify a vehicle by which states can achieve the goals of awareness and understanding of domestic and family violence and of effective intervention to reduce the incidence thereof in the state. State advisory councils on domestic and family violence are able to give visibility, authority, and breadth of experience to the public awareness initiatives and other functions delineated in this section. The state advisory council, while reporting to the highest level of one branch of state government, is designed to be an independent agency to ensure that the focus of the work undertaken is not parochial, that all pertinent disciplines are involved in collaboration, and that strategies adopted are best suited to reduce the incidence of domestic and family violence within the state. See Appendix IV.

Subsection 2 defines the purposes and the functions of the state advisory council. Paragraph (a) charges the council with promulgating strategies for identification of domestic or family violence. Paragraph (a) also requires the council to promote effective intervention strategies for agencies in the public and private sectors. The oversight efforts of a state advisory council, both to identify model programs and interventions undertaken by various disciplines and agencies and to facilitate research on the efficacy of these approaches for protecting victims and deterring perpetrators, will help to refine practice in the field and concomitantly reduce domestic and family violence. Paragraph (b) authorizes the council to engage in public education. Paragraph (c) authorizes the council to facilitate communication between intervention programs for perpetrators and programs for victims of domestic and family violence. Paragraph (d) directs state advisory

councils to assist agencies working in the field in the creation of statewide intervention and education procedures. The paragraph states that fatality review procedures related to domestic and family violence should be developed and implemented locally. Paragraph (e) charges the council with developing a plan for collection of data about the incidence, circumstances, and consequences of domestic and family violence for the state. Lack of data makes it difficult to evaluate accurately the efficacy of interventions and to identify the barriers within and between systems. The Code invests in the council the responsibility of working through the problems associated with data collection and crafting a plan for comprehensive, statewide data collection from all relevant agencies at the state and local levels. The plan is to be developed in consultation with the relevant agencies. Data must be gathered, analyzed, and reported in a manner that does not reveal the identity of victims. Paragraph (f) directs that the state advisory council facilitate the establishment of local councils and provide training, technical assistance, and other support to their endeavors. See section 503.

Subsection 3 identifies the agency or office to which the state advisory council is to report. If it is to be the powerful force for coordination and awareness anticipated by the Code drafters, it must report to the highest level of state government. See commentary concerning subsection 1.

Sec. 502. Composition and qualification of members.

1. The state advisory council on domestic and family violence consists of insert number of members. The governor, chief justice, or other appointing authority shall appoint the members of the advisory council after consulting with public and private agencies that provide programs for victims of domestic or family violence, advocates for victims, the statewide domestic or family violence coalition, and persons who have demonstrated expertise and experience in providing services to victims of domestic and family violence and their children.
2. The membership of the advisory council must include as many relevant disciplines as practicable. The governor or other appointing authority shall appoint persons to the advisory council to provide significant representation by victims of domestic and family violence and persons of diverse racial and ethnic backgrounds.

COMMENTARY

Subsection l requires that the state office with oversight responsibility for the council appoint the members. This appointment must be in consultation with programs and advocates for victims, the statewide domestic or family violence coalition and others expert in service delivery to victims.

Subsection 2 indicates the composition of the council is to include representatives of the relevant disciplines in the field, victims of domestic or family violence, and persons of diverse racial and ethnic backgrounds.

Sec. 503. Enabling statute for establishment of local councils.

1. A local government or group of local governments may establish an advisory council on domestic and family violence.
2. The purpose of the advisory council is to increase the awareness and understanding of domestic and family violence and its consequences and to reduce the incidence of domestic and family violence within the locality by:
   (a) Promoting effective strategies of intervention for identification of the existence of domestic or family violence and intervention by public and private agencies serving persons who are victims of domestic or family violence;
   (b) Providing for public education;
   (c) Facilitating communication between public and private agencies that provide programs

to assist victims and programs of intervention for perpetrators;

(d) Providing assistance to public and private agencies and providers of services to develop statewide procedures and community education, including procedures to review fatalities; and

(e) Developing a comprehensive plan of data collection concerning domestic and family violence for courts, prosecutors, law enforcement officers, health care practitioners, and other local agencies, in a manner that protects the identity of victims of domestic and family violence.

COMMENTARY

This section authorizes local governments or a consortium of local governments to establish advisory councils within a county, circuit, or district to undertake work parallel to that of the state council and to coordinate with the state advisory council of section 501.

Sec. 504. State public health plan for reducing domestic and family violence.

1. The designated state public health agency shall:
   (a) Assess the impact of domestic and family violence on public health;
   (b) Write a state public health plan for reducing the incidence of domestic and family violence in the state.
2. The state public health plan:
   (a) Must include but is not limited to public education, including use of the various communication media to set forth the public health perspective on domestic and family violence.
   (b) Must be developed in consultation with public and private agencies that provide programs for victims of domestic or family violence, advocates for victims, the statewide domestic or family violence coalition, and persons who have demonstrated expertise and experience in providing health care to victims of domestic and family violence and their children.
   (c) Must be completed on or before insert date.
3. The designated state public health agency shall:
   (a) Transmit a copy of the state public health plan to the governor and the members of the state legislature; and
   (b) Review and update the state public health plan insert interim.

COMMENTARY

This section requires that the designated state public health agency make an assessment of the impact of domestic and family violence on public health and write a plan for reducing the incidence of domestic and family violence in the state. Requirements for the plan are listed in subsection 2 and requirements for transmittal, review, and update are listed in subsection 3. This section also authorizes public health officers to assume the requisite leadership to effect the change in health care practice necessary for physicians, nurses, and medical caregivers to contribute fully to the multi-disciplinary initiatives to end domestic and family violence against abused adults and their children. See Appendices IV and VIII.

Sec. 505. Standards for health-care facilities, practitioners, and personnel; specialized procedures and curricula concerning domestic and family violence.

1. The <u>insert appropriate state agency or licensing board</u> shall promulgate standards for health care facilities, practitioners, and personnel in the facilities including specialized procedures

and curricula concerning domestic and family violence.

2. The procedures and curricula must be developed in consultation with public and private agencies that provide programs for victims of domestic or family violence, advocates for victims, the statewide domestic or family violence coalition, and persons who have demonstrated expertise and experience in providing health care to victims of domestic and family violence and their children.

COMMENTARY

Subsection 1 requires the establishment of protocols and training throughout the health care community and its service organizations.

Subsection 2 requires that the procedures and curricula be developed by the appropriate state agency or licensing board in consultation with specified service-providers and professionals. See Appendices IV and VIII.

Sec. 506. Notice of rights of victims and remedies and services available; required information.

1. The designated state public health agency shall make available to practitioners and health care facilities a written notice of the rights of victims and remedies and services available to victims of domestic or family violence in accordance with subsection 3.
2. A practitioner who becomes aware that a patient is a victim of domestic or family violence shall provide to the patient and every health care facility shall make available to all patients the notice provided pursuant to subsection 1.
3. The notice to victims of domestic or family violence must be substantially as follows:
   "If you are the victim of domestic or family violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that an officer assist in providing for your safety, including asking for an emergency order for protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place including but not limited to a designated meeting place for a shelter, a family member's or a friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the report at no cost from the law enforcement department. You may ask the prosecuting attorney to file a criminal complaint. You also have the right to file a petition in insert name of court requesting an order for protection from domestic or family violence which could include any of the following orders:
   (a) An order enjoining your abuser from threatening to commit or committing further acts of domestic or family violence;
   (b) An order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly;
   (c) An order removing your abuser from your residence;
   (d) An order directing your abuser to stay away from your residence, school, place of employment, or any other specified place frequented by you and another family or household member;
   (e) An order prohibiting your abuser from using or possessing any firearm or other weapon

specified by the court;

(f) An order granting you possession and use of the automobile and other essential personal effects;

(g) An order granting you custody of your child or children;

(h) An order denying your abuser visitation;

(i) An order specifying arrangements for visitation, including requiring supervised visitation; and

(j) An order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs, and attorney's fees.

The forms you need to obtain an order for protection are available from the insert clerk of the court or other appropriate person. The resources available in this community for information relating to domestic and family violence, treatment of injuries, and places of safety and shelters are: insert list and hotline numbers. You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property. This can be done without an attorney in small claims court if the total amount claimed is less than fill in the amount required by statute."

4. The written notice:

(a) Must not include the addresses of shelters, unless the location is pubic knowledge.

(b) Must be provided in the native language of the victim, if practicable, when the native language of the victim is not English.

COMMENTARY

This section recognizes the responsibility of the health care delivery system, public and private, to disseminate information about legal options and available services for the victims of domestic or family violence. In subsection 1, the state public health agency is directed to provide such information in written form to health care practitioners.

Subsection 2 requires practitioners in the health care community to make available written notice about legal options and community services and offers a simple, effective mechanism for transmitting life-preserving information to victims of domestic and family violence.

Subsection 3 provides the substantial elements of the notice.

Subsection 4 protects the confidentiality of the location of shelters and requires the notice be provided to those victims of domestic or family violence in their native language where practicable. Also see section 204 and the commentary following.

Sec. 507. Hospitals required to provide certain information to parents.

Hospitals shall provide information concerning domestic and family violence to parents of newborn infants and to parents of hospitalized minors. The information must include but is not limited to the effect of domestic and family violence on children and available services for the prevention and treatment of domestic and family violence.

COMMENTARY

This section mandates that information about risks and remedies be given to all parents of newborn children so that parents can readily identify domestic and family violence, aptly assess the impact of ongoing abuse on the adult and

child victims, and effectively seek intervention early in the life of the children. This section of the Code articulates a prevention strategy that has profound implications for averting the trauma of domestic and child abuse in families. This information is not routinely shared with pregnant women and parents of newborns, and thus battered parents are without the information essential to identify the risks to their infants posed by domestic and family violence and to obtain the assistance they need to protect their children and themselves. Informing parents about domestic violence and the community and health care systems available for support and assistance may be the first step in the process of acquiring essential safeguards and services for families.

Sec. 508. Regulation of programs of intervention for perpetrators; required provisions; duties of providers.

1. The insert appropriate state agency shall promulgate rules or regulations for programs of intervention for perpetrators of domestic or family violence. The rules or regulations must be promulgated after consultation with public and private agencies that provide programs for victims of domestic or family violence and programs of intervention for perpetrators, with advocates for victims, and with persons who have demonstrated expertise and experience in providing services to victims and perpetrators of domestic and family violence and their children. If a state licenses or provides money to a program of intervention for perpetrators, the state agency shall review compliance with the rules or regulations promulgated pursuant to this subsection.
2. The rules or regulations must include:
   (a) Standards of treatment for programs of intervention;
   (b) Criteria concerning a perpetrator's appropriateness for the program;
   (c) Systems for communication and evaluation among the referring court, the public and private agencies that provide programs for victims of domestic or family violence, and the programs of intervention for perpetrators; and
   (d) Required education and qualifications of providers of intervention.
3. The standards must include but are not limited to the following principles:
   (a) The focus of the program must be stopping the acts of violence and ensuring the safety of the victim and any children or other family or household members.
   (b) Recognition that violence is a behavior for which the perpetrator must be held accountable.
   (c) Recognition that substance abuse is a problem separate from domestic or family violence which requires specialized treatment.
4. Providers of programs of intervention for perpetrators:
   (a) Shall require a perpetrator who is ordered into the program by a court to sign the following releases:
      (1) Allowing the provider to inform the victim and victim's advocates that the perpetrator is in treatment with the provider, and to provide information for safety to the victim and victim's advocates;
      (2) Allowing prior and current treating agencies to provide information about the perpetrator to the provider; and
      (3) Allowing the provider to provide information about the perpetrator to relevant legal entities, including courts, parole officers, probation officers, and children's protective services.

(b) Shall report to the court and the victim any assault, failure to comply with the program, failure to attend the program, and threat of harm by the perpetrator.

COMMENTARY

The requirements of this section establish the minimum level of responsibility, service, and accountability expected from providers of programs of intervention for perpetrators of domestic or family violence, and provide a measure against which the performance and efficacy of a program can be evaluated. See Appendix IV. Subsection 1 requires the appropriate state agency to promulgate statewide rules or regulations for programs of intervention for perpetrators. The Model Code specifies that the state agency is to consult with programs for victims and perpetrators, advocates for victims, and persons with demonstrated expertise in service delivery to victims and perpetrators.

Subsection 2 lists requirements for the rules or regulations including standards of treatment; criteria concerning the appropriateness of a perpetrator for treatment; provisions for communication and evaluation among the referring court, public and private agencies, and the programs of intervention; and the education and qualifications of providers. Statewide service delivery standards facilitate uniformity of practice, promoting the highest level of ethical and informed practice by practitioners.

Subsection 3 lists the principles which are required to be included in the standards of treatment.

Subsection 4 mandates that a program of intervention require a perpetrator who is ordered into treatment to sign releases allowing the program to provide certain information to the victim, the court, and other legal entities. The subsection also requires the provider of a program to report to the court and the victim assaults, threats, absence from the program, and failure to comply with the program by the perpetrator.

Sec. 509. Continuing education for law enforcement officers concerning domestic and family violence; content of course.

1. The peace officers standards and training committee or other appropriate state agency must provide insert number of hours of initial education to all prospective law enforcement officers concerning domestic and family violence.
2. The insert the appropriate law enforcement agency shall provide insert number of hours of continuing education concerning domestic and family violence to law enforcement officers each year.
3. The course of instruction and the objectives in learning and performance for the education of law enforcement officers required pursuant to subsections 1 and 2 must be developed and presented in consultation with public and private providers of programs for victims of domestic or family violence and programs of intervention for perpetrators, persons who have demonstrated expertise in training and education concerning domestic and family violence, and the statewide domestic or family violence coalition.
4. The course of instruction must include but is not limited to:
   (a) The investigation and management of cases involving domestic and family violence and writing of reports in such cases;
   (b) The nature, extent, and causes of domestic and family violence;
   (c) Practices designed to promote the safety of officers investigating domestic and family violence;
   (d) Practices designed to promote the safety of the victims of domestic and family violence and other family and household members, including safety plans;
   (e) The legal rights and remedies available to victims of domestic or family violence including but not limited to rights and compensation of victims of crime and enforcement

of civil and criminal remedies;

(f) The services available to victims of domestic or family violence and their children;

(g) Sensitivity to cultural, racial, and sexual issues and the effect of cultural, racial, and gender bias on the response of law enforcement officers and the enforcement of laws relating to domestic and family violence; and

(h) The provisions of the Model Code and other applicable state statutes concerning domestic and family violence.

COMMENTARY

Subsection 1 indicates that the state committee or agency charged with establishment of professional standards, development and delivery of comprehensive training, and certification for law enforcement recruits is the appropriate office in which to locate law enforcement training responsibility. While those constructing the curriculum may conclude that issues of domestic and family violence intervention should be woven throughout the entire curriculum, rather than being offered in a separate unit of instruction, it is important that a significant amount of time be devoted to domestic and family violence intervention since such a substantial amount of the time of front line staff is expended on these calls.

Subsection 2 does not charge the same state committee or agency with continuing education of law enforcement, recognizing the diversity in state statutes and regulations about the vehicles for on-going training of officers. The Code contemplates that all sworn officers, including executives, management, and supervising officers, not just front line staff, are subject to this education requirement.

Subsection 3 requires the course of instruction required in subsections 1 and 2 to be developed and presented in collaboration with four specific groups of expert professionals in the state. In many states these professionals have historically provided leadership in crafting and delivery of training for law enforcement. This Code includes them to facilitate cooperative, multi-disciplinary initiatives for domestic and family violence intervention.

Subsection 4 enumerates the essential components of a preliminary course of instruction for prospective and veteran officers while state code drafters and local practice may require the inclusion of other components.

Sec. 510. Continuing education of judges and court personnel; content of course.

1. The supreme court or state judicial educator shall develop and present courses of continuing education concerning domestic and family violence for judicial officers and court personnel.
2. The courses must be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic or family violence and programs of intervention for perpetrators, advocates for victims, the statewide domestic or family violence coalition and the state advisory council on domestic and family violence.
3. Each judicial officer and each court employee who comes into contact with either party in domestic or family violence cases must have insert appropriate number of hours of education in domestic and family violence.
4. The courses must include but are not limited to the following topics:
   (a) The nature, extent, and causes of domestic and family violence;
   (b) Practices designed to promote safety of the victim and other family and household members, including safety plans;
   (c) Resources available for victims and perpetrators of domestic or family violence;
   (d) Sensitivity to gender bias and cultural, racial, and sexual issues; and
   (e) The lethality of domestic and family violence.

COMMENTARY

Subsection 1 designates the office responsible for development and presentation of the continuing education courses on domestic and family violence for justice system personnel. It further directs that the requirement of continuing education in this field applies both to judicial officers and court staff. Magistrates, law masters, arraignment or other judicial officers, law clerks, court administrators, clerical assistants, registry staff, security personnel, process servers, and others working in criminal, family, and district courts where issues of domestic and family violence are addressed should be knowledgeable about the law and procedure. See Appendix VIII for a bibliography of continuing education curricula and materials for judicial and court personnel.

Subsection 2 directs that courses be prepared and presented in consultation with experts in the field and the state advisory council. See commentary pertaining to subsection 3 of section 509.

Subsection 3 requires all judicial officers and court personnel who come in contact with victims or perpetrators of domestic or family violence in the course of their professional responsibilities to receive a minimum number of hours of continuing education.

Subsection 4 lists the topics that must be included in courses of continuing education. See the commentary pertaining to subsection 4 of section 509.

Sec. 511. Continuing education for state, county, and city employees who work with domestic and family violence cases and are required to report abuse and neglect of children.

1. The appropriate state, county, and city agencies shall provide courses of continuing education concerning domestic and family violence for state, county, and city employees:
   (a) Who work with cases of domestic and family violence; and
   (b) Who are required by law to report abuse or neglect of children.
2. The courses must be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic or family violence and programs of intervention for perpetrators, advocates for victims, the statewide or local domestic or family violence coalition and the state advisory council on domestic and family violence.
3. The courses must include but are not limited to the following topics:
   (a) The nature, extent, and causes of domestic and family violence;
   (b) Practices designed to promote safety of the victim and other family and household members, including safety plans;
   (c) Resources available for victims and perpetrators of domestic or family violence;
   (d) Sensitivity to gender bias and cultural, racial, and sexual issues; and
   (e) The lethality of domestic and family violence.
4. As used in this section, "state, county, and city employees who work with cases of domestic and family violence" include:
   (a) Probation officers;
   (b) Workers in children's protective services;
   (c) Psychologists;
   (d) Social workers;
   (e) Court appointed special advocates;
   (f) Mediators;
   (g) Custody-evaluators; and
   (h) State to add any other employees.

COMMENTARY

Subsection 1 identifies the appropriate agencies on the state, county, and city levels which is responsible for continuing employee education and directs them to provide courses on domestic and family violence to those classes of employees who work with cases of domestic or family violence and who are mandated reporters of child abuse or neglect.

The commentary in sections 509 and 510 examines the intent of the Code related to subsections 2 and 3.

Subsection 4 defines the classes of employees subject to this training mandate. The enumeration is extensive in order to assure that practice among and between the professions is compatible and subscribes to the same goals of prevention and intervention.

Sec. 512. Continuing education for attorneys.

1. The state bar or appropriate state agency shall provide courses of continuing legal education in domestic and family violence for attorneys.
2. The courses must be prepared and presented in consultation with persons who have demonstrated expertise and experience in providing legal assistance to victims and perpetrators of domestic or family violence, advocates for victims, the statewide domestic or family violence coalition and the state advisory council on domestic and family violence.
3. The courses must include but are not limited to the following topics:
   (a) The nature, extent, and causes of domestic and family violence;
   (b) Practices designed to promote safety of the victim and other family and household members, including safety plans;
   (c) Resources available for victims and perpetrators of domestic or family violence;
   (d) Sensitivity to gender bias and cultural, racial, and sexual issues; and
   (e) The lethality of domestic and family violence.

COMMENTARY

This section mandates that the state bar or other appropriate state agency provide continuing legal education in domestic or family violence for attorneys. See commentary following sections 509 and 510 which examines the intent of the Code related to subsections 2 and 3.

Sec. 513. Required curricula for state, county, and city education system.

1. The state, county and city departments of education shall select or develop:
   (a) Curricula for pupils concerning domestic and family violence that are appropriate for various ages; and
   (b) Curricula for school counselors, health-care personnel, administrators, and teachers concerning domestic and family violence.
2. The curricula must be selected or developed in consultation with public and private agencies that provide programs for victims of domestic or family violence and programs of intervention for perpetrators of domestic or family violence, advocates for victims, the statewide domestic or family violence coalition, persons who have demonstrated expertise and experience in education and domestic or family violence, and the state advisory council on domestic and family violence.
3. The curricula must include but are not limited to:
   (a) The nature, extent, and causes of domestic and family violence;

(b) Issues of domestic and family violence concerning children;
(c) The prevention of the use of violence by children;
(d) Sensitivity to gender bias and cultural, racial, and sexual issues;
(e) Violence in dating and other social relationships of boys and girls; and
(f) Practices designed to promote safety of the victim and other family and household members, including safety plans.

COMMENTARY

There are many curricula on domestic and family violence tailored for education of children attending kindergarten through grade 12. See commentary related to subsection 4 of section 509 and subsection 4 of section 510 which is related to subsections 2 and 3 of this section. See Appendix VIII.

Sec. 514. Continuing education for school personnel who are required to report abuse and neglect of children.

1. The state department of education or other appropriate school district shall provide courses of continuing education concerning domestic and family violence for employees who are required by law to report abuse or neglect of children.
2. The courses must be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic or family violence, persons who have demonstrated expertise in education and domestic and family violence, advocates for victims, the statewide domestic or family violence coalition and the state advisory council on domestic and family violence.
3. The courses must include but are not limited to the following topics:
   (a) The nature, extent, and causes of domestic and family violence;
   (b) Practices designed to promote safety of the victim and other family and household members, including safety plans;
   (c) Issues of domestic and family violence concerning children;
   (d) Sensitivity to gender bias and cultural, racial, and sexual issues; and
   (e) The lethality of domestic and family violence.

COMMENTARY

The nexus between domestic and family violence and child abuse and neglect is strong. School personnel can assist children in violent homes and their parents through identification, information and referral related to legal options and community resources, and safety planning. The Code requires that such courses be developed and provided to appropriate educators and school personnel who are mandated reporters. Also see commentary related to subsections 2 and 3 following sections 509 and 510.

Model Code on Domestic & Family Violence

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NATIONAL COUNCIL OF
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