

LAW ENFORCEMENT MANAGEMENT INSTITUTE

DOMESTIC VIOLENCE: A POLICE LIABILITY OF THE FUTURE

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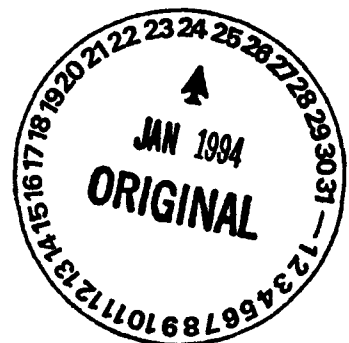


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I. INTRODUCTION

The purpose of this project will be to determine the current definition of family violence, the criteria for family violence as outlined in the *Texas Family Code*, and the various forms that episodes of family violence can take.

A review will then be made of the duties of police officers in handling family violence acts as they are defined in the *Texas Code of Criminal Procedure*. Along with these, some of the tactics for dealing with family violence calls will be explored.

By examining some of the case studies which have involved legal actions against police departments and their officers, conclusions may be drawn regarding the actions which were taken or omitted. This is of particular significance with respect to liability claims against law enforcement management and officers.

Finally, after examining excerpts from several departmental policies dealing with family violence, recommendations will be made regarding inclusion of such guidelines into policy making, especially in areas where liability issues have already arisen.

II. DEFINING FAMILY VIOLENCE

For the purpose of this paper, the definition of family violence will be the statutory definition set forth in the Texas Family Code:

An act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, or assault, or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, or assault, excluding the reasonable discipline of a child by a person having that duty; or abuse, as that term is defined by Sections 34.012 (1) (c), (e), and (g) of this code, by a member of a family or household toward a child of the family or household.¹

According to the definition used, a family:

includes individuals related by consanguinity or affinity, individuals who are former spouses of each other, individuals who are the biological parents of the same child, without regard to marriage, and a foster child and foster parent, whether or not those individuals reside together.²

The term household as defined "means a unit composed of persons living together in the same dwelling, whether or not they are related to each other."³ The most common form of family violence is found when one party is physically assaulted by another. The offense of assault is outlined in 22.01 of the *Texas Penal Code* and is defined as:

A person commits an offense if the person: (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse; or (2) intentionally or

knowingly threatens another with imminent bodily injury, including the person's spouse; or (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.⁴

As evidenced by the above definitions, family violence includes a large group of individuals. Family violence is also generally considered to mean physical harm or the threat of physical harm. However, family violence also includes emotional harm. Many times, psychological damage can be more permanent and sometimes as life-threatening as physical violence. Keeping this thought in mind, various types of family violence will be explored.

III. TYPES OF FAMILY VIOLENCE

Family violence is generally categorized into three main areas: physical abuse, emotional abuse, and sexual abuse. The most common type and usually the most recognizable form is physical abuse. Physical abuse can range from the most severe injuries which may result in death, permanent damage such as scars, broken bones that have healed improperly or those injuries resulting in permanent disabilities which would include loss of sight, loss of hearing, and loss of extremities. Physical abuse can also include shoving, punching, biting, and kicking. In dealing with physical abuse, if a person takes the position that only the severe acts of violence should be addressed, then acts may be overlooked which could be setting a pattern or trend. This pattern, if left unchecked, may escalate toward more frequent and more violent behavior that can eventually result in severe beatings or even death.

In a recent survey conducted in Texas, approximately 30.7% of those women who responded indicated that they had been the victims of some form of physical abuse after the age of eighteen.⁵ While evidence obtained during the survey research indicates that most physical abuse occurs without the use of weapons (other than hands or feet), 24% of the respondents admitted to being threatened with some other type of weapon. According to the Texas Department of Public Safety's *Uniform Crime Reports* (1988), a total of 1,679 women in Texas were murdered by their husbands, ex-husbands, or boyfriends in 1988 and most of the victims were killed with a firearm.⁶

Another type of family violence is sexual violence. This is probably the most under-reported due to the victim's reluctance to discuss it with other persons, including the police. Police are all-too-familiar with most cases of sexual assaults. Sexual violence in the family includes many different types. Many times, it is simply the fact of forcing a victim to have sex against his or her will; however, often this forced sexual activity includes physical violence or the threat of physical violence. Sometimes these physical attacks are directed at the victim's genitals or breasts. On occasions, the sexual activity may include forcing the victim to perform sexual acts which are degrading and embarrassing. This activity may even include forcing the victim to participate in sexual activity with a third person or both parties. Due to the shame felt by the victim, there is a reluctance to report the incident(s).⁷

Probably the most common type of family violence is that of emotional abuse or psychological battering. Emotional abuse is generally found in one of three forms: (1) Threats -- threatening the use of violence against the victim or others, threatening to commit suicide, threatening to deport foreign alien victims, threatening to take the children away or harm them;⁸ (2) Use of Degradation and Control -- forcing the victim to eat cigarettes, beg, lick the floor, kiss or lick the actor's feet, etc., limiting the victim's access to money and transportation, interfering with the victim's sleep and meals, regulating their social relationships and activities, verbal abuse and attacks on victim's self-esteem;⁹ and (3) Fear -- doing things to intentionally frighten the victim such as reckless driving, playing with weapons, and using threats as those previously described.¹⁰

After viewing the three main types of family violence, it appears to this author that most episodes are directed at establishing and maintaining a pattern of dominance of the

abuses over the victim. Also, by committing acts designed to degrade the victim, the abuser reinforces their superiority -- at least in their thinking.

Having examined these three types of family violence, another phenomenon of family violence will be explored. Research conducted with 120 battered women and batterers revealed that three distinct stages occur in family violence. These stages may vary in length and intensity, but the cycle usually includes all three. The research was developed by Dr. Lenore Walker and is known as the "Cycle Theory of Battering."¹¹

Phase one is called the "tension building" phase and is described as "one in which tension builds and the abuser is edgy and more prone to react negatively to frustrations. The abuser may have small episodes of violence that quickly subside and may be quick to blame the victims for any real or imagined wrongdoings."¹² Often the victim will attempt to prevent escalation of this phase by employing methods that have worked in the past. Unfortunately, by attempting to calm down the batterer, the victim lets him know she accepts the abusiveness as legitimately directed towards her, assuming guilt, denying anger at being abused, and identifying with the abuser's reasoning. During this phase the victims usually deny the knowledge that the violent episodes will become worse. This is generally a coping mechanism. Techniques used to calm the abuser lose effectiveness as the tension builds and the victim's anger increases. Both victim and abuser become more agitated, incidents become more frequent, and it becomes more difficult for coping mechanisms to continue to work.¹³

Phase two is one of direct confrontation and is the "punishment phase." It is the shortest and most violent of the cycle. Most victims state that the incidents occur for no

apparent reason. It is not uncommon for a victim to describe being awakened from their sleep to discover that they are being beaten. Victims often deny the seriousness of their injuries and usually refuse to seek immediate medical attention. According to Dr. Walker,

during phase two the batterer fully accepts that his rage is out of control. . . . He usually starts out wanting to teach her a lesson and doesn't want to inflict any particular injury on her. He stops only when he feels she has learned her lesson. Most victims report that to fight back in a phase two incident is only to invite more serious violence. Many women, however, have been damming up their anger during phase one and only feel safe letting it out during the second phase. They know that they will be beaten anyway.¹⁴

The third phase is termed the "honeymoon phase" and is a calm loving phase. Movement from phase two to phase three is welcomed by both victim and abuser. During this "honeymoon phase" the batterer displays genuine sincerity in promises that he will not let such incidents occur again. His reasonable and loving behavior during this phase can convince the victim that he really can change. He will exhibit very attentive behavior and will try to convince her that his greatest fear is that she will leave. During this phase it is most difficult for the victim to make a decision to end the relationship or request help from a social agency or law enforcement official.¹⁵

IV. PAST, PRESENT AND FUTURE HISTORY OF FAMILY VIOLENCE

Having read various accounts relating to mankind's history and culture over the past twenty or so years, it is this author's opinion that acts of violence between family members can be traced back to prehistoric times. During this era, mankind began to form bonds among the species. Groups began living together, primarily for protection and mating. Within these groups or tribes, men began to select a female for mating, and usually this female would then be considered his property. As the groups began structuring, family units began to form. Patterns of behavior were developed. The male of the units bore certain responsibilities which were to hunt and provide food and to protect the unit from outside dangers. Females were expected to handle tasks which were considered beneath the male's status. Males were expected to maintain total dominance over the females. To this end, physical violence was frequently used and was considered acceptable by the group members. Thus, even at the beginnings of mankind's history, a pattern of violence in the family unit not only developed but was accepted. Possibly one of the first written records documenting an act of family violence might be the biblical story of Cain and Abel. Throughout history, not only customs involving family violence can be found, but in some cases official condoning of such violence exists.

Looking back at American history, it can be found that violence in the family was legitimized. In 1824, the Mississippi Supreme Court was the first of several legislatures which held that husbands were immune from assault and battery charges for moderately chastising their wives in cases of "great emergency."¹⁶ Throughout history, violence within

the family unit has generally been ignored or accepted. The notion that violence in the family should not be recognized and punished has persisted.

It has only been lately that family violence is recognized for what it is. Family violence in today's society has escalated to what some experts would consider epidemic proportions. Police respond to more calls of family violence than to all other categories of serious crimes combined. Between 20-25% of homicides nationwide involve victims and offenders who are related to each other. Where the relationship between victim and offender is known, 14% of all aggravated assaults, those that involve serious injury or the use of a weapon, were between family members. The FBI considers spouse abuse the most under-reported crime in the nation, with one beating occurring every eighteen seconds.¹⁷ A recent study completed by the Criminal Justice Center at Sam Houston State University revealed that over one million women in Texas alone have experienced some type of physical abuse in their lifetime, including over 300,000 who had experienced physical abuse within the preceding twelve months.¹⁸

It can be seen from the above that at present family violence incidents occur extremely frequently. To predict what path family violence will take in the future, other factors must be explored. Alcohol has been documented as probably one of the most important contributing factors in family violence. Alcoholism and alcohol-related disorders are two of the greatest problems facing society. Abuse of drugs -- both prescription and illegal -- has climbed over the past few years. This problem has also contributed to cases of family violence. Thus, if society does not begin to make strides in combating these problems, then the logical trend will be the continued escalation of incidents of family violence in the future.

V. DUTIES OF PEACE OFFICERS RESPONDING TO FAMILY VIOLENCE

Regarding responses to family violence, the duties of a peace officer, according to the *Texas Code of Criminal Procedure*, Article 5.04, are:

(a) The primary duties of a peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence are to protect any potential victim of family violence, enforce the law, and make lawful arrests of violators; (b) A peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence shall advise any possible adult victims of all reasonable means to prevent further family violence, including giving written notice of a victim's legal rights and remedies and of the availability of shelter or other community services for family violence victims; (c) A written notice required by Subsection (b) of this article is sufficient if it is in substantially the following form with the required information in English and in Spanish inserted in the notice.¹⁹

Article 5.04, *Texas Code of Criminal Procedure*, above, supplies the criteria that a peace officer must provide the victim with a written document which outlines their rights and provides them information regarding shelter and possible assistance with counseling or legal advice.

Peace officers' duties on reports and records involving family violence are outlined in Article 5.05 of the *Texas Code of Criminal Procedure*:

(a) A peace officer who has reason to believe that an offense involving family violence has occurred shall make a written report, including but not limited to: (1) the names of the suspect and complainant; (2) the date, time, and location of the incident; (3) any visible or reported injuries; and (4) a description of the incident and a statement of its disposition.²⁰

In discussing the legal duties as outlined above, the key factors are basically identical to the responsibility of peace officers in other crimes: protecting the victim or potential victim, enforcing the law and making a lawful arrest of any person for which probable cause exists that indicates that the person committed a violation of the law. The law concerning family violence differs from nondomestic violence in that the officer is obligated to give written notice to any victim of family violence. This written notice must outline the victim's rights and give the location where assistance is available. This information is required in both English and in Spanish.²¹

In providing this additional information, the author believes that an attempt is being made by legislators to explore means of decreasing family violence other than by arrest and detention by directing the victim toward available resources for providing physical safety, psychological assistance, and legal assistance to terminate the relationship.

VI. HANDLING RESPONSES TO FAMILY VIOLENCE CALLS

In discussing the methods which assist the officer in dealing with calls for service in cases of family violence, the officer should remember that family violence is one of the toughest and most dangerous calls that they are required to make. Although each case is different, most contain some similarities that can lull the responding officer into a false sense of security. Because of the potentially violent nature of family crises, officers can ill afford to drop their guards. They should always remember that more officers are assaulted on family disturbance calls than any other single area of police work.²²

After receiving a call for service in a domestic dispute, the first issue an officer must address is the initial contact. Self-confidence and projecting a professional image are the primary concerns. In responding to a family dispute, an officer should be aware that his or her method of approach to the situation is of paramount importance. The first impression created may well determine the final outcome of the intervention. In most cases, the participants involved will react to the intervening officer's attitude. Thus, the officer should convey a calm, positive, and helpful manner. This will have the effect of establishing rapport, calm the situation, and lead those involved to believe that the officer has the ability to assist them in resolving their problems. During the initial contact, the officer should properly introduce him or her self. All parties involved should be advised that they are present in response to a call for police service and that they are ready to assist the family in any way possible.²³ This initial response is based on instances where no acts of physical

violence are in progress at the time of arrival or where physical violence acts have already occurred, making medical attention for the victim the primary concern.

The general appearance of the officer is extremely important. A clean proper uniform will tend to have a favorable effect on the other parties in their initial contact with the intervening officer. By appearance and initial action, the officer will, in most cases, project the image of being a well-trained professional police officer.²⁴ When speaking with the parties, the officer should avoid profanity or aggressiveness. The tone of voice should project a calming effect.

Officers, upon entering a home, should remember that not all disputes involve the commission of a crime. Officers should also be aware that families who have requested police service are in need of outside intervention for problems which may have progressed beyond the point of self-mediation or control.

It is desirable that officers show through speech or action the necessary concern and willingness to assist the family by all means available within the scope and authority of the police department. This may aid the family to regain self-control, and where it is necessary, the officer will be able to advise the parties of other means available to effect a proper resolution of the problems. It is important that officers avoid creating an impression of disinterest or belittle the problems for which the officer has been called.²⁵

In conjunction with the above approach, it is necessary that the intervening officer make a quick analysis of the situation, paying close attention to the possibility of the use of weapons and the emotional actions of the disputants. This is for both their own safety and the safety of others who may be present. Additionally, such analysis will aid the officer in

determining the proper techniques that should be utilized in order to gain control of the situation.²⁶

The next phase should involve calming the conflict. Based on the proper implementation of the initial contact, the officer has begun the first step in restoring calm. This contact should have drawn the attention of persons involved to the officer and away from the conflict. After establishing themselves during the initial contact, the officers should avoid using unnecessary force or verbal abuse because this might result in a complete breakdown of the new relationship.²⁷ It is important that they proceed along the initial guidelines. The officer can then begin to take the necessary steps, depending on the type of dispute occurring, to modify the conduct and patterns which have led to the present family crisis.

The following will explore two types of domestic disputes, together with methods of regaining order and restoring calm. The first to be discussed is the violent dispute. Physical intervention on the officer's part may be necessary in this type of dispute. If an arrest is warranted, then it should be made. The officers involved should place themselves in a position so as to limit the possibility of personal injury. In separating the persons involved, a visual survey should be made in the area for objects which could be used as weapons. In handling violent family disputes, it is necessary to be familiar with certain types of individuals who may be prone to physical action. Many intoxicated persons become violent during these disputes. Often men or women who may be passive by nature when sober become extremely violent and aggressive when under the influence of alcohol or drugs. It may be extremely difficult to reason with or intervene with a person in this condition.

Caution must be used until the officer can effectively calm the person down. During the initial dialogue, the officers may seem to agree with statements made by those individuals to make them more receptive.²⁸

In many disputes involving women, it has been found that they may remain passive until the officers arrive and then become abusive. The female may then even try to strike the other person involved believing that the officer will protect her. Officers must act quick to stop this behavior immediately.²⁹

Once the immediate threat of physical confrontation has been eliminated, the officers can conduct a thorough investigation and observe any injuries that may have resulted from an assault. This must be done so that necessary police action may be taken. During this time, officers should be on guard for a possible outbreak of violence leading to an assault. Officers should be sensitive to the possibility of growing anger among the parties, as a remark or personal slur could trigger physical responses by either person. The officer should be cautious of a person who is overly quiet because he or she may have already reached the breaking point and may be waiting for the first opportunity to lash out.³⁰

The second type of family disturbance is the verbal dispute. Basically, the only difference between violent disputes and verbal disputes is that the confrontation between participants in a verbal dispute has not reached the point where there has been a physical assault. The first step in intervening in a verbal dispute is to stop the direct confrontation between the parties involved. When possible, the officers should separate and place the disputants out of hearing range of each other. Intervening officers should utilize more than one room whenever feasible. If only one room is available, then the officers should separate

the individuals to opposite ends of the room. This will help to create the needed distraction that will give the officers an opportunity to gain the attention of the person to whom they are talking. However, officers should keep in mind that, whenever possible, visual contact should be maintained for safety purposes. In most cases, a quiet, calm and firm tone of voice used by the intervening officers will cause the individuals to become calm and to stop and listen. After this happens, they will begin paying close attention to the officer and thereby become less involved with each other. This should help establish a more reasonable communication between the participants and also aid the officers in gathering needed information regarding the individuals concerned in the present crisis.³¹

Any attempt to find the method of police intervention which provides the strongest deterrence to future violence may benefit by reviewing what is considered a milestone in criminal justice studies: the *Minneapolis Domestic Violence Experiment*. This was the first scientifically controlled test of the effects of arrest for any crime.³² The purpose of the experiment was to find the best response for the police to misdemeanor cases of domestic violence. At the time of the experiment there were three viewpoints:

- (1) The traditional police approach of doing as little as possible, on the premise that offenders will not be punished by the courts even if they are arrested, and that the problems are basically not solvable.
- (2) The clinical psychologists' recommendations that police actively mediate or arbitrate disputes underlying the violence, restoring peace but not making any arrests.

(3) The approach recommended by many women's groups and the Police Executive Research Forum (Loving, 1980) of treating the violence as a criminal offense subject to arrest.³³

To determine which police approach was most effective in deterring future domestic violence, the Police Foundation and the Minneapolis Police Department agreed to conduct an experiment. The project, known in scientific circles as a "classic experiment," was a research design that allowed scientists to discover the effects of one thing on another by holding constant all other possible causes of those effects. The design of the experiment called for a lottery selection, which ensured that there would be no difference among the three groups of suspects receiving the different police responses. The lottery determined which of the three responses police officers would use on each suspect in a domestic assault case.

According to the lottery, "a suspect would be arrested, or sent from the scene of the assault for eight hours, or given some form of advice, which could include mediation at an officer's discretion."³⁴ These responses were termed "the arrest," "send," and "advise" treatments. The design called for a six month follow-up period to measure the frequency and seriousness of any future domestic violence in all cases in which the police intervened. The design applied only to simple or misdemeanor domestic assaults where both the suspect and the victim were present when the police arrived. The experiment included only those cases in which police were empowered, but not required, to make arrests under Minnesota state law. Under said law, the police officer must have probable cause to believe that a cohabitant or spouse had assaulted the victim within the past four hours and police did not

have to witness the assault.³⁵ The design called for each officer to carry a color-coded pad of report forms for the three different police responses. Each time the officers encountered a situation that fit the experiment's criteria, they would take whatever action was indicated by the report form on the top of the pad. The forms were numbered and arranged for each officer in the order determined by the lottery. Consistency of the lottery assignments was monitored by research staff observers riding on patrol for a sample of the shifts.

After a police action was taken at the scene of a domestic violence incident, the officer was required to fill out a brief report and give it to the research staff for follow-up. The follow-up consisted of a face-to-face interview which would be followed by telephone interviews every two weeks for a twenty-four-week period. The interviews were primarily designed to measure the frequency and seriousness of victimizations caused by a suspect after police intervention.³⁶

The results of the *Minneapolis Domestic Violence Experience* revealed a familiar pattern. Domestic violence cases coming to police attention disproportionately involve unmarried couples with lower-than-average educational levels, who are disproportionately minority and mixed race and who are very likely to have had prior violent incidents with police intervention. The fact that 60% fell into the unemployed category appeared to be overly high in a community with approximately 5% of the workforce unemployed. A 59% prior arrest rate seemed to suggest that the suspects generally are experienced law-breakers who are accustomed to police interventions.³⁷

Two kinds of measures of repeat violence were used in the experiment. One was a police record of an offender repeating domestic violence during the six month follow-up

period, either through an offense or an arrest report written by an officer in the department or through a subsequent report to the project research staff of an intervention by officers participating in the experiment. The second kind of measure came from interviews in which victims were asked if there had been a repeat incident with the same suspect, including an actual assault, threatened assault, or property damage.

Statistics revealed that under the first method of measurement, sending the suspect away produced two-and-a-half times as many repeat incidents as did the cases where arrest of the suspect was used. In addition, the advise method of treatment did not reveal any statistical difference that was distinguishable from the other two police actions.

In looking at the second method of measurement, a completely different view is seen. According to the victims' reports of repeat violence, arrest is still the most effective action. But the advise category -- not sending the suspect away -- produced the worst results with almost twice as much violence as arrest.

In attempting to draw conclusions from the study, it may be premature to conclude that arrest is always the best way for police to handle domestic violence. However, the results of the study indicated in both methods of measurement that the use of arrest produced the least amount of repeat violence.³⁸

The results of the Minneapolis Experiment produced a rash of mandatory arrest laws enacted across the United States. The Experiment also led the National Institute of Justice to fund replications in six additional cities. Findings from five of the six cities are now available: Omaha, Milwaukee, Charlotte (NC), Colorado Springs, and Dade County (Miami). Replications in Omaha, Charlotte, and Milwaukee found no evidence for a long-

term deterrent effect of arrest on recidivism. Instead, significant long-term increases were found in subsequent incidents. However, the Colorado Springs and Dade County replications found evidence of long-term deterrent effects but no evidence of escalation effects.³⁹

The Milwaukee Experiment was conducted from April, 1987, until August, 1988, with the Milwaukee Police Department participating in an experiment involving 1,200 cases of misdemeanor domestic battery.⁴⁰ Three treatments were employed: (1) a standard arrest in which suspects were held until morning unless they could post bail; (2) a short arrest in which the suspects were released on recognizance; and (3) a police warning, but no arrest. All arrested persons were taken to police headquarters for booking.⁴¹

In summarizing the Milwaukee Experiment, it was found that where arrest influenced the subsequent violence of those arrested depended on the arrested person's stake in conformity. Arrested persons who lacked a stake in conformity were significantly more likely to have a repeat offense. Those arrested who were married and employed, thereby having a stake in conformity, were deterred.⁴²

The Metro-Dade Experiment found several statistically significant deterrent effects of arrest based on both victim interviews and official records. Based on reports of subsequent arrests, cases randomly assigned to the arrest response had significantly lower occurrence rates and times to a subsequent assault than those assigned to the no-arrest response.⁴³ In this experiment, there also seemed to be a different effect on employed suspects as opposed to unemployed suspects who were in the arrest group. Among employed suspects, arrest had a statistically significant deterrent effect on the occurrence of a subsequent assault. Among

unemployed suspects, significant increases in subsequent assaults were associated with arrest. There were no differences with respect to marital status.⁴⁴

Upon review of these additional experiments, it appears that mandatory arrest works better as a deterrent for some actors, those with a stake in conformity, than others. However, there are reasons other than lower recidivism rates to justify a mandatory arrest policy.

VII. POLICE LIABILITY AND REQUIRED INTERVENTION IN RESPONDING TO FAMILY VIOLENCE

Traditionally, governmental agencies and their agents have enjoyed what is termed "qualified immunity." This basically means that they are exempt from civil litigation based on their actions, or the lack of, provided a violation of constitutional rights does not exist. The courts have upheld the idea that "government officials have no constitutional duty to protect members of the public at large from crime,"⁴⁵ although "such duty may arise by virtue of special relationship between those officials and a particular member of the public."⁴⁶ In the past it has been well-established that a municipality, acting in its governmental capacity for the protection of the general public, "cannot be cast in damages for a mere failure to furnish adequate protection to a particular individual to whom it has assumed no special duty."⁴⁷ The key phrase here is "special duty." Generally, there is no special duty to protect a citizen even when requested to do so.⁴⁸ Circumstances, however, can create the special duty and there may be liability where a special duty is owed a specific individual or a particular individual belonging to a class when a special relationship is proven. This establishment of a "special relationship" and "special duty" has become one area which has produced previously unknown civil actions against governmental agencies and their agents.⁴⁹ Another area that has come to establish a civil responsibility of the government to the people is "civil rights." The United States Supreme Court in the case of *Monell v. NY Dept. of Social Services* made it clear that while state and local police officers may be individually liable for a violation of a person's civil rights, local governments can now be "persons" under

the statute and are therefore liable for damages by policies or "customs" that create constitutional deprivation.⁵⁰ In considering the effects of policy/custom, there must be an established link between the policy/custom and the violation of rights.

The courts have held that a lack of training or failure to set policy or procedure can be grounds for a constitutional violation and also that the single decision of a chief or sheriff can be construed as a policy of a city or county.⁵¹ In establishing the issue of "special duty" there have been recent cases of landmark importance. In the case of *Bolistreri v. Pacifica Police Department*, the court held that in order

to determine whether a special relationship exists, a court may look to a number of factors, which include (1) whether the state created or assumed a custodial relationship toward the plaintiff; (2) whether the state was aware of a specific risk of harm to the plaintiff; (3) whether the state affirmatively placed the plaintiff in a position of danger; or (4) whether the state affirmatively committed itself to the protection of the plaintiff.⁵²

In the *Bolistreri* case, which involved an attempt to establish the issue of "special duty," the court stated

the heart of Bolistreri's claim is that the Pacifica police failed to take steps to respond to the continued threats, harassment, and violence towards Bolistreri by her estranged husband. These allegations, if true, would implicate Bolistreri's right to be free from physical harm and restraint comprised by due process right to liberty.⁵³

Although Bolistreri was unsuccessful, it was one of the first cases that attempted to establish the existence of a "special duty" to protect a person based on continued contact with, and requests for assistance from, police in dealing with cases of family violence.

Probably the most famous and widely publicized case to establish a "special duty" is that of *Thurman v. City of Torrington*.⁵⁴ This case appeared to reveal a prolonged period of gross indifference on the part of police with the City of Torrington. On numerous occasions, Tracy Thurman reported threats of violence and harassment on the part of her ex-husband. Even after she sought and received a protection order from the court, which must clearly establish a responsibility on the part of the police department to provide protection, and after reporting violations of this same court order, the Torrington police did not make any attempt to secure the custody of Charles Thurman. Subsequently, eleven days after Tracy Thurman appeared at the Torrington Police Department to pursue a warrant request, Charles Thurman came to the residence of Tracy Thurman and brutally attacked her with a knife.

In this case the court found that a "special duty" had been established requiring that the Torrington Police Department afford protection to Tracy Thurman and that the Torrington Police Department was negligent in failing to do so. A landmark monetary judgment was granted to Tracy Thurman.

Another landmark case which was based upon the theory of "special duty" is *Sorichetti v. City of New York*. In this case, Josephine and Frank Sorichetti had a long history of family violence. After their divorce papers were served, Josephine obtained a court order which outlined the provisions of child visitation and specifically directed any police officer to make

an arrest for any violation of said order. During one such visitation on the weekend, Frank Sorichetti indicated to Josephine that he was going to harm their daughter. Josephine reported this to the police and requested assistance but was denied. On Sunday, she was told to wait until the time limits on the visitation were up and see if Frank returned. When the police finally intervened, they found that Frank Sorichetti had severely maimed his daughter by repeatedly stabbing her and attempting to cut off one of her legs. The following appeared in the trial document in which the court established "special duty": "[4] As the jury in this case found, the 43rd precinct police had particular knowledge of Frank Sorichetti's abusiveness, assaultiveness and chronic alcoholism."⁵⁵

Another factor in creating "special duty" was the conduct of the police toward Josephine Sorichetti on the evening of the assault. When she first approached the police, she was told to wait and if Frank did not arrive at a reasonable time they would send a patrol unit out to check, thus creating the clear impression that Frank Sorichetti's failure to return would be a violation of the protection order and that some action would be taken. In the establishment of this "special duty," the court over-ruled the officers' and city's right to qualified immunity and found in favor of the plaintiff. The court awarded the child two million dollars and Josephine was awarded forty thousand dollars.

In the case of *Watson v. City of Kansas City*, 857 F. 2d 690 (C.A. 10th - 1988), the plaintiff alleged not only the existence of a special relationship but filed on the grounds of a violation of their civil rights with regards to the right of equal protection. This case involved a long history of family violence between the plaintiff, Nancy Watson, and the actor, Ed Watson, who was a member of the Kansas City Police Department. During this

history, there were repeated acts of physical violence and the plaintiff reported to the police this violence on more than one occasion. The police repeatedly failed to take action, and on one occasion the plaintiff alleged that she was threatened by a ranking officer of the Kansas City Police if she continued to call for help. On November 28, 1983, after a severe attack on the plaintiff, the actor committed suicide.

During the trial the plaintiff presented evidence documenting that the Kansas City Police Department had a 31% arrest record in nondomestic assault cases and a 16% arrest record in domestic assault cases.⁵⁶ Regarding the issue of violating civil rights based on "equal protection," the court held the following:

When all of the plaintiff's evidence is considered, it is sufficient, if believed, to support a jury finding that the City and Police Department followed a policy or custom of affording less protection to victims of domestic violence than to victims of nondomestic attacks. Furthermore, a jury could infer, based on this evidence, that the City and Police Department acted with a discriminatory motive in pursuing this policy, and that her injuries were a result of the policy.⁵⁷

By reviewing case law it can be seen that the courts are beginning to examine police action or inaction, regarding response to calls for assistance where family violence is involved, with a much more critical view. Police departmental policymakers, as well as their officers, can no longer afford to assume a passive role in dealing with domestic violence. Society is of the opinion that because the events happen within the family unit, and on most occasions even within the confines of the family dwelling, that this should not and can not

preclude police intervention. The object of this intervention is to interrupt the cycle of violence and prevent further injury, even death in extreme cases.

VIII. DEVELOPING DEPARTMENTAL POLICIES FOR POLICE RESPONSE TO FAMILY VIOLENCE

This section will examine domestic violence policies that are used in four different police agencies in Texas. Major areas to be addressed will be highlighted in designing domestic violence response policies.

Travis County Sheriff's Department mandates that their officers comply with those applicable sections of the Code of Criminal Procedure, Penal Code and Family Code. Section 6.08.003, *Officer Requirements*, states:

Officers who investigate family violence incidents or disturbance calls that may involve family violence inform any possible adult victim, in writing, of their legal rights, remedies and of the availability of shelter and other community services for family violence victims. Officers are to treat all incidents involving family violence as criminal conduct. Mediation or separation of the parties involved is not used as a substitute for appropriate reporting and enforcement activity when assaults or other forms of physical violence have occurred.⁵⁸

This policy further outlines actions that their officers may take in domestic situations where no physical violence has occurred. The Travis County policy has succeeded in making sure officers are aware of their responsibility by law as outlined in state statutes. By doing this, Travis County has taken steps to encourage compliance. Travis County also ensures that officers inform victims of their rights and of available assistance. This is done to protect the

county from potential liability where the courts have held that the police have the duty to protect family violence victims and to remove them from potential harm.

The family violence policy of the Rockwall Police Department entails the following: establishing guidelines and procedures regarding family violence and to prevent further criminal behavior, injury to the victim, demonstrate to the victim, the offender, and the community that domestic violence is criminal behavior and increase the number of offenders to prosecution, treatment and other community intervention.⁵⁹

The Rockwall Police Department policy requires in its procedures that officers will enforce the law and make lawful arrests where applicable and that the officer will advise the victims in writing of their rights and access to shelter and services. The policy statement is designed to provide a definite stand on the issue of family violence and to set the goal to be obtained by that stand. This is necessary so that every member of the department knows the position of management.

In examining the domestic violence policy of the Duncanville Police Department, one area of interest is found in the *Legislative Statement*:

A. Family violence is a serious danger and threat to society and its members. Victims of family violence are entitled to the maximum protection from harm or abuse or the threat of harm or abuse as is permitted by law.

B. In any law enforcement, prosecutorial, or judicial response to allegations of family violence, the responding law enforcement or judicial officers shall protect

the victim, without regard to the relationship between the alleged offender and victim.⁶⁰

Two other areas of interest in the Duncanville policy are found in the *Procedures* section:

C. The Duncanville Police Department will not adopt or employ an arrest avoidance policy in response to incidents of alleged family violence.

D. The Duncanville Police Department shall not respond to requests for assistance from victims of family violence any less diligently than they respond to requests for assistance from other persons who have been victims of violent crimes arising in a non-domestic context.⁶¹

In addition, the policy outlines procedures for issuing written notice of rights to victims and conditions for making arrests of offenders. In its legislative statements, the policy makes clear the stand on family violence. It asserts that family violence is a clear and present danger and all victims are entitled to protection. Duncanville takes a strong stand to ensure that active intervention will be followed and that intervention will not be influenced by discrimination. This is extremely important in light of the findings in *Watson v. City of Kansas City*, 857 F.2d 690 (C.A. 10th - 1988). Duncanville's policy specifically mandates that responses to family violence will be handled as aggressively as violent crimes that are not domestic.

In reviewing the Dickinson Police Department's family violence policy, an area of interest occurs in the Documentation section.

B. Family Violence Tracking Sheet will be completed by the officer for any incident of domestic violence which he/she investigates including non-arrest situations.

C. Notice to Adult Victims of Family Violence. Officers shall have the victim(s) sign this form and the carbon copy will be issued to the victim and the original will be turned in by the officer to be placed into the family violence files. This will be done in all investigations of domestic disturbances.⁶²

The Dickinson Police policy also outlines criteria for officers that mandate arrest in cases where physical violence has occurred. The main issue that is highlighted concerns documentation. The policy requires that the victim of family violence be given a written copy advising them of their rights. The policy then takes this further by having the victim sign the written notice and the department then retains a signed copy. This can be extremely important during civil litigation if the victim contends that he or she was not advised of his or her rights.

The Dickinson policy has also developed a tracking sheet to document all responses to incidents of family violence including those non-arrest situations. This provides a valuable asset in trying to be aware of possible domestic confrontations which may arise in the future. It also provides officers involved in current domestic investigations with information regarding past domestic problems involving the victim or actor.

In examining the four policies, there is a general tendency to ensure that instances of family violence are handled the same as any other violation of the law. Each policy outlined those steps which were mandated by law and each policy, if not mandatory, strongly recommended the use of arrest when warranted and in accordance with the law. Additionally, in some of the policies there were clear guidelines to ensure that there would be no discrimination in the handling of family violence cases. It is apparent that in

developing policy regarding domestic violence, police administrators should be aware of both criminal and civil issues.

IX. CONCLUSIONS

Domestic violence has emerged as a major concern to both law enforcement and society. Although the problem of domestic violence has existed in the past, in recent years it has emerged demanding more attention. Possibly due to educational efforts or public awareness programs, more cases of family violence are being reported.

Police administrators and policy developers must always be concerned with the safety of the public. They, by virtue of their responsibility to their governmental entity, must also be aware of potential liability risks.

In determining if the agency should choose to adopt a policy in favor of arrest, the literature provided no clear findings that arrest would result in a reduction of family violence. The data indicated that other factors such as geographic location, marital status, or employment status has some bearing on how effective arrests are in deterring further occurrences. Nevertheless, an arrest is an attempt on the part of law enforcement to interrupt the cycle of violence.

In light of recent court findings and monetary judgments which have been levied against governmental entities, it becomes extremely important that police departments take measures to ensure the victim is protected and that future acts of violence will not occur.

In conclusion, the police administration or policy makers should design a policy which will provide the maximum effect in dealing with and attempting to prevent acts of family violence.

ENDNOTES

1. Vernon's Texas Codes Annotated, Family, 71.01, Title 4, (2) 1993.
2. Ibid., (3).
3. Ibid., (5).
4. Vernon's Texas Codes Annotated, Penal Code, Volume 2, 22.02 (a)(1)(2)(3) 1993.
5. Robert Grant, Michael Preda, and J. David Martin, "Domestic Violence in Texas: A Study of Statewide and Rural Spouse Abuse," Midwestern State University, Wichita Falls, Texas, 1989, 8.
6. Ibid., 19.
7. Vergie Junot, "Nature, Causes and Dynamics of Crimes of Spouse Abuse," Texas NOW Domestic Violence Task Force, no date, 2.
8. Ibid., 2.
9. Ibid.
10. Ibid.
11. Lenore E. Walker, The Battered Woman Syndrome (Springer Publishing Company, Inc., 1984), 95.
12. Ibid.
13. Ibid.
14. Ibid., 96.
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16. Sue Eisenberg and Patricia Micklow, 'The Assaulted Wife: 'Catch 22' Revisited (Ann Arbor: University of Michigan Law School, 1974).
17. Vergie Junot, "Spouse Abuse -- The Epidemic of Violence in the Home: A Look at the Myths and the Facts, Texas NOW Domestic Violence Task Force, no date, 1.
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19. Vernon's Texas Statutes Annotated, Code of Criminal Procedure, Vol. 1, Art. 5.04 (a)(b)(c) 1993.
20. Vernon's Texas Statutes Annotated, Code of Criminal Procedure, Vol. 1, Art. 5.05 (a)(1)(2)(3)(4) 1993.
21. Vernon's Texas Statutes Annotated, Code of Criminal Procedure, Vol. 1, Art. 5.04, (c) 1993.
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23. Ibid., 3, 4.
24. Ibid., 4.
25. Ibid., 5.
26. Ibid.
27. Ibid., 6.
28. Ibid., 7.
29. Ibid., 7.
30. Ibid., 7, 8.
31. Ibid., 8, 9.

32. Lawrence W. Sherman and Richard A. Berk, The Minneapolis Domestic Violence Experiment, Police Foundation Reports #1 (April 1984).
33. Ibid., 2.
34. Ibid., 3.
35. Ibid.
36. Ibid.
37. Ibid., 5.
38. Ibid., 6, 7.
39. Lawrence W. Sherman, Douglas A. Smith, Janell D. Schmidt and Dennis P. Rogan, "Crime, Punishment and Stake in Conformity: Legal and Informal Control of Domestic Violence," American Sociological Review, 1992, Vol. 57 (October: 680-690), 680.
40. Ibid., 683.
41. Ibid., 684.
42. Ibid., 686.
43. Anthony M. Pate and Edwin E. Hamilton, "Formal and Informal Deterrents to Domestic Violence: The Date County Spouse Assault Experiment, American Sociological Review, 1992, Vol. 57 (October: 691-692), 692.
44. Ibid., 695.
45. Sawicki v. Vill. of Ottawa Hills, 525 N.E. 2d 468 (OH - 1988).
46. Sorichetti v. City of New York, 240 N.E. 2d 70 (NY - 1985).
47. Bruttomesso v. Las Vegas Metro. P.D., 591 P. 2d 254 (NEV. - 1979).
48. Riss v. City of New York, 240 N.E. 2d 860 (NY - 1968).

49. Sorichetti v. City of New York, 240 N.E. 2d 70 (NY - 1985).
50. Monell v. NY Dept. of Social Services, 436 U.S. 658, 98 S. Ct. 2108 (1978).
51. Pembauer v. Cincinnati, 106 S. Ct. 1292 (1986).
52. Balistreri v. Pacifica Police Dept., 855 F. 2d 1421 (C.A. 9th - 1988).
53. Ibid.
54. Thurman v. City of Torrington, 595 F. Supp. 1521 (D. Ct. - Conn. - 1984).
55. Sorichetti v. City of New York, 240 N.E. 2d 70 (NY - 1985).
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57. Ibid.
58. Travis County Sheriff's Department (March 1987), Family Disturbances and Family Violence, Section 6.08.003.
59. Rockwall Police Department (August 1987), Family Violence Response Policy, Section II.
60. Duncanville Police Department (1989). Family Violence and Family Protective Orders, Regulation 86-18, Section II.
61. Ibid., Section IV.
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