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SYMPOSIUM: MANDATORY ARREST LAWS AND POLICIES

VIRGINIA'S RESPONSE TO FAMILY VIOLENCE

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I am 13 years old. All my life I had violence in my family, my grandma, grandfather, my uncle and his girlfriend, my mother and her boyfriend . . . I've been slapped, kicked and beaten up trying to stop fights and because of that I have bruises and scars from violence. I feel we need to put a stop to violence. Men, women and children need to stop hurting one another and a woman that is beaten needs to leave that man alone and find a good man because it's not worth it and it's not real love. Take it from a person with experience.¹

The effects of violence within families know no boundaries. The problem is severe and cries out for a solution. Yet, family violence is not a new problem; it has been eating away at society for about as long as families have existed on the face of this earth.² Damage to the victim is incalculable; it affects the mind, the soul, and the spirit. The effects linger from one generation to the next. Violence turns a family, which should be a source of warmth, security, and nurturance, into a source of hostility, fear, and terror. Violence within the home serves as an incubator for violence on the street. The problem of family violence is long-standing and complex. Likewise, the solutions will require long-term investment and a comprehensive approach that marshals the resources of every organization, agency and discipline that has an impact on families.

The Commonwealth of Virginia, like many other states, is aware of the extent of family violence and recognizes it as a

1. Interview with a young woman working in the Virginians Against Domestic Violence Office (Apr., 1993).

2. See The Hon. Harry L. Carrico, Chief Justice, Supreme Court of Virginia, Keynote Address at the Norfolk Family Violence Alliance Conference (June 28, 1995).

problem that needs to be addressed. In state fiscal year 1995 in Virginia, 32,764 abused women, 9,572 abused children, and 393 abused men received services through domestic violence programs.³ During that year 3,245 women received shelter; however, there were 3,517 requests for shelter that were unable to be met.⁴ Of the women receiving shelter following an abusive episode, 47% did not report the episode; 21% reported the episode but no arrest resulted; 11% reported the episode and an arrest resulted; and 7% reported the episode, and both an arrest and prosecution resulted.⁵ In 1994, 38.5% of the female victims of homicide in Virginia were killed by family or household members.⁶

I. DIRECTION AND LEADERSHIP ON THE PROBLEM OF FAMILY VIOLENCE

In 1994, the General Assembly of Virginia established the Commission on Family Violence Prevention. This Commission builds on the work of the Domestic Violence Coordinating Council that convened in July, 1993, by Chief Justice Harry L. Carrico of the Supreme Court of Virginia. The Commission is charged to study family violence; identify existing services and resources; investigate ways to coordinate those services and resources; increase public awareness; and determine what added services, resources, and legislation are needed to address family violence. The Commission is comprised of thirty members representing the legislative, executive, and judicial branches of government, as well as victims of family violence, advocacy groups, service providers, and citizens. The Commission conducts its work through subcommittees and task groups that further expand the involvement of key state and local individuals and agencies.

During its first eighteen months, the Commission undertook an in-depth study of Virginia's criminal justice response to family violence. The study focused both on the law enforcement arrest response and the use of civil protective orders. In 1996, the Commission introduced an omnibus Family Violence Prevention Bill, Senate Bill 113,⁷ which addresses both areas in a

3. See VIRGINIA DEPT OF SOC. SERV., SPOUSE ABUSE PROGRAM STATE STATISTICAL REPORT FOR FY 95 (1996).

4. See *id.*

5. See *id.*

6. See VIRGINIA ST. CRIME COMM'N (1994).

7. 1996 Va. SB 113.

comprehensive fashion. Senator Janet D. Howell, chair, and Delegate Linda "Toddy" Puller, co-chair, sponsored the legislation. The bill was enacted with a delayed implementation date of July, 1997, to allow for sufficient time to establish local law enforcement policies and to provide training to key individuals.

II. FINDINGS OF THE VIRGINIA COMMISSION ON FAMILY VIOLENCE PREVENTION

The Commission reviewed the statutes of other states; analyzed localities in Virginia that have adopted mandatory and pro-arrest policies, as well as those with no existing policies; and surveyed service providers, victims, judges, and court service units. The study identified a number of key areas of concern.

Some critics indicate that a focus on family violence detracts or redirects criminal justice time and resources from more important work. Upon closer scrutiny, it appears that these cases already consume a great deal of time and resources. A high volume of calls for service to law enforcement agencies involve domestic disputes. During 1994, Henrico County, which has a population of 218,000, averaged eleven domestic violence responses per day.⁸ Prince William County, which has a population of 216,000, averaged fourteen responses per day.⁹ Roanoke County, which has a population of 79,000, averaged four responses per day.¹⁰ Portsmouth, which has a population of 103,000, averaged four responses per day.¹¹ Finally, Virginia Beach, which has a population of 393,000, averaged twenty-eight responses per day.¹² During that same year, Lynchburg reported twelve homicides, five of which were related to domestic violence.¹³ From January to October, 1995, Henrico County experienced twelve homicides, six of which were related to domestic violence.¹⁴ It is clear that citizens are calling for a law enforcement response and that these cases result in the most

8. Telephone survey conducted by the Virginia Commission on Family Violence Prevention, Jan., 1996 (using population estimates derived from VIRGINIA DEPT OF HEALTH, VIRGINIA VITAL STATISTICS 1993 ANNUAL REPORT (1993)).

9. *See id.*

10. *See id.*

11. *See id.*

12. *See id.*

13. *See* The Hon. Dale Harris, Judge, Lynchburg Juvenile and Domestic Relations District Court, Presentation to the Community Response Subcommittee of the Virginia Commission on Family Violence Prevention (Jan. 6, 1995).

14. *See* HENRICO COUNTY POLICE DEPT, REPORT SUMMARY (1995).

serious of outcomes, homicide. The Commission reviewed local law enforcement policies and received extensive presentations from five jurisdictions, regarding their policies and their perceived effectiveness.¹⁵ Those localities with policies defined them as either pro-arrest or mandatory arrest policies.¹⁶ Review of these policies indicated that both types of policies had very similar structure and wording: both contained guidance in determining whom to arrest by distinguishing which party in an altercation acted as an aggressor; all required the filing of a report; all placed priority on assuring safety for victims, including arranging for transportation to a shelter or other services; all directed that information be provided to victims about services available in their locality; and most listed circumstances that should not be considered as part of the arrest decision.¹⁷

As part of its analysis, the Commission undertook a survey of victim service providers.¹⁸ All forty of the domestic violence programs responded. Fifty-one percent of the programs indicated that their localities had a written policy related to family violence;¹⁹ 58% of those with a policy described it as a pro-arrest policy,²⁰ and 29% described the policy as a mandatory arrest policy.²¹ The survey participants defined a pro-arrest policy as a policy that encourages arrest unless there are clear and compelling reasons not to arrest; such a policy encourages identification and arrest only of the primary physical aggressor or the person who acted primarily in an aggressive manner rather than in self defense.²² The participants defined a mandatory arrest policy as one in which police must arrest alleged

15. The Commission reviewed the law enforcement policies of the following jurisdictions: Henrico County, Culpeper County, Fauquier County, Fairfax County, Roanoke County, Prince William County, and the Cities of Richmond, Alexandria, Virginia Beach, Lynchburg, and Staunton. On April 10, 1995, representatives from Henrico County, Culpeper County, and the City of Virginia Beach presented information to the Law Enforcement Subcommittee of the Commission on Family Violence Prevention regarding the effectiveness of their policies. Representatives from the City of Alexandria made a similar presentation on April 21, 1995. Representatives from Fauquier County made a presentation on September 16, 1996.

16. *See id.* (citing Henrico County, Culpeper County, Fauquier County, Fairfax County, Roanoke County, Prince William County, and the Cities of Richmond, Alexandria, Virginia Beach, Lynchburg, and Staunton).

17. *See id.*

18. *See* VIRGINIA COMM'N ON FAM. VIOLENCE PREVENTION, L. ENFORCEMENT SUBCOMM., SERVICE PROVIDER SURVEY (1995).

19. *See id.* at 1.

20. *See id.*

21. *See id.*

22. *See id.*

perpetrators in all instances in which there is probable cause to believe that a crime involving family violence has occurred.²³ Localities with arrest policies viewed the law enforcement response as effective to somewhat effective.²⁴ Localities without arrest policies viewed their law enforcement response as somewhat effective to ineffective.²⁵ There was no discernable difference in the perception of effectiveness between localities who identified their policies as pro-arrest and those who identified their policies as mandatory arrest.²⁶ The programs reported that most of the victims served had called the police when they were assaulted and that the majority had reported more than one instance of domestic violence to local law enforcement.²⁷ Seventy-six percent said that when police responded an arrest was made sometimes or never;²⁸ twenty-four percent said an arrest was made frequently, and no programs reported that an arrest was always made.²⁹ Eighty-six percent of the service programs said a pro-arrest policy would enhance law enforcement effectiveness and victim safety.³⁰ Fifty-seven percent felt that a mandatory arrest policy would have the same effect.³¹

In order to determine how victims perceive the criminal justice response to their calls for help, the Commission undertook a survey of victims receiving services from domestic violence programs.³² Eighty-seven victims who had called law enforcement following an episode of domestic violence participated in the survey. In the incident that lead to the call, 91% of the respondents said they had been threatened by their assailant, while 89% had been physically abused.³³ In 42% of the cases an arrest was made, the police took 37% of those arrested into custody.³⁴ In the rest of the cases, the assailant was released on summons or their own recognizance.³⁵ Seventy-five percent of respondents had been physically abused at least twice before

23. *See id.*

24. *See id.* at 3.

25. *See id.*

26. *See id.*

27. *See id.* at 1.

28. *See id.* at 2.

29. *See id.*

30. *See id.* at 4.

31. *See id.* at 5.

32. *See* VIRGINIA COMM'N ON FAM. VIOLENCE PREVENTION, L. ENFORCEMENT SUBCOMM., SURVEY OF VICTIMS OF DOMESTIC VIOLENCE (1995).

33. *See id.* at 1.

34. *See id.* at 2.

35. *See id.*

making their first call to police;³⁶ 42% reported between two and five previous episodes of abuse, and 33% reported over five episodes of abuse before they made their first call.³⁷ When asked what effect law enforcement actions had on the abuse in the relationship, 48% of the respondents indicated that when the abuser was arrested and released such actions had no effect;³⁸ 34% thought such actions increased the violence, and 18% thought it decreased the violence.³⁹ When the abuser was arrested, prosecuted, and released, 34% felt such actions had no effect;⁴⁰ 33% thought it increased the violence, and 33% thought it decreased the violence.⁴¹ When the victims filed for a protective order, 29% felt it had no effect, 24% thought it increased the violence, and 53% thought it decreased the violence.⁴²

The Commission surveyed the Virginia Juvenile and Domestic Relations District Court Judges at their conference in August, 1995, to determine their concerns related to family violence cases.⁴³ Sixty-two percent responded that prosecutors are available to prosecute these cases over 50% of the time;⁴⁴ 38% said that less than 50% of the cases involved prosecutors;⁴⁵ and 22% indicated that prosecutors were never available in these cases.⁴⁶ Thirty-seven percent of respondents felt a mandatory arrest policy would be helpful,⁴⁷ 41% felt it would not be helpful,⁴⁸ and 22% were unsure.⁴⁹ Judges indicated that more intervention programs were needed for abusers, as well as more services for victims and their families.⁵⁰ Finally, they indicated that the greatest frustration with these cases was the unwillingness of many victims to testify.⁵¹ They also felt that the criminal justice system is expected to fix the problem, and that

36. *See id.* at 3.

37. *See id.*

38. *See id.* at 5.

39. *See id.*

40. *See id.*

41. *See id.*

42. *See id.*

43. *See VIRGINIA COMM'N ON FAM. VIOLENCE PREVENTION, JUDICIAL SURVEY, conducted at A Conference on Family Violence Issues for Virginia Judges (Aug. 23-24, 1995).*

44. *See id.* at 1.

45. *See id.*

46. *See id.*

47. *See id.* at 3.

48. *See id.*

49. *See id.*

50. *See id.* at 5.

51. *See id.* at 8.

the answer or solution to family violence can be found in the courtroom.⁵²

III. STRENGTHENING THE ARREST RESPONSE

Arrest is the preferred law enforcement response to domestic violence articulated in virtually every state code.⁵³ Statutes in forty-seven states and the District of Columbia authorize or mandate warrantless, probable cause arrest.⁵⁴ Senate Bill 113 strengthens Virginia's arrest policy. The bill states that if there is probable cause to believe an assault and battery of a family or household member has occurred, the officer will arrest the individual determined to be the primary physical aggressor, take that person into custody and bring them before a magistrate to be charged—unless there are special circumstances that would dictate a course of action other than an arrest.⁵⁵ The bill allows for warrantless arrest and the same mandatory arrest policy for violations of "no further abuse," "no contact," or "no trespass" conditions of protective orders.⁵⁶ The bill allows for decisive arrest unless there are clear and compelling reasons not to arrest.⁵⁷

The Code further directs that if the magistrate issues a warrant for assault and battery of a family or household member and there is likelihood of future danger, the magistrate will also issue an Emergency Protective Order (EPO).⁵⁸ The time of arrest and the moments immediately following arrest are periods of increased danger for the victims and other household members.⁵⁹ Perpetrators of family violence are more likely to retaliate against their victims and intimidate them from proceeding with prosecution than perpetrators of other crimes.⁶⁰ Use of the protective order as a standard practice when issuing assault and

52. *See id.*

53. *See* BARBARA J. HART, ESQ., NATIONAL COUNCIL OF JUV. AND FAM. CT. JUDGES, STATE CODES ON DOMESTIC VIOLENCE: ANALYSIS, COMMENTARY AND RECOMMENDATIONS 63-64 (1992); *see also* COMMONWEALTH OF VA. COMM'N ON FAM. VIOLENCE PREVENTION, DOMESTIC VIOLENCE: A STATE BY STATE ANALYSIS OF ARREST POLICIES, H.R. DOC. NO. 50, at 69-73 (1996).

54. *See* HART, *supra* note 53, at 63.

55. 1996 Va. SB 113 § 19.2-81.3.

56. *Id.*

57. *See id.*

58. *See id.*

59. *See* NATIONAL COUNCIL OF JUV. AND FAM. CT. JUDGES, FAMILY VIOLENCE: A MODEL STATE CODE 11 (1994).

60. *See id.*

battery warrants may provide victims a window of safety and added protection.

Virginia, as well as other states, have adopted these policies because they believe that in addition to protecting the victim, arresting the abuser sends a clear message to the victim, her children, and the rest of society that it is a crime to beat a woman and that society will no longer tolerate it.⁶¹ Such arrest policies cannot be viewed in isolation. These policies need to be supported with criminal prosecution, comprehensive court orders, intensive follow-through in terms of monitoring and enforcing orders, services and protection for victims, treatment for perpetrators, and coordination among all agencies involved.⁶² Virginia's statute requires that officers provide information to victims on the legal and social services available to them.⁶³ They may also provide or arrange for transportation for victims to a magistrate, shelter, or hospital, if requested.⁶⁴ Law enforcement officers are the gate keepers of the criminal justice system and their response is pivotal for both the victim and the perpetrator.⁶⁵

In order to determine whom to arrest, the Virginia Code directs officers to determine who acted as the primary physical aggressor. In identifying the primary physical aggressor, officers should evaluate certain factors including: (1) whether one of the parties acted primarily in self defense; (2) prior complaints of family violence; (3) the relative severity of injuries; and (4) the likelihood of future injury.⁶⁶ Every effort should be made to avoid arresting both parties. In making dual arrests, officers may place victims at accelerated risk and often immunize perpetrators from accountability.⁶⁷

The Virginia Code contains provisions for the development of training standards for law enforcement officers and the adoption of local policies by all law enforcement agencies to assure implementation of the statute as it was intended.⁶⁸ In addition to these provisions, the Code provides for an increase in funds to support prosecution in Juvenile and Domestic Relations Courts and to establish community services for victims where none

61. See Joan Zorza, *Mandatory Arrest for Domestic Violence*, 10 CRIM. JUST. 4 (1995).

62. See U.S. DEPT OF JUSTICE, *FAMILY VIOLENCE: INTERVENTION FOR THE JUSTICE SYSTEM* 3 (1993).

63. 1996 Va. SB 113 § 19.2-81.3(E).

64. See *id.*

65. See *supra* note 59, at 6.

66. See VA. CODE ANN. § 19.2-81.4(2) (Michie 1996).

67. See *supra* note 59, at 7.

68. See 1996 Va. SB 113, at § 9-170.

exist.⁶⁹ Virginia has adopted a comprehensive, coordinated approach that relies on all sectors of the criminal justice system working together. The following chart provides an analysis of the Virginia Code sections related to the criminal remedies, discussed with some "best practice" recommendations:

69. See VA. CODE ANN. § 19.2-81.4 (Michie 1996).

Code of Virginia	Best Practice Recommendations
<i>Definitions:</i>	
<p>1. "Family or household member" (§ 18.2-57.2) as used in all criminal sections means:</p> <p>(i) the defendant's spouse, regardless of whether or not he or she resides in the same home with the defendant, or</p> <p>(ii) the defendant's former spouse, regardless of whether he or she resides in the same home with the defendant, or</p> <p>(iii) the defendant's parents, stepparents, children, stepchildren, brothers and sisters, grandparents and grandchildren who reside in the same home with the defendant, or</p> <p>(iv) the defendant's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law who reside in the same home with the defendant, or</p> <p>(v) any person who has a child in common with the defendant, regardless of whether the defendant and that person have been married or have resided together at any time, or</p> <p>(vi) any individual who cohabits or who, within the previous twelve months, cohabited with the defendant, and any children of either of them then residing in the same home with the defendant.</p>	<p>In order for the person brought before the magistrate to be charged with Assault and Battery of a Family or Household member, the victim must fall within the definitional section.</p>

<p>2. "Law enforcement officer" (§ 19.2-81) is defined as:</p> <p>members of the State Police force of the Commonwealth; Sheriffs of the various counties and cities, and their deputies; members of any county police force or any duly constituted police force of any city or town of the Commonwealth; and others as set out in § 19.2-81 of the Code of Virginia (<i>see also</i> §19.2-81.3(G)).</p>	
<p>3. "Family abuse" (§ 16.1-228) is defined as:</p> <p>any act of violence, including any forceful detention, which results in physical injury or places one in reasonable apprehension of serious bodily injury and which is committed by a person against such person's family or household member.</p>	<p>"Family abuse" is defined in Title 16.1 but is used throughout Title 18.2 (<i>see also</i> Civil Protection Orders Section).</p>
<p><i>Jurisdiction:</i></p>	
<p>1. Jurisdiction for Related Parties (§ 16.1-241):</p> <p>The jurisdiction of the J&DR Court includes offenses in which one family or household member is charged with an offense and another family or household member is the victim. Note: Under § 16.1-241(J), the jurisdiction of J&DR courts includes in "family & household member" parent & child, stepparent & stepchild, brothers & sisters, and grandparent & grandchild, regardless of whether such person resides in the same home.</p>	<p>This section extends the jurisdiction of J&DR courts to hear most criminal type cases between family members, regardless of residence.</p>

<i>Powers of the Law Enforcement Officer.</i>	
<p>1. Warrantless Arrests (§ 19.2-81):</p> <p>The law enforcement officer can make a warrantless arrest, upon a finding of probable cause, for a felony committed outside his presence and for misdemeanors committed in his presence and certain enumerated misdemeanors committed outside his presence.</p>	
<p>2. Warrantless Arrests in Cases of Assault and Battery Against a Family or Household Member (§ 19.2-81.3):</p> <p>With a finding of probable cause, the officer shall arrest and take into custody the primary physical aggressor in a family or household member assault and battery <i>unless</i> the officer can indicate special circumstances that would dictate a course of action other than an arrest.</p>	<p>The officer must arrest the perpetrator if probable cause is found. The term "primary physical aggressor" and the special circumstances alternative will be defined by local law enforcement policies.</p>
<p>3. Warrantless Arrests in Cases of Violation of a Protective Order (§ 18.2-18.3):</p> <p>Upon a probable cause finding that a person violated a protective order, the officer shall arrest and take into custody the alleged perpetrator <i>unless</i> the officer can indicate special circumstances that would dictate a course of action other than an arrest.</p>	<p>A warrantless arrest for a violation of a protective order allows the officer to immediately remove the violator from the situation without filing a warrant</p>
<p>4. Emergency Protective Orders (EPO) (§ 19.2-81.3(D)):</p> <p>The officer shall petition for an emergency protective order under § 16.1-253.4 if an arrest is made, or if no arrest is made but the officer has probable cause to believe that a danger of acts of family abuse exists.</p>	<p>The requirement that the officer petition for the EPO provides immediate protection for the victim.</p>

<i>Criminal Charge & Other Requirements:</i>	
<p>1. Assault and Battery Against a Family or Household Member (§ 18.2-57.2):</p> <p>Assault and battery is typically a <i>Class 1 misdemeanor</i>; however, the charge is increased to a <i>Class 6 felony</i> if the charge is the third or subsequent conviction for assault and battery against a family or household member.</p>	<p>An increased penalty is available for a third offense. Attempts should be made through the local law enforcement office to obtain this background information so that the charge will not need to be amended.</p>
<p>2. Emergency Protective Order (§ 18.2-57.2):</p> <p>When a warrant for an assault and battery against a family or household member is issued, and future abuse is likely, the magistrate <i>shall issue an emergency protective order</i> (§ 16.1-253.4).</p>	<p>Magistrates now have the power to issue an EPO (see the Civil Protective Orders section)</p>
<i>Duties of Law Enforcement Officers</i>	
<p>1. Filing of a Written Report (§ 19.2-81.3(C)):</p> <p>Regardless of whether an arrest is made, the responding officer must file a report with his department if there is probable cause to believe that family abuse has occurred; the report should include an articulation of the special circumstances that dictated a course of action other than an arrest, where applicable. The local department will make a copy of the summary of this report available to victims upon request.</p>	<p>Local law enforcement agencies will begin to develop a profile of families when there are repeated calls for service. Agency policies will define how to identify special circumstances—most current policies list circumstances that cannot be considered as a reason not to arrest a perpetrator.</p>

<p>2. Transportation of Abused Person (§ 19.2-81.3(E)):</p> <p>When investigating family abuse, including but not limited to assault and battery, the officer may, upon request, transport or arrange for the transportation of an abused person to a hospital, safe shelter, or magistrate.</p>	<p>Transportation to one of the enumerated places will protect and assist the victim in either receiving the necessary services, or providing a means to document the severity of injuries by a doctor or even a magistrate. Note: transportation may be provided in cases of family abuse which consists of more than the assault and battery.</p>
<p><i>Other Provisions</i></p>	
<p>1. Requirement for Local Policies (§ 19.2-81.4):</p> <p>The State Police and all local law enforcement agencies must establish arrest policies and procedures to implement § 19.2-81.3. The policies at a minimum must provide guidance on standards for determining the primary physical aggressor; procedures for completion of the required report, and determination of special circumstances that would dictate a course of action other than an arrest; transportation for victims; and legal and community resources available to the victim and family members.</p>	<p>The Department of Criminal Justice Services is developing a model policy that can be adapted by communities to comply with this section. That agency will also provide training and consultation to local law enforcement agencies on the development and implementation of policies.</p>

2. Training Standards for Law Enforcement Personnel
 (§ 9-170):

This provision directs the Department of Criminal Justice Services to establish training standards for all law enforcement personnel in the handling of family violence cases.

These standards will be put in place and act as the basis for curriculum development that will be used as mandatory training for all new officers and become incorporated into training for veteran officers.

IV. CHALLENGES OF IMPLEMENTING VIRGINIA'S ARREST POLICY

The differences between a mandatory arrest policy and a pro-arrest policy are difficult to delineate; many refer to Virginia's new policy as a mandatory arrest policy. In fact, the policy states that upon finding probable cause to believe an assault and battery of a family or household member has occurred, the officer shall arrest the primary physical aggressor *unless* special circumstances exist that would dictate a course of action other than arrest.⁷⁰ This language allows for some discretion, but requires that if there is not an arrest, the officer must be able to articulate in writing the special circumstances that mitigated an arrest. Virginia's policy more closely fits a pro-arrest model. Unfortunately it has been referred to in the press as a "mandatory" policy and is receiving some resistance from some who have not fully examined the statute.

The language, "primary physical aggressor," was taken from the Family Violence Model State Code.⁷¹ This term is not used elsewhere in the Virginia Code, nor is it commonly used in law enforcement policies. This term has created a great deal of confusion. Some local agencies believe it should be interpreted as "first in time," or who struck the first blow.⁷² Language in the section of the Code that relates to the development of policy (§ 19.2-81.4) lists factors that should be considered in making this determination including: (1) the intent of the law to protect the

70. See VA. CODE ANN. § 19.2-81.3 (Michie 1996).

71. See *supra* note 59, at 7.

72. These views were presented at the Virginia Chiefs of Police Training Institute on May 27, 1996, and June 3, 1996, at Radford University.

health and safety of family and household members; (2) prior complaints of family abuse; (3) the relative severity of the injuries inflicted; and (4) whether any injuries were inflicted in self defense. Clearly, none of these factors relate to the "first in time" concept. Discussions with local law enforcement agencies further clarify the concept of deciphering whether injuries are primarily the result of self defense or primarily the result of aggressive actions. The Commission is working closely with the Department of Criminal Justice Services to develop training materials and a model policy that will help clarify the meaning and allow for appropriate implementation. The Association of Chiefs of Police and the Sheriff's Association have also been involved in the crafting of language that will provide clearer guidance and discourage dual arrests when they are not appropriate.

A general concern about the new policy is the potential increase in time and paperwork that may be required, and whether the policy will become overly burdensome and result in officers being kept off the streets. Local agencies, however, now already generally require reports of all responses for calls for service.⁷³ The new policy may require that the report include some additional information, but should not necessarily require an entirely new or different report. While some localities may wish to use a separate report, it is not required. It is difficult to project how much more or less officer time will be spent with these cases. Most localities that have implemented family violence policies find that they initially experience an increase in calls and time spent in processing cases, but over time there are fewer callbacks to the same residences and therefore less time on the whole spent with these case types.⁷⁴

Senate Bill 113 provides direction and guidance from the first contacts with families and access to protective orders, through responses to assault and battery, and charging the alleged abuser. This bill, however, is only the front end of the solution; it is not a full solution. The Commission has provided materials and suggestions to the Commonwealth's Attorneys Training Council for consideration in developing a chapter for the Commonwealth's

73. See *supra* note 15 (citing Henrico County, Culpeper County, Fauquier County, Fairfax County, Roanoke County, Prince William County, and the Cities of Richmond, Alexandria, Virginia Beach, Lynchburg, and Staunton).

74. See *supra* note 15 (citing Henrico County, Culpeper County, Fauquier County, the City of Virginia Beach, and the City of Alexandria).

Attorneys Manual that focuses on prosecution of these cases.⁷⁵ Materials and training have been provided to magistrates and court clerks regarding identification and response to cases of family violence. Circuit Court and Juvenile and Domestic Relations District Court judges all have had extensive training on issues related to family violence. The Office of the Executive Secretary of the Supreme Court of Virginia has agreed to include a focus on family violence cases in its calendar management project. This project is a comprehensive program to assist Virginia's Juvenile and Domestic Relations District Courts in streamlining the docketing and case scheduling process to assure better case flow and management. A template for informational cards related to the legal and community services available to victims of family violence has been distributed to all courts and law enforcement agencies. Additional funding has been secured to provide for more prosecutors in Juvenile and Domestic Relations District Courts and to provide for the development of victim services in localities that currently have no services available.

Over the past year, the Commission has studied the feasibility of establishing a central oversight body and standards of practice for local programs designed to address abusive behaviors. The General Assembly has directed the Commission to continue this work and bring forth specific recommendations in the 1998 Session. Since 1995, the Commission has worked with the court information management system and the Virginia State Police to examine the Virginia Criminal Information Network, and recommend improvements in the system to assure for timely entry of information related to protective orders. This work will continue in the hopes of establishing an efficient, effective registry for such orders that can assist in the service and enforcement of orders across jurisdictions.

The Commission continues to work with statewide advocacy groups to develop and disseminate general public awareness materials so that the social climate supports the intent of the family violence legislation. The three medical schools in Virginia have established a consortium that has reviewed each schools' curriculum related to family violence and is designing a core curriculum that will be adopted in each school. The Commission is facilitating this effort and will co-sponsor a symposium for

75. See COMMONWEALTH OF VIRGINIA, REPORT OF THE COMMISSION ON FAMILY VIOLENCE PREVENTION TO THE GOVERNOR AND GENERAL ASSEMBLY OF VIRGINIA, S. DOC. NO. 22, at 28 (1997).

clinical faculty from the medical schools in the fall of 1997. Plans are underway to develop materials for health care providers to assist them in identifying victims of family violence, effectively collecting evidence, and appropriately referring victims for support services. Over the next year, the Commission will examine the impact of domestic violence on children; review homicides over the past ten years; and examine the business, school, and religious communities' responses to family violence.

Virginia's Family Violence Prevention Bill makes a strong policy statement about family violence; and the expected criminal justice system response. This response must be placed in a much broader context in order to be effective. The Commission will attempt to determine the impact of the legislation at the same time it is moving forward to establish a comprehensive community response. Nonetheless, the impact of this legislation relies much more on the commitment and dedication of those closest to these families than it does on state policy. As Sheriff Joseph Higgs, Jr. said in his testimony to the Senate Courts of Justice Committee:

We, the elected officials in the law enforcement field, were placed here to make tough decisions and to make them affect the 'right' outcome. If that means I have to go one step further, if that means I have to authorize my deputies to do things differently, then so be it. Only through innovation and team effort can this problem be dealt with, that team begins here with the legislature, the stronger your commitment to proactive intervention, the sooner the other law enforcement officials will be spurred to action. Together we can, and must, make a difference.⁷⁶

76. Joseph Higgs, Jr., Sheriff, Fauquier County, testimony presented to the Virginia Senate Courts of Justice Committee of the General Assembly of Virginia (Jan. 31, 1996).