

# **Developing Policy on Officer-Involved Domestic Violence**

**By Diane Wetendorf and Dottie L. Davis**

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## **Abstract**

*This intent of this article is to generate thoughtful consideration among police administrators and victim advocates on various elements that may be considered for inclusion in a policy on officer-involved domestic violence. It is essential to acknowledge from the outset that law enforcement and advocates have different perspectives, priorities, and goals. Some solutions good from the department's perspective make things worse for the victim, and some solutions better for the victim leave the department open to liability. Both police administrators and advocates are bound to experience conflict and frustration when they confront this problem because of its many complex and ambiguous aspects.*

## **Different Perspectives**

Police-involved domestic violence is not a new problem, but an old one that law enforcement has been reluctant to acknowledge. Because victims of this crime rarely come forward to report the abuse, police departments have been able to minimize the extent of the problem. But when a domestic violence situation involving an officer leads to a lethal attack as it did in April, 2003 when a Chief of Police shot his wife and then killed himself, police administrators all over the country witnessed the impact on the community and the potential financial disaster of a multi-million dollar lawsuit. It is predictable that departments will see the need to adopt policy specific to officer-involved domestic violence in order to prevent such incidents and to protect their departments from liability if an incident should occur in their own department.

Many administrators look to existing policies in other agencies for guidance in crafting their own policies. Some departments, especially those with government funding that requires them to work collaboratively with victim advocates, may also look to domestic violence advocates for input in developing response to victims. Though this collaboration may be beneficial in cases involving the general population, it is likely to present conflicts when the batterer is a member of law enforcement.

From the administrator's perspective, certain aspects of a policy are absolutely necessary to protect the department from liability. From the advocate's perspective, these very elements leave a victim more vulnerable than she was before policy was implemented. Advocates want police agencies to hold abusive officers accountable—but not at the expense of the victim. Police administrators also want to protect

victims—but not at the expense of exposing the department to liability or of depriving officers of their rights to due process.

Ultimately, it may not be possible to craft a policy that will satisfy both police administrators and victim advocates. But this does not negate the value of the discussion if the police and the advocates further their understanding of each other's roles and perspectives. Both must clearly identify the appropriate boundaries and limitations of collaboration when the batterer is a member of law enforcement.

## **Pre-hire Screening**

Administrators and advocates agree that the ideal is that a police agency could avoid hiring a potentially abusive officer through pre-hire screening. A background investigation can be conducted face-to-face in the candidate's home. When the candidate is in an intimate relationship, the significant other—and family as appropriate—should be requested to participate in the interview process. These interviews should occur outside the presence of the candidate. A candidate's insistence on being present during others' interviews should raise suspicion. Interviewers must be aware that if previous spouses, family members and intimate partners experienced abuse at the candidate's hands, they may not be willing to disclose that information. Family, friends, and neighbors should be sensitively questioned about the candidate's current and prior relationships.

While psychological tests alone are unlikely to distinguish batterers or sexual offenders from the general male population, psychological screening that focuses on identifying abusive tendencies can provide guidance when it is conducted by a competent psychologist. No screening has value, however, if the department disregards the findings and recommendation of the psychologist in order to honor political or personal promises.

## **Officer Training**

Training should be provided collaboratively by police instructors and victim advocates. The material should be specific to the dynamics of officer-involved domestic violence, including the abusive officer's ability to misuse his professional training and to manipulate responding officers and investigators. All officers, members of internal affairs, department chaplains, all command staff, and the Chief should be required to attend the training.

Police instructors and advocates may disagree on what "causes" domestic violence. Most victim advocates believe that gender inequality and the resulting imbalance of power in an intimate relationship is the cause of male violence against women. Police officers who hold traditional beliefs which grant men authority over women, though they may not condone physical violence to establish or maintain that authority, may become defensive and argumentative with advocates who take a feminist perspective. This can cause considerable conflict because advocates know that confronting domestic violence requires us to confront sexist beliefs and attitudes. Police agencies that are willing to work collaboratively with victim advocates must be willing to make it clear to officers that the department will not tolerate sexism (as it will not tolerate racism or homophobia.)

This message also needs to be communicated to officers' intimate partners and family members. Though some departments conduct orientation sessions for officers' families, many women say that the message they get is that if there are "problems at home," the department is there to help the officer. They get the impression that the intimate partner's role is to cooperate with the department in protecting the officer's career. If domestic violence is even mentioned in these sessions, its cause is attributed to the stress of the job, thus in effect excusing an officer's violent behavior at home.

## **Is Zero Tolerance the Answer?**

In an effort to communicate the seriousness of domestic violence, agencies may be seduced into adopting a “zero tolerance” policy. Though the meaning of the phrase “zero tolerance” seems obvious on the surface, on closer examination it is confusing and contradictory. Violence exists on a continuum—does zero tolerance include every behavior on the continuum? For example, will an intimidating gesture be weighted the same as a punch in the face, or a gun held to the victim’s head? Or, does “zero tolerance” apply only to a complaint sustained by an internal investigation or a criminal conviction? And, if in reality there is little chance of either of these outcomes, is there really a “zero tolerance” policy?

Victims, friends and family members who learn that the department has a “zero tolerance” policy will probably think long and hard about the potential consequences of reporting the officer’s violent behavior, even though the department urges them to do so. Potential complainants have a right to information about the complaint process and the ensuing investigation. They should be informed that when a complaint is made, investigators will interview the victim, family members, neighbors and friends.

Anyone who agrees to speak to an investigator may be placing themselves and the victim at great risk of retaliation by the abuser and/or other officers. Before the interview takes place, all parties have a right to know that their statements are not confidential, and that the accused officer will have access to their statements. Any witness for the victim may fear risking the victim’s safety by admitting knowledge of the abuse, while witnesses for the abuser typically state that they cannot imagine the officer having committed the alleged crime.

## **Officers' Responsibility to Report**

A policy may require officers to inform the agency when they have knowledge that another officer is committing domestic violence, and to require cooperation with the resulting investigation. Officers who fail to notify the department or engage in actions intended to interfere with an investigation can be investigated, sanctioned, or criminally charged. In theory, this is good policy, but it denies the existence of the officers’ code of silence. In 22 years on the police force, Davis cannot recall one instance in which an officer reported another officer for domestic violence.

Despite the unlikelihood of an officer reporting a fellow officer, the policy may prevent a victim from talking to the only people she believes may have any influence over the abuser—other officers. She knows that there is a code of silence in the ranks, and she also knows that an officer could be officially disciplined for upholding it. The requirement to report is particularly problematic for a female officer victim who wants to protect her friends on the job from having to make a difficult choice between honoring her confidence and violating the departmental rules. This situation is exacerbated when the female officer is in an intimate relationship with another officer from the same agency or even a neighboring jurisdiction.

Policy can require an officer to self-report being the perpetrator or victim of domestic violence. Perpetrators are unlikely to self-report unless it is unavoidable. The requirement to self-report is a significant problem for the officer/victim who under policy must report her own victimization. And, is it appropriate to order a female police officer/victim to place herself at risk by cooperating in the investigation, especially if the abuser is also an officer?

## **Protective Orders**

A policy can require an officer who is subject to a protective order to report it to the department. This notification requirement serves as a liability shield for the department. However, it may prevent a victim from pursuing a protective order because she cannot do it without involving the agency.

Policy might also require an officer who is either the petitioner or the respondent to a protective order to report it to the department. Will a female officer/victim avoid obtaining a protective order because of the requirement to report? Agencies need to consider the ramifications of this policy for female officer/victims who are most likely to be the petitioners. On the other hand, this requirement could be instrumental in alerting supervisors to a male officer/abuser who has obtained a protective order as a pre-emptive strike against his victim.

Federal law allows an exemption for on-duty officers to retain their weapons while under protective orders unless otherwise stipulated in the order. This exposes the department to liability, however, because nothing precludes an officer from killing his significant other with his service weapon while on duty. Agencies may attempt to circumvent this liability by requiring the officer to surrender all firearms. The victim is still vulnerable because of the abuser's expertise in defensive tactics and ownership of other weapons which can inflict serious bodily injury, if not death.

## **Administrative Orders of Protection**

Police departments have the ability to give an administrative order to the accused officer, commanding him to refrain from certain activities. This may be the most attractive option to the victim who does not want to place the abuser under the scrutiny of the courts. Agencies, however, may fear that they would still be held liable if an incident occurs while the administrative order is in effect. The issuance of the order illustrates that the agency acknowledges that the situation is potentially volatile.

## **Internal Investigations**

Though we like to think that internal investigations are not biased, the investigation of an officer can be heavily influenced by the accused officer's reputation and his relationship with the investigating officer. Levels of integrity vary by agency and by individual. Investigators who take civilian complaints may not be accustomed to listening to and truly believing what the citizen says. They generally cite the adage that "there are two sides to every story and the truth is somewhere in the middle." This perspective easily lends itself to making a case that the victim shares responsibility for the abuse and that it was mutual combat. Investigators who are anxious to give the officer the benefit of the doubt in a "he said/she said" situation typically determine that an allegation is unfounded or not supported by evidence sufficient to sustain the complaint.

A department may also conduct an internal investigation that runs concurrently with a criminal investigation. Internal investigators base their findings on a "preponderance of the evidence," meaning that based on the facts they have gathered, they conclude that the incident did or did not occur. In criminal proceedings, the standard of proof is considerably higher: guilt must be proven "beyond a reasonable doubt." The officer may be disciplined based on the findings of the administrative investigation regardless of the outcome of the criminal case.

Before the administrative interview, the officer must be given what is known as a Garrity warning. This is a direct order by the department to truthfully answer questions related to his performance of official duties or his fitness for office. Failure to truthfully answer questions will result in disciplinary action up to and including termination. Because of the Fifth Amendment protection against incriminating

oneself in criminal court, information gleaned from an internal interview may not be used against him in a criminal case (with the exception of perjury or obstruction of justice.) This protection of the officer's civil rights allows the accused officer to admit to a domestic battery during an internal investigation while being granted immunity regarding a criminal proceeding. The officer can resign from the department or the agency can terminate him based on his admission of guilt. This same officer may avoid facing criminal charges and is free to seek employment in another law enforcement agency.

It would be useful for agencies to keep statistics on domestic violence complaints and findings, and to make these available to the public. If statistics show that a department typically finds in favor of its officers, victims could use this information when deciding whether to make a complaint and/or to cooperate with an internal investigation.

## **Victim Vulnerability**

The investigation period is an extremely dangerous time for the victim. Some departments may place an officer on administrative leave or even remove the officer's badge and weapons while he is under investigation. While this may shield the department from liability, the abuser is likely to use this time and freedom to stalk and harass the victim. He will pressure her to recant, reconcile, drop the charges, or drop her protective order so that he can regain his police powers.

Policy makers must consider how a victim will be kept informed during the process and how she will be notified—before the officer is notified—of any action the department takes against the officer. The higher his rank, the longer he has been employed, and the stronger his identification with the job, the more danger the victim is in.

An incident involving a high-ranking officer or an incident in which a victim suffers severe injuries might end up in criminal court. Some agencies work with the prosecutor to pursue the charges even if the victim recants or refuses to cooperate. A policy to pursue charges and subpoena the victim can endanger her and rob her of her right to do what she believes is in her best interest. In court, the abuser's attorney will do everything possible to discredit the witness (the victim), including portraying her as a bad wife, a neglectful mother, a promiscuous woman, or a mentally unstable person who is lying about the abuse in an attempt to ruin her partner's career.

Officers are rarely convicted because the judge and jury believe the officer's word over the word of the victim. Judges and juries are even more reluctant to convict an officer since a 1996 amendment to the Gun Law banned a convicted officer from possessing a weapon. Officers had previously enjoyed an exemption from this law.

## **Batterer's Counseling**

Police officer batterers are unlikely to voluntarily attend counseling because of the police culture's stigma against seeking help for personal problems. And, many unions prohibit the department from sending an officer to a program for domestic batterers based on an unsubstantiated allegation.

If commanding officers and/or EAP administrators do not understand the power and control dynamics of domestic violence, they may make inappropriate referrals. If they view domestic violence as a "marital problem" or place equal responsibility on both parties for their "differences," they are likely to suggest marriage or couples counseling. They may refer the offending officer to a police psychologist or chaplain who, due to lack of knowledge about domestic violence, may place the victim in even greater danger by validating the abuser's justifications for his violence.

Many departments employ advocates and/or social workers to work with victims and perpetrators of domestic violence. When the abuser is a police officer, a victim is unlikely to trust that her abuser's co-worker or fellow employee will advocate on her behalf. Agencies should also consider the appearance of

impropriety if the victim is being advised by a member of the department. And, most victims report that they do not want anyone on the department to have information concerning their safety plan. Police agencies must have available referrals to independent advocacy services for victims and they must also respect the victim's right to confidential advocacy from outside of the department.

## Conclusion

We have addressed just some of the issues that law enforcement agencies and advocates must consider when crafting policy. Despite the best intentions, there are many elements of policy that make a victim's situation worse. There are also many elements of victim safety that impact a police agency's exposure to liability.

Some citizens, advocates and police administrators believe this is a "clear cut" issue and that an abusive officer should be fired, period. Others believe it is a complex issue that demands case-by-case consideration. Though well aware of the liability for negligent retention, police administrators are also aware that the agency has invested a significant amount of time and money in each officer. This investment, in addition to loyalty to their employees, may motivate the agency to do everything possible to preserve an officer's career. Although advocates do not want police agencies to sweep domestic incidents "under the rug," they know that it is ultimately the victim who will pay the highest price if the abuser loses his career.

## About the Authors

**DIANE WETENDORF** is a life-long advocate who pioneered the field of police officer-involved domestic violence. Her work has helped thousands of domestic violence advocates, family attorneys, and law enforcement professionals learn how to safely help survivors. Untold numbers of battered women now know "*they are not alone, they are not exaggerating, and they are certainly not crazy.*"

Diane is the author of *Police Domestic Violence: A Handbook for Victims*, the first book written specifically for survivors of police-perpetrated domestic violence; *When the Batterer Is a Law Enforcement Officer: A Guide for Advocates*; as well as *Crossing the Threshold: Female Officers and Police-Perpetrated Domestic Violence*, a ground-breaking book for women in law enforcement. Her latest book, *Hijacked by the Right: Battered Women in America's Culture War*, addresses the future of battered women services in the 21st century.

In 1996, while director of counseling for a community domestic violence agency, Diane created a unique program which provided specialized counseling, legal and advocacy services for victims of officer-involved domestic violence. Now retired, Diane has worked with law enforcement agencies throughout the U.S. and Canada; conducted workshops and seminars for local, state, and national audiences; served as expert witness in both the U.S. and Canada; and provided thousands of hours of counseling and support to survivors of domestic violence. Her website is [AbuseofPower.info](http://AbuseofPower.info).

**DOTTIE L. DAVIS** is president and owner of Davis Corporate Training, Inc., a private consulting business. She speaks nationally and internationally on topics surrounding family violence, legal issues and liability for law enforcement, law enforcement's response to persons in a mental health crisis, supervision and leadership, ethics, women in non-traditional careers, and workplace violence prevention. She also consults as an expert witness in both civil and criminal trials. Her website is [DottieDavis.com](http://DottieDavis.com).

## Books & Articles by Diane Wetendorf

Additional material is available on [AbuseofPower.info](http://AbuseofPower.info).

**Hijacked by the Right: Battered Women in America's Culture War.** Family Justice Centers are the focal point of this thought-provoking investigation into the reframing of family violence. What could possibly go wrong when law enforcement enters into partnership with the other pillars of society: religion, family, government, and corporations?

**Crossing the Threshold: Female Officers and Police-Perpetrated Domestic Violence.** Police training and culture affects officers' personal relationships. It's always a volatile situation when a police officer is the perpetrator, but what happens when both the abuser and victim are officers?

**Police Domestic Violence: A Handbook for Victims.** Women whose abusers are in law enforcement face extraordinary challenges. The *Handbook*, written specifically for survivors of police-perpetrated domestic violence, explores the dynamics of officer-involved domestic violence.

**When the Batterer Is a Law Enforcement Officer: A Guide for Advocates.** Comprehensive resource for advocates working with women whose batterers are in law enforcement. Includes safety considerations and advocacy strategies.

**The Misuse of Police Powers in Officer-Involved Domestic Violence.** Explores how the power and authority granted to officers to protect the public can lead to the abuse of their power.

**Abusive Police Officers: Working the System.** Officers who batter use professional control tactics and the brotherhood to defend their actions, receiving support and assistance from the same institutions victims turn to for protection.

**Police-Perpetrated Domestic Violence: An Advocate's Pessimistic Perspective.** Policy and rhetoric make it appear that police agencies want victims to come forward, but agencies' actual response seems designed to ensure that victims remain silent. Addresses the progress—or lack thereof—in confronting police-perpetrated domestic violence.

**Representing Victims of Police-Perpetrated Domestic Violence.** Attorneys and legal advocates face extraordinary challenges when representing a woman in a divorce or custody case whose batterer is a police officer.

**Female Officers as Victims of Police-Perpetrated Domestic Violence.** Examines how the expectations and values of the female officer's profession and workplace culture influence her behavior and decisions regarding her abusive relationship.

**Developing Policy on Officer-Involved Domestic Violence.** Solutions good from the department's perspective can make things worse for the victim; and solutions better for the victim can leave the department open to liability.

**The Impact of Police-Perpetrated Domestic Violence.** The FBI National Academy held a invitational summit on officer-involved domestic violence and published the resulting compilation of research in *Domestic Violence by Police Officers*. Wetendorf's chapter examines the dynamics of OIDV and the impact on victims, departments and communities.

**Police Family Violence.** Rather than customizing services for victims of police abusers, we expect departments to hold officers accountable for criminal behavior.

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