

## EXECUTIVE SUMMARY AND RECOMMENDATIONS

### I.1 Summary

#### *Background to Study*

This study examines the effectiveness of the civil and criminal justice systems' response to domestic violence in Ireland. It aims to document whether or not civil remedies provide adequate protection and safety for women. It also examines the extent to which the criminal justice system imposes adequate sanctions on perpetrators.

We use the term domestic violence in the study as it is the main term used in Irish legislation and social policy. We recognise that it fails to indicate as many researchers have pointed out that, in the vast majority of cases where violence occurs, men are the perpetrators and women the victims (Byles 1978; Dobash and Dobash 1979; 1992; Martin 1976; Watkins 1982; Kelly 1999).

Study after study reveals that the core aspect of men's domestic violence is a pattern of coercive control over key aspects of the woman's life. It can involve the destruction of property, isolation from friends, family and other potential sources of support, threats to "significant others" including children, stalking, control over access to money, personal items, food, transportation and telephone. It can also involve sexual coercion, sexual assault and rape. Violence of this nature is not a once-off occurrence, but is persistent, frequent and aimed at instilling fear into the victim. There is also evidence that violent men carry their violence from one relationship to another. Pagelow's study of women survivors in the United States documents that 57 per cent of male partners who had been previously married were known to have been violent to another partner (Pagelow 1981).

This study is set against the backdrop of developments, which took place at an international level in the 1970s and early 1980s. Both academic researchers and women activists claimed that the traditional police and justice systems were ineffective in responding to domestic violence. The main allegation was that the systems did not take domestic violence seriously. Arrests were not being made. Where arrests were made and brought before the court, few cases resulted in prosecution.

The women's movement pressurised for change. In the United States, an important role was played by individual women who took lawsuits against police departments for failing to protect them adequately. In a major court settlement in Connecticut, United States in 1985, Tracy Thurman was awarded \$1.9 million as a result of police failure to protect her.

How to develop an effective response to domestic violence became a major focus of the debate. One group of researchers argued that the accused should be arrested. This, in itself, they claimed was a deterrent (Sherman and Berk 1984, Berk and Newton 1985). They did however point out that a percentage of the population, namely, recidivists or people with a tendency to extreme violence, would not be deterred by arrests. Others argued that the effects of arrests were only short-term and within six months, many were likely to re-offend (Edwards 1989).

The research undertaken by Sherman and Berk had a major impact on police policy and practice in the United States and led to the introduction of a mandatory arrest policy in many states. Other practitioners claimed that mandatory arrest in itself was not sufficient and practitioners began to develop more comprehensive inter-agency approaches in the 1980s and 1990s. A major concern of the inter-agency approaches was to build in safety measures in the civil and criminal justice systems to protect women.

#### *Developments in the Irish Context*

In the 1990s, important reforms were also introduced in Ireland. These included:

- The establishment in March 1993 of the Domestic Violence Sexual Assault Investigation Unit (DVSAIU) in the Dublin Metropolitan Area (DMA). In 1997 it was placed under the National Bureau of Criminal Investigation and given a countrywide brief.
- The introduction in 1994 of the Garda Síochána Policy on Domestic Violence Intervention which was amended in 1997.
- The introduction of the *Domestic Violence Act*, 1996. This Act dealt with both the civil and criminal aspects of domestic violence. It widens the categories of people who can apply for domestic violence orders to include as well as spouses, parents and cohabitantes with certain residency and property restrictions

(see *Domestic Violence Act*, Section 2 and 3) It re-enacts Section 7 of the 1981 *Family Law (Protection of Spouses and Children) Act* which makes breach of a domestic violence order an arrestable offence. Section 18 of the Act introduces “probable cause” arrest where arrests can be made without a Garda witnessing the violence if it is suspected that Actual Bodily Harm or Grievous Bodily Harm is being or has been committed.<sup>1</sup> The Act however falls short of legislative reforms introduced in a large number of states in the United States where the police can make warrantless arrests for unseen simple or common assaults.<sup>2</sup> The powers of arrest in Section 18 (2) of the *Domestic Violence Act*, 1996 have been superseded by the *Non Fatal Offences Against the Person Act*, 1997, in conjunction with the *Criminal Law Act 1997*.

- The publication of the Report of the Working Party on the Legal and Judicial Process for Victims of Sexual and Other Crimes of Violence Against Women, 1996.
- The establishment of a Task Force on Domestic Violence, Rape and Sexual Assault and the publication of the Report of the Task Force on Violence Against Women, 1997.

<sup>1</sup> This legislation is re-enacted in Sections 3 and 4 of the *Non-Fatal Offences Against the Person Act*, 1997.

<sup>2</sup> In addition, many states in America have introduced legislation that legislates for domestic violence as a separate criminal offence.

### Overall Aim of Study

The present study aimed to generate baseline quantitative and qualitative data on the way domestic violence cases are processed in the Irish civil and criminal justice systems. It specifically sought to document court outcomes and outcomes of Garda action. Particular emphasis was placed on how agencies recorded and compiled statistics on domestic violence. Lessons learned from current practice, and issues that need to be addressed in order to improve the effectiveness of the civil and criminal justice systems, were also identified.

### Research Sources

The main sources for the research were:

- Statistical data provided by the Department of Justice, Equality and Law Reform.
- Civil process applications at district court level in three research sites.
- Charge sheets at district court level in the three research sites to determine court outcomes.
- DVSA(1) Form on call-outs by the Gardaí to Domestic Violence Incidents and follow-up on court outcomes.
- A sample of domestic violence cases from the Garda Criminal Records Office (GCRO).

- Participant Observation in the courts.
- Interviews with women who had experienced domestic violence.
- Semi structured interviews with key actors in state agencies and with service providers for abused women.

#### *Research Sites*

Three research sites were selected for in-depth study. These were selected to represent a range of urban and rural areas in order to present an overview of the operation of domestic violence legislation and policy in Ireland. The areas included:

- A rural Garda Division with a population of approximately 100,000.
- A Garda Division with two major towns which has a population of 200,000.
- A sub area of a Dublin Garda Division with a population of 100,000.

#### *Increasing Visibility of Domestic Violence*

Domestic violence is becoming increasingly visible in Ireland and is reflected in the fact that the district courts dispose of over 5,000 barring order applications and 2,000 safety order applications each year. In addition, over 200 barring orders are disposed of each year in the circuit court as part of judicial separations. This comprises between 20 to 30 per cent of applications.

Gardaí also call out to over 4,000 domestic violence incidents a year.

Over the last four years, at least six women each year have been murdered by husbands, partners or ex partners in Ireland. Evidence from international literature suggests that in a high proportion of spousal/partner murders where the woman is killed there is a history of violence against the woman in the relationship (Campbell 1995; Stark and Flitcraft 1996).

#### *Domestic Violence Incidents in Dublin Compared to the Rest of the Country*

Reported domestic violence incidents are much greater in the Dublin area than for the country as a whole. This is reflected in the fact that people in the Dublin area are four times more likely to call the Gardaí than people outside the Dublin area. Callers outside the Dublin area however are twice as likely to have an injury than callers in the Dublin area. Paralleling this, arrests, charges and conviction rates are twice as high outside of the Dublin area. This is likely to be linked to the higher number of injuries outside of the Dublin area.

#### *Gendered Nature of Violence*

Evidence from the three research sites indicates that the vast majority of applicants in civil cases are female and the vast majority of respondents are male. The percentage of applicants who are female was 92 per cent in Research Site 1, 97 per cent in Research Site 2 and 93 per cent in Research Site 3.

In relation to Gardaí call-outs to a house, the research indicates that the vast majority of accused are male. In Research Sites 1 and 2, males comprised 97 per cent and in Research Site 3, males comprised 90 per cent.

Analysis of 379 cases retrieved from the Garda Criminal Records Office (GCRO) files, indicated that over 99 per cent of offenders are male and the average age (mean age) of the convicted person was 47 years.

#### *Levels of Recorded Violence*

The type of information recorded on the grounds for civil applications, and recorded by the Gardaí in relation to call-outs, indicates that violence against women is severe. For 50 to 60 per cent of civil applications the grounds involved physical violence. The grounds included long histories of repeated violence, physical injury, threats to kill and violence during pregnancy. Cases also indicated that on previous occasions many women had been hospitalised as a result of injury. The prevalence of injury from domestic violence resulting in hospitalisation is documented by Cronin and O'Connor (1993).<sup>3</sup>

Sexual violence is seldom specified as a ground for an application for a domestic violence order. International research however indicates that sexual violence by intimate male partners is significant. Russell (1982) found that 14 per cent of married women had been raped by their husbands or partners. In a UK prevalence study (Painter 1991), one in seven married women had been coerced into sex, or raped and this rose to one in three women for separated and divorced

women. The vast majority (91 per cent) of women had told no one.

#### *Children*

The negative impact which domestic violence has on children was illustrated in the report. Children witnessed the violence or were present in the house in 64 per cent of cases in Research Site 1, in 76 per cent of cases in Research Site 2 and in 34 per cent of cases in Research Site 3.

Research illustrates (Stark and Flitcraft 1996) that children who witness domestic violence risk injury if they get in the way of an attack or attempt to intervene to protect their mother. It can also have detrimental emotional consequences such as poor school performance, the children being fearful and withdrawn and having sleeping problems.

International research and practice holds that a key principle in child protection is the protection of women in domestic violence situations. However research also demonstrates that women are reluctant to seek the support of child protection agencies because of fear that they will be blamed and undermined and ultimately lose custody of their children (Kelly 1996).

<sup>3</sup>Some studies have shown that the most severe incidents of violence resulted in calls for medical services rather than the police (Pierce and Spaar 1992). Therefore, it is critical that all medical and health personnel are trained to record injuries as a result of assault and support women to proceed with criminal prosecutions.

### *Parents and Common Law Spouses*

The two new categories of applicants legislated for in the *Domestic Violence Act, 1996* are parents and common law spouses. These categories now comprise sizeable proportions of applicants, indicating the importance of protection for these applicants.

### *Barring Orders Granted*

The statistics of the Department of Justice, Equality and Law Reform indicate that at a national level barring orders granted as a percentage of applications ranged from between 35 and 53 per cent between 1980 and 1997. In 1996/1997, the national figure was 41 per cent.

#### **Percentage of Applicants who were Parents and Common Law Spouses (1996-1998)<sup>4</sup>**

Research Site	Percentage of Applicants who were Common Law Spouses	Percentage of Applicants who were Parents
Research Site 1 (Rural Area)	15.5	7.0
Research Site 2 (Area with Two Large Towns)	22.1	7.6
Research Site Research (Dublin City)	21.6	9.9

A small percentage of overall applications are refused (7 per cent in Research Site 1, 2 per cent in Research Site 2 and 8 per cent in Research Site 3). If one however subtracts the applications which are withdrawn/ struck out, and calculates the refusal rate as a percentage of cases where a judicial decision is required, the refusal rate is one in four in Research Site 3, one in seven in Research Site 1 and one in 25 in Research Site 2.

Parents calling Gardaí for “out of control” young people was particularly notable in the Dublin City research site. Many of these cases were drugs related.

### *Health Boards*

Since January 1997 under the Domestic Violence Act, 1996, health boards can make an application for a court order under the domestic violence legislation. In Research Sites 1 and 3, health boards did not make any applications. In Research Site 2 the health board made two (1.2 per cent) applications.

### *Interim Barring Orders and Safety Orders.*

The two new court orders under the domestic violence legislation introduced in the *Domestic Violence Act, 1996* are the safety order and the interim barring order. There were almost 2,000 applications for safety orders in 1996/1997, which accounted for 28 per cent of main order applications. In Research Sites 1, 2 and 3, safety orders comprise 13, 18 and 24 per cent respectively of main order applications which were granted.

<sup>4</sup>For Dublin City, statistics refer only to the year 1997/1998 as statistics were not available for 1996/1997.

At national level, a large proportion of applicants making an application for a barring order are granted an interim barring order while awaiting the determination of the application for a barring order. This study estimates that approximately 30 per cent of applicants are granted an interim barring order while awaiting the determination for the barring order application decision. The granting of interim barring orders is unevenly spread throughout the country. They are frequently granted in Research Sites 2 and 3 and rarely granted in Research Site 1.

The granting of interim barring orders is an indication that the judiciary is taking domestic violence seriously and that judges recognise the severity of the violence and the risk to women. There is evidence that only about one-fifth of interim barring orders translate into barring orders. One of the main reasons for this is that many women withdraw their application prior to or on the determination of the barring order. A concern is raised in the report that many women experiencing serious violence are withdrawing applications and the report recommends that support and safety measures for women need to be put in place.

#### *Withdrawal of Applications and the Safety of Women*

The present study indicates that a large proportion of civil applications are withdrawn or struck out as the following table shows.

<i>Research Site</i>	<i>Percentage Withdrawn/Struck Out</i>
Research Site 1 (Rural Area)	48
Research Site 2 (Area with Two Large Towns)	61
Research Site 3 (Dublin City) <sup>5</sup>	67

As in civil cases, a significant proportion of women testifying as witnesses in criminal prosecutions against intimate partners withdraw their complaint or refuse to make a complaint.

The reasons why applicants withdraw applications are complex. Some women use the application as a threat in an attempt to change the violent behaviour of partners and in some circumstances may negotiate a period of safety. Interviews with service providers and women using support services indicate that many women are aware of the physical risk that they may incur as a result of taking legal action and fear the escalation of violence. They are also aware of other negative consequences which can follow such as losing custody of children and the exposure in court of details concerning a woman's personal history, for example, prior history of being sexually abused as a child or adult sexual history. The reality of the fear which

<sup>5</sup>For Dublin City, statistics refer only to the year 1997/1998 as statistics were not available for 1996/1997.

women experience is borne out by international research which demonstrates that serious assault, injury, rape and homicide can occur immediately following the victim attempting to access the legal system (Campbell 1995).

Confronting a technical legal court system, which has a language and procedure they are unfamiliar with, is intimidating. Many women lack the personal support to proceed with the application. International research indicates

In some rural areas, it is the practice to release the accused on station bail. The accused in these circumstances is released without conditions being attached to the bail. This practice can put the woman at severe risk.

#### *Arrests, Convictions, and Prison Sentencing*

Women who already have a court order under the domestic violence legislation make up a significant proportion of Garda call-outs. They also make up a significant proportion of cases where an arrest is made.

#### **Arrests, in relation to Domestic Violence Orders<sup>6</sup>**

Research Site	Percentage of Call-Outs with Domestic Violence Orders in Existence	Percentage of Arrests with Domestic Violence Orders in Existence
Research Site 1 (Rural Area)	32	54
Research Site 2 (Area with Two Large Towns)	43	65
Research Site 3 (Dublin City)	17	51

In cases where an arrest was not made and where there was a court order, under the domestic violence legislation in existence, reasons were given as to why an arrest was not made. Reasons include technical difficulties regarding the serving of the summons or the fact that the accused had “fled the scene”. It was difficult to know the outcome of Garda follow-up when the culprit fled the scene as this was not consistently documented.

that a support service for women significantly reduces the numbers of women who withdraw applications (Reid 1997).

While court cases are proceeding, women need to feel safe and need support to attend and participate in court proceedings. The system gives little consideration as to whether or not the behaviour of the accused is putting the safety of the woman and her dependants at risk.

The following table presents the arrests, charges, persons found guilty by the courts and persons receiving a prison sentence as a percentage of call-outs in the three research sites. It also shows national statistics.

<sup>6</sup>The call-outs relate to a twelve month period during 1997 in Research Site 1, a six month period during 1998 in Research Site 2 and a six month period during 1998 in Research Site 3.



### Arrests, Charges and Persons Found Guilty by the Court

Sites	Number of cases Analysed	Arrests	Charges	Found Guilty by Court	Persons Receiving Prison Sentence
Rural Based Site	81	50%	25%	20%	2%
Research Site with Two Large Towns	83	57%	25%	20%	6%
Research Site in Dublin City	263	21%	19%	3%	1%
National (1997)	4,184	27%	23%	16%	N/I

Only a small proportion of accused receive a prison sentence. Persons receiving a prison sentence comprised one per cent in Research Site 3, two per cent in Research Site 1 and six per cent in Research Site 2.

Rates of arrest are significantly higher than that of Northern Ireland where the arrest rate is between 12 and 16 per cent of incidents (McWilliams and Spence 1996). The Northern Ireland arrest rate is similar to Britain where Kelly (1999) found in the two police divisions she studied that the arrest rate was 14 per cent of all call-outs.

In an analysis of the Garda Criminal Records Office (GCRO) files undertaken for the present study, it was found that domestic violence offenders found guilty by the courts are already highly criminalised. The average number of offences per offender was 6.7. The following table presents the

numbers of convictions of persons found guilty of domestic violence offences.

For 27 per cent of offenders, the domestic violence conviction was their first conviction. Thirty-four per cent had between one and five convictions, 17 per cent of offenders had between six and ten convictions and 21 per cent had ten or more convictions.

Forty per cent of offenders who were found guilty by the court received a prison sentence. Offenders with more than three convictions were two and a half times more likely to get a prison sentence than were first time offenders. Given the highly criminalised background of men who are convicted of domestic violence offences,

### Previous Convictions

Convictions	Number	Percentage
No previous convictions	105	27.7
1 to 5	129	34.0
6 to 10	65	17.2
10 +	80	21.1

N = 379; Source: GCRO records.

research would indicate that convicted offenders are disproportionately from marginalised sectors of the community.

Although these findings indicate that people who are sentenced for domestic violence offences are likely to be working class males, this in no way infers that domestic violence is only or primarily committed by working class males. Earlier research using a national random sample (Kelleher and O'Connor 1995) indicated that domestic violence occurs in all classes. The prosecution of working class males is likely to result from a combination of factors, which include the fact that working class women are more likely than middle class women to call the Gardaí. When cases reach a court hearing, men from the lowest income group are more likely to receive a prison sentence as one of the main factors taken into consideration in sentencing is prior convictions.

#### *Breaches of Orders*

It is difficult for the Department of Justice, Equality and Law Reform to compile information on breaches of orders as applications for orders and breaches of these are processed through separate court systems i.e. the civil court and the criminal courts. Statistics on breaches are returned as part of criminal statistics under generic court outcome categories such as fine or prison sentence.

Statistics are easier to compile outside of the main city areas where the same court office processes both civil and criminal cases. The

Department of Justice, Equality and Law Reform compiled statistics outside of Dublin between 1992 and 1996. Statistics suggest that barring orders are breached in between 12 to 15 per cent of cases and protection orders are breached in approximately 8 per cent of cases.

Evidence from the present research indicates that between 8 and 16 per cent of orders are reported as having been breached.

#### *Recording of Cases is Inadequate and Statistics Compiled are Incomplete*

Although practices of various agencies have improved in recent years, findings of the study indicate that recording systems in both civil and criminal cases are inadequate. This is a major weakness of the system.

The report draws attention to the fact that the type of information collected on the abuse experienced by women is variable as recording systems i.e. the civil applications and Garda call-out forms (DVSA(1)) do not consistently document the abuse. In some cases due to the lack of documentation it was difficult to know the nature of the abuse which was inflicted on the woman.

A wide range of abusive behaviour however was evident, including physical, psychological, and sexual abuse. Women reported receiving threats that they would be killed. They were threatened with weapons and other objects. In order to facilitate effective case management and to enhance our understanding of the risk to women and

children, more specific information is required.

In relation to Garda call-outs there is a need to know whether or not an arrestable offence has been committed. There is a need to know whether the Gardaí have called back to the house, and the outcome and the follow-up where for instance the culprit has “fled the scene”.

One of the findings of the research is that, at national level, statistics compiled on civil cases are incomplete. We do not know the sex of the applicant and respondent, relationship between the applicant and respondent, numbers of applications refused or withdrawn, or numbers of orders breached.

Since 1994, statistics on domestic violence incidents are published in the annual Garda Report. The Crime Division of the Garda Síochána compiles these statistics. Information presented in the Garda Report needs to be expanded to include gender, relationship of accused to victim and the number of call-outs where there is a domestic violence order in existence.

The difficulty of tracking cases through the criminal justice system was highlighted throughout the report. This is unsatisfactory from the point of view of the long-term monitoring of policy and legislation. There is thus a need to put in place a mechanism for tracking domestic violence cases through the criminal justice system. There is also a need to be able to track breaches of civil orders in the

criminal justice system. A recommendation is put forward in the report in this regard.

If the accused is sentenced, there is a need to determine whether or not the accused served his sentence. To do this would require permission to access prison records.

## 1.2 Recommendations

The main recommendations of the report are as follows:

### *Amend Domestic Violence Legislation*

Eligibility criteria under the *Domestic Violence Act, 1996* should be extended to include a person with a child in common. Provisions should also be made to cover situations where the perpetrator has been in prison, or out of the country prior to the making of the application.

Section 18 of the *Domestic Violence Act, 1996* should be amended to include the *Non Fatal Offences Against the Persons Act, 1997* and the *Criminal Law Act, 1997* as the assault offences set out in Section 18.2 of the *Domestic Violence Act, 1996*, have effectively been repealed by the *Non Fatal Offences Against the Person Act, 1997*. The Gardaí can now use the power of entry and arrest set out in the *Criminal Law Act, 1997* where an assault under section 3 or 4 of the *Non Fatal Offences Against the Person Act* has been committed.

### *Improve Recording Practice in Civil Applications*

Information on the applicant and respondent should include the following:

- Age;
- Sex;
- Relationship between applicant and respondent;
- Number and ages of children;
- Area of residence;
- Employment status;
- Ethnic origins;
- Previous applications for domestic violence orders;
- Category of violence i.e. threats of violence, physical violence, sexual violence, criminal damage;
- Length of time violence has been present in relationship;
- The type of physical violence used, if appropriate i.e. hit, pushed, shoved, attempted strangulation;
- Weapon/implement used i.e. knife, gun;
- Injury to applicant;
- Whether or not the violence has escalated over time;
- Whether or not the respondent has abused the children (if relevant);
- Whether or not the children have witnessed the violence (if relevant).

The above information should be compiled in pre-coded form. In addition, a statement in the words of the applicant should be taken regarding the grounds for the application. Sufficient space needs to be made available on the form to allow for a lengthy statement, if necessary.

### *Support Service for Women*

A support service for women needs to be put in place. This service would offer women support while making applications and provide a support worker to accompany women to court when applications are being heard. It would also support women who are testifying in criminal law cases. This service would also be available to women who have called-out the Gardaí for a domestic violence incident. The service should be situated in a location which is easily accessible to the family law courts. Research evidence suggests that where such a service exists there are fewer withdrawals of civil applications and fewer refusals to make complaints or withdrawal of complaints (Reid 1995).

Additional resources must be provided to ensure equality of access to support services and the legal systems for women who experience further structural barriers and discrimination because of poverty, ethnicity, race, disability, sexual orientation or educational disadvantage.

### *The Role of the Gardaí*

Records of previous call-outs and outcomes of call-outs should be available to Gardaí attending a domestic violence incident. As part of the response of the Gardaí to a call-out, an interview is undertaken with the woman. An initial risk assessment to determine whether or not the woman is safe should be part of the interview. All “bogus” calls should be investigated and the victim should be interviewed to determine the extent to which the safety of the woman is at risk.

The DVSA(1) Form filled out by Gardaí on all call-outs where there is a domestic violence incident, should contain the following additional information:

- Whether or not a weapon was used or the accused threatened to use a weapon;
- Whether or not there was a threat to kill;
- Previous call-outs, previous applications for domestic violence orders and previous orders issued;
- Whether or not the victim required medical treatment;
- Whether or not the accused had a serious drug or alcohol problem;
- Whether or not there was a power of arrest i.e. an arrestable offence was committed.
- Whether the perpetrator is harassing/<sup>7</sup>stalking, watching or besetting the victim

after she has taken out an order, Section 10 i.e. harassment should be used;

- Where no arrest has been made, reasons for not making an arrest should be given;
- In cases where no arrest has been made and a warrant is issued the outcome of such action should be recorded;
- Follow-up work with the victim should be documented and time and dates of contact recorded;
- Referrals to a support agency should also be documented.

The present research documents that children are present in a large proportion of call-outs to domestic violence incidents. The negative effect which domestic violence has on children has been highlighted in many studies. Accurate data on children is thus essential for the effective management of any particular case. Additional data should include:

- Whether or not the defendant has abused the children;
- Whether the children are afraid of the defendant.

Guidelines need to be developed on the recording of domestic violence call-outs and training needs to be provided for all members of the Gardaí. Where an offence more serious than sections 3 or 4 of the *Non Fatal Offences*

<sup>7</sup>International research demonstrates that a significant proportion of stalkers are ex partners with a history of violence against the victim.

*Against the Person Act, 1997* has been committed, the Gardaí should use the appropriate power of arrest, for example under section 5 which covers a threat to kill or cause serious harm.

Where the accused is arrested and charged, station bail should only be granted to the accused where Gardaí are satisfied that there is no threat or risk to the victim. Where Gardaí are not satisfied that this is the case, special court sittings should be held to allow conditions of bail to be issued. At the court hearing bail conditions should be set according to the risk assessment made by the Gardaí. The judge should appoint a Probation and Welfare Officer to undertake a more detailed “risk assessment” to determine the extent to which the woman is at risk. Sentencing should be based on both the assessments made by the Gardaí and by the Probation and Welfare Service.

All members of the Garda force should receive training on domestic violence, sexual assault and rape. The extent to which each Garda member receives training should be recorded.

The Domestic Violence Sexual Assault Investigation Unit (DVSAIU) should collate statistics annually from the DVSA(1) Forms and make them available to interested parties.

There is need to up-grade work positions in the Domestic Violence Sexual Assault Investigation Unit (DVSAIU). The person in charge of the Unit should be up-graded from

Inspector to Superintendent. Given that the Unit is now operating on a countrywide basis and that the workload of the Unit in child sexual abuse and domestic violence cases has increased, staff positions in the Unit should be increased from 12 to 20 staff members.

#### *The Probation and Welfare Service*

The Probation and Welfare Service had a key role in family law proceedings between 1975 and 1995. The Service provided family law courts with professional assessment reports. This role was discontinued due to the lack of resources. The former role of the Probation and Welfare Service should be re-established. The Service also has experience in monitoring the behaviour of offenders. When issuing protection orders or interim barring orders the judge should have the option of requesting a report on the history of violence in the relationship, previous civil applications, and the seriousness of the violence from the Probation and Welfare Service. The views and the wishes of the woman should be a central feature of the recommendations made in the report.

In deciding on access cases, research points out that full consideration must be given to the safety of women and children (Pagelow 1993). Where there has been a history of violence against the women, access to the father needs careful consideration and the safety of the woman and child must not be compromised. In some cases there will need to be supervised appropriate access in designated centres. This should be managed by the Probation and Welfare Service.

### *The Judiciary*

A judge who has specialised in family law should preside over family law courts. There is need for judges to be informed on the issue of domestic violence. This should include information on the prevalence of domestic violence and other research findings. There is also need to ensure consistency in decision making in relation to the issuing of orders under domestic violence legislation. In relation to individual cases, judges need full information on the history of violence of the respondent, past orders applied against the respondent, breaches of such orders and the extent to which the safety of the woman is at risk. The Probation and Welfare Service should provide this information to the court, in full consultation with the applicant as outlined above.

In criminal cases, sentencing at present would appear to be based on whether or not the accused has previous convictions. This is not always appropriate for domestic violence cases and does not take into consideration the history of violence of the accused or the danger the accused poses to his partner or ex partner. As stated above, the report of the Probation and Welfare Service should inform sentencing policy as the legal sanction imposed on the accused must be sufficient to deter him from committing further acts of violence.

In addition, sentencing options need to be broadened to include court-mandated programmes for men. Intervention programmes with violent men must be guided by the core principles outlined in the Report of the Task Force on Violence Against Women, Office of the Tánaiste 1997.<sup>8</sup>

To ensure consistency and appropriateness of sentencing, it is essential that all members of the judiciary are fully informed of the nature of domestic violence and the risk to women who experience domestic violence.

### *Support for Court Staff and Legal Practitioners*

Court staff are dealing with the extreme trauma and distress of women on a daily basis. Resources for staff support and training need to be put in place, particularly for staff who are dealing directly with victims of abuse.

Legal practitioners must also be trained and supported when working with abused women.

### *Family Courts*

Many rural areas have no special family court and the ordinary courts are cleared to make way for family cases. The lack of privacy can be embarrassing and humiliating for the parties concerned. A particular difficulty in rural areas is the lack of public transport to enable people to get to court hearings. This report fully endorses the recommendations of previous reports on the restructuring and

<sup>8</sup>These principles are outlined in Chapter 9.

reform of the family law courts. These include:

- The establishment of regional family courts;
- Providing adequate facilities to ensure privacy and safety;
- The appointment of judges who specialise in family law;
- Permitting women who so wish to give evidence by video.
- Immediate access to legal advice and legal aid for all applicants and respondents.

#### *Court Procedures*

Family law court proceedings for civil cases are held in camera. The in camera rule should be amended to provide limited access for licensed journalists and researchers who are sanctioned by the Department of Justice, Equality and Law Reform.

The research documented that in one of the three research areas, cases involving breach of a domestic violence order are held in camera in the family law courts. The reason for this is that the presiding judge is of the opinion that it is too stressful for a woman to give evidence in public in the criminal court. The argument against this is that in hearing the case in a civil court it may be perceived as a lesser offence. For this reason, the president of the district court who has jurisdiction over district courts in the Dublin Metropolitan Area (DMA) has

given an instruction that all breaches of domestic violence orders be prosecuted through the criminal courts. Where breach of orders are heard in the criminal courts, the courts should be cleared.

#### *Inter-Agency Co-ordination*

In order to put in place an effective system which protects the woman and holds the accused accountable for his actions, inter agency co-ordination is essential between the Gardaí, the Probation and Welfare Service, the Judiciary, the court service, medical and health personnel and the support services provided to women.

For the long-term monitoring of policy and legislation, mechanisms need to be put in place in order to track cases across agencies.

#### *Mechanism for Tracking Domestic Violence Cases*

The difficulty of tracking cases through the criminal justice system and compiling aggregate data was highlighted throughout the report. There is also need to be able to track breaches of civil orders in the criminal justice system.

If the accused is arrested and charged and brought before a court, there is a need to be able to track the court outcome. If the court finds the accused guilty, the sentence is contained in the A95 Form, which in turn is in-putted in the Garda Criminal Records Office (GCRO) files. The GCRO, however, is not designed as a data base for retrieving aggregate data. It provides information on records of individual offenders. The court



outcome (contained in the A95 Form) needs to be inputted into an up-to-date data-base designed for aggregate data analysis. An essential part of the tracking is linking the DVSA(1) Form (form filled out by the Gardaí on each domestic violence call-out incident) with the A95 Form and inputting both of these into a modern data base. If the accused is sentenced, there is a need to determine whether or not the accused served his sentence. This would require that prison records are accessible.

The fact that cases cannot be effectively tracked and aggregate data compiled is unsatisfactory from the point of view of the long-term monitoring of policy and legislation. Tracking cases systematically involves putting in place a unique identifier such as a numerical code, which would allow cases to be tracked both through the criminal courts and from the civil courts to the criminal courts.

#### *Published Statistics*

Since 1994, statistics on domestic violence incidents are published in the annual Garda Report. The Crime Division of the Garda Síochána compiles these statistics. Information presented in the Garda Report needs to be expanded to include gender, relationship of accused to victim and the number of domestic violence orders in existence.

In relation to indictable assault and sexual assault cases, the annual Garda Report should also provide data on the relationship of the

offender to the victim.

Statistics on assault, indictable assaults and murders should be published by both sex of the offender and victim, and the relationship between the victim and offender.

### 1.3 Domestic Violence Pilot Intervention Project

This study recommends that an integrated domestic violence intervention project be piloted in three areas.<sup>9</sup> These areas should include a rural area, a town based area and a city area.

The underlying principles, the role of the main agencies and how the model will operate are outlined below.

#### *Underlying Principles*

The underlying principles of the domestic violence intervention model are as follows:

1. On every occasion that a woman seeks help from the Gardaí or the courts she should have access to support and advocacy services. Her protection and safety should also be ensured. All

<sup>9</sup>We would like to acknowledge the contribution of Ellen Pence and the Duluth Project, Minnesota in the formulation of this model of intervention.

personnel must be trained in dealing with the trauma and impact of physical and sexual violence;<sup>10</sup>

2. The needs of women who face further structural barriers and discrimination, because of poverty, disability, race, illegal status, ethnicity, sexual orientation, educational disadvantage, or behaviour that is viewed as non conforming, must be integrated into all responses;
3. The protection and safety of victims should be the prime focus of the legal systems;
4. The legal systems should be responsible for monitoring and controlling the violence of the perpetrator and preventing the re-victimisation of the victim;
5. Practitioners must have knowledge, information and training in the assessment of levels of violence, patterns of coercion and threats, and risk to the victim;
6. The woman must be facilitated to be an active agent in her interaction with the civil and criminal justice systems in order that her capacity to make choices is increased in relation to the management of her own safety;
7. In recognising the unique capacity of the male domestic violence abuser to control

<sup>10</sup>The term woman is used instead of victim or applicant and man is used instead of respondent or accused as results from the research indicate that women are the main victims or applicants and men the main respondents or perpetrators of violence.

the victim, mandatory interventions have been introduced in other jurisdictions, for example arrest and “no drop” policies for prosecutors. However this report recommends that an infra-structure of advocacy, safety measures and sanctions need to be put in place and demonstrated to be effective before mandatory policies can be introduced.

#### *Role of Key Agencies*

The key agencies in a domestic violence intervention model and key aspects of their roles are outlined below:

A Women's Advocacy and Support Service:

It is critical that every woman at risk of domestic violence has immediate and on-going access to an advocacy support service which:

- Provides a non-judgmental, non-directive service as developed by feminist organisations;
- Works with the woman in examining all options and obstacles which she may encounter;
- Examines with her the consequences of each action;
- Undertakes a risk assessment interview with the woman;
- Develops a safety plan with the woman;

- Provides a court accompaniment service;
- Refers her to other services where necessary. These should include emergency refuge, income support, legal aid, counselling and housing.

The Probation and Welfare Service:  
The role of the Probation and Welfare Service in a domestic violence intervention pilot project is to:<sup>11</sup>

- Undertake a danger assessment of the perpetrator (Appendix 2);
- Monitor the behaviour and movements of the perpetrator;
- Report to the civil and criminal courts with recommendations on sanctions for the perpetrator;
- Supervise access to children, where appropriate;
- Liaise with or develop a domestic violence intervention programme for men (Appendix 3);
- Consult the woman at every level of decision.

The Gardaí:  
The role of the Gardaí in a domestic violence intervention project is to:<sup>12</sup>

- Respond immediately to domestic violence call-outs;
- Implement the guidelines on the Garda Síochána Policy on Domestic Violence Intervention at the scene of the domestic violence incident;
- Arrest and detain the perpetrator where an assault or a breach of an order has been committed;
- Provide immediate and on-going information to the victim regarding the above;
- Hold the perpetrator in custody where there is breach of a court order under the domestic violence legislation or where an assault has been committed until a district court hearing takes place;
- Having completed a risk assessment in the interests of the safety and protection of the woman, recommend custody or conditions of bail (Appendix 4).

<sup>11</sup>While recognising that the Probation and Welfare Service has withdrawn from working in the family court due to a lack of resources, it is proposed that the Service does not wait for its current role to be clarified before it gets involved with the pilot project.

<sup>12</sup>Many aspects of this role are outlined in the Garda Síochána Policy on Domestic Violence.

The Judiciary:

The role of the Judiciary is to:

- Issue civil orders with full regard for the safety and welfare of women and children;
- Issue conditions of civil orders to hold the perpetrator accountable for his behaviour;
- Impose criminal justice sanctions appropriate to the seriousness of the violence perpetrated against the woman;
- Take into consideration the recommendations of the Probation and Welfare Officer's court report;
- Ensure that intervention programmes for men are not seen as alternatives to civil or criminal sanctions.
- Examine the possibility of breaches of civil orders being heard in family courts.

#### *Monitoring and Tracking*

A recording system needs to be put in place, which ensures the effective management of individual cases and the long-term monitoring of the domestic violence intervention model and its outcomes. This needs to ensure that:

- At every point of the system the critical information regarding the woman's safety and behaviour of the man is documented;

- All practitioners need to be trained in recording the details of domestic violence complaints;
- Clear guidelines need to be drawn up on confidentiality and on the transfer of information between practitioners;
- Women must have access to all information recorded.

#### *Financing of and Overseeing Pilot Projects*

An interdisciplinary committee should be established to oversee the implementation of this proposal. The committee should be similar in composition to the consultative committee, constituted for the present research study. Service providers and local community activists should also be represented on the committee.

Planning for the three pilot projects should begin immediately and project start-up should take place in January 2000. Each pilot project should run for a three-year period. It is estimated that the cost per project per year is £300,000. The Department of Justice, Equality and Law Reform is the appropriate agency to fund the pilot projects.