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**ACCOUNTABILITY OF OFFENDERS, SAFETY OF VICTIMS,  
CONSISTENT CONSEQUENCES:  
Addressing Domestic Violence in Military Families**

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**ACCOUNTABILITY OF OFFENDERS, SAFETY OF VICTIMS,  
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**STATEMENT OF THE PROBLEM**

Military members who engage in violence against their intimate partners too frequently escape meaningful disciplinary action by the military and enforcement of state laws regarding domestic violence. There are several reasons for this, among them a lack of knowledge about military organization and regulations on the part of civilian authorities, issues of jurisdiction and resources for enforcing the law with regard to military members and civilian spouses, inconsistent consequences for domestic violence between military and civilian offenders living in the same communities – as well as between communities, and the lack of effective coordination between civilian and military authorities. Further, the response to domestic violence incidents varies according to where the military family lives, whether the military police or civilian police are the first responders, and whether the victim is a civilian or a military member. This complicates the enforcement of stated community norms in both the civilian and military communities that violence against an intimate partner or other family member is unacceptable, since it is apparently tolerable within at least some parts of the combined community.

Some examples<sup>1</sup>: A sailor avoided for three weeks the service by the civilian police of a temporary restraining order his wife obtained after his assault of her by staying aboard his ship. His crewmates aided him in this by telling the police that he was not aboard at the time they arrived – and the police left without talking to the Commanding Officer, who was ultimately responsible for making the sailor available for service. Another sailor regularly missed hearings in

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<sup>1</sup> Examples are from personal knowledge.

both criminal and civil courts stemming from his abuse of his wife. Each time he cited the Soldiers' and Sailors' Civil Relief Act (SSCRA) and was granted continuances to prepare for the hearing. Each time he had failed to comply with the requirements of the Act and his command was unaware of his legal troubles in the civilian courts because he had been arrested off base. A soldier stalked his girlfriend for months and was never arrested. The base Family Advocacy Program could not take the referral because they weren't married; base police did nothing because she had a civilian restraining order; civilian police did nothing because the incidents occurred on federal property. A Marine terrorized his spouse; when she obtained a restraining order from the Family Court, he violated it by stalking her. He was not arrested for several days after she reported his breaking into her house, until a civilian advocate connected the spouse with the Domestic Violence Unit of the civilian police department. Another soldier assaulted his wife, demolished the furniture in their house, and was merely removed from the house to "cool off" in the barracks. Base security had responded to her call first; civilian police would have arrested him. A few days later, he accosted her in the parking lot of the post exchange, hit her, called her names. This was a violation of the temporary restraining order issued by the Family Court and served on him that day – however, he was merely warned by military police and sent on his way. The incident report lacked details of the assault. A soldier was assaulted by her civilian husband; base security responded, removed her to the barracks (by way of the military hospital) and left her husband in the house and in possession of their children. Her command issued a Military Protective Order (MPO) but did nothing about her husband, citing their lack of jurisdiction over him.

There are many more cases of such failures to hold offenders accountable and ensure the safety of victims and their children.

The military population on Oahu is not separated from the communities surrounding the military installations; military families live in those communities, whether in private housing or in housing that is outside the installation gates and open to the community. Jurisdiction<sup>2</sup> over incidents of intimate partner violence differs according to whether it occurs within the community

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<sup>2</sup> “‘Jurisdiction’ means the power to hear a case and to render a legally competent decision.” MCM, 1995, II-9.

or within base housing areas; by the type of jurisdiction the military exercises over particular parcels of land (within the base gates, the military may have exclusive,<sup>3</sup> concurrent,<sup>4</sup> or partial<sup>5</sup> jurisdiction over criminal acts; outside the base gates and on federal land, the military may have exclusive, concurrent, partial or proprietary<sup>6</sup> jurisdiction (Bovarnick, 2004)); and by which government has personal jurisdiction over the participants – the military retains jurisdiction over its active duty members no matter where they are (LCDR Harris, 2005; Bovarnick, 2004; Gilligan, 1999; UCMJ, 1998) but generally lacks formal arrest authority over civilians<sup>7</sup> (Bovarnick, 2004; Hickman and Davis, 2003; Gilligan, 1999), which is what military family members are.

Thus civilian authorities often have shared jurisdiction over the actions of military members and their families. “[S]ome form of civilian jurisdiction over installations is the rule . . . the majority (87 percent) of service members and their families fall under either shared or

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<sup>3</sup> Exclusive jurisdiction: “only Congress can legislate and the federal government is responsible for law enforcement. The State cannot enforce its own laws except to serve civil or criminal process.” (p. 27) Exclusive jurisdiction results where the Federal government “ceded property to establish a state, but reserved some land as federal property, thus retaining legislative jurisdiction over the land it reserved.” (Note 129, p. 28) Bovarnick, 2004.

<sup>4</sup> Concurrent jurisdiction: “both State and Federal laws are applicable so both the State and Federal governments may prosecute offenders of crimes in these areas.” (p. 27) Concurrent jurisdiction is one possible result when the Federal government acquires land either by purchase and consent – “the state legislature consents to giving the federal government jurisdiction” – or by cession – “after the federal government acquires title to the property, the state may cede jurisdiction, in whole or in part, to the federal government.” (Note 129, p. 28) Bovarnick, 2004.

<sup>5</sup> Partial jurisdiction: “the State grants to the Federal government, without reservation, the right for the Federal government to execute and enforce its laws as if the area were under exclusive federal jurisdiction.” (pp. 27-28) Bovarnick, 2004.

<sup>6</sup> Proprietary jurisdiction: the Federal government “has only the same rights in the land as does any other landowner.” (pp. 28-29) Bovarnick, 2004.

<sup>7</sup> Formal arrest authority for the military would require an Act of Congress. Congress has so far not granted power to the military to arrest civilians on its own authority; such power as it has rests on two Constitutional exceptions – “emergency authority” and “protection of federal property and functions”; the common law doctrines of “citizens’ arrest” and “military purpose”; and a few exceptions to the Posse Comitatus Act. See Gilligan, pp. 6-12.

complete civilian authority . . . [T]he military does not hold sole responsibility for responding to domestic violence incidents involving service members. Civilian communities that neighbor installations also share this responsibility, not only for incidents that occur off installations but also, in many areas, for incidents occurring on installations.” (Hickman and Davis, 2003, p. 2) Police and courts usually have general policy statements encouraging cooperation with military officials (Nishijo, 2005; Santos, 2005);<sup>8</sup> it is common for there to be only informal agreements between civilian authorities and military commanders about who responds to incidents in base housing, and who will have final jurisdiction over cases involving military members both in base housing and in the community (Hickman and Davis, 2003).

Since the military lacks exclusive jurisdiction over many intimate partner incidents involving military members, and may not be aware of transgressions of its members that occur outside of duty hours and away from the duty station, its ability to enforce its stated policy of “zero tolerance”(Wolfowitz, 2001) for such violence is hindered. The lack of formal coordination hinders as well the ability of the State to enforce its laws where military members are involved.

## **THE MILITARY POPULATION**

Hawaii has the 8<sup>th</sup> largest concentration of military members and their families in the United States. In 2003 there were 42,625 active duty members with 57,508 family members, plus 9,764 reservists and national guard members and their families (2003 Demographics Report, pp. 19, 71), concentrated in Honolulu. The population present in Hawaii because of military orders is over 100,000 persons, comprising approximately 8% of Hawaii’s total resident population and 11% of Oahu’s resident population. (Hawaii’s total resident population in 2003 was 1,257,608; Oahu’s was 876,165. (Data Book 2003, Table 1.03))

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<sup>8</sup> Nishijo, 2005. “The Honolulu Police Department shall make every [effort] to cooperate with and support other law enforcement agencies in areas of concurrent jurisdiction to provide the best possible law enforcement services to the community.” Santos, 2005: “[W]e already have in place a practice of sending copies of temporary restraining orders and permanent orders of protection to the command of any military active duty person involved in such orders.” A recent informal agreement between the courts and the Hawaii Armed Service Police (HASP) for collection of these orders by HASP has been adversely affected by military deployments and the courts are now working on an alternative method of getting copies of orders to commands.

The active duty military population is on average younger than the general population: the average age of officers is 34.5 years and of enlisted members is 27 years (average age for the entire population of 30.75 years). In fact, 79.3% of active duty military members are younger than 35 years of age. (2003 Demographics Report, p. 21) The average age of Oahu's population in 2003 was 35.7 years. (2003 Data Book, Table 1.14)

The age range in which most intimate partner violence occurs and the risk is greatest varies by population: in a study of a military population sample it is stated to be 18 to 36 years (McCarroll et al., 1999), while a study of a civilian population sample found it to be 16 to 44 years (Mooney, 2000, p. 171). The active duty military population consists entirely of adults in this age range, unlike the civilian populations to which it is usually compared. Reserve and national guard members are older – their average age is 41.4 years for officers, and 37.3 years for enlisted – but still within this age range. (2003 Demographics Report, p. 1)

More than half of active duty military members are married. Among the enlisted ranks, the most junior in rank (E1-E4) are 44.4% of the total military population and 27.8% of them are married; among E5-E6, who are 29.7% of the population, 69.1% are married; among E7-E9, who are 9.8% of the population, 85.9% are married. Among the officer ranks, the most junior in rank (O1-O3) are 8.9% of the total military population and 54.8% are married; among O4-O6, who are 5.9% of the population, 87.1% are married; among O7-O10, who are less than 1% of the population, 94.5 % are married; and among warrant officers, who are about 1% of the population (W1-W5), 81.5% are married. (2003 Demographics Report, p. 26) The average for marriage among active duty members in all the Military Services is 52.3%. Among reservists and the national guard, 51.4% are married. (Ibid., pp. 72, 77) Military studies tend to find that domestic violence is most prevalent in the enlisted ranks, and particularly among E1-E4, (U.S. Air Force, 1997) who are the youngest and least able to cope with the stresses of military life, as well as least likely to know about and have the resources to use legal, medical and social services outside the military. These studies rely on incidents reported to the Family Advocacy Program and entered into its database.

The military tracks intimate partner violence occurring between married partners only. However, this understates such violence involving its members by ignoring unmarried couples

living together – who only do so in the civilian community because eligibility for base housing requires marriage – and dating violence involving single military members. Almost all intimate partner violence incidents involving these unmarried couples will occur in the civilian community and be dealt with primarily by the civilian authorities who have exclusive jurisdiction over the civilian partner. The military may attempt to obtain jurisdiction over criminal matters when a military member is involved, but is unlikely to be successful unless both the offender and the victim are military members. (Harris, 2005)

Many active duty military families (and all reservists and national guard families) live in the communities surrounding installations. (Again, the military counts only those who are married.) At military installations outside the continental United States, a category that includes Alaska and Hawaii, 63% of married Service members with families live in base housing (1999 Demographics Report, p. 23), the rest live in the surrounding communities. Approximately 8,248 active duty military families, 5,019 reserve and national guard families, and an unknown number of cohabiting couples, live in civilian communities on the island of Oahu, about 5% of Oahu's total households, about 37% of military households in Hawaii. (There were altogether 286,450 households on Oahu in the year 2000. (2003 Data Book, Table 1.14))

## **MILITARY DOMESTIC VIOLENCE STATISTICS**

The most current of the available Defense Department statistics for the rate of domestic violence occurring in the military are unreliable owing to various problems with its data collection procedures, which mean that the reported numbers undercount actual incidence; however, its database contained 12,068 such incidents reported to Family Advocacy Programs (FAP) worldwide and 1,492 such incidents report to military law enforcement worldwide in 2000. (DoD Report, 2000, pp. 1-2) There were 18,000<sup>9</sup> incidents of spouse abuse reported to FAP in 2001. (Beals, 2003) The Deputy Secretary of Defense, Paul Wolfowitz, wrote in a policy memorandum to the Service Secretaries on November 19, 2001, entitled “Domestic Violence,” that in fiscal year 2000 “more than 10,500 physical and/or sexual assaults of a spouse were substantiated in the

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<sup>9</sup> Beals, 2003: “In 2001, more than 18,000 incidents of spouse abuse were reported to the Military Services. More than 10,000 of these cases were ‘substantiated.’” (p. 8)

DoD Family Advocacy Program, with more than 5,200 active duty personnel identified as the alleged perpetrators.” (Wolfowitz, 2001)

To make a rough comparison of incidence in the military and civilian populations, consider the situation of San Diego, a city with a population size comparable to the military’s total active duty population<sup>10</sup> – city of San Diego 1,220,734 in 2003 (2003 Data Profile, San Diego City); U.S. Military, 1,419,061 in 2003 (2003 Demographics Report, p. 1) – with a significant military subpopulation as well (100,179 active duty military members and 109,269 family members – 66% and 61% respectively of California’s share of the U.S. military population, which was 14% of the total in 2003). (2003 Demographics Report, pp. 19, 114-115) In San Diego city there are approximately 12,000 domestic violence crime and incident reports made annually.(2003 Demographics Report, p. 7; Gwinn, 2003) Although many researchers insist that the rate of domestic violence in the military is higher (from two to five times higher) than the rate in the civilian population, the fact is that this problem is widespread in both populations (DoD 2001; H.R. 5391, 2004)<sup>11</sup> – and is under-reported and under-counted in both.

“Although data are hard to obtain [even for the Defense Task Force on Domestic Violence!!] it is apparent that relatively few military personnel are prosecuted or administratively sanctioned on charges stemming from domestic violence.”<sup>12</sup> (DoD, 2001; H.R. 5391, 2004) Prosecution of intimate partner violence offenses is more certain in the civilian community, though still far from uniform and predictable.

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<sup>10</sup> The comparison is drawn on comparable size of population, not on other demographic variables: the military population is skewed toward young males and lacks members over retirement age.

<sup>11</sup> Congress has currently cited this problem in its findings attached to H.R. 5391, proposing amendments to the Armed Forces Domestic Security Act. “(12) The rates of domestic violence among members of the Armed Forces are considerably higher than anticipated and are two, three, four, or five times higher than the civilian rate.”

<sup>12</sup> Initial Report DTFDV, 2001, p. 52. H.R. 5391 finds, “(15) Five to six percent of substantiated offenders are court-martialed by military authorities.”

## **JURISDICTION AND RESPONDING TO INCIDENTS**

Most military housing on Oahu is not behind base gates, but is located on federal land contiguous to civilian communities, where law enforcement jurisdiction is shared with the City and County of Honolulu. The military was the assumed first responder in these housing areas until quite recently, when it contracted management and further development to civilian companies, with the expectation that law enforcement would be shifted to civilian police. (Dingeman, 2005) Thus, a large proportion of the military's estimated 22,293 active duty, married households (8% of Oahu's households (Data Book 2003, Table 1.03)) – and all of its active duty, cohabiting households – are within civilian legal jurisdiction, and most have been added to the area of responsibility of the civilian police without the addition of resources, either of personnel or money. (Dingeman, 2005)

The military population's small but significant presence in the local community brings benefits (i.e., civil service jobs, military contracts, skilled labor) and costs (i.e., increased demands for law enforcement and social services, market stresses on housing, wages, and schools) to the local community and to military installations (lessened cohesion in the military community, reliance on civilian services, jurisdictional muddles), drawing these institutions together. The implication for the response to intimate partner violence, given evidence of systemic failures that further endanger victims and allow offenders to escape accountability, is that neither the civilian community nor the military can effectively or efficiently handle this problem without formal coordination of jurisdiction and resource issues.

## **WHAT CAN BE DONE?**

Among the options for improving offender accountability, victim safety, and reinforcing the message that domestic violence is unacceptable for all members of both communities, are 1) federal legislation to clarify military and civilian jurisdiction over these incidents on military bases and other federal lands, perhaps by settling the issue in favor of either exclusive civilian or complete military jurisdiction; 2) continued reliance on informal agreements and separate policies encouraging cooperation by both military and civilian authorities; and, 3) the negotiation of formal, written agreements clarifying jurisdiction, addressing resource issues, and creating and

coordinating procedures for the sharing of information (arrests, court orders, and other relevant information), the arrest and adjudication of offenders, and services for victims.

**A. Congressional Action.** Although Congress has recently enacted law making civilian restraining orders fully enforceable on military installations, is considering whether military protective orders should be enforceable by civilian police, and is amending the Uniform Code of Military Justice (UCMJ) to make charging domestic violence easier and more visible (MacDonald and Tucker, 2003), it is doubtful it will act any time soon to resolve the tangle of jurisdictional issues of law enforcement and the variation in domestic violence laws and enforcement policies among the states and cities hosting military installations. Since the States are largely responsible for defining crimes within their borders and determining how these are punished, and because law regarding marriage and the family is also a State prerogative, and because resolving jurisdictional issues alters the terms of sovereign power of both state and federal governments, any action of the Congress will be delayed and is likely to introduce yet other complications. For example, Congress made State criminal laws apply on military installations with exclusive jurisdiction rather than write an entire criminal code for the military through the Assimilated Crimes Act (ACA) (18 U.S.C. § 13), with the exceptions that the ACA only applied where there were not existing federal laws for the same acts and when state laws were not in conflict with other federal laws – among the results is to add another level of analysis in deciding how to prosecute military offenders as well as creating new “gaps” in the coverage of criminal statutes (Gilligan, 1999, p. 44 note 183; Bovarnick, 2004; Eldridge, 2000). Despite the difficulty and time involved in obtaining adequate Congressional fixes for jurisdictional issues, this option should be pursued over the long term.

**B. Exclusive Jurisdiction for Either Military or Civilian Authorities.** The benefit of assigning exclusive jurisdiction for responding to and prosecuting domestic violence crimes to either military or civilian authorities would be in simplifying jurisdictional issues raised by the sovereignty of the Federal and State governments and the patchwork nature of Federal and State jurisdiction over federal lands, which presumably would increase the consistency of consequences for domestic violence crimes, whether or not committed on federal property (though the effect on holding offenders accountable and making victims safe would still be in doubt). This option requires Congress to act: Congress must either legislate liberal State access to military

installations for the purpose of law enforcement, ending exclusive federal jurisdiction over crimes committed in those military areas where it now exists and complicating military control over entry to its installations, or expand military law enforcement powers to include the arrest and prosecution of offenders even for incidents involving civilian offenders against military members (i.e., a civilian husband or boyfriend assaulting a military member wife or girlfriend) outside of military installations. Both options involve limiting the sovereignty of either the states or of the federal government in favor of the other and unsettle the boundaries of long accepted common law doctrines. However, the jurisdictional simplification itself introduces additional complications: Should Congress change the rules for all criminal acts or only for domestic violence? If it changes the rules for the criminal acts involved in domestic violence, should it also include those that are violations against civil law? What about actions that are violations of the UCMJ but not of State criminal law?

1. All military jurisdiction for military members and military family members. This option runs into the limited authority that Congress and the Constitution allow the military to exercise where civilians are concerned. The military lacks statutory authority granting formal arrest authority – and therefore authority to prosecute – over civilians, outside of the employer-employee relationship, both on and off installations. The military is further limited by the Posse Comitatus Act’s prohibition against military assistance to civilian law enforcement in enforcing the civil law. However, military installation commanders are deemed to have inherent authority, flowing through the Congress’ delegation of authority to the President and its direct legislation regarding military installations, to maintain law and order and to protect the safety and well-being of the inhabitants of the installation. This authority translates into enough authority to detain a civilian lawbreaker in areas of shared jurisdiction on installations long enough to turn him or her over to civilian authorities and to investigate crimes that have a nexus with military responsibilities. The Military Purpose Doctrine, an exception to the Posse Comitatus Act, also allows military commanders to authorize actions that further a military function, whether or not this also benefits civilian authorities in enforcing the civil law. Two other exceptions are found in the common law: Military law enforcement personnel may pursue a civilian lawbreaker off the installation under certain circumstances and may make citizen’s arrests in accord with local laws

and procedures. (Bovarnick, 2004; Gilligan, 1999; UCMJ, 1995)

All this basically means that military law enforcement personnel may arrest a civilian if the violation occurs where the military has exclusive jurisdiction and turn the offender over to civilian authorities if they are interested in accepting the case for prosecution (generally the Federal District Attorney or local District Attorney is contacted). If the violation occurs where the military and the state have concurrent jurisdiction, or the military has only proprietary jurisdiction, military law enforcement personnel can arrest a civilian only if civilian authorities cannot be contacted in time to prevent harm or if they cannot or will not respond, and the offender must be turned over to civilian authorities for prosecution. (Bovarnick, 2004; Gilligan, 1999) If the offender is a military member, military law enforcement can arrest the offender no matter where the violation occurs, owing to Congress' delegation of authority over military members "worldwide" (UCMJ, 1995). As a practical matter, though, when civilian authorities are first responders, either in civilian exclusive jurisdiction or in shared jurisdiction, they will prosecute the military offender unless the military is able to convince them to transfer jurisdiction. This is likely to happen, at least in Hawaii, only when both the offender and the victim are military members. (Harris, 2005) It is military policy to attempt to retrieve jurisdiction over military members arrested and charged by state authorities. (UCMJ, 1995)

A civilian spouse of a military member, at least at installations within the United States, generally has the option of using civilian police to report crimes that occur on federal lands and ask for the arrest of the offender, as well as to use the civilian courts for redress in civil and criminal matters. Since civil laws regarding domestic violence vary from jurisdiction to jurisdiction and state to state, and since these also differ from military regulations, and because jurisdictions vary greatly in their emphasis and practices observed in enforcing these laws and in the model of domestic violence intervention to which they subscribe, this introduces systemic uncertainty into the consequences of intimate partner violence for any particular offender or victim, as well as the degree to which an offender is held accountable by law enforcement, courts, and the military. (Hickman and Davis, 2003)

2. All civilian jurisdiction for military members and military family members. This option founders on the issue of military control over military members, held to be vital to the

maintenance of good order and discipline, and unit cohesion, within the military – and to the effective accomplishment of military responsibilities and missions. Further, as with all military jurisdiction over civilians involved in crimes on and off the installation, this option is limited by federal authority over military installations with either exclusive or concurrent jurisdiction – the federal government exercises sovereign authority on the installation, and even, to varying degrees on bordering lands. Civilian and military authorities already share jurisdiction over the majority of domestic violence incidents, as well. The tension comes from the degree to which the civilian community has based its domestic violence laws and procedures on the domestic violence reform model – which advocates a coordinated community response to such violence as the “best practice” for discouraging it – and the mix of family systems theory and military hierarchy in the military model – which actually has a coordinated community response, though with different objectives for its interventions.

3. It is up to Congress. The primary argument against assigning exclusive jurisdiction over crimes committed on military installations by military members to either state or military law enforcement authorities is that such action interferes either with the inherent authority of a military installation commander over the installation (under the Property Clause – U.S. Constitution, art. 1, § 8, cl. 17 – and the Enclaves Clause – art. IV, § 3, cl. 2, granting legislative authority/jurisdiction regarding federal lands to the Congress, and Congressional delegations of authority regarding military matters to the President as Commander-in -Chief) and over military members (UCMJ, 1995) or with the prevention of direct use of the military to enforce civil law (i.e., Posse Comitatus Act and others). (Bovarnick, 2004; Gilligan, 1999; UCMJ, 1995)

However, the most important argument against either of these options is that they are politically infeasible. Instituting such all-or-nothing jurisdiction requires far too much tinkering with sovereignty issues between the states and the federal government, with the structure of federalism and existing issues between states and federal regulation of their authority, and ignores the special status of the military institution within the federal scheme.

**C. Retain the system of informal agreements and arrangements between State and military officials.** It is not that civilian and military officials don't cooperate or try to coordinate their efforts to ensure that military members and their families are safe. The problem is that these informal arrangements depend on the persons filling the relevant positions at any one time rather than on promulgated procedures for interagency and intergovernmental cooperation and coordination. The Defense Task Force on Domestic Violence (DTFDV) recommended that collaboration between military installations and surrounding communities be required of the Services, and, as echoed by Hickman and Davis, "supported by formal agreements" (2003, p. 7), not least because informal relationships with civilian authorities are disrupted by the frequent reassignment of military personnel and rarely address all the concerns of either side. Despite efforts to cooperate on both sides, military member offenders are not always identified by police and courts dealing with incidents, nor do military commands always know about arrests and court hearings and orders. Family Advocacy officials' requests to HPD for incident reports about military member offenders gets them access to the daily police blotter (to sift through all calls) but not access to the incident reports (Koos-lee, 2005). Military offenders are able to miss court hearings with minimal consequences, delaying decisions about restraining orders, divorces, child custody and visitation, and adjudication of their guilt in criminal acts. And, the issue of who should be responsible for responding to calls in military housing areas is in dispute. (Dingeman, 2005)

Relying on informal agreements and internal policies – the current system – has allowed military offenders to slip through the cracks between institutions and escape responsibility for their criminal actions. The lack of coordinated procedures for responding to and intervening in domestic violence compromises the safety of victims and their children. In terms of victim safety, offender accountability and consistent consequences for offenders, this option fails entirely.

**D. Negotiating Formal, Written Agreements between State and Military Officials.**

The benefit of negotiating formal, written agreements between state and military officials regarding appropriate response to domestic violence involving military members and military family members is the establishment of procedures addressing the concerns of both sides, of settling jurisdictional uncertainties and disputes, and the formal commitment of both the state and

the military of personnel, facilities, time and money to the support of these procedures. Negotiating such agreements will be a complex task, but it is currently the best option for effectively managing a difficult and complex social problem.

The Department of Defense, acting on the strong and repeated recommendations of the DTFDV (DoD 2001; DoD, 2002; DoD, 2003) regarding improving coordination between civilian and military authorities responding to domestic violence, is currently encouraging the Military Services to require formal agreements between military installations and local civilian authorities. These are known to the military as MOU – Memoranda of Understanding – or MOA – Memoranda of Agreement. A Memorandum of Understanding (MOU) is a written expression of the intent to collaborate between a military installation and other community organizations (either military or civilian). The document contains policies and procedures related to the agreed collaboration, formalizing and extending previous informal relationships to achieve specified goals.

Memoranda of Agreement should clearly accomplish the goal of making offenders accountable, of placing responsibility for holding offenders accountable on military and civilian authorities rather than on victims, and of ensuring the safety of victims and their children. At a minimum, this means working to institute a strong coordinated community response that includes formalized working relationships and explicit procedures for cooperation among military and civilian authorities. The goal is to end tolerance of domestic violence.

## **WHAT IS THE PURPOSE OF A MEMORANDUM OF UNDERSTANDING?**

Memoranda of Understanding are meant to improve and formalize cooperation between organizations on matters of mutual concern, by setting out policies and procedures to be followed when dealing with the issues that are the subject of the agreement. Thus an MOU could address the sharing of information about arrests of military members, determining what information will be shared, when and by what methods, and what each organization may do with the information received, as well as clarify who has jurisdiction and under what terms the military might exercise its jurisdiction over military members to take responsibility for prosecution of a criminal matter. An MOU might address the exchange of court hearing notices, court orders, and service issues, as

well as military protective orders and information about previous incidents and interventions. In terms of intimate partner violence, an MOU could determine how intimate partner violence is defined and clarify the jurisdictional issues of who responds when, to what, and what gets done during and after the call for help, as well as ensure that victims are informed of resources available to them in both the civilian community and on military installations, and is given referrals to FAP and military victim advocates, as well as to civilian advocates and agencies.

Hickman and Davis recommended the military request access to all reports of domestic violence calls from civilian law enforcement agencies, not just arrests, involving military members involved in domestic violence and offer to share its own information. (2003, p. 5) They also recommended that any MOU address how military offenders will be handled, stating that merely asking for military members to be referred to the base for management of their cases through FAP – which uses a clinical approach and in which decisions about what to do about both criminal acts and intervention (other disciplinary measures and clinical treatment) is left to the discretion of commanding officers – won't be well received outside the gates, particularly in the many jurisdictions that have adopted the “philosophy and reforms of the modern domestic violence reform movement.” (p. 3) In civilian law, in Hawaii and elsewhere, violence between intimate partners is regarded as a violation of the public order, i.e., as a criminal act. The police investigate to collect trial evidence, not just to restore order and facilitate referral to social services (the purpose now fulfilled in the immediate investigation of military police responding to these incidents – trial evidence may be collected weeks later by a different military agency), and it is the courts that rule on the guilt of offenders, not commanding officers or a committee of service providers and command representatives. (Hickman and Davis, 2003)

Another issue to be addressed in an MOU is the procedure for determining when a military member cannot be required to appear at court hearings or court-mandated treatment sessions because of military duties, under the provisions of the Soldiers and Sailors Civil Relief Act (SSCRA). At present, military members are able to avoid or indefinitely delay appearances at court by pleading military duties, and without the formal determination by a commanding officer required by the Act. How will this be communicated and what criteria will apply? Who will decide? How will it be made consistent?

Further, MOUs must describe the resources – personnel, money, equipment, supplies – each organization will devote to accomplishing the coordination being formalized.

Whatever is included in them, MOUs should be tailored for local conditions and thus will vary from state to state and installation to installation.

## **WHY WOULD MEMORANDA OF UNDERSTANDING BE NEEDED?**

### **A. Some practical reasons.**

The military population is intertwined with the civilian population on Oahu rather than separate and thus many, if not most, intimate partner violence incidents occur outside military jurisdiction or where jurisdiction is shared. Hickman and Davis' study of the need for and obstacles to implementing MOUs with civilian organizations found no national or state data regarding the number of incidents of intimate partner violence involving military members responded to by civilian authorities (Hickman and Davis, 2003, p. 5); however, it is a logical inference from the dispersion of the military population and the shared jurisdiction in base housing areas to suggest that this is a substantial portion of such incidents. In the table on the following page is an estimate for the number of incidents that might be expected on Oahu if the military population is no more violent than the civilian population as a whole:

An Estimation of Expected Military-Related Cases of Intimate Partner Violence on Oahu Based on Department of the Attorney General 2003 Domestic Violence Statistics City and County of Honolulu <sup>13</sup>			
Reports, Arrests	Year	Total for Oahu	Estimate for Involvement of Military Members and Family Members (8% of total population in 2003)
Reports of AFHM	2002	3,001	240.08 reports of AFHM expected
Arrests for AFHM (state total = 3,356)	2002	1,848 (or 61.6% of reported incidents)	147.84 expected arrests for AFHM
TRO and PO issued (state total = 4,623)	2002	2, 838	227.04 expected restraining orders issued
TRO arrests (state total = 2,565)	2002	1396 by police 61 by sheriffs (1457 total)	116.56 expected arrests for violation of restraining orders
Domestic Violence homicides (includes intimate partner, child and elder abuse, and domestic arguments)	1975 - 1999	15* rate of .6 per 100,000 residents	.56 military-related DV homicides each year
Intimate Partner Violence (IPV) homicides	est. for yr.	7* 2.48 men killed by women: 20% of women's victims are adult males 4.11 women killed by men: 33% of men's victims are adult females	.53 IPV homicides expected

\* Estimation from "Crime Trend Series, 25 Years of Uniform Crime Reports in Hawaii, 1975-1999," February 2001, "Crime Trend Series, Murder in Hawaii 1992-1997," 6/2, June 1998, Department of the Attorney General Crime Prevention and Justice Assistance Division; and "Domestic Violence-Related Murders in Hawaii, Updated December 1999," Research & Statistics, Hawaii Department of the Attorney General. Hawaii estimates the number of these murders is 25%-30% of all murders each year. The average number of murders per year from 1975-1999 was 49.8, of which 30% would be 14.94. Women's victims are adult males 20% of the time and usually someone they know, so it is likely these are intimate partners. This amounts to about 2.98 such murders per year. Men kill adult females almost 1/3 of the time. Again it is likely these are intimate partners. This is about 4.11 such murders. Of Hawaii's annual domestic violence homicides, then, about 7 occur between intimate partners.

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<sup>13</sup> "State of Hawaii Strategic Plan for the S.T.O.P Violence Against Women Formula Grant FY 2002," Department of the Attorney General Crime Prevention and Justice Assistance Division, January 2004.

If the DoD's goal is to enforce its policy of "zero tolerance" for such violence, it needs an effective Coordinated Community Response (CCR) – the current best practice for intervention in and prevention of domestic violence. "This response model is based on the philosophy that . . . organizations that come into contact with perpetrators and victims need to work together to propagate a consistent message throughout the community that domestic violence is unacceptable, victims will be protected, and abusers will be held accountable. Thus, communication and coordination are promoted among criminal justice, social service, and nonprofit agencies; citizen groups; major employers; religious and medical communities; and schools." (Hickman and Davis, 2003, p. 3) The most certain method for obtaining information about incidents and to enforce military regulations is to institute formal mechanisms – through MOUs – for collaboration and cooperation with civilian law enforcement and investigators, prosecutors, judges, probation officers, batterer intervention programs, victim advocates, shelters, Domestic Violence Councils or Task Forces, public health agencies, social services agencies, medical, military, business, and faith communities (Gwinn, 2003), mental health providers, attorneys, and mediators – with any government agency or not-for-profit organization that responds to batterers or victims.

**B. The military requires it.**

Another important reason to pursue the implementation of MOUs with civilian authorities regarding response to intimate partner violence is simply that military policy now requires it. Where these agreements were once left to the discretion of base commanders and other commanding officers, this kind of formalized collaboration is now required.

The Defense Task Force on Domestic Violence strongly recommended that the military services require installation commanders to develop Memoranda of Understanding with local community authorities to improve its ability to appropriately and effectively respond to intimate partner violence within the military community. (DoD, 2002, p. 25) "Military installation officials should seek to establish relationships which foster collaboration with community based services for victims of domestic violence; local law enforcement departments; local prosecutor's office(s); and local criminal, civil, and domestic violence court(s). *The ultimate goal being the improvement of command awareness of domestic violence issues, improvement of the delivery of*

*services to and safety of victims, and increased accountability of offenders.*” (Ibid., p. 26, emphasis added.) In its reply to the recommendations, the Defense Department agreed to amend its regulations to require such collaboration. (DoD Response, 2002)

Recently promulgated revisions of prior policy statements direct the military service branches and local installation commanders to improve their coordination with surrounding communities and to cooperate in responding to intimate partner violence incidents. The Department of Defense Directive to the Family Advocacy Program (FAP) (which is located within the installation command structure, or is contracted for by the commanding officer of the installation) states, “It is DoD policy to: . . . 4.5 Cooperate with responsible civilian authorities and organizations in efforts to address [child abuse and domestic abuse].” It goes on to assign responsibility to the Service Secretaries to “5.2.8. Encourage local commands to develop memoranda of understanding providing for cooperation and reciprocal reporting of information with the appropriate civilian officials . . .”(DoDDIR) 6400.1, 2004, Section 4, “Policy.”)

Don’t let the word “encourage” convince you that this is an optional task.

In the Department of Defense program manual for the Family Advocacy Program, which sets program standards, is this directive: “Any necessary and appropriate written MOU shall be developed with Federal, State, local, and foreign governmental agencies and *with local civilian community organizations* to facilitate the implementation of the FAP. When possible these shall ensure continued military involvement with the involved military families.” (DOD 6400.1-M, 1992, C1.2 “Memoranda of Understanding (MOUs) and Contracts for the FAP Services.” Emphasis added in this and following selections from this document.) In further sections of this manual, are these requirements: “C3.1.2. Local law enforcement agencies shall be requested to provide access to reported child and spouse abuse incidents involving military personnel and families. *These review procedures shall be included in the installation MOUs with these agencies.*” “C3.1.6. A 24-hour a day reporting mechanism shall be established for receiving reports of alleged child or spouse abuse, including those reports received from military and civilian law enforcement agencies, medical facilities, the local public child protective services agency, and from individuals wishing to report cases of alleged child or spouse abuse in military families.” “C3.2.3: “FAP staff shall establish a reporting system to ensure that military law

enforcement, military investigative services, civilian law enforcement agencies, and the public child protective services agency are notified during the investigative phase of a child or spouse abuse incident.” Of course, the MOU should also address when military law enforcement and Family Advocacy Programs will share information with civilian authorities.

The Navy Law Enforcement Manual states, “Wherever there is an established Domestic Violence Unit (DVU) policies and procedures contained in the MOU or MOA will be adhered to. DVUs are composed of personnel specially trained and readily available to handle domestic violence incidents. Where DVUs exist, they may be primary or first responders to a domestic complaint and patrol personnel might be called upon simply to assist or back up the DVU until the situation has calmed. *This may also apply whenever there is an agreement with civil authorities having concurrent jurisdiction with Navy law enforcement on properties located within or outside the installation proper.*” (OPNAVINST 5580.1A, 2002, Section 1404. Emphasis added. There are similar manuals for the other Services, with similar statements.) Obviously, the MOU is seen as a major tool in accomplishing the mission of the Family Advocacy Program and in improving the military’s handling of cases of intimate partner violence.

In addition to these efforts of the Defense Department and the Military Services to incorporate the work of the Defense Task Force into their policies and procedures, Congress continues to issue legislative directives that will require installation commanders to collaborate with civilian authorities in their procedures. For example, the Armed Forces Domestic Security Act (Public Law 107-311, amending Chapter 80 of title 10, U.S. Code by inserting a new section, §1561a after §1561.) became law on December 2, 2002. This law makes orders for protection issued by civilian judges fully enforceable on military installations, with the same effect as in the jurisdiction in which the order was issued. The law requires the Secretary of Defense to issue regulations for how this will be accomplished; however, it is certain that this will require coordination between civilian and military authorities. Congress is currently working on enhancements to this Act. (H.R. 5391, 2004)

The military on Oahu currently has no Memoranda of Understanding with Honolulu Police Department or with the Family Court of the First Circuit. Hickam Air Force Base had negotiated one MOU with the Victim Witness Assistance Division of the Honolulu Prosecutor’s Office as of

August 2004. The First Circuit Court is currently working with the DoD liaison to replace its informal agreement with HASP with a system in which court orders will be mailed to the appropriate commands. (Nishijo, 2005; Harris, 2005; Santos, 2005; Lee, 2004)

## **WHAT DOES A MEMORANDUM OF UNDERSTANDING LOOK LIKE?**

The well-written MOU for cooperation with civilian police and courts in responding to domestic violence incidents would include the following sections (CO Guide, as of March 24, 2005):

1. Statement of Purpose
2. Explain and clarify jurisdiction with regard to responsibility for responding to, investigating and prosecuting incidents on and off bases, involving both military and civilian offenders and victims
3. Procedures for responding to and investigating and prosecuting incidents on and off base (including collecting information from offenders and victims about military affiliation), for forwarding of civilian court orders to “the appropriate installation SJA” and the “law enforcement office” and the enforcement of these orders, for forwarding of incident and investigation reports to “the installation law enforcement office” and appropriate action on these reported violations, and for notification of FAP and commanding officers.
4. Designate recipients of reports and orders and other information.
5. Procedures for informing civilian law enforcement of the existence of Military Protective Orders and for civilian law enforcement to report violations to military law enforcement.
6. Procedures for informing victims of installation services and other resources
7. Sharing of facilities for coordination of efforts
8. Regular meetings to review procedures and cases
9. Amendment procedures

## **RECOMMENDATIONS**

For the military, the question is not whether to negotiate Memoranda of Understanding, but rather who to involve, at what level, and how centralized the response should be.

Commanders of military installations on Oahu must begin to formalize working

relationships with civilian law enforcement, courts, and social services. At a minimum, this requires MOUs with the Honolulu Police Department, Honolulu County Sheriff Department, Honolulu Prosecutor's Office, Hawaii Judiciary (First Circuit Court and District Courts), Honolulu Fire Department, emergency medical services, Hawaii Coalition Against Domestic Violence, Domestic Violence Clearinghouse and Legal Hotline, Parents and Children Together, Hawaii Departments of Health and Child and Family Services, local shelters, hospitals, the Sexual Abuse Treatment Center, the Victim-Witness Kokua program at the prosecutor's office. Military agencies to include are base security and law enforcement, federal law enforcement, military investigative services, Family Service Centers and Family Advocacy Programs, legal services and Staff Judge Advocates, medical clinics and treatment facilities, and the military shelter.

Commanders must investigate, acquire, and commit to providing funding and billets to support the implementation and monitoring of MOUs. This commitment should include paying a fair share of the costs of civilian law enforcement, emergency response, and social services costs (both government and not-for-profit agencies).

Memoranda of Agreement should clearly accomplish the goal of making offenders accountable, of placing responsibility for holding offenders accountable on military and civilian authorities rather than on victims, and of ensuring the safety of victims and their children. At a minimum, this means working to institute a strong coordinated community response that includes formalized working relationships and explicit procedures for cooperation among military and civilian authorities. The goal is to end tolerance of domestic violence.

Given the complexity and sheer numbers of potential responders to domestic violence in both the civilian and the military communities, installation commanders should seek to establish a centralized coordination and liaison office to bring together the agencies that must work together, to simplify coordination, to simplify victim access to resources, to ensure offenders are held accountable, and to make use of the system knowledge of all responders in developing the effective policies and procedures to be formalized in the MOUs. An example of this sort of centralized office is San Diego's Family Justice Center.<sup>14</sup>

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<sup>14</sup> Resource information can be found at [www.sandiegodvunit.org](http://www.sandiegodvunit.org), [www.sandiegodvcouncil.org](http://www.sandiegodvcouncil.org) and [www.familyjusticecenter.org](http://www.familyjusticecenter.org).

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