

## **THE LEGAL ROAD TO FREEDOM**

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### **Abstract**

The law is a tool that can help constrain the violence of batterers and assist battered women and children in their efforts to achieve lives free of violence. Historically, this was not the case. This paper presents a brief history of the evolving law on domestic violence. It then describes how research on domestic violence has informed legal reform. Finally, it provides an overview of current law designed to end the violence, afford battered women safeguards against future abuse, mandate restitution and offer resources for independent, violence-free living.

The search for freedom from domestic violence is often a long and arduous process and it cannot occur until battering and terrorism cease. Even then, it is obstructed unless the battered woman can achieve autonomy and self-determination. The law is a tool that can facilitate the search for safety and freedom. But, historically, the law protected perpetrators. This paper first presents a brief history of the evolving law on domestic violence. It then examines the phenomenon of domestic violence and its impact on battered women and children. Finally, it provides an overview of the legal strategies now available in most states that may put an end to the violence, afford battered women safeguards against future abuse, mandate compensation for the losses imposed by the abuse, and offer resources essential for independence and safety.

### **HISTORY OF LAW ON DOMESTIC VIOLENCE.**

Violence against wives is a right men exercised with impunity for centuries. This prerogative of men has been articulated in the precepts of religion, philosophy and law throughout the northern hemisphere. Physical violence against wives was deemed necessary for the "well-being" of women. It was couched in terms of corrective discipline and chastisement of erring wives (Davis, 1972). A medieval Christian scholar propagated *Rules of Marriage* in the late 15th Century. These specified:

When you see your wife commit an offense, don't rush at her with insults and violent blows.... Scold her sharply, bully and terrify her. And if this doesn't work...take up a stick and beat her soundly, for it is better to punish the body and correct the soul than to damage the soul and spare the body.... Then readily beat her, not in rage but out of charity and concern for her soul, so that the beating will redound to your merit and her good. (Davidson, 1978, at p. 99)

British common law later embraced, but limited, the husband's authority to assault wives by adopting the "rule of thumb" which permitted a man to beat his wife with a "rod not thicker than his thumb" (Davidson, 1977).

Jurists and legislators in the United States followed in the tradition of the European clergy and lawmakers and approved the use of men's violence against their wives.

In 1824 the Mississippi Supreme Court in *Bradley v. State* voiced approval of the husband's role as disciplinarian and stated its belief that the law should not disturb that role: Let the husband be permitted to exercise the right of moderate chastisement, in cases of great emergency, and use salutary restraints in every case of misbehaviour, without being subjected to vexatious prosecutions, resulting in the mutual discredit and shame of all parties concerned. *Bradley v. State*, 1 Miss. 156 (1824) (U.S. Commission on Civil Rights, 1982)

Not until 1871 did a court in this country rescind the legal right of men to beat their wives.

The privilege, ancient though it be, to beat [one's wife] with a stick, to pull her hair, choke her, spit in her face or kick her about the floor, or to inflict upon her like indignities, is not now acknowledged by our law.... [I]n person, the wife is entitled to the same protection of the law that the husband can invoke for himself.... All stand upon the same footing before the law "as citizens of Alabama, possessing equal civil and political rights and public privileges." *Fulgham v. State*, 46 Ala. 146-47 (1871) (U.S. Commission on Civil Rights, 1982)

But the highest court of another state subsequently disagreed and endorsed a limited right of violence against wives:

If no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive. *State v. Oliver*, 70 N.C. 60, 61-62 (1874) (U.S. Commission on Civil Rights, 1982)

In 1882, Maryland was the first state to pass law that made wife-beating a crime, punishable by 40 lashes or a year in jail (Davidson, 1977). Nonetheless, over the course of the ensuing century, men's use of violence went basically unfettered. Although technically no jurisdiction in this country now permits a husband to strike his wife or a man to assault his partner (U.S. Commission on Civil Rights, 1982), the reality is that men still use violence against wives without fear of reprisal in many jurisdictions.

### **ISSUES ADDRESSED IN RECENT LEGAL REFORM.**

It was not until the late 1970's that the law started to become an ally of battered women. The women's liberation movement of the late '60's birthed women's support centers and telephone crisis lines. Battered women quickly responded, identified their plight and sought assistance. Women's advocates and attorneys heard stories of domestic terrorism that had been unspoken (Schechter, 1982). The secret about violence against women in intimate relationships covered domestic brutality of astounding proportions. Advocates, lawyers and legislators began to look for legal solutions based in the experience of battered women; not based in common misconceptions about women's masochism, men's passion or marital dysfunction. The task of fashioning statutory law to confront domestic violence and to sustain its victims has not been an easy one. The web of control and terror woven by batterers is not readily unraveled. It is complex and pervasive. Those crafting domestic violence law in the last two decades have recognized that the law must address several critical issues to provide effective relief. Some of these pivotal issues include:

**Batterers use violence as a tool to achieve power and control over their partners and children** (Bowker et al., 1988; Hart, 1988; Ellis, 1987; Pence & Paymar, 1986; Schechter, 1982; Dobash & Dobash, 1979).

Batterers believe they are entitled to the obedience, services, loyalty, and the exclusive intimacy of battered women. They fancy themselves entitled to the control of their mates and have learned they will not suffer adverse consequences if they employ violence as a tactic to achieve or sustain power over their female partners; most batterers view the subservience of women as right and good - in effect, normal (Hart, 1988; Pence & Paymar, 1986; Dobash & Dobash, 1983; Rich, 1979). The wife who disagrees with her battering husband or fails to defer to his preferences risks retaliatory violence (Adams, 1988; Ptacek, 1988; Dobash & Dobash, 1983). (Hart, 1990, p. 319)

The risk of violent assaults on battered women increases when a woman challenges the batterer's control over her, when she takes action on her own behalf that may set back his interests, and when she acts in a way that clearly advises him that she contemplates a future life without him (Ellis, 1987).

**Batterers often increase the severity of violence toward partners at the time of separation.** Many people, including clinicians, believe that battered women will be safe once they separate from the batterer. They also believe that women are free to leave abusers at any time. However, leaving does not usually put an end to the violence. Batterers may, in fact, escalate their violence to coerce a battered woman into "reconciliation" or to retaliate for the battered woman's abandonment of the batterer. Men, who believe they are entitled to an ongoing relationship with their partners, or that they "own" them, view their partners' departure as ultimate betrayal which justifies retaliation (Saunders & Browne, 1990; Dutton, 1988; Bernard et al., 1982).

Evidence of the gravity of separation violence is overwhelming. Up to 3/4 of domestic assaults reported to law enforcement agencies may be inflicted after separation of the couple (U.S. Dept. of Justice, 1983). One study revealed that 73% of the battered women seeking emergency medical services sustained

injuries after leaving the batterer (Stark et al., 1981). Women are most likely to be murdered when attempting to report abuse or to leave an abusive relationship (Sonkin et al., 1985; Browne, 1987). Because leaving may be dangerous does not mean that the battered woman should stay or is safer remaining with the batterer. Cohabiting with the batterer is highly dangerous since violence usually increases in frequency and severity over time and as a batterer may engage in preemptive strikes, fearing abandonment or anticipating separation even before the battered woman reaches such a decision (Hart, 1990; Browne, 1987; Walker, 1984). Many batterers who kill their female partners acknowledge that they did so because the woman stated that she no longer loved or trusted the violent partner (Hart, 1991a). Although leaving may pose additional hazards, ultimately a battered woman may best achieve safety and freedom apart from the batterer (Bowker, 1983).

**Men who batter their wives/partners often endanger and abuse their children.** Most children of battered women witness the violence of their fathers against their mothers, and some experience symptoms equivalent to those of children who have, themselves, been severely abused (Pagelow, 1989). Those boys who witness their fathers' abuse of their mothers are more likely to inflict severe violence against intimates as adults than those who grow up in homes free of abuse (Hotaling & Sugarman, 1986). Data suggest that girls who witness maternal abuse may tolerate abuse as adults more than girls who do not (Hotaling & Sugarman, 1986).

Between 50% and 70% of the men who batter their wives also abuse their children (Pagelow, 1989; Walker, 1982). Severe child abuse usually occurs in the context of domestic violence, and the onset of child abuse usually post-dates abuse of the mother (Stark & Flitcraft, 1985). The more grievous the abuse of the mother, the greater the likelihood that child abuse will be severe (Bowker, Arbitell & McFerron, 1988).

Abuse of children by batterers may be more likely when the marriage is dissolving, the couple has separated, and the husband and father is highly committed to continued dominance and control of the mother and children (Bowker, Arbitell & McFerron, 1988). Since...abuse by husbands and fathers is instrumental, directed at subjugating, controlling and isolating, when a woman has separated from her batterer and is seeking to establish autonomy and independence from him, his struggle to... dominate her may increase and he may turn to abuse and subjugation of the children as a tactic of... control of their mother (Stark & Flitcraft, 1988; Bowker, Arbitell & McFerron, 1988). (Hart, 1990, p. 322) Battering men also use custodial interference as a tool to terrorize battered women or to retaliate for terminating the relationship (Hart, 1990). About 40.4 children are abducted by a parent each *hour* in this country. About half of the abductions are short-term manipulations around custody orders, but the other half involve concealing the whereabouts of the child for longer periods of time or taking the child out of state (Finkelhor, Hotaling & Sedlak, 1990).

Intervention to stop the violence and safeguard victims can enable children from violent homes to avoid these risks and achieve non-abusive adult relationships (Browne, 1991; Jaffe et al., 1990).

**Battered women and their dependent children are often economically compelled back into relationship with batterers.** Women and children suffer substantial economic loss upon separation and divorce in this country. One study discovered that the standard of living of women plunged 73% after divorce while that of divorcing men increased by 42% in the same time-frame (Weitzman, 1985). Many women who establish households independent of battering husbands/partners find themselves in poverty. The number of female-headed households living below the poverty line has nearly doubled since 1970. Two out of three adults living in poverty are women. A recent Philadelphia study discovered that 1/3 of all children are living below the poverty level, and for black children, the poverty rate is a staggering 60% (Henninger, 1986).

In 1987, only 42.8% of all fathers ordered to pay child support fully complied with the court orders, while 21.4% made partial payment and 35.7% paid nothing. The average award was only \$2,710/year/family (Bureau of Census, 1987). The 1986 Philadelphia divorce study found that men who batter are less likely to pay support than men who do not use violence towards their intimates (45% as compared to 76%), and batterers are less likely to fully comply with child support orders (28.3% as compared to 49%) (Kurz & Coughy, 1989).

Economic viability appears to be a critical factor in the decision-making of battered women considering separation from the batterer (Aguirre, 1985; Strube & Barbour, 1983). The most likely predictor of whether a battered woman will permanently separate from her abuser is whether she has the economic resources to survive without him (Gondolf, 1988; Okun, 1986). Three critical ingredients of economic independence for battered women include income from a source other than the batterer, adequate transportation and sufficient childcare arrangements (Gondolf, 1988).

**Domestic violence is costly, as are its remedies.** Former Surgeon General Everett Koop identified violence against women by their partners as the number one health problem for women in the United States. Domestic violence causes more injuries to women than automobile accidents, muggings, and rapes combined (Koop, 1989). The severity of injuries sustained in domestic violence assaults is significantly greater than that sustained in stranger assaults (Finesmith, 1983). "Injuries inflicted in domestic violence incidents are as serious as, or more serious than, injuries inflicted in 90% of all violent felonies" (Attorney General's Family Violence Task Force, 1989). More than \$50 million is paid in medical costs related to abuse of intimate adult partners in the U.S. each year. Yet, the emotional and psychological abuse inflicted by batterers may be even more costly than the physical injuries (Straus, 1987).

Batterers universally destroy family property: telephones, televisions, cars, walls, children's favorite toys, and the clothing of battered women are frequently targeted by the batterer (Ganley, 1981; Fortune, 1981). The financial cost of this destruction is substantial and although national data are not available, battered women seeking shelter in domestic violence programs report that the losses sustained through batterer property destruction prior to separation average \$10,000 per perpetrator (Hart, 1991b). Battered women's service providers report that the costs of relocation for battered women displaced by domestic violence is a minimum of \$5,000 per relocation (Hart, 1991b).

**The adverse consequences of domestic violence must be substantial for perpetrators to cease their acts of terrorism.** Research demonstrates that men stop battering women partners to the extent that they perceive that penalties for further violence will be both certain and severe (Carmody & Williams, 1987; Jaffe, 1986). It appears that most batterers engage in a cost/benefit analysis in electing to continue or terminate their violent assaults on wives or women partners. In those jurisdictions where the courts and the criminal justice system respond to domestic violence as serious criminal conduct and impose sanctions accordingly the cost/benefit balance tips in favor of desistance (Hart, 1990a; Attorney General's Family Violence Task Force, 1989).

A leading study demonstrates that where police arrest perpetrators of domestic violence rather than separating the couple or mediating between the victim and offender, the arrested perpetrators are significantly less likely to recidivate within six months than those offenders with whom the police conciliate or take no action (Sherman & Berk, 1984).

Preliminary data suggest that court-mandated treatment following arrest and prosecution for domestic assaults may substantially contribute to the reduction in severe violence by batterers (Dutton, 1986; Jaffe, et al., 1986). Those completing court-mandated treatment appear less likely to recidivate than those terminating before completion (Edelson & Grusznski, 1988).

All of the above is relatively new knowledge, gleaned from the experiences of battered women, practitioners and research inquiries. Much of it differs sharply from strongly held cultural beliefs about marital relationships and about the experience of adults and children in families. It suggests a need for reformulating strategies, both legal and clinical, for intervention in domestic violence. Collectively, it gave clear direction to those setting about the task of legal reform.

### **RECENT DEVELOPMENTS IN THE LAW.**

Hearing from divorcing women that they were not able to escape the violence even after separation -- that women were literally hostages of violent husbands -- and that current law failed to protect them from the abuse and actually impeded escape from batterers, legal services attorneys and advocates began in 1975 to fashion statutory law to remedy the problems arising from domestic violence (Fields, 1978). Drafters early recognized that statutory relief would fail to serve battered women if it merely punished batterers for their violence rather than seeking to prevent future violence and to safeguard victims (Finn & Colson, 1990). Testimony offered before legislators and public policy-makers demonstrated that batterers are resistant to change -- unwilling to stop coercive violence, to relinquish the stranglehold of control they exert over the lives of their partners, to allow battered women to establish safe and independent households, and to undertake cooperative and non-abusive parenting (U.S. Commission on Civil Rights, 1982). As a consequence, the legislatures in most states have undertaken comprehensive statutory revision about civil and criminal law to put an end to intimate violence and to enhance the recovery of its survivors. The most effective legislative initiatives forged over the last sixteen years are:

**Civil protection orders.** The grandmother of domestic violence law is the civil protection order. First adopted in 1976, within thirteen years all 50 states and the District of Columbia passed similar legislation. Initially, in most statutes only married people or individuals living in a committed relationship were eligible to petition for relief. But now in most jurisdictions the class of eligible victims is much broader; including the victim who is divorced, who is a current or former family or household member of the perpetrator, who is related by blood or marriage to the batterer, who is the parent of a child of the abuser, and someone who has been sexually or otherwise intimate with the abuse. Gay and lesbian people in intimate relationships are eligible for relief in about half of the states (Finn & Colson, 1990).

All the statutes authorize relief where the adult partner has been abused. More than half also permit an adult household member to seek an order on behalf of a child who alone is the target of abuse (Finn & Colson, 1990). Abuse is usually defined as physical assault, threatened or attempted physical assault or acts of physical menace that instill fear of or risk serious bodily injury. In over half of the states abuse also includes sexual assault of the battered adult, and almost as many states define abuse to include the sexual assault of children. False imprisonment, burglary and property destruction are contained within the scope of abuse in several states (Finn & Colson, 1990).

Statutes permit broad relief. Most include restraining orders, eviction of the perpetrator from the residence of the abused, no-contact or stay-away mandates, child and spousal support awards, child custody provisions, counseling and attorney's fees and other costs. Some statutes also provide for relocation costs, restitution, mandated counseling of perpetrators and orders enjoining the abuser from disposing of the property of the abused or the couple (Finn & Colson, 1990).

Most state statutes provide that only the perpetrator can be compelled to action or restrained by the protection order. Thus, counseling, drug and alcohol treatment or other rehabilitation mandates are directed at abusers. Legislators were intentional in this limitation; they recognized that abusers are solely responsible for the violence and that battered persons should not be subject to penalties for failure to comply with the course of treatment prescribed by the judiciary (Herrell & Hofford, 1990, at p. 25; Finn & Colson, 1990).

In half the states the maximum duration of a protection order is one year. California permits orders for three years while Indiana for only five days, and there is substantial variability in the remaining states (Finn & Colson, 1990).

Civil protection orders may be the most immediate and accessible relief available to victims of crime. In almost half the states victims have access to the courts around the clock. In California, the police can obtain a protection order on behalf of the victim by telephone. Immediate relief can be awarded upon the filing of the petition in all jurisdictions. In half the states there are no filing fees and in the rest the fees may be waived for indigent victims. In almost two thirds of the states a victim need not be represented by an attorney and applicants can obtain assistance from the court in completing petitions (Finn & Colson, 1990).

Civil protection orders can be effective in eliminating or reducing domestic violence when orders are properly issued and enforced. The utility of protection orders seems to depend both on the specificity of the relief ordered and the enforcement practices of the police and the courts. Providing precise conditions of relief makes the offender aware of the specific behavior prohibited. "A *high degree of specificity* also makes it easier for police officers and other judges to determine later whether the (perpetrator) has violated the order" (Finn & Colson, 1990, at p. 2). For orders to be effective, they must be comprehensive; courts should tailor comprehensive relief to the particular safety needs of the victim in each case (Herrell & Hofford, 1990). Legal and personal safety are advanced when battered women can acquire protection orders that confront the coercive controls in violence imposed by batterers, afford battered women and children safe housing and economic support, and exact swift and certain penalties for violation of any provision.

**Domestic violence arrest statutes.** Police have historically had the right to make a warrantless arrest of any suspect they believe has committed a felony even though the police do not observe the commission of the crime (Goolkasian, 1986). While police in most jurisdictions also have had the power to make a warrantless arrest when they witness a misdemeanor, in some states a warrant had to be obtained if the misdemeanor did not occur in the presence of the officer. This has changed dramatically in the past ten years; now state statutes enable police to arrest without a warrant absent observation in specific domestic violence misdemeanors, and in 15 states the codes *require* police to make an arrest when they determine a domestic violence crime has been committed (Zorza, 1991; Lerman & Livingston, 1983). Statutes in at least 25 states permit police to make a warrantless arrest if they determine that a civil protection order has been violated. Codes of another 13 states *require* police to make an arrest where they determine that the perpetrator has violated a civil protection order (Finn & Colson, 1990).

The advantages of warrantless arrests are several. It is easier to take a suspect into custody at the scene than to locate him after obtaining a warrant from the court. Police are more likely to initiate prosecution if they can arrest at the time they respond to the domestic violence call; thus, the perpetrator may be introduced into the criminal justice system earlier and begin the process of desistance before victims are irreparably harmed and perpetrators firmly committed to domestic violence. Offenders more often admit their culpability in the immediacy of an arrest at the scene of the crime. Victims are better protected by prompt arrest, arraignment, and the imposition of special bail conditions or criminal protective orders (Hart, et al., 1990).

Most domestic crimes involving injury should be classified as felonies since injuries produced by domestic violence are as serious as those inflicted in 90% of all violent felonies (Attorney General's Family Violence Task Force of Pennsylvania, 1989; Goolkasian, 1986). Nonetheless, police still identify most domestic violence assaults as misdemeanors. Thus, the expansion of arrest authority to include domestic violence crimes has given law enforcement a powerful tool for domestic violence intervention in situations in which they previously concluded (erroneously or otherwise) that they had no authority to act. Once a police officer concludes that there is probable cause to believe that a domestic violence crime has been committed, the officer should effect an arrest. No state statute permits victims or perpetrators to compel or restrain an officer in his decision about arrest. Clinicians may find it appropriate to advise

clients, whether survivors or perpetrators, of the fact that they cannot exercise control over this decision in most jurisdictions.

Litigation in the last ten years has exerted additional pressure on law enforcement to act diligently to protect the victims of domestic violence. Several police departments across the country that failed to protect battered women have been found liable and have had large damages assessed against them (Carrington, 1989).

**Domestic violence custody statutes.** A majority of the states have adopted statutes requiring courts to consider domestic violence as a factor in custody and visitation determinations. In Washington State if the court concludes that a parent has engaged in child abuse or domestic violence, it is precluded from awarding joint legal custody and it may limit unsupervised residential time of the offending parent with the child. In Arizona, North Dakota, Oklahoma and Wyoming, domestic violence is presumed to be contrary to the best interests of the children and any award of visitation must be designed to best protect the child and the abused parent from further harm. In California, the courts must consider awards of supervised visitation when there is a finding of domestic violence. In Pennsylvania, Montana and Minnesota statutes provide that if a parent is convicted of certain enumerated violent crimes, the court must find that the offending parent does not pose a threat of harm to the child or that it is in the best interests of the child before making an award of custody or visitation to the offending parent. The Pennsylvania custody statute requires the court to take testimony about specialized domestic violence counseling received by the offending parent and about any continuing risk of harm to the child before issuing any order of custody to a parent convicted of specific enumerated crimes. The California Code specifies that both parents and the child may be required to participate in counseling when there is a custody dispute but that the counseling of the parent should be separate and at separate times if the abused person so requests.

Prior to the adoption of these provisions, custody judges routinely concluded that the abuse of a parent by the other was irrelevant in custody proceedings; that violence toward a spouse/partner had nothing to do with one's ability to adequately parent (New York Task Force on Women in the Courts, 1987). Some civil protection order statutes direct courts to craft specific provisions in temporary custody awards to safeguard the battered adult and children. As a consequence, advocates for battered women have begun to engage in safety planning with battered women and children to identify the special needs of abused adults and children when the abuser is allowed custodial access (Hart, 1991c). The safety planning process coupled with the court's approval of the safety conditions recommended by the child have provided essential safeguards and have been great sources of empowerment of children.

**Mandatory custody mediation.** Data from the National Center for State Courts reveal that only a handful of states mandate custody mediation by statute. In about one-third of the states, various judicial districts mandate custody mediation by local court rule (Myers, et al., 1988). In several states, mediation of custody disputes may not be compelled by the courts in the context of domestic violence. Feminist scholars and advocates for battered women strongly oppose the imposition of mediation in the resolution of custody disputes (Lefcourt, 1989; Bruch, 1988). The only research that squarely addresses the question of whether victims are better protected from future violence by adversarial rather than mediation divorce processes demonstrates that battering men inflict less post-separation violence if the divorce proceedings are based in advocacy rather than in conciliation (Ellis, 1987, 1989; Ellis & Wight-Peasley, 1986).

The process of mediation requires cooperation, honest communication, equivalent power, similar investment in the outcomes, voluntary participation, and an environment of safety. No matter how skillful the mediator, batterers cannot be quickly transformed so that the mediation process can proceed with

integrity (Pagelow, 1990; Hart, 1990). Custody mediation is not a legal tool that enhances custody outcomes for battered women and children (Bruch, 1988; Sun & Thomas, 1987).

**Expert testimony on the experience of battered women.** Many appellate courts across the country have generated case law that permits the defense to offer expert testimony on the perceptions, beliefs and experiences of battered women defendants in criminal trials where battered women are charged with killing or assaulting their battering partners. A handful of state legislatures have revised state codes to affirmatively permit this expert testimony. Courts have been receptive to expert testimony by forensic specialists, clinicians, and, to a lesser extent, by battered women's advocates.

Law reform in this area has been partially a consequence of judicial education about the counter-intuitive realities of domestic violence. Appellate courts in a significant number of states have concluded that jurors and judges both harbor misconceptions about battering; often they hold strong beliefs that blame victims and exonerate batterers. The judiciary has concluded that if these critical actors in the justice system are not cognizant of the terror imposed and manipulated by batterers, they cannot fairly evaluate the evidence presented at trial without assistance from an expert witness.

The governors of Ohio and Maryland recently granted clemency to battered women who were convicted without the benefit of adequate information about the phenomenon of domestic violence and the impact of batterer violence upon the battered woman defendant. In its last session, the legislature in Texas passed a resolution that requires a review of all the sentences of incarcerated persons who were victims of domestic violence.

**Victim rights statutes.** Since 1965 crime victim reform measures have become an important part of legislative activity in most states. Seventy-four new victim rights statutes were enacted across the country from 1981 through the first quarter of 1983 (Hudson, 1984). This paper cannot describe all of these victim protective initiatives. Those which have been most helpful to battered women include:

Victim Confidentiality Statutes. The Victims of Crime Act of 1984 (VOCA) prohibits recipients of VOCA grants from disclosing any information about any victim of crime served without the consent of the victim (42 U.S.C. §10604(d)). More than a third of the states have enacted even broader privilege provisions providing for confidential communications between battered women and counselors in domestic violence programs. Some statutes specify that communications which occur within counseling groups in domestic violence centers are, likewise, covered by the privilege (Post, 1991; Marks, 1986). Several states have adopted statutes that provide for the confidentiality of the addresses of both domestic violence programs and of battered women who are seeking to reside at undisclosed locations (Marks, 1986). Beyond this, in California the legislature recently adopted a statute that provides similar protection to the communications between crime victims and victim/witness advocates (10.35 and 10.37 California Evidence Code). The communications privilege accorded battered women in domestic violence programs is not applicable to clinicians working with survivors in other arenas. Many states have adopted clinical privileges for psychologists and psychiatrists, and a lesser number have enacted social worker privilege statutes (Post, 1991; Marks, 1986).

Police Notification Laws. Law enforcement officers in many states are now required by statute to inform battered adults of the availability of civil and criminal protection orders, of crime victims compensation, and of domestic violence services. (See, FL. Statutes, 1987 S. 960.001; 18 Pa.C.S. §2711)

Victim Impact Statements. Victims may submit victim impact statements to the court supporting or opposing proposed plea bargains in many jurisdictions (Hudson, 1984). Victims also have the right to submit impact statements in the sentencing phase of criminal matters, including hearings on the death



penalty (*Payne v. Tennessee*, U.S. \_\_\_\_\_, June, 1991). In many states victims can provide either a statement or testimony before parole boards on the question of discharge from incarceration.

Victim Intimidation Statutes. Many states have adopted legislation to protect victims and witnesses during the pendency of criminal matters. These statutes are often called victim intimidation laws, criminal protective order statutes or criminal stay-away provisions. These orders may be issued against the defendant or any other person who attempts to interfere with a victim or a witness' participation in any stage of a criminal matter.

Research demonstrates the effectiveness of victim intimidation protective orders issued in pre-trial criminal proceedings (Goolkasian, 1986). Although these orders are typically not as broad as the civil protection order, they do usually require the defendant to stay away from the victim or witness and to refrain from any harassment or intimidation. Battered women are generally more cooperative with prosecution when they do not have to live with the defendant prior to trial. The reluctance of a battered woman to participate in the prosecution process may be reduced when she is free from the threats of her partner or those of his family and friends, attempting to dissuade her from testifying, or cooperating with prosecution.

Crime Victim Compensation. In 1988 Congress amended the Victims of Crime Act, requiring state victim compensation programs to make awards to victims of domestic violence. States no longer may deny compensation to a battered woman because of her familial relationship to the offender or because she is sharing a residence with him; the exception to this rule is made where it appears that the offender would reap unjust enrichment as a result of an award.

Most statutes permit recovery for medical and treatment costs resulting from injuries inflicted in the commission of the crime against the victim. Most also pay for loss of earnings when a victim is injured by the crime. Many compensate for replacement services, such as housekeeping and transportation, and most permit recoupment of attorneys fees. Few provide for property recovery.

However, for victims of crime to be eligible, they must report the crime promptly and thereafter cooperate with prosecution. The offender need not be convicted of a crime for the victim to be eligible for compensation (NOVA, 1987). Crime victims compensation awards are usually grants of "last resort." Thus, the crime victim must first look to health and disability insurance for restitution, and funds acquired through litigation may be attached in most jurisdictions for reimbursement of the compensation fund up to the total amount of their award.

Notice of Discharge of Offender. Homicides committed by incarcerated offenders on furlough from correctional institutions in recent years have stimulated legislative activity to assure that victims of crimes have notice that the criminal is no longer in custody. Although definitive research on the rate of violent recidivism by batterers toward partners and family or household members after release from incarceration has not been undertaken, the experience of professionals in the domestic field is that batterers are at high risk of directing post-incarceration violence at partners and children and any persons protecting them (Hart, 1991a). These new statutes require that victims be notified of the offender's discharge from custody at any time from pre-trial release to parole or escape. Few legislatures have adopted this legislation to date.

## **LAW REFORM IMPLEMENTATION.**

The law relating to domestic violence has changed profoundly in the last fifteen years. In every state in the District of Columbia, battered adults can now seek civil protection orders to constrain the violence of abusers. In most states the police may make a warrantless arrest for misdemeanor crimes involving domestic violence. Custody statutes have been modified in about half the states to require courts to

consider domestic violence in fashioning awards of visitation or custody. Several state codes now exempt the victims of domestic violence and child abuse from compulsory divorce and custody mediation. Many states, whether by case law or statute, now permit explicit expert and lay testimony on the history of domestic violence and its impact on the battered woman in criminal trials where battered women claim self-defense, duress or necessity. Governors have begun to address the clemency requests of battered women. In virtually all states, statutes and local rules of court afford victims an array of rights and remedies that enhance victim safety and economic recovery.

Nonetheless, battered women sometimes find that the law may not be an effective tool in the search for safety and independence. The law is an imperfect tool; imperfect because of the social and cultural context in which it is embedded. It works best when all the other systems are collaborating in a concerted effort to end domestic violence. Legal strategies collapse if the consciousness of the community is not aligned against violence, if emergency services and housing are not available to battered women and children, if human service institutions are not cognizant of domestic violence and are not employing strategies to safeguard victims and hold batterers accountable, and if the family and friends of the battered woman and the batterer do not reject violence as an option in intimate relationships and offer support for safety and change. Legal safeguards work best where society embraces practices compatible with the remedies articulated in the law.

But beyond this, the law is imperfect because the application of statutory and case law may be uneven. Courts, prosecutors, police, parole boards and crime victim compensation boards all exercise a great deal of discretion in implementation of the law. Budgets are tight and priorities are often assigned elsewhere. Prestige is not typically accorded those practicing family law or protecting women and children. Backlash against the legal gains of women and children is now being orchestrated by fathers' rights groups and batterers. As a consequence, battered women in some communities may not find the legal relief and safeguards they need.

To counter any erosion of legal protections for battered women and children, professionals across the country are collaborating to make certain that legal results comport with the safeguards anticipated by law reform efforts. Many communities have developed multi-disciplinary task forces to enhance coordinated justice system intervention against domestic violence. Clinicians are active participants in many of these policy-making bodies. Battered women's programs often employ legal advocate specialists who work with the justice system, while simultaneously facilitating legal reform.

The law can be a useful tool for battered women and children seeking safety and independence. As statutory law expands and as justice system practices are tailored to afford battered women ready access to the courts, legal possibilities can become realities for battered women and children (Herrell & Hofford, 1991; Finn & Colson, 1990; Goolkasian, 1986).

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