

# MEMORANDUM

## BACKGROUND RESEARCH

July 10, 1996

**RE:** Survey Findings. *Effects of Legal Services Cuts and Welfare Reform on Battered Women*

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Ayuda conducted a survey in which we interviewed thirty state domestic violence coalitions on the importance of legal services and welfare for battered women and their children. This survey examined the ability of battered women to obtain legal assistance to escape abusive relationships and the role welfare plays in the lives of these women in striving to become financially independent. The survey gives support to the notion that battered women cannot successfully go to court themselves ("pro-se") and obtain effective protective orders. The fallacy that the pro-se system is effective has a grave effect on the lives of women across the country.<sup>1</sup> Many coalitions assert that women who are represented get better and safer results in court. They also report that legal services attorneys have the greatest expertise in domestic violence and protection order cases. They therefore help their clients attain the most effective protection from continued abuse.

Pro-bono attorneys are not a viable alternative because there are not enough who are not effectively trained or equipped to understand the dynamics of domestic violence. If the 60,000 cases involving protection for women and children handled by Legal Services Corporation attorneys each year were to be turned over to the private bar, each State would have to train over 550 pro-bono attorneys.<sup>2</sup> The current training procedure is inadequate and to take on thousands more is simply not realistic. The survey finds that this lack of training and understanding results in fatal consequences for many women. The survey also found that private family law attorneys have little or no understanding of domestic violence laws and dynamics. The assistance they offer battered women can often be ineffective and dangerous.

In addition to legal remedies, the survey finds that welfare is often the only way a woman can actually leave her abuser. Without it, women return to their abusive relationship, putting themselves and their children in danger. As a result, the cycle of violence is passed down to another generation.

### LEGAL SERVICES ATTORNEYS PROVIDE CRUCIAL ASSISTANCE TO BATTERED WOMEN

Many battered women who are represented in protection orders or family law matters are represented by Legal Services Corporation-funded agencies ("Legal Services"). The single largest category of cases handled by the 323 legal services programs is family law, which includes domestic violence matters. In 1993, legal services programs handled over 60,000 cases involving protection for women and children.<sup>3</sup> State coalitions overwhelmingly report that battered women in their states rely on legal services attorneys as practically the sole source of legal representation of battered women in protection order cases and other family matters.<sup>4</sup> Other states reported that inadequate funding has created problems with accessibility, resulting in lower percentages of

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<sup>1</sup>Battered women who have the assistance of legal counsel obtain more protection orders, and the orders they obtain are more effective. The need for effective representation is based in part on a judicial system where judges have outdated and improper views concerning domestic violence. PETER FIND AND SARAH COLSON, NATIONAL INST. OF JUSTICE, CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT 4 (1990).

<sup>2</sup> This is based on an assumption that pro-bono attorneys take on approximately two such cases per year.

<sup>3</sup>LEGAL SERVICES CORPORATION, LEGAL SERVICES COMBATS DOMESTIC VIOLENCE Fact Sheet.

<sup>4</sup>State coalitions report that of the women who are represented in court for protection order or family law cases, the following percentages were represented by legal services attorneys. Mississippi - 100%; Oregon - 80%; Ohio - 75%; Wyoming - 70%; Louisiana - 80%; Wisconsin - over half; West Virginia - 60% (after cuts); Iowa - 75%.

women being represented by legal services.<sup>5</sup> All states, however, stress the need for more legal services representation. The recent cuts in Legal Services have already proven deadly for women who have been turned away.<sup>6</sup>

Legal services funding cuts and inadequate funding levels have barred needy abuse victims from access to attorneys who are domestic violence experts. In Washington, for instance, the lack of funds have forced Legal Services to place stringent restrictions on the women they will represent, including a requirement that a woman must have lost custody of a child before Legal Services will consider her case.<sup>7</sup> Only three Legal Services offices serve the state of Nebraska. There, Legal Services previously only represented battered women in custody cases, and even this service has been eliminated due to the cuts in funding.<sup>8</sup> Missouri has only two legal services offices which are located in metropolitan areas. Thus, most women are forced to file civil protection order petitions on their own (pro-se).<sup>9</sup> In other states, such as Texas and Tennessee, each district determines which services to provide.<sup>10</sup> Both states reported less than 50% of battered women who need representation are represented by legal services attorneys. Access to legal services varies greatly from state to state and between urban and rural areas. These differences make information about accessibility of those services that do exist difficult to obtain.

► *Examples.* THE CRITICAL ROLE ACCESS TO LEGAL SERVICES CAN PLAY FOR BATTERED WOMEN

A woman represented by the Cincinnati Legal Aid Society fled to Texas with her three children. Her abuser found her, beat her, threatened to kill her by putting a gun to her head, and took the youngest child back to Ohio. The Cincinnati Legal Aid Society was able to work with a legal services program in Texas to get the child back, a divorce, permanent custody and child support.<sup>11</sup>

An abuser in Alaska took the children after his wife refused to return to his remote village. The Alaska Legal Services Corporation helped her get her children back, permanent custody and prompted a state criminal investigation where child abuse charges were brought against the abuser.<sup>12</sup>

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<sup>5</sup>In West Virginia, for example, a majority of battered women sought help from legal services before the recent cuts. The cuts resulted in fewer offices; and now, the number is at about 60%, which is a conservative estimate. Telephone interview with Diane Reese, West Virginia Coalition Against Domestic Violence (June 20, 1996). In Massachusetts, one out of every six women referred to legal services by the state coalition is accepted. Written statement by Leslie Staroneck, Massachusetts Coalition of Battered Women's Service Group (July 8, 1996).

<sup>6</sup> Mariella Batista's abuser murdered her in front of their nine year old son just minutes before entering the courthouse for a custody hearing. Legal services' denial prevented Batista from obtaining a protection order and receiving the necessary safety planning that is so crucial for domestic violence victims. William Claiborne, *Abused Immigrant Slain After Plea for Legal Services Help is Denied*, Washington Post, June 5, 1996 at A3.

<sup>7</sup>Telephone interview with Leigh Hofheimer, Washington State Coalition Against Domestic Violence (June 21, 1996).

<sup>8</sup>Telephone interview with Sarah O'Shea, Nebraska Domestic Violence and Sexual Assault Coalition (June 20, 1996).

<sup>9</sup>Telephone interview with Colleen Coble, Missouri Coalition Against Domestic Violence (June 20, 1996).

<sup>10</sup>Telephone interview with Dee Ann Anders, Texas Council on Family Violence (June 25, 1996); Telephone interview with Kathy England, Tennessee Task Force Against Domestic Violence (June 25, 1996).

<sup>11</sup>LEGAL SERVICES CORPORATION, LEGAL SERVICES COMBATS DOMESTIC VIOLENCE Fact Sheet.

<sup>12</sup>*Id.*

## WHY ATTORNEYS ARE NEEDED IN DOMESTIC VIOLENCE CASES

The complexity of the system often hinders battered women from representing themselves (“pro se”). Legal terminology, unequal resources between the parties, the batterer’s emotional control over the victim, problems of credibility, and the lack of technical assistance and knowledge adversely affect battered women who attempt to go into the courts pro se, particularly if custody and property issues are involved.

In all these cases, battered women who must represent themselves in court because they cannot obtain legal assistance often lose custody, get inadequate child support or receive inequitable property awards, especially if their batterers have the resources to hire an attorney.<sup>13</sup> Domestic violence advocates from New York and New Jersey reported that victims who attempt to proceed pro-se do not know how to present their case effectively.<sup>14</sup> Victims do not know what to ask for in restraining orders because they do not understand what is available or what they really need to be safe. Advocates in Wyoming also reported that judges listened to and give more respect to attorneys than domestic violence advocates or battered women who proceed without an advocate.<sup>15</sup> In Kentucky, respondents’ attorneys convince judges to grant Agreed Orders to women who are not represented in which respondents must comply with the provisions of the order but do not admit that the violence ever occurred.<sup>16</sup> These orders are less effective than orders issued after the abuser admits the abuse or if found by a judge to have committed the abuse. In North Carolina, women are held to the same technical, legal, and evidentiary standards in presenting their cases as trained and experienced attorneys. The respondent’s attorney’s objections are sustained because women do not know the procedure for presenting evidence and the respondent’s attorney is usually able to present their evidence without interruption.<sup>17</sup>

Unrepresented battered women do not understand court proceedings. In Missouri, judges will use complex phraseology, such as “placed in apprehension or harm” or “presentation of evidence.” Women do not know the judge is only asking them why they are scared and to tell their story. The curtness of the judges flusters battered women. Unfamiliar with the legal system, women representing themselves do not know that they can ask for a continuance to get counsel, seek help from non-lawyer domestic violence advocates or even that they must appear in court.<sup>18</sup> In Louisiana, women who attempt to file pro-se receive inconsistent responses, depending on the clerk of the parish. Although in many jurisdictions court clerks are supposed to provide information packets and technical assistance on how to file the petitions, they often do not provide this service, leaving women confused and frustrated; some do not even know they are supposed to show up in court.<sup>19</sup> In

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<sup>13</sup>Telephone interview with Vickie Smith, Illinois Coalition Against Domestic Violence (June 21, 1996); Telephone interview with Kathy Hodges, North Carolina Coalition Against Domestic Violence (June 21, 1996); Telephone interview with Diane Reese, West Virginia State Coalition Against Domestic Violence (June 21, 1996); Telephone interview with Kathleen Kurnick, Wisconsin Coalition Against Domestic Violence (June 21, 1996); Telephone interview with Maureen McKnight, Oregon Coalition Against Domestic & Sexual Violence (June 24, 1996);

<sup>14</sup>Response to poll from Larissa, former domestic violence advocate at the Bergen County Courthouse (received June 21, 1996).

<sup>15</sup>Telephone interview with Mary Dawn Wright, Domestic Violence Shelter in Casper, Wyoming (June 21, 1996).

<sup>16</sup>Telephone interview with Sherry Currens, Kentucky Domestic Violence Association (July 8, 1996).

<sup>17</sup>OVERVIEW OF SURVEY RESULTS, MEETING THE LEGAL NEEDS OF BATTERED WOMEN IN NORTH CAROLINA, NORTH CAROLINA COALITION AGAINST DOMESTIC VIOLENCE.

<sup>18</sup>Telephone interview with Colleen Coble, Missouri Coalition Against Domestic Violence (June 20, 1996).

<sup>19</sup>Telephone interview with Patsy Taylor, Louisiana Coalition Against Domestic Violence (June 24, 1996); Telephone interview with Lynne Rosenthal, Florida Coalition Against Domestic Violence (July 8, 1996).

Washington, judges do not listen to women and make it very difficult for any woman who attempts to go through a case herself.<sup>20</sup>

In addition, many states refuse to allow a woman to represent herself in civil protection order and other family court cases. Mississippi, Indiana, North Dakota, Tennessee coalitions report that judges will not allow women to enter the courtroom without an attorney.<sup>21</sup> In Tennessee, the courts call legal services for assistance if a woman does not have representation.<sup>22</sup>

Legal services attorneys across the country have been daily facilitating access to protection and custody of battered women and their children across the country. Legal services attorneys have developed vast experience in an area of law that is not common knowledge to most family law or pro-bono attorneys. This expertise goes beyond representation in court to include techniques for helping women and children plan for their safety. Restricting funds to legal services programs will reduce the numbers of attorneys who are experts in domestic violence who can assist battered women. Funding restrictions are also cutting off some battered women totally from any access to those legal services that do exist. The cuts in Legal Services assistance will effectively preclude many battered women, who often have few resources, from entering the courtroom at all to get civil protection, custody or support orders.

*Other examples.* PROBLEMS THAT OCCUR WHEN BATTERED WOMEN MUST REPRESENT THEMSELVES

- In rural Arizona, women who proceed pro-se have been told that they could be held criminally responsible if they initiate contact with their abuser, reinforcing the batterers control.<sup>23</sup>
- Judges leave out important provisions of protection orders.<sup>24</sup>
- Battered women may get fees assessed against them instead of waivers. In rural Indiana, the petitions are not even make available to some victims, forcing them to hire a private attorney. If they cannot afford one, they do not get relief. Petitions are not made available to women because battering is not deemed to be a problem worth the court's time.<sup>25</sup>
- In Kentucky, some judges will not award custody to a woman who does not have an attorney. The respondents will then go to circuit court and get custody. Once this occurs, the women will return to their abusers.<sup>26</sup>
- Women often do not know how to define abuse, recognize sexual assault or how to present it to a judge.<sup>27</sup>
- In Wyoming, some offices require that a potential client bring in two letters of rejection before legal

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<sup>20</sup>Telephone interview with Leigh Hofheimer, Washington State Coalition Against Domestic Violence (July 1, 1996).

<sup>21</sup>Telephone interview with Bonnie Pzlecek, North Dakota Council on Abused Women's Services (June 20, 1996); Telephone interview with Phoebe Davis, Mississippi Coalition Against Domestic Violence (June 26, 1996); Telephone interview with Laura Berry, Indiana Coalition Against Domestic Violence (July 2, 1996); Telephone interview with Kathy England, Tennessee Task Force Against Domestic Violence (June 25, 1996).

<sup>22</sup>Telephone interview with Kathy England, Tennessee Task Force Against Domestic Violence (June 25, 1996).

<sup>23</sup>Telephone interview with Terry Hanson, Arizona Coalition Against Domestic Violence (July 1, 1996).

<sup>24</sup>Telephone interview with Lynne Rosenthal, Florida Coalition Against Domestic Violence (July 8, 1996).

<sup>25</sup>Telephone interview with Laura Berry, Indiana Coalition Against Domestic Violence (July 2, 1996).

<sup>26</sup>Telephone interview with Sherry Currens, Kentucky Domestic Violence Association (July 8, 1996).

<sup>27</sup>Telephone interview with Maureen McKnight, Oregon Coalition Against Domestic & Sexual Violence (June 24, 1996).

services will take them.<sup>28</sup>

- In Massachusetts, an advocate reported that the effects of violence on victims can make them present themselves in ways that may harm them in court. The anxiety, numbing, anger, depression and unkempt appearance battered women may experience can make them appear “unfit.”<sup>29</sup>
- Women in the system will often blame themselves for the violence and thus are less likely to be prepared for the court process. In Kansas, an advocate reported that women are afraid to bring up the abuse for fear that they will be perceived as vindictive.<sup>30</sup>

#### PROBLEMS BATTERED WOMEN HAVE WITH PRIVATE ATTORNEYS

When battered women can no longer gain access to legal services attorneys to represent them in civil protection order, custody and child support matters, they will effectively have no access to competent legal council. Most private attorneys who practice family law know little about domestic violence, have no experience developing safety plans and often allow their own perceptions about domestic violence to interfere with competent representation.<sup>31</sup> Private attorneys are not sensitive to domestic violence issues nor are they familiar with the law in this area, especially those concerning the woman’s safety. In Wisconsin, for example, private attorneys tell women that a restraining orders would just get in the way of the divorce proceedings and convince them to accept joint custody.<sup>32</sup> In Louisiana, private attorneys are largely unaware of the Post-Separation Family Violence Relief Act, a state statute that requires any evidence of family violence to be considered in custody cases.<sup>33</sup> A similar problem exists in North Dakota where many private attorneys do not understand the significance of the state Battery and Custody Statute.<sup>34</sup>

Many private attorneys do not understand protection orders and their ability to provide a whole range of remedies that are not fully available in a divorce proceeding. When attorneys who are insensitive to the dynamics of domestic violence present cases before unknowledgeable judges, the results are often court-ordered mediation in domestic violence cases.<sup>35</sup> Recently, in Louisiana, two women were killed in the courthouse during the intermission of their mediation sessions.<sup>36</sup> Private attorneys often do not know how to disclose or ask for information. They underestimate the power and control the abuser has over the situation. They lack an

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<sup>28</sup>Telephone interview with Rosemary Bratton, Wyoming Coalition Against Domestic Violence & Sexual Assault (June 20, 1996).

<sup>29</sup>Written statement by Leslie Starsoneck, Massachusetts Coalition of Battered Women’s Service Group (July 8, 1996).

<sup>30</sup>Telephone interview with Jan Guthrie, Attorney in Kansas (July 2, 1996).

<sup>31</sup>Some attorneys in California feel that domestic violence should be kept out of court proceedings because it is “muddy up” the case and “won’t look good.” Telephone interview with Gail Blasie, California Alliance Against Domestic Violence (June 25, 1996). In Montana, attorneys tell battered women that getting a restraining order or fighting against joint custody will make them look unreasonable. The attorneys make these women think they are crazy for attempting to get such remedies. Telephone interview with Jackie Garcia, Creative Actions (July 9, 1996).

<sup>32</sup>Telephone interview with Kathleen Kurnick, Wisconsin Coalition Against Domestic Violence (June 21, 1996).

<sup>33</sup>Telephone interview with Patsy Taylor, Louisiana Coalition Against Domestic Violence (June 24, 1996).

<sup>34</sup>Telephone interview with Bonnie Pzlecek, North Dakota Council on Abused Women’s Services (June 20, 1996).

<sup>35</sup>Attorneys in Massachusetts may coerce their clients into mediation, not realizing the potential for violence. This results in risks to their clients’ physical safety, loss of children and loss of financial resources. Written statement by Leslie Starsoneck, Massachusetts Coalition of Battered Women’s Service Group (July 8, 1996).

<sup>36</sup>Telephone interview with Patsy Taylor, Louisiana Coalition Against Domestic Violence (June 24, 1996).

understanding of evidence that is important, such as police reports and the impact of domestic violence on women generally.<sup>37</sup>

Private family law attorneys will often enter stipulations to keep violence evidence out of custody cases resulting in the abuser winning the custody case. There are currently not enough trained volunteer attorneys in any jurisdiction in the United States to handle the cases of all the battered women who were previously being represented by legal services attorneys. There are a few very good volunteer attorneys who represent battered women, but even in jurisdictions with pro-bono training programs the numbers of volunteer attorneys who are experts in domestic violence or who are mentored by a domestic violence expert who does not work for a legal services program are very small.<sup>38</sup> To often volunteer attorneys are not fully trained in domestic violence dynamics. Few volunteer attorneys have the experience to routinely do safety plans with their clients that will enable them to identify weapons and seek emergency orders. Some volunteer attorneys do little preparation, and complex cases can cause unforeseen and disastrous results, leaving other attorneys little time to remedy the situation.<sup>39</sup>

Battered women cannot rely upon assistance from private attorneys, paid or volunteer. In Idaho and Alabama, the state domestic violence coalitions reported that private attorneys did not even handle any protection order cases.<sup>40</sup> Kentucky reported that particularly in rural areas where the “old-boy” network is strong, private attorneys will not represent the women because they know the abuser.<sup>41</sup>

► *Examples.* PRIVATE ATTORNEYS DO NOT UNDERSTAND THE DYNAMICS OF DOMESTIC VIOLENCE

In Wisconsin, R’s private bar attorney instructed her to accept joint custody. R’s former husband killed her as he was picking up the kids at her home. R’s private attorney failed to see the importance of arranging safe visitation that minimized contact between the adult parties. The husband had previously abducted the children and was found with an arsenal of weapons. R was able to obtain temporary custody, but when she ran out of money, the attorney convinced her to agree to this visitation order that led to her murder.<sup>42</sup>

In South Dakota, G, who was represented by a private attorney, lost custody of the children she had with her abuser and a child she had before she met the abuser. At the hearing, evidence that the batterer raped G two weeks after she had a baby and a episiotomy was presented. The batterer got custody of all of these children, in addition to receiving alimony from G, because G’s attorney did not understand the dynamics of domestic violence in the custody hearing.<sup>43</sup>

In New York, D’s batterer, who was an attorney, abused her and her child. She got a divorce and received sole custody of her child in one county. D then went back to court in another county to ask for

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<sup>37</sup>Telephone interview with Sarah O’Shea, Nebraska Domestic Violence & Sexual Assault Coalition (June 20, 1996). Telephone interview with Leigh Hofheimer, Washington State Coalition Against Domestic Violence (June 21, 1996).

<sup>38</sup>Telephone interview with Kelly Carmody, National Legal Aid and Defender Association (June 25, 1996).

<sup>39</sup>Telephone interview with Sarah O’Shea, Nebraska Domestic Violence & Sexual Assault Coalition (June 20, 1996).

<sup>40</sup>Telephone interview with Carol Gundlach, Alabama Coalition Against Domestic Violence (June 20, 1996); Telephone interview with Sue Fellen, Idaho Coalition Against Sexual & Domestic Violence (June 21, 1996).

<sup>41</sup>Telephone interview with Rich Seckel, Kentucky Domestic Violence Association (June 21, 1996).

<sup>42</sup>Telephone interview with Kathleen Kurnick, Wisconsin Coalition Against Domestic Violence (June 21, 1996).

<sup>43</sup>Telephone interview with Verlaine Gullickson, South Dakota Coalition Against Domestic Violence & Sexual Assault (June 21, 1996).

permission to relocate. In exchange for permission to relocate, D's attorney convinced her to agree to more than generous visitation rights for the batterer. The batterer had the child every other weekend, every holiday and every school vacation. Further, D had to pay for all costs of visitation and transportation. She had to drive the child to the batterer several hours away every other weekend, even though she could not drive because she suffered two detached retinas as a result of the abuse. Her attorney told her that he just wanted to get her permission to move, and they could go back later and change the visitation order. When she attempted to change the visitation, however, she was told by numerous courts that she had signed a valid enforceable contract.<sup>44</sup>

In Wisconsin, a Hmong immigrant woman, who did not speak English, obeyed her attorney when he told her to agree to visitation with the drop-off spot at her house. The private attorney never asked for provisions for her safety and was killed when he came to drop off the children.<sup>45</sup>

In Wyoming, a private attorney sent a battered woman home to where her abuser was staying. A domestic violence advocate informed the attorney that the judge had issued a mutual restraining order, so if she went home, she could be found in contempt for violating the order. The private attorney told the domestic violence advocate that he knew what he was doing because he was an attorney.<sup>46</sup>

Also in Wyoming, an elderly 71 year old woman, P, with cancer was being abused by an 81 year old man. P's attorney allowed the 81 year old abuser to have the house because he felt sorry for him and told P to go to the bank and take the savings.

*Other examples.* PROBLEMS BATTERED WOMEN HAVE HAD WITH PRIVATE ATTORNEYS

- In Arizona, a private attorney let a divorce case continue for over a year without obtaining interim support or a temporary restraining order.<sup>47</sup>
- Attorneys do not know the process for obtaining protection orders.<sup>48</sup>
- Attorneys advise battered women to meet with their abusers, do not recognize the tools abusers use, such as children, to control the woman and do not understand the actual danger the woman is in.<sup>49</sup>
- In rural Oregon, attorneys often blame the victim for not protecting the children and do not know how to argue in a case where the police fail to appear or where police blame the victim.<sup>50</sup>
- Attorneys sometimes run up fees.<sup>51</sup>
- Attorneys do not fight continuances, allowing cases to continue for long periods of time and not meeting

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<sup>44</sup>Telephone interview with P.J. Newell, New York State Coalition Against Domestic Violence (June 21, 1996).

<sup>45</sup>Telephone interview with Kathleen Kurnick, Wisconsin Coalition Against Domestic Violence (June 21, 1996).

<sup>46</sup>Telephone interview with Mary Dawn Wright, Domestic Violence Shelter in Casper, Wyoming (June 21, 1996).

<sup>47</sup>Telephone interview with Dee Ann Anders, Texas Council on Family Violence (June 25, 1996).

<sup>48</sup>Telephone interview with Terry Hanson, Arizona Coalition Against Domestic Violence (July 1, 1996).

<sup>49</sup>Telephone interview with Lynne Rosenthal, Florida Coalition Against Domestic Violence (July 8, 1996); Telephone interview with Laurie Smith, Arkansas Coalition Against Violence to Women & Children (June 21, 1996); Telephone interview with Laurie Schipper, Iowa Coalition Against Domestic Violence (June 24, 1996);

<sup>50</sup>Telephone interview with Maureen McKnight, Oregon Coalition Against Domestic & Sexual Violence (June 24, 1996);

<sup>51</sup>Telephone interview with Lynne Rosenthal, Florida Coalition Against Domestic Violence (July 8, 1996); Telephone interview with Terry Hanson, Arizona Coalition Against Domestic Violence (July 1, 1996).

Violations of injunctions can be enforced through civil or criminal contempt proceedings, or may be prosecuted by the state's attorney as a criminal violation.<sup>129</sup> Civil contempt may include failure to pay monetary relief, failure to vacate residence or give property to petitioner. While these violations may result in criminal contempt as well, civil contempt is intended to encourage remedial compliance by the respondent. Criminal contempt, however, is punitive in nature.<sup>130</sup> Both civil and criminal contempt actions must be filed in the same court that issued the injunction.<sup>131</sup>

c. Other civil actions for continuing domestic violence.

A victim of continuing domestic violence has a cause of action against the perpetrator responsible for the violence.<sup>132</sup> "Continuing domestic violence" means "physical or psychological injuries over an extended period of time."<sup>133</sup> Plaintiffs (victims) seeking such relief must file a lawsuit within four years from the time of the last incident of domestic violence.<sup>134</sup>

Women may also be able to bring a lawsuit under the Civil Rights Remedies for Gender-Motivated Violence Act.<sup>135</sup> Under this Act, a woman who is the victim of a crime of violence motivated by gender may pursue her case in federal court.<sup>136</sup> A crime of violence motivated by gender is an act or series of acts that would constitute a felony against the woman or against property if the conduct presents a serious risk of physical injury to another, whether or not those acts resulted in criminal charges, prosecution or conviction.<sup>137</sup> Cases may be brought in either state or federal court.

## II. REMEDIES IN CRIMINAL LAW

Domestic violence calls are the most common type of calls to which police respond; approximately one third of police time is spent responding to domestic violence calls.<sup>138</sup> The Florida Department of Law Enforcement provides law enforcement officers with special training to handle domestic violence cases. Since January 1, 1986, Florida law has required that law enforcement officers receive at least six hours of training in handling domestic violence cases as part of their initial certification training program<sup>139</sup> and that law

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<sup>129</sup>FLA. STAT. ANN. § 741.30(8)(a). For a discussion on criminal remedies for violation of injunctions, *see infra* part II.C.

<sup>130</sup>Catherine F. Klein and Leslye Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 1101-02 (Summer 1993).

<sup>131</sup>Fla. Fam L. P. R. Appendix 4.

<sup>132</sup> FLA. STAT. ANN. § 768.35(1).

<sup>133</sup>*Id.*

<sup>134</sup>FLA. STAT. ANN. § 768.35(3).

<sup>135</sup>Pub. L. 1104-140, 110 Stat. 1327 (1996) (codified at 42 U.S.C.A. §§ 13701 et seq.); H.R. Rep. No. 103-711, 103d Cong., 2d Sess. 151, §40301 (1996) [hereinafter House Report].

<sup>136</sup>Persons contemplating filing an action for civil rights remedies under the Violence Against Women Act should contact the NOW Legal Defense Fund in New York for advise and assistance (212) 925-6635.

<sup>137</sup>House Report, *supra* note 132, at (d)(2).

<sup>138</sup>*Gender Bias Study*, *supra* note 1, at 109.

<sup>139</sup>FLA. STAT. ANN. § 943.171.



enforcement officers, probation officers and other correctional staff receive at least four hours of training in victim assistance and victim rights as part of their basic skills courses.<sup>140</sup>

#### A. Investigating and Reporting Incidents of Violence

A police officer is required to assist the victim in obtaining medical treatment if it is needed as a result of the incident the officer is investigating.<sup>141</sup> The officer also must advise the victim that there is a domestic violence center at which the victim can get help.<sup>142</sup> The officer must inform the victim of legal rights and remedies available by giving him or her a standard form developed and distributed by the department. The department is required to prepare forms in both Spanish and English.<sup>143</sup>

The officer also must make a written report which includes a description of physical injuries, if any; if an arrest was not made, an explanation of why an arrest was not made; and a statement indicating that the officer gave the victim the notice containing legal rights and remedies.<sup>144</sup> The officer must send the report to a local certified domestic violence center within twenty-four hours of investigating the incident. The report must also contain a narrative description of the domestic violence incident. The officer does not have to include confidential information that is part of an active criminal investigation in the report to the domestic violence center.<sup>145</sup> Police officers, however, follow this procedure inconsistently, with little regularity and with omissions of key information. When domestic violence centers receive the information, they often do not have the resources or knowledge about how to respond. The implementation and success of these procedures for victims in local jurisdictions vary greatly across the state.

#### B. Arresting Perpetrators of Domestic Violence

When an officer determines that there is probable cause to believe that an act of domestic violence has been committed, the officer may arrest the perpetrator and charge that person with the appropriate crime. The officer does not need a warrant to arrest in domestic violence cases.<sup>146</sup> The decision to arrest and charge shall not require consent of the victim or consideration of the relationship of the parties.<sup>147</sup> Previously, the officer could not charge the perpetrator if the victim was unwilling to press charges for any reason. Although Florida law now prohibits law enforcement officers from considering the victim's consent was a factor in making an arrest, as a practical matter it is in many cases unlikely a prosecutor will succeed in convicting the perpetrator without the testimony of the victim.<sup>148</sup> These provisions allow police officers to protect other

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<sup>140</sup>FLA. STAT. ANN. § 953.172. The *Gender Bias Study* found, however, that domestic violence training was given a low priority. Only six of 54 counties reported giving regular training in domestic violence for law enforcement officers. Veteran officers do not receive any formal training. *Gender Bias Study*, *supra* note 1, at 110-11 (citing C. Slaughter, *Florida's Response to Domestic Violence* 6 (1988) (unpublished study available from the Gender Bias Study Commission)).

<sup>141</sup>FLA. STAT. ANN. § 741.29(1).

<sup>142</sup>*Id.*

<sup>143</sup>*Id.*

<sup>144</sup>FLA. STAT. ANN. § 741.29(2)(a)-(c).

<sup>145</sup>FLA. STAT. ANN. § 741.29(2).

<sup>146</sup>FLA. STAT. ANN. § 901.15.

<sup>147</sup>FLA. STAT. ANN. § 741.29(3).

<sup>148</sup>*See* Rosman, *supra* note 91.

family members, as well as the victim and to make arrests “without delay” and over objections from the petitioner.<sup>149</sup> The police officer does not have to observe physical harm or interview corroborating witnesses.

An officer who makes an arrest based on probable cause or who enforces a court order in good faith cannot be held liable for an arrest. This freedom from liability is intended to encourage arrests by giving the officer immunity from being sued by perpetrators of domestic violence. The language of the statute is not clear as to whether it would also preclude a lawsuit from a victim of domestic violence where the officer failed to arrest a perpetrator when probable cause existed to believe that the respondent committed an act of domestic violence or violated an injunction.

Under Florida law, the police may make an arrest without a warrant include when.<sup>150</sup>

(1) a felony, misdemeanor or violation of a municipal or county ordinance occurred in the presence of the officer. This arrest must be made immediately or shortly thereafter.

(2) an officer reasonably believes that the person has committed a felony.

(3) there is probable cause to believe that the person has committed a criminal act which violates an injunction for protection, *over the objection of the petitioner*, if necessary.

(4) there is probable cause to believe that the person has committed an act of domestic violence, child abuse or any battery upon another person.

(5) the officer has probable cause to believe that the person has knowingly committed an act of repeat violence in violation of an injunction for protection for repeat violence.

Whether or not the batterer is arrested,<sup>151</sup> the police may take the victim to a hospital, help her and her children leave the house and go to a safe location such as a shelter or a friend's house, order the batterer to go for a walk or take him outside and tell him to cool down, or simply leave the scene. Even if the batterer is arrested, in many jurisdictions he may not be taken to jail if the crime with which he is charged is a misdemeanor, such as violating an injunction or committing an assault or battery that was not aggravated by the use of a deadly weapon. Instead, he may be given a citation and released.

When a defendant is released from custody before a trial, a condition of the release is that the defendant not contact the victim.<sup>152</sup> If the defendant wants to contact the victim, he must ask the court to modify the conditions of release. If he does ask for such a modification, the state attorney will notify the victim and the victim will have a chance to voice her concerns about the modification at a hearing.

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<sup>149</sup>FLA. STAT. ANN. §901.15(7)(a).

<sup>150</sup>FLA. STAT. ANN. § 901.15.

<sup>151</sup>Police in some counties arrest more than police in other counties. For example, Monroe County had a 60% arrest rate compared with a 12.5% arrest rate in another county. *Gender Bias Study, supra* note 1, at 114-115.

<sup>152</sup>FLA. STAT. ANN. § 903.047.

### C. Criminal Prosecution of Perpetrators of Domestic Violence<sup>153</sup>

Violations of domestic violence injunctions must be reported promptly to the local law enforcement agency, and civil or criminal contempt actions must be filed in the same court that issued the order. The courts and the state's attorney decide whether or not to file a criminal prosecution.<sup>154</sup> By law, criminal prosecution is the favored method of enforcing compliance with injunctions for protection of abuse victims.<sup>155</sup> If a perpetrator is convicted on criminal rather than civil charges, the court can increase the length and severity of the sentence.<sup>156</sup>

Any third or subsequent conviction of any battery is a felony of the third degree.<sup>157</sup> In addition, the court may award damages to any person who suffers an injury and or loss as a result of a violation of an injunction, including costs and attorneys' fees for enforcement.<sup>158</sup> When deciding a sentence, the prosecutor should investigate and the court should consider the defendant's history, including prior arrests for domestic violence or non-domestic charges, prior domestic violence injunctions, and prior repeat violence injunctions.<sup>159</sup>

Respondents who violate a domestic violence injunction will be charged with a first degree misdemeanor. Under this class of crime, violators may face up to one year in jail and/or a fine of \$1000.<sup>160</sup> Violators will be arrested and shall be held in custody until brought before the court as quickly as possible.<sup>161</sup>

Law enforcement agencies are required to enter all information concerning injunctions in a statewide verification system within twenty-four hours of issuance or change of an order. This enables all, law enforcement officers to electronically access information about any injunction.<sup>162</sup> When a defendant is arrested for an act of domestic violence, he will be held in custody until the bail hearing. When determining bail and when considering releasing the perpetrator, the court will consider the safety of the victim. Judges are required to consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released, and exercise caution in releasing defendants.<sup>163</sup>

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<sup>153</sup>See *supra* part I.D. for information on obtaining an injunction. See *supra* part I.D.2.b. for information on remedies for violators of injunctions. Violations of injunctions can be enforced through civil or criminal proceedings, or may be prosecuted by the state's attorney as a criminal violation. FLA. STAT. ANN. § 741.30(8)(a).

<sup>154</sup>Fla. Fam. L.R.P. Appendix 4 (1996).

<sup>155</sup> FLA. STAT. ANN. § 741.2901(2).

<sup>156</sup>See FLA. STAT. ANN. § 741.2901 (2). See also *supra* part I.D.2.b. for a discussion of criminal prosecution of violators.

<sup>157</sup>A conviction is any determination of guilt that is the result of a plea or a trial regardless of whether adjudication is withheld. FLA. STAT. ANN. § 784.03(2).

<sup>158</sup>FLA. STAT. ANN. § 741.31(6).

<sup>159</sup>FLA. STAT. ANN. § 741.2901(3).

<sup>160</sup>FLA. STAT. ANN. §§ 775.082(4)(a), 775.083(1)(d).

<sup>161</sup>FLA. STAT. ANN. §§ 741.30(8)(b), 784.046(9)(b).

<sup>162</sup>FLA. STAT. ANN. §§ 741.30(c), 784.046(c).

<sup>163</sup>FLA. STAT. ANN. §§ 741.2901 (3), 741.2902(1).

A recent court opinion<sup>164</sup> suggests there may be constitutional problems with holding a perpetrator in custody before the trial when he has been charged with "simple battery," even when a judge has found that releasing him may endanger the victims. If the perpetrator is charged with a serious offense such as aggravated battery, then the judge can order pre-trial detention.<sup>165</sup>

#### D. Child Abduction

Taking and concealing a child without the consent of the custodial parent or legal guardian is a felony.<sup>166</sup> This includes taking and concealing a child from the parent to whom temporary custody has been ordered while a court case is pending. Even if there have been no earlier court proceedings awarding custody to the mother, and even if the father has been living with the children, the father may still be guilty of a felony if he takes and conceals his children with the "malicious intent" to deprive the mother of her right to custody.<sup>167</sup> These kidnaping offenses do not apply to a battered woman who takes her children without telling the other parent if she has a reasonable belief that this is necessary to protect them from danger, if she is seeking shelter with her children and is the victim of domestic violence, or if she reasonably believes that she will become a victim of domestic violence.<sup>168</sup>

It is also a felony to take a child outside the state while a proceeding regarding custody is pending if this violates a court order, to conceal the location of a child contrary to a court order, and to fail to return a child who has been taken out of state when the court orders the return.<sup>169</sup> It is a defense to these felonies that the person reasonably believed that taking the child outside the state was necessary to protect the child against abuse.<sup>170</sup>

If the battered woman is concerned that the other parent may take the children outside the state and not return them, and especially if she is concerned that an immigrant batterer may take the children to the batterer's native country, the woman should request that the court issue an order preventing the removal of the children from the state. The court may also order the abuser to sign a statement which the judge also signs prohibiting issuance of a visa to U.S. citizen children absent court order. A copy of this order and any other prohibiting removal of the children from the country should be filed with the embassy of any country to which the abuser may be likely to flee with the children, with the airlines he is likely to take when leaving the county and with the U.S. passport service. Women who fear international kidnaping should secure the children's birth certificates, social security cards, passports, immunization records, and health insurance cards in a safe place to prevent the batterer from obtaining visas for the children.<sup>171</sup> If the batterer is currently in control of the documents, the order should require him to relinquish possession of them. The court may issue this in a temporary order while the proceeding is pending, or as part of the judgment. If the batterer violates this order, it may be a felony, as described above.

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<sup>164</sup>Swanson v. Allison, 617 So.2d 1100 (Fla. Dist. Ct. App. 5th Dist. 1993).

<sup>165</sup>Id.

<sup>166</sup>FLA. STAT. ANN. § 787.

<sup>167</sup>FLA. STAT. ANN. § 787.03.

<sup>168</sup>Id.

<sup>169</sup>FLA. STAT. ANN. § 787.04(1)-(6).

<sup>170</sup>FLA. STAT. ANN. § 787.04(5).

<sup>171</sup>Leslye E. Orloff, Deena Jang & Catherine Klein, *With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women*, 29 FAM. L. Q. 313, 318 (1995).

- the battered woman's immediate safety needs.<sup>52</sup>
- Attorneys tend not to introduce battery to the court.<sup>53</sup>

#### WHY WELFARE IS A SAFETY NET FOR BATTERED WOMEN

Many battered women need to rely temporarily on public assistance as a safety net when they lack the resources that would allow them to leave the violent relationship. The number one reason women will remain in or return to violent relationships is that they lack the economic resources to support themselves and their children. The level of economic resources available to an abused woman is the best indicator of whether or not she will permanently separate from her abuser.<sup>54</sup> Women with greater economic dependency on their abusers experience a greater severity of abuse.<sup>55</sup>

In Missouri, 75% of women who use shelters are AFDC eligible. In Alabama, it is estimated that 50% of the women in shelters have absolutely no income, while 90% of the women are living at the poverty line.<sup>56</sup> Of the 35,000 women at a shelter in Illinois, 1/3 needed some type of assistance.<sup>57</sup> Public assistance in the form of in-kind grants, food stamps, and housing, ensures that a battered woman is not forced to decide between continuing to subject her children to violence or leave the relationship for a situation where she is unable to meet her children's basic needs. In rural areas of many states, such as South Dakota, there may be no public housing available, very few jobs, and in-kind cash grants may be the only means that allow women to leave violent homes.<sup>58</sup>

An advocate in Massachusetts had the following to say concerning welfare and battered women:

*Welfare is indeed a necessary piece of the survival plan and starting over. It's not throwing money at an insurmountable problem, as critics might say about housing subsidies, but indeed is a critical piece to ending domestic violence. It's about maximizing options and providing alternatives to violent lives . . . we need to remember that there are always children where there is a family on AFDC.*<sup>59</sup>

This survey has found that welfare provided a means for survivors of domestic violence to obtain high school, college and graduate level degrees in becoming teachers, psychologists, counselors and social workers.

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<sup>52</sup>*Id.*

<sup>53</sup>Telephone interview with Lynne Rosenthal, Florida Coalition Against Domestic Violence (July 8, 1996); Telephone interview with Terry Hanson, Arizona Coalition Against Domestic Violence (July 1, 1996); Telephone interview with Gail Blasie, California Alliance Against Domestic Violence (June 25, 1996).

<sup>54</sup>Patricia Horn, *Beating Back the Revolution: Domestic Violence's Economic Toll on Women*, DOLLARS AND SENSE (Dec. 1992).

<sup>55</sup>Michael J. Strube and Linda S. Barbour, *The Decision to Leave an Abusive Relationship: Economic Dependence and Psychological Commitment*, J. OF MARRIAGE AND THE FAMILY 837 (1983). Studies show that over half of abused women stay with their abusers because they do not feel they could support themselves and their children if they left. Chris Sullivan et al., *After the Crisis: A Needs Assessment of Women Leaving a Domestic Violence Shelter*, 7 VIOLENCE AND VICTIMS 267 (1992).

<sup>56</sup>Telephone interview with Carol Gundlach, Alabama Coalition Against Domestic Violence (June 20, 1996).

<sup>57</sup>Telephone interview with Vickie Smith, Illinois Coalition Against Domestic Violence (June 21, 1996).

<sup>58</sup>Telephone interview with Verlaine Gullickson, South Dakota Coalition Against Domestic Violence & Sexual Assault (June 21, 1996).

<sup>59</sup>Written statement by Leslie Staroneck, Massachusetts Coalition of Battered Women's Service Group (July 8, 1996).

► *Examples.* WELFARE GIVES BATTERED WOMEN & CHILDREN A SECOND CHANCE.

M came to the U.S. from Somalia and settled in the Midwest with her abuser. When she was eight months pregnant, and could no longer take the brutal beatings, she left the Midwest and went to Providence, Rhode Island, to a battered woman's shelter. The shelter helped her to get public assistance and an apartment. M's two young children adjusted well to their new home with a place to live, enough food to eat, and the basic necessities. The cash grants gave M the stability that allowed her to get her children into school, and get a job for herself. She now supports herself and her children with the earnings from her new job.<sup>60</sup>

J is the single mother of two sons. She struggled to get out of a violent and abusive relationship, raise her children on welfare and seemed to have few options except minimum wage jobs with varied shifts making child care and health care inaccessible. For two years she served as an Americorps Member, receiving job training, a living stipend, health insurance, child care, and an educational voucher. With a tremendous growth in her self-image and self-worth, J learned to develop new skills that she had never used before, while being a responsible parent and providing for her children. Next September, J is planning to begin studies at a four year college using her service stipend. She plans to get a Master's degree in social work.<sup>61</sup>

C, a young woman in Idaho, had been kidnaped by her abuser. The police gave her the number of a battered women's shelter where she stayed for three months. The shelter workers helped her obtain public assistance, in the form of cash grants for her and her children. She received public assistance for four years. With this assistance, C was able to stay out of the relationship, and graduate from college with a degree in social work and go on to support herself and her children. Without public assistance, C would never have been able to escape the abusive relationship.<sup>62</sup>

G, originally from El Salvador, was in the United States as a legal permanent resident working for a family doing child care. During this time, she met a man with whom she had three children. He forced her to quit her job and abused her for several years. When she could no longer stand the abuse, she took her children and left. In the winter snow, she sat in a park and was eventually taken to a social service agency. She stayed at a shelter where she went on public assistance, learned English and received job training. Within two years, she and her children were able to leave the shelter and get off the benefits. She is currently working in a law firm.

#### BATTERED WOMEN DO NOT ABUSE THE WELFARE SYSTEM

Some state domestic violence coalitions reported that battered women stay on welfare anywhere between six months and four years. In Wyoming, a shelter reported that abused women are off welfare faster than non-abused women because they want their dignity back, and they are used to making more money than they receive on welfare.<sup>63</sup> California, Oregon, South Dakota, Wisconsin, Texas and Tennessee all reported that abused women who leave their batterers stay on welfare for two years or less. For seven years, Kentucky operated an employment program in seven shelters within the state through McKinney Homeless funding. In this program, the placement rates were higher than the JTPA average, with the average length of stay being three months. This program recently ended due to federal funding cuts, but are being continued through some shelters due to

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<sup>60</sup>Telephone interview with Mary Trinity, Rhode Island Council Against Domestic Violence (June 21, 1996).

<sup>61</sup>Telephone interview with Diane Reese, West Virginia Coalition Against Domestic Violence (June 20, 1996).

<sup>62</sup>Telephone interview with Sue Fellen, Idaho Coalition Against Sexual & Domestic Violence (June 21, 1996).

<sup>63</sup>Telephone interview with Mary Dawn Wright, Domestic Violence Shelter in Casper, Wyoming (June 21, 1996).

other donations.<sup>64</sup>

#### WHAT HAPPENS TO ABUSED WOMEN WHO CANNOT GET PUBLIC ASSISTANCE?

Women who are unable to receive public assistance have few options and often return to abusive situations. The Senate Judiciary Committee found that 50% of all homeless women and children are fleeing domestic violence.<sup>65</sup> The state coalitions reported that in almost every situation, if a woman cannot get the assistance she needs to survive on her own, she will return to her batterer or get involved in another abusive relationship. Usually, it is because women cannot afford to provide for their children from the little assistance they receive. Many states listed lack of housing as a main concern, particularly with the end of the preference given to battered women for Section 8 Housing Vouchers.<sup>66</sup>

Returning to abusive relationships not only affects the woman, but has serious ramifications on the children. Studies have shown that child abuse is 129% higher in families with spousal abuse.<sup>67</sup> Even if they are not abused themselves, the emotional and psychological effects are massive.<sup>68</sup> Children who see their mothers abused are 24 times more likely assault someone sexually and six times as likely to commit suicide than children from nonabusive homes.<sup>69</sup> Also, of the males incarcerated for homicide who are between 11 and 20 years old, 63% are serving time for killing their mother's abuser.<sup>70</sup> Children in such families learn that violence is an acceptable method of dealing with problems and maintaining control over others. This continuing cycle of violence not only place thousands of women and children in danger, but leads to an increase in the level of criminal activity and behavior.

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<sup>64</sup>Telephone interview with Sherry Currens, Kentucky Domestic Violence Association (July 8, 1996).

<sup>65</sup>*The Violence Against Women Act of 1990; Hearing on S. 2754, Senate Comm. On the Judiciary, Report 101-545*, 101st Cong., 2d Sess. 37 (1990).

<sup>66</sup>Federal preferences for Section 8 housing vouchers under the National Affordable Housing Act of 1937 were eliminated in 1995. Each individual housing authority can develop their own preferences.

<sup>67</sup>THE EFFECT OF WOMAN ABUSE ON CHILDREN PSYCHOLOGICAL AND LEGAL AUTHORITY, NATIONAL CENTER ON WOMEN AND FAMILY LAW (1991).

<sup>68</sup>See Naomi Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 VAND. L. REV. 1041, 1055 (1991).

<sup>69</sup>Joan Zorza, *Women Battering: High Costs and the State of the Law*, 28 CLEARINGHOUSE REVIEW, SPECIAL ISSUE 386 (1994) (citing Sarah M. Buel, *The Dynamics of Domestic Violence Cases in the United States: An Overview*, in DEFENDING BATTERED WOMEN IN CRIMINAL CASES 12 (Am. Bar Ass'n 1992).

<sup>70</sup>*Id.*

November 11, 1996

ayuda

Re: Welfare Reform, The Family Violence Option and State Plans and Immigrant Victims of Domestic Violence

Dear Governor ---

As you may know, President Clinton has recently called upon States to implement the Wellstone/ Murray Family Violence provisions of Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193, § 103(a)(1), Sec. 402(a)(7)).<sup>1</sup> **We are writing to join the President in urging your state to:**

1) **Affirmatively elect the Family Violence Option when you file your welfare state plan with the Department of Health and Human Services.** If you have already filed your state plan we urge you to amend that plan to **affirmatively elect the Family Violence Option by July 1997;** and

2) **Elect to make certain battered immigrant women and children whom INS has granted or is in the process of granting legal status under the Violence Against Women Act eligible for Temporary Assistance for Needy Families (TANF), social services block grants under Title XX of the Social Security Act, and non-emergency Medicaid, as provided under PRWORA (§ 402(b)(1)), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996 (Public Law 104-208, § 501).**

I. Wellstone/ Murray Family Violence Option

Under the Family Violence provision, States are urged to choose to screen and identify domestic violence victims, refer them to counseling and supportive services, and waive any program requirement that would make it more difficult to escape violence or unfairly penalize such individuals who are or have been victimized by domestic violence.<sup>2</sup> Adopting this option will not only improve safety and increase self-sufficiency for recipients of benefits, but will improve your state's ability to successfully move women and children out of poverty.

**The Family Violence Option also gives states greater flexibility and substantial increases your states ability to comply with the 20% cap on hardship exemptions from five year time limits and to meet mandatory monthly work participation rates set by the federal government.**

First, the Family Violence Option enables states to decide in individual cases to waive program requirements including the five year time limit for battered women as long as necessary for her protection. This Option does not grant the abuse victim a permanent exemption from time limits or any other program requirement. Instead, it allows the state the option of waiving program requirements for the time required to protect a victim from ongoing violence or to avoid penalizing a victim for failing to meet program requirements because of the abuse. The Family Violence Option creates an appropriate alternative to the permanent hardship exemption. Consequently, states retain the option to continue to pay benefits for more than 60 months to individuals who have been granted good cause waivers under the Family Violence Option from the five-year time limit, without a specific limitation on the number of waivers and **without counting battered women subject to waivers toward the 20% cap on hardship exemptions.**

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A United Way Member Agency

Second, good cause waivers granted to battered women under the Family Violence Option will not count against the state in its obligations to meet mandatory monthly participation rates. The Family Violence provisions of the Welfare Bill explicitly allow states to modify work requirements and time limits in cases of domestic violence. Thus, waivers granted to battered



women will constitute "reasonable cause" for the state being excused from penalties for failure to meet mandatory monthly work participation rates due to Family Violence Option Waivers.

Domestic violence imposes significant barriers to women's ability to participate in welfare-to-work programs and in turn, to achieve economic independence. Batterers, who often feel deeply threatened by their partners' participation in job training or educational programs, may seek to maintain control over their partners by sabotaging their attempts to become self-sufficient.<sup>3</sup> Research cited in a Sense of Congress Joint Resolution<sup>4</sup> that recognized the correlation between domestic violence and poverty reported that many battered women lose jobs due at least in part to domestic violence and many abuse victims are harassed at work by their abusers.

The level of economic resources available to an abused woman is the best indicator of whether or not she will permanently separate from her abuser.<sup>5</sup> Women with greater economic dependence on their abusers experience a greater severity of abuse compared to employed women who are abused.<sup>6</sup> More than half of abused women surveyed state that they stayed with their abusers because they did not feel that they could support themselves and their children if they left.<sup>7</sup> For battered women who do find the courage to flee their abusers, access to public benefits is the safety net that enables them to succeed in escaping violence and creating safe and secure lives for themselves and their children apart from their abusers. **By affirmatively electing the Family Violence Option states will be able to provide the flexibility battered women need to be able to successfully flee violence and successfully move from welfare to work without jeopardizing the state's ability to meet federal mandates.**

## II. Providing Certain Public Benefits for Battered Immigrant Women

**We also urge you to exercise your state's option to under PRWORA (§ 402(b)(1)), as amended by the Immigration Bill (IIRAIRA)(Public Law 104-208, § 501) to provide TANF, Title XX social services, and non-emergency Medicaid to the narrow class of battered immigrant women and children whom the Immigration Bill has authorized to receive such benefits because they have obtained or are in the process of obtaining lawful residency.** States are authorized to provide access to TANF, Title XX social services, and non-emergency Medicaid for "qualified aliens" who include, among others, battered immigrant spouses and battered immigrant children for whom there is a substantial connection between the need for public benefits and the battering (PRWORA, § 431). The State option of providing benefits to battered immigrant women is only available for the restricted category of such women for whom the need for benefits is closely tied to the abuse and who have pending or approved family or domestic violence based immigration petitions.

Welfare and Medicaid play a critical role in enabling battered women and their children to escape abusive relationships and seek safety. Battered women face a 50% likelihood that their standard of living will drop below the poverty line upon leaving their abuser<sup>8</sup> and must often rely temporarily on public assistance to be able to survive independently and safely. Battered immigrant women face additional barriers that undermine their ability to become economically self-sufficient from their abusers. Those who batter immigrant women cut victims off from information about their legal rights, isolate them from support networks who could help them, and threaten deportation if they seek help, even when the abuse victim has a legal right to obtain lawful permanent residency under the 1994 federal Violence Against Women Act.<sup>9</sup>

In addition to facing the same work related harassment faced by citizen victims of abuse whose abusers sabotage their efforts to work, battered immigrant women are often prevented by their abusers from obtaining the language or job skills necessary to immediately find employment. Many battered immigrant women who are "qualified aliens" under the Immigration and Welfare bills and who qualify to obtain lawful immigration status under the Violence Against Women Act *will not have authorization to work in the United States* for some period of months. Without either transitional public assistance or ability to support her children, these immigrant women will remain in violent homes. They will have *no* choice.

States must elect to offer access to limited critical public benefits for battered women and children who are "qualified aliens." Failure to provide transitional safety net benefits creates serious barriers to leaving abusive

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Second, good cause waivers granted to battered women under the Family Violence Option will not count against the state in its obligations to meet mandatory monthly participation rates. The Family Violence provisions of the Welfare Bill explicitly allow states to modify work requirements and time limits in cases of domestic violence. Thus, waivers granted to battered

situations that may, in turn, lead to escalating violence and even death, abuse of children, and the deepening of long-term physical and psychological scars for both battered women and children who witness or endure abuse themselves.

States have a strong financial incentive to continue to provide battered immigrant women with Medicaid coverage, because offering preventive care is more cost-effective than paying for emergency treatment. Providing Medicaid to battered immigrant women is particularly fiscally sensible with respect to prenatal care. Among battered women, 87% are physically abused during pregnancy and 29% reported that battering increased after they became pregnant.<sup>10</sup> Battered women are four times more likely than non-battered women to deliver low-birth weight babies,<sup>11</sup> who, in turn, are more likely to have birth defects.<sup>12</sup> Because children born in the U.S. are fully eligible for Medicaid, States have a financial stake in providing battered immigrant women with Medicaid in order to prevent poor health outcomes for their children. Finally, States which opt to continue to provide Medicaid to battered immigrant women will not have to bear the full cost of doing so; States will continue to be reimbursed by the federal government of 50% of the medical costs claimed under Medicaid.<sup>13</sup>

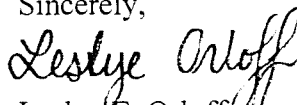
The goals of the Violence Against Women Act immigration protections were to ensure that all batterers can be prosecuted for their crimes even when their victim is their immigrant spouse or child and to provide protection to battered immigrant women and their children. The recent immigration law recognized that battered immigrant women will not be able to escape abuse, obtain protection and cooperate in the prosecution of their abusers if they have no means to survive economically living apart from their abusers. We urge you to **exercise your state option to provide battered immigrant women and children access to TANF, Title XX social services and non-emergency Medicaid.**<sup>14</sup>

### III. Conclusion

If your state chooses to adopt the Family Violence option and exempt battered women immigrants from the prohibition on public assistance, we would be pleased to offer any assistance you may require in implementing these provisions. President Clinton has directed the Secretary of the Department of Health and Human Services to provide States with ongoing technical assistance to implement the Family Violence option.<sup>15</sup>


Please do not hesitate to call our office, if you have any questions or concerns. We have additional materials that we can make available to you on the Family Violence Option and battered immigrant women's need for access to public benefits to leave violent relationships. We look forward to assisting you in crafting a welfare plan that will enable welfare recipients to transition into the workforce successfully.

Sincerely,



Leslye E. Orloff

Director of Program Development



Minty Siu Chung

Policy Attorney

cc: State Governors  
State Health Administrators  
National Conference of State Legislatures  
National Association of Counties  
State Domestic Violence Coalitions

## Endnotes

1. President's Memorandum to the Secretary of Health and Human Services and the Attorney General (Oct. 3, 1996).
2. Including but not limited to time limits (for as long as necessary) for receiving assistance, residency requirements, child support cooperation requirements, and family cap provisions. Section 402(a)(7)(A)(iii).
3. JODY RAPHAEL, PRISONERS OF ABUSE: DOMESTIC VIOLENCE AND WELFARE RECEIPT 6-7 (1996).
4. H. Con. Res. 178, a non-binding resolution setting out the budget priorities for the 1997 fiscal year, passed both houses of Congress. *Cong. Rec.* H6267 (June 12, 1996); *Cong. Rec.* S6168 (June 13, 1996).
5. Horn, Patricia, Beating Back the Revolution: Domestic Violence's Economic Toll on Women, Dollars and Sense (Dec. 1992).
6. Strube, Michael J. and Linda S. Barbour, The Decision to Leave an Abusive Relationship: Economic Dependence and Psychological Commitment, 1983 J. of Marriage and the Family 837.
7. Sullivan, Chris, et al., After the Crisis: A Needs Assessment of Women Leaving a Domestic Violence Shelter, 7 Violence and Victims 267 (1992).
8. *Women and Violence: Hearings Before the Senate Comm. on the Judiciary*, 101st. Cong. 95 (1990).
9. Pub. L. No. 103-322, Title IV, 108 Stat 1902-55 (relevant sections codified at 8 U.S. C. §§ 204(a)(1) and 240A(b)(2)).
10. Judith McFarlane, *Battering During Pregnancy: Tip of the Iceberg Revealed*, 15 WOMEN & HEALTH 69 (1989).
11. *Id.*
12. March of Dimes, All Pregnant Women Should be Evaluated for Battering During Routine Prenatal Care (June 16, 1992).
13. Charles Wheeler, *The New Alien Restrictions on Public Benefits: The Full Impact Remains Uncertain*, 73 INTERPRETER RELEASES 1245, 1249.
14. Domestic violence and child abuse harm not only citizens, permanent residents and VAWA-eligible women, but also those who are undocumented without pending immigration cases. Extreme cruelty, physical assaults and sexual abuse in the home are not the appropriate penalties for unlawfully presence in the United States, particularly when a State has an obligation to deter violent crime, child abuse and homicide. Therefore, we also encourage your State to choose to provide appropriate transitional public assistance to make fleeing violence a feasible option for undocumented women and children living under the perpetual threat of violence.
15. President's Memorandum to the Secretary of Health and Human Services and the Attorney General (Oct. 3, 1996).

usually a minimum wage job in our rural areas, and they need to keep earning money. She often needs money to get medicine for her kids because most women in our rural areas don't have health care.

Welfare can give a woman money for medicine. She can sign up for food stamps, but she is required to name the father of the kid, which can be dangerous. In one case a woman had to name the rapist who got her pregnant. They forced the rapist to get DNA tested, and then a judge ordered visitation for him. We should instead make him provide health insurance and support.

5. Women stay on welfare because they can't get their kids to the doctor, because they have no medical care, usually 6-7 months. There is a lot of seasonal work in Texas, and women usually find seasonal work after 6 or 7 months.

6. A high percentage of women go on welfare because its all they have. If there was no welfare, a high percentage would go back. Its also not a consumer-friendly system, its difficult to get on in the first place for many women who don't know how to deal with the bureaucracy.

WASHINGTON STATE COALITION AGAINST DOMESTIC VIOLENCE

LEIGH HOFHEIMER • JUNE 21, 1996

1. Not many women are represented by legal services attorneys. There are not many legal services offices throughout the state, and the offices that exist have to turn a lot of women down. For example, they will not take a battered woman's custody case unless she has lost her child. Some legal aid programs give advice to battered women, but these programs can be inconsistent in their services due to funding.

2. There are always problems with private bar attorneys. One woman lost sole custody of her kids because the batterer manipulated her attorney. This happens often. Probably 75% of the time the private attorney is not trained in domestic violence. Guardian ad litem can also be used as a tool against a battered woman. They also need lots of training. Immigration and refugee attorneys also often do not have training in domestic violence.

3. Women must have attorneys in Washington because judges are very resistant to women going through the divorce process in Washington themselves. They won't listen to the women, and they make it very hard for any woman who attempts to go through a case herself.

4. Battered women are helped by two specific housing programs in Washington. First, they may receive priority on HUD housing, and second (I believe this is only in WA), if they are being stalked at their houses, HUD will help them move to a different location to avoid the batterer. This keeps her from being evicted because of the battery. A woman has someplace to go then when she leaves the shelter.

5. Women stay on public assistance an average of 2 years in WA.

6. Economic reasons are one of the strongest reasons women stay in a relationship. If a woman could not get public assistance, probably 50 - 75% of them would go back to the violent relationship.

WEST VIRGINIA COALITION AGAINST DOMESTIC VIOLENCE

DIANE REESE • JUNE 20, 1996

1. For the most part, prior to the cuts, a majority of people went to Legal Services. Now she states that the number is a conservative 60%. She also states that the cuts have left little LS offices around. She states that the cuts were a major detriment to women.

2. #1 - women can't afford them. Most demand a \$500 fee up front. #2 most private attorneys do not

do domestic relations. #3 Attorneys do not give good representation. Even most pro bono attorneys will not do domestic violence.

3. Women should be able to proceed pro se - in West Virginia, the forms are not complex. However, if there are children or property interests involved, she should not proceed pro se.
4. Welfare is a safety net because it provides temporary resources, esp. important is the medical care card. Who would want to get off of welfare for this because it is so expensive? (*See attachment #3 - Stories regarding Americorps persons*)
5. No stats or idea on this question.
6. A majority will go back because they can't afford not to, esp. if children are involved.

WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE  
KATHLEEN KURNICK • JUNE 21, 1996

1. Over 50% of battered women in our state are represented by LS attorneys.
2. Family law attorneys don't have the slightest idea what they're doing. Women stipulate to orders that are unsafe for them, because attorneys convince them to, i.e. joint custody or joint placement (WI calls visitation "placement"). Attorneys tell women to not get a restraining order because it will just "get in the way" and because she will get one when she gets a divorce. Provisions for protection of battered women that exist in custody law are ignored, or attorneys don't even know they exist.

One woman was told to accept joint custody by her private bar attorney. She was killed by her former husband as he was picking up the kids AT HER HOME, because they had not asked for a separate drop off spot. This woman ran out of money and finally couldn't keep going to court when she agreed to visitation for her husband and pick up at her house. Before this, the husband had abducted the children and was found with an arsenal of weapons. She then obtained temporary custody, but after her parents put a 2nd mortgage on their house, she had no more money to fight the case, and the attorney got her to agree to this visitation order, so it remained. Until he killed her.

A similar thing happened to another woman who was a Hmong woman, an immigrant who did not speak the language, but who obeyed her attorney when he told her to agree to visitation where the drop off spot would be her house. The private bar attorney never asked for provisions for her safety. She was killed when he was dropping the kids off at her house.

3. Women should have attorneys, batterers have attorneys. She is asked to stand up against the person who has beaten her. Divorce is also a very complicated thing, the law is complicated. Women will lose custody to batterers, or get 60% placement but no support, or get physical custody, but the batterer is allowed to make ALL the decisions. Or she may end up in mediation, which is a bad idea if its a battering relationship.
4. Public assistance gives a woman money for a new deposit, for a new apartment; money to live on until the court case is over. She can keep her kids settled then, and not upset their lives as much during the transition. She can not worry about having to show up for a job, where he might be stalking her, while she's trying to get away and get settled. More and more women are staying in shelters because they have nowhere to go, so more women will also need public assistance to get out. Without assistance, the women is out on the street or she must go back to the batterer, public housing has a long waiting list.
5. Women stay on public assistance less than 2 years when getting out of the relationship. 50 - 80% of women at the shelters get public assistance.
6. Most women will go back. Women who go on public assistance have no other resources, it is their

last chance. But we won't have a sense until the change in Wisconsin's welfare system has been implemented. With the new W-2 system in Wisconsin it will be even worse for women, there will be no way for women to have a sustainable living wage.

WYOMING COALITION AGAINST DOMESTIC VIOLENCE AND SEXUAL ASSAULT  
ROSEMARY BRATTON/MARY DAWN WRIGHT • JUNE 20/21, 1996

1. 70%
2. Private attorneys do not understand the dynamics of domestic violence, such as why mutual restraining orders are detrimental to victims. A private attorney sent a battered woman home to where her abuser was staying. A domestic violence advocate informed the attorney that the judge had issued a mutual restraining order, so if she went home, she could be found in contempt for violating the order. The private attorney told the domestic violence advocate that he knew what he was doing because he was an attorney. In another case, a woman was arrested at the safehouse where she was hiding because she called her abuser to get money for diapers, a violation of a mutual protection order.
3. Most women go in pro-se because legal services does not have the resources to represent them. Some offices require that a potential client bring in two letters of rejection of private attorneys before legal services will take them. Judges listen to attorneys, but do not pay attention to advocates or victims representing themselves. An elderly 71 year old woman, P, with cancer was being abused by an 81 year old man. P's attorney allowed the 81 year old abuser to have the house because he felt sorry for him and told P to go to the bank and take the savings.
4. A woman who returns to her abuser after being on public assistance will lose custody of her children.
5. Most abused women want their dignity back quickly. They are also used to living on more money, so they cannot provide for their children on welfare. Sixty percent (60%) are off within four years.
6. Public assistance workers are often abuse the system. They demand documentation fees. 100% will go back if they cannot obtain the necessary assistance.

NATIONAL LEGAL AID AND DEFENDER ASSOCIATION (NLADA)  
KELLY CARMODY • JUNE 25, 1996 (*See Attachment #4*)

1. I wouldn't have a guess. I wouldn't know which family law cases involve D.V.
2. You don't really want to make this argument because we're trying to get pro bono attorneys to help (and this alienates them). Pro Bono attorneys need help from legal aid attorneys to do a good job. The problem in the Batista case was not that she had a bad attorney, it was first that her attorney couldn't meet with her, and second that the woman may not have known that the woman could go to the police and ask for an escort. We should instead argue that there are not enough attorneys to take the cases, and attorneys need more help from legal services to do a good job. They need that support. We can't cut LSC anymore because LSC is trying to expand its pro bono program and it can't provide the support without money.