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Protection of Battered Women: A Survey of State Legislation

BY LISA G. LERMAN WITH THE ASSISTANCE OF SHARON GOLDZWEIG*

Less than a decade ago few states had any laws aimed to reduce or prevent violence between family or household members. A battered woman¹ who sought legal protection from abuse had few options. If the woman was married, she could file for divorce, separation, or custody. In some states she could get an injunction ordering her husband not to abuse her while domestic relations proceedings were pending. Such orders were limited in scope and did not provide penalties for violation.

During the last five years, most states have passed extensive legislation on domestic violence. The laws create specific remedies for domestic abuse, and impose duties on court and law enforcement officials who handle family violence cases. Some of the state legislatures have allocated funding for shelters or other services to violent families.

Forty-eight states and the District of Columbia have now enacted legislation to protect battered women. Those that have taken no recent action are South Carolina and South Dakota.² The

rapid development of domestic violence law in the United States is the product of a broad network of community groups, legal service lawyers, shelter workers, and law enforcement officials. The initial efforts of this movement focused on setting up shelters and hotlines and developing a civil injunction by which battered women could obtain emergency protection without filing criminal charges. As experience was gained with the protection order laws, it became clear that injunctive relief is most effective when the statutes spell out specific procedures by which courts and law enforcement agencies should issue and enforce orders, and when the laws make violation of a protection order a criminal offense.

New legislation cannot by itself change the response of courts, police, or social service agencies to the problem of family violence. It does, however, furnish a tool that battered women and their advocates can use to promote more effective court response and better services for violent families.

USING THE CHART

The chart of state domestic violence laws may be used by persons drafting new state legislation as a checklist of the types of provisions which might be included. The chart indicates what legislation has been passed or is pending in each state and how many states have different types of laws.

In most cases, a black dot on the chart indicates that a statute includes language similar to that

remedies, but have been available for decades. The chart focuses on recent legislation; these older statutes were included because some have been recently amended to correspond with the protection order laws, and because the older restraining orders may be useful to battered women.

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1. It is widely recognized that although some men are beaten by their mates, most adult victims are female. Therefore, victims of abuse are referred to as female and abusers as male for purposes of simplicity. Mate abuse is used instead of the more common term, spouse abuse, to include persons subject to violence by intimates, regardless of their marital status or living arrangements.

2. The South Dakota legislature passed a protection order bill, but it was vetoed by the governor. South Carolina, like many other states, has legislation providing for issuance of restraining orders during domestic proceedings. These laws, listed under the section entitled "Orders During Divorce, Separation, or Custody Proceedings," are not new

listed on the chart. Statutory language varies widely; the provisions listed on the chart are an approximation of the most common statutory language. In some cases, marks on the chart reflect procedures being followed in a state that are not listed in the domestic violence law, but appear elsewhere in the state code. This is the case with most of the listed filing fees and fee waiver provisions.

Significant provisions which appear in only one or two of the statutes are listed in the footnotes to the chart. Each line on the chart represents provisions appearing in the statutes of three or more states. Where a dot and a footnote number appear on the chart, the statute includes language similar to that listed and some other related provision. Where only a footnote number appears, the statute includes only a provision related to the listed provision.

The chart does not include all types of legislation that may benefit violent families, but focuses on recent legislation aimed to reduce or prevent mate abuse.³ Legislation dealing only with physical or sexual abuse of children or with elder abuse, is not covered.⁴ However, much of the legislation on adult abuse may also be used to prevent subsequent child abuse or elder abuse.

New legislation on spousal rape is not charted. A recent survey indicates that a man may be prosecuted for raping his wife in seven states: California, Connecticut, Iowa, Massachusetts, Minnesota, Nebraska, and New Jersey. Other states allow prosecution for spousal rape if the victim and defendant are married but living apart, if they have filed for divorce, separate maintenance, or annulment, or if they have obtained a judicial separation.⁵

PROTECTION ORDER LAWS

A protection order (also called a temporary restraining order) is an injunction designed to prevent violence by one member of a household

3. The chart does not cover criminal law generally, but only lists criminal law targeted at mate abuse. Neither does it cover divorce and custody, public benefits, interspousal immunity, or crime victim compensation.

4. Information on these laws may be obtained from the National Legal Resource Center on Child Abuse and Neglect, American Bar Association, 1800 M St., N.W., Washington, D.C.

5. Barry, *Spousal Rape: The Uncommon Law*, 66 A.B.A.J. 1088, 1090 (1980). See Bienen, *Update of Rape II*, WOMEN'S RTS. L. RPT. (Spring 1980 Supp.).

against another. The court may, depending on state law, order an abuser to move out of a residence shared with a victim, to refrain from abuse of or contact with the victim, to enter a counseling program, or to pay support, restitution, or attorney's fees. The court may award child custody and visitation rights or may restrict the use or disposition of personal property (see chart, Section 1A).

Laws providing this type of protection have been passed in thirty-six states and the District of Columbia. Thirty-one of the protection order laws allow the court to evict an abuser from a residence shared with a victim of abuse. The eviction order is the most important form of relief available; it gives a victim of abuse an enforceable right to be safe in her home, and establishes that the abuser rather than the victim should bear the burden of finding another residence.⁶

The laws vary widely as to what relationship must exist between abuser and victim for protection to be available. Three statutes restrict eligibility to spouses; the others make relief available to other family or household members, and sometimes to former co-residents.⁷

To get a full protection order (one issued after a hearing at which both parties are present), a victim must show, usually by a preponderance of evidence, that abuse has occurred, or that there has been some threatened or attempted abuse. Nine states also allow issuance of a protection order if it is shown that a child has been sexually abused (see chart, Section 1B).⁸

Few of the new laws make protection orders available based on a showing of harassment or psychological abuse. Coverage of such conduct

6. Many of the laws allow eviction even if the title or lease of the residence lists only the abuser's name. Some statutes allow eviction in such cases only if the abuser is found to have a legal obligation to support his wife or children.

7. Charting of the statutory definitions of which victims are eligible for protection orders was extremely difficult because of wide variations in statutory language and the possibility of several interpretations.

8. The District of Columbia statute defines abuse to include any act committed against an eligible party that would be punishable as a criminal offense. This more general definition would allow issuance of a protection order not only for threatened or attempted assault, but also for burglary, larceny, kidnapping, harassment, or destruction of personal property. The rationale is that if an act may be the basis of a criminal prosecution, it is serious enough to justify issuance of a protection order.

would provide a remedy to persons who are kept prisoner in their homes, whose property is destroyed, or whose homes are broken into by boyfriends or former spouses.

The chart categorizes protection orders according to how quickly a court will respond after a petition is filed and how long the order may last. A *full protection order* may be issued only after the abuser is notified and a hearing is held at which both parties have an opportunity to testify. (If the abuser fails to appear at this hearing, he is deemed to have waived his right to a hearing, so relief may be granted based on the victim's testimony.)

The less time it takes to obtain a protection order, the more effective it is likely to be. Thirty-four of the statutes provide for *temporary protection orders*, which are issued *ex parte* within a day or a few days after a petition is filed, following a hearing at which the victim but not the abuser is present. A temporary protection order lasts until the abuser receives notice and has an opportunity for a hearing on whether the order should be dissolved, at which time a full protection order may be issued.

A few of the laws allowing *ex parte* relief have been challenged as violating the due process clause of the fourteenth amendment, but so far such challenges have been unsuccessful.⁹ The deferral of a hearing has been found permissible if there is a danger of irreparable harm unless relief is granted.

Since most abuse occurs at night, nine of the statutes provide for *emergency protection orders*, which may be issued at night or on weekends when the regular courts are not in session. The emergency order, often issued by a magistrate rather than a judge, lasts only until the next weekday morning when the victim must go to court to reapply for a temporary protection order.

In sixteen states, an abuser who violates a protection order may be prosecuted for a misdemeanor offense, and in twenty-four states for contempt of court. Nine of these twenty-four states allow prosecution either for a misdemeanor or for

contempt. Thirteen of the statutes include explicit language allowing courts to impose a jail sentence of six months or more for violation of a protection order. The laws frequently allow imposition of a fine of \$500 or more instead of or in addition to a jail sentence.

Each statute contains procedural rules on where, how, and by whom petitions may be filed, fees to be charged, when hearings must be held, and so on (see chart, Section IE). Some of these rules are not listed in a spouse abuse statute but may be found in the general rules of civil practice. Of particular importance are rules on fees for filing papers or service of orders. Provisions waiving filing fees, permitting victims to file without a lawyer, and requiring court clerks to assist victims in filing petitions are essential to ensure that protection orders will be available to victims of abuse who have no money or no access to their money.

ORDERS PENDING DIVORCE OR OTHER DOMESTIC RELATIONS PROCEEDINGS

Many state domestic relations laws have, for a century or more, included provisions allowing courts to issue injunctions requiring payment of support, designating custody or use of property, or prohibiting abuse during the pendency of other proceedings. These injunctions were, and still are, independent of allegations of abuse. In some states that have passed new protection order laws, the injunction pending divorce has been expanded and enforcement provisions have been added. However, injunctions pending divorce or other proceedings are the only form of civil injunction available in Idaho, Indiana, Michigan, New Jersey, New Mexico, Oklahoma, Rhode Island, South Carolina, South Dakota, Virginia, Washington, and Wyoming.

CRIMINAL LAW

Every state has laws imposing criminal penalties for assault, battery, burglary, and kidnapping. These laws are sometimes enforced against persons who are violent against intimates, but mate abuse has not traditionally been treated as a criminal matter.

To promote enforcement of criminal law against abusers, ten states have enacted legislation making spouse abuse a separate criminal offense whether or not the victim has previously obtained a protection order. Like the protection order

9. Pennsylvania Court of Common Pleas upheld the *ex parte* relief afforded by the state law against a due process challenge in *Boyle v. Boyle*, 5 Fam. L. Rptr. 2916, September 25, 1979. The Ohio protection order law was upheld against a constitutional challenge in *Ohio v. Hevl*. No C79BR120 (Hamilton Mun. Ct. 1979). There was no written opinion (see chart, *infra*).

laws, these criminal laws specify the relationships covered and the penalties which may be imposed for commission of the offense (see chart, Section IIIA). While these statutes make no substantive change in the criminal law, they give clear direction that criminal laws are to be enforced against abusive mates and they facilitate easy identification of family violence cases by victim services or statisticians.

Some state laws set out dispositions that may be used in place of a fine or jail sentence in domestic violence cases in which criminal charges are filed. Some allow a protection order prohibiting abuse of or contact with the victim; others allow the court to require an abuser to attend counseling.

In a few states, such as Washington and Ohio, criminal courts may issue broad protection orders similar to those generally available from civil courts.

The relief available may vary depending on the stage of the criminal process at which an order is issued. The court may impose requirements on an abuser as a condition of release, as a condition of deferred prosecution, or as a condition of probation after conviction. Violation of conditions of release could result in pretrial detention or setting of bail. Where prosecution is deferred pending compliance with a counseling or protection order, violation could result in later prosecution. Violation of terms of probation could result in revocation of probation and imposition of a jail sentence (see chart, Section IIIB).

The foregoing dispositional options, which are codified in many state laws are also available in other jurisdictions as a matter of judicial discretion. Statutory authority is not necessary, for example, for a judge to order a defendant to stay away from the victim as a condition of release on bail. However, an explicit statute encourages judges to use particular options in cases in which the victim and offender are related.

POLICE INTERVENTION

Twenty-six of the recent state laws on domestic violence expand police power to arrest in domestic abuse cases. In nineteen states, arrest without a warrant is permitted where a police officer has probable cause to believe that an abuser has committed a misdemeanor. In thirteen states, police may arrest without a warrant if they have probable cause to believe that an abuser has violated a protection order. Six states allow probable cause

arrest in both cases. Most of these arrest laws give police a discretionary power, but five state laws impose a duty to arrest where probable cause is present.

Almost half the states impose some duties on police responding to domestic disturbance calls, including transporting the victim to a hospital or shelter, informing her of her legal options, and staying until she is no longer in danger. Many of the laws prescribing police duties or expanding arrest powers immunize law enforcement officials from suits for damages for any action taken in a good faith effort to enforce the law (see chart, Section IV).

DATA COLLECTION

Lack of adequate data as to the nature and scope of family violence has hindered improvement of law enforcement response to the problem. Twenty-three states have now passed laws that require agencies that assist violent families either to keep internal records of each case handled or to report cases handled or the problem generally to another agency (see chart, Section V).

FUNDING

Thirty-six states have appropriated funds for services to violent families. Such appropriations are made either by including a line item in the budget of a state agency or by passing a bill making a categorical appropriation. All appropriations must be approved by the state legislature. They may originate, however, in the governor's office as part of the proposed budget submitted each year to the legislature by the governor, or as a separate bill.

In twelve states a new source of funding has been created by passage of legislation that imposes a surcharge on the marriage license. The money collected through the surcharge is distributed to shelters and other service organizations. In two states, the legislatures have appropriated funds in the state budgets in anticipation of income from the marriage license surcharge.

The funding legislation generally specifies whether funds are to be spent on shelters, on counseling services, on employment training, legal advocacy, or other services. In some states, the law suggests types of services to be funded, while in other states a program must provide listed services in order to be eligible for funding.

The chart lists only statewide appropriations. In many states, other money for services to violent families is also available from city or county governments, or from private sources. Nevertheless, the need for funding for shelters and other services to violent families is still largely unmet. Most shelters operate on a shoestring, providing only basic services, and must turn away a substantial percentage of the families which seek assistance.

CONCLUSION

The process of drafting and lobbying for new domestic violence legislation is difficult and time-consuming. Most of the existing legislation reflects a composite of what the drafters felt would benefit battered women, and what was politically feasible in the state. Drafters should consider that setting up a commission to study the problem or to collect data on domestic violence may be easier

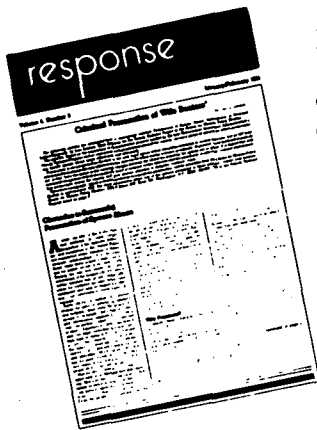
politically than improving the available legal remedies, and that a protection order law may be less controversial than a funding bill.

In drafting legislation, advocates for battered women should consult with shelters and other groups around the state so that the bill submitted to the legislature will have widespread support. In addition, the legislative counsel's office at the state capitol should be asked to assist in tailoring legislation to fit the state code or court system. An expert on constitutional law should be asked to examine any drafts of bills for possible flaws.

A valuable resource on drafting legislation and planning a lobbying strategy is a monograph by Julie Hamos entitled *State Domestic Violence Laws and How to Pass Them*. This document may be obtained from the National Clearinghouse on Domestic Violence, P.O. Box 2309, Rockville, MD 20852.

Response to Violence in the Family

is a national publication on family violence and sexual assault.



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KEY * - effective legislation; ° - pending legislation; T - thousand; M - million; FY - fiscal year
 Numbers beside dots or in lieu of dots refer to footnotes, except where a line on the chart refers to a time period or a sum of money.
 A time period or a sum of money that is circled indicates pending legislation.

	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	District of Columbia	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas
I. PROTECTION ORDERS¹																	
A. Court May Order:																	
1. Eviction of the abuser	*	*	*		*	*	*	* ²	*	*	*	*		*		*	*
(a) Allowed even if residence is in abuser's name	*	*	*		*	*	*	*		*	*	*		*		*	*
2. Abuser to provide alternative housing for the victim	*													*		*	*
3. No further contact with the victim		*	* ⁷		*			*	*		*	*		*		*	*
4. No further abuse	*	*	*		*	*	*	*	*	*	*	*		*		*	*
5. No threat of abuse			*		*	*	*	*	*	*	*	*		*		*	*
6. Abuser not to molest or disturb the peace of the victim					*	*	*	*	*	*	*	*		*		*	*
7. No restrictions on the personal liberty of the victim							*	*	*		*	*		*		*	*
8. Counseling for the abuser and/or the victim ⁸					*	*	*	*	*		*	*		* ¹⁰		* ⁹	*
9. Temporary support of spouse or minor children	*	*	*		*	*	*	*	*	*	*	*		*		*	*
10. Temporary child custody/visitation rights	*	*	*		*	*	*	*	*	*	*	*		*		*	*
11. Monetary compensation to the victim by the abuser		*	*		*	*	*	*	*	*	*	*		*		*	*
12. Payment of the victim's court costs and/or attorney's fees by the abuser ¹²	*	*	*		*	*	*	*	*	*	*	*		*		*	*
13. Temporary use or possession of personal property					*	*	*	*	*	*	*	*		*		*	*
14. No disposition of property					*	*	*	*	*	*	*	*		*		*	*
15. Other terms may be set by the court ¹³		*	*		* ¹⁴	*	* ¹⁴	*	*	*	*	*		*		*	*
B. Abuse for Which a Protection Order is Available																	
1. Physical abuse:																	
(a) of an adult	*	*	*		*	*	*	*	*	*	*	*		*		*	*
(b) of a child	*	*	*		*	*	*	*	*	*	*	*		*		*	*
2. Threat of physical abuse	*	*	*		*	*	*	*	*	*	*	*		*		*	*
3. Attempt at physical abuse	*	*	*		*	*	*	*	*	*	*	*		*		*	*
4. Sexual abuse:																	
(a) of an adult								*	°		*	*		*		*	*
(b) of a child								*	°		*	*		*		*	*
C. Who May Be Covered by a Protection Order (relationship to the abuser)																	
1. Spouse	*	*	*		*	*	*	*	*	*	*	*		*		*	*
2. Minor child of one or both parties	*	*	*		*	*	*	*	*	*	*	*		*		*	*
3. Parent	*	*	*		*	*	*	*	*	*	*	*		*		*	*
4. Household member related by blood or marriage ²³	*	*	*		*	*	*	*	*	*	*	*		*		*	*
5. Person living as a spouse	*	*	*		*	*	*	*	*	*	*	*		*		*	*
6. Unrelated household member		*	*		*	*	*	*	°	*	*	*		*		*	*
7. Former spouse		*	*		*	*	*	*	°	*	*	*		*		*	* ²⁷
8. Person formerly living as a spouse		*	*		*	*	*	*	°	*	*	*		*		*	* ²⁷
9. Former household member		*	*		*	*	*	*	°	*	*	*		*		*	* ²⁷
D. Limits on Eligibility for a Protection Order																	
1. Protection order unavailable if the victim has filed for a separation or a divorce			*														
2. Eligibility unaffected if the victim leaves the residence to avoid abuse	*				*	*	*	*						* ³⁰		*	*
E. Procedural Provisions of the Protection Order Laws																	
1. In general																	
(a) Petition may be filed by:																	
(i) Victim	*	*	*		*	*	*	*	°	*	*	*		*		*	*

I. Protection Orders

1. States marked on this line have laws providing for issuance of protection orders, usually by civil courts, independent of any action for divorce or separation. The section on procedure (IE) distinguishes full protection orders from temporary or emergency protection orders. The section that lists what a court may include in a protection order (IA) refers to protection orders issued after a full hearing. In some states, the same relief is available under temporary or emergency orders (which are issued *ex parte*) as under a full protection order. In other states, the available relief is more limited for temporary or emergency orders (see Section IE). The sections covering the types of abuse for which a protection order is available (IB) and who is eligible for a protection order (IC) include temporary and emergency orders in any references to protection orders.

2. The Delaware Family Court is empowered to act in any proceeding in which a member of a family alleges that some other member of the family is "imperiling the family relationship." The Division of Social Services or a licensed youth agency may also petition where it is alleged that the "conduct of a child, or his parents or custodians, or members of a family, imperils any family relationship or imperils the morals, health, maintenance or care of a child." Under this section, the court is empowered to "make such adjudications and dispositions as appear appropriate." This general statute, together with the court's broad equitable powers, allows the court to issue protection orders similar to those available under the specific protection from abuse acts enacted in other states. In addition, the court may intervene before any physical abuse has taken place.

Ex parte hearings may be conducted on an emergency basis pursuant to court rule. An emergency hearing may be held if facts are set forth on affidavits or verified pleadings "upon which the court may conclude that unless the relief sought is granted prior to the hearing on the merits, substantial and irreparable harm will result." The charted information for Delaware lists not only provisions expressly included in the law, but relief deemed to be available under the "imperiling" statute.

3. On the last day of the 1980 session, the South Dakota legislature passed a

protection order bill similar to the Iowa law. The law was vetoed by the governor of South Dakota.

4. The Ohio law allows a court to prohibit a victim of abuse from allowing the abuser to enter a residence from which he has been evicted. This provision may be used only upon issuance of a second or subsequent protection order.

5. Under the Oregon protection order statute, eviction of an abuser is permitted only if minor children reside in the home. This is also true for an order pending divorce.

6. Under Maryland law, if the court determines that abuse has occurred it may as part of the relief granted under a protection order require the abuser to vacate the family home immediately and grant temporary possession of the home to the petitioner for up to 5 days. Any extensions to the order to vacate may not exceed a total period of 15 days.

7. Under Arizona law, "either or both parties may be restrained from coming near the residence, place of employment or school of the other party, or other specifically designated locations or persons on a showing that physical harm may otherwise result." Many of the statutes that allow no contact orders use similar language.

8. Some state laws allow the court to *require* that the abuser and/or victim attend counseling; other statutes allow the court to *recommend* counseling.

9. The Iowa law provides that where a counseling order is issued, the cost of counseling is to be paid by the abuser, or, if the abuser is indigent, by the abuser's county. A similar provision in North Dakota states that the costs of counseling are to be borne by the parties or by the county of residence for indigents.

10. Under New Hampshire and Illinois law, counseling may be recommended for the abuser only.

11. Missouri law allows assignment of income by the court.

12. Some of the statutes allow the court to order payment of court costs and attorneys' fees of the prevailing party by the other party.

13. "Other terms may be set by the court" means that the statute gives a judge discretion to add provisions to a protection order other than those listed in the law.

14. Under the laws of California and Connecticut, the court may prohibit the respondent from sexually abusing the victim.

	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	District of Columbia	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas
(ii) Parent of a minor victim	•				•			•						•			•
(iii) Adult member of the household for a minor	•							•			•			•			•
(b) Filing for a protection order does not preclude other court action		•	•		•		•	•	•		•			•		•	•
(c) Protection order has no effect on legal title to real property	•							•						•		•	•
(d) Fee charged for filing a petition (\$)			20		50-60	9-40		15		30	16			42		8	0
(e) Court may waive the filing fee for indigents		•	•					•						• ³⁵		•	•
(f) Fee charged for delivery of a protection order to an abuser (\$)					9 ³⁶	10		0	0	12				11 ³⁶			
(g) Victim may file a petition without a lawyer		•	•		•			•		•		•					
(h) Court clerk must assist the victim in filing a petition		•						•				•					
(i) Court must:																	
(i) Prepare forms useable by lay people		•	•		•			•		•		•					
(ii) Inform the victim of the availability of a protection order								•									
(iii) Inform the abuser of his right to obtain counsel		•	•					•									•
(iv) Give protection order petitions priority over other civil actions					•												
(j) Consent decree may be issued instead of a protection order		•			•			•			•						•
2. Full protection order procedure																	
(a) Maximum duration of full protection order (months)	12	1½	6		3		3		12		6	2		12		12	12 ⁴
(b) Maximum duration of eviction order if less than protection order (days)														30			
(c) Hearing must be held:																	
(i) Number of days after filing of a petition	10		10				14				10					10	10
(ii) Number of days after a temporary protection order is issued		10	10		15 ^{or 20}								15				
(d) Full protection order is renewable		•	•	•	•		•	•	•					•		•	•
(e) Full protection order is modifiable	•							•	•					•		•	•
3. Temporary protection order procedure																	
(a) Maximum duration of a temporary protection order (days) ⁴³					15-20				10			30		10			
(b) Hearing must be held within number of days after a petition is filed										20		1					
(c) Temporary protection order may be granted <i>ex parte</i> ⁴³	•	•	•		•		•	•	•	•	•	•		•		•	•
(d) Petition must list facts showing need for immediate relief ⁴³					•									•		•	•
(e) Must prove immediate danger of abuse to get an <i>ex parte</i> order	•	•			•		•	•	•		•	•		•		•	•
(f) Available relief is more limited than under a protection order														•		•	•
(g) Temporary protection order is renewable	•	•			•							•		•		•	•
(h) Temporary protection order lasts until full hearing is held					•							•					
(i) Full hearing must be held before a protection order is issued ⁴⁵		•															
(j) Temporary protection order becomes full protection order unless the abuser requests a hearing ⁴⁵				•													
(k) No bond requirement																	•
(l) Bond requirement waivable																	•
4. Emergency protection order procedure																	
(a) Judge to issue emergency protection order at night and/or on weekends	•																•
(b) Emergency protection order lasts until the regular court opens (max. 72 hrs.)																	•
(c) Upon expiration, the victim may petition for a temporary protection order	•																•
F. Enforcement of Full Protection Orders, Temporary Protection Orders, and Emergency Protection Orders						48											
1. Order issued to the abuser by the court	•				•			•		•				•		•	•
2. Order to be personally served on the abuser		•	•		•	•			• ⁴⁹					•		•	•
3. Free copy of the order given to the victim	•				• ⁵⁷		•	•									•
4. Copy of the order sent to the local police by the court	•	•	•		• ⁵²	•	•	•			•			•		•	•
5. Penalties for violation of protection orders																	
(a) Misdemeanor			•		•	•	•	•	•			•		•		•	•
(b) Contempt of court	•		•		•	•	•	•	•			•		•		•	•
(c) Maximum jail sentence (months)		55			6	6	12	24	6								
(d) Maximum fine (\$)					500	500	1000	1000	300								

31. In the District of Columbia, only the Corporation Counsel may file protection order petitions. Victims of abuse have no private right of action except to seek temporary restraining orders as part of a divorce, custody, or other proceeding in family court. A pending amendment to the statute gives victims of abuse a private right of action.

32. In Minnesota and Pennsylvania, the laws allow any adult household member to file a petition on behalf of a child living in the residence.

33. Missouri law states, "No order entered pursuant to this act shall be *res judicata* to any other proceeding."

34. Under New York law, a victim of abuse may apply for relief in either family court or criminal court. Within 72 hours after filing a criminal charge or a petition for a protection order in family court, she may change her mind and switch from one court to the other. Petitioners are informed that the purpose of the family court proceeding is to keep the family intact, while the purpose of the criminal proceeding is prosecution.

35. In Maryland, Pennsylvania, and Illinois, if a person filing a petition alleges that she is indigent or unable to pay the filing fee, the fee is temporarily waived. At a later hearing it is determined if the fee should be waived or whether payment should be required. In Maryland, the abuser may be required to pay the filing fee for the victim.

36. In California, North Dakota, Vermont, and Illinois, the court may waive the fee for service of a protection order upon application by a victim of abuse to proceed in *forma pauperis*.

37. The Missouri statute declares that assistance provided to the victims by court clerks "shall not constitute the practice of law." In New York, legislation passed which gives indigent petitioners in family offense proceedings a right to court-appointed counsel.

38. Maine law provides that the address of the victim may be deleted from court papers.

39. New York requires that a summons issued to an abuser inform him of his right to be represented by a lawyer and of his right to have a court appoint a lawyer for him if he is indigent. New York law also gives indigent petitioners in family offense proceedings a right to court-appointed counsel.

40. A temporary support order is limited to 30 days in Kansas and 2 weeks in Pennsylvania.

41. Under Ohio law, if no *ex parte* protection order is requested, a petition will be heard on the same schedule as all other civil actions. If an *ex parte* order is requested, it must be heard on the same day. If an abuser is evicted on the basis of an *ex parte* hearing, a full hearing must be held within 3 days. If an eviction order is not issued, then a full hearing must be held within 10 days.

42. Under Minnesota law, a court referee may be appointed to take evidence and report it to the judge.

43. The provisions allowing *ex parte* eviction have been criticized as allowing a deprivation of property without notice and hearing in violation of the due process clause of the fourteenth amendment of the United States Constitution. In ruling on other statutes allowing injunction relief prior to notice and hearing, the Supreme

	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	District of Columbia	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas
II. INJUNCTIONS PENDING DOMESTIC RELATIONS PROCEEDINGS⁵⁶																	
A. Order Restraining an Abuser is Available to a Victim Who Files for Divorce																	
B. Court May Order:																	
1. Eviction of the abuser			• ⁵⁷		• ⁵⁸	•		•				•		•	•		•
2. Abuser not to molest or disturb the peace of the victim			• ⁵⁷		•	•		•				•		•	•		•
3. No restriction on the liberty of the victim			•		•							•					
4. Support of a spouse or minor children			•		•	•		•	•	•	•	•	•	•	•	•	•
5. Child custody/visitation rights			•		•	•		•	•	•	•	•	•	•	•	•	•
6. No removal of children from the jurisdiction			• ⁵⁷		•									•			
7. Payment of court costs and/or attorney's fees of the victim by the abuser			•		•	•		•	•			•	•			•	•
8. Temporary use or possession of personal property			•		•	•		•							•		•
9. No disposition of property			•		• ⁵⁷	•		•	•			•			•		•
10. Other terms may be set by the court			•		•	•								•			
C. Ex Parte Relief Available																	
D. Police Must Enforce Orders																	
E. Penalties May Be Imposed for Violation of Orders																	
III. CRIMINAL LAW																	
A. Statute Makes Domestic Violence a Separate Criminal Offense																	
1. Charges include:																	
(a) Simple assault					•	•						•					
(b) Aggravated assault					•	•											
(c) Criminal trespass																	
2. Who may be charged (relationship to the abuser):																	
(a) Spouse					• ⁶¹	•						•					
(b) Unmarried intimate						•											
(c) Former spouse						•											
3. Violation: felony																	
4. Violation: misdemeanor																	
5. Sentence upon conviction or guilty plea:																	
(a) Jail (maximum months)						36											
(b) Fine (maximum \$)																	
B. Alternative Dispositions Authorized by State Law																	
1. Court may impose conditions on pretrial release, including:																	
(a) Pretrial detention if the abuser is dangerous			•												•		
(b) Protection order			•												•		
2. Deferred prosecution (diversion) program																	
(a) Arrest record expunged if abuser successfully completes diversion program			• ⁷²		• ⁷²										• ⁷²		• ⁷⁴
(b) Court may order mandatory counseling			•		•										•		
(c) Court may issue a protection order			•		•										•		
(d) Evidence from the program is not admissible if prosecution is resumed					•												
3. Court may impose conditions on probation, including:																	
(a) Mandatory counseling															•		
(b) Protection order															•		
C. Law Imposes Duties on the Court or the Prosecutor																	

police.

53. Violation of a protection order in Maine is, in most cases, a misdemeanor. However, violation of provisions ordering counseling or payment of temporary support or compensation for injuries are punishable only as contempt of court.

54. The Texas protection order law states that violation of an *ex parte* protection order is punishable by up to 6 months in jail or a fine of \$500 or both. Violation of a full protection order, also according to the civil law, is punishable by up to 12 months in jail or a \$2000 fine or both. However, a proposed amendment to the criminal code that was to accompany this new legislation was never voted on by the Texas legislature.

55. Alaska law provides that "a defendant convicted of assault in the third degree committed in violation of [a protection order]... shall be sentenced to a minimum term of imprisonment of 10 days. The execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served. Imposition of sentence may not be suspended, except upon condition that the defendant be imprisoned for no less than the minimum term of imprisonment provided in this section, and the minimum sentence provided for in this section may not be otherwise reduced."

II. Injunctions Pending Domestic Relations Proceedings

56. Many states allow some form of temporary injunctive relief during divorce, separation, or custody proceedings, whether or not abuse is alleged. All of these are listed on the chart because of their potential usefulness to battered women. Some of these laws include specific provisions for orders prohibiting abuse or evicting the abuser. These are listed under Section II.A.

57. Under Arizona law, an injunction is issued automatically against all parties to every divorce action. Such an injunction prohibits disposition of common property, prohibits molestation, harassment, assault, or disturbance of the peace of the other party or of any children of the parties, and prohibits removal of the children residing in Arizona without written consent of the parties or the court. These orders warn that violation is contempt of court and may subject the violator to arrest and prosecution for crimes committed in the course of violation of the order. Parties are encouraged to file the order with a local law enforcement agency. The statute provides for warrantless arrest for violation of the order based on probable cause and for

imposition of conditions on release of persons arrested.

The orders listed above are issued in every divorce case regardless of allegations of violence. No application is necessary. Other orders pending divorce are available in Arizona upon application by a party.

58. In California, protection orders are available in some paternity proceedings as well as in domestic relations proceedings.

59. Under Massachusetts law, the court may order the husband or wife to vacate the marital home for a period of time not to exceed 90 days. The court may extend the period of time, after a hearing, if it finds that the health, safety, or welfare of the moving party or minor children would be endangered. The opposing party is given at least 3 days notice of such a hearing. However, if immediate danger can be demonstrated the court may enter a temporary order without notice and give the opposing party notice within 5 days and an opportunity to question the order's continuation.

III. Criminal Law

60. New York law provides that the family court and criminal court have concurrent jurisdiction over most family offenses. For first-degree assault, however, the criminal court has exclusive jurisdiction.

61. Pennsylvania law makes intimidation of a victim or witness of a crime a criminal offense. Depending on the method of intimidation used, the crime is either a third-degree felony or a second-degree misdemeanor. Protection orders for victims and witnesses may be issued on hearsay evidence. Compliance with this provision is made a condition of all pretrial releases.

62. The criminal provisions charted for Massachusetts, New Hampshire, and Wisconsin were included in domestic violence legislation, but the laws are not specifically directed to spouse abuse. The Wisconsin law creates a "middle-level" battery, which is a class E felony. The laws in Massachusetts and New Hampshire make it a criminal trespass to enter or remain in defiance of the order of the owner or other authorized person.

63. Ohio law also allows former household members related by blood or marriage to be charged. Wyoming law criminalizes abuse or neglect of a disabled adult by a caretaker.

64. The spouse assault law of Arkansas refers to husbands rather than spouses.

	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	District of Columbia	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas
IV. POLICE INTERVENTION																	
A. Warrantless Arrest:																	
1. Permitted if probable cause that a misdemeanor or offense was committed		•	•							•	•	•	•	•			
2. Permitted if probable cause that a protection order was violated		•	•							•	•	•	•	•			
3. Arrest mandatory				•													
4. Arrest discretionary		•	•							•	•	•	•	•			
5. Abuse need not occur in presence of the police		•	•							•		•	•	•			
B. Warrantless Arrest Allowed Only If:																	
1. Physical evidence of abuse is visible										•							
2. Danger that the abuser would injure the victim or property unless arrested										•		•					
3. Police have verified the existence of an effective protection order																	
C. Police Department Must/May:																	
1. Establish procedure for informing officers on call of effective protection orders		•	•		•	•											
2. Develop and implement domestic violence training programs for officers		•															
D. Police Officer Must/May:⁸⁹																	
1. Use all means necessary to prevent further abuse		•															
2. Enforce protection order		•	•		•	•											
3. Arrest the abuser where appropriate					•												
4. Transport the victim to a hospital					•							•					
5. Transport the victim to a shelter					•												
6. Inform the victim of her legal rights		•	•		•												
7. Stay until the victim is no longer in danger																	
8. Supervise eviction of the abuser, or his return home for personal property					•						•						•
9. Other duties											93			93			
E. Police Immune from Civil Liability for Good Faith Enforcement																	
				•													•
V. DATA COLLECTION AND REPORTING																	
A. Records Must be Kept on All Domestic Violence Cases by:																	
1. Police					•		•										
2. Social service agencies																	
3. Shelters		•															
4. Hospitals							•										
B. Statistical or Other Reports on Domestic Violence Must Be Prepared by:																	
1. State agency responsible for domestic violence services		•	•		•		•			•	•			•	•	•	
2. Police																	
3. Shelters		•															
C. Personal Information Included in Reports is Confidential																	
		•															
VI. FUNDING AND/OR SHELTER SERVICES																	
A. State Appropriations																	
1. Total amount appropriated (\$)		2.5M 6M	548T		280T 500T		275T 325T	63T				212T (295T)		564T	50T	100T 100T	60T
2. Years covered		FY 80-81 81-82		FY 78-80		FY 79-80 80-81	FY 1981					FY 79-81 (81-82)		FY 82	FY 80-81	FY 79-80 80-81	FY 1981
B. Marriage License Surcharge																	
1. Amount of surcharge (\$)		5			8					5				10 ⁹⁸	10		99
2. Anticipatory appropriation (\$)										880T FY 79-81							
3. Funds are collected and distributed statewide					103					•					•		•
C. Use of Funds Collected or Appropriated																	
1. Funds to be used for shelter services		•	•		•		•	•		•	•			•	•	•	•
2. Shelters to provide additional services ¹⁰⁴		•			•		•			•	•						
3. Funds to be used for other services			• ¹⁰⁵		•			•		•		• ¹⁰⁶					
4. Maximum number of shelters to be funded																	1
5. Maximum amount per shelter per year (\$)		75T								50T					50T		
6. Maximum percentage of shelter budget that may be supplied by state funds		50%								75%	75%			•	75%		
D. Other Provisions																	
1. AFDC or other welfare funds available to shelter residents			109														•
2. Shelter records confidential										•							
E. Shelter Legislation Without Appropriation																	

establish a similar program termed supervision. When a defendant is placed on supervision the court enters an order for supervision for a specified period of time not to exceed 2 years, and defers further proceedings in the case until the conclusion of that period. The court sets reasonable conditions, some of which may include reporting to the court or a social service agency, undergoing counseling, attending or residing in a facility established for the instruction or residence of defendants on probation, and complying with the terms and conditions of an order of protection issued to the victim by the court. The court defers entering any judgement on the charges until the conclusion of the supervision. If the defendant successfully com-

plies with all the conditions of supervision, the court will discharge the defendant and enter a judgement dismissing the charges. Discharge and dismissal upon successful conclusion of a disposition of supervision shall be deemed without an adjudication of guilt and shall not be termed a conviction for purposes of disqualification or disabilities imposed by laws upon conviction of a crime. 73. In Michigan, a person convicted of simple or aggravated assault against a spouse, former spouse, or present or former household member may be placed on probation prior to entry of a judgement of guilt and ordered to participate in counseling. If conditions of probation are fulfilled, proceedings are dismissed.

Washington law, the police must send reports of domestic disturbance calls to the prosecutor if there is probable cause that an offense has been committed. Records must be coded to facilitate the identification of domestic violence cases. Prosecutors must notify victims of the decision to prosecute or not prosecute within 5 days after a report is received and must advise victims of private complaint procedures.

Courts may not dismiss criminal charges against abusers because of pending civil proceedings, they must not require that the victim have filed for divorce, and they may not require disclosure of the address of the victim. In addition, domestic violence actions must be identified on docket sheets.

IV. Police Intervention

79. Under Minnesota law, warrantless arrest had been allowed at a suspect's home or when the suspect was threatening to return if the officer has probable cause to believe that a misdemeanor assault occurred within the preceding 4 hours and there is evidence of physical abuse. An amendment was passed which removed the requirement for warrantless arrest that the suspect be present at the residence of the victim or threatening to return there.

80. Under Ohio law, if an officer has probable cause to believe abuse has occurred he or she may arrest a suspected abuser without a warrant if the victim or the parent of a minor victim signs a statement alleging that abuse occurred. This requirement is substituted for the common law rule that a police officer cannot make a warrantless arrest for a misdemeanor unless he or she sees the offense committed.

81. Under Michigan law, violation of an order issued during divorce or separate maintenance proceedings or violation of a peace bond justifies warrantless arrest.

82. North Carolina law requires police to make a warrantless arrest only if they have probable cause to believe an abuser has violated an eviction order.

83. Under Maine law, warrantless arrest is mandatory where the officer has probable cause to believe that an aggravated assault occurred. Warrantless arrest is mandatory for those violations of protection orders that constitute misdemeanors. Arrest without a warrant is not permitted for violation of those provisions of a protection order that are punishable only as contempt of court.

84. Oregon law mandates arrest of a suspected abuser where the officer has probable cause to believe that abuse has occurred or been threatened and where the victim does not object to the making of an arrest. Arrest is also mandatory where there is probable cause that a protection order has been violated; in such cases the duty to arrest is not conditioned on the consent of the victim. A pending amendment would delete the provision conditioning the duty to arrest on the non-objection of the victim.

85. In Hawaii, a police officer who has reasonable grounds to believe that recent physical harm to a spouse has occurred must order the abuser to leave the residence for a 3-hour cooling-off period. If the abuser refuses, the officer may make a warrantless arrest on a misdemeanor charge.

86. In Minnesota, warrantless arrest is allowed within 4 hours after an abusive incident. In New Hampshire, warrantless arrest is allowed within 6 hours of abuse. In Rhode Island, warrantless arrest is allowed within 24 hours of abuse.

87. An amendment to the Ohio law requires that each law enforcement agency keep an index of all protection orders sent to the agency, and keep records of the date and time that each order is delivered to a batterer.

88. In Nevada and Virginia, the state legislatures passed resolutions encouraging police departments to institute training programs on intervention in family violence cases.

89. Some statutes require that police provide certain services when responding to domestic calls. Others with less imperative language list services that police may provide to victims. Statutes that require rather than recommend certain types of assistance are easier to get enforced, because inaction by police then becomes a violation of law rather than a permissible exercise of discretion.

90. Utah law does not require that police transport victims to shelters or hospitals; rather, it requires police to make arrangements for the victims to obtain shelter and medical care. The law also provides that police may ask victims to sign written statements describing the alleged abuse.

91. Massachusetts laws require that the police give victims of abuse a written statement of their legal rights.

92. Under the laws of Maine and Missouri, police are required to respond to mate abuse as they would to any stranger crime. Missouri law, in addition, allows police to establish domestic crisis teams, consisting of police officers and domestic crisis workers, to intervene in domestic disputes.

93. Under the laws of Maryland, North Carolina, and Illinois, police must accompany a victim to her residence to pick up her children and personal property. In Georgia, and under pending legislation in New Jersey, the court may as part of a protection order direct that the police provide such assistance.

94. Under North Carolina law, law enforcement officers need not respond to multiple complaints from the same victim within 48 hours if they have "reasonable cause to believe that immediate assistance is not needed."

V. Data Collection and Reporting

95. Separate records on all domestic violence cases must be kept by the courts in New Hampshire and Washington. A New Jersey bill would require courts to keep records on domestic abuse and to report annually on the data collected to state officials. The Mississippi law also makes professionals who report abuse or participate in judicial proceedings immune from liability for good faith reporting or testimony. Such action is declared not to constitute breach of confidentiality.

96. Kentucky law provides that all persons who suspect abuse of an adult must report such cases to a state agency, which is then required to investigate reports. A similar law in Wyoming applies only in cases of abuse or neglect of disabled adults.

97. Under Minnesota law, persons reporting domestic violence cases are immune from civil liability.

VI. Funding and/or Shelter Services

98. Indiana law imposes a surcharge on filing of an action for dissolution of marriage rather than on the marriage license. Minnesota law imposes a \$15.00 surcharge on both the filing of an action for dissolution of a marriage and the filing for a marriage license. Illinois law imposes a \$10.00 surcharge for a marriage license and a \$5.00 fee when filing for dissolution.

99. The marriage license surcharge passed by the Kansas legislature is to be used to create a "Family and Children Trust Fund." A portion of the money deposited into the fund is to be used for grants to shelters.

100. The marriage license surcharge in Michigan is used for a family counseling service which is an arm of the circuit court. The law specifies that this program "shall include counseling for domestic violence and child abuse."

101. Pending legislation in PA would impose an \$8.00 surcharge on the marriage license. Separate legislation is pending which would impose a \$10.00 line on persons convicted of crimes. The money from both bills would be used to fund the Office on Crime Victims, which would coordinate the services of and secure funding for family violence programs and other programs. Information charted for PA under the section entitled "Use of funds collected or appropriated" refers not to this pending legislation but to legislation appropriations for family violence programs.

102. Wisconsin law provides that where a fine is imposed as part of a penalty for a crime involving domestic abuse, that a domestic abuse assessment, in the amount of 10% of the fine imposed, shall also be imposed. The money received is used for funding programs providing services to battered women.

103. The marriage license surcharge laws in California, Michigan, Ohio, and Nevada provide that funds are to be collected and distributed by each county or by groups of counties that elect to pool their funds.

104. Some legislation requires that state-funded shelters provide services to victims of abuse other than food and a place to sleep. Other required services may include referral to or provision of psychological or employment counseling, medical or legal services, public benefits counseling, child care, or abuser counseling. Some shelters are required to maintain a 24-hour hotline or to develop material or conduct training to educate the public about domestic violence. The states indicated on the chart impose various combinations of these duties on shelters that receive state funds.

105. The 1980-81 appropriation figure includes a line item for a counseling program for male batterers. The 6M figure for 1981-82 is earmarked for capital improvements and building of shelters.

106. The \$212,000 appropriation listed for Hawaii is for programs providing services to battered women and to abused children.

107. Minnesota law requires that a minimum of four shelters be funded using state funds appropriated.

108. Under authorization legislation which took effect in Michigan in October 1978, \$55,000 is the maximum grant that may be made to any locality in 1 year. If grants are made to two shelters in one town, the total may not exceed \$55,000.

109. The laws of Alaska and Wisconsin exempt shelters from the requirement that they obtain multiple dwelling licenses.

110. The laws of Minnesota and Washington include provisions that limit the civil liability of shelters. Minnesota shelters, to qualify or state funds, must show some involvement with courts and law enforcement agencies.

111. New Jersey law requires shelters to provide bilingual services and prohibits shelters from releasing minor children to a nonresident parent without a court order.

112. Ohio prohibits shelters from discriminating on the basis of race, religion, age, or marital status.

113. The laws of Oregon and Washington provide that the addresses of shelters are to be kept secret.