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Lisa G. Lerman

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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 woman 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.

* Lisa G. Lerman is staff attorney for the Center for Women Policy Studies in Washington, D.C., and is a graduate of New York University School of Law. Sharon

Goldzweig is a student at Northeastern University School of Law.

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.

^{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. Rptr. (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 comission 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 timeconsuming. 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.



RESPONSE contains vital information on medical, social service, legal and legislative developments in the family violence field, and feature stories on wife battery, sexual assault, and sexual abuse of children. It also contains book reviews, resource listings, bibliographies, funding alerts and a calendar section.

For further information about a RESPONSE subscription or other publications available from the Center for Women Policy Studies, please call or write to: Publications Department, Center for Women Policy Studies, 2000 P Street, NW, Suite 508, Washington, DC 20036, (202)872-1770.

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KEY • - effective legislation; • - pending legislation; T- thousand; M - million; District of Columbia 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. I. PROTECTION ORDERS¹ A. Court May Order: Eviction of the abuser (a) Allowed even if residence is in abuser's name 2. Abuser to provide alternative housing for the victim ٠ ٠ 3. No further contact with the victim 4. No further abuse • . • 5. No threat of abuse ٠ • 6. Abuser not to molest or disturb the peace of the victim • 7. No restrictions on the personal liberty of the victim ٠ . 8. Counseling for the abuser and/or the victim -10 .9 . ٠ 9. Temporary support of spouse or minor children ٠ • ٠ 10. Temporary child custody/visitation rights . . ٠ ٠ . ٠ • 11. Monetary compensation to the victim by the abuse 12. Payment of the victim's court costs and/or attorney's fees by the abuser 12 ٠ ٠ ٠ ٠ ٠ 13. Temporary use or possession of personal property . . . 14. No disposition of property 15. Other terms may be set by the court 13 . ٠ . B. Abuse for Which a Protection Order is Available 1. Physical abuse: (a) of an adult ٠ ٠ ٠ ٠ • (b) of a child ٠ ٠ 2. Threat of physical abuse • 3. Attempt at physical abuse . ٠ • . . 4. Sexual abuse: (a) of an adult ٥ (b) of a child ٠ 0 ٠ C. Who May Be Covered by a Protection Order (relationship to the abuser) Spouse 2. Minor child of one or both parties ٠ ٠ • ٠ . • 3. Parent ٠ Household member related by blood or marriage²³ • • • 5. Person living as a spouse ٠ 6. Unrelated household member Former spouse 0 8. Person formerly living as a spouse . ٥ .27 9. Former household member 0 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 E. Procedural Provisions of the Protection Order Laws 1. In general

I. Protection Orders

(a) Petition may be filed by: (i) Victim

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 saties, 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 "imperilling"

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

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

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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

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 lowa 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.

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15. A protection order in New York may order the parties, in addition to provisions listed, to give "proper attention to the care of the home," to refrain from actions that "make the home not a proper place for the child," or to participate in an "education program" for abusers which is similar to the program for those convicted of driving while intoxicated.

- while illustration order law in the District of Columbia allows issuance of an order for "any act," punishable as a criminal offense," against an eligible party.

 17. Laws in New York and Illinois include harassment in the definition of abuse for which a protection order may be issued.

which a protection order may be issued.

In California, temporary restraining orders are also available to persons who have suffered harassment. Harassment is defined as "a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses such person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff. 'Course of conduct' is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of 'course of conduct'"

18. Tennessee lists additional grounds for issuance of a protection order, including physical restraint on the victim or malicious damage to the personal property of the

- physical restraint on the victim or malicious damage to the personal property of the
- victim.

 19. New Hampshire law makes a protection order available for sexual abuse of an adult, but excludes spouses from relief under this provision.

 20. Only spouses and former spouses are expressly covered by the Arizona protection order law, but the statule states that protection may be extended to other specifically designated persons at the discretion of the court.

 21. Under the laws of Missouri and Tennessee, protection orders are available only if both the victim and the abuser are adults. The definitional section of the Tennessee laws extended to a broad group of victimes but an
- see law makes protection orders available to a broad group of victims, but an amendment at the end of the statute restricts availability of orders to currently married persons. 22. In Nevada and North Dakota, protection orders are available, in addition to

- parties listed, to any adult member of the abuser's family.

 23. "Household members related by blood or marriage" is often stated in the law as "persons related by consanguinity or alfinity," or in some states as "relatives." Consanguines include blood relatives and affines include spouses and indaws. A lew of the states listed do not require that persons in this category be co-residents. 24. In Massachusetts and Minnesota, "consanguines" but not "affines" are eligible
- Under Texas law, no co-residency requirement is imposed on persons related by consanguinity or affinity. Texas law also covers loster parents and children.
 Wisconsin law makes protection orders available to persons living as spouses
- only if they are of the opposite sex and have minor children in common.

 27. The laws of Kansas and Pennsylvania allow issuance of protection orders to former spouses and former household members only if both parties still have legal access to the residence. An adult in Kansas may not obtain a protection order more than twice in a 12-month period. Kansas law allows issuance of protection orders to former household members only if they are related by blood or marriage.
- New York law allows issuance of protection orders to former spouses only in conjunction with custody orders.

 28. In Missouri, a protection order terminates, unless otherwise provided by law,
- upon the entry of a decree of dissolution of marriage or legal separation. Ohio law states that a protection order shall terminate no later than 60 days after the victim files for separation or divorce.
- 29. The protection order laws of Vermont and West Virginia state that orders are unavailable to victims of abuse who have filed for separation or divorce. However,
- unavailable to victims of abuse who have filed for separation or divorce. However, both of these states have other legislation making protection orders available while proceedings for divorce or separation are pending (see Section II).

 30. The Maine protection order law states, "The right to relief under this chapter shall not be affected by the plaintiffs use of reasonable force in response to abuse by the defendant." In Tennessee, eligibility for a protection order is unaffected by "use of such physical force against the respondent as is reasonably believed to be necessary to defend the petitioner or another from imminent physical injury or abuse." A familier president in the laws. abuse." A similar provision is found in Illinois law.

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- 31. In the District of Columbia, only the Corporation Counsel may file protection order patitions. 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.

- 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.
- 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 courtappointed 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 exparte 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 exparte 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

Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
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Court stated that deferral of a hearing on deprivation of property may be permissible if (1) the petition includes statements of specific facts that justify the requested relief; (2) notice and opportunity for a full hearing are given as soon as possible, preferably within a few days after the order is issued; and (3) the temporary injunction is issued by a judge. See Mitchell v. Grant, 416 U.S. 500 (1974). Drafting protection order laws that reflect these guidelines may minimize the risk that the laws will be found unconstitutional.

The case in which these guidelines were developed involved summary repossesthe case in which these guidelines were developed involved autimary is posses-sion of consumer goods on default of payments by the buyer. The court balanced the right of the buyer to notice and hearing before repossession against the seller's property interest. The balancing test used in Mitchell might be interpreted to find that a projection order is necessary to preserve the physical safety of the victim. (See

p. 3, n. 6, supra).
44. In Vermont, an ex parte order prohibiting abuse of or interference with the 44. In Vermont, an ex parte order prohibiting abuse of or interference with the personal liberty of the victimor minor children may be issued if the court finds that abuse has occurred. Vermont law allows issuance of a temporary custody order exparte if the victim can show immediate danger of abuse of minor children. If she can show that she was forced to vacate her residence and is without shelter, the court may issue an exparte eviction order.
45. "Sections IE3i and IE3j distinguish two statutory alternatives for providing the abuser with "notice and the opportunity to be heard" required by the due process clause of the fourteenth amendment. Under some laws, a full hearing must be recorded by the processor.

scheduled whenever a temporary protection order is issued. Other statutes require

that the abuser be given notice when a temporary order is issued and have the

that the abuser be given notice when a temporary order is issued and have the opportunity to request a hearing. Under these laws, the temporary order becomes permanent unless the abuser requests that a full hearing be held.

46. In North Dakota and Pennsylvania, the relief that may be ordered on an emergency basis is more limited than that which may be ordered when a full protection order is issued. These provisions are parallel to those limiting relief available under a temporary protection order (see Section IE31).

47. In Pennsylvania, emergency relief is available on weekends on a 24-hour basis, but emergency orders cannot be obtained on weekinghts.

48. California law provides that the court may appoint counsel or the district automey to represent the plaintiff in a proceeding to enforce the terms of a protection order. The defendant may be ordered to pay court costs and attorneys fees incurred by the plaintiff or to reimburse the county for costs incurred if the plaintiff is

by the plaintiff or to reimburse the county for costs incurred if the plaintiff is represented by the district attorney.

49. In the District of Columbia, protection orders are served on the abuser by the U.S. Marshal, not by the D.C. Police.

50. Utah law makes a victim of abuse responsible for serving a protection order on

ner abuser.

51. In California, a free copy of a protection order is given to a victim of abuse only if the filing fee has been waived.

52. Under the laws of Oregon, Pennsylvania, and Utah, the victim rather than the court is required to deliver a copy of the protection order to the local police department. In California, both the victim and the court must deliver the order to the local

	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	District of Columbia	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	lowa	Kansas
II. INJUNCTIONS PENDING DOMESTIC RELATIONS PROCEEDINGS ⁵⁶		ļ						<u> </u>					L	_	ا ـــــا	├ ─	<u> </u>
A. Order Restraining an Abuser is Available to a Victim Who Files for Divorce		·	●57		●58	•	┝	·	├—	<u> </u>		•	ļ	•	•	i	<u>+ •</u>
B. Court May Order:		ļ	L		<u> </u>	<u> </u>		ļ	<u> </u>	ļ	<u> </u>		<u> </u>		- —		-
1. Eviction of the abuser	-	ļ	• 57		•	Ŀ	├	•	<u> </u>		<u> </u>	 —		•	•	 	<u> • </u>
2. Abuser not to molest or disturb the peace of the victim	<u> </u>	ļ			•	<u>.</u>	<u> </u>	•	<u> </u>	├		├		•	•		<u> •</u>
3. No restriction on the liberty of the victim	ļ	·	•		_	ļ	 			 -		•			 	 	<u> </u>
4. Support of a spouse or minor children		•	•		•	•	 	•	<u> </u>	·	•	•	•	•	•	Ŀ	•
5. Child custody/visitation rights		·	-57		•	•	├	·	•	•	•	Ŀ	•	•	•	•	<u> •</u>
6. No removal of children from the jurisdiction	<u> </u>	<u> </u>		<u> </u>	•	ļ	├	 		<u> </u>	├—		 	•	├		
7. Payment of court costs and/or attorney's fees of the victim by the abuser	<u> </u>	•	·		•	•	- -	·	<u> </u>	<u> </u>	<u> </u>	•	•			-	<u> </u>
8. Temporary use or possession of personal property	<u> </u>	ļ	<u> </u>	<u> </u>	•	•	╙	·	Ļ	-	 	├	├	<u> </u>	•		<u> • </u>
9. No disposition of property	<u> </u>	Ŀ	●57		•	•		<u> • </u>	<u> </u>		<u> </u>	·	<u> </u>	•	•		·
10. Other terms may be set by the court	<u> </u>		• •57		•	•	ļ	—	 		<u> </u>	├ —	<u> </u>	٠	<u> </u>		-
C. Ex Parte Relief Available	<u> </u>				•	•		٠.		-		↓	<u> </u>	•	•	\vdash	-
D. Police Must Enforce Orders	<u> </u>		•57	_	٠	•		<u> • </u>	├ ─	 	<u> </u>	<u> </u>	<u> </u>	<u> </u>	-		₩.
E. Penalties May Be Imposed for Violation of Orders	ļ	<u> </u>	•57		•	•	ļ	╚		├	<u> </u>	├ —	<u> </u>		ا—ا	 	
III. CRIMINAL LAW				ļ		├		<u> </u>	├ ─	 	<u> </u>	 	<u> </u>	<u> </u>	! —		
A. Statute Makes Domestic Violence a Separate Criminal Offense		ļ	Ь-	•	•	⊢ –		┢	l		_	•	├		 -	 i	
1. Charges include:	 	Ļ	<u> </u>	-		<u> </u>		<u> </u>	 -	ļ	<u> </u>	├ —	<u> </u>			<u> </u>	 _
(a) Simple assault		<u> </u>		<u> </u>	•	 	Ļ	ļ_	├ —	<u> </u>		•	⊢-	 	—		-
(b) Aggravated assault	ļ		 	<u> </u>	•	<u> </u>	<u> </u>	<u> </u>	ļ	_	ļ	ļ	<u> </u>		-	 	├ ─
(c)Criminal trespass			<u> </u>		ļ	<u> </u>	ļ	ļ	<u> </u>	 	<u> </u>	├	<u> </u>	<u> </u>	 —	 	—
2. Who may be charged (relationship to the abuser):	<u> </u>	Ļ	 	-	ļ	ļ		<u> </u>		<u> </u>	-		<u> </u>	ļ		ļ	<u> </u>
(a) Spouse	ļ	L		-4	ŀ		ļ			<u> </u>	 	•	 	<u> </u>	ļ	├	<u> </u>
(b) Unmarried intimate	<u> </u>	<u> </u>	-	<u> </u>	•		<u> </u>		<u> </u>	<u> </u>	 	ļ		<u> </u>	ł	<u> </u>	—
(c) Former spouse	├	ļ	<u> </u>	<u> </u>	·		├		<u> </u>	├ —	<u> </u>	} —	 	<u> </u>	 	⊢ –	—
3. Violation: felony	ļ	L	Ь.	•	<u>.</u>	<u> </u>	<u> </u>			<u> </u>	<u> </u>	ļ	<u> </u>		 —	 	⊢
4. Violation: misdemeanor		├	├	·		ļ	<u> </u>	!	ļ	╙	├	•	<u> </u>		ł	├	├
5. Sentence upon conviction or guilty plea:	<u> </u>	L	╙			Ь.	-	<u> </u>	<u> </u>		₩.	 	<u> </u>		 —	├ —	
(a) Jail (maximum months)	<u> </u>	ļ	<u> </u>		.36	<u> </u>	↓	 	<u> </u>	╙	-	↓	ļ		 —		-
(b) Fine (maximurn \$)	₩		<u> </u>		ļ	<u> </u>	<u> </u>	ļ		↓	-	├ —	 	-	 	<u> </u>	⊢
B. Alternative Dispositions Authorized by State Law	 	├	├-		 	├	├	├	├-	├	-	↓_		<u> </u>	↓	 -	—
Court may impose conditions on pretrial release, including:	<u> </u>		•	<u> </u>	-	ـــــ	-	↓	<u> </u>	<u> </u>	├	-	├ -	•	∤		├
(a) Pretrial detention if the abuser is dangerous	Ь.	├	ļ	<u> </u>	ļ	ļ	<u> </u>	↓	ļ	ļ	<u> </u>	↓	<u> </u>		ļ.—	└ ─	 —
(b) Protection order		├ ─	•	ļ	<u> </u>		<u> </u>	 		<u> </u>	-	ļ	 	•	ļ	 	
Deferred prosecution (diversion) program	<u> </u>	 	•72	<u> </u>	•72	<u> </u>	}—		ـــ			├—	 	•72 •74	 	<u> </u>	—
(a) Arrest record expunged if abuser successfully completes diversion program	Ь	 	├-	ļ	•	├	—	 	├	├ ─	├	├ —	├	₩-	ļ	├	
(b) Court may order mandatory counseling	—.	ļ.	<u> </u>	┢	•	├	₩	╁	 	┼—	┼—		├	<u> • </u>	├ —-	├	—
(c) Court may issue a protection order	₩	 	•	├	ļ.—	 	₩	 	 	₩-	 	├	 	•	 	├	—
(d) Evidence from the program is not admissible if prosecution is resumed	₩	├ -	\vdash	!	<u> • </u>	\vdash	-	-	┼	├	₩-	├	ـــ	₩	∤- —	 	├
3. Court may impose conditions on probation, including:	├—	 	\leftarrow	 	 	├-	 		₩	 		\vdash	├	ŀ٠	 	├	-
(a) Mandatory counseling	├	 	\vdash	├ —	 	<u> </u>	-	ـ	 	 	₩	↓		•	 	—	—
(b) Protection order	├-	├ —	├	—	 	-	-	 	<u> </u>	┼	 		 	•	 	—	—
C. Law Imposes Duties on the Court or the Prosecutor	•	<u> </u>	Щ.	l	•	Ц.		<u></u>	Ь.,		L	0	ــــــــــــــــــــــــــــــــــــــ	<u> </u>	<u> </u>	Щ.	Щ.

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 crimnial code that was to accompany this new legislation was never voted on by the Texas

55. Alaska law provides that "a defendant convicted of assault in the third degree committed in violation of the provisions of la 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 mum 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 obuse 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

Some of these laws include specific provisions for orders prohibiting abuse or evicting the abuser. These are listed under Section IIA.

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

 In California, profection orders are available in some paternity proceedings as well as in Idomestic relations proceedings.
 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 cent may extend the court may extend the process. 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 crimon Perhapsivation taw index a inflammation of a vicinity of winess of a chimle of chim-inal offense. Depending on the method of intimidation used, the crime is either a third-degree (elony 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.

is made a containon of an premium 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

64. The spause assault law of Arkansas refers to husbands rather than spauses

Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
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65. Under Ohio law, a first offense under the spouse assault law is a first-degree misdemeanor, punishable by a 6-month jail sentence or a \$1,000 line, or both. A subsequent offense is a fourth-degree felony, punishable by 5 years in jail or a \$2,500 fine, or both. Wyoming law allows imprisonment for up to 5 years for second

or subsequent offenses.
66. Under the laws of Massachusetts and New Hampshire, a convicted abuser may be ordered to compensate the victim for loss or injury resulting from the abuse.

67. Legislation in Ohio and Wisconsin allows a court to release a suspected abuser into the custody of a third party.

into the custody of a third party.

68. In Minnesota, post-arrest detention is allowed if the abuser is considered dangerous, but any person detained must be brought before a judge within 24 hours or else released. In New Hampshire, an abuser may be detained if he violates conditions of pretrial release, but a bail revocation hearing must be held within 24

69. Under North Carolina law, if a defendant in a domestic abuse case is charged with assault, threat of assault, criminal trespass, or violation of a protection order,

then:
Upon a determination by the judicial official that the immediate release of the likely to result in intimidation of the alleged victim and upon a determination that the execution of an appearance bond...will not reasonably assure that such injury or intimidation will not occur, a judicial official may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.

70. Minnesota law prohibits an arresting officer from issuing a citation in lieu of arrest or detention to a person charged with assaulting a spouse or household member. Persons arrested for domestic violence are required by law to be released member. Persons arrested or admessic violence are required by it wis to be released after arrest "unless it reasonably appears that detention is necessary to prevent bodily harm to the arrested person or another," or if the arrestee may not respond to a citation. Persons detained pursuant to this provision must be brought before a judge within 24 hours ofter arrest, excluding Sundays and holidays.

71. Protection orders available as a condition of release in Ohio are charted under

the section on protection orders. There are a few significant differences between available civil and criminal protection orders in Ohio. Hearings must be held within 24 hours for a criminal temporary protection order, and the same day for a civil temporary protection order. Also, the statute does not authorize eviction of abusers

In other states, the injunctions available as a condition of release are separate from the civil protection order, which may be issued in an independent proceeding. Generally, the injunctive relief available from criminal court is more limited than

relief provided by the civil protection order laws.

72. Arizona, California, and Wisconsin specify conditions that must be met before an abuser may be admitted to a deferred prosecution program. In Arizona, deferred prosecution is unavailable if the abuser has a prior criminal conviction or has in the past been unsatisfactorily terminated from a deferred prosecution program. An abuser cannot enter a diversion program without the consent and recommendation of the prosecutor and the victim. Diversion occurs after conviction but before adudication of guilt is entered. In California, deferred prosecution is available where the offense was charged as

in California, deferred prosecution is available where the otlense was charged as or reduced to a misdemeanor, where there has been no conviction of a violent crime within 3 years, where there has been no prior revocation of probation, and where the abuser has not previously participated in a diversion program. A 1980 amend-ment prohibits diversion of persons charged with assault with a deadly weapon or instrument upon a spouse or cohabitant.

If the defendant is eligible for diversion, the prosecutor must inform the defendant and his attorney of the existence of the diversion program and of the procedure for entry. The defendant must consent to participate and waive his right to a speedy trial. No admission of guilt is required. California law specifies that the abuser will be unsatisfactorily terminated from the program if he is convicted of another violent crime during the diversion period or if the prosecutor, the court, or the probation department finds that he is not participating in or benefiting from the program.

Wisconsin law requires that an abuser admitted to a diversion program consent to participate, waive his right to a speedy trial, and agree that the statute of limitations will be tolled during diversion (so that prosecution may be resumed if necessary). Abusers participating in diversion in Wisconsin must file monthly reports with prosecutors certifying compliance with conditions imposed.

In California, prosecution may be suspended for 6 to 24 months. In Wisconsin, cution may be suspended for up to 12 months.

While there is no deferred prosecution program in Illinois, the statute does

	Alabama	Alaska	Antenna,	Arkansas	California	Colorado	Connecticut	Delaware	District of Columbia	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	lowa	Kansas
IV. POLICE INTERVENTION																	
A. Warrantless Arrest:		•	•							•	٠	•	•	•			
Permitted if probable cause that a misdemeanor or offense was committed	<u> </u>	•	•							•	•	•	•	•	Ш	$oldsymbol{\sqcup}$	
Permitted if probable cause that a protection order was violated	<u> </u>		٠	ļ										٠	L	\sqcup	
3. Arrest mandatory	ļ			 	_				\dashv						\square		
4. Arrest discretionary	├	•	•				\vdash		\dashv	•	•	•	٠	•	\vdash	\longrightarrow	
5. Abuse need not occur in presence of the police	├ ─	•	•		ļ				\Box	•		85	٠	•	 	\vdash	
B. Warrentless Arrest Allowed Only If:	├	_	<u> </u>		<u> </u>		\vdash	_				- 83				\vdash	—
Physical evidence of abuse is visible Danger that the abuser would injure the victim or property unless arrested	├	-	 -		_	-		-	\vdash	•		•		\vdash	\vdash	-	
Duringer that the abuser would mjure the victim or property unless arrested Police have verified the existence of an effective protection order	├			-				-	\vdash	•	_	•		-		-	—
C. Police Department Must/May:	 	-			_		-							\vdash		\rightarrow	—
Establish procedure for informing officers on call of effective protection orders		•	•		•	•	-	_	-					•		\vdash	—
2: Develop and implement domestic violence training programs for officers	 	•	<u> </u>		<u> </u>	H	 	_				-		•	П		_
D. Police Officer Must/May:89	 	1		<u> </u>													_
Use all means necessary to prevent further abuse	\vdash	•		ا ا					-					•		$\neg \uparrow$	
Enforce protection order		•	•		•	•		_	. 0 .	46.5	-			<u> </u>			_
3. Arrest the abuser where appropriate	1	-	-		•			-	-			••		•			
4. Transport the victim to a hospital	T	 	\vdash		•							•		•			
5. Transport the victim to a shelter					•									•		\Box	_
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		<u> </u>	<u> </u>	<u> </u>		<u> </u>								L	L!		
A. Records Must be Kept on All Domestic Violence Cases by:	<u> </u>	<u> </u>				ļ											
1. Police				ļ	•		•							•	•	•	
2. Social service agencies	<u> </u>															\square	
3. Shelters	•	_	ļ	<u> </u>		ļ								<u> </u>	╙	 	
4. Hospitals	⊢	<u> </u>		ļ			٠	_						<u> </u>	\vdash	 	
B. Statistical or Other Reports on Domestic Violence Must Be Prepared by:				<u> </u>		_								Ь—	\vdash	 	
State agency responsible for domestic violence services	•	•		_	•	<u> </u>	•	\vdash		•	•			•	•	•	
2. Police 3. Shelters	 	-		 			<u> </u>	-	-					•	┝	\vdash	
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C. Personal Information Included in Reports is Confidential VI. FUNDING AND/OR SHELTER SERVICES	÷	├_	<u> </u>		•					•		•		-	H	\vdash	<u> </u>
A. State Appropriations	۱÷	<u>:</u>	<u>:</u>			 		•	-	•		·		·	÷	•	:
Total amount appropriated (\$)	<u> </u>		 		-	 	 					_		50 4 m		1	_
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B. Marriage License Surcharge	·	81-82			•	 	80-81			•		<u> 61-82</u>		•	98	Н	●99
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2. Anticipatory appropriation (\$)										880T FY 79-81							3.00
3. Funds are collected and distributed statewide	\vdash	 	 	 	103		\vdash	 	H			_	H	\vdash			•
C. Use of Funds Collected or Appropriated	 		 	 	\vdash				H					\vdash	Ė		Ť.
1. Funds to be used for shelter services	•	•			•		•	•		•	•			•	•	•	•
2. Shelters to provide additional services 104	•				•	<u> </u>	•	<u> </u>		•	•			Г	•	•	<u> </u>
3. Funds to be used for other services		•10S			•			•		•		•106			•	\square	•
4. Maximum number of shelters to be lunded																1	
5. Maximum amount per shelter per year (\$)	75T	L					L^{-}			50T					50T		
6. Maximum percentage of shelter budget that may be supplied by state funds	50%									75%	75%			•	75%		
D. Other Provisions		109				匚								匚			二
AFDC or other welfare funds available to shelter residents																•	
2. Shelter records confidential		<u> </u>						<u> </u>	Ш	•				<u> </u>	<u> </u>	Ш	<u></u>
E. Shelter Legislation Without Appropriation	<u>i </u>			<u>l</u>	L	L	L	l	L	L	•		<u> </u>	<u> </u>	<u> </u>	$oxed{oxed}$	Щ.

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 detendant 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.

Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
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^{74.} In Illinois, after successful conclusion of a disposition of supervision the court enters a judgement dismissing the charges. Two years after discharge and dismissal a person may have his arrest record expunged.

75. Michigan law provides that when an abuser's arrest record is expunged, a nonpublic record is kept which is "furnished to a court or police agency for the purpose of showing that a defendant in a criminal action...has already once [participated in a diversion program]."

76. New Hampshire law requires that presentence investigation reports be prepared for all felony offenses, and upon the prosecutor's recommendation, for violent

misdemeanor offenses, if there is reason to believe a similar offense was committed in the preceeding year. The period of probation is 3 years for a felony conviction and 1 year for a misdemeanor conviction.

7. New York law requires probation officials, law enforcement officials, and prosecutors to inform victims of abuse of their legal rights and states that "no official....shall discourage or prevent any person who wishes to file a petition or sign a complaint from having access to any court for that purpose."

78. Of the statutes that impose duties on courts or prosecutors regarding prosecution of family violence cases, the Washington law is the most comprehensive. Under

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. Prosec 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 tim 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 warrant-less 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. 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 prob-

able 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-oil 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

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.

workers, to intervene in domestic disputes.

3. 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 multi-

emplaints 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 records on domestic abuse and to report annually on the abuse contented 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

pate in judicial proceedings immune from liability for good ratin 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

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. pending legislation but to legislation appropriations to state of a penalty for a 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 holline 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

105. The 1980-81 apropriation 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

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