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Domestic Violence

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Domestic Violence: Recent Amendments to the Florida Statutes

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TABLE OF CONTENTS

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I. INTRODUCTION

In the past, "domestic violence" meant violence within the home which causes death or injury to another. Past policy assumed the victim to be a wife and the perpetrator to be a husband,[1] and depended upon preconceived notions of gender roles and unexamined assumptions about the structure and nature of the family. In many domestic violence cases, the traditional family has changed or disappeared. Often, violence occurs between people who live together but who are not married. The genders of the victim and perpetrator also are not necessarily fixed. In fact, the gender of the parties may be the same. Accordingly, the notions of "victim" and "perpetrator" have thus evolved.

If alignments of gender, victim, and perpetrator have changed, so has our understanding of domestic violence. Traditionally, violence has been understood to mean physical death or injury. However, violence, as now addressed in the *Florida Statutes*, takes several forms and is to be viewed in light of its potential social consequences. Domestic violence affects the stability and success of marriages, and a variety of familial and economic relationships. Domestic violence also alters psychological growth patterns in children. Family ties become dysfunctional and torn, which jeopardizes long-term relationships. While physical injuries may seem short-lived, the mental and emotional effects of domestic violence often cause long-term psychological harm, which impacts on existing and future generations.

Children have always been participants in domestic violence as both victims and witnesses of what occurs. Not only do children become victims of direct physical violence, they become victims of indirect physical violence by experiencing the effects of physical violence upon a parent or caretaker. Children also become victims of direct and indirect emotional violence, as well. Violence resulting in the collapse of families affects children in multiple ways, including their development into psychologically healthy adults.[2] Moreover, we now know that young victims of domestic violence often become abusers themselves.

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1. LEWIS OKUN, WOMAN ABUSE: FACTS REPLACING MYTHS 3 (1986).

2. RICHARD J. GELLES & MURRAY A. STRAUS, INTIMATE VIOLENCE 91 (1988) [hereinafter GELLES & STRAUS].

Physical forms of domestic violence rely upon and exalt brute strength. Accordingly, physical forms of domestic violence send dangerous messages that: 1) physical strength and brute force are appropriate communicators in resolving conflicts; 2) whoever is physically strongest prevails; and 3) whatever the dispute or circumstances, violence is an acceptable means of resolving disputes. In such cases, physical strength defines roles and capabilities. Children, the elderly, and women often lack physical strength commensurate with the abuser. Lack of physical prowess marks and measures the vulnerability of victims. In domestic violence situations, the stronger individual is superior.

These messages and public tolerance of domestic violence degrade the social fabric and undermine public understanding that reason should be the basis for decision making and dispute resolution. Reason is one of the principal bases of the law. In addition, public tolerance or silence about domestic violence leads to profound economic and social costs, including disregard for the law. Many victims and perpetrators who are arrested lose days of work. As a result, families lose income. Furthermore, physical and mental injuries increase medical costs to victims and the nation. The loss of even one productive person, whether adult, elderly, or child, is high.

In response to the social and economic costs of domestic violence, Florida enacted legislation in 1992 which addressed a range of domestic violence issues and problems. These laws were later amended in 1994 and 1995. In making these changes, the Florida legislators attempted to ameliorate prior laws that did not adequately protect victims. Thus, to achieve this end, Florida's new legislation placed additional responsibilities on judges, police officers, prosecutors, and clerks of the court.

It is the legislature's intent that domestic violence be treated as an "illegal act" rather than a "private matter."[3] As a result of this policy, the legislature also expanded and altered the traditional view of what constitutes domestic violence as well as who may be regarded as a victim or perpetrator.

The time has come to test the efficacy of the new language in Florida's domestic violence statutes. Do the new statutes effectively communicate the legislature's goals to those charged with administering and interpreting them? Do those affected by the new statutes understand them and feel capable of enacting and obeying them? This article examines these questions both analytically and empirically. Specifically, this article proposes that although the legislature may have attained its goal in passing

3. FLA. STAT. § 741.2901(2) (Supp. 1994).

laws protecting victims in domestic violence situations, the legislature failed to effectively communicate those aims to its many audiences.

This article further asserts that the term "domestic violence" is both inadequate and deceptive, and as such, lessens the significance of the crimes it purports to designate. Such crimes should be taken seriously and should be classified under standard language used to describe violent acts. The term "domestic violence" is unnecessarily soft and distinguishes assault and battery in the home from traditional assault and battery. Finally, this article suggests that Florida's statutes should be further refined to assist those who must comply with its provisions.

Part II of this article presents an historical survey of how women and other victims of domestic violence have been treated from ancient times to the present. Part III offers a close study of Florida's domestic violence statutes by comparing the 1991 statutory language with changes enacted between 1992 and the present, a period during which sweeping reforms occurred in Florida. In addition, Part III analyzes the language of individual statutes, paying close attention to structure, form, and style.

To determine the clarity of Florida's statutory language, this article considers elements of structure and style, including the use of nouns, verbs, qualifiers, nominalizations, powerful speech, powerless speech, hypercorrectness, complex syntax, direct syntax, motifs, values, and morals. This section also defines how the new statutory provisions impact those affected most: namely, victims, judges, police, prosecutors, defense attorneys, clerks of the court, and society in general. Specifically, Part III tests the effectiveness of the new statutes on its intended audiences.

Part IV of this article advocates the elimination of the term "domestic violence" because it seems to separate crimes of domestic violence from other crimes such as assault and battery. Including battery upon one's spouse within the realm of domestic violence, rather than under the general battery provisions of the *Florida Statutes*, suggests that the crime is different and less serious. In truth, however, the crimes are one and the same. Thus, this section proposes either a change in, or an elimination, of the statutory title of "domestic violence."

II. HISTORICAL BACKGROUND OF DOMESTIC VIOLENCE

The word family, for many, represents warm memories, a safe haven, and the American dream. For others, however, this dream has become a nightmare. Family violence is a serious and seemingly intractable problem in the United States which transcends race, religion, age, gender, and socioeconomic strata. Its occurrence is nondiscriminatory, frequent, and

widespread. What once was shrouded in secrecy is now reported daily by the media. Violence exists not only among strangers, but among family members.

The term "domestic violence" summarizes, includes, and supersedes expressions like wife beating, battered woman, intimate violence, physical violence, spouse abuse, and family violence. Collectively, these terms describe domestic violence between spouses, family members, and opposite sex partners. Domestic violence is not a private matter protected from society's views of the sanctity of the home. Rather, it involves crimes where the victim either knows, or is related to, the perpetrator.

Because family violence is both personal and subjective, it is frequently unreported. Shame often prevents the victim from seeking assistance. Denial sometimes causes a victim to interpret acts of aggression as typical rather than criminal. For example, Gilda Berger, author of *Violence in the Family*, writes that "national statistics give only incomplete estimates of the incidence and extent of family violence."[4] In 1984, the Attorney General's Task Force on Family Violence Final Report disclosed that "[r]oughly 20 percent of all murder victims in the United States are related to their assailants;"[5] and "[a]bout 1.5 million children are seriously abused each year by their parent, guardian, [or some other person]."[6] Likewise, in her book *The War Against Women*, Marilyn French states that a man beats a woman every twelve seconds.[7] Ann Jones, author of *Next Time, She'll be Dead*, chronicles the alarming escalation of violence against women in Massachusetts.[8] Her statistics indicate that in 1989, a woman was slain by her husband or boyfriend every twenty-two days.[9] In 1990, this number decreased to one slaying in every sixteen days, and one in every nine days in 1992.[10] Regrettably, violence between family members is on the increase.

To address the present needs of families ravaged by domestic violence, one must understand the history of domestic violence. Violence in the home is not a new or recent phenomenon, particularly violence against women. For centuries, men were encouraged to beat their wives and children as a

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4. GILDA BERGER, VIOLENCE AND THE FAMILY 10 (1990).
5. *Id.*
6. *Id.* at 11.
7. MARILYN FRENCH, THE WAR AGAINST WOMEN 187 (1992).
8. ANN JONES, NEXT TIME, SHE'LL BE DEAD: BATTERING AND HOW TO STOP IT 7 (1994).
9. *Id.*
10. *Id.*

right of entitlement by gender, for social, economic, political, and psychological power.[11] Physical beating was an accepted corollary of male dominance.

A. *Spouse Abuse*

1. Violence Against Women

According to Lewis Okun, author of *Woman Abuse: Facts Replacing Myths*,[12] abuse of women can be traced back to 753 B.C. to the reign of Romulus.[13] Romulus established rules making the husband the sole head of the household and his wife his possession. A wife had no legal rights and was not viewed as a separate entity. A wife's misbehavior could, therefore, result in punishment by her spouse because husbands were held accountable for their wives' actions. In an effort to insure conformity, Roman law gave the husband the legal right to punish his wife physically for various infractions. These laws were known as the "Laws of Chastisement." Roman law further mandated inequalities in sentencing. If a wife committed adultery or drank wine, for example, she faced the death penalty. However, if her husband did the same thing, he would go unpunished.[14]

Okun states further that after the Punic Wars in 202 B.C., conditions in the family changed and afforded some freedom to women.[15] Widows who previously had no rights became property owners. In addition, wives were allowed to sue their husbands if they had been unjustly beaten. While the laws of Rome regarding the treatment of women relaxed slightly over time, the rise of Christianity reaffirmed male dominance and soundly supported patriarchal authority.[16] Okun points out that while the teachings of Jesus Christ support equality in marriage, the early church fathers did not.[17] The New Testament is replete with statements that encourage female

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11. LINDA GORDON, HEROES OF THEIR OWN LIVES 251 (1988).
12. OKUN, *supra* note 1.
13. *Id.* at 2.
14. *Id.*
15. *Id.*
16. *Id.* at 3.
17. OKUN, *supra* note 1, at 3. The church's support of wife abuse is clearly outlined in the *Rules of Marriage*, written by Friar Cherubino Siena in the second half of the fifteenth century. Okun quotes Siena:

> When you see your wife commit an offense, don't rush at her with insults and violent blows. . . . Scold her sharply, bully and terrify her. And if this still doesn't work . . . take up a stick and beat her soundly, for it is better to punish

servitude. For example, in I *Peter* 3:1, the apostle said "ye wives, *be* in subjection to your own husbands[.]"[18] Religion continued to influence the treatment of women throughout the sixteenth century.[19]

The Laws of Chastisement remained firmly intact for centuries, spanning through several cultures. Wives were considered chattel and remained legally deprived of the rights possessed by men. For example, the "Rule of Thumb" tenet, a part of British common law, allowed beatings of one's wife with a stick no greater in circumference than her husband's right thumb.[20] Maria Roy, author of *Children In the Crossfire*, states that "[t]his regulation was considered to be a lenient piece of legal reform."[21] Linda Gordon states that the Rule of Thumb is evidence of the extremes in women's suffering, humiliation, and powerlessness in prior years.[22] At that time, there were no restrictions limiting brutality against women. Women were at the mercy of men. Opposition to the Rule of Thumb came from women themselves and through the support of the patriarchal community.[23] The patriarchal community did not defend the legitimate issue of women's rights, rather it supported its long-established practice, considered to be unwritten law, through its customs and bargaining aimed at regulating social issues within their community.[24] Even the modifications which resulted, however, encouraged the brutality to continue.

It was not until the end of the nineteenth century that reform began to produce changes in the treatment of women in both England and America. In 1861, English philosopher John Stuart Mill wrote *The Subjection of Women* which resulted in tremendous controversy.[25] Mill's words, even

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> the body and correct the soul. . . . Readily beat her, not in rage but out of charity . . . for [her] soul, so that the beating will redound to your merit and her good.

Id. at 3 (quoting Friar Cherubino Siena, *Rules of Marriage*).

18. *Id.* (quoting 1 *Peter* 3:1).

19. *Id.* at 3-4. This influence stemmed from the rise of Protestantism in 1517 in Wittenberg, Germany, and England, and in 1536 during the rise of Calvinism in Switzerland.

20. MARIA ROY, CHILDREN OF THE CROSSFIRE 38 (1988).

21. *Id.*

22. GORDON, *supra* note 11, at 256.

23. *Id.* The enforceability of the "Rule of Thumb" was challenged by women willing to defend themselves and who were supported by their allies within the patriarchal community. The patriarchal community is defined as a system larger than any individual family having established regulations followed by all members. Patriarchal fathers controlled their households but were subject to sanctions—social control—by the community. *Id.*

24. *Id.*

25. OKUN, *supra* note 1, at 5.

though written over a century ago, have "lost little of their relevance" in today's society.[26] Mill wrote:

> When we consider how vast is the number of men, in any great country, who are little higher than brutes, and that this never prevents them from being able, through the law of marriage, to obtain a victim, the breadth and depth of human misery caused in this shape alone by the abuse of the institution swells to something appalling.
>
> The vilest malefactor has some wretched woman tied to him, against whom he can commit any atrocity except killing her, and if tolerably cautious, can do that without much danger of the legal penalty.[27]

Seventeen years following Mill's scathing commentary on the plight of battered women, Frances Cobbe wrote *Wife Torture in England*.[28] Cobbe condemned the brutality of blue collar husbands in Liverpool and labeled their community a "kicking district."[29] The writings of these advocates, plus Queen Victoria's rise to power, resulted in the enactment of new laws that raised the status of women in England.[30]

In the United States, wife beating was effectively illegal in most states by the year 1870, with the exception of Mississippi.[31] Wife beating had become a disreputable, seamy practice. Women began seeking protection from child abuse agencies and by the late nineteenth century, women sought protection in small campaigns that fought for increased criminal prosecutions and severe sentences for wife beaters, including corporal punishment. The awareness of wife beating was masked by the growing concern over child abuse. Both forms of abuse, however, simultaneously made substantial progress toward becoming less tolerable and illegal although spanking a child was still acceptable. Domestic violence was a source of concern throughout the nineteenth century women's rights movement. It was indirectly addressed through temperance, child welfare, and social purity campaigns, and only marginally addressed through direct lobbying for legislation or judicial reform.[32]

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26. *Id.*
27. *Id.* (quoting JOHN STUART MILL, THE SUBJECTION OF WOMEN 63-65 (1861)).
28. *Id.* (citing FRANCES COBBE, WIFE TORTURE IN ENGLAND (1878)).
29. *Id.* (citing EMERSON R. DOBASH & RUSSELL DOBASH, VIOLENCE AGAINST WIVES (1979)).
30. OKUN, *supra* note 1, at 5.
31. GORDON, *supra* note 11, at 254.
32. *Id.*

Unfortunately, socialization in the late nineteenth century and early twentieth century witnessed a lack of progress and concern for the victimized woman. By 1910, most states granted divorce for physical abuse.[33] In the 1930s, women had to allege child abuse in order to get agency help.[34] However, subsequent investigations revealed that the actual abuse was against the wife.[35] This treatment continued throughout the 1930s. During that time, women were more likely to be protected by the court system on issues such as nonsupport than for physical violence.[36] Women believed in the support offered through social services.[37] These agencies sent messages that the court system offered more protection on issues of support than protection from physical abuse.[38] Ironically, after women's suffrage, the issue lay dormant for five decades.[39] Spouse abuse flourished behind closed doors and remained a private matter between a husband and a wife.[40] For some, the marriage license was a license to beat or even to kill.

History confirms that the single most important factor influencing renewed interest in the plight of battered women was the emergence of the women's liberation movement during the 1970s and the associated changes in media coverage.[41] Only when countless women found courage to defend themselves did the nation become aware of the devastating scope of domestic violence. Media attention focused first on rape victims and then on battered women.[42] By 1976, high circulation newspapers and magazines began printing articles detailing wife abuse.[43] In addition, broadcast journalists reported nightly on incidents of wife abuse. These broadcasts were particularly compelling because the words were enhanced by graphic visual images of brutality. Thereafter, television talk shows and television movies began exploring the issue of domestic violence.

Arguably, the most effective media messages concerning domestic violence were two movies which told the stories of Francine Hughes and Tracey Thurman. Together, these films left an indelible mark upon society's

33. OKUN, *supra* note 1, at 6.
34. GORDON, *supra* note 11, at 259.
35. *Id.* at 259-60.
36. *Id.* at 258.
37. *Id.* at 258-59.
38. *Id.*
39. OKUN, *supra* note 1, at 6.
40. *Id.* at 6-7.
41. *Id.* at 7.
42. JULIE BLACKMAN, INTIMATE VIOLENCE: A STUDY OF INJUSTICE 10 (1989).
43. *Id.*

collective consciousness. In 1987, viewers watched the torture of a Michigan housewife named Francine Hughes in the television movie titled *The Burning Bed* based on the book by Faith McNulty.[44] The film was widely seen and garnered much praise for its graphic depiction of domestic violence. A second television movie titled *A Cry for Help: The Tracey Thurman Story* aired in October 1989.[45] Thus, media attention immeasur-

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44. FAITH MCNULTY, THE BURNING BED (1980). Hughes' story differed from others that the public had previously seen and heard. After years of agonizing torment, Francine stopped the abuse. On March 9, 1977, she poured kerosene on the floor surrounding the bed where her ex-husband Mickey was sleeping. She then lit a match, dropped it, and fled her home with her children. Later, she drove to the local sheriff's office and confessed to burning her husband. Both her house and her ex-husband were destroyed in the fire.

Gelles and Straus, authors of *Intimate Violence*, note that "the Francine Hughes case unfolded just as feminists across the country were striving to define wife battering as a major social problem." GELLES & STRAUS, *supra* note 2, at 134. Furthermore, the Hughes story set legal precedent. First, Hughes killed her ex-husband as he slept, not during a beating or rape. JONES, *supra* note 8, at 102. Second, her defense was temporary insanity, which Hughes claimed resulted from years of her ex-husband's abuse. *Id.* Third, the jury was permitted to hear evidence that Hughes had been seriously and routinely beaten. Finally, and most importantly, Francine Hughes was acquitted. *Id.* at 103.

45. *A Cry for Help: The Tracey Thurman Story* (NBC television broadcast, Oct. 2, 1989). The movie claimed that Thurman's case was distinctive because the Torrington, Connecticut Police Department apathetically responded to Thurman's telephone calls for help. Separated for eight months from her husband, Charles "Buck" Thurman, who had beaten her violently over a period of a year, Tracy lived at a friend's home with her young son. Repeatedly and publicly, her husband threatened to kill her. Because of these threats, Tracey repeatedly asked the Torrington police to enforce her court order. The police ignored her requests.

On June 10, 1993, Tracey called for help for the last time. She begged police to arrest Buck, who was standing outside her home and screaming to see her. Before responding to the call, however, the officer dispatched to the scene stopped at the police station to use the bathroom. JONES, *supra* note 8, at 50. Twenty-five minutes later, the officer sat in his patrol car and watched as Tracey fled from Buck as he chased, beat, and stabbed her 13 times with a knife. The officer finally left his vehicle and disarmed Buck, but did not arrest him. Instead, the officer watched Buck kick his wife, break her neck, and then seize their child. More officers arrived at the scene and watched. It was not until Buck tried to attack Tracey as she was being lifted into the ambulance that he was arrested, 45 minutes after Tracey had placed the call. *Id.* at 51.

Miraculously, Tracey survived, though she is disfigured and permanently paralyzed on the right side of her body. Courageously, she testified against Buck who received a 15 year sentence. In 1985, Tracey sued the City of Torrington for violating her constitutional right to equal protection under the Fourteenth Amendment. This landmark case settled for 1.9 million dollars in damages against 24 police officers for negligently failing to protect Tracey Thurman and her son from the violent acts of her husband. As a result of Tracey Thurman's ordeal, officers in Connecticut, pursuant to the "Thurman Law," are now mandated to arrest

ably enhanced public awareness of the widespread social problem of domestic violence.

2. Husband Abuse and Partner-to-Partner Assault

An historical discussion of spouse abuse would not be complete without examining husband abuse and partner-to-partner assault. While the number of such incidents is small compared to wife battering, husband abuse and partner-to-partner assault are just as violent and devastating. Instances of husband abuse are "much harder to trace" and "not written into law throughout Western history."[46] The only known historical reference to husband beating is Charivari, a ceremony popular in France during the Middle Ages.[47] Charivari was a means of publicly ridiculing a husband for allowing his wife to abuse him.[48] The husband's punishment for becoming a victim was to be further victimized through the sneers and derision of his community.[49]

Some believe that the negative stigma associated with husband battering is due to a lack of reporting these incidents. The perception is that a husband's masculinity diminishes or is questionable, while his wife's abusive behavior increases her power and control. Others simply choose to ignore the existence of husband abuse. In 1975, however, the National Family Violence Survey confirmed that a "substantial number of women hit and beat their husbands."[50] Studies done since that time support this finding. Another 1975 survey found that "nearly three-fourths of the violence committed by women is done in self-defense."[51] Gelles and Straus state that "more often than not a wife who beats her husband has herself been beaten. Her violence is the violence of self-defense."[52]

Partner-to-partner assault also exemplifies violence between intimates. The term "partner" is gender neutral and generally refers to violent homosexual relationships. In homosexual relationships, blows are no less painful to the victim and the drama is no less devastating to the child who

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offenders in "cases of probable domestic violence." Jeanie Park & Susan Schindehette, et al., *Thousands of Women, Fearing for Their Lives, Hear a Scary Echo in Tracey Thurman's Cry for Help*, PEOPLE WKLY., Oct. 9, 1989, at 112, 113.

46. OKUN, *supra* note 1, at 1.

47. *Id.*

48. *Id.*

49. *Id.* at 1-2.

50. GELLES & STRAUS, *supra* note 2, at 90.

51. *Id.*

52. *Id.*

witnesses it. Ann Jones writes that "the cultural repression of homosexuals trivializes violence within the homosexual community and writes off its victims, presenting immensely complicated problems to those who need help and must seek it from public authorities."[53] As with most abuse, partner-to-partner assault is typically under reported. Fear of nonacceptance, or fear of a homophobic response, prevents many victims from reporting.

However, much is yet to be learned about domestic violence in same sex relationships. To date, the most interesting aspect of lesbian and gay domestic violence is that it questions the widespread belief that violent behavior is a matter of gender and largely attributable to males. Domestic violence in same sex relationships supports the theory that violence is an issue of power and not of gender or sexual orientation.

B. *Child Abuse*

Similar to abuse against women, child abuse is rooted in history. In ancient times, children were considered the property of their fathers.[54] As such, they could be killed, sold, or abandoned. Infanticide, defined as the murdering of infants, was seen as a means of birth control and was encouraged by ancient cultures.[55] In some groups, babies were slaughtered to appease the gods for famines or diseases.[56] Abandonment was another common practice for those seeking to rid themselves of children. Babies were left at designated drop-off sites "where they could be rescued by childless couples or sold off to slavery or beggarhood."[57]

It was not until the 1960s that child abuse was recognized in America as a social problem of national proportions.[58] Experts agree that the publication of C. Henry Kempe's *The Battered Child Syndrome* was responsible for focusing legal, social, and ethical attention upon the plight of American children.[59] Kempe's words shocked his readers when he likened "child abuse to other diseases as a common killer of children."[60] Author Maria Roy attributes the public outcry against child battery to television, whose "[p]ictures had enormous impact on our social and moral

53. JONES, *supra* note 8, at 84.
54. ROY, *supra* note 20, at 32.
55. *Id.* at 33.
56. *Id.*
57. *Id.*
58. *Id.* at 35.
59. BERGER, *supra* note 4, at 26-27.
60. *Id.* at 27 (citing C. HENRY KEMPE, THE BATTERED CHILD SYNDROME (1962)).

conscience."[61] Public outcry on behalf of America's battered children amplified with the rise of the women's movement in the late 1960s.[62] As advocates spoke out, public awareness heightened.[63] Despite this new vision, however, the problem nevertheless persists today. Child abuse and spouse abuse too often are seen as separate social problems.

While spouse abuse and child abuse are the two most common types of intrafamily violence, sibling and elderly abuse are also common forms of violence. Gelles and Straus describe violence between siblings as the "most common and most commonly overlooked form of family violence."[64] While society perceives fighting among children as the norm, surveys show that "[t]hree siblings in one hundred used weapons."[65] Experts interpret this to mean that nationally, "more than a hundred thousand children annually face brothers or sisters with guns or knives in their hands."[66]

Regardless of whether the victim is an adult or a child, violence in the home continues to claim countless families each year. Lifetimes of abuse are endured in the false hope of a brighter tomorrow. For some, tomorrow never comes. The effects of family violence are so far-reaching that no member of society remains untouched. Absenteeism from jobs and loss of productivity are common among victims in the work force. Low school attendance or inappropriately aggressive behavior in the classroom often are characteristics of child abuse victims.

Only when society has zero tolerance for domestic violence will it cease being the pervasive destroyer it is. It is incumbent that the stronger members of society empower the weaker, thereby strengthening society as a whole. When one child is beaten in body or spirit, when one grandparent is derided or duped, or when one wife is battered or broken, we all share the pain.

III. FLORIDA'S DOMESTIC VIOLENCE STATUTES

The Florida Legislature enacted domestic violence statutes in 1984 and 1991. Since 1991, multiple changes to the statutes have occurred providing victims of domestic violence with new protections and rights. The following discussion focuses on eight domestic violence statutes. Each

61. ROY, *supra* note 20, at 35.
62. *Id.* at 35-37.
63. *Id.* at 36-38.
64. GELLES & STRAUS, *supra* note 2, at 59.
65. *Id.* at 60.
66. *Id.*

discussion recommends ways to strengthen the language of the new statutory provisions.

A. *Standards for Judges in Domestic Violence Cases*

The purpose of section 25.385 of the *Florida Statutes* is to enable the Florida Court Educational Council ("FCEC") to "establish standards for instruction of circuit and county court judges" in handling domestic violence cases.[67] The statute requires judges to receive education in the area of domestic violence.[68] The section also redefines the terms "domestic violence" and "family or household member."[69]

Subsection 23.385(1) of this statute clearly contains mandatory language. It requires that the council "shall establish standards . . . and . . . shall provide such instruction on a periodic and timely basis."[70] This language compels judges to receive additional education, thereby strengthening Florida's law. However, a further revision should be to make time tables specific and establish mandatory dates by which standards will be created. Furthermore, the word "periodic" and the phrase "timely basis" should be changed because these terms are too vague for a statute that attempts to provide mandatory requirements.

In Florida, county judges also handle domestic violence cases. Therefore the words "and county judges" were a necessary addition. The concise wording of subsection 23.385(1) shows the legislature's intent that all members of the judiciary who will hear domestic violence cases receive special, uniform training provided by the FCEC.

Subsection 23.385(2) provides definitions of "domestic violence" and "family or household member." To reduce excess verbiage, however, this section could simply refer to section 741.28,[71] which also defines these terms. In a new and changing area of law such as domestic violence, however, including definitions of these terms in each statute may aid the reader who is new to this field of law, or a lay person. Therefore, including these definitions would be beneficial.

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67. FLA. STAT. § 25.385(1) (1993). Under subsection 23.385(1), "[t]he Florida Court Educational Council shall establish standards for instruction of circuit and county court judges who have responsibility for domestic violence cases, and the council shall provide such instruction on a periodic and timely basis." *Id.*

68. *Id.*

69. *Id.* § 25.385(2)(a)-(b).

70. *Id.* § 25.385(1).

71. FLA. STAT. § 741.28(1)-(2) (Supp. 1994).

B. *Availability of Judges for Hearings*

Section 26.20 requires that in circuits with more than one circuit judge, at least one judge in each circuit be available twenty-four hours each day of the year to address domestic violence emergencies.[72] Such availability is necessary to issue temporary injunctions in situations requiring them. Twenty-four-hour availability is the judiciary's first line of defense between the assailant and the victim. A judge can issue a temporary order prohibiting any contact between the parties. This act may save a victim from further injury or even death. From the assailant's point of view, judicial action may prevent him or her from committing an act that could lead to criminal sanctions.

It is certainly advantageous to the victim to always have available at least one judge, whether it be a circuit or county judge, to hear motions for ex parte temporary injunctions. Before the legislature enacted this change, no judges were available to hear temporary injunctions on weekends, after hours, or on holidays. Unfortunately, domestic violence does not keep a schedule. Prior to any statutory revisions, a victim who could have turned to the court after hours, would do so to no avail because judges could not provide proper protection. It was absurd that victims could only receive emergency aid from a judge if they were attacked during business hours. Thus, the addition to the statute requiring judges to be available "around-the-clock" was certainly necessary because the law now provides an immediate remedy for battered victims. Nevertheless, the language of the statute could be modified further to more precisely articulate that the number of judges available is based on the size of the circuit.

The legislature thought time constraints were important enough to include mandatory language in the statute. The statute states that "judges *shall* be available . . . to hold and conduct hearings in chambers."[73] Furthermore, "there *must* be at least one judge available . . . to hear motions . . . in domestic violence cases."[74] The statute has numerous gaps that

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72. FLA. STAT. § 26.20 (1993). The statute states that:

> In circuits having more than one circuit judge, at least one of said judges shall be available as nearly as possible at all times to hold and conduct hearings in chambers. In each circuit, there must be at least one judge available on Saturdays, Sundays, holidays, and after hours on weekdays to hear motions for a temporary injunction ex parte in domestic violence cases. The chief judge may assign a judge for this purpose.

Id.

73. *Id.* (emphasis added).

74. *Id.* (emphasis added).

could affect a potential victim. For example, the last sentence of the statute fails to define who the available judge must be. The last sentence of the statute further states that "[t]he chief judge *may* assign a judge for this purpose."[75] Unlike the first two sentences of the statute which use mandatory language, this provision bestows upon the chief judge in each circuit the discretion to decide which judge will be on call for domestic violence cases that occur after hours. The word "may" is less definite than the word "shall." Thus, by using weaker terminology in lieu of the stronger, mandatory language, a gap occurs which could be unfavorable to a potential victim of domestic violence.

Potential problems could arise where the chief judge in a circuit does not assign a judge. The statute would have been more effective if it had required that the chief judge assign a judge instead of making the decision discretionary. Discretion should be left to deciding who the most qualified judges are, or which judges have special training in domestic violence cases. However, regardless of which factors affect the decision, the chief judge should be required to make that decision. This requirement would effectively strengthen the statute and would be more indicative of a statute which the legislature clearly thought of as indispensable.

C. *Definition of Domestic Violence*

The 1994 version of section 741.28 of the *Florida Statutes* defines domestic violence as "any assault, battery, sexual assault, sexual battery, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit."[76] The definition, however, fails to define the word

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75. *Id.* (emphasis added).

76. FLA. STAT. § 741.28 (Supp. 1994). The entire section reads:

> (1) "Domestic violence" means any assault, battery, sexual assault, sexual battery, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.
>
> (2) "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who have a child in common regardless of whether they have been married or have resided together at any time.
>
> (3) "Department" means the Florida Department of Law Enforcement.
>
> (4) "Law enforcement officer" means any person who is elected, appointed, or employed by any municipality or the state or any political subdivision thereof who meets the minimum qualifications established in s.

"residing." Thus, it is unclear whether a person must be at a residence for a particular period of time in order to reside there or whether staying at a residence only one day a week qualifies as "residing." It is also unclear whether there are certain requirements that both the victim and the perpetrator would have to comply with in order to satisfy the residing requirement.

The 1995 amendments to this section also failed to define the term "residing." However, the amendments extended the definition of domestic violence to clearly include an array of criminal acts.[77] For example, the 1995 amendment changed the section to explicitly define specific conduct or behavior that constitutes domestic violence, such as sexual assault, sexual battery, and stalking.[78] The terms "sexual assault, sexual battery, or any criminal offense, resulting in physical injury or death . . . ."[79] are much more inclusive and powerful. Domestic violence encompasses a wide range of offenses. Therefore, it is different from acts that must involve sexual behavior in order to constitute a crime. Sexual assault and battery are crimes in and of themselves and should not be grouped under any other type of heading, nor should they be limited to acts of domestic violence.

The legislature also failed to define the term "assault." If the spirit of the legislative amendments is to make language powerful, then a powerful definition of "assault" is necessary. For example, by defining the term "assault" as the "fear of bodily harm," this would distinguish assault from a less serious act, such as being screamed at by another. This definition could help policymakers clear the muddy waters that often engulf defining acts of domestic violence.

Subsection 741.28(2) defines "family or household member" as "spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who have a child in common regardless of whether they have been married or have resided together at any time."[80] A definition of the term "residing" should also be included

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943.13 and is certified as a law enforcement officer under s. 943.1395.

Id.

77. Recently, § 741.28 was amended to include aggravated assault, aggravated battery, stalking, and aggravated stalking within the realm of domestic violence. Ch. 95-195, § 1, 1995 Fla. Sess. Law Serv. 1393, 1394 (West) (amending FLA. STAT. § 741.28(1) (Supp. 1994)) (effective July 1, 1995).

78. *Id.*

79. FLA. STAT. § 741.28(1) (Supp. 1994).

80. FLA. STAT. § 741.28(2) (Supp. 1994).

in this section. Nevertheless, the phrase "family or household member" is all-encompassing in that it includes persons who have a child in common regardless of whether they have ever "resided" together. The change from "person's spouse" to "family or household member" reveals the Florida Legislature's desire to protect all members of the home. In fact, it recognizes that domestic violence is not limited to the marital relationship. The language encompasses persons in the household such as nieces, nephews, foster children, or children in temporary custody. The previous statute left many people who were affected by domestic violence unprotected. The fact that the legislature left this definition intact in the 1994 and 1995 legislative sessions signifies its belief that this definition offers the most protection.

D. *Investigating and Reporting Incidents of Violence*

1. Investigation Guidelines

Section 741.29 establishes new guidelines for law enforcement officers who investigate domestic violence cases.[81] This section ensures the rights and remedies of the victim, while also concentrating on the victim's medical needs.[82] The first sentence of the section states that "[a]ny law enforcement officer who investigates an alleged incident of domestic violence shall assist the victim to obtain medical treatment if such is required as a result of the alleged incident to which the officer responds."[83] However, this sentence is vague and raises a number of questions. First, the meaning of the phrase "assist the victim to obtain medical treatment" is both unclear and unspecific. The statute fails to specify: 1) who will pay for the ambulance, hospital, and doctors if the victim cannot; 2) what happens when the victim is afraid to seek the necessary medical attention; and 3) how much discretion does the investigating officer have in assisting the victim. These questions must be addressed. Nevertheless, the first three lines of this subsection offer the victim bold, new, and humane medical assistance when required.

The last sentence of subsection 741.29(1) also contains one of the finest pieces of legislation to originate from the domestic violence statutes. It requires that the notice to the victims, entailing their legal rights and

81. *Id.* § 741.29.
82. *Id.*
83. *Id.* § 741.29(1).

remedies, provide a general summary in simple English or Spanish.[84] There are approximately eighteen million Hispanics in this country, many of whom either live in or visit Florida. In Florida alone, Hispanics comprise almost fourteen percent of the national population of Hispanics. Thus, the use of simple English and Spanish in the notice is significant since not all victims of domestic violence have mastered the English language. Many immigrants speak and understand limited English at best. Furthermore, many people born and raised in the United States will also benefit from the use of simple English rather than complex statutory language.

Ideally, a model notice form would guarantee that each victim receives the same effective communication concerning his or her rights. Some law enforcement agencies have dispensed with this standard model form, while others have not. Thus, the change in the wording of the statute from "as a model form to all law enforcement agencies" to "as a model form to be used by all law enforcement agencies" should have the effect of creating the desired uniformity among the various agencies.

Section 741.29 requires that the notice include a resource listing, including the telephone number for the local domestic violence center designated by the Department of Health and Rehabilitative Services ("HRS").[85] This provision, however, raises several questions. For example, does the resource listing requirement mean that the victim must go through HRS first before going to another center, or does HRS merely give the victim a listing of all abuse centers? By mandating that a resource listing be provided to the victim, the legislature is attempting to induce the victim to obtain the appropriate and necessary counseling.

Paragraph (1)(b) of section 741.29 requires that a copy of the following statement be included in the notice. It states that:

> IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you may ask the state attorney to file a criminal complaint. You also have the right to go to court and file a petition requesting an injunction for protection from domestic violence which may include, but need not be limited to, provisions which restrain the abuser from further acts of abuse; direct the abuser to leave your household; prevent the abuser

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84. *Id.* The section states:

> The [D]epartment [of Law Enforcement] shall revise the Legal Rights and Remedies Notice to Victims to include a general summary of s. 741.30 using simple English as well as Spanish, and shall distribute the notice as a model form to be used by all law enforcement agencies throughout the state.

FLA. STAT. § 741.29(1) (Supp. 1994).

85. *Id.* § 741.29(1)(a).

> from entering your residence, school, business, or place of employment; award you custody of your minor child or children; and direct the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so.[86]

This section sets forth, in straightforward language, several important rights of the victim. Nevertheless, additional punctuation would help clarify the rights specified by the legislature. For example, a colon placed after the phrase "but need not be limited to" would make the sentence more precise. Moreover, successive numbers instead of semicolons would further clarify the various rights. Clearer punctuation would enable the reader to better perceive distinct breaks in the statutory language and would help the reader (and potential victim) to understand that not every sentence necessarily applies to them.

The last sentence, permitting the victim to "direct the abuser to pay support to [the victim] and the minor children if the abuser has a legal obligation to do so[,]"[87] is also confusing. This sentence would be clearer if it included a list of examples that constitute "legal obligations." The provision concerning payment to minor children raises additional unanswered questions, such as, whether payment can be made directly to minor children,[88] and how the children must be related to the abused person. Once these questions are answered, an additional question arises as to whom should the money go. Efforts to simplify this language will, in turn, help victims of domestic violence.

2. Mandatory Written Police Reports

Subsection 741.29(2) requires investigating officers to file a written police report, regardless of whether an arrest was made.[89] Furthermore, the

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86. *Id.* § 741.29(1)(b).

87. *Id.*

88. The answer to this question is probably no.

89. FLA. STAT. § 741.29(2) (Supp. 1994). The statute reads as follows:

> When a law enforcement officer investigates an allegation that an incident of domestic violence has occurred, the officer shall handle the incident pursuant to the arrest policy provided in s. 901.15(7)(a), and as developed in accordance with subsections (3), (4), and (5). Whether or not an arrest is made, the officer shall make a written police report as part of the field arrest and incident reporting form and as prescribed by the department of the alleged incident which clearly indicates that the alleged offense was an incident of domestic violence. Such report must include:
>
> (a) A description of physical injuries observed, if any.

report must contain a description of physical injuries observed by the law enforcement officer, the reasons why an arrest was not made, and a statement indicating that a copy of the legal rights and remedies notice was given to the victim.[90] This last requirement, amended in 1994, is different from the earlier version of the statute because it requires officers to make a statement, in writing, signifying that the victim has received the notice of his or her rights.[91] This, in turn, ensures that the officer will remember to give the victim the notice because the officer must do so in order to properly complete the report.

The legislature revised subsection 741.29(2) to require investigative officers to list the physical injuries observed on the victims.[92] This requirement serves several functions. First, it may later give the officer who responded to the incident an opportunity to refresh his or her memory by referencing certain facts. If a trial results from the incident, specific memories may allow the officer to give specific testimony. Second, the injury report may assist in a medical diagnosis. If a victim of domestic violence refuses treatment for injuries, a detailed report as to the time and cause of the injury may later assist the treating physician in arriving at an accurate diagnosis. This injury report also protects a potential defendant because the statute requires an officer to document the injuries, or the lack

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(b) If an arrest was not made, an indication by the law enforcement officer, in writing, of the reasons why an arrest was not made.

(c) A statement which indicates that a copy of the legal rights and remedies notice was given to the victim.

Whenever possible, the law enforcement officer shall obtain a written statement from the victim and witnesses concerning the alleged domestic violence. The officer shall submit the report to the supervisor or other person to whom the employer's rules or policies require reports of similar allegations of criminal activity to be made. The law enforcement agency shall, without charge, send a copy of the initial police report, which excludes victim/witness statements or other materials that are part of an active criminal investigation and are exempt from disclosure under chapter 119, to the nearest locally certified domestic violence center within 24 hours after the agency's receipt of the report. The report furnished to the domestic violence center must include a narrative description of the domestic violence incident.

Id.

90. *See id.* § 741.29(2)(a)-(c).

91. *See* Ch. 94-135, § 2, 1994 Fla. Laws 750, 752 (amending FLA. STAT. § 741.29(2) (Supp. 1994)).

92. *Id.*

thereof, that result from the domestic violence incident.[93] This prevents a victim from linking an injury resulting from some other cause to the one to which the police responded.

However, there are potential problems with the police documentation requirement. First, a police officer has only his or her training and experience to rely upon when documenting these injuries. Police officers do not always have formal medical training which would allow them to determine the cause of the injury. Second, if the police do not witness the occurrence of the injury, the cause and the surrounding circumstances may pass undetected. However, these potential problems are relatively minor. The legislature has taken important steps to aid in the reporting of domestic violence incidents by the police. Thus, these positives far outweigh any potential negatives.

The practice of requiring officers to include reasons why an arrest was not made serves to prevent any arbitrariness by the investigating officer in handling incidents of domestic violence and to preclude any tendency to treat domestic violence as private family matters.[94] The requirement serves as a policy statement encouraging arrests.

Other positive changes to the law include obtaining written statements from victims and witnesses, and furnishing copies of the initial police report to the domestic violence center within twenty-four hours of the agency's receipt of the report.[95] Obtaining written statements from victims and witnesses allows for better documentation of the incident. By gathering information close to the time of the incident, the officers can more aptly record details while they are still fresh in the minds of the victim and witnesses. Moreover, if the incident leads to a trial, these reports may be used to refresh recollection or even to impeach a witness who changes his or her story.

By providing notice to the domestic violence center, the center can take immediate action in accordance with its policies.[96] The statute also requires that the domestic violence center be provided with a narrative of the incident. This requirement is a change from the previous version of the statute which only required that the police submit a copy of the police report to the center.[97] The purpose behind the old provision was to ensure

93. *See* FLA. STAT. § 741.29(2)(a) (Supp. 1994).

94. *See id.* § 741.29(2)(b).

95. *Id.* § 741.29(2).

96. *See id.*

97. *See* FLA. STAT. § 741.29(2) (1991); *see also* Ch. 91-210, § 2, 1991 Fla. Laws 2040, 2042.

continued integrity of the investigation. However, the 1994 amendment is an important addition because in requiring the narrative, the legislature realized that the more information the centers have about the incident, the more effective their assistance will be. Thus, the legislature appears to have imparted to the police the need for swift action in domestic violence cases.

In 1991, the legislature adopted subsection 741.29(3).[98] This was the first indication of Florida's new pro-arrest stance on domestic violence. The statute, which is unchanged from its original date of enactment, states that:

> Whenever a law enforcement officer determines upon probable cause that an act of domestic violence has been committed within the jurisdiction the officer may arrest the person or persons suspected of its commission and charge such person or persons with the appropriate crime. The decision to arrest and charge shall not require consent of the victim or consideration of the relationship of the parties.[99]

Prior to this addition, the prosecution was forced to accede to the victim's decision not to press charges because any reason offered by the victim for not pressing charges aborted the prosecution. Fear, intimidation, hope of reconciliation, and countless other reasons offered by the victim prevented the prosecution of perpetrators. The 1991 version, however, took the ominous decision of whether to prosecute away from the victim.[100] By allowing prosecutors to go forward with the prosecution over the victim's objections, the legislature is sent the message that the crime is against both the state and the victim, and not just the victim alone.

However, this pro-prosecutorial stance is flawed. Realistically, if a victim does not want to press charges or testify, a prosecutor may not proceed very far because, often, the only witnesses to these actions are the abuser and the victim. Assuming the abuser will not testify against himself, the victim is the only remaining witness. Thus, the victim's refusal to cooperate may thwart the legislature's attempt to initiate a pro-prosecutorial stance.

Subsection 741.29(4) involves a probable cause determination before making an arrest.[101] The section also raises questions because the language is unclear. The statute states that "[w]hen complaints are received

98. Ch. 91-210, § 2, 1991 Fla. Laws at 2042 (codified at FLA. STAT. § 741.29(3) (1991)).

99. FLA. STAT. § 741.29(3) (Supp. 1994).

100. *See* FLA. STAT. § 741.29(3) (1991).

101. FLA. STAT. § 741.29(4) (Supp. 1994).

from two or more parties, the officers shall evaluate each complaint separately to determine whether there is probable cause for arrest."[102]

First, it is not clear whether the phrase "two or more parties" refers to the parties' spouses, witnesses, or children. Second, it is equally unclear which officers evaluate whether probable cause exists. Since the legislature's goal is to eliminate the deference given to the police, more specific language should have been used. A better method would be to require a supervisor or an individual with special experience or training in domestic violence cases to make the probable cause determination.

Finally, subsection 741.29(5) refers to the potential liability of police officers in domestic violence cases.[103] The section provides that "[n]o law enforcement officer shall be held liable . . . for an arrest based on probable cause." Effective July 1, 1995, this section grants police officers civil immunity for good faith enforcement of the court orders and service of process.[104] Therefore, this section encourages arrests where the situation warrants it. Without this immunity from suit, police officers might be reluctant to arrest perpetrators of domestic violence, thus, rendering the legislature's pro-prosecutorial stance ineffective.

E. *Prosecuting Domestic Violence Cases*

Section 741.2901 sets out certain guidelines that all state attorney offices should follow in prosecuting domestic violence cases.[105] The section requires the state attorney's office to take a pro-prosecutorial stance in all cases and to investigate the defendant's history.[106] Subsection 741.2901(1) of this statute states that "[e]ach state attorney shall develop special units or assign prosecutors to specialize in the prosecution of domestic violence cases, but such specialization need not be an exclusive area of duty assignment. These prosecutors, specializing in domestic violence cases, and their support staff shall receive training in domestic violence issues."[107]

Structural changes to this section are necessary to clarify the vague and ambiguous language. For example, the phrase "in smaller counties" could be added after the word "assignment." Thus, larger counties with available

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102. *Id.* § 741.29(4).

103. *Id.* § 741.29(5).

104. Ch. 95-195, § 2, 1995 Fla. Sess. Law Serv. at 1394 (amending FLA. STAT. § 741.29(5) (Supp. 1994)).

105. FLA. STAT. § 741.2901 (Supp. 1994).

106. *Id.*

107. *Id.* § 741.2901(1).

resources would be required to form special prosecutorial units specializing in domestic violence. Smaller counties, on the other hand, could allocate its prosecutors to cases involving domestic violence as well as other areas.

Section 741.2901(1) could also be modified to include specific criteria for training. This would make training uniform throughout the state. For example, after the word "training," the subsection could be revised to state specific expectations during training, including the length of training required, the degree of intensity, and the form of training necessary.

Subsection 741.2901(2) finally addresses the legislature's concern with removing the historical belief that domestic violence is limited to the domain of the family. The 1994 version of the statute provided that:

> It is the intent of the Legislature that domestic violence be treated as an illegal act rather than a private matter, and for that reason, indirect criminal contempt may no longer be used to enforce compliance with injunctions for protection against domestic violence. The state attorney in each circuit shall adopt a pro-prosecution policy for acts of domestic violence . . . . The filing, nonfiling, or diversion of criminal charges shall be determined by these specialized prosecutors over the objection of the victim, if necessary.[108]

The purpose of this section was to end the cycle of tolerance afforded to domestic violence by law enforcement officers and victims alike. This section attempted to abolish the mistaken belief that domestic violence removes the sole provider or breadwinner from the home, effectively breaking up the family and impairing it economically. The law now aims to impart the view that laws are broken when a person takes it upon himself or herself to strike someone or put another's life in jeopardy.

The most significant change to this section of the statute in the last year is evidenced by the recent amendment reimplementing the indirect criminal contempt provision.[109] Section 741.2901(2) had previously prohibited use of indirect criminal contempt as a means of enforcing compliance with the protective injunctions.[110] Under the 1994 version, a violation of an injunction for protection against domestic violence had to be handled by the state attorney's office. Furthermore, it removed the judge's power to hold a respondent in criminal contempt for violating an injunction for protection

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108. *Id.* § 741.2901(2).

109. Ch. 95-195, § 3, 1995 Fla. Sess. Law Serv. at 1395 (amending FLA. STAT. § 741.2901(2) (Supp. 1994)).

110. *See* FLA. STAT. § 741.2901(2) (Supp. 1994).

against domestic violence.[111] However, the 1995 amendment restored the indirect criminal contempt provision as a statutorily recognized enforcement tool. As a result of this amendment, the power to enforce the injunction for protection against domestic violence is once again in the hands of the judiciary. Because the judiciary makes the initial determination of whether an injunction is necessary, it is only natural that the judiciary be responsible for enforcement as well.

Subsection 741.2901(3) requires the state attorney's office to conduct a full investigation into a perpetrator's background specifically searching for past criminal misconduct, including any instances of domestic violence.[112] A thorough investigation provides vital information for the court to determine whether there is a pattern to the violence. The statute requires that "[t]his information shall be presented at first appearance, when setting bond, and when passing sentence, for consideration by the court."[113] These procedural steps enable a judge to make an informed decision about the disposition of the defendant. Accordingly, a judge will know the defendant's history before she sets bond[114] or passes sentence. Furthermore, this knowledge may help a judge decide whether to depart from the sentencing guidelines.

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111. *Id.*

112. *Id.* § 741.2901(3). The statute now provides that:

> Prior to a defendant's first appearance in any charge of domestic violence as defined in s. 741.28, the State Attorney's Office shall perform a thorough investigation of the defendant's history, including, but not limited to: prior arrests for domestic violence, prior arrests for nondomestic charges, prior injunctions for protection against domestic and repeat violence filed listing the defendant as respondent and noting history of other victims, and prior walk-in domestic complaints filed against the defendant. This information shall be presented at first appearance, when setting bond, and when passing sentence, for consideration by the court. When a defendant is arrested for an act of domestic violence, the defendant shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903. In determining bail, the court shall consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released.

Ch. 95-195, § 3, 1995 Fla. Sess. Law Serv. at 1395.

113. FLA. STAT. § 741.2901(3) (Supp. 1994).

114. The 1995 amendment requires that the defendant be brought before a judge and then admitted to bail. The judge must consider the safety of the victim, the victim's children, and anyone else who may be in danger if the defendant is released. Ch. 95-195, § 4, 1995 Fla. Sess. Law Serv. at 1395.

F. *The Role of the Judiciary*

Section 741.2902(1) now states that "[i]t is the intent of the Legislature, with respect to domestic violence cases, that at the first appearance the court shall consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released, and exercise caution in releasing defendants."[115]

This addition to Florida's domestic violence statute is a crucial change. A judge must first consider the safety of the victim, his or her children, or *any other person* who may be in danger, in determining whether to release an abuser. It is clear from this language that the legislature intended to enhance victim safety. Nevertheless, the sentence requiring courts to "exercise caution in releasing defendants" raises significant questions. For example, it is unclear whether this section was intended to be merely a reminder or a directive to judges. The language would have been more instructive if it had listed with specificity the type of caution required; whether a domestic violence offender should be treated differently than any other violent offender; or whether a trial court can deny pretrial releases in domestic violence cases where one is charged with a misdemeanor battery, detention for which is based on a threat of harm.

The court in *Swanson v. Allison*[116] was called upon to decide similar questions involving this statute. In *Swanson*, the defendant was arrested for "domestic violence battery," the statutory equivalent of simple battery.[117] During first appearance, the judicial officer detained the defendant and ordered a domestic violence investigation. The defendant then filed a petition for writ of habeas corpus to obtain his pretrial release. The defendant was subsequently granted this release.[118]

In making its determination, the court first looked at the *Constitution of Florida*.[119] The court held that:

> The Constitution of the state of Florida provides that every person charged with a non-capital offense not punishable by life imprisonment is entitled to pre-trial release on reasonable conditions . . . . Before denying pre-trial release because of the threat of harm to the community, the court must make several findings, including that the present charge is a "dangerous crime." Although the Legislature's definition of

115. *Id.* (amending FLA. STAT. § 741.2902 (Supp. 1994)).
116. 617 So. 2d 1100 (Fla. 5th Dist. Ct. App. 1993).
117. *Id.* at 1100.
118. *Id.*
119. *Id.* at 1100-01.

> "dangerous crime" includes the felony offense of aggravated battery, we find no constitutional or statutory authority for denying pre-trial release to one charged with misdemeanor battery, where the detention is based on a threat of harm finding.[120]

The court further held that if section 741.2902(1) is being used to detain those charged with simple batteries arising from domestic disputes, "the statute is being unconstitutionally applied."[121] The court was troubled by the charge of "domestic violence battery" and the subsequent use of this term.[122]

> [The defendant] was arrested and charged with "domestic violence battery," there is no such statutory offense. It appears that certain law enforcement officials, prosecution units, and courts have in effect created the offense of "domestic violence battery" to place the burden on those arrested to demonstrate that pre-trial release would pose no threat of harm.[123]

The court drew a definite line between felony and misdemeanor pretrial release.[124] It failed to see any distinction between misdemeanor battery resulting from domestic violence and misdemeanor battery resulting from any other incident.[125] The court stated that:

> When a person is charged with a serious offense arising out of a domestic dispute, such as aggravated battery, we have no qualms with pre-trial detention if the state can prove the necessity for such action. However, any policy authorizing the denial of pre-trial release for those charged with simple battery based on a finding of potential harm is unconstitutional.[126]

This case seems to stand for the proposition that in the eyes of the court, as far as pretrial release is concerned, a stricter standard does not necessarily apply simply because an offense involves domestic violence.

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120. *Id.* at 1100 (citations omitted).
121. *Swanson*, 617 So. 2d at 1101.
122. *Id.*
123. *Id.*
124. *Id.*
125. *Id.*
126. *Swanson*, 617 So. 2d at 1101.

Subsection 741.2902(2) relates to protective injunctions in domestic violence situations.[127]

Paragraph (a) requires judges to first consider the safety of the victim of domestic violence first.[128] It allows the judge to remove the perpetrator of the violence from the home, separating the parties and allowing the victim to remain at home. Thus, it is the perpetrator who must find another place to stay and not the victim. The recent amendments to this subsection further emphasize the importance of the victim's safety by requiring the judge to note the inherent danger in allowing the respondent even partial access to the house.[129]

Paragraph (b), requiring the parties to understand the terms of the injunction, is also important because it protects the rights of both the victim and the perpetrator. In requiring the court to ensure that both parties understand the terms of the injunction and the penalties for noncompliance, the victim is better protected because she knows exactly what the perpetrator of

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127. FLA. STAT. § 741.2902(2) (Supp. 1994). The subparts to subsection 741.2902(2) now read as follows:

> (a) Recognize that the petitioner's safety may require immediate removal of the respondent from their joint residence and that there can be inherent danger in permitting the respondent partial or periodic access to the residence.
>
> (b) Ensure that the parties have a clear understanding of the terms of the injunction and the penalties for failure to comply, and that the parties cannot amend the injunction verbally, in writing, or by invitation to the residence.
>
> (c) Ensure that the parties have knowledge of legal rights and remedies including, but not limited to visitation, child support, retrieving property, and counseling, and enforcement or modification of the injunction.
>
> (d) Consider temporary child support when the pleadings raise the issue and in the absence of other support orders.
>
> (e) Consider supervised visitation, withholding visitation, or other arrangements for visitation that will best protect the child and petitioner from harm.
>
> (f) Consider requiring the respondent to pay, to the clerk of the court and sheriff, filing fees and costs waived pursuant to s. 741.30(2)(a), or to reimburse the petitioner for filing fees and costs paid by the petitioner.
>
> (g) Enforce, through a civil or criminal contempt proceeding, a violation of an injunction for protection against domestic violence.
>
> (h) Consider requiring the perpetrator to complete a batterers' intervention program. It is preferred that such program be certified under section 16 of this act.

Ch. 95-195, § 4, 1995 Fla. Sess. Law Serv. at 1395-96.

128. FLA. STAT. § 741.2902(a) (Supp. 1994).

129. *See* Ch. 95-195, § 4, 1995 Fla. Sess. Law Serv. at 1395 (amending FLA. STAT. § 741.2902(2)(a) (Supp. 1994)).

the violence can and cannot do. This section also protects the perpetrator by ensuring that he understands what the injunction means, and precludes any subsequent arguments that one or more terms were misunderstood. Another important provision within paragraph (b) is the recent amendment prohibiting parties from amending "the injunction verbally, in writing, or by invitation to the residence."[130]

Paragraph (c) requires the judicial system to ensure that all parties involved are apprised of their rights.[131] This is important because many victims of domestic violence are not always informed of their rights and may be too afraid to file charges in situations where the police were not involved. The remainder of section 741.2902 mandates the court to consider a number of factors before issuing an injunction. Namely, the court must consider: 1) temporary child support for the children affected by domestic violence;[132] 2) visitation rights, focusing on the interests of the child;[133] and 3) who should pay the filing fees and court costs.[134] The statute recommends that the court either charge the respondent with responsibility for any fees waived by statute or reimburse the petitioner for fees and costs previously paid.[135]

The recent amendments by the legislature reimplementing an indirect criminal contempt provision also affected subsection 741.2902(2)(g). This section provides judges with a powerful tool in enforcing protective injunctions. The statute is further strengthened by the additional provision suggesting that courts "[c]onsider requiring the perpetrator to complete a

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130. *Id.* (amending FLA. STAT. § 741.2902(2)(b) (Supp. 1994)).

131. FLA. STAT. § 741.2902(2)(c) (Supp. 1994).

132. *Id.* § 741.2902(2)(d). Paragraph (d) makes sure that the children are supported and provided for. Although children may not be direct victims of domestic violence, children are certainly indirect victims. When one parent has to leave the home because of a court order, the judge must consider and provide for the support of the children.

133. *Id.* § 741.2902(2)(e). Paragraph (e) accomplishes two things. First, the language focuses on the safety of the children and victim by avoiding potentially high risk situations. Second, the language provides for the safety of the victim and the children during visitation. If the children's safety is in jeopardy, visitation can be denied. Visitation must take place in such a way as to "best protect the child and the petitioner from harm." *Id.* This sentence ensures that the victim will not be put in the same situation that led to the violence in the first place.

134. *Id.* § 741.2902(2)(f).

135. FLA. STAT. § 741.2902(2)(f) (Supp. 1994). Paragraph (f) specifically requires the court to consider whether the respondent should pay for all of the court filing fees. *Id.* Since the court considers the financial status of both parties in making its determination, it is logical to consider the economic burden carried by the victim, especially a victim with children.

batterers' intervention program."[136] These additions allow for stronger enforcement of the protective injunctions.

G. *Protective Injunctions*

1. Statewide Procedures

Subsections 741.30(1)(a) and (b) previously defined terms contained within this statute.[137] However, the July 1994 amendments deleted the definitions of both "domestic violence" and "family or household member" and placed them in section 741.28 instead.[138] In deleting these definitions from section 741.30, the legislature made reading the statute a bit cumbersome. Because this statute is long and cumbersome, the omission of these terms now requires the reader to turn repeatedly to another section to glean their meaning.

In subsection 741.30(1), the legislature created a cause of action for an injunction for protection against domestic violence.[139] Paragraph (a) of the section gives standing to the victim or potential victim of domestic violence to petition the court for protection.[140] So long as a petitioner has a cause of action, the law mandates that the court hear the action.

Paragraph (e) of this section defines who may bring a cause of action. The statute states that "[t]his cause of action for an injunction may be sought by family or household members. No person shall be precluded from seeking injunctive relief pursuant to this chapter solely on the basis that such person is not a spouse."[141] Paragraph (e) is very important because it adds the phrase "by family or household members," which includes unmarried persons. A broad interpretation of this section means that many different categories of people will be allowed to seek injunctive relief. Thus, the legislature recognized that people other than married couples live

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136. Ch. 95-195, § 4, 1995 Fla. Sess. Law Serv. at 1396 (to be codified at FLA. STAT. § 741.2902(2)(h)).

137. FLA. STAT. § 741.30 (1991).

138. Ch. 94-135, § 1, 1994 Fla. Laws at 751.

139. FLA. STAT. § 741.30(1)(a), (e) (Supp. 1994).

140. *Id.* § 741.30(1)(a). Paragraph (a) of the section states that:

> Any person described in paragraph (e), who is the victim of any act of domestic violence, or has reasonable cause to believe he or she is about to become the victim of any act of domestic violence, has standing in the circuit court to file a sworn petition for an injunction for protection against domestic violence.

Id.

141. *Id.* § 741.30(1)(e).

together in domestic settings. This section demonstrates the legislature's realization that many people may be victims of domestic violence and should, therefore, be afforded proper protection.

The legislature, in its aim to protect victims of domestic violence, also provides victims with the right to obtain an injunction for protection regardless of whether they can afford it. Subsection 741.30(2)(a) provides, in pertinent part, that:

> In the event the victim does not have sufficient funds with which to pay filing fees to the clerk of the court or service fees to the sheriff *or law enforcement agency* and signs an affidavit stating so, the fees shall be waived by the clerk of court or the sheriff *or law enforcement agency* to the extent necessary to process the petition and serve the injunction, subject to a subsequent order of the court relative to the payment of such fees.[142]

After the last word "fees" in this paragraph, however, the section should state "pursuant to section 741.2902(2)(f)." Section 741.2902(2)(f) requires the court to consider making the respondent pay the specified fees.[143] By referencing to section 741.2902(2)(f), the reader will better understand which fees the judge should consider.

In its July 1994 amendments, the legislature twice added the phrase "or law enforcement agency" in section 741.30(2)(a).[144] Previously, the only law enforcement officer mentioned in this section was the sheriff. Now all law enforcement agencies are named or referenced. This addition is important because by enhancing this section with "law enforcement agency," it means that any person who is elected, appointed, or employed by any municipality meeting the minimum qualifications established in section 943.13, and who is certified as a law enforcement officer under section 943.1395, can waive fees. Before the July 1994 amendments, only the clerk of the court or the sheriff had the authority to waive fees.

Subsection 741.30(2)(c), establishing duties of the clerk of the court, was revised in 1995.[145] The section provides new and expanded duties of

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142. *Id.* § 741.30(2)(a) (emphasis added).

143. FLA. STAT. § 741.2902(2)(f) (Supp. 1994).

144. Ch. 94-135, § 5, 1994 Fla. Laws at 755.

145. Ch. 95-195, § 5, 1995 Fla. Sess. Law Serv. at 1396. Section 741.30(2)(c) now provides:

> 1. The clerk of the court shall assist petitioners in seeking both injunctions for protection against domestic violence and enforcement for a violation thereof as specified in this section.

the clerk of court in an effort to ease the process for the victim. For example, this new section entitles petitioners to assistance in both seeking injunctions and enforcing violations of such injunctions.[146] The new section left unchanged the requirement that clerk must advise petitioners that affidavits waiving filing fees are available in instances of insolvency and indigence.[147] Without this knowledge, a victim might conclude that a lack of money prevents them from getting assistance. However, the section fails to offer examples of how the clerk might assist the petitioner. Thus, language should be added to better define the clerk's role in assisting the petitioner. The legislature should add the phrase "and assistance in their completion, if necessary," at the end of the sentence in paragraph (1) so the petitioner can be assured that assistance is available.

The remaining paragraphs within this subsection should also be modified. To clarify the wording of the statute and reduce excess verbiage, everything past the word "injunction" in paragraph (4) should be stricken. The legislature should also define the phrase "privacy to the extent practical." This phrase is vague because it fails to address how much privacy the victim is to receive or whether the victim should be behind

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2. All clerks' offices shall provide simplified petition forms for the injunction, any modifications, and the enforcement thereof, including instructions for completion.

3. The clerk of the court shall advise petitioners of the availability of affidavits of insolvency or indigence in lieu of payment for the cost of the filing fee, as provided in paragraph (a).

4. The clerk of the court shall ensure the petitioner's privacy to the extent practical while completing the forms for injunctions for protection against domestic violence.

5. The clerk of the court shall provide petitioners with a minimum of two certified copies of the order of injunction, one of which is serviceable and will inform the petitioner of the process for service and enforcement.

6. Clerks of court and appropriate staff in each county shall receive training in the effective assistance of petitioners as provided or approved by the Florida Association of Court Clerks.

7. The clerk of the court in each county shall make available informational brochures on domestic violence when such brochures are provided by local certified domestic violence centers.

8. The clerk of the court in each county shall distribute a statewide uniform informational brochure to petitioners at the time of filing for an injunction for protection against domestic or repeat violence when such brochures become available.

Id.

146. *Id.* (to be codified at FLA. STAT. § 741.30(2)(c)1.).

147. FLA. STAT. § 741.30(2)(c)3. (Supp. 1994).

closed doors while filing charges. The victim's privacy is very important. Thus, an important step in ensuring the victim's privacy might be to enact legislation specifically aimed at preventing the victim's name from becoming public record.

Section 741.30(2)(c) also requires training for the clerk of the court and the members of the staff to effectively assist petitioners.[148] However, the legislature should define the phrase "effective assistance" as it is used in the statute. For example, the statute should list whether a minimum standard is to be applied in administering assistance. Paragraph (2)(c)(7) of section 741.30, which requires the availability of informational brochures on domestic violence, should also be clarified.[149] The statute should specify whether these brochures are the same as the Legal Rights and Remedies Notice given out at the initial police call. If the documents are the same, then it should be noted in the statute. If not, then the specific differences between the two documents should be explicitly stated. Perhaps the biggest criticism of the brochure requirement is the brochure's availability. The statute states that brochures are provided "when such brochures become available."[150] This is unacceptable because brochures should be provided *whenever* the police encounter a victim.

2. The Petition for Injunction

Section 741.30(3)(b) exemplifies the form of the petition for injunction for protection against domestic violence.[151] The statute's language in this section should also be modified. Section 741.30(3), which presently states that "[t]he sworn petition shall be in substantially the [same] form," could be replaced with the provision "all petitions, throughout Florida, shall have at least this much information and can have more, but not less," in order to protect the victim's rights. This modification would leave no doubt as to how much information would be required to be furnished in order for the form to be complete. Because the word "shall" is directive, it implies that the form's use should conform to that provided by the law.

In 1992, the legislature adopted a broader definition of "respondent" in the petition. This definition remained unchanged in the 1994 and 1995 amendments. A respondent is defined as "a person with whom the petitioner has a child in common, regardless of whether the petitioner and

148. *Id.* § 741.30(2)(c)6.
149. *Id.* § 741.30(2)(c)7.
150. *Id.* § 741.30(2)(c)8.
151. *Id.* § 741.30(3)(b).

respondent are or were married or residing together, as if a family."[152] Consequently, this definition includes within the purview of domestic violence, acts perpetrated on either a mother or a father by the other parent. It is no longer relevant whether the petitioner and respondent lived together or were married at any time. This section also provides protection for both the victim and the children of the victim. The legislature recognized, perhaps for the first time, that domestic violence can occur without two people ever having lived together.

Section 741.30 also provides the court with the discretion to issue an injunction based upon information contained in the petition.[153] The 1994 amendments added language invoking clarity of the court's decisions. Prior to 1994, there was no difference between immediately restraining and restraining the respondent. The 1994 amendment created the distinction between whether the petitioner was seeking an injunction "immediately restraining the respondent from committing any acts of domestic violence," and "[r]estraining the respondent from committing any acts of domestic violence." Why would the defendant be immediately restrained in some cases and not in others? The 1994 amendment answered this question by providing that "[w]hen it appears to the court that an immediate and present danger of domestic violence exists, the court may grant a temporary injunction ex parte . . . ."[154]

Subsection 741.30(6)(a) provides ex parte relief for victims.[155] It permits the court to award "to the petitioner the exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner."[156] The provision excluding the respondent from the petitioner's residence should be stricken, however, because it is unnecessary. Awarding the petitioner temporary exclusive use and possession of the residence would achieve the same result.

The provision in subsection (6)(a)(4), "establishing temporary support for a minor child or children or the petitioner," also needs to be modified. The words "and/or" should be substituted for the word "or" directly before the phrase "the petitioner."[157] This change would clarify that the support is for both the child and the petitioner.

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152. FLA. STAT. § 741.30(3)(b) (Supp. 1994).
153. *Id.* § 741.30(3)(b).
154. *Id.* § 741.30(5)(a).
155. *Id.* § 741.30(6)(a).
156. *Id.* § 741.30(6)(a)2.
157. FLA. STAT. § 741.30(6)(a)4. (Supp. 1994).

In addition to the above modification, the treatment of the respondent should be more forceful than the statute currently provides. Section 741.30(6)(a)(5) states that the court may order the "respondent to participate in treatment or counseling services."[158] This should be an automatic requirement and not merely a factor for the court to consider.

The section addressing ex parte injunctions provides that:

> Any such ex parte temporary injunction shall be effective for a fixed period not to exceed 15 days. A full hearing, as provided by this section, shall be set for a date no later than the date when the temporary injunction ceases to be effective. The court may grant a continuance of the ex parte injunction and the full hearing before or during a hearing for good cause shown by any party, which shall include a continuance to obtain service of process.[159]

This section is a modification of the 1992 version addressing ex parte injunctions. The 1994 amendments changed the requirements of the section by reducing the number of days from thirty to fifteen that a temporary injunction may be effective.[160] This reduction allows for quicker review of the petition and a faster ruling by the administering judge. Thus, the legislature attempted to make the temporary injunction more equitable for the respondent. The reduction in time in issuing a temporary injunction also may create additional rights for the respondent.

For example, prior to 1994, a respondent could be forced to stay away from his or her home for thirty days without a hearing. A month is a significant period of time to be kept away from one's home. The sequence of events also complicates matters. An injunction can be issued by a judge without the respondent ever being present. The judge simply looks at the affidavit and signs the order. Obviously, the affidavit would be written from the petitioner's perspective. Consequently, the respondent may not get a chance to present his side of the story until a hearing date is set thirty days later. Thus, the fifteen-day requirement effectively relieves the respondent of such inconveniences.

On the other hand, a strong argument exists in opposition to the legislature's reduction in time. For example, the sheriff has the duty to

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158. *Id.* § 741.30(6)(a)5. The section was recently amended to read "ordering the respondent to participate in treatment, *intervention*, or counseling services." Ch. 95-195, § 5, 1995 Fla. Sess. Law Serv. at 1399 (emphasis added).

159. *Id.* at 1398 (amending FLA. STAT. § 741.30(5)(c) (Supp. 1994)).

160. *Id.*

serve process upon the defendant. Often the sheriff is inundated with other service requests, hence delaying the process further. Where a defendant is elusive, further delay in locating him adds to the time needed to effect proper service of process. Therefore, fifteen days may be too short a time in which to serve a defendant. Once the fifteen days elapse, the injunction terminates, leaving the victim unprotected. The reduction in time from thirty days to fifteen days, therefore, might result in a gain of rights for the respondent and a loss of rights for the victim. Thus, the legislature may want to consider reinstating the thirty-day limit so as not to divest the victim of any necessary protection. The 1995 amendments alleviate this problem slightly because the statute now gives the issuing judge the discretion in determining an applicable time period for continuance of the service of process period.[161]

Another important provision of section 741.30 requires the clerk of the court to furnish certain material to the respondent. Subsection 741.30(7)(a)(1) states that:

> The clerk of the court shall furnish a copy of the petition, financial affidavit, uniform child custody jurisdiction act affidavit, if any, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. . . . *Notwithstanding any other provision of law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions pursuant to this section shall use service and verification procedures consistent with those of the sheriff.*[162]

The phrase "as soon thereafter as possible on any day of the week and at any time of the day or night" is an excellent addition because flexibility is always helpful when working within a prescribed period of time. The law enforcement officer must serve the respondent within the allotted fifteen days up to the time of the hearing.[163]

The provision allowing the chief judge to authorize a specific law enforcement agency to effect the service will help eliminate confusion as to

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161. *Id.*

162. *Id.* at 1399 (amending FLA. STAT. § 741.30(7)(a)1. (Supp. 1994)) (emphasis added).

163. FLA. STAT. § 741.30(7)(a)1. (Supp. 1994).

which law enforcement agency should administer the service. If one agency handles all such service, it would streamline and speed the service process. One change should be made, however. The chief judge should be required to authorize an agency to administer the service. This would ensure uniformity among the circuits. Furthermore, it would ensure that the new approach adopted by the legislature would be carried out.

Subsection 741.30(7)(b) prioritizes domestic violence as a serious offense. Of the many functions required of law enforcement officers, this section significantly demonstrates the assistance provided to victims. For instance, the law requires immediate service of the petition by law enforcement officers. Furthermore, it orders law enforcement officers, upon the victim's request, to accompany victims and assist them in obtaining possession of or retrieving personal property from a dwelling.

The 1994 amendments changed section 741.30(7)(b) to read in part:

> There shall be created a Domestic and Repeat Violence Injunction Statewide Verification System within the Department of Law Enforcement. The department shall establish, implement, and maintain a statewide communication system capable of electronically transmitting information to and between criminal justice agencies relating to domestic violence injunctions and repeat violence injunctions issued by the courts throughout the state. Such information must include, but is not limited to, information as to the existence and status of any injunction for verification purposes.[164]

This paragraph is extremely important because law enforcement agencies will now have information at their fingertips about domestic violence injunctions on a statewide basis. For example, an injunction issued in Tampa can be quickly and easily verified in Miami.

Other additions to the statute include a twenty-four-hour time period during which certain tasks must be accomplished.[165] For example, under the 1995 amendments, the court may continue or extend an injunction.[166] If it elects to do so, the clerk of court must forward a copy of the injunction to the sheriff for service within twenty-four hours.[167] Once the respondent has been served, the officer must forward written proof of service to the

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164. *Id.* § 741.30(7)(b).

165. *Id.* § 741.30(7)(c).

166. Ch. 95-195, § 5, 1995 Fla. Sess. Law Serv. at 1400. This is different from the 1994 law which specified that a copy of the injunction must be sent to the sheriff if the court *issues*, *vacates*, or *changes* an injunction. *See* FLA. STAT. § 741.30(7)(c)1. (Supp. 1994).

167. *Id.*

clerk. The sheriff is then required to make information relating to the injunction available to all other law enforcement agencies electronically. Once the respondent has been served, he or she is required to appear before the court.

As a result of the 1995 amendments, courts are now required to enforce a violation of an injunction for protection through either a civil or criminal contempt proceeding.[168] As a result of the amendments, there are three enforcement options available to circuit court judges: 1) civil contempt; 2) criminal contempt; and 3) prosecution for a criminal violation under section 741.30 or any other criminal statute.[169] Paragraph (8)(a) of section 741.30 also directs the monies collected from a monetary assessment or fine imposed by the court be placed in the state treasury for deposit in the marriage license trust fund established in section 741.01.[170]

3. Violation of Protective Injunctions

The 1994 and 1995 amendments to section 741.31 give a future respondent notice as to what constitutes a violation of an injunction for protection against domestic violence.[171] It makes it a violation of the injunction if the perpetrator returns to the petitioner's residence, school, job, or any other place frequented by the petitioner or a family or household member.[172] This section makes clear exactly what property is covered by statute. Subsection (4)(c) of the statute makes committing an act of

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168. Ch. 95-195, § 5, 1995 Fla. Sess. Law Serv. at 1400 (amending FLA. STAT. § 741.30(8)(a) (Supp. 1994)).

169. *Id.*

170. *Id.*

171. Under the 1995 amendments, subsection 741. 31(4) now reads as follows:

> A person who willfully violates an injunction for protection against domestic violence . . . by:
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> (a) Refusing to vacate the dwelling that the parties share;
>
> (b) Going to the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
>
> (c) Committing an act of domestic violence against the petitioner;
>
> (d) Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner; or
>
> (e) Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party . . . .

Id. at 1401 (amending FLA. STAT. § 741.31(4) (Supp. 1994)).

172. *Id.* (to be codified at FLA. STAT. § 741.31(4)(d)).

domestic violence against the petitioner a violation of the injunction.[173] This further enhances the ability of the court to punish an offender for committing an act of domestic violence. Now the respondent who commits a second act of domestic violence will not only face the initial charge of domestic violence, but will also face a misdemeanor charge for violating the injunction. Subsection (4)(d) also makes a respondent's threat of violence toward a petitioner, who is already protected by an injunction, a violation.[174]

Section 784.046 of the *Florida Statutes* establishes a domestic violence injunction statewide verification system, providing for a twenty-four-hour time limit on certain actions by the clerk of the court and law enforcement agencies.[175] The 1995 amendments provide enforcement through civil or criminal contempt proceedings for a violation of an injunction for protection.[176]

H. *Lawful Arrests without Warrants*

Section 901.15 provides guidelines for arrests without warrants in domestic violence cases.[177] The 1995 amendments to the section permit law enforcement officers to make arrests where "[t]here is probable cause to believe that the person has committed a criminal act . . . which violates an injunction for protection . . . over the objection of the petitioner . . . ."[178] The phrase "over the objections of the petitioner" is an improvement because it protects other family members, as well as the victim.[179] In addition, the new statutory language removes the gender biased pronoun "he," which assumed that all police were male.

The 1995 amendments also changed the language in subsection (7)(a), making an arrest permissible where:

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173. Ch. 95-195, § 6, 1995 Fla. Sess. Law Serv. at 1401 (to be codified at FLA. STAT. § 741.31(4)(c)).

174. *Id.* (to be codified at FLA. STAT. § 741.31(4)(d)).

175. FLA. STAT. § 784.046 (Supp. 1994).

176. Ch. 95-195, § 6, 1995 Fla. Sess. Law Serv. at 1401 (amending FLA. STAT. § 741.31(2) (Supp. 1994)).

177. FLA. STAT. § 901.15 (Supp. 1994).

178. Ch. 95-195, § 20, 1995 Fla. Sess. Law Serv. at 1408 (amending FLA. STAT. § 901.15(6) (Supp. 1994)). The amendment deleted the provision that the violent act create "a threat of imminent danger to the petitioner or household members." *Id.*

179. *See* discussion *supra* part III.C.

> There is probable cause to believe that the person has committed an act of domestic violence, as defined in s. 741.28, or child abuse, as defined in s. 827.04(2) and (3), or any battery upon another person, . . . and the law enforcement officer reasonably believes that there is danger of violence unless the person alleged to have committed the act of domestic violence, or child abuse, or battery is arrested without delay.[180]

The phrase "[t]here is probable cause to believe that the person" shows that gender bias has been stricken from the language of this section as well. Moreover, this section broadens the arrest powers of the police because it effectively allows law enforcement officers, upon finding probable cause, to make an arrest without delay. A law enforcement officer no longer has to observe actual bruises or have corroborating witnesses to make an arrest.

A comparison of subsections 901.15(6) and (7) of the statute demonstrates a similar substantive quality in regard to the "probable cause" issue. Subsection 901.15(6) surrounds the issue of "commit[ting] a criminal act . . . which violates an injunction"[181] whereas section 901.15(7) identifies "that the person has committed an act of domestic violence . . . ."[182]

Subsection 901.15(8) was re-enacted by the 1994 legislative amendments but was not changed by 1995 legislative enactments. Referring to law enforcement officers, the statute states that "[h]e has probable cause to believe that the person has knowingly committed an act of repeat violence in violation of an injunction for protection from repeat violence . . . ."[183] The 1994 amendment is inconsistent with the provisions in other parts of the statute because it uses the gender biased word "he" when referring to police officers. The legislature should remove the word "he" throughout the entire statute to render all sections consistent.

I. *Uniform Statewide Policies and Procedures*

Section 943.1701 mandates the creation of uniform statewide policies in the area of domestic violence and requires that they be implemented into basic law enforcement training and continuing education programs.[184]

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180. Ch. 95-195, § 20, 1995 Fla. Sess. Law Serv. at 1409 (amending FLA. STAT. § 901.15(7)(a) (Supp. 1994)).

181. *Id.* (amending FLA. STAT. § 901.15(6) (Supp. 1994)).

182. *Id.* (amending FLA. STAT. § 901.15(7)(a) (Supp. 1994)).

183. FLA. STAT. § 901.15(8) (Supp. 1994).

184. *Id.* § 943.1701 (1993). The statute requires that the statewide policies and procedures include:

This section is important because it requires the police to become familiar with the many issues inherent in and raised by domestic violence. Although the legislature writes the statutes, it is up to the police to enforce them. To properly enforce domestic violence statutes, police must not only become familiar with the statutes, but they must also become familiar with the topic of domestic violence.

Although all of the provisions of this section are important, only a few require mentioning. Subsection 943.1701(3) helps the officer to insure both his or her own safety, as well as the safety of the victim. Domestic violence situations may be volatile. Thus, responding officers require special skills when responding to cases involving domestic violence.[185] This section requires the officer to be educated in ways which will reduce the chance of danger for everyone involved.

Subsection 943.1701(4) requires officers to learn about the extent of the causes of domestic violence.[186] Such an understanding may help the

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(1) The duties and responsibilities of law enforcement in response to domestic violence calls, enforcement of injunctions, and data collection.

(2) The legal duties imposed on law enforcement officers to make arrests and offer protection and assistance, including guidelines for making felony and misdemeanor arrests.

(3) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote safety of the victim.

(4) The dynamics of domestic violence and the magnitude of the problem.

(5) The legal rights of, and remedies available to, victims of domestic violence.

(6) Documentation, report writing, and evidence collection.

(7) Tenancy issues and domestic violence.

(8) The impact of law enforcement intervention in preventing future violence.

(9) Special needs of children at the scene of domestic violence and the subsequent impact on their lives.

(10) The services and facilities available to victims and batterers.

(11) The use and application of sections of the Florida Statutes as they relate to domestic violence situations.

(12) Verification, enforcement, and service of injunctions for protection when the suspect is present and when the suspect has fled.

(13) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.

(14) Working with uncooperative victims, when the officer becomes the complainant.

Id.

185. *Id.* § 943.1701(3).

186. *Id.* § 943.1701(4).

officer realize that a domestic violence problem he or she encounters is not just an isolated "family situation," but is an epidemic that affects the population at large. This insight into the causes of domestic violence is very important because one cannot expect an officer to deal effectively with a situation unless the officer first understands it. Subsection 943.1701(6) mandates that officers understand the dynamics of documenting, reporting, and evidence collection as they pertain specifically to the area of domestic violence.[187] This subsection impresses upon the officer that management of domestic violence cases requires special procedures.

Subsection 943.1701(9) addresses an important point about "the subsequent impact on [children's] lives."[188] This is the first positive point about children's issues raised in Florida's revised statutes. Subsection (9) is one of the few statutes that addresses the uniqueness of children's needs in domestic violence.

Finally, the importance of subsection 943.1701(14) must be impressed upon law enforcement officers because under the state's new pro-prosecutorial policy, officers no longer need the cooperation of the victim to press charges. This section requires police officers to work with uncooperative victims when the *officer* becomes the complainant.[189] Thus, if the state's pro-prosecutorial policy is to be effective, it is imperative that the police learn about this area in the event they become the complainant.[190]

J. *Collection of Statistics on Domestic Violence*

Section 943.1702 states that:

> (1) In compiling the Department of Law Enforcement Crime in Florida Annual Report, the department shall include the results of the arrest policy . . . with respect to domestic violence to include: separate statistics on occurrences of and arrests for domestic versus nondomestic violence . . . .
> (2) Each agency in the state which is involved with the enforcement, monitoring, or prosecution of crimes of domestic violence shall collect and maintain records of each domestic violence incident for access by investigators preparing for bond hearings and prosecutions for acts of

187. FLA. STAT. § 943.1701(6) (1993).

188. *Id.* § 943.1701(9).

189. *Id.* § 943.1701(14) (emphasis added).

190. The language of this subsection is a bit confusing. The legislature should clarify when an officer becomes a "complainant."

> domestic violence. This information shall be provided to the court at first appearance hearings and all subsequent hearings.[191]

Subsection 943.1702(1) assists the authors of the *Department of Law Enforcement Crime in Florida Annual Report* in analyzing statistics about domestic violence. Specifically, the frequency of domestic violence crimes can be compared and contrasted with other violent crimes. By comparing the number of domestic violence cases reported, the number of domestic violence arrests made, and the number of times the officer rather than the victim is the complainant, the effectiveness of the new statutes can be analyzed.

Subsection 943.1702(2) is also a positive step because it provides relevant information to investigators and the court. One criticism of this section, however, is that these statistics should be provided not only to law enforcement agencies and investigators, but to anyone wishing to have access to them. Statistics on domestic violence should become public records. This would enable civilian specialists to analyze the material and would, in turn, allow experts such as university professors the opportunity to either comment on or criticize the statistics.

K. *Children's Issues*

Section 61.13 addresses the custody and support of children, visitation rights, and the power of court in making orders.[192] The statute provides that:

> The court shall consider evidence that a parent has been convicted of a felony of the second degree or higher involving domestic violence . . . as a rebuttable presumption of detriment to the child. If the presumption is not rebutted, shared parental responsibility, including visitation, residence of the child, and decisions made regarding the child, shall not be granted to the convicted parent. However, the convicted parent shall not be relieved of any obligation to provide financial support.[193]

The language in this section is a strong addition to the statute because it provides additional protection for children. The legislature recognizes that children do not belong with parents convicted for acts of domestic violence.

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191. FLA. STAT. § 943.1702 (1993).
192. *Id.* § 61.13 (Supp. 1994).
193. *Id.* § 61.13(2)(b)(2).

It is unconscionable to think that a person charged with abusing another adult could be awarded custody of a child. Accordingly, the court must now consider any domestic violence offenses when determining the custody of a child. Furthermore, the legislature provided for the financial welfare of the child through the addition of the last sentence denying the convicted parent relief from his or her obligations to provide financial support.[194] A child should not have to forego basic necessities.

L. *Stalking*

Section 784.048(4) relates to stalking. The statute states that:

> Any person who, after an injunction for protection against repeat violence . . . or an injunction for protection against domestic violence . . . or after any other court-imposed prohibition of conduct toward the subject person or that person's property, knowingly, willfully, maliciously, and repeatedly follows or harasses another person commits the offense of aggravated stalking, a felony of the third degree . . . .[195]

This section further protects victims of domestic violence. Instead of merely violating the injunction, the respondent can also commit a felony by stalking the petitioner. Additionally, even if the respondent does not make actual contact with the petitioner's person or property, the respondent may still be guilty of stalking. This stalking provision should provide for even more distance between the victim of domestic violence and his or her assailant.

IV. ELIMINATING THE TERM "DOMESTIC VIOLENCE"

The Florida Legislature defines "domestic violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit."[196] Language is the ability to communicate thoughts and feelings through vocal sound.[197] Does the combination of the words "domestic violence" effectively communicate and

194. *Id.*
195. *Id.* § 784.048(4).
196. Ch. 95-195, § 1, 1995 Fla. Sess. Law Serv. at 1394.
197. WEBSTER'S NEW WORLD DICTIONARY 759 (3d college ed. 1994).

identify its expressive intent? Or, is the phrase "domestic violence" merely a contradiction in terms?[198]

Collectively, domestic violence almost seems to suggest "good violence" or, at the very least, "better violence." Thus, the term is an oxymoron. The combination of the positive term "domestic" with the negative word "violence" lessens the negative connotation of the phrase. It is a euphemism since the phrase is now less distasteful and less offensive. Perhaps the term captures an American need to avoid domestic violence and treat hard topics euphemistically. For many years in our country, domestic violence was thought of as something within the family. In fact, it often went unreported by its victims. Even the police and the courts treated domestic violence differently than violence committed on strangers.

In order to do the victim justice and properly define the role of the perpetrator, the term "domestic violence" must be changed or eliminated. Domestic violence encompasses too many different types of violence. By giving domestic violence a label different from other forms of violence, it is thought of and treated differently than other types of violent crimes. The label "domestic violence" has diluted the seriousness of the crimes involved.

To strengthen the charge of "domestic violence" and accurately describe what it is, the legislature should return to the plain legal definition. The term "domestic violence" minimizes the impact of the brutality that often takes place within domestic relationships. Terms such as murder, aggravated battery, and aggravated assault clearly describe the action and impact the seriousness of the criminal misconduct and resulting harm. Moreover, domestic violence could be redefined as a battery, aggravated battery, or an attempted battery. These simple, though descriptive labels are

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198. *Webster's New World Dictionary* defines the word "domestic" as:

> 1. having to do with the home or housekeeping; of the house or family 2. of one's own country or the country referred to 3. made or produced in the home country; native 4. domesticated; tame: said of animals 5. enjoying and attentive to the home and family life.

Id. at 405. This word has almost a positive connotation. By contrast, the word "violence" means:

> 1. physical force used so as to injure, damage, or destroy; extreme roughness of action 2. intense, often devastatingly or explosively powerful force or energy, as of a hurricane or volcano 3.a) unjust or callous use of force or power, as in violating another's rights, sensibilities, etc. b) the harm done by this 4. great force or strength of feeling, conduct, or expression; vehemence; fury 5. a twisting or wrenching of a sense, phase, etc., so as to distort the original or true sense or form [to do *violence* to a text] 6. an instance of violence; violent act or deed.

Id. at 1490.

legal terms; terms that courts have spent hundreds of years defining. So why is the term "domestic violence" used instead of a standard legal term? It could be a result of our society's need to label actions and expressions before it attempts to discuss and understand them.

Webster's New World Dictionary does not include or define the term "domestic violence."[199] However, simply because there is no definition in the dictionary for domestic violence, does not mean that an analysis of the term is warranted. It is remarkable to see the other words that are included in the dictionary.[200] Domestic violence would be perceived differently if it were called battery, aggravated battery, or assault. *Black's Law Dictionary* defines battery as an "[i]ntentional and wrongful physical contact with a person without his or her consent that entails some injury or offensive touching."[201]

Black's further defines aggravated battery as "[a]n unlawful act of violent injury to the person of another, accompanied by circumstances of aggravation, such as the use of deadly weapon, great disparity between the ages and physical conditions of the parties, or the purposeful infliction of shame and disgrace."[202] Finally, *Black's* defines assault as:

> Any willful attempt or threat to inflict injury upon the person of another, when coupled with an apparent present ability so to do, and any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm . . . [a]n assault may be committed without actually touching, or striking, or doing bodily harm, to the person of another.[203]

These standard definitions would cover almost every possible scenario of domestic violence.

Changing the language used to describe domestic violence would impose stiffer sentences for the convicted abuser. The legislature could simply make any act of battery, aggravated battery, or assault against

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199. *Id.* at 405.

200. For example, on the very page where "domestic violence" should appear, the term "domestic relations court," appears defined as a "court with jurisdiction over cases involving relations within the family or household, as between husband and wife or parent and child." *Id.* Thus, in terms of the evolution of the phrase "domestic violence," it is inconceivable that a court of jurisdiction handling domestic violence matters was labeled as such prior to attaching the phrase "domestic violence" to the matters which it heard.

201. BLACK'S LAW DICTIONARY 152 (6th ed. 1990).

202. *Id.* at 153.

203. *Id.* at 114.

someone in the "domestic" sense an aggravating factor to be considered when sentencing. Linguistic changes might also accomplish the special goal the legislature has in more severely punishing a person guilty of such violence. The statute could still mandate the special reporting requirements of the police, the procedures used in administering domestic violence cases, and background checks. Furthermore, the presiding judge could still be required to consider any history the lawmakers feel is relevant in domestic violence cases.

If domestic violence must have a special label to be recognized, I suggest the following alternatives. Select a term that fits the seriousness and injurious nature of the act; a term that would correctly define the particular form of abuse. For example, an appropriate term might be "violence on a loved one" or "interrelationship violence." Because violence is committed on someone the perpetrator supposedly knows and loves, the language should express and communicate to people that the action is worse than a random act of violence. In these cases, the perpetrator has committed violence on someone who trusted him or her and someone who was more than likely living in their own home at the time. This way, society would be faced with the truth of what domestic violence really means.

By eliminating the term "domestic violence," society would be exposed to terminology that would better describe these serious and dangerous crimes. To some, domestic violence connotes conduct that is within the realm of the family and is, therefore, less serious than a "real" battery or assault. Crimes should be defined by the conduct and not by marital status or relationship. An aggravated battery or assault should be defined as such in order to communicate the seriousness of the conduct. A term which lessens the significance of the conduct or the societal response to that conduct should not be utilized.

V. RECOMMENDATIONS AND CONCLUSION

The main claim of this article is that although the legislature attained its goal in passing legislation which protects victims in domestic violence situations, it has failed to effectively communicate those aims to its many audiences. Furthermore, the term "domestic violence" is inadequate or deceptive, and lessens the significance of the crimes it purports to designate. Crimes should be defined by the conduct and not by marital status or relationship. The public awareness of the seriousness of incidents of domestic violence needs to be heightened.

Florida's domestic violence statute has undergone sweeping reform since 1992. The Florida Legislature set standards of education for members

of the judiciary who hear cases in the area of domestic violence. In addition, new laws mandate that judges be available twenty-four hours a day to hear cases and that victims be provided with knowledge of their rights, protection, and opportunities.

These new laws also effectively respond to the needs of victims and their minor children by awarding victims temporary exclusive custody of the children and temporary exclusive use of the marital dwelling. A perpetrator can be required to pay temporary support for the victim and children, as well as filing fees for injunctions. In some situations, the court can order the abuser to seek counseling. Law enforcement officers can arrest perpetrators on probable cause, without a warrant, regardless of whether the victim consents to the arrest. The police must also assist victims in receiving medical attention. The economic barriers that once prevented victims from seeking an injunction for protection against domestic violence no longer exist. Domestic violence is no longer a "behind closed doors" issue.

However, it is at the local level where society should attempt to put into practice the wishes of lawmakers in removing the pernicious blight of domestic violence from our society. In the past, domestic violence was thought of as something that was dealt with behind closed doors. Today, domestic violence has come to be recognized as a serious crime that often leads to physical and psychological injury or death. Assaulting one's spouse and maiming or killing one's child has serious consequences in today's society.

Many local enforcement agencies are forming "domestic violence" squads which "demonstrat[e] a newborn sensitivity to such problems in scattered areas."[204] Local communities and providers of services for victims now work with law enforcement agencies to make officers aware of the risks to victims in violent family situations. Generally, abusers are not likely to change their ways without intensive counseling. Programs for batterers have made some headway in effecting behavioral change, but success is relatively limited. In addition, restraining orders have only had minor success in separating the batterers from the battered. Similar to maxim that paper cannot stop a bullet, restraining orders, alone, cannot stop the violence.

The pro-arrest policy of Florida should help alleviate the problem with prior arrest policies. Law enforcement officers understand that abused

204. Sandy Rovner, *Violence Hits Home: When the Abused Child Grows Up*, WASH. POST, Aug. 11, 1987, at Z12.

persons have a cyclical tendency to return to their abuser. Accordingly, lawmakers hope that the pro-arrest policy will be the single, most effective, weapon against domestic violence by stopping spouses and children from continuing to form relationships with abuser type personalities.

It is encouraging to note that reportings of abuse are rising. This does not implicate a rise in the actual incidents of domestic violence. It indicates that an increase in public awareness of the problem has helped bring domestic violence out into the open. Perhaps we can measure our success in reducing violence by counting the increased safety of our men, women, and children.

Society benefits when domestic violence is diminished. Death, injury, and the destruction of relationships all lead to an unhealthy society. Acts of domestic violence need to be taken seriously to avoid degradation of society. The need to address such harm has been recognized by the Florida Legislature in its recent alterations in the language of Florida's domestic violence statutes. Better training, increased sensitivity, taking a pro-arrest and pro-prosecutorial positions, all indicate the legislature's desire take domestic violence seriously.

These new laws place increased importance on domestic violence. Although the statutory language is clear and effective, a large percentage of the population is unaware of the legislative changes. Therefore, the justice system must educate the public about their increased rights under the new laws. In accomplishing this goal, the justice system should enlist the media to help educate the public. Only then will society become aware of its rights and remedies and confidently trust our system of justice to properly handle acts of domestic violence.