Protection of Battered Women: A Survey of State Legislation

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Protection of Battered Women: A Survey of State Legislation

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

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

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

Forty-eight states and the District of Columbia have now enacted legislation to protect battered women. Those that have taken no recent action are South Carolina and South Dakota. The rapid development of domestic violence law in the United States is the product of a broad network of community groups, legal service lawyers, shelter workers, and law enforcement officials.

The initial efforts of this movement focused on setting up shelters and hotlines and developing a civil injunction by which battered women could obtain emergency protection without filing criminal charges. As experience was gained with the protection order laws, it became clear that injunctive relief is most effective when the statutes spell out specific procedures by which courts and law enforcement agencies should issue and enforce orders, and when the laws make violation of a protection order a criminal offense.

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

Using the Chart

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

In most cases, a black dot on the chart indicates that a statute includes language similar to that remedies, but have been available for decades. The chart focuses on recent legislation; these older statutes were included because some have been recently amended to correspond with the protection order laws, and because the older restraining orders may be useful to battered women.

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

2. The South Dakota legislature passed a protection order bill, but it was vetoed by the governor. South Carolina, like many other states, has legislation providing for issuance of restraining orders during domestic proceedings. These laws, listed under the section entitled "Orders During Divorce, Separation, or Custody Proceedings," are not new...
listed on the chart. Statutory language varies widely; the provisions listed on the chart are an approximation of the most common statutory language. In some cases, marks on the chart reflect procedures being followed in a state that are not listed in the domestic violence law, but appear elsewhere in the state code. This is the case with most of the listed filing fees and fee waiver provisions.

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

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

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

**Protection Order Laws**

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

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

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

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

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

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

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


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

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

8. The District of Columbia statute defines abuse to include any act committed against an eligible party that would be punishable as a criminal offense. This more general definition would allow issuance of a protection order not only for threatened or attempted assault, but also for burglary, larceny, kidnapping, harassment, or destruction of personal property. The rationale is that if an act may be the basis of a criminal prosecution, it is serious enough to justify issuance of a protection order.
would provide a remedy to persons who are kept prisoner in their homes, whose property is destroyed, or whose homes are broken into by boyfriends or former spouses.

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

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

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

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

In sixteen states, an abuser who violates a protection order may be prosecuted for a misdemeanor offense, and in twenty-four states for contempt. Thirteen of the statutes include explicit language allowing courts to impose a jail sentence of six months or more for violation of a protection order. The laws frequently allow imposition of a fine of $500 or more instead of or in addition to a jail sentence.

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

Orders Pending Divorce or Other Domestic Relations Proceedings

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

Criminal Law

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

To promote enforcement of criminal law against abusers, ten states have enacted legislation making spouse abuse a separate criminal offense whether or not the victim has previously obtained a protection order. Like the protection order
laws, these criminal laws specify the relationships covered and the penalties which may be imposed for commission of the offense (see chart, Section IIIA). While these statutes make no substantive change in the criminal law, they give clear direction that criminal laws are to be enforced against abusive mates and they facilitate easy identification of family violence cases by victim services or statisticians.

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

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

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

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

**Police Intervention**

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

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

**Data Collection**

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

**Funding**

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

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

The funding legislation generally specifies whether funds are to be spent on shelters, on counseling services, on employment training, legal advocacy, or other services. In some states, the law suggests types of services to be funded, while in other states a program must provide listed services in order to be eligible for funding.
The chart lists only statewide appropriations. In many states, other money for services to violent families is also available from city or county governments, or from private sources. Nevertheless, the need for funding for shelters and other services to violent families is still largely unmet. Most shelters operate on a shoestring, providing only basic services, and must turn away a substantial percentage of the families which seek assistance.

CONCLUSION

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

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

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

Response to Violence in the Family

is a national publication on family violence and sexual assault.

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

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I. Protection Orders

1. States marked on this line have laws providing for issuance of protection orders, usually by civil courts, independent of any action for divorce or separation. The section on procedure (E) distinguishes full protection orders from temporary or emergency protection orders. The section that lists what a court may include in a protection order (D) distinguishes full protection orders from temporary or emergency orders. In other states, the available relief is more limited than protection orders issued after a full hearing. In some states, the relief available is not issued under protection orders but under other means. For example, local authorities may be empowered to “make such adjudications and dispositions as appear appropriate.”

2. The Division of Social Services or a licensed youth agency may place a family member in a shelter or other emergency housing if the court determines that abuse or threat of abuse exists and that placing the family member in shelter or other emergency housing is necessary to prevent the victim from being harmed. The court is empowered to “make such adjudications and dispositions as appear appropriate.”

3. The court may prohibit a victim of abuse from allowing the abuser to enter the residence, place of employment or school of the other party, or other specifically described places. The court may also prohibit an abuser from having telephone contact with a victim, or any member of the same family. The court may also prohibit a victim of abuse from having telephone contact with the abuser or any other member of the same family.

4. The court may prohibit a victim of abuse from allowing the abuser to enter the residence, place of employment or school of the other party, or other specifically described places. The court may also prohibit an abuser from having telephone contact with a victim, or any member of the same family. The court may also prohibit a victim of abuse from having telephone contact with the abuser or any other member of the same family.

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12. The court may prohibit a victim of abuse from allowing the abuser to enter the residence, place of employment or school of the other party, or other specifically described places. The court may also prohibit an abuser from having telephone contact with a victim, or any member of the same family. The court may also prohibit a victim of abuse from having telephone contact with the abuser or any other member of the same family.

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16. The court may prohibit a victim of abuse from allowing the abuser to enter the residence, place of employment or school of the other party, or other specifically described places. The court may also prohibit an abuser from having telephone contact with a victim, or any member of the same family. The court may also prohibit a victim of abuse from having telephone contact with the abuser or any other member of the same family.

D. Limits on Eligibility for a Protection Order

1. Protection order unavailable if the victim has filed for separation or divorce

2. Eligibility unaffected if the victim leaves the residence to avoid abuse

E. Procedural Provisions of the Protection Order Laws

1. In general

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

3. The Ohio law allows a court to prohibit a victim of abuse from allowing the abuser to enter the residence of any action for divorce or separation. This provision may be used only upon issuance of a second or subsequent protection order.

4. Under the Oregon protection order statute, ordering of an abuse is permitted only if minor children reside in the home. This is true for any order pending divorce.

5. Under the Maryland law, if the court determines that abuse has occurred, it may as part of the relief granted under a protection order require the abuser to vacate the former household. The court may also prohibit the victim from allowing the abuser to enter the residence.

6. Under the Wisconsin law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

7. Under the Louisiana law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

8. Under the Michigan law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

9. Under the Mississippi law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

10. Under the Massachusetts law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

11. Under the Missouri law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

12. Under the Nebraska law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

13. Under the Nevada law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

14. Under the New Mexico law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

15. Under the New York law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

16. Under the North Carolina law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

17. Under the North Dakota law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

18. Under the Ohio law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

19. Under the Oklahoma law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

20. Under the Oregon law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

21. Under the Pennsylvania law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

22. Under the Rhode Island law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

23. Under the South Dakota law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

24. Under the Tennessee law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

25. Under the Texas law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

26. Under the Utah law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

27. Under the Virginia law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

28. Under the Washington law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

29. Under the West Virginia law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

30. Under the Wisconsin law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.

31. Under the Wyoming law, the court may prohibit the victim from allowing the abuser to enter the residence. The court may also prohibit the victim from allowing the abuser to enter the residence.
15. A protection order in New York may order the parties, in addition to provisions listed, to give "proper attention to the care of the home," to refrain from actions that "make the home a proper place for the child," or to participate in an "education program" for abusers which is similar to the program for those convicted of driving while intoxicated.

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

17. In New York and Illinois, perpetrators of sexual assault are considered "persons related by consanguinity or affinity," and are eligible for protection orders. In Illinois, however, not all "relatives" are eligible for protection orders.

18. Texas law does not require that persons in the category be co-residents.

19. Massachusetts and Minnesota, "consanguines" but not "affines" are eligible for protection orders.

20. Under Texas law, no co-residency requirement is imposed on persons related by consanguinity or affinity. Texas law also covers foster parents and children.

21. Wisconsin law makes protection orders available to persons living as spouses only if they are of the opposite sex and have minor children in common.

22. Wisconsin law also covers foster parents and children.

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

24. Massachusetts and Minnesota, "consanguines" but not "affines" are eligible for protection orders.

25. Under Texas law, no co-residency requirement is imposed on persons related by consanguinity or affinity. Texas law also covers foster parents and children.

26. Wisconsin law makes protection orders available to persons living as spouses only if they are of the opposite sex and have minor children in common.

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32. Wisconsin law makes protection orders available to persons living as spouses only if they are of the opposite sex and have minor children in common.

33. Wisconsin law also covers foster parents and children.
Victims of abuse have no private protection order in family court, she may change her mind and switch from one or criminal court. Within 34. Under New York law,

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

31. For service of a protection order upon application
should be required. In Maryland, the abuser may be required to pay the filing
later hearing

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

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38. If he is indigent. New York law also gives indigent petitioners in family offense
proceedings a right to court-appointed counsel.

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

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

35. If an ex parte order is issued, it must be heard on the same schedule as all other civil actions. If an ex parte order is requested, it must be heard on the same day. If an order is vacated on the basis of an ex parte hearing, a full hearing must be held within 10 days. If an ex parte order is not issued, then no full hearing must be held within 10 days.

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

43. The provisos allowing ex parte evictions have been criticized by allowing a
deposition of property without notice and hearing in violation of the due process
clause of the fourteenth amendment of the United States Constitution. In ruling on
other statutes allowing injunction relief prior to notice and hearing, the Supreme
Court stated that denial of a hearing on deprivation of property may be permissible if (1) the petition includes assurances of specific facts that justify the requested relief; (2) notice and opportunity for a full hearing are given as soon as possible, preferably within a few days after the order is issued; and (3) the temporary injunction is issued by a judge. See Mitchell v. Grant, 416 U.S. 600 (1974). Drafting protection order laws that reflect these guidelines may minimize the risk that the temporary order will be found unconstitutional.

Provision of the protection order becomes permanent unless the abuser requests that a hearing be held.

In North Dakota and Pennsylvania, the relief that may be ordered on an emergency basis is more limited than that which may be ordered when a full protection order is issued. These provisions are parallel to those limiting relief available under a temporary protection order (see Section 636).

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

California law provides that the court may appoint counsel or the district attorney to represent the plaintiff in a proceeding to enforce the terms of the protection order. The defendant may be ordered to pay court costs and attorneys' fees incurred by the plaintiff or to reimburse the county for costs incurred if the plaintiff is not represented by the district attorney.

California, Oregon, Pennsylvania, and Utah, the victim rather than the court is required to deliver a copy of the protection order to the local police department. In California, the victim and the court must deliver the order to the local police department.
II. INJUNCTIONS PENDING DOMESTIC RELATIONS PROCEEDINGS

A. Order Restraining an Abuser is Available to a Victim Who Files for Divorce

1. Divorce the abuser
2. Abuser not to molest or disturb the peace of the victim
3. No restriction on the liberty of the victim
4. Support to a spouse or minor children
5. Child custody & visitation rights
6. No removal of children from the jurisdiction
7. Payment of court costs and/or attorney's fees to the victim by the abuser
8. Temporary use or possession of personal property
9. No restriction of property
10. Other terms may be set by the court

C. Ext. Relief Available

D. Police Must Enforce Orders

E. Penalties May Be Imposed for Violation of Orders

III. CRIMINAL LAW

A. Statute Makes Domestic Violence a Separate Criminal Offense

1. Charges include:
   a) Simple assault
   b) Aggravated assault
   c) Criminal trespass
2. Who may be charged (relationship to the abuser):
   a) Spouse
   b) Unmarried intimate
   c) Former spouse
3. Violation:
   a) Fine (maximum $5,000)
   b) Jail
4. Violation: misdemeanor

B. Alternative Dispositions Authorized by State Law

1. Court may impose conditions on pretrial release, including:
   a) Pretrial detention if the abuser is dangerous
   b) Protection order
2. Deferred prosecution (diversion) program:
   a) Formerly required expanded database successfully completes diversion program
   b) Court may order mandatory counseling
3. Court may issue a protection order
4. Evidence from the program is inadmissible if prosecution is resumed
5. Court may impose conditions on probation, including:
   a) Mandatory counseling
   b) Protection order

C. Law Imposes Duties on the Court or the Prosecutor

police

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

54. The Texas protection order law allows that violation of an ex parte protection order is punishable by up to 6 months in jail or a fine of $500 or both. Violation of a full protection order, even according to the civil law, is punishable by up to 12 months in jail or a $1,000 fine or both. However, a proposed amendment to the criminal code that was to accompany this new legislation was not vetoed on by the Texas legislature.

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

II. Injunctions Pending Domestic Relations Proceedings

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

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

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

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

59. Under Massachusetts law, the court may order the husband or wife to vacate the marital home for a period of time not to exceed 30 days. The court may extend the period of time, after a hearing, if it finds that the health, safety, or welfare of the moving party or minor children would be endangered. The opposing party is given at least 5 days notice of such a hearing. However, if immediate danger can be demonstrated the court may enter a temporary order without notice and give the opposing party notice within 5 days and an opportunity to question the order's continuance.

III. Criminal Law

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

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

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

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

64. The spouse assault law of Arkansas refers to husbands rather than spouses.
65. Under Ohio law, a first offense under the spouse assault law is a first-degree misdemeanor, punishable by a 6-month jail sentence or a $1,000 fine, or both. A subsequent offense is a fourth-degree felony, punishable by 5 years in jail or a $2,500 fine, or both. Wyoming law allows imprisonment for up to 5 years for second or subsequent offenses.

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

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

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

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

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

70. Minnesota law prohibits an arresting officer from issuing a citation in lieu of arrest or detention to a person charged with assaulting a spouse or household member. Persons arrested for domestic violence are required by law to be released after arrest "unless it reasonably appears that detention is necessary to prevent bodily harm to the arrested person or another." If the arrestee fails to respond to a citation. Persons arrested pursuant to this provision must be brought before a judge within 24 hours after arrest. Excluding Sundays and holidays.

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

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

72. Arizona, California, and Wisconsin specify conditions that must be met before an abuser may be admitted to a deferred prosecution program. In Arizona, deferred prosecution is unavailable if the abuser has a prior criminal conviction or has in the past been unsatisfactorily terminated from a deferred prosecution program.

An abuser cannot enter a diversion program without the consent and recommendation of the prosecutor and the victim. Diversion occurs after conviction but before adjudication of guilt is entered.

In California, deferred prosecution is available where the offense was charged as a misdemeanor or as a violation of a civil protection order. The California statute does not authorize eviction of abusers under a criminal order. The statute does not authorize eviction of abusers under a criminal order.

73. Arizona, California, and Wisconsin specify conditions that must be met before an abuser may be admitted to a deferred prosecution program. In Arizona, deferred prosecution is available where the offense was charged as a misdemeanor or as a violation of a civil protection order. The California statute does not authorize eviction of abusers under a criminal order. The statute does not authorize eviction of abusers under a criminal order.
IV. POLICE INTERVENTION

A. Warrantless Arrest:
1. Permitted if probable cause that a misdemeanor or offense was committed
2. Permitted if probable cause that a protection order was violated
3. Arrest mandatory
4. Arrest discretionary
5. Abuser need not occur in presence of the police

B. Warrantless Arrest/ Allowed Only If:
1. Physical evidence of abuse is visible
2. Danger that the abuser would injure the victim or property unless arrested
3. Police have verified the existence of an effective protection order

C. Police Department Must/May:
1. Establish procedure for informing officers on call of effective protection orders
2. Develop and implement domestic violence training programs for officers

D. Police Officers May/ May Not:
1. Use all means necessary to prevent further abuse
2. Enforce protection order
3. Arrest the abuser where appropriate
4. Transport the victim to a hospital
5. Transport the victim to a shelter
6. Return the victim of the legal rights
7. Stay until the victim is no longer in danger
8. Supervise eviction of the abuser, or his return home for personal property
9. Other duties

E. Police Immunity from Civil Liability for Good Faith Enforcement

V. DATA COLLECTION AND REPORTING

A. Records Must be Kept on All Domestic Violence Cases by:
1. Police
2. Social service agencies
3. Shelters
4. Hospitals

B. Statistical or Other Reports on Domestic Violence Must be Prepared by:
1. State agency responsible for domestic violence services
2. Police
3. Shelters

C. Personal Information Included in Reports is Confidential

VI. FUNDING AND/or SHELTER SERVICES

A. State Appropriations
1. Total amount appropriated ($)
2. Years covered

B. Marriage License Surcharge
1. Amount of surcharge ($)
2. Anticipatory appropriation ($)
3. Funds are collected and distributed statewide
4. Use of funds collected or appropriated
1. Funds to be used for shelter services
2. Shelters to provide additional services
3. Funds to be used for other services
4. Maximum number of shelters to be funded
5. Maximum amount per shelter per year ($)
6. Maximum percentage of shelter budget that may be supplied by state funds

D. Other Provisions
1. AFDC or other welfare funds available to shelter residents
2. Shelter records confidential
3. Shelter Legislation Without Appropriation

establishes a similar program termed supervision. When a defendant is placed on supervision, the court enters an order for supervision for a specified period of time not to exceed 2 years, and defers further proceedings in the case until the conclusion of that period. The court sets reasonable conditions, some of which may include reporting to the court or a social service agency, undergoing counseling, attending or residing in a facility established for the instruction or residence of defendants on probation, and complying with the terms and conditions of an order of protection issued to the victim by the court. The court defers entering any judgement on the charges until the conclusion of the supervision. If the defendant successfully complies with all the conditions of supervision, the court will discharge the defendant and enter a judgement dismissing the charges. Discharge and dismissal upon successful completion of a disposition of supervision shall be deemed without an adjudication of guilt and shall not be termed a conviction for purposes of disqualification or disabilities imposed by laws upon conviction of a crime.

73. In Michigan, a person convicted of simple or aggravated assault against a spouse, former spouse, or person or former household member may be placed on probation prior to entry of a judgement of guilt and ordered to participate in counseling. If conditions of probation are fulfilled, proceedings are dismissed.
In Illinois, after successful conclusion of a disposition of supervision, the court enters a judgement dismissing the charges. Two years after discharge and dismissal a person may have his arrest record expunged.

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

New Hampshire law requires that presentence investigation reports be prepared for all felony offenses, and upon the prosecutor's recommendation, for violent misdemeanor offenses. If there is reason to believe a similar offense was committed in the preceding year. The period of probation is 3 years for a felony conviction and 1 year for a misdemeanor conviction.

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

Of the statutes that impose duties on courts or prosecutors regarding prosecution of family violence cases, the Washington law is the most comprehensive. Under
Washington law, the police must send reports of domestic disturbance calls to the prosecutor if there is probable cause that an offense has been committed. Records must be coded to facilitate the identification of domestic violence cases. Prosecutors must notify victims of the decision to prosecute or not prosecute within 5 days after a report is received and must notify other victims of private complaint procedures. Courts may not dismiss criminal charges against abusers because of pending civil proceedings; they may not require that the victim have filed for divorce, and they may not require disclosure of the address of the victim. In addition, domestic violence actions must be identified on docket sheets.

IV. Police Intervention

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

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

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

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

83. Under Maine law, warrantless arrest is mandatory where the officer has probable cause to believe that an aggravated assault occurred. Warrantless arrest is mandatory for those violations of protection orders that constitute misdemeanors.

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

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

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

87. In Rhode Island, warrantless arrest is allowed within 24 hours of abuse.

88. An amendment to the Ohio law requires that each law enforcement agency maintain an index of all protection orders served to the agency, and keep records of the dates that each order is delivered to a batterer.

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

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

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

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

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