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**Domestic**

**Violence**

**Handbook**

**Victim's Guide**

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Crime Prevention Center  
& Attorney General's Office

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**Crime Prevention Center  
Office of the Attorney General  
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*Domestic Violence Handbook: A Victim's Guide*, write:

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## Introduction

Domestic violence is a major problem, both in California and in the United States. It is estimated that one-fourth of all homicides in this country occur within the family, and one-half of these are husband-wife killings.

The purpose of this handbook is to provide basic information on the nature, laws, causes and consequences of domestic violence; to describe the options and rights of domestic violence victims; to explain the role of the criminal justice system; and to provide a list of available emergency services for domestic violence victims.

This handbook is designed as a useful reference for law enforcement officials, people in government and the private sector who assist victims of domestic violence, as well as victims themselves. By communicating and working together, we may find some solutions to this devastating social problem.

Domestic violence is a term which is used in reference to many types of familial abuse, such as child abuse, spousal abuse and sibling abuse. This handbook will specifically address the physical abuse that occurs between couples involved in ongoing relationships (they may or may not be married). In the large majority of cases, the woman is the victim of domestic violence; thus, this handbook is primarily directed to the battered wife or woman. However, it should be noted that there is an increasing incidence of domestic violence against men.

Domestic violence may begin with angry words, a shove or a slap. Sometimes this escalates and a pattern of abuse is established. Without intervention, the assaults often become more frequent and more violent as time goes on. Abuse may result in permanent physical injury or even death. Almost always, domestic violence leaves the victims feeling isolated, angry, disappointed, lonely and bitter.

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# Overview of Domestic Violence

## **THE CAUSES**

Violence between partners may be triggered by numerous factors, such as:

- Stress situations, such as job loss, financial problems, pregnancy, or role changes (such as the woman starting school);
- Frustrations;
- Alcohol and/or other drug abuse;
- Abuse-prone attitudes and beliefs; for example, "show the woman who's boss," "a little slap is good for her," or "he wouldn't hit me if I didn't deserve it,"
- Sadistic personality;
- Childhood experiences of abuse and/or parental violence; and
- Mental or physical disorders.

In the past, domestic violence was largely viewed as a "family problem." Police, courts, hospitals and social service agencies hesitated to intervene. Today, however, as part of the growing concern with women's rights and with violence in general, these agencies and other community groups are looking more closely at the causes of violence within the home and are offering valuable assistance to victims.

## ***THE VICTIM***

There is no typical profile of domestic violence victims other than that they are usually female. Young, old, black, white, single, married, professional, unemployed, rich, poor—all may be potential victims of domestic violence.

Children are also victims—even if not physically abused themselves. When children witness violence between their parents, they may learn violence as a way of life and later become involved in abusive relationships themselves. In addition, violence in the home causes emotional suffering and many corresponding problems.

## ***THE ABUSER***

Similarly, there is no single profile of domestic abusers, other than that they are usually male. Like the victim, he may come from any walk of life. To outsiders, he may appear to be a good provider, a warm and loving father, and a law-abiding citizen. Nevertheless, he frequently has a low opinion of himself. He may be under the influence of alcohol or drugs at the time of the assault. The abuser may refuse to accept responsibility for his destructive behavior. He may claim, "I was drunk," "I didn't know what I was doing," or "it just happened." Or he may, in fact, believe the abuse was justified. In any case, the assaults usually continue.

## **FOR BETTER OR WORSE**

One of the most frequently asked questions about domestic violence is, "Why does she stay?"

There are many reasons why women (or men) remain in violent relationships: ignorance, love, fear, pride, embarrassment, loyalty, financial dependence, low self-esteem, or a combination thereof.

Another root of domestic violence is that it is often handed down from generation to generation. Many victims experienced family violence during their childhood and now accept it as a normal part of life. In fact, some men and women do not even realize that physical assault of a spouse is a crime.

Also, those women who lack money and job skills—especially when they have children—are financially dependent on the abuser.

Some women are ashamed or embarrassed to admit they are being beaten or that they made the wrong choice in a partner. Cultural, religious, and personal beliefs and practices also play a strong role in the victim's desire to stay in a relationship or marriage. Also, some women remain in a violent situation simply because they believe their partner's promises to change. For battered men, the shame and embarrassment are greatly intensified due to typical social role patterns and expectations.

Finally, and most significantly, women stay in violent relationships because they fear the consequences of leaving their partner. Three-fourths of the number of battered women are beaten **after** they leave (they were divorced or separated at the time of the incident).

## **THE THREE-PHASE THEORY OF FAMILY VIOLENCE**

Dr. Lenore Walker, chairperson of the Department of Psychology at Colorado Women's College, completed an extensive study of more than 1,000 battered women, as well as a smaller group of abusing men. She found a pattern she labeled the *three-phase theory of family violence*. It involves the *tension-building stage*, the *acute battering incident* and the *loving reconciliation*. The psychological dynamics of these three phases help explain why some women feel so guilty and ashamed of their partner's violence toward them and why they may find it difficult to leave, even when their lives are in danger.

### **TENSION-BUILDING PHASE:**

Tension is a normal factor in everyone's life and in all relationships. However, some people, for a variety of reasons, react to tension violently. Once violence occurs within a relationship, it compounds the normal tensions.

During the tension-building phase of a violent relationship, the woman senses her partner's increasing tension. She may or may not know what is wrong. The man is edgy and lashes out in anger. He challenges her, tells her she is stupid, incompetent and unconcerned about his welfare. In a violent relationship, the woman generally lets the batterer know she accepts his blame of her. She tries hard not to make any "mistakes" that may upset him. She takes the responsibility for making him feel better, and thus begins to set herself up to feel guilt when he eventually explodes in spite of her best efforts to calm and please him.

During the increasing tension, the woman is rarely angry even at the most unreasonable demands or blame. Rather, she internalizes her appropriate anger at the man's

unfairness and, instead, feels depression, anxiety, and a sense of helplessness. She may suffer physical symptoms related to her emotional distress, such as headaches, upset stomach, difficulty sleeping, weakness and fatigue. These problems increase the woman's sense of worthlessness and loss of control and make her more vulnerable to the man's criticisms.

The woman may deny her fear and minimize the seriousness of the threat, believing she can control the situation. Even if she acknowledges her fear and danger, she may be reluctant to seek help. She feels ashamed of her failure to please her partner, and she believes, often correctly, that if other people knew about the violence they would blame her.

As the tension in the relationship increases, minor episodes of violence increase, such as pinching, tripping, slapping, or shoving. The batterer knows his behavior is inappropriate, and he fears the woman will leave him. The fear of rejection and loss increases his rage at the woman and his need to control her.

#### ACUTE BATTERING INCIDENT:

The tension-building phase ends in an explosion of violence. The incident that sets off the man's violence is often trivial or unknown, leaving the woman desperately confused and feeling very helpless.

The woman may or may not fight back. She often tries to escape the violence or call for help. If she cannot escape the beating, she may make herself feel as if the beating is happening in a dream. She may not be aware of how badly she is hurt.

Following the battering, the woman is in a state of physical and psychological shock. She may be passive and withdrawn, or hysterical and incoherent. She may not be aware of the seriousness of her injuries and may resist getting treatment. The man discounts the episode and usually underestimates the woman's injuries. He may refuse to summon medical help even when her injuries are life-threatening.

#### LOVING RECONCILIATION:

The loving reconciliation may begin within a period of a few hours to several days following the acute battering incident. Both the man and the woman have a profound sense of relief that "it's over." While the woman may be initially angry at the man, he begins an intense campaign to "win her back." Just as his tension and violence were overdone, his apologies, gifts and gestures of love may also be excessive, showering her with love and praise that helps her repair her shattered self-esteem. It is nearly impossible for her to leave him during this phase as he is meeting her desperate need to see herself as a competent and lovable woman.

During this period, the woman's feelings of power and her romantic ideals are nurtured. She believes this gentle, loving person is her "real" man. She believes that if only she can find the key, she can control him and prevent further violent episodes. No matter how often it has happened before, somehow this episode seems different and this time it will never happen again. During the loving reconciliation, a strong bond develops between the couple, isolating them both from reality and from anyone who might try to intervene in their destructive relationship. *Anyone who has attempted to support the woman and urged her out of the violent relationship may now be seen as "the enemy" trying to separate the loving couple.*

The loving reconciliation is a period of intense pleasure and reassurance for the couple. It convinces them that there is nothing wrong with their relationship and discourages them from seeking assistance. It is also isolating. When the violence does recur, the woman finds she has fewer and fewer places to turn for support.

The loving reconciliation also becomes a kind of reward for the violence. Psychologists have found that any behavior followed by a positive reward will occur more and more frequently. The more often periods of uncomfortable tension end in a violent explosion followed by loving closeness, the less likely alternatives for handling tension and stress will be developed by the couple. In order to end the violence, this cycle must be broken and new alternatives for handling tension must be developed within the relationship.

### ***THE INCREASING SPIRAL OF VIOLENCE***

One aspect of family violence of particular concern is the progressive and spiraling nature of the problem. Once violence has begun, research indicates that it not only continues, but over time increases in both frequency and severity. As the violence continues, the three-phase cycle begins to change. The tension-building phases become shorter and more intense, the acute battering incidents become more frequent and severe, and the loving reconciliations become shorter and less intense. After many years of battering, the man may no longer apologize at all.

The psychological consequences for the woman of the increasingly severe cycle of violence are feelings and behaviors that form another vicious cycle. She develops behavior patterns in response to the violence that function as traps that keep her from escaping the violent relationship. The

escalating violence increases her need, but decreases her ability to find alternatives to the violent relationship.

Most abuse victims fear for their lives or the lives of their children. They may have tried to leave before, only to be found by their partners and abused or "punished" even worse than before. These people often decide that there is no help for them.

Understanding the psychological consequences of the violent relationship can help the woman take power and choose constructive life alternatives, as well as aid those who intervene to help her.

### ***EFFECTIVE INTERVENTION***

Effective intervention in the violent relationship can be blocked by the mismatch between the cycles of violence and the timing of the intervention. Agencies mandated to help are often not geared to respond effectively **before** the battering crisis occurs. Police agencies find it difficult to act when a woman calls reporting a threat or the minor violence that precedes a severe battering. Likewise, the district attorney may be reluctant to file charges on a minor injury.

Shelters, however, find that many women come to them before a beating rather than afterward. During the tension-building phase, the woman's anxiety is high and she is often motivated to seek help. *It is important to provide alternatives during this phase.* The victim needs a positive and strong support group. The woman's self-esteem and self-confidence must no longer rise and fall with the moods of her violent partner if she is to build a safe and constructive life for herself.

The battered woman who seeks help is often frightened and unsure of herself. She can rarely escape her situation alone. A woman who has learned to be helpless will need especially strong support and help to find the strength to take action to end her victimization. If the criminal justice and social service agencies fail to serve her because of her passivity and confusion, the woman may feel she has no option but to return to the violent relationship.

### ***THE DECISION TO CHANGE***

The breaking point is different for every individual, but the day usually comes when a victim decides she can no longer take the physical and/or emotional abuse. It may be after the first or the fiftieth assault.

Where battered women's hotlines and shelters are available, domestic violence victims can find powerful and supportive advocates. But shelters do not exist everywhere, and where they are available, resources are desperately strained. They cannot do the job alone. Understanding the dynamics of the violent family can be the beginning of the process of developing more effective intervention by all agencies. Only effective, early intervention will break the deadly cycle of family violence.

Everyone has the right to be safe from beatings and threats. The information contained in the rest of this handbook is directed to anyone who has been or may become the victim of domestic violence.

## The Law

In California, it is a crime for any person to beat, sexually assault or otherwise harm another person, whether or not they are married. The following laws relate to domestic violence cases between adults (child abuse encompasses another set of laws).

### *Penal Code Section 13700 - Definitions.*

(a) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, or another.

(b) "Domestic Violence" is abuse committed against an adult or fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or a person with whom the suspect has had a child or has had a dating or engagement relationship.

(c) "Officer" means any law enforcement officer employed by a local police department or sheriff's office, consistent with Penal Code Section 830.1.

(d) "Victim" means a person who is a victim of domestic violence.

*Section 240: Assault defined.* An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

*Section 241: Assault; punishment.* An assault is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

*Section 242: Battery defined.* A battery is any willful and unlawful use of force or violence upon the person of another.

*Section 243: Battery; punishment.* A battery is punishable by fine of not exceeding two thousand dollars (\$2,000), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

*Section 245(a): Assault with deadly weapon or force likely to produce great bodily injury; punishment.* Every person who commits an assault upon the person of another with a deadly weapon or instrument or by any means of force likely to produce great bodily injury is punishable by imprisonment in the state prison for two, three or four years, or in a county jail not exceeding one year, or by fine not exceeding ten thousand dollars (\$10,000), or by both such fine and imprisonment.

*Section 261: Rape defined.* Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

- 1) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or should reasonably be known to the person committing the act.
- 2) Where it is accomplished against a person's will by means of force, violence, or fear of immediate and unlawful bodily injury on the person or another.
- 3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, administered by or with the privity of the accused.

4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused.

5) Where a person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practice by the accused, with intent to induce the belief.

6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

*Section 262: Rape of spouse.* Rape of a person who is the spouse of a perpetrator is an act of sexual intercourse accomplished against the will of the spouse by means of force or fear of immediate and unlawful bodily injury on the spouse or another, or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this subdivision, "threatening to retaliate" means a

threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(There can be no arrest or prosecution under this section unless the violation is reported to a peace officer or to the county district attorney within 90 days of the violation.)

*Section 273.5: Corporal injury.* Any person who willfully inflicts upon his or her spouse, or any person who willfully inflicts upon any person of the opposite sex with whom he or she is cohabiting, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 3, or 4 years, or in the county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both such fine and imprisonment.

*Section 273.6: Violation of court order; penalty.* Willful and knowing violation of a court order issued to prevent domestic violence is a misdemeanor punishable by a fine of not more than \$1,000, or by imprisonment in the county jail for not more than six months, or both. In the event of a violation which results in a physical injury, the person shall be imprisoned in the county jail for at least 48 hours.

*Section 278: Unlawful detention, concealment, etc.; punishment.* Every person, not having a right of custody, who maliciously takes, detains, conceals, or entices away, any minor child with intent to detain or conceal that child from a person, guardian, or public agency having the lawful charge of the child shall be punished by imprisonment in the state prison for two, three or four years, a fine of not more than ten thousand dollars (\$10,000), or both, or imprisonment in a county jail for a period of not more than one year, a fine of not more than one thousand dollars (\$1,000), or both.

*Section 278.5: Violation of custody or visitation decrees; punishment.*

(a) Every person who, in violation of the physical custody or visitation provisions of a custody order, judgment, or decree takes, detains, conceals, or retains the child with the intent to deprive another person of his or her rights to physical custody or visitation shall be punished by imprisonment in the state prison for 16 months, or two or three years, a fine of not more than ten thousand dollars (\$10,000), or both; or by imprisonment in a county jail for a period of not more than one year, a fine of not more than one thousand dollars (\$1,000), or both.

(b) Every person who has a right to physical custody of or visitation with a child pursuant to an order, judgment, or decree of any court which grants another person, guardian, or public agency right to physical custody of or visitation with that child, and who within or without the state detains, conceals, takes, or entices away that child with the intent to deprive the other person of that right to custody or visitation shall be punished by imprisonment in the state prison for 16 months, or two or three years, a fine of not more than ten thousand dollars (\$10,000), or both; or by imprisonment in a county jail for a period of not more than one year, a fine of not more than one thousand dollars (\$1,000), or both.

*Section 467: Deadly weapons; possession with intent to assault.* Every person having upon him any deadly weapon with intent to assault another, is guilty of a misdemeanor.

There are other laws that may be applied to domestic violence. For more information, please contact your local district attorney's office, local law enforcement agency, women's shelter, legal aid office, or public library.

# **If You Become a Victim of Domestic Violence**

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## **MAKE SURE YOU ARE SAFE FROM ANOTHER BEATING**

If your attacker has left the house but may come back, you should leave or call a friend to come and stay with you.

If your attacker is still in the house and you think he may batter you again, you should either call the police or leave as soon as possible. It may take a lot of courage to call the police or leave, but it may save you from a future filled with repeated violence. Go to a neighbor's house or call a friend or relative to come and pick you up. You can also ask the police to take you to a battered women's shelter or some other safe place, or ask them to tell you where a shelter is located, so you can get there on your own.

Whenever you believe you are in danger, leave your home and take your children. (See page 29 for a list of what to take in the event of a hasty exit.) Even if you have to leave your house in your nightgown in the middle of the night, it is better than possibly subjecting yourself to a beating. You may be embarrassed, but you will have a better chance of being safe and unharmed. If you cannot leave the house, ask someone you trust to stay with you.

## **GET MEDICAL ATTENTION**

**Always** get the medical attention you need after a beating. Don't try to patch yourself up. You may be injured much more seriously than you realize. As soon as possible, see your private doctor or go to the emergency room of a

hospital. Tell the doctor and nurses what happened to you so they can note it in their records. You can use the records for future evidence if needed. The most important thing is to get the medical care you need.

### ***SAVE ALL THE EVIDENCE YOU CAN***

As much as you are able, you should save all evidence showing that you were attacked and how badly you were injured. You may not want to press charges now, but later you may change your mind, and you will then need proof that you have been assaulted.

Try to get a friend or someone from a battered women's center to take color photographs of your injuries as soon as possible after the beating. Do not use old-style Polaroid film (the type that requires application of a liquid "fixer") because the pictures will fade. You can also have pictures taken by the police, if you choose to call them.

Save any torn or bloody clothing. If you see a doctor after the beating, get a copy of your medical records. Ask the police for a copy of their report also.

Once you are out of physical danger, you can then consider the options open to you.

## Protect Yourself

At least for the short-term future, you must decide what action you want to take. Your primary consideration must be your own protection and that of your children. Ask yourself if you want to remain in the present situation. Even if this was the first time you were beaten and you were not seriously injured, you should **not** take the event lightly. In some relationships, battering is a once-in-a-lifetime experience. However, in a large number of cases, the violence—once started—develops into a pattern of escalating abuse. If you do nothing else, you should seek **individual** professional counseling for yourself and your partner. (Couples counseling is generally not recommended in most battering cases.) Such intervention can prevent relatively minor problems from growing into intolerably abusive situations.

Consider the following actions:

- 1) call the police and press charges against your batterer;
- 2) move out for a period of time or for good;
- 3) insist that your abusing partner move out for a period of time or for good; or
- 4) remain with the abuser, and encourage him to seek professional counseling.

Under any of these conditions, professional counseling can be of invaluable assistance. A women's shelter or your county mental health agency can direct you to appropriate counseling services. If shame interferes with protecting yourself, remember that it is his action, not yours, that is the crime.

## ***CALLING THE POLICE***

Calling the police will set the criminal justice system in motion. This may lead to the arrest, conviction and imprisonment of your attacker.

The police can help you in the following ways:

- they can protect you from immediate danger and help you and your children get out of the house safely; and
- in certain circumstances they can arrest your attacker, which may lead to his conviction and possible imprisonment.

## ***WHEN YOU CALL THE POLICE***

When you call the police, explain exactly what is happening to you. For example, "My husband hit me. Now he's threatening me with a knife." The dispatcher may ask you some questions. Answer as clearly as you can and, in addition, be sure to say if:

- you have suffered any serious injuries;
- your attacker is still there or has threatened to return soon;
- your attacker has threatened to harm you again or possibly your children;
- there is a weapon involved and, if so, what type;
- your attacker is under the influence of drugs and/or alcohol;

- you have called the police before; and
- you have a temporary restraining order against him.

The police will respond faster if any of these factors are present, and they will be better prepared to help you when they arrive. Call them as soon as you can. If the police don't come within 10 minutes and you believe you are in danger, call again or leave.

### ***CITIZEN'S ARREST***

The police may be reluctant to make an arrest if they did not see your attacker hurt you or if they don't think a crime has been committed. You are always entitled to make a citizen's arrest. This is done in the presence of a police officer. The law provides that anyone can make an arrest of another person who commits a crime in his or her presence.

To make a citizen's arrest, you must ask the police to give you the appropriate forms to sign. (Say this to the police: "I want to make a citizen's arrest.") Once you have told the police what happened to you and have signed the papers, the police are required to take the offender into custody. Be aware, however, that the law allows the police to release the man from custody if they think the charges against him are not legitimate.

## ***THE POLICE REPORT***

Whether or not your attacker is arrested, make sure a police report is completed. The police report is the official record of what happened to you. It contains the date, names of people involved, what happened and how the dispute was handled. It is important that the police make a report, even if you don't plan to press charges at the time, because:

- you can use it to substantiate your story if you ever decide to press charges against your attacker;
- it provides a past history which may assist you in gaining the help of the police (and prosecutor) if you are ever threatened again; and
- it can be used to show good cause for the court to grant a Temporary Restraining Order if you should ever need one.

To ensure that the police report is complete and accurate, it is important to show the officer your injuries. Write down the name and badge number of the officer, and ask for the police report number. This information will make it easier for you to get a copy of the police report later.

## **Deciding To Prosecute**

If your husband or partner is arrested, the district attorney (prosecutor) will decide whether there is enough evidence to begin criminal proceedings against him. The district attorney will be more likely to prosecute if he or she feels the victim will be a consistent witness and will not change her mind or back away from the situation later. For the same reason that the police are sometimes reluctant to arrest your partner, the district attorney may be hesitant to prosecute. What you say or do can have a great deal of influence on this decision. You are most likely the primary (or only) witness and your cooperation is essential.

Domestic violence is a criminal act against the state, however, and the district attorney can prosecute without your approval or cooperation, if he or she has sufficient evidence.

If the district attorney decides to prosecute, he or she will act on your behalf against your batterer and will call on you to testify. You do not need to hire a private lawyer; however, if you would like to consult a lawyer and you either have the money or qualify for legal aid, you may do so.

### ***THE ARRAIGNMENT***

Within 48 hours of his arrest, your attacker (the defendant) makes his first appearance in court at a hearing called an "arraignment." He will be informed of the charges against him and must enter a plea of guilty or not guilty. The judge will then decide whether to hold him in jail until the next hearing or to release him.

Most defendants in wife beating charges are released at this point. He can be released in two ways:

- he may be required to post a certain amount of money (bond or bail), or
- he may be released on his own recognizance (his personal promise to appear in court at all future hearings).

Either way, he is free to come and go as he pleases until the trial (except for the possible limitations imposed by any restraining order you may have obtained). You should keep this in mind and ensure your safety (and that of your children if you feel they are in danger) during this time.

### **TEMPORARY RESTRAINING ORDERS**

Court orders may be requested and granted which prohibit or require certain actions and behavior by your spouse or partner. For example, a Temporary Restraining Order (TRO), obtained through civil court, may prohibit your spouse or partner from striking, molesting or harassing you; coming into your house or bothering you at work; or taking the children away from you. *With a TRO, a judge can also order the batterer to move out of the house.* (You can also ask for a "Stay-Away Order" during criminal proceedings at no cost; they can be in effect as long as the criminal proceedings take place.)

A TRO, provided for under Sections 540-549 of the Code of Civil Procedures for the prevention of domestic violence, may be available to anyone who has been living with her attacker, whether or not the couple is married. You can apply for a TRO whether or not you have left the house to

avoid further abuse and whether or not you have filed for divorce if you are married. If you believe a TRO is necessary in your case, you must apply to the court for such an order as soon as possible after you have been attacked or physically abused. Should you decide you want to remove the order, you must report to the court to ask for it to be removed.

## ***OBTAINING A RESTRAINING ORDER***

You do not have to hire a lawyer to apply for a TRO. If your husband or partner is employed, an attorney may be willing to handle your case with the expectation that the court will order your attacker to pay your attorney fees. Application forms with instruction booklets are available at courthouses, district attorney's offices, at most women's shelters, and at some police stations.

A section of the form asks for a description of what happened to you when you were beaten. Be very specific—you should explain in detail what happened to you when you were abused. If you called the police when you were attacked, include a copy of the police report with your form. If you needed medical attention, include a copy of the hospital record or your doctor's report.

The court may grant a TRO without your attacker being present in court. The court must see that the application form contains your sworn statements about the attack. You may also need to show the court that you have a right to remain in the house (usually by mortgage payment or rent receipts).

Orders granted by the court at a TRO hearing will be effective only 20 to 25 days. In order to receive a longer-term

restraining order (up to three years, or more in some cases) you will have to attend an "Order to Show Cause" (OSC) hearing. Prior to the OSC hearing, the other party must receive notice of the hearing so the court can hear both sides.

If your attacker has been served notice but does not appear at the hearing, the court will hear your case anyway and will probably grant the order you request by default. At the OSC hearing, the judge has the power to order your attacker to stay away from you and your house, to provide support for your children if he is their father and to reimburse you for any loss of earnings or out-of-pocket medical and legal expenses caused as a result of the attack.

If you are married and file for divorce after being abused by your husband, the court may also order support payments and restrictions on the disposal of property. The judge may also suggest (or order) that you participate in counseling.

### ***ENFORCING THE COURT ORDER***

The law requires that a copy of a temporary or longer-term restraining order granted by the court must be delivered to your attacker and to the local law enforcement agencies which operate in the locations covered by the order. Be sure to keep a certified copy of any court order for yourself and carry it with you. This is very important should you need police assistance in enforcing the order.

If your attacker ignores the court order in any way, there are three things you can do:

- Call the police and ask them to arrest him. Tell the officer on the phone about the order (he can verify the

existence, terms and current status of any such order through the appropriate law enforcement agencies). Show your copy to the officer when he or she arrives.

- You can make a citizen's arrest once law enforcement officers arrive at the scene. (See "Citizen's Arrest," page 19.)
- You can go to court and ask the judge to hold your husband or partner in contempt of court for violating the order. (Penal Code Section 273.6 provides that wilful and knowing violation of such a court order is a misdemeanor.)

If you do not have an attorney, the court may appoint counsel for you and order your husband or partner to pay court costs and reasonable legal fees.

## **The Trial and Sentencing**

At the trial you will be called to testify. You will be asked by the prosecutor to describe to the court the attack against you in great detail. Your batterer's attorney will also ask you questions.

The trial can be a traumatic experience because of the questioning and because you will see your attacker in the courtroom. You should prepare yourself for the trial by reviewing the police report so that you have the facts firmly fixed in your mind. You may find it helpful to bring a friend or counselor for support during the trial.

You must keep in mind that the more detailed the information you provide the court in your testimony, the better your chance that your batterer will be convicted and sentenced to jail. The system makes it a long and sometimes difficult process, but follow through with it if you are convinced your batterer should be prosecuted.

At the end of the trial, your batterer will be found guilty or not guilty. If he is found guilty, the judge will decide what his sentence will be. The batterer can be sentenced to jail or state prison or placed on probation. In reality, men who are arrested for battering do not spend much time in jail, even after they have been convicted of a crime. This is especially true if it is the first arrest for battering. Under California law (Penal Code Section 1000.6), a first offender charged with a misdemeanor can receive counseling instead of a jail term.

## **DISPOSITIONAL ALTERNATIVES**

The judge has a variety of dispositional alternatives in abuse cases. Once the judge hears both sides of the case, he or she can impose one or some combination of the following judgments:

- Refer the case for investigation by court personnel, a child protective services worker, or social worker from the Department of Social Services.
- Impose a suspended sentence with probation. Probation carries with it specific terms and conditions—such as refraining from further abuse and/or possibly a restraining order. If the conditions of probation are violated, a jail or prison term may be imposed.
- Order that both parties receive counseling (individuals usually receive separate counseling).
- Order the batterer to undergo a psychiatric examination.
- Order the batterer to enter a diversion program.
- Order the batterer to substance-abuse counseling or treatment.
- Impose a fine.
- Impose a prison sentence (usually only in severe situations).

All victims have the right to speak at the sentencing hearing. They may read a prepared statement or simply voice their opinion.

## **Moving Out**

If you have decided to move to a women's shelter or some other safe place, whether for a short time or permanently, you need to consider the following.

### **TAKING YOUR CHILDREN**

You can legally take your children with you when you move out, unless your husband has been given sole legal custody of them. Seeking temporary custody within a few days is important. A TRO is one way to achieve this; a lawyer can also help.

Your children may be targets for abuse in your absence. If you believe you are in immediate danger and cannot take your children, contact the police immediately to arrange for their temporary protective custody. *This does not mean you will lose your right to custody of your children.* The question of permanent custody will be decided later by a judge.

### **WHERE TO GO**

If possible, stay with a woman friend or relatives. Do not stay with a man who lives alone unless he is your brother, father or grandfather. Living with a man you are not married to could hurt your chances of getting custody of your children or getting spousal support. It could also cause further conflict with your abuser.

You and your children can go to a battered women's shelter. A battered women's shelter is a temporary place to stay while you decide what you want to do next. The staff at the shelter can help you get legal, financial and medical help.

You will also have an opportunity to talk with other women who have been battered. Most shelters are free or charge a very low fee. You can find a shelter by calling an emergency hot-line in your community or a women's organization. You can also ask the police to direct you to a shelter. If space is not available in a shelter, they can help develop other alternatives.

If you take your children with you, try to give them as much stability as possible. Moving frequently may adversely affect your children emotionally, as well as affect your chances for custody.

### **WHAT TO TAKE**

When you leave, whether you believe it will be for a short time or for good, be sure to take the following items:

- Driver's license or Department of Motor Vehicles identification card
- Money
- Checkbooks
- Credit cards
- Keys
- Medications
- Address Book
- Green card(s) (immigration verification)

If there is time, also consider taking as many of the following items as you can. You may have difficulty going back for these things later.

- Children's birth certificates
- Your birth certificate
- Pink slip to your car

- Lease, rental agreement, house deed
- Bankbooks
- Insurance papers
- Pictures
- Medical records (for the whole family)
- Social security cards
- Welfare identification
- School records
- Work permits
- Passport
- Divorce papers
- Jewelry

*If you are thinking about leaving, it would be a good idea to put these things together in one place where you can get to them in a hurry.*

Remember, legally you may take anything that belongs to you alone and anything that belongs to you and your husband together. You can withdraw money you have in a joint bank account with your husband or partner. You may not take anything that belongs only to your husband or partner. You may not destroy property that belongs to both of you or only to your husband or partner.

If you did not take everything you need when you left, you have the right to ask the police to escort you back to your house later to pick up items. The police will only allow you to take things that obviously belong to you or your children, such as clothing. Take a friend or relative with you. Or, you can wait until your husband or partner goes to work or leaves the home for some other reason, and then go into the house to get what you need. However, if you do go back and your husband or partner won't let you in, the police cannot force him to let you in without a court order.

## ***ONCE YOU MOVE***

If you are concerned that your attacker may try to find you, be careful to whom you (and/or your children) give your new address and phone number. Consider renting a post office box for your mail or using the address and phone number of a friend. Be aware that addresses are on restraining orders and police reports.

If you go to court, use a post office box number or your lawyer's address as your address. This can be extremely important if your partner has threatened your life or you believe he will attempt to find you and abuse you further.

## Financial Alternatives

Under the California Victims of Violent Crime Program, the state provides compensation to victims of violent crimes, their dependents, family members, or persons in close relationship with the victims, if they suffer serious financial loss in an amount of more than \$100 or 20 percent or more of the victim's net monthly income, whichever is less. Coverage may include necessary medical expenses, lost earnings, child care, and costs of job retraining. Attorneys' fees may also be available.

To receive this state compensation, you must have suffered physical or emotional injury as a result of a violent crime. It is not necessary to be a resident of California in order to receive compensation. (In cases of death of the victim, the heirs may have rights to this compensation for financial losses to the deceased.)

A victim of any crime, including domestic violence, may **not** receive compensation if he or she refuses to cooperate with the police in apprehending and prosecuting the assailant. Most state programs do not allow compensation to victims who are married to or living with their assailant because the assailant might indirectly receive the compensation and benefit from his crime. California, however, allows compensation to victims who live with the assailant if the assailant is receiving therapy.

Information and application forms about compensation to victims of violent crimes may be obtained from the State Board of Control, Victims of Violent Crimes, P.O. Box 3036, Sacramento, California, 95812-3036. You may also call the police, sheriff, or your local victim/witness assistance program for more information.

## **Help For Battered Women**

If you are a battered woman, seek the assistance you need to make a better life for yourself.

If you need help, look in the yellow pages of your telephone directory under "Women's Services and Organizations." If nothing is listed, look under the name of your city or county for departments of family services, social services, health or welfare. These agencies can often help you or refer you to someone who can. Also, check the white pages of your telephone book under the heading "Crisis." Many areas have crisis hotlines that are answered 24 hours a day.

Remember that your local police and sheriff's departments exist to help you. You should always have their numbers handy for an emergency situation. County hospitals are designed to handle emergency problems. Other sources of help and/or referral are the Salvation Army or your private physician or attorney. Also, look in the yellow pages under "Attorney Referral Service" or "Legal Assistance" or "Bar Association" if you have a low income and need a lawyer.

For more information on legal proceedings and women's legal rights, please order the Attorney General's free publication *Women's Rights Handbook*, Office of the Attorney General, P.O. Box 944255, Sacramento, California, 94244-2550.

For more information on family violence, sexual assault, and other crime prevention issues, please contact your local law enforcement agency or the Attorney General's Crime Prevention Center, P.O. Box 944255, Sacramento, California, 94244-2550.

# Acknowledgements

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