

63932

✓ SYSTEMS RESPONSE

✓ THE RESPONSE OF THE JUDICIAL SYSTEM Chapter 3

63932

NCJRS

DEC 26 1979

ACQUISITIONS

Special acknowledgement is due to the following for their contributions to THE RESPONSE OF THE JUDICIAL SYSTEM:

CATHERINE AVINA, administrator, Southern Minnesota Regional Legal Services, Inc., St. Paul

AVIVA BREEN, attorney, Legal Aid of Ramsey County, St. Paul

CINDY COOPER, attorney, Court Information Office of the Minnesota Supreme Court, St. Paul

CANDACE DeGRAZIA, attorney, Southeastern Minnesota Legal Services, Winona

RICHARD ENGA, attorney, Citizens Dispute Settlement Project, Minneapolis

JUDITH JACKSON, attorney, Citizens Dispute Settlement Project, Minneapolis

PAT MURPHY, staff, Women's Advocates, St. Paul

MIRIAM WOLF, attorney, Legal Aid, Minneapolis

TABLE OF CONTENTS

Introduction

Criminal Law and the Battered Woman

Introduction

Background

Entering the Criminal Justice System

Initiation of Criminal Proceedings

Criminal Proceedings

Misdemeanors

First Court Appearance

Pre-Trial Conference

Trial

Gross Misdemeanors or Felonies

First Court Appearance

Arraignment

Omnibus Hearing

Trial

Plea Bargaining

Penalties

Needs and Concerns of Women of Color

Conclusions

Recommendations

Civil Law and the Battered Woman

Background

Processes for Obtaining a Dissolution/Separation

Contacting an Attorney

Petition and Summons

Exclusive Occupancy Hearing

Temporary Hearing

Final Hearing

Conclusions and Recommendations

Glossary

Appendices

NOTE:

This chapter is designed to provide a general idea of the procedures that a battered woman may encounter when seeking assistance within the judicial system. There are many variations in the law that could not be dealt with here. Specific questions must be directed to an attorney.

INTRODUCTION

There are two separate and distinct kinds of law with which a battered woman may come into contact: criminal and civil. Criminal law involves violations of state statutes. Such violations include assault, harassment, and the like. Civil law involves disputes between people. This includes processes such as separation and dissolution of marriage.

This chapter will detail the procedures involved in the judicial processing of both criminal and civil law. Important points to be noted by those providing services to battered women within the legal system will be detailed where appropriate. Definitions of terms commonly used in the judicial processes are included in the Glossary at the end of this chapter.

CRIMINAL LAW AND THE BATTERED WOMAN

INTRODUCTION

During the past few years, increasing attention has been focused on the situation of victims within the criminal justice system. Often described as the "forgotten persons of a crime", the victims are frequently victimized again by the very system set up to deliver justice.

Women who are abused by their partners not only suffer the same frustrations in the judicial process that other victims do but, because their assailants are also husbands/boyfriends, the process tends to further frustrate justice by viewing these assaults as part of private family matters. Such an attitude can decrease the effectiveness of the system in providing safety and justice to the woman who has been assaulted. There are many reasons why a battered woman may not choose to seek assistance through the criminal justice system. These reasons include: inadequate protection from her assailant during the lengthy judicial process; lack of information, support, and encouragement; lack of meaningful input into many of the procedures; and, inadequate and/or inappropriate sentencing.

The purpose of this chapter is twofold: first, to give advocates, counselors, medical and law enforcement professionals and others who work with women who are abused an awareness of what a woman must face should she choose to seek assistance through the criminal justice system and secondly, to provide recommendations to those within the criminal justice system from attorneys and advocates as to how the system may be changed to better meet the needs of battered women.

BACKGROUND

There are many kinds and forms of abuse that are perpetrated upon women. Most women acknowledge that use of a weapon such as a gun or knife against them by their partners is criminal, but most do not view slapping and striking as criminal behavior. They may perceive this as part of a relationship problem, not as a crime. All kinds and forms of physical abuse, hitting, pushing, kicking as well as attempts to cause bodily injury or putting one in fear of imminent bodily injury are criminal behaviors.

Different degrees of physical abuse carry correspondingly different degrees of punishment within the legal system. For example, pushing, hitting, punching and the like are usually charged as misdemeanors and carry a specific range of penalties whereas threats with or use of various weapons and severe beatings can be charged as gross misdemeanors or felonies and carry a range of penalties that are heavier than those for misdemeanors. Recently, legislation was enacted that defines assault in varying degrees. First, second and third degree assault are charged as felonies and carry different degrees of punishment. Fourth degree assault is charged as a misdemeanor. See Appendix I for definitions of degrees of assault and corresponding penalties. For this reason it is important that a woman be encouraged to give an accurate account of her abuse, not minimize it out of shame, fear, or a desire to protect her partner. In order to facilitate this, the person(s) listening to her story must be understanding of and sensitive to her needs and concerns (e.g., her need for physical safety).

There are differences in the criminal process depending on how the abuse is charged. These will be considered in the text wherever they appear.

A woman can seek recourse in the criminal justice system. She should be given information about how to use this system and should be given support if she decides to do so. The assailant must come to realize that his behavior is clearly unacceptable and criminal in nature.

ENTERING THE CRIMINAL JUSTICE SYSTEM

The most common way for an abused woman to enter the criminal justice system is to call the police when she is threatened with assault or immediately after an assault. If the officer witnessed the assault, s/he can arrest the assailant and/or issue a citation. A citation is an accusation of an offense directing the accused to appear before a designated court at a particular time.

If, in the judgment of the officer, the assailant is viewed as dangerous, shows continued assaultive behavior or makes serious verbal threats, he may be taken to jail and detained there. Once in jail, the accused has the option of posting bail and being released, often within only a few hours after arrest. Prior to release, the judge may conduct an investigation into the accused's background. This may result in the imposition of specific conditions for release. If the criteria of probable cause are met (see THE LAW ENFORCEMENT RESPONSE chapter for a discussion of the Probable Cause Arrest law), an officer may arrest a person accused of assaulting his spouse or other individual with whom he resides. A citation may not be issued in lieu of arrest and detention.

Once detained, the arrested person may be issued a citation in lieu of the continued detention unless it appears reasonable to the officer or sheriff that detention is necessary to prevent bodily harm or that the person will fail to respond to a citation. It is important for battered women's advocates to let the officer or sheriff know the danger that a particular woman faces from her assailant.

¹The criteria of Probable Cause are:

- 1) The officer observes a recent physical injury and,
- 2) The injured party either resides with the assailant or is the assailant's spouse and,
- 3) The alleged assault must have occurred within the last four hours and,
- 4) The arrest (not necessarily the assault itself) must take place at the residence of the assailant.

If the arrested person is not issued a citation, he shall be brought before the nearest available judge in the county in which the alleged assault took place no more than twenty-four hours after his arrest, exclusive of Sundays and legal holidays. The judge shall review the facts surrounding the arrest and detention and the arrested person shall be ordered released pending trial or hearing unless the judge determines that release will endanger the public or that this person will not appear at subsequent proceedings.

If the arrested person is not issued a citation and is not brought before a judge within the specified time limit, he shall be released and issued a citation in lieu of continued detention.

If the officer did not witness the assault and the criteria of probable cause are not met, the assailant can still be arrested if the woman chooses to perform a citizen's arrest. Most women prefer not to arrest their assailant who is also their partner for many reasons, one of which may be the heightened fear of revenge. With fair interpretations of the Probable Cause Arrest law, the occasions on which a woman is put in a position to make a citizen's arrest in order to proceed with prosecution should be few.

INITIATION OF CRIMINAL PROCEEDINGS

There are two ways in which criminal proceedings can be initiated against a woman's assailant: the filing of a complaint and the issuance of a citation. A complaint is a formal document, written and signed, filed at the City (or County) Attorney's Office by which a person is charged with a crime. A citation is a written accusation of an offense issued by a police officer directing the accused to appear before a designated court at a particular time.

A complaint must be filed if the crime with which the assailant is charged is a gross misdemeanor or a felony. If the crime charged is a misdemeanor (and a citation has been issued), a complaint must be filed only if the defendant or his counsel requests that this be done. If no citation was issued no matter what the crime with which the woman wants her assailant charged, she must take it upon herself to report the crime to the police and to see that a complaint is filed.

A complaint can be filed by either the woman or the officer. To file a complaint, a copy of the police report must be obtained at the police station and brought to the City (or County) Attorney's Office (depending on your location) where the complaint is made. In Hennepin and Ramsey Counties, the severity of the charge is the determining factor as to where the complaint is made; first degree assault charges are filed at the City Attorney's Office, second, third and fourth degree assault at the County Attorney's Office.

Upon the filing of a complaint, the prosecuting (City or County) attorney decides whether the complaint is charged. After a woman files a complaint, the process may go no further. In cases where the complaint is charged, the prosecuting attorney will issue either a summons for the defendant to appear in court or a warrant for his arrest depending on the circumstances. In misdemeanor cases, the prosecuting attorney will first consider issuing a summons. But if it is decided that the arrest of the defendant is

¹ It would be useful if a procedure could be devised to eliminate the necessity of the woman going to the police station to get a copy of the report. It may be difficult as well as impractical for her to do this.

necessary to prevent bodily harm to the woman or to others, a warrant for arrest will be issued instead. In gross misdemeanor and felony cases, the prosecuting attorney has discretion concerning whether issuing a summons or warrant is appropriate without first considering issuing a summons.

Another way for criminal proceedings to be brought against a woman's assailant is through the issuance of a citation. If a police officer issued a citation for a misdemeanor (most assaults on women that are charged are charged as misdemeanors), a copy of this citation is delivered to the clerk of court. This takes the place of the complaint and is known as a "tab charge". In such cases upon the request of the defendant or his counsel, a complaint must also be filed.

It can be very difficult for a woman to file a complaint. Advocates from shelters who have accompanied women to file complaints state that prosecuting attorneys often attempt to convince them not to file. This may be because many prosecutors have had the experience of women not following through, blame them for this, and become reluctant to assist other women in similar circumstances.

It is important for prosecuting attorneys to understand the danger in which a woman is placing herself when she files a complaint. Inadequate safety may be one major reason that she decides not to follow through with pressing charges.

It is recommended that the woman be referred to a local battered women's group.¹ Such groups are equipped to offer her the support and encouragement she may need to continue in the judicial process. Some groups also are able to offer her needed safety in a shelter or safe home during at least part of the process. Others, unfortunately, are not, but may be able to refer her elsewhere to meet this need.

CRIMINAL PROCEEDINGS

A directive to appear in court is included in the filing of charges. The processes involved in court proceedings are somewhat different for misdemeanors as compared with gross misdemeanors and felonies. These will be considered separately.

Misdemeanors

*First Court Appearance

If the defendant is arrested and detained, he must be granted a first court appearance within thirty-six hours following his arrest (excluding the day of arrest, Sundays and legal holidays). If a formal complaint is requested by the defendant or his counsel at this time, a delay of up to forty-eight hours is authorized. There is no thirty-six hour requirement following the issuance of a citation or a summons only. If the defendant is arrested according to the Probable Cause law, he must be afforded his first court appearance within twenty-four hours.

At the first court appearance, the judge will inform the defendant of his constitutional rights and the nature of the charges against him. He will be informed of his right to

¹For an updated list of battered women's groups throughout the state, contact the Minnesota Department of Corrections, Programs and Services for Battered Women, 430 Metro Square Building, 7th & Robert Streets, St. Paul, MN 55101.

request a formal complaint. If this is not so requested, the information contained on the citation becomes a "tab charge" and takes the place of a formal complaint. The defendant will be called upon to enter a plea but may decline to do so. If he declines, a time for his next court appearance will be set. Also, at this time, the conditions of the defendant's release and bail will be established.

The woman needs to be aware of court appearances, the purpose of each and the nature and meaning of the results. It is important for her to have meaningful input at each step in the process; the court must be aware of her needs for safety, especially in determining the conditions of the defendant's release.

*Pre-trial Conference

The purpose of the pre-trial conference is to consider the admissibility of evidence, pre-trial motions or other matters. Pre-trial conferences are scheduled at the discretion of the court and the practice will vary depending on the local court. If no pre-trial conference is held, such evidentiary issues will be heard immediately before the jury trial or will be ruled on as they present themselves during the trial.

The defendant may plead guilty as charged or guilty to a lesser charge at this time. Or the court may decide to dismiss the case due to insufficient or inadequate evidence. Otherwise, the case will proceed to trial.

*Trial

The defendant detained in custody may make a demand for trial to be held within ten days. If he is not in custody, he may make a demand for the trial to be held within sixty days. If such a demand is not made, the trial date may be extended further into the future. The defendant's attorney may actively seek continuances because, as the waiting time increases, the more likely it becomes that the woman will discontinue her involvement in the proceedings. An extended wait can be detrimental to the woman, the victim, physically as well as psychologically. Not only may she fear physical revenge from her partner, battering may actually occur if she is not in a safe place such as a shelter or a safe home. Most shelters and safe homes are unfortunately not able to provide housing during the entire period of a lengthy trial. The focus of such is to provide crisis housing, the average length of stay being slightly over one week.

Gross Misdemeanors or Felonies

*First Court Appearance

As with a misdemeanor, if the defendant is arrested for a gross misdemeanor or felony he must be afforded a first court appearance within thirty-six hours (excluding day of arrest, Sundays and legal holidays). If he is issued a citation or summons, there is no thirty-six hour requirement.

At the first court appearance, the defendant will be informed by the judge of his constitutional rights and the nature of the charges against him. A copy of the formal complaint will be provided. The conditions of the defendant's release and bail will be set and the court will give the defendant a date for his next court appearance (arraignment). It is important for the woman to be informed of the defendant's pending release so that she has time to take any necessary precautions.

*Arraignment

At the arraignment, the defendant is called upon to enter a plea to the charges against him, to demand or waive that the court rule on the admissibility of the prosecutor's evidence and to demand or waive a review of the issue of probable cause for his arrest. If he does not plead guilty as charged or to a lesser charge acceptable to the court, an additional appearance in court will be scheduled.

*Omnibus Hearing

If the defendant has a challenge based upon either the inadmissibility of evidence or lack of probable cause for his arrest and continued criminal proceedings, the court will consider these matters at an Omnibus Hearing. The Hearing is scheduled at the arraignment and must be held within fourteen days after the arraignment. The woman should be notified of this hearing and advised of its purpose.

The Omnibus Hearing is essentially three separate hearings combined into one:

- (1) Evidentiary hearing to determine the admissibility of evidence for the trial.

The state must show affirmatively that any evidence (e.g., statements or admissions by the defendant) will not violate any constitutional rights of the defendant.

- (2) Hearing to determine if there is sufficient cause to continue criminal proceedings.

The state must show that there is probable cause to believe that the defendant has in fact committed the crime as charged, but need not produce evidence showing positive guilt. It is at this point that valuable input may be obtained from the woman. A channel to solicit and use her testimony should be provided.

- (3) Hearing for testimony on any motion for dismissal or for appropriate relief.

Such motions can be requested by either the state or the defendant.

*Trial

With gross misdemeanors and felonies, either the prosecutor or the defendant may make written or oral demand before the court to have the case tried as soon as possible. The trial must begin within sixty days from the time of demand.

However, if a demand for trial is not made, the trial may be delayed indefinitely. Delays at any point in the process, as mentioned previously, may cause serious problems for the woman. She may become increasingly discouraged with the process and fearful of possible revenge by her assailant. Because the system is not meeting her needs promptly leaving her fearful, exposed to potential danger, she may decide to discontinue her involvement with the judicial system.

The defendant has the right to a twelve person jury trial unless he waives that right or agrees to allow six jurors to consider the case. If the trial is to be held before a judge without a jury, the court must reach its decision within seven days following completion of the trial.

If the woman is to be called as a witness, it is important that she be offered the support she needs in what may be a very difficult task for her. The assistance of an advocate from a shelter or a battered women's group is desirable. Understanding and sensitivity shown by her attorney is essential.

Plea Bargaining

At many points during the criminal process, the defendant has the opportunity to enter a plea. The plea that he enters may not be to the charges as filed against him and as stated during the first court appearance. Any changes in a charge are brought about by the process of plea bargaining. Plea bargaining is a common procedure and is encouraged by the system in order to promptly dispose of pending criminal cases.

It is recommended that battered women's advocates meet with local prosecutors to discuss the use of plea bargaining in order to ensure that it is not used to the detriment of the woman in the interest of moving the court calendar. Also, the woman should be consulted before the prosecuting attorney makes a decision to plea bargain.

Plea discussions and arrangements (bargaining) take place between the prosecutor and the defense counsel. Any agreement made by the defense counsel must be agreed to first by the defendant. The defendant makes the final decision as to which course to take.

The defendant may plead guilty to a lesser-included offense, i.e., one that is less serious but also appropriate for the criminal conduct with which he is charged. This requires approval of the prosecutor and the court. No amendment of the complaint or tab charge is necessary.

With the prosecutor's consent, the defendant may plead guilty to a different offense than that with which he is charged. In this case, the prosecutor must file a new complaint for felonies and for most gross misdemeanors or a new complaint or tab charge for misdemeanors. It is important that the woman remain in contact with her attorney (the prosecutor) throughout this process.

Without the prosecutor's consent, the defendant can plead guilty to a lesser-included offense or to an offense of lesser degree with the discretion of the court. The court should be aware of possible detriment to the woman before arriving at a decision in such cases.

Penalties

The prescribed penalties for misdemeanors and felonies are as follows:

Misdemeanors - punishable by imprisonment for not more than 90 days, or a fine, or both.

Felonies - punishable by imprisonment for more than one year, or a fine, or both.

Refer to Appendix I for penalties corresponding to varying degrees of assault. Maximum penalties are usually not assigned in cases of battering.

Often the sentence given may be viewed as inappropriate. For example, if the man is only given a fine and imprisonment, his violent behavior is not confronted. Even if he is required to enter chemical dependency treatment, this behavior is usually not con-

fronted. A penalty including mandatory, long-term counseling directed at dealing with his violence as well as follow up to verify that he did in fact remain in counseling, is highly recommended in addition to incarceration when appropriate. It can be extremely frustrating for the woman involved in this lengthy and dangerous procedure to see her assailant receive a suspended sentence or a minimal sentence. She may have only succeeded in angering her assailant and in spending large amounts of her family's money.

NEEDS AND CONCERNS OF WOMEN OF COLOR

It is a common belief that minority men are sentenced more severely than white men for similar crimes. For this reason, many women of color are hesitant to press charges against their partners. A woman of color is hesitant to bring her partner against a system she sees as oppressive. She is often expected by her community to use family and community based resources to deal with the abuse she is experiencing. It must be recognized that if she chooses to use the court system, she often does this at the expense of terminating her support systems within the community. See the chapters on minority families included in the Overview section of this manual for background material.

CONCLUSIONS

There are facets of the criminal justice system that may prevent women who are abused from effectively using it.

Women who have been through the criminal justice process often say that they feel they have little involvement in the procedures. Since the focus is on the defendant and the victim's role is primarily that of witness, this perception is understandable. A woman may thus lack the encouragement and support she needs in order to pursue court proceedings.

Lengthy criminal proceedings may increase the danger in which a woman must live. Because of the unique situation of the woman as a victim in that she usually must live with her assailant or in a place with which he is familiar (i.e., with relatives or friends) during the judicial process, she is subject to further assaults. It is often necessary for her to seek safety in another location during this time. Shelters and safe homes where she may go do exist, however their services are not accessible or available to many women. Also, shelters and safe homes are intended to provide short term, crisis housing and often cannot house a woman during the entire court process.

There are too few shelters to meet the needs of all the women who request emergency housing. From January to November, 1978, 79% of the women seeking shelter in Minnesota were turned away due to lack of space. An abused woman who cannot obtain safe housing often decides to abandon the criminal process. At least her situation will not be made worse, her assailant will not be angered by being brought to court.

A woman who is abused may believe it is useless to enter the criminal justice system. When a man is found guilty, she sees that his sentence is seldom appropriate (\$100 fine, commitment to a drug treatment program) in that usually no method for his dealing with his violent behavior is provided. The woman's short term and long term safety has not been provided for in an effective manner.

Advocacy is needed to explain the legal system to the battered woman and to offer her support throughout the lengthy judicial process. She must be made aware of the fact

that her complaint and case may be minimized throughout the process and she must be prepared to deal with this. Those within the system will expect her to persevere, to be a witness, but can offer her no real protection while doing so.

There are benefits for many women who choose to seek assistance through the criminal justice system. For example, a woman may increase her self-esteem by taking legal action against her assailant and/or she may achieve relief from abuse especially if her assailant fears criminal court exposure.

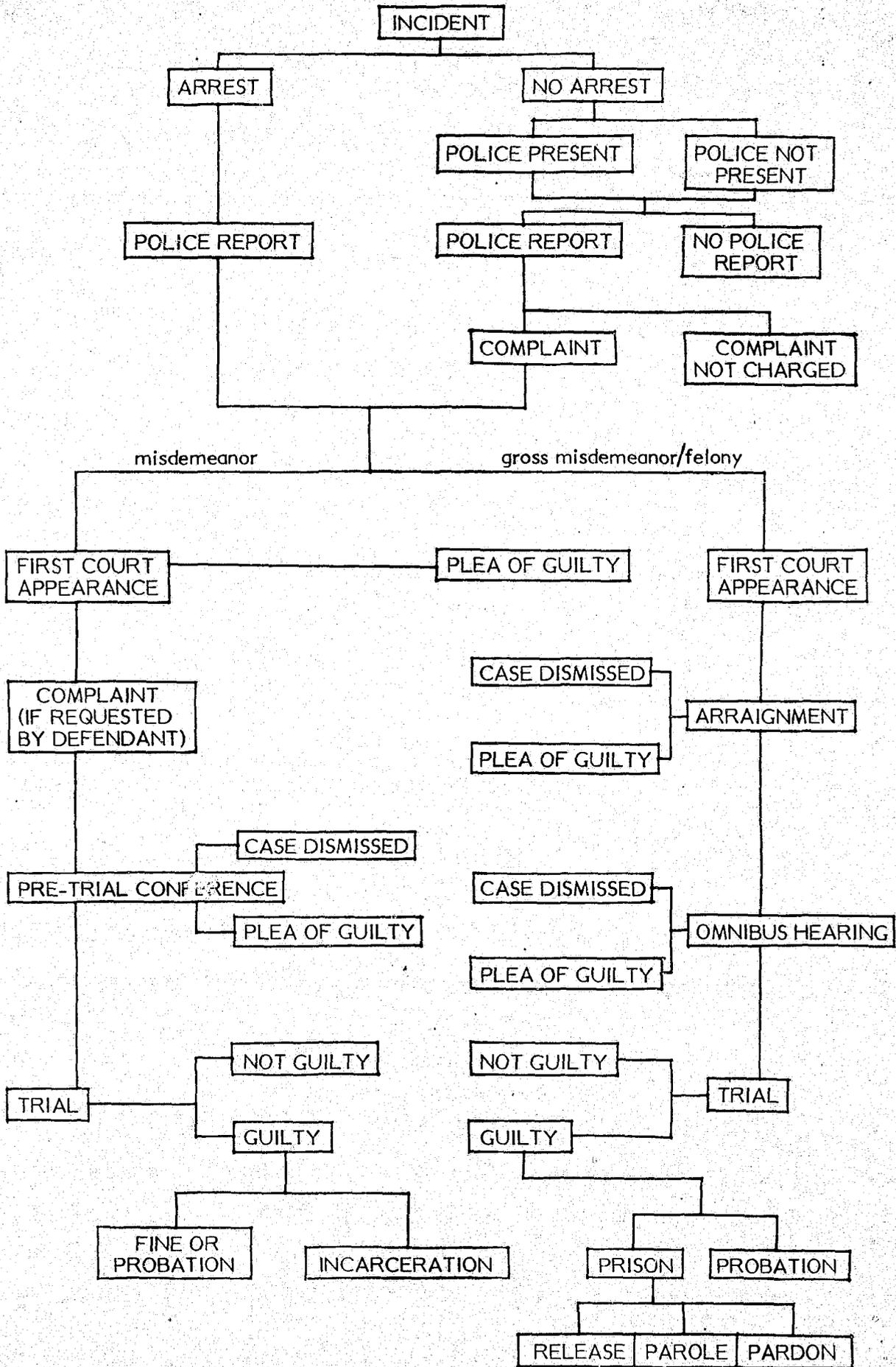
RECOMMENDATIONS

There are some recommendations that can be made with respect to the criminal justice system and advocacy and service organizations that provide legal assistance to battered women. Hopefully, implementation of all or some of these recommendations will allow the criminal justice system to be increasingly effective in delivering service to women:

- 1) Evidence gathering is important for the implementation of a fair judicial process. It is recommended that prosecutors' offices work with medical and law enforcement people and local battered women's groups to ensure that proper statements from victims and witnesses are taken and that pictures and/or other documentation of physical evidence (e.g., medical reports, signs of forced entry) be thoroughly gathered by trained personnel sensitive to the crisis the woman is experiencing.
- 2) Working with people in the judicial system in order to ensure that the woman is notified of all court proceedings and that the meaning of each step in the process is adequately explained to her is important. Community groups can work toward providing support systems for battered women by setting up advocacy programs that a woman can use if she wants. Such programs could provide transportation, information and persons to accompany the woman through the court process for support and encouragement.
- 3) Education of persons determining conditions of release is critical. The danger a woman is in when her husband is released from jail must be fully understood by those who set bail. Her life as well as the lives of her children may very well be at stake. Women's involvement in this phase has often been very successful resulting in obtaining restrictions on where the assailant may go.
- 4) Education of professionals within the criminal justice system regarding the use of a serious and sensitive approach toward the abuse of women is of great importance. Many of the questions asked are extremely personal and may be shameful to the woman. Ensuring that she is dealt with in a respectable manner, that the criminal nature of the complaint charge is not minimized and that a sensitivity to her dangerous situation and emotionally traumatic experience is expressed is crucial to her being able to persevere during the judicial process.
- 5) A treatment program for men who batter should be developed by those knowledgeable in the field. Legal professionals can offer suggestions and advice regarding the implementation of such a program and how the criminal justice system can best utilize it. When such a treatment model is developed in the community, battered women's advocates should meet with representatives of appropriate local agencies and individuals as well as judges to discuss the use of the treatment model. Sentencing to the program should then be made mandatory from the bench.
- 6) Including the woman in all court processes that affect her well-being is desirable. It is recommended that decisions including conditions of release, plea bargaining, sentencing, etc. not be made without input from the woman who was assaulted.

7) Ensuring a speedy trial is important in enabling the woman to persevere without fear of reprisal from her assailant. Legal professionals should be well aware of this and avoid delays whenever possible.

CRIMINAL LAW: GENERAL PROCESS



CIVIL LAW AND THE BATTERED WOMAN

BACKGROUND

When a woman has decided that she wishes to live apart from her husband, she may want to file for a dissolution of marriage or a separation. The detailed processes in obtaining a dissolution and a separation will be discussed in this chapter. A couple can be separated legally without necessarily going through the court process simply by establishing separate maintenance. However, a dissolution can only be obtained through civil proceedings.

There are fairly obvious reasons why a woman would choose a dissolution of marriage instead of a separation. These reasons include obtaining a legal termination of the marriage, a final legal decision regarding the ownership of their property and a final legal decision regarding custody of the children, if any.

There are reasons a woman may choose a separation rather than a dissolution. These include strong religious or moral convictions against dissolution. If large sums of money are involved, it may be more profitable to seek a separation.

The process for obtaining a dissolution is similar to that for a separation. However, it is important to understand that even though the processes are similar, the woman should state to her lawyer in the beginning which it is she wants. Though her decision can be amended by petition once the process has been started, this will result in a delay.

PROCESSES FOR OBTAINING A DISSOLUTION/SEPARATION

Contacting an Attorney

When a woman wants a dissolution of marriage or a separation, her first action is to contact an attorney. In most cases, the woman will be required to pay a retainer. There is an informal pauper's procedure if she is indigent. Also, under certain circumstances her husband can be ordered to pay the fees.

If she does not already have an attorney that she wishes to contact or can afford to retain, she should get in touch with a local legal aid office or an organization for battered women that provides referrals for low cost legal services. The woman should be aware that particular legal aid offices may have certain restrictions and/or procedures regarding prospective clients. For example, a particular office may not represent a woman without children and may take her husband's income into consideration when determining eligibility.

It may be important that the lawyer whose services she intends to use is sensitive to the needs of battered women in general and will understand her particular emotional and financial situation. The lawyer should be aware of, and refer the woman to, a local battered women's group that offers other kinds of assistance she may need during the dissolution/separation process. This may greatly facilitate the woman and the lawyer working effectively together.

Petition and Summons (See Appendices II and III for examples.)

After the woman has met with an attorney and has decided to file for a dissolution or a separation, the lawyer will draw up papers to be served on her husband. These papers include a petition which states generally what the woman (the petitioner) wants regarding the final division of property and custody of children, and a summons which is simply a statement to the effect that the husband (respondent) has a certain length of time, thirty days, in which to respond to the petition. At times, the court may allow a longer period to respond. Whether the action sought is a dissolution or a separation is recorded in the petition.

The petition and summons must be delivered to the respondent personally. This can be done by anyone except the wife, i.e., by a sheriff or an advocate. If all efforts at locating the husband have been tried and he cannot be found, the papers can be served, with permission from the court, by publication in a legal newspaper for a specified length of time.

The husband must respond to the petition within the specified time limit. To respond, he must appear in court either with or without an attorney in order to file an answer and/or a counterpetition. If he is in agreement with the terms of the petition, he will file an answer to that effect. If he is in disagreement, he will file a counterpetition. If he fails to respond, he is in default and the process will continue without his participation.

At the time the petition and summons are issued, a restraining order may also be issued ex parte in cases where there is imminent danger to one of the parties involved. A restraining order is basically a written court order for the parties involved to abide by certain behavioral restrictions. A common temporary restraining order demands that each party refrain from molesting or assaulting the other.

Exclusive Occupancy Hearing

If an exclusive occupancy hearing is to be held, a motion for exclusive occupancy must be served on the respondent. At this hearing, only occupancy of the home is decided. Other issues such as child custody and support, and division of property are considered at later hearings. The intent of this hearing is to provide immediate relief to a spouse in danger.

Temporary Hearing

It is not necessary to hold a temporary hearing. The primary purpose of a temporary hearing is for the petitioner to obtain some sort of temporary relief from the respondent immediately.

A temporary hearing may occur before the end of the specified response period but usually does not because of the crowded court calendar. In situations involving battering, a temporary hearing can usually be scheduled early.

If such a hearing is to be held, a motion for temporary relief (See Appendix IV) must be served on the respondent. This motion states what the petitioner requests immediately from the respondent (e.g., financial assistance). The order to show cause (see Appendix V) accompanies this motion and orders the respondent to appear in court and show reason, if any, why, the petitioner should not be granted the requests stated in the motion.

The respondent is given five days notice of the temporary hearing. This time limit may be waived by the court in cases in which there is imminent danger to the parties

involved (e.g., petitioner, children). If special permission is not granted, it will usually take from two to three weeks to schedule a hearing.

It is at the temporary hearing that restraining orders may be issued, temporary division of property is determined and temporary custody established. This is done with the husband present if he responded to the petition or without him if he did not respond.

When battering is involved, a temporary restraining order is usually issued at the temporary hearing. A restraining order that was issued ex parte before the hearing can be reinstated at the hearing.

A copy of the restraining order is given to the woman usually as a courtesy from her attorney. No orders are in effect until they are served on the respondent or his attorney, whichever is defined as proper service in the orders. If the husband should violate its terms, he is in contempt of court. The woman then must contact her attorney who will prepare a motion by which the man will be brought into court to face the contempt charge. This can be time-consuming and costly. Though a contempt of court charge is serious, usually no punishment is imposed.

If the woman has a restraining order and the local police or sheriff knows this (by receiving a copy of the order from the woman's attorney), experience shows that these officers are sometimes more likely to respond quickly and effectively to her call than if she had no restraining order. Many times, though, it cannot be shown that they respond any differently.

As of March, 1979, violation of a restraining order will be a misdemeanor. Thus, police will be able to arrest when they witness a person in violation. This might mean that they could arrest a husband for merely being present in the residence where his wife is staying if the conditions of the restraining order are such that he is required not to be there.

Legislation recently passed that allows unmarried persons or married persons not wishing to file for dissolution of marriage or a legal separation to get a restraining order. See Appendix VI for a copy of this bill (Order for Protection) and Appendix VII for an attorney's explanation of its implications.

In addition to the issuing of a restraining order, the temporary hearing also serves to set up a status quo regarding property and custody of children. If the husband responded in basic agreement with the terms of the petition, consideration will be given to the petition. If there is disagreement, the points on which husband and wife disagree will be discussed and, from this, a status quo will be established. When the husband is in basic agreement with the terms of the petition, a stipulation (an agreement between the parties) can be made at this time. A final legal agreement (judgment and decree) will usually follow at the final hearing with no problem.

However, if the husband responded to the petition and filed a counterpetition, that is, if he contests the woman's petition, it is often the case that many hearings will precede the final hearing. Each hearing is to address specific problems that developed out of the terms established at the previous hearing, e.g., not enough child support, disagreement with the terms of visitation. Sometimes when a petition is contested, many hearings are necessary before the parties reach a mutually acceptable solution, can enter into a stipulation.

During the dissolution process if there are disagreements concerning, for example, child custody or visitation, the parties involved may be referred to various court services departments involving such processes as mediation and investigation. This can take from one to two years. The results of the use of such services may be court ordered supervised visitation or third party visitation. Such are often necessary in cases involving battering where visitation is used by the husband/father as an opportunity to assault the woman or children, or when he has refused to return the children after visitation as a threat to the woman. It is important that any such problems between a woman and her partner be made known to her attorney and that her legal rights and recourses regarding the issues be thoroughly explained.

As with dissolution of marriage, legal separation can also involve temporary hearings and must involve a final hearing. The major difference is in the outcome: in dissolution, the marriage is terminated and the parties may re-marry; in separation, the marriage is not legally terminated.

Final Hearing

At the final hearing, the court decides whether or not to accept the stipulation as presented. The stipulation may be incorporated by the court into the final dissolution papers, the judgement and decree. Incorporation of the stipulation is always at the discretion of the court. If the parties are in agreement, generally the court will accept the terms. When there are children involved, the court is obligated to decide what is in their best interests and make sure this is included in the final papers. Most dissolutions are by stipulation and, in these cases, only the petitioner needs to appear at the final hearing.

If there is no stipulation, if the parties are not in agreement, a contested hearing is held. The court then determines what are to be the final terms of dissolution and these are recorded in the judgment and decree.

In Hennepin County, there is a mandatory waiting period of ninety days before the dissolution is finalized. There are varying waiting periods in other locations.

CONCLUSIONS AND RECOMMENDATIONS

The processes of obtaining a dissolution of marriage or a separation may be quite long, arduous and expensive. For a battered woman, it may be especially trying. During this time, she is probably acutely experiencing isolation and may be forced into making decisions routinely that at first she feels she is incapable of making. Fear and prolonged physical and psychological abuse can immobilize people. For this reason, a woman who has been abused may appear to back away from decisions and new responsibilities concerning housing, finances and needs of her children. This is a normal reaction to repeated victimization. In addition, she may still be vulnerable to further assaults by her husband during this time.

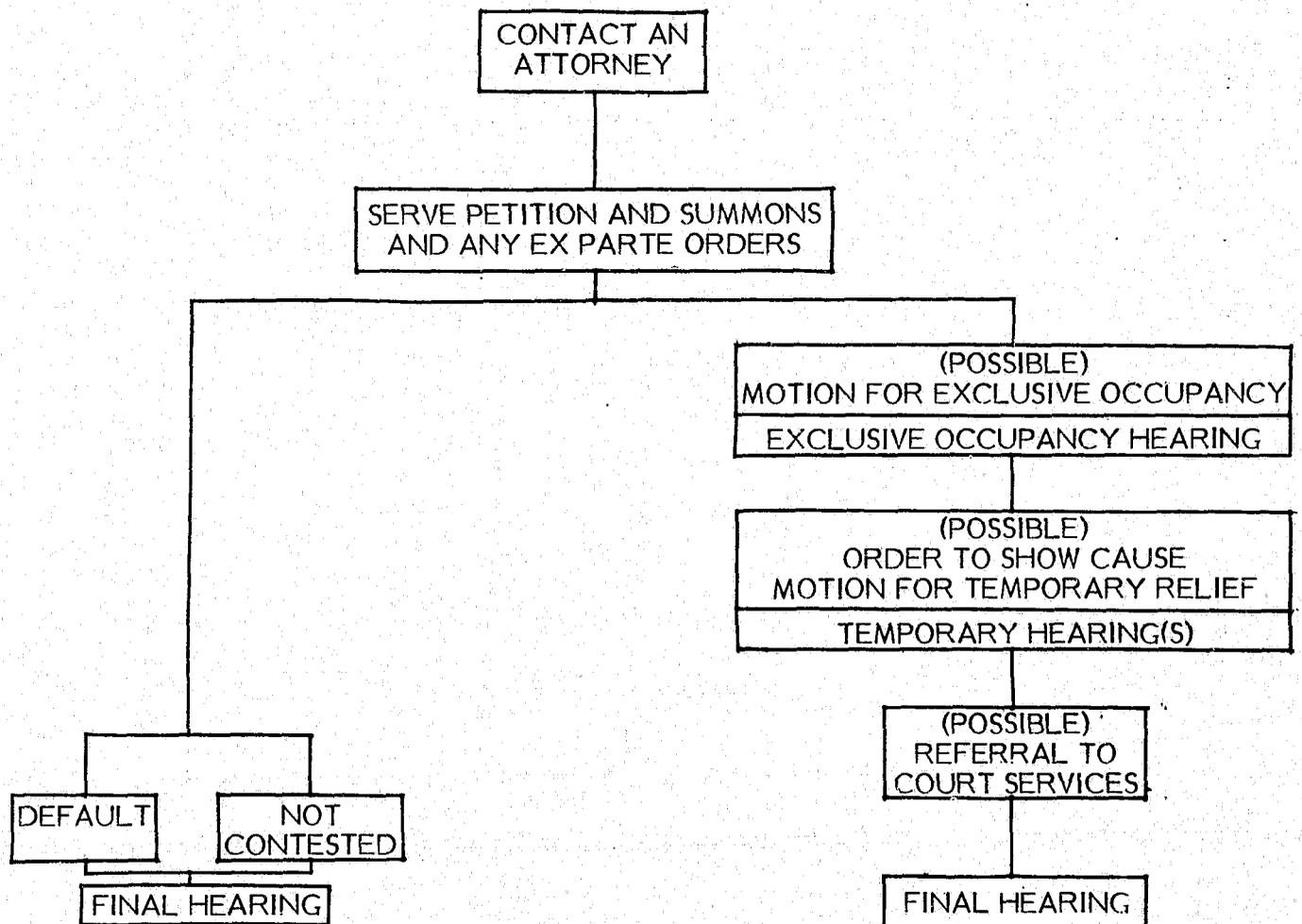
Thus, if a woman chooses to seek a dissolution or a separation as a means of terminating a battering situation, it is important that she has her safety and that of her children secured and that she receives adequate support to persevere in her decisions. It is recommended, therefore, that local community organizations provide some sort of safe housing when it is needed and that advocates for support and encouragement be made available whenever possible. Such advocates should encourage the woman to make decisions and accept responsibilities during the court process and should provide

for practical and vital needs of the woman such as interpretation of the legal process and transportation to and from hearings.

It is important that attorneys be aware of the often limited financial resources of women who are abused and who are, in effect, cut off from any monetary assistance from their husbands. Fees, whenever possible, should be adjusted according to the individual woman's ability to pay rather than the husband's.

It is recommended that the courts respond as quickly as possible to dissolutions/separations sought by women who are battered. The longer the court process, the less likely a woman will have access to needed safe housing during the entire process.

CIVIL LAW: GENERAL PROCESS FOR DISSOLUTION OF MARRIAGE



GLOSSARY

CRIMINAL LAW

ARRAIGNMENT hearing held in gross misdemeanor and felony cases at which the defendant is called upon to enter a plea to the charges against him, to demand or waive that the court rule on the admissibility of the prosecutor's evidence and to demand or waive a review of the issue of probable cause for his arrest.

CITATION accusation of an offense directing the accused to appear before a designated court at a particular time.

COMPLAINT formal document, written and signed, by which a person is charged with a crime.

COMTEMPT OF COURT violation of a court order.

DEFENDANT person formally charged with a crime.

FELONY crime which is punishable by imprisonment for more than one year, or a fine, or both.

MISDEMEANOR, GROSS crime which is punishable by imprisonment for not more than one year, or a fine, or both.

MISDEMEANOR crime which is punishable by imprisonment for not more than 90 days, or a fine, or both.

OMNIBUS HEARING hearing held in gross misdemeanor and felony cases to determine the admissibility of evidence for the trial, to determine if there is sufficient cause to continue with criminal proceedings and for testimony on any motion for dismissal or appropriate relief.

PRE-TRIAL CONFERENCE hearing which may be held before the trial in misdemeanor cases to evaluate evidence and to consider pre-trial motions or other matters.

SENTENCE penalty imposed by the judge on the defendant following a guilty plea or a judgment of guilt by either the jury or the judge.

STAYED SENTENCE sentence not executed upon certain prescribed conditions.

TAB CHARGE citation for a misdemeanor delivered to the clerk of court and serving as a formal charge.

CIVIL LAW

DEFAULT failure to respond to legal papers properly served.

DISSOLUTION legal termination of marriage; divorce.

JUDGMENT AND DECREE final legal documents which set forth the terms of dissolution.

MOTION FOR TEMPORARY RELIEF one of the documents which may be served to the respondent in dissolution or separation proceedings stating terms the petitioner requests to be met by the respondent regarding immediate aid.

ORDER TO SHOW CAUSE one of the documents which may be served to the respondent in dissolution or separation proceedings ordering the respondent to appear in court and show reason, if any, why the petitioner should not be granted what is requested in the motion for temporary relief.

PETITION one of the documents served to the respondent in dissolution or separation proceedings stating the petitioner's terms of the action sought.

PETITIONER spouse beginning a legal separation or dissolution of marriage.

RESPONDENT spouse of the person beginning a legal separation or dissolution.

RESTRAINING ORDER written court order for the parties named to abide by certain stated behavioral restrictions, violation of which involves a contempt of court charge.

SEPARATION establishment of separate maintenance by spouses, need not necessarily be obtained via civil proceedings.

STIPULATION agreement between parties involved in a dissolution as to disposition of property, custody, etc.

SUMMONS one of the documents served to the respondent in the dissolution or separation process giving the respondent a specified length of time in which to formally respond to the petition.

APPENDIX I

Degrees of Assault and Corresponding Penalties (Excerpt from Minnesota Statutes 1979, Chapter 258)

Sec. 4. Minnesota Statutes 1978, Chapter 609, is amended by adding a section to read:

(609.221) (ASSAULT IN THE FIRST DEGREE.) Whoever assaults another and inflicts great bodily harm may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$10,000, or both.

Sec. 5. Minnesota Statutes 1978, Chapter 609, is amended by adding a section to read:

(609.222) (ASSAULT IN THE SECOND DEGREE.) Whoever assaults another with a dangerous weapon but without inflicting great bodily harm may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$5,000, or both.

Sec. 6. Minnesota Statutes 1978, Chapter 609, is amended by adding a section to read:

(609.223) (ASSAULT IN THE THIRD DEGREE.) Whoever assaults another and inflicts substantial bodily harm may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$3,000, or both.

Sec. 7. Minnesota Statutes 1978, Chapter 609, is amended by adding a section to read:

(609.224) (ASSAULT IN THE FOURTH DEGREE.) Whoever does any of the following commits an assault and is guilty of a misdemeanor:

(1) Does an act with intent to cause fear in another of immediate bodily harm or death; or

(2) Intentionally inflicts or attempts to inflict bodily harm upon another.

IV.

That petitioner and respondent were duly married _____, 19____, in _____, and ever since that time have been, and now are, wife and husband.

V.

That as issue of said marriage there is/are _____ minor child(ren), to-wit: _____

Petitioner has the following issue, not of said marriage, to-wit:

Respondent has the following issue, not of said marriage, to-wit:

The welfare of all of the minor children listed within this paragraph may be affected by the controversy herein.

VI.

That there has been an irretrievable breakdown of the marriage relationship of the parties hereto.

VII.

That the petitioner is a fit and proper person to have the care, custody and control of the minor child(ren) of the parties.

VIII.

That respondent is capable of earning sufficient sums with which to contribute to the support of the petitioner and the minor child(ren) of the parties.

IX.

That the parties own furniture and miscellaneous household goods and other items of personal property; the parties have various debts, secured and unsecured.

X.

That a separate proceeding for dissolution of marriage has not been previously commenced by respondent, nor is such a proceeding pending in any Court in the State of Minnesota or elsewhere.

XI.

That this petition has been filed in good faith and for the purposes herein set forth.

WHEREFORE, Petitioner prays the judgment and decree of the above Court as follows:

I.

Granting a dissolution of the marriage of the parties hereto.

II.

Awarding the care, custody and control of the minor child(ren) of the parties to petitioner, subject to reasonable visitation by respondent.

III.

Ordering and directing respondent to pay to petitioner a reasonable sum for the temporary and permanent care and support of petitioner and the minor child(ren) of the parties; further, ordering that respondent fully assume sole responsibility for payment of the debts of the parties existing at the time that judgment shall be entered herein.

IV.

Ordering respondent to carry medical, health, hospitalization and life insurance available to him through his present and subsequent employers for the benefit of the minor child(ren) of the parties.

V.

Ordering that the furniture and miscellaneous household goods of the parties shall be the sole and exclusive property of the petitioner; further, ordering that the personal property of the parties now in the possession of the petitioner shall be her sole and exclusive property.

VI.

For such other and further relief as to the Court may seem just.

LAW OFFICES OF THE LEGAL AID
SOCIETY OF MINNEAPOLIS, INC.

By _____
Attorneys for Petitioner
501 Park Avenue
Minneapolis, MN 55415
(612) 332-3479

STATE OF MINNESOTA)

SS

COUNTY OF HENNEPIN)

_____, being first duly sworn on oath, says that she is the petitioner above named, that she has read the foregoing Petition, and that the same is true of her own knowledge, except as to those things stated on information and belief and as to such she verily believes it to be true.

Subscribed and sworn to before me

this _____ day of _____, 19__

APPENDIX III

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
FAMILY COURT DIVISION

_____;

Petitioner,

and

_____;

Respondent.

S U M M O N S

THE STATE OF MINNESOTA TO THE ABOVE NAMED RESPONDENT:

You, _____, are hereby summoned and required to answer the Petition for Dissolution of Marriage of petitioner in the above-entitled proceeding, which Petition is hereto annexed and herewith served upon you, and to serve a copy of your Answer to the said Petition on the subscribers at their office, 501 Park Avenue, in the City of Minneapolis, County of Hennepin, State of Minnesota, within thirty (30) days after service of this Summons upon you, exclusive of the day of such service, and if you fail to answer the said Petition within the time aforesaid, the petitioner in this proceeding will apply to the Court for the relief demanded in said Petition.

LAW OFFICES OF THE LEGAL AID
SOCIETY OF MINNEAPOLIS, INC.

By _____

Attorneys for Petitioner
501 Park Avenue
Minneapolis, MN 55415
(612) 332-3479

APPENDIX IV

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

-o0o-

_____, Petitioner,

MOTION
File No.

_____, Respondent.

-o0o-

The _____ moves the Court as follows:

By: _____
Attorneys for
Legal Aid Society, Inc.
501 Park Avenue
Minneapolis, Minnesota 55415

NOTICE OF MOTION

TO:

Please take notice that the undersigned will bring the above Motion on for hearing before the Court at a Special Term thereof, to be held at the Court House, in the City of Minneapolis, on the _____ day of _____, 19__, at ___ o'clock __.M., or as soon thereafter as counsel can be heard, and that said Motion will be based upon the attached Affidavit and upon all the files and proceeding herein.

By: _____
Attorneys for
Legal Aid Society, Inc.
501 Park Avenue
Minneapolis, Minnesota 55415

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

-o0o-

_____, Petitioner,

AFFIDAVIT OF
File No.

_____, Respondent.

-o0o-

STATE OF MINNESOTA)

) ss

COUNTY OF HENNEPIN)

_____, being first duly sworn on oath, deposes and says that she is the _____ in the above entitled action, which was one for dissolution, commenced by service of the Summons and Petition personally on _____, said proceeding was heard on _____, 19____, an Order entered therein, ordering _____ to pay the sum of \$ _____ per _____ to _____ for support of the children.

Your affiant states that since the entry of said Order in this matter, _____ has willfully, flagrantly and intentionally failed and refused to obey the Orders of the Court herein, and that _____ is in arrears in support.

Further affiant saith not, save that she makes this Affidavit in support of a Motion and Order to Show Cause in conjunction therewith, seeking to have _____ adjudged in contempt of Court and punished accordingly for his failure to obey the Orders of this Court.

Subscribed and sworn to before me
this _____ day of _____, 19____

APPENDIX V

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
FAMILY COURT DIVISION

_____, Petitioner,

and

ORDER TO SHOW CAUSE

_____, Respondent.

THE STATE OF MINNESOTA TO _____,
RESPONDENT ABOVE NAMED:

Upon reading and filing the Affidavit of _____,
and upon all the files and records herein,

IT IS HEREBY ORDERED that you, _____, the above-named respondent, personally appear before the above-named Court, on the Fifth Floor of the Courts Tower, Hennepin County Government Center, 300 South 6th Street, Room _____, in the City of Minneapolis, County of Hennepin and State of Minnesota, on the _____ day of _____, 19____, at _____ o'clock ____ .M., or as soon thereafter as counsel can be heard, and show cause, if any you have, why an order should not be made granting to petitioner the relief prayed for in the attached Notice of Motion and for such other and further relief as to the Court may seem just, fair and equitable in the premises.

FURTHER, that the petitioner and respondent and their agents and servants be, and each is, enjoined and restrained from doing, or attempting to do, any act of injuring, maltreating, vilifying or molesting the other party, or any of the children, during the pendency of this action, either in or out of the home, either in person or by telephone.

Each party is herein restrained from pledging the credit of the other and each party is restrained and enjoined from selling, transferring or encumbering any jointly owned property, either real or personal.

IT IS FURTHER ORDERED that you bring with you to Court at the time of the hearing hereon the following: a verified statement of your earnings for the past six (6) months; or your salary check stubs for the past six (6) months; or a copy of your latest Federal Income Tax Return.

So ordered this ____ day of _____, 19____.

BY THE COURT:

JUDGE OF DISTRICT COURT

APPENDIX VI

H.F.No. 521
CHAPTER No.

AN ACT

relating to domestic abuse; authorizing judicial intervention to provide protection from domestic abuse; prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. (518B.01) Subdivision 1. (SHORT TITLE.) This section may be cited as the domestic abuse act.

Subd. 2. (DEFINITIONS.) As used in this section, the following terms shall have the meanings given them:

(a) "Domestic abuse" means: (i) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; or (ii) criminal sexual conduct, within the meaning of Minnesota Statutes, Sections 609.342, 609.343, 609.344, or 609.345, committed against a minor family or household member by an adult family or household member;

(b) "Family or household members" means spouses, parents and children, persons related by consanguinity, and persons jointly residing in the same dwelling unit.

Subd. 3. (COURT JURISDICTION.) An application for relief under this section may be filed in the court having jurisdiction over dissolution actions. In a jurisdiction which utilizes referees in dissolution actions, the court or judge may refer actions under this section to a referee to take and report the evidence therein in the same manner and subject to the same limitations as is provided in section 518.13. Actions under this section shall be given docket priorities by the court.

Subd. 4. (ORDER FOR PROTECTION.) There shall exist an action known as a petition for an order for protection in cases of domestic abuse.

(a) A petition for relief under this section may be made by any family or household member on behalf of himself or herself or on behalf of minor family or household members.

(b) A petition for relief shall allege the existence of domestic abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(c) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition or other action between the parties.

(d) The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section by any person not represented by counsel.

(e) The court shall advise a petitioner under clause (d) of the right to file a motion and affidavit and to sue in forma pauperis pursuant to Minnesota Statutes, Section 563.01 and shall assist with the writing and filing of the motion and affidavit.

Subd. 5 (HEARING ON APPLICATION.) Upon receipt of the petition, the court shall order a hearing which shall be held not later than 14 days from the date of the order. Personal service shall be made upon the respondent not less than five days prior to the hearing. In the event that service cannot be made, the court may set a new date.

Subd. 6. (RELIEF BY THE COURT.) Upon notice and hearing, the court may provide relief as follows:

(a) Restrain any party from committing acts of domestic abuse;

(b) Exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;

(c) On the same basis as is provided in chapter 518, award temporary custody or establish temporary visitation with regard to minor children of the parties;

(d) On the same basis as is provided in chapter 518, establish temporary support for minor children or a spouse;

(e) Provide counseling or other social services for the parties, if married, or if there are minor children;

(f) Order, in its discretion, other relief as it deems necessary for the protection of a family or household member, including orders or directives to the sheriff or constable, as provided by this section.

Any relief granted by the order for protection shall be for a fixed period not to exceed one year.

Subd. 7. (TEMPORARY ORDER.) Where an application under this section alleges an immediate and present danger of domestic abuse, the court may grant an ex parte temporary order for protection, pending a full hearing, and granting relief as the court deems proper, including an order:

(a) Restraining any party from committing acts of domestic abuse;

(b) Excluding any party from the dwelling they share or from the residence of the other except by further order of the court.

An ex parte temporary order for protection shall be effective for a fixed period not to exceed 14 days. A full hearing, as provided by this section, shall be set for not later than seven days from the issuance of the temporary order. The respondent shall be served forthwith, a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

Subd. 8. (SERVICE OF ORDER.) Any order issued under this section shall be personally served upon the respondent.

Subd. 9. (ASSISTANCE OF SHERIFF IN SERVICE OR EXECUTION.) When an order is issued under this section upon request of the petitioner, the court shall order the sheriff or constable to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in execution or service of the order of protection.

Subd. 10. (RIGHT TO APPLY FOR RELIEF.)

(a) A person's right to apply for relief shall not be affected by his or her leaving the residence or household to avoid abuse.

(b) The court shall not require security or bond of any party unless it deems necessary in exceptional cases.

Subd. 11. (MODIFICATION OF ORDER.) Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection.

Subd. 12. (REAL ESTATE.) Nothing in this section shall affect the title to real estate.

Subd. 13. (COPY TO LAW ENFORCEMENT AGENCY.) Upon the request of the petitioner, any order for protection granted pursuant to this section shall be forwarded by the clerk of court within 24 hours to the local law enforcement agency with jurisdiction over the residence of the applicant.

Each appropriate law enforcement agency shall make available to other law enforcement officers through a system for verification, information as to the existence and status of any order for protection issued pursuant to this section.

Subd. 14. (VIOLATION OF AN ORDER FOR PROTECTION.)

(a) Whenever an order for protection is granted pursuant to this section, and the respondent or person to be restrained knows of the order, violation of the order for protection is a misdemeanor.

(b) A violation of an order for protection shall also constitute contempt of court and be subject to the penalties therefor.

Subd. 15. Any testimony offered by a respondent in a hearing pursuant to this section is inadmissible in a criminal proceeding.

Subd. 16. (OTHER REMEDIES AVAILABLE.) Any proceeding under this section shall be in addition to other civil or criminal remedies.

Sec. 2. This act is effective the day after final enactment and shall apply to all acts of domestic abuse committed on or after that date.

Effective May 26, 1979

APPENDIX VII
Prepared by Aviva Breen, Attorney, Legal Aid of Ramsey County

The purpose of the bill is to provide a civil, legal remedy for persons who are being abused by someone with whom they live. Under previous law a person who is married could obtain a restraining order only if he or she began a dissolution (divorce) action. The restraining order was not available if there was no divorce or separation. An order for domestic protection, under this bill, can be issued by the court when there is not divorce action. This is a major difference as far as legal procedures are concerned. Some legislators have felt this was too radical a change in established court procedures but 9 states other than Minnesota have already adopted some form of domestic protection order and bills are pending in at least 6 others so Minnesota is by no means the first.

The bill covers spouses, parents and children and persons jointly residing in the same dwelling unit. This means that unmarried couples are covered. This is crucial to the bill because so much beating goes on between "cohabitators" and they must also be protected.

The bill allows a person covered by the bill to apply or petition the court for relief. The person must present an affidavit, which is simply a signed, sworn statement, stating the specific facts, along with the application. The court then sets a hearing date for no more than 14 days later and requires that the abuser get notice of the hearing. If a person alleges an immediate and present danger of harm the court can grant an order without holding a hearing first. The order would only last 14 days, by which time a hearing would have to be held or the order would expire.

In the order the court can restrain any party from committing acts of abuse, exclude any party from the dwelling they share, award temporary custody or establish visitation for minor children, establish temporary support for minor children or provide counseling or other social services.

The bill provides for police assistance to a victim in enforcing an order and requires that police receive a copy of the order so that they can readily verify its existence.

The importance of this bill is that a person need not begin a divorce action and need not involve the criminal justice system in order to get protection from abuse. It has always been apparent that neither choice was very reasonable and the battered person has been left with nowhere to turn.

K

END