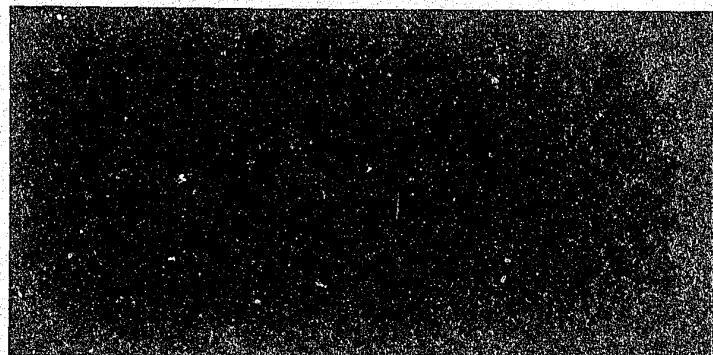
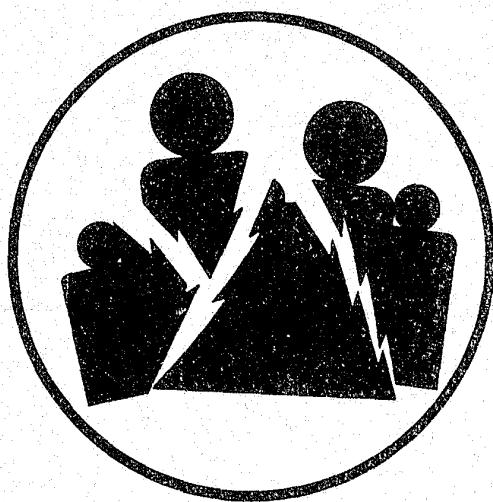


# national clearinghouse on domestic violence



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~~✓~~ LEGAL HELP FOR BATTERED WOMEN

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by

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LEGAL HELP FOR BATTERED WOMEN

by Lisa G. Lerman

During the last few years, almost every state has made new legal remedies available to abused women. State laws have been passed which strengthen both civil protection and criminal penalties. Advocates for battered women are working with police, prosecutors, legal services lawyers, judges, and others to encourage active enforcement of the laws.

Until recently, family violence was largely ignored by policemen, lawyers, judges, and legislators. A victim of abuse could get a divorce based on her husband's cruelty, or she could get a piece of paper issued by the court warning her husband not to abuse her again. If the abuser disregarded the warning, the woman could only go back to the court for another piece of paper.

In many places the courts are still reluctant to intervene in family matters. Even where new laws have been passed, the remedies provided may not be effective because the law is not enforced. In most states, however, the courts provide some tools which a battered woman can use to change her situation. Through the courts she may terminate an abusive relationship, obtain financial support, or have the batterer evicted from a residence. She may get an order to compel the abuser to stop the violence which is enforceable by arrest. She may file assault charges against the abuser, and have him put in jail or ordered into a counseling program.

Availability of these tools varies from state to state. The following description of legal remedies for battered women does not explain which remedies are available in each state. Instead it outlines the most effective of the recent developments in the laws affecting battered women, and describes some problems encountered in implementing the new laws.

**THE LEGAL SYSTEM**

Each state has its own laws and its own court system. In every state there are both civil and criminal laws, which are usually enforced in different courts. Below is a list of some important differences between civil and criminal cases.

**Civil**

Purpose: To settle disputes between individuals and to compensate for injuries.

Remedies: Court may order payment of money to an injured party, or may order a defendant to do or to stop doing certain acts.

Proof: Violation of the law must be proven by a "preponderance of evidence." It must be shown to be more likely than not that the act in question occurred.

Lawyers: Plaintiff (victim) hires a private attorney or goes to a legal services lawyer. The defendant (abuser) also must hire a private attorney or go to a

**Criminal**

Purpose: To punish acts which are disruptive of social order and to deter other similar acts.

Penalties: Conviction of a crime may result in a jail sentence, a fine, an order to pay money to the victim, or a term of probation during which certain conduct may be required or prohibited.

Proof: Violation of the law must be proven "beyond a reasonable doubt." This is a much higher standard than for a civil suit--more evidence is needed.

Lawyers: State hires prosecutors (district attorneys) to enforce criminal law. The prosecutor represents the state; this means that the prosecutor must act on

legal services lawyer.

behalf of both the victim and the community.\* Defendant has a right to counsel if conviction could result in a jail sentence, and may have a public defender appointed to represent him.

**CIVIL REMEDIES**

Several forms of civil relief are available to battered women. These include:

- Protection Order
- Temporary Restraining Order
- Peace Bond
- Divorce or Separation
- Child Custody and Visitation Rights
- Alimony and Child Support
- Money Damages for Personal Injury

**PROTECTION ORDER**

**What Is a Protection Order?**

A protection order (also called a restraining order) is an order from a civil court to an abuser to require him to change his conduct. It can last for a period of up to one year. Depending on the state law, the court may order the defendant:

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\*In some places prosecution may occur even if the victim wants to withdraw. This is because the state has an interest in punishing a criminal even if the victim does not wish to do so.

- To refrain from abuse of any household member.
- To leave the victim alone.
- To move out of a residence shared with the victim even if the title or lease is in the abuser's name. The abuser may be required to make rent or mortgage payments even if he has been evicted.
- To provide alternate housing for the victim.
- To pay for the support of the victim and/or of minor children in her custody.
- To attend a counseling program aimed to stop violence and/or alcohol or drug abuse. Both the abuser and the victim may be ordered to participate in counseling.
- To pay the victim a sum of money for medical expenses, lost wages, moving expenses, property damage, court costs, or attorney's fees.
- Also, temporary custody of minors may be awarded to the victim, and visitation rights of the abuser may be established.

#### Who Can Get a Protection Order?

While rules differ from state to state, many states will issue a protection order on behalf of anyone abused by a spouse, former spouse, family member, household member, or former household member. Some states will only issue a protection order to a woman married to her abuser; in others, protection orders are available only to married women who have filed for separation or divorce.

### How Can a Victim of Abuse Get a Protection Order?

A protection order may be obtained by filing a petition in the court which has authority to issue it. It is useful but not necessary for a victim to be represented by a lawyer when she files a petition. In some cities there are clinics which assist victims in writing their petitions.

When a petition is filed, the court schedules a hearing, usually within two weeks of the date of filing. The abuser is notified of the hearing and asked to appear. The hearing is held before a judge or a magistrate; there is no jury. Both parties have an opportunity to testify as to why an order should or should not be issued.

Some form of protection order is available in nearly every state. To find out which court issues protection orders in a particular community, and where she can get assistance in filing a petition, a victim of abuse should call a local shelter, women's organization, legal services office, police department, or a clerk of a local court.

### What Type of Abuse Must be Shown to Get a Protection Order?

"Abuse" for which a protection order is available may include:

- An act causing physical injury, e.g., hitting, shoving, use of a weapon;
- An attempt to cause physical injury, e.g., raising a fist, pointing a gun;
- A threat to cause physical injury, e.g., saying "I'm going to beat you up;"
- Sexual abuse of a spouse or of her children.

### How are Protection Orders Enforced?

Violation of a protection order is often treated as contempt of court,\*

\*Contempt of court is the term used to describe any violation of a court order.

punishable by a jail sentence (up to six months), a fine (up to \$500), or both, or a term of probation. An abuser released on probation may be required to attend counseling sessions, to avoid contact with the victim, to refrain from abuse, etc. The abuser must report to a probation officer, who is responsible for making sure that the abuser does what the order says.

Many states allow a police officer to make an arrest without first obtaining a warrant if he believes that a protection order has been violated. In some places, warrantless arrest is allowed even if the officer did not witness the abuse and even if there are no visible injuries.

#### TEMPORARY ORDER OF PROTECTION

A temporary order of protection (also called a temporary restraining order) is an emergency protection order, which may be issued within a few hours or a few days of the time it is requested. In most states, the temporary order is available to the same categories of victims as a regular protection order; in most places the same relief is available under a temporary order, and the procedure for enforcement is the same. A temporary order is different from a protection order in the way it is obtained, the period of time it stays in effect, and the conduct or circumstances which must be proven to get one.

A temporary order:

- May be issued ex parte (after a hearing at which the victim is present but not the abuser). This means the victim can obtain the order the same day that she files the petition.
- May be available at night or on weekends from a magistrate's court, when the civil or family court is closed.
- Remains in effect until a full hearing can be held (usually within two weeks) or until the regular courts re-open the next weekday morning.
- May be issued if "immediate and present danger of abuse" is shown. This usually includes visible injury or threat of serious physical injury.

#### PEACE BOND

A peace bond is an order to an abuser to refrain from abuse and to deposit a sum of money with the court which is not refunded to the abuser if the order is violated. (This procedure is similar to posting bail). In some states the peace bond is simply a warning to the abuser, and posting of bond is not required. This remedy has traditionally been used by the courts in lieu of measures with more "teeth".

Peace bonds are often ineffective, since the victim cannot get the abuser arrested when an order is violated. She must go back to court and request a hearing to determine whether the order has been violated. If she wins, the abuser will lose the money he deposited.

#### DIVORCE AND SEPARATION

Many beaten women terminate their relationships with abusive husbands by filing for separation or divorce. While filing for divorce may not stop the violence, it can be an important step for a woman seeking to get away from an abusive relationship. Some abusers, however, become more violent when victims separate from them. It may be important for a victim to get a protection order when she starts divorce or separation proceedings. In some states divorce is granted if one party is shown to be at fault, and in those states "cruelty" is one ground for divorce.

When a separation or divorce is granted, the court may grant custody of children to one parent and may decide a property settlement. One party may be ordered to provide financial support to his or her spouse and children, and property owned by either party may be awarded to the other or divided.

#### PERSONAL INJURY (TORT)

In some states a victim of domestic abuse may sue her mate to obtain a court order that he must pay for any injury to her or her property. This

type of lawsuit is like a criminal charge of assault and battery, false imprisonment, etc., except that it is brought by the victim and not by the state. This remedy has not yet been widely used, although battered women have won awards of money damages in at least a few cases.

A tort suit may be useful where the abuser has money or property and/or where there are large hospital bills, attorney's fees, property damage, or lost wages. Damages may also be awarded for pain and suffering. Traditionally, husbands and wives were not allowed to sue each other, but the rule of interspousal immunity has been abolished in the majority of the states for intentional injuries. The disadvantages of this type of lawsuit are that it may take years to resolve, and attorney's fees can be very high. Some lawyers will accept a contingency fee in tort cases. This means that if the lawsuit is successful, the lawyer will be paid a percentage (usually one third) of the money damages awarded. If the claim fails, the lawyer does not get paid.

#### CRIMINAL PROSECUTION

Spouse abuse is a crime. Every state has laws prohibiting physical assault; these may be enforced against abusers where there has been any physical violence or any threat of physical violence. Some states have enacted laws that make spouse abuse a separate criminal offense.

In the past, spouse abuse was treated as a family matter, and criminal law was rarely enforced against wife-beaters. Recently, however, several prosecutors' offices have initiated programs to increase prosecution of domestic abuse.

#### What Action May be Prosecuted Under Criminal Law?

Conduct which may violate state criminal law, which may be the basis of a criminal complaint includes:

- Hitting, slapping, shoving, or other physical assault;
- Sexual assault, rape, or attempted rape;
- Harrassment or threat of physical assault;

- Any act causing the death of another;
- Destruction of private property belonging to another;
- Kidnapping or confining another against his or her will;
- Violation of the terms of a protection order.

#### How Can a Battered Woman Get the State to File Criminal Charges?

There are two ways in which a criminal action against an abuser may be started:

- When the police make an arrest after being called for assistance.
- When the victim goes to the prosecutor's office\* or to an intake unit in criminal or family court to file a private criminal complaint.

#### Arrest

In many cases the police must obtain a warrant from a judge or magistrate before making an arrest. This means that the arrest cannot always be made when the police are called to a residence. The police must go to the courthouse or police station to request a warrant, and must sometimes wait a few hours to get the request processed.

Each state has different rules about when a warrant is required. Generally, warrantless arrest is permitted where there has been a serious assault and there are visible injuries (a felony), or where the officer witnessed the abuse (a misdemeanor). In some states, if the victim makes a statement that she has been abused, then warrantless arrest is permitted, even if she was not seriously injured. Many states allow warrantless arrest where the victim has a protection order and the police officer thinks that the order has been violated.

After an arrest is made a criminal charge is filed. In some places charges are filed by the police; in other places the police send a report to the prosecutor's office, and the prosecutor files charges.

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\* The prosecutor will be listed in the phone book in a section listing government offices. It may be called the Office of the District Attorney, City Attorney, City Solicitor, Attorney General or United States Attorney.

Private Criminal Complaint:

A victim of domestic abuse may file a criminal complaint if the police were not called after the abuse occurred, or if they were called, but failed to appear or did not make an arrest. A complaint is a paper filed with the court which describes the abusive incident. After a complaint is filed, the prosecutor's office will conduct an investigation and decide whether charges should be filed. If charges are filed, the court will issue a warrant for the arrest of the abuser.

What Can a Prosecutor Do Besides Filing Criminal Charges?

In many cases it is inappropriate to file charges because the evidence is insufficient to make conviction likely or because the victim has no interest in prosecution. In these cases the prosecutor can take informal action to assist the victim in stopping the abuse. Below are examples of such informal action:

• Information and Referrals: The prosecutor can advise the victim of her legal and other options. After determining which of these options the victim wishes to pursue, the prosecutor can refer her to another legal or social service agency.

• Warning Letter: The prosecutor can send a letter to the abuser to notify him that a complaint has been made that he has abused a member of his family, that such conduct is against the law, and that further violence will be prosecuted.

• Meeting with Abuser: The prosecutor may request that the abuser come to the prosecutor's office to discuss the alleged conduct. At the meeting he may be informed of the seriousness of the conduct charged and of the potential consequences of further abuse.

• Office Hearing: The prosecutor may meet with both the victim and the abuser in the office to discuss the complaint and gather further evidence. Sometimes the purpose of this meeting is to make it easier for the parties to talk to each other about the violence.

What Can a Criminal Court Do After a Charge Has Been Filed?

The arrest of the abuser and the filing of the criminal charge begins the

process of prosecution. The next step is to hold an arraignment or bail hearing, at which the abuser is required to submit a sum of money to the court to insure that he will reappear for his trial. Other conduct may be required as a condition of release from jail, such as participation in counseling, avoiding contact with the victim, or terminating the abuse. If the terms are violated, the abuser may be returned to custody until the charge is disposed of.

The filing of a criminal charge does not necessarily mean that there will be a trial. The charge may be disposed of in any of the following ways:

•Pretrial Diversion, or Deferred Prosecution: Prosecution may be postponed after charges are filed, in cases where injuries are not severe and the abuser is a first offender. An order is issued in those cases requiring counseling, no contact with the victim, departure from a shared residence, and/or cessation of the abuse. The prosecutor is responsible for making sure that the abuser complies with the order. If the abuser does so, then the charges will be dropped. If he violates the order, prosecution will be resumed. Deferred prosecution programs have different names, such as adjournment in contemplation of dismissal (ACD) and accelerated rehabilitative disposition (ARD).

•Plea Bargaining: In most criminal cases the prosecutor, the defense attorney, and the defendant (the person charged with a crime) make a deal in which the defendant agrees to plead guilty to charges and the prosecutor agrees to request a less severe penalty than would be imposed if the defendant were convicted by a court. The process of making deals to avoid trial is called plea bargaining.

Plea bargaining of spouse abuse cases usually results in a sentence of a period of probation. During probation the abuser may be required to attend counseling, to move out of a shared residence, to stay away from the victim, and/or to refrain from abuse...A probation officer is supposed to stay in touch with the abuser and make sure that he does not violate the probation order. If the abuser violated the terms of probation, e.g., by beating his wife again, he may be put in jail without a trial on the charges. By pleading guilty, he has agreed to his own conviction.

Trial: If the abuser pleads innocent, he will be tried on the offenses charged. If convicted, he may be jailed, fined, or placed on probation.

Jail sentences are rarely imposed in domestic assault cases, and are almost never longer than one year. Where a victim of abuse is required to testify at a trial, she may be able to get help from either the prosecutor's office or from another agency. She may need someone to go to hearings with her, or to explain the court system to her. She may need child care while she goes to court. She may need assistance in getting housing, public benefits, a divorce, or a protection order. If no one in the prosecutor's office can help, then they or a local shelter or women's group can tell her where to go for help.

#### **CHOOSING A REMEDY**

In many states, a battered woman can use any of the remedies described, or she may want to use more than one. For example, a protection order is often useful to a woman who files criminal charges against her husband. In deciding what action to take it is important to find out what the victim wants from the court. Most victims want to end the violence. Some may also want to punish the abuser, to get help for him, to end the relationship, or all of these. The remedy chosen must depend on which of the remedies available in the state best corresponds to the desires of the victim.

Information about the legal remedies available to battered women may be obtained from a local shelter or hotline, from a legal services office or the bar association, or from any victim/witness assistance program or women's organization. These will be listed in the yellow pages under attorneys, city government, women, human services, etc.

Legal action is only one of many options available to battered women. Other action in addition to or instead of getting help from the courts may be more successful. A victim of abuse may need immediate medical care. She may elect to spend time in a shelter or to stay with relatives or friends. She may eventually move to a new residence or a new city. She may wish to get help from a minister or a counselor in a mental health or family service agency. In the process of recovering from

an abusive situation, stopping the abuse and recovering from the trauma are only the first step. A victim may need career counseling or job training. She may need public benefits from the welfare department, or the unemployment insurance board. She may need to apply for AFDC or food stamps. Combined with other nonlegal assistance, the remedies provided by the courts may give a victim of abuse the strength required to change or terminate a violent relationship.

**END**