FEMINIST ADVOCACY:
THE EVOLUTION OF PENNSYLVANIA'S PROTECTION FROM ABUSE ACT

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Fostering social change does not end with the passage of effective laws. If a law’s stated purposes are to be accomplished, legislation must be monitored by those whose lives it affects, refined through advocacy, and tested through litigation.

Pennsylvania’s Protection From Abuse Act began as a collaboration among grass-roots women’s advocates, legal services attorneys and sensitive legislators. Through a carefully orchestrated combination of litigation and systems advocacy, the Act has become an effective vehicle for social change within the legal system. This article will examine the evolution and implementation of the Act over the past seventeen years. It will also identify facets of the Act which are still developing, and suggest directions for future advocacy on behalf of battered women.

I. ORIGIN OF THE PROTECTION FROM ABUSE ACT

In the early 1970s, legal services attorneys in Pennsylvania discovered that domestic violence was the basis for many of the divorces in their case loads, and that no adequate protection existed for clients who were the victims of that violence. The criminal justice system was not responsive to battered women, and the economic hardship which could result from arrest of the abuser was more than many women wanted to bear. The only civil remedy available was a "peace bond," which could be issued by magistrates located in police district offices in any situation involving a disturbance of the peace. Such bonds were not effective in protecting battered women because they were essentially unenforceable.

At the same time, women’s advocates were forming a grass roots battered women’s movement to give voice to the staggering number of battered women who had begun seeking support from women’s centers and other groups. Advocates from across the state began talking about the problem.

By 1975, the two groups came together to take action. New York had recently passed a statute to provide civil remedies to victims of domestic violence. Peggy McGarry, an advocate based at the Philadelphia YWCA and later to be one of the founders of Women Against Abuse, and Larry Mass of Community Legal Services in

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Philadelphia, reviewed New York’s statute and prepared the first draft of the Pennsylvania Protection From Abuse Act. With the assistance of Ken Neely, on the staff of Judiciary Committee member Senator Patrick Hill, the draft was circulated throughout the state.

The Judiciary Committee was receptive to the proposed bill and agreed to hold a public hearing. Battered women’s advocates from across the state gathered to participate in the hearing. Marjorie Fields (then a legal services attorney and now a family court judge in New York) testified about New York’s experience with its statute.

Pennsylvania’s Judiciary Committee viewed domestic violence as a women’s issue and saw this bill as an opportunity to do something positive for women during the Bicentennial year. In October of 1976, with the passage of the Protection From Abuse Act, Pennsylvania became only the second state in the country to respond legislatively to the needs of battered women.

The Act in its 1976 form was relatively simple. Family or household members who resided together could file a civil petition and obtain a court order that would direct the defendant to refrain from abusing the plaintiff or minor children, evict the defendant from the residence, and award temporary custody of minor children to the plaintiff. These orders could be obtained temporarily on an ex parte basis with a hearing to be held within ten days. Final orders could remain in effect for as long as one year.

The triumph of their advocacy efforts profoundly affected battered women’s advocates who had participated in the drafting and passage of the Act. They continued to meet and decided to expand their collaborative efforts. They recognized the necessity of publicizing the existence of the Act to legal services attorneys and battered women’s programs, and of monitoring application of the Act by the courts.

The advocates’ individual grassroots organizing effort quickly evolved into a non-profit corporation, the Pennsylvania Coalition Against Domestic Violence (PCADV). A legal advisory committee was formed to oversee the implementation of the Act. Training was provided to legal services attorneys. Model pleadings and forms were drafted and needs surveys were conducted. This successful combination of legislation and advocacy, which has become the hallmark of PCADV, was born with the realization of the potential impact of a statewide group of battered women’s advocates.

II. 1978 AMENDMENTS

The efforts of PCADV’s advocates in monitoring implementation of the Act across the state revealed problems almost immediately. The police were not authorized to enforce protection orders. Divorced or separated women, who were frequently at heightened risk, were not eligible for protection at all. Further, the Act contained no provisions for temporary child or spousal support.

Advocates responded by drafting amendments, which were quickly passed in 1978. The Act as amended further defined protection order violations as indirect criminal contempt, and authorized specific punishments in the form of imprisonment for up to six months and/or a fine of up to $1,000.
Police were empowered to arrest abusers for violation of protection orders upon probable cause, regardless of whether the violation was committed in their presence. Recognizing the harsh financial realities which often force battered women to remain dependent on their abusers, advocates also succeeded in amending the Act to include temporary support as a provision in final protection orders.

Additionally, the definition of "abuse" was expanded to include acts by people with "legal access" to the homes of their victims, because the groups of victims originally protected by the Act represented only a small portion of those who were experiencing violence. Advocates continue to push for amendments in this area of the law, seeking official recognition of the widespread nature of violence against women. Because of the perceived effectiveness of protection orders as a tool for speedy resolution of "familial" violence, however, efforts to broaden the Act's reach also threaten to dilute the protection afforded battered women by reducing them to one of several classes of persons to whom the orders apply. Recently, for example, efforts have been made to expand the Act's protections to individuals abused by caretakers, as well as to allow governmental entities to file for protection orders on behalf of third parties. These types of cases are qualitatively different from adult battered women, as victims of elder abuse and child abuse are often unable to act autonomously and require special protections which are inappropriate for adult battered women and can be better addressed through other statutory schemes and remedies. Amendments to the Protection From Abuse Act, though, helped create a more comprehensive mechanism by which battered women could reshape their lives.

Following the 1978 successes in amending the Protection From Abuse Act, for the greater part of the next decade PCADV's advocacy shifted to include priorities other than the development of the statute itself. A statewide network of battered women's programs was developed, and PCADV's efforts to secure funding for member programs caused the coalition to evolve into a funding conduit as well as an advocacy group. Developments in the Act continued, however, through the persistent monitoring of the Act's implementation, litigation of issues which called for statutory interpretation, and local advocacy efforts. During this time, advocates also developed companion legislation, such as Section 2711 of the Crimes Code, which gives the police heightened arrest powers in domestic violence situations.

III. LOCAL ADVOCACY: A CASE STUDY OF PHILADELPHIA

In Philadelphia, battered women's advocates made great strides during the decade of 1978 to 1988. In 1979, with the assistance of then-District Attorney Edward G. Rendell (now Philadelphia's mayor), Women Against Abuse expanded its shelter program, in operation since 1977, to include legal advocacy. The initial project, options counseling provided by a part-time advocate, was housed in City Hall space provided by the District Attorney. It has since grown into the Women Against Abuse Legal Center, staffed by attorneys and legal advocates
who provide legal representation, advocacy, and options counseling for thousands of the approximately 45,000 women battered in Philadelphia every year.

In the early 1980's, then Philadelphia Family Court Judge Nicholas B. Cipriani convened a committee to develop local procedural rules for practice under the Protection From Abuse Act. Legal services attorneys and Women Against Abuse attorneys were among those who participated. As part of its work, the Committee succeeded in establishing a certification procedure for emergency protection orders, mandated but never implemented by the 1976 version of the Act. Because the Act's provision had not been enforced previously, battered women seeking emergency protection orders on evenings and weekends could obtain only a brief respite from their abusers—until 9:00 A.M. the next business day—unless they filed a separate petition with the Court of Common Pleas for a temporary protection order. Due to filing delays, thousands of women who took action on an emergency basis were left at heightened risk between the time their emergency order expired and the point where a temporary order could be issued. This gaping hole in the system was corrected in Philadelphia by the passage of local rules, which allowed for the immediate transfer of emergency orders issued by Municipal Court to Family Court, for review and issuance of temporary protection orders.  

In 1984, pressure from advocates to meet the needs of battered women was amplified by the tragic murder of a Criminal Justice Coordinating Commission secretary at the hands of her abuser. In response, Philadelphia's Family Court opened the first courtroom in the country dedicated solely to hearing domestic violence cases. Philadelphia's Municipal Court soon followed suit with a courtroom specifically devoted to criminal domestic violence cases.

IV. 1988 AMENDMENTS

By the mid-1980's, Community Legal Services attorneys and PCADV advocates statewide acquired enough experience with the Protection From Abuse Act to embark upon a careful process of drafting comprehensive amendments to increase the Act's effectiveness. A decade of monitoring Protection From Abuse Act practice revealed the need for increased access to the Act's protection, as well as expansion of the relief it offered. The amendments were crafted over a three-year period, and were introduced as a package several times before final passage. By 1988, however, the legislature viewed passage of the amendments as an opportunity to remedy injustice. Thus, H.B. 418 was passed by the House and Senate in April of 1988, and took effect on June 20, 1988.  

An analysis of the major provisions of the amendments demonstrates how battered women's advocates managed to successfully use their experience with the Act to broaden its scope in every direction. By focusing continued attention on the problem of domestic violence, advocates exposed the pervasiveness of battering in relationships between intimate partners, regardless of their marital status or sexual orientation. In many circumstances, however, victims in less "traditional" relationships were denied the
protection of the Act. In response, the 1988 amendments significantly broadened the class of people protected from domestic violence. Gay and lesbian victims were brought within the coverage of the Act. In addition, residency requirements were completely eliminated, so that the Act protects people in intimate relationships regardless of whether they have ever lived together.

Recognizing that domestic violence is manifested in many forms, advocates successfully expanded the definition of abusive conduct to include spousal sexual assault and false imprisonment (reflecting the hostage-taking nature of many abusive incidents). A better understanding of the complex emotional and economic ties which bind battered women to their abusers also resulted in an amendment requiring final protection orders to include notice to the parties that resumption of cohabitation does not invalidate the order, so that a battered woman will not be deemed to have waived her right to protection just because she allowed the abuser back into the house.

By the mid-1980's, rising public awareness of domestic violence and increasing availability of support services for battered women and their children encouraged many women to seek court-ordered protection from their abusers. Since filing a Protection From Abuse Act petition for assistance required the assistance of an attorney, lengthy waiting lists of battered women seeking representation developed in legal services offices across the state. As battered women are frequently at heightened risk of further violence when they attempt to end their relationships, the delay in access to the courts placed many women in jeopardy.

Advocates sought to eliminate this risk through amendments to the Act creating a pro se system for filing for a protection order, and requiring courts to provide assistance in English and Spanish to pro se filers.

Philadelphia advocates have succeeded in implementing the pro se filing provision by working with the Family Court to create the "Abuse Assistance Unit," which processes petitions for protection orders on a same-day basis. Victims of domestic abuse in Philadelphia are now able to file for protection twenty-four hours a day, seven days a week, and to obtain orders which provide continuous protection from the time of issuance until the petitioner appears in court for a hearing.

The 1988 amendments also expanded the forms of relief available under the Act. Reflecting the difficulty faced by battered women, who sought protection orders after custody of minor children had been adjudicated in another forum, the amendments explicitly permit the court to modify pre-existing custody orders, under certain circumstances, when entering temporary and permanent protection orders. This provision was a source of controversy and delay in the passage of the entire amendment package.

The amendments also provided for confiscation by law enforcement officials of weapons used or threatened to be used by an alleged abuser. This provision enjoyed the widespread support of police officials and district attorneys across the state. Such support is a manifestation of the (often uneasy) alliance between law enforcement officials and battered women's advocates.
Over the last decade, domestic violence has increasingly become a law enforcement/criminal justice issue. While the support of the law enforcement sector is important in order for abusers to be held accountable for their actions, the interests of law enforcement and battered women's advocates often diverge. There are numerous instances where prosecution and incarceration may not be the best strategy to pursue for a particular battered woman. And while it may be easier to gain the support of some legislators by inviting them to view domestic violence strictly as a criminal justice problem, this narrow viewpoint marginalizes the issue. To fully understand and respond to domestic violence, legislators must be continually reminded of the social context in which it occurs, which includes their own neighborhoods, their own families, and sometimes their own relationships.

The Act was also amended in 1988 to allow for the recovery of attorneys fees and other out-of-pocket expenses, including medical bills and lost wages. Taken together, these provisions make it possible for a victim of domestic violence to address all immediate consequences of the abuse in a single forum.

Further, the legitimacy of advocacy for battered women was recognized in the 1988 amendments to the Protection From Abuse Act, which defined the role of a domestic violence counselor, not only in terms of the training and supervision the position required, but also by delineating the activities in which a counselor may engage. This amendment was initially opposed in the legislature, apparently due to concerns about whether a lay advocate speaking on behalf of a battered woman would be engaging in the unauthorized practice of law. The Act as amended provides for the presence of a support person in the courtroom, but does not specifically authorize that person to speak on behalf of an alleged victim during court proceedings.

While the merits of institutionalizing what essentially had been a grassroots effort may be open to debate, the statutory invention of the "domestic violence counselor" was accompanied by a much-needed privilege. All conversations between battered women and their counselors, as well as the counselor's records, are now protected from disclosure. This amendment met with no resistance, probably due to the success of previous battles fought by the Pennsylvania Coalition Against Rape to create a privilege for rape counselors.

Since 1988, many other amendments have been proposed independent of advocacy efforts by PCADV and legal services attorneys; none have passed. As the issue of domestic violence grows in political importance, legislators are less willing to defer to the expertise of PCADV and legal services in drafting amendments. Instead, they are turning to academics and national experts with decidedly mixed results. In recent years, the legislature's response to domestic violence is less and less related to empowering women, and more and more related to punishing crime. Pennsylvania legislators, the overwhelming majority of whom are male, appear to be more comfortable distancing themselves from the issue by viewing it in this light rather than undertaking the more complex and personally confronting task of addressing the overall imbalance of
power between men and women in our society. Although law enforcement is one important component of addressing domestic violence, these larger societal issues are crucial in developing a comprehensive and effective approach. The challenge for advocates in the 1990s will be to balance the important relationships which have been developed with the criminal justice and legislative systems with the grassroots efforts to empower women out of which the battered women's movement was born.

V. LITIGATION UNDER THE PROTECTION FROM ABUSE ACT

In contrast to the high level of legislative action, litigation, especially at the appellate level, has played a less important role in shaping the contours of the Protection From Abuse Act. In general, however, a review of the body of PFA case law shows a respect for and understanding of the statute and the purposes which underlie it. This again is a tribute to battered women and their advocates, who crafted a clear, enforceable law and have continually expanded and refined it.

Contempt proceedings under the Act are essentially criminal in nature. The plaintiff has a higher burden of proof, i.e. she must prove that the defendant is in contempt beyond a reasonable doubt, and the defendant is entitled to all criminal procedural safeguards, such as the right to counsel, the exclusion of inadmissible evidence, and the right to a speedy trial.35 If the defendant is on parole, a finding of contempt constitutes a criminal conviction which can result in his incarceration as a parole violator.36 Despite this, the Pennsylvania Superior Court has upheld the legislature's determination that defendants in PFA contempt proceedings are not entitled to jury trials,37 and that defendants who have been held in contempt of PFA orders are not protected by the double jeopardy clause from subsequent prosecution for the same incident.38

Trial courts as well as appellate courts have entered a number of decisions clarifying statutory language. What constitutes "abuse" under the Act has been perhaps the most frequently litigated issue. Recently, the superior court found "abuse" to include a twisted wrist, which the defendant had claimed failed to rise to the level of a "bodily injury" under the Crimes Code.39 Similarly, a defendant's reckless behavior in a car combined with threats to the plaintiff were held to constitute abuse under the Act.40 Abuse was also found by a trial court where the defendant, who had abused the plaintiff in the past, threatened to remove her from the home by force.41 Trial courts, however, have not found abuse where the defendant's proximity to his children caused the children stress,42 or where the defendant/wife threw a set of keys which accidentally hit her child in the forehead.43

Trial courts have also clarified other provisions of the Act, particularly those involving the payment of money by defendants. A trial judge in Warren County held that temporary support can be awarded in PFA proceedings even where the plaintiff has not requested it.44 In Philadelphia, a judge recently issued an opinion establishing that, under the 1988 amendment, which provides for recovery of out-of-pocket losses suffered by the plaintiff as a result of the
abuse, the defendant must compensate the plaintiff for the destruction of her property even if it was given to her as a gift. Similarly, a defendant can be ordered to pay attorneys fees even where the plaintiff is represented by legal services.

Surprisingly little litigation has taken place concerning the custody provisions of the Act. The superior court has simply noted that temporary custody awards under the PFA are ancillary relief and not intended as substitutes for established proceedings to determine permanent custody. More recently, the superior court quashed an appeal on procedural grounds in a case where the trial court refused to make a temporary custody determination despite the fact that the defendant/father had snatched four children from the plaintiff/mother. In that case, the Women Against Abuse Legal Center in Philadelphia, supported in an amicus curiae brief filed by PCADV and battered women’s programs across the state, attempted to secure from the superior court a clarification of the scope of the trial court’s jurisdiction over custody matters in PFA proceedings.

After monitoring litigation, PCADV has now proposed a further amendment to the custody section of the Act to deal specifically with situations, such as the one in Valentine v. Wroten, where children are forcibly or fraudulently removed from their mothers by abusers. Another example of legislation tracking litigation stemmed from Heard v. Heard, a recent superior court case which challenged the common judicial practice of issuing "mutual orders" (i.e. PFA orders against both parties), even where the defendant has not filed a petition alleging abuse. While the court did prohibit the issuance of such orders, PCADV has nonetheless proposed an amendment specifically prohibiting them, in order to codify this judicial opinion.

VI. WHERE DO WE GO FROM HERE?: THE FUTURE OF THE PROTECTION FROM ABUSE ACT

The process of refining and adapting the law is continuous. The fact that many important amendments to the Protection From Abuse Act have been passed and implemented over the past sixteen years does not mean that an end to legislative change is in sight. As the Act was designed to deal with a dynamic and complex social problem, it must be constantly measured against and tailored to the changing parameters of domestic violence in Pennsylvania. Drawing from our experience as practitioners and as participants in the battered women’s movement, we recommend that the following legislative areas be given top priority.

A. Enforcement

The weakest part of the process set in motion by the Act is the enforcement of orders once they are granted. It is now relatively easy to obtain temporary and final orders in most counties; it is far more difficult to enforce their terms if violated. As a result, the relief battered women obtain is effective only in direct proportion to the batterer’s ignorance of the consequences of violation of the order and belief that he could, in fact, be sent to jail. Therefore, we suggest the addition of the following provisions to bolster the ability of victims to obtain meaningful
relief from the Act after the terms of their protection orders have been violated.

1. Authorize the Pro Se Filing of Contempt Petitions

Currently, the Act requires the court to "provide simplified forms and clerical assistance in English and Spanish to help with the writing and filing of the petition for a protection order for an individual not represented by counsel." No such assistance is mandated for the filing of contempt petitions, which require the involvement of counsel unless an arrest is made and the case is picked up by the District Attorney’s office. There is no rational basis of which we are aware for determining that initial filings are more important in protecting victims than contempt filings for those women who already have protection orders which are being ignored by their abusers. In fact, our experience tells us that this second group may in fact be at higher risk of serious injury or death than the group of initial filers. The pro se assistance currently mandated for initial filings should be explicitly extended to contempt actions.

2. Require the District Attorney’s Office to Prosecute All Contempt Actions

Mysteriously, a distinction in PFA practice has arisen over the years between "civil" and "criminal" contempt. This distinction, accepted by judges, prosecutors and the private bar alike, has no basis whatsoever in the statute. The law does provide that contempt actions can be initiated either by the filing of a petition by the plaintiff (that is, by her attorney) or by prosecution for violation of the protection order. Both ways of initiating contempt proceedings result in the same outcome: a finding of indirect criminal contempt and the imposition of sanctions which may include up to six months in jail. Despite this parity of result, the courts tend to treat those cases prosecuted by the District Attorney’s office, the "criminal" contempt, far more seriously and are much more likely to impose real sanctions on the defendant if he is proven guilty. As cases prosecuted by the District Attorney are generally those in which an arrest was made, victims to whom the police fail to respond are doubly penalized: they get no immediate relief from the police and, should they choose to pursue a contempt action on their own, they are less likely to get meaningful sanctions imposed by the court.

The District Attorney should be charged with the responsibility of prosecuting all contempt actions, regardless of whether the violation gave rise to an arrest. Private filings through the court should be picked up and handled by the District Attorney’s office. Victims who wish to initiate contempt actions through private counsel should have the option of having the District Attorney’s office pick up the case after the petition is filed or continuing with private representation.

3. Create Mandatory Minimum Fines and Sentences

Currently, the Act provides for the imposition of fines of up to $1,000 and/or incarceration for up to six months pursuant
to a finding of indirect criminal contempt. These sanctions are rarely imposed. We support PCADV's proposal to require a minimum fine of $100, which would double with each subsequent finding of contempt to a ceiling of $1,000 (PCADV suggests that these monies be used for legal advocacy and representation of domestic violence victims) and a minimum term of imprisonment of 48 hours where the acts of contempt resulted in physical injury to the plaintiff or a minor child. Where contempt is found but the defendant is not sentenced to prison, the judge should be required to make written findings explaining why imprisonment was not imposed.45

4. Require Police Adherence to a Written Domestic Violence Response Policy

The Protection From Abuse Act charges each police department in the Commonwealth with training all officers about the provisions of the Act. There is virtually no way to monitor or enforce this provision. PCADV has proposed, and we agree, that each department should be required to adopt a written domestic violence response policy consistent with the model protocol of the Attorney General's Family Violence Task Force.46

Additionally, we propose to take this one step further and create a private right of action for those victims harmed by police failure to adopt and adhere to such a policy. A victim's prima facie showing that her injuries resulted from such a failure should raise a presumption of police liability, thus shifting the burden to the police department to rebut her claim. Such an amendment would be consistent with the decision of Judge Edward N. Cahn of the U. S. District Court for the Eastern District of Pennsylvania in Kauffman v. Wilson,47 which found that holders of protection orders have a property interest in police protection. Requiring the adoption of written policies would permit police departments to define the parameters of that duty to every individual officer; creating a statutory private right of action for failure to follow the policies would give victims a way to vindicate, in state court, the rights Judge Cahn has already determined they have.

B. Strengthen Existing Provisions

In addition to problems in enforcing protection orders, several provisions of the PFA simply do not go far enough to adequately protect women from violence. The following amendments would go a long way toward increasing the effectiveness of protection orders.

1. Extend Maximum Length of Protection Orders From One to Two Years

The longest order currently available under the Act is for one year. There is no way to "renew" the order in the absence of contempt proceedings and the issuance of a new order, pursuant to a finding of contempt. Women's experience tells us that one year is not a long enough time in which to rebuild a life: new housing, new custody and support arrangements, new schools, new jobs, etc. If the Act is truly intended to help victims create violence-free lives for themselves and their children, adequate time must
be provided. The Act should be amended to allow for automatic status listings on the expiration date of the order for the purpose of determining if good cause exists for an extension. Good cause should be defined as violations during the term of the order or threats by the defendant to resume abuse upon the expiration of the current order.

2. Clarify Custody Provision So Courts May Modify Existing Custody Orders Where Appropriate

Currently, the Act tells the court not to change existing custody orders unless "the defendant is likely to inflict abuse upon the children or to remove the children from the jurisdiction of the court prior to the hearing." In practice, if there is a custody order in effect, the judge hearing the abuse action is unlikely to modify it at all. The statutory language needs to be changed to require the court to inquire about and review any existing custody order, and to modify it as necessary to protect the safety of the plaintiff and minor children during the pendency of the protection order. If no such modification is made, the court must make written findings explaining how the existing order adequately provides for protection of the plaintiff and children.

VII. WHERE DO WE GO FROM HERE?: OTHER AREAS OF THE LAW

The Protection From Abuse Act, useful as it is, is merely one legal tool to help women lead violence-free lives. Too close a focus on the Act compartmentalizes domestic violence and allows policy makers and judges to ignore the issue when it arises—as it invariably does—in other contexts and proceedings. The reality of battered women's lives is too complex to be addressed and remedied in a one-day PFA hearing. In addition to the incorporation of important areas of family law (e.g., custody, support) into PFA proceedings, we must work to integrate the concerns of victims of domestic violence into other areas of the law.

A. Custody

The 1990 amendments to state custody law are an excellent example of successful legislative efforts to integrate concerns of victims of domestic violence into a different area of the law. Judges hearing custody cases are now required to consider evidence of domestic violence when making any award of custody, partial custody, or visitation. This is, in effect, a form of forced consciousness-raising for the judiciary. They are no longer free to decide that domestic violence has no place in a best-interests-of-the-child determination. Judges are now being told, by the legislature, that one parent's violence against another negatively affects children and must be considered and weighed against an award to that parent. Also, if a parent has been convicted of any of an enumerated list of crimes, which include kidnapping, unlawful restraint, rape, incest and sexual abuse of children, he must undergo a course of treatment, the treating therapist must testify as to his progress, and the court must find that he does not pose a risk of harm to his child before he can be permitted any contact with the child.
B. Divorce

Economic dependence is one of the major underlying reasons why women are trapped in violent relationships. From a policy perspective, any measure which helps women achieve economic self-sufficiency will enable them to leave abusive relationships or avoid becoming involved in them in the first place. For married women, then, the Divorce Code is a critical piece of legislation.

With the advent of "no-fault" divorce and the 1980 amendments to the Divorce Code, marital misconduct is no longer a factor to be considered by the court in the distribution of marital property. Many of the factors which the court must consider, however, can be invoked to argue for a split of marital assets in the wife's favor where the husband has been abusive during the marriage. For example, "the relative earning capacities of the parties" might be dramatically different because the husband has sabotaged the wife's efforts to work outside the home and/or obtain higher education or professional training. Similarly, "the contribution of each party as homemaker" can be used to favor the battered wife who has shouldered complete responsibility for child care and household duties, as is typical in abusive relationships. "Health of the parties" can also be important if the wife has medical needs, including therapy, which result from the husband's violence toward her.51

Additionally, marital misconduct is still explicitly relevant to alimony awards.52 Battered women and their lawyers need to emphasize domestic violence as a form of marital misconduct which warrants a larger alimony award: the rehabilitative role alimony is now supposed to play is especially appropriate where a wife's earning capacity, readiness for the job market, and overall self-esteem are low due to years of physical abuse. Other provisions of the Divorce Code are important for battered women as well, such as counsel fee awards and exclusive possession of the home.53

C. Personal Injury Suits

Civil lawsuits against batterers for money damages are a little-used remedy available to battered women. A victim of domestic violence can use our tort system to secure compensation for injuries such as out-of-pocket losses and pain and suffering. While, admittedly, intentional tort actions are not always advisable, largely due to the absence of insurance on the other side, they should certainly be considered where the batterer/defendant has assets or makes a substantial salary.

Requiring batterers to pay money damages to their victims is the civil equivalent of promoting arrest and prosecution. The effect of each is to publicly treat domestic violence as deviant/criminal/tortious behavior which should be dealt with in the same manner as other conduct which harms society. Awarding money damages to battered women also legitimizes the severity of their injuries: although we all know that money can never really "make the victim whole," it is the only measure of compensation our legal system recognizes. Putting a high price tag on conduct which injures women's bodies and women's psyches communicates a clear
message which is instantly understood by the community at large.\(^{44}\)

Moreover, the awarding of damages is far more than a symbolic gesture. It can free women from dependence on male providers and thus help them avoid recurring abusive relationships. And from the plaintiff’s point of view, the experience itself can be one of great empowerment. Filing a civil suit differs fundamentally from pursuing criminal prosecution in that the woman herself is the plaintiff and is in control of how the case is litigated or settled. Lawyers who represent battered women should routinely explore the possibility of such suits.

D. Gender Bias Study of the Courts

Moving on to the larger picture, battered women and their advocates must find ways to battle a problem far more insidious than any statutory language: the attitudes of judges, non-judicial decision-makers, and court personnel. We may know, intuitively, that when battered women take the witness stand they are not believed, but we need hard evidence of this if we are to secure any real change. So far, a number of states have conducted gender bias studies of their court systems and the results have been predictably distressing. Women lawyers, litigants and court personnel all encounter discrimination in their contact with the judicial system, and battered women are at the bottom of the heap.\(^{45}\) Battered women’s stories are not believed, their experience is trivialized, and the danger they face is minimized.

The authors of this article have experienced such bias firsthand in the Philadelphia Family Court. For example, one judge who hears custody cases seems to believe that evidence of domestic violence is relevant to a woman’s desire to limit the batterer’s contact with her children only because it gives her a reason to be angry with him and to want to (unjustly) penalize him. The more she expresses concern about the safety of her children, the more her sincerity is questioned.

The data generated by these studies—most of which are funded by the court systems themselves—are troubling, even to the most unenlightened members of the judiciary. The studies invariably involve recommendations forremedying the documented bias which can then be translated into funding for judicial education programs, adoption of non-discriminatory policies and protocols, and court monitoring.

Pennsylvania has done no such study. Requests to the Pennsylvania Supreme Court to fund and oversee such a study have been flatly turned down.\(^{46}\) Efforts to do a statewide study continue, however, even in the absence of judicial support. Battered women and their advocates must support these efforts as critical to the struggle to make their voices heard and understood in courts throughout the Commonwealth.

VIII. WHERE DO WE GO FROM HERE?: MOVING BEYOND THE LAW

Ultimately, even lawyers recognize that legal solutions alone cannot eradicate domestic violence. On October 19, 1991, a symposium celebrating the fifteenth anniversary of the Protection From Abuse Act was held at the University of Pennsylvania Law School. Battered women, battered women’s advo-
cates, lawyers, law students, police officers, and others met in workshops to discuss various topics related to the Act and then coalesced to share their recommendations. This larger discussion provided a foundation for developing an agenda for the future. It included ideas for preventing domestic violence through educational programs in the schools, funding for a panoply of services for battered women, better police response, gun control laws, and the promotion of social policies which help women achieve economic parity.

We must never lose sight of the fact that our agenda is this larger picture, not simply the refinement of the statute. The lessons in effective advocacy that we can learn from studying the Protection From Abuse Act’s history and evolution, though, are invaluable; they can and should be applied to every one of these broader goals. If we in the battered women’s movement can be as successful in tackling the challenges that lie ahead as we have been with the Protection From Abuse Act, the future for women may still hold the promise of peace.
ENDNOTES

1. Throughout this article, victims of domestic violence are referred to in the feminine gender. This reflects the fact that in the overwhelming majority of cases the victim is female and the abuser male. The laws discussed and policies proposed, however, are intended to apply equally to male victims where applicable.

2. The information in this section is drawn in part from interviews the authors conducted on December 17, 1991 with Susan Kelly-Dreiss, Executive Director of the Pennsylvania Coalition Against Domestic Violence (PCADV), and Barbara Hart, Esquire, Staff Counsel to PCADV.

3. 35 PA. STAT. ANN. § 10181.


6. See id. § 6113 (a).

7. See id. § 6108 (a) (5).

8. See 18 PA. CONS. STAT. ANN. § 2711.


12. See 23 PA. CONS. STAT. ANN. § 6102(a).

13. See id. § 6102 (a).

14. See id. § 6102 (a) (1).

15. See id. § 6102 (a) (3).

16. See id. § 6113 (g).


18. See 23 PA. CONS. STAT. ANN. § 6106 (g). With notice, interpreters can be obtained for parties who speak any language other than English.

19. See id. § 6108 (a) (4).

20. See id. § 6108 (a) (7).

21. See id. § 6108 (a) (8).
22. See id. § 6102.

23. See id. § 6111.

24. See id. § 6116.


28. See Commonwealth v. Allen, 486 A.2d 363 (Pa. 1984). But see Grady v. Corbin, 495 U.S. 508 (1990), where the U.S. Supreme Court held that state was barred from prosecuting a drunk driver for vehicular homicide as he had previously pleaded guilty to traffic tickets charging drunk driving which arose out of the same incident. The effect of this ruling on Commonwealth is unclear.


38. See Valentine v. Wroten, 580 A.2d 757 (Pa. Super. 1990). The dissenting opinion of Justice Tamilia, however, urges the court to find that the Act clearly authorizes an award of custody to such a plaintiff, without the necessity of finding that the defendant directly abused the children. See id. at 758 (Tamilia, J., dissenting).


41. See PCADV, supra note 39, at § 6108(c).

42. 23 PA. CONS. STAT. ANN. § 6106 (g) (1).

43. See PHILADELPHIA COURT OF COMMON PLEAS LOCAL RULE 1905.8.

44. See 23 PA. CONS. STAT. ANN. § 6114.
45. See PCADV, supra note 39, at § 6115 (c).
46. See id. at § 6105 (a).
48. 23 PA. CONS. STAT. ANN. § 6108 (a) (4).
49. See id. § 5301 et seq.
50. See id. § 5303 (b), (c).
51. Id. § 3502 (a).
52. See id. § 3701 (b) (14).
53. See id. § 3502.
54. For a discussion of why these measures are important but do not present an entire solution, see supra note 20 and accompanying text.
56. Telephone interview with Judy F. Berkman, Co-Chair of Women's Rights Committee of the Philadelphia Bar Association (Mar. 3, 1993).