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Orders of Protection and the Battered Woman Syndrome

*Honorable Sheila M. Murphy**

Violence in the home strikes at the heart of our society. Children who are abused or who live in homes where parents are battered carry the terrible lessons of violence with them into adulthood. . . . To tolerate family violence is to allow the seeds of violence to be sown into the next generation.

. . . .
We as a nation can no longer allow these victims to suffer alone. We must understand the breadth and scope of the problem. We must admit that family violence is found at every level of the social structure. We must let victims know that they need not hesitate to seek help. We must listen with an understanding heart and we must act in ways which prevent, protect and support. This action requires a flexible response.¹

I. INTRODUCTION

Statistics on domestic violence are alarming. Yet, because domestic violence often goes unreported,² estimates do not reflect the full scope of the crime.³ The Illinois Coalition Against Domestic Violence estimates that each year 300,000 women in Illinois and 3 million women nationwide are victims of domestic violence.⁴ Others estimate that abuse may actually occur in as many as half

* Associate Judge, Circuit Court of Cook County, Illinois. Judge Murphy acknowledges with gratitude the research and assistance of DePaul University Law students Laura Ankenbruck and Teresa Voss, and IIT-Chicago Kent Law student Susan Barron.

1. Lois Haight Harrington, *Preface* to U.S. ATT'Y GEN., FINAL REP. OF THE ATTORNEY GENERAL'S TASK FORCE ON FAMILY VIOLENCE at iii, iv (1984).

2. The U.S. Surgeon General has recognized that there are many reasons why women are reluctant to report abuse, including the fact that they often are financially dependent. See George E. Curry, *Doctors to Battle Domestic Violence: Koop "No Man has License to Beat"*, CHI. TRIB., Jan. 4, 1989, § 1, at 3.

3. "It is impossible to know the extent of wife abuse in our society. For many years, the problem was largely ignored, and the available information was so incomplete and disorganized that it was functionally useless." Kathleen Waits, *The Criminal Justice System's Response to Battering: Understanding the Problem, Forging the Solution*, 60 WASH. L. REV. 267, 272 (1985); see also Barbara K. Finesmith, *Police Respond to Battered Women: A Critique and Proposals for Reform*, 14 SETON HALL L. REV. 74, 75-79 (1983).

4. Telephone Interview with Joyce Pruitt, Executive Director, Illinois Coalition Against Domestic Violence (Jan. 27, 1992).

of all marriages.⁵ Such domestic violence often escalates into fatal consequences.⁶ Moreover, the children who are present and witness the violence may grow up to be either victims or abusers themselves.⁷

The judiciary must take every opportunity to intervene and to attempt to prevent these tragic consequences. Judges must realize the very fact that a victim has reported the incident means that she is at further risk. Those who treat abusers confirm that the violence often escalates when the victim tries to end the relationship.⁸ Those repeatedly abused may fall into a pattern of "learned helplessness," known to professionals as the Battered Woman Syndrome.⁹ The judiciary must view the request for a protection order as an opportunity to say to the victim, "yes, we will do our best to protect you" and to the abuser, "we will not tolerate any form of violence or abuse." Otherwise, the courage that this person has exemplified by requesting help may be superseded by fears of economic, physical, and emotional repercussion and she may never again have the strength to save herself from most certain harm. The National Council of Juvenile and Family Court Judges recommends that protective orders "be available to all and issued *ex parte* on request when family violence has occurred *or is threatened*."¹⁰

By issuing an order of protection, the judge assures the victim of

5. See Colleen Cacy, Comment, *The Battered Woman's Syndrome Defense*, 24 KAN. L. REV. 337, 337 (1985) (citing Murray Straus, *Wife-Beating: Causes, Treatment and Research Needs*, in U.S. COMM'N ON CIVIL RIGHTS, BATTERED WOMEN: ISSUES OF PUBLIC POLICY 465 (1978)); Marilyn Hall Mitchell, Note, *Does Wife Abuse Justify Homicide?*, 24 WAYNE L. REV. 1705, 1706 (1978).

6. "More than a third of the women slain in this country die at the hands of husbands or boyfriends, and domestic violence is the single largest cause of injury to women in the United States—more common than automobile accidents, muggings and rapes combined." *Doctors Launch Battle Against Family Violence*, WASH. POST, Oct. 17, 1991, § A, at A2.

In 1988, 55% of Illinois homicide victims were family members or otherwise known to their attackers or killers. ILLINOIS STATE POLICE, CRIME IN ILLINOIS 1988, at 15-16 (1989).

7. PETER G. JAFFE ET AL., CHILDREN OF BATTERED WOMEN 18-19 (1990); see Peter M. Tolman & Larry W. Bennett, *A Review of Quantitative Research on Men Who Batter*, J. INTERPERSONAL VIOLENCE, Mar. 1990, at 87, 97.

8. David Adams, *Identifying the Assaultive Husband in Court: You Be the Judge*, RESPONSE TO THE VICTIMIZATION OF WOMEN AND CHILDREN, Vol. 13, No. 1 1990, at 13, 13.

9. LENORE WALKER, THE BATTERED WOMAN 55-70 (1979). While orders of protection are available to both men and women in either heterosexual or homosexual relationships, the focus of this Article is on women battered by men.

10. NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, FAMILY VIOLENCE: IMPROVING COURT PRACTICE 12 (1990) (emphasis added).

her right to have the police intervene should the abuser attempt to contact or harm her. Intervention by law enforcement authorities might reduce the risk of a repeat attack.¹¹ Thus, by granting orders of protection, judges ensure continued police intervention and legitimize the victim's attempts to protect herself.

Although issuing orders of protection is imperative in domestic violence cases, the current procedures for issuing orders without additional rehabilitative requirements are causing an overload to an already crowded court docket. Abusers are returning to the court system over and over again, never receiving help for their violent behavior. Imprisonment is not the answer at a time when state prison populations experience record growth.¹² These " 'prisons will simply bankrupt the states unless we find cheaper ways to punish and figure out how to keep these people from returning.' "¹³

Judges should be actively involved in this attempt to alleviate the need for repeat abusers to return to the court system. By requiring abusers to attend follow-up programs, judges can use the authority that has been granted to them in the Illinois Domestic Violence Act to require psychiatric, alcohol, and drug, testing and treatment during supervision.¹⁴ In making evaluations about the need for rehabilitation, judges should solicit the help of both the victim and the attorneys. Questions should be asked as to whether or not the abuser has a history of alcohol or drug abuse.¹⁵

The Illinois Domestic Violence Act¹⁶ also gives judges the discretion to require counseling for domestic violence and other types of aggressive behavior.¹⁷ Programs on domestic violence should be implemented in city and community colleges and attendance made

11. Data from a National Crime Survey shows that only 15% of victims who called the police following a domestic violence attack were attacked again within an average of six months, while 41% who did not call the police were attacked again. U.S. DEPT OF JUSTICE, NATIONAL CRIME SURVEY 52 (1986).

12. Andrew H. Malcolm, *More Cells Being Built For More Prisoners, But to What End?*, CHI. DAILY L. BULL., Jan. 18, 1991, at 3. The Illinois prison population grew 20% in 1990, more than any other state. *Id.*

13. *Id.* (quoting Kenneth McGinnis, Director, Illinois Department of Corrections).

14. ILL. REV. STAT. ch. 38, para. 1005-6.3(4) (1989).

15. While studies indicate that 61% of domestic violence cases involve drinking during the time of the violent incident, chronic alcohol abuse rather than acute intoxication is a better predictor of battering. Tolman & Bennett, *supra* note 7, at 90-91.

16. ILL. REV. STAT. ch. 40, paras. 2311-1 to 2313-5 (1989). Those sections of the Act dealing with orders of protection also have been incorporated into the code of criminal law and procedure. ILL. REV. STAT. ch. 38, paras. 112A-1 to 112A-25 (1989). For ease of reference, this Article will shorten citations to these two Acts to the relevant chapter and paragraph numbers.

17. Chapter 40, para. 2312-14(b)(4); chapter 38, para. 112A-14(b)(4).

mandatory for abusers. These programs could be very similar in structure to those that many states currently require for people convicted of driving under the influence of alcohol or drugs. Compliance should be monitored by a court administrator to ensure that the abuser is attending the counseling or classes and an agency should be set up to administer the program.

II. THE ILLINOIS DOMESTIC VIOLENCE ACT OF 1986

The Illinois Domestic Violence Act of 1986 ("IDVA") enables judges to protect victims through extensive provisions for granting orders of protection. Orders of protection are written court orders that require an abuser to do, or not to do, certain acts. The purpose of these orders is to prevent any further domestic violence and to resolve related issues such as custody and support. Orders of protection are preventative or civil, rather than punitive or criminal, in nature regardless of which court issues them.¹⁸ Courts may grant protective orders to anyone for physical abuse, harassment, or interference with personal liberty.¹⁹ The orders also may be granted to protect children and adults who are ill, aged, or disabled from intimidation and willful deprivation, and can protect those who witness abusive activity.²⁰ The order may be obtained in civil or criminal court, but to proceed in criminal court, there must be an underlying criminal action filed in conjunction with the request for an order of protection. The Illinois legislature has recently expanded the list of criminal actions that warrant a protective order to include burglary, trespass (to a residence, vehicle, or land), damage to property, and telephone harassment.²¹

Further, any family or household member may obtain a protection order. This includes persons who are or were spouses, share or shared a common dwelling, are related by blood or marriage (including step-children), or allegedly have a child in common.²²

18. Chapter 40, para. 2312-5; chapter 38, para. 112A-6. Section 205 of the Illinois Domestic Violence Act of 1986 provides in pertinent part:

Any proceeding to obtain, modify, reopen, or appeal an order of protection, whether commenced alone or in conjunction with a civil or criminal proceeding, shall be governed by the rules of civil procedure of this State. The standard of proof in such a proceeding is proof by a preponderance of the evidence, whether the proceeding is heard in criminal or civil court.

Chapter 40, para. 2312-5; chapter 38, para. 112A-6.

19. Chapter 40, para. 2311-3(1), (4), (5); chapter 38, para. 112A-3(1), (4), (5).

20. Chapter 40, para. 2311-3(6), (9), (10); chapter 38, para. 112A-3(6), (9), (10).

21. ILL. ANN. STAT. ch. 38, para. 112A-2 (Smith-Hurd Supp. 1991) (codifying P.A. 86-1300, effective Jan. 1, 1991).

22. Chapter 40, para. 2311-3(5).

The IDVA also expands coverage to include children and disabled persons.²³

There are three types of protection orders under the IDVA. The first is an Emergency order of protection, which may last up to twenty-one days and is available without prior service of process or even service of notice on respondent.²⁴ The second is an Interim order of protection which may last up to thirty days.²⁵ The final type is a Plenary order of protection which lasts for a fixed period of time up to two years.²⁶ Each of the three types of orders of protection may be extended repeatedly if certain requirements are met.²⁷

III. REMEDIES AVAILABLE IN THE ORDER OF PROTECTION

The IDVA provides fourteen different types of remedies that may be available in an order of protection. These remedies can be divided into four categories: (1) abuse prevention, (2) child welfare, (3) economic relief, and (4) injunctive relief. The remedies under "abuse prevention" include: prohibiting abuse, neglect, or exploitation;²⁸ granting exclusive possession of the residence to the victim;²⁹ restricting the abuser from certain areas where the victim might be found;³⁰ counseling;³¹ and prohibiting the abuser from entering or remaining in the household.³² The remedies under "child welfare" include: awarding temporary legal custody and visitation;³³ prohibiting the removal or concealment of the child;³⁴ ordering the abuser to appear;³⁵ and ordering the abuser to leave the child with the person responsible for the physical care of the child.³⁶ The "economic remedies" include: granting exclusive possession of personal property to the victim;³⁷ protecting the property

23. Chapter 40, para. 2311-3(2).

24. Chapter 40, para. 2311-17. Paragraph 112A-17 of the criminal code differs slightly in that emergency orders of protection may only be issued for a 14-day period. Chapter 38, para. 112A-17.

25. Chapter 40, para. 2311-18; chapter 38, para. 112A-18.

26. Chapter 40, para. 2311-19; chapter 38, para. 112A-19.

27. Chapter 40, para. 2312-20(a), (d), (e); chapter 38, para. 112A-20(a), (d), (e).

28. Chapter 40, para. 2312-14(b)(1); chapter 38, para. 112A-14(b)(1).

29. Chapter 40, para. 2312-14(b)(2); chapter 38, para. 112A-14(b)(2).

30. Chapter 40, para. 2312-14(b)(3); chapter 38, para. 112A-14(b)(3).

31. Chapter 40, para. 2312-14(b)(4); chapter 38, para. 112A-14(b)(4).

32. Chapter 40, para. 2312-14(b)(14); chapter 38, para. 112A-14(b)(14).

33. Chapter 40, para. 2312-14(b)(5); chapter 38, para. 112A-14(b)(5).

34. Chapter 40, para. 2312-14(b)(6); chapter 38, para. 112A-14(b)(6).

35. Chapter 40, para. 2312-14(b)(7); chapter 38, para. 112A-14(b)(7).

36. Chapter 40, para. 2312-14(b)(8); chapter 38, para. 112A-14(b)(8).

37. Chapter 40, para. 2312-14(b)(9); chapter 38, para. 112A-14(b)(9).

by forbidding the abuser from transferring, damaging, or otherwise disposing of it;³⁸ ordering payment of support;³⁹ and ordering payment for losses suffered as a direct result of the abuse.⁴⁰ Similarly, under the “injunctive relief” category, the judge may order any relief that is “necessary or appropriate to prevent further abuse of a family or household member.”⁴¹ If any remedy requested by the petitioner is denied, the judge must state why the remedy was denied in the order of protection.⁴²

To be effective, orders of protection must be comprehensive. Given the particular circumstances of the case, judges should provide all the relief that the victim requires. The IDVA directs the judge to balance the hardships when determining which remedies to grant.⁴³ Using this test, the judge should remove the offender from the home whenever possible, while the victim and any chil-

38. Chapter 40, para. 2312-14(b)(10); chapter 38, para. 112A-14(b)(10).

39. Chapter 40, para. 2312-14(b)(11); chapter 38, para. 112A-14(b)(11).

40. Chapter 40, para. 2312-14(b)(12); chapter 38, para. 112A-14(b)(12).

41. Chapter 40, para. 2312-14(b)(13); chapter 38, para. 112A-14(b)(13).

42. “An Emergency order may not include the counseling, legal custody, payment of support or monetary compensation remedies.” Chapter 40, para. 2312-17(a)(3)(iii); chapter 38, para. 112A-17(a)(3)(iii).

“An Interim order may not include the counseling, payment of support or monetary compensation remedies, unless the respondent has filed a general appearance or has been personally served.” Chapter 40, para. 2312-18(a)(3); chapter 38, para. 112A-18(a)(3).

43. Chapter 40, para. 2312-14(c); chapter 38, para. 112A-14(c). Section 214 of the IDVA provides in pertinent part:

(c) Relevant Factors; Findings:

(1) In determining whether to grant a specific remedy, other than payment of support, in an order of protection, the court shall consider relevant factors, including but not limited to the following, and shall make oral or written findings thereon;

(i) the nature, frequency, severity, pattern and consequences of the respondent’s past abuse, neglect or exploitation of the petitioner or any family or household member, including the concealment of his or her location in order to evade service of processor notice; any unauthorized physical violence by respondent; and the likelihood of danger of future abuse, neglect, or exploitation to petitioner or any member of petitioner’s or respondent’s family or household; and

(ii) the danger that any minor child will be abused or neglected or improperly removed from the jurisdiction, improperly concealed within the State or improperly separated from the child’s primary caretaker.

(2) In comparing relative hardships resulting to the parties from loss of possession of the family home, the court shall consider relevant factors, including but not limited to the following, and shall make findings thereon;

(i) availability, cost, safety, adequacy, location and other characteristics of alternate housing for each child and any minor child or dependent adult in the party’s care;

(ii) the effect on the party’s employment;

(iii) the effect on the relationship of the party, and any minor child or dependent adult in the party’s care, to family, school, church and community; and

dren involved should be allowed to remain with appropriate protection, plans, and support.⁴⁴ Removing the abuser from the home gives a clear signal that the victim(s) will be protected, regardless of who owns the home or "pays the rent."⁴⁵ Economic support should also be granted whenever possible, as a victim will often return to a violent situation due to financial dependence.⁴⁶

IV. SANCTIONS FOR VIOLATIONS OF AN ORDER OF PROTECTION

Orders of protection can only be effective when they are issued consistently and when sanctions are imposed for violations according to a clear and formal policy.⁴⁷ When a protection order is granted and the abuser is present, he should be made fully aware of the consequences of violating that order. Violations of an order of protection include committing any act that was prohibited by the court in the order or failure to perform any action that was required by the order in the form of a remedy.⁴⁸ A judge may hold the abuser in contempt of court or impose criminal Class A felony charges, both of which may include an order directing the abuser to pay restitution to the victim, pay a fine, or both.⁴⁹ The IDVA encourages the court to impose increased penalties for intentional violations of the order and to impose a minimum of twenty-four hours of imprisonment for the abuser's second or subsequent violation of the order.⁵⁰ The court also may increase, revoke, or modify a bail bond, revoke or modify probation, or revoke or modify a sentence of periodic imprisonment in response to the violation of

(iv) other relevant factors.

(3) If there otherwise would be no official record of court's findings, such findings shall be in writing.

(d) Balance of Hardships; Findings. If the court finds that the balance of hardships does not support the granting of a remedy governed by paragraph (2), (3), (9), (10) or (13) of subsection (b) of this Section, which do or may require such balancing, the court's findings shall also describe the manner in which the hardship to the abusive party if the remedy were granted would substantially outweigh the hardship to the petitioner from the denial of the remedy. If there would otherwise be no official record of the court's findings, those findings shall be in writing.

Chapter 40, para. 2312-14(c), (d).

44. NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *supra* note 10, at 22.

45. *Id.* at 24.

46. *Id.* at 22.

47. *Id.* at 23.

48. Chapter 40, para. 2312-23; chapter 38, para. 112A-23.

49. Chapter 40, para. 2312-23(e); chapter 38, para. 112A-23(e).

50. Chapter 40, para. 2312-23(e)(3); chapter 38, para. 112A-23(e)(3).

an order of protection.⁵¹ The abuser should be made aware of all of these potential penalties if he is present when the order of protection is issued.

V. THE BATTERED WOMAN SYNDROME

A woman suffering from Battered Woman Syndrome is characterized as "one who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to force her to do something he wants her to do without concern for her rights."⁵² More specifically:

The "battered woman syndrome" generally refers to common characteristics appearing in women who are physically and psychologically abused by their mates. The typical pattern of violence consists of three recurrent phases of abuse: a tension-building stage, characterized by minor abuse; an acute battering stage, characterized by uncontrollable explosions of brutal violence; and a loving respite stage, characterized by calm and loving behavior of the batterer, coupled with pleas for forgiveness. The continued cycle of violence and contrition results in the battered woman living in a state of learned helplessness. Because she is financially dependent on the batterer, she may feel partly responsible for the batterer's violence, she may believe that her children need a father, or fear reprisal if she leaves. The battered woman lives with constant fear, coupled with a perceived inability to escape. Eventually she comes to believe that her only options are enduring the abuse, striking back, or committing suicide.⁵³

As violence against battered women occurs in the "battlefield" of the home, the battered woman syndrome is comparable to the post traumatic stress syndrome evidenced by veterans returning from Vietnam.

Moreover, the battered woman frequently suffers from a codependency personality disorder. In order to understand the codependent personality disorder, it is helpful to know the diagnostic criteria. The diagnostic criteria for codependent personality disorder have been defined as follows:

A. Continued investment of self-esteem in the ability to control both oneself and others in the face of serious adverse consequences.

51. Chapter 40, para. 2312-23(e)(4); chapter 38, para. 112A-23(e)(4).

52. WALKER, *supra* note 9, at xv.

53. *Fennell v. Goolsby*, 630 F. Supp. 451, 456 (E.D. Pa. 1985) (footnotes omitted).

- B. Assumption of responsibility for meeting others' needs to the exclusion of acknowledging one's own.
- C. Anxiety and boundary distortions around intimacy and separation.
- D. Enmeshment in relationship with personality disordered, chemically dependent, other co-dependent, and/or impulse disordered individuals.
- E. Three or more of the following:
 - 1. Excessive reliance on denial
 - 2. Constriction of emotions (with or without dramatic outbursts)
 - 3. Depression
 - 4. Hypervigilance
 - 5. Compulsions
 - 6. Anxiety
 - 7. Substance Abuse
 - 8. Has been (or is) the victim of recurrent physical or sexual abuse
 - 9. Stress-related medical illnesses
 - 10. Has remained in a primary relationship with an active substance abuser for at least two years without seeking outside help.⁵⁴

The battered woman syndrome can result in frustration for those who attempt to prosecute cases on behalf of abused women because often these women are unable to carry through on the cases they initiate. Thus, in order to understand this phenomena with the empathy that it deserves, it must be remembered that battered women often suffer from the codependency personality disorder. Codependents and survivors anonymous groups based on the twelve steps of Alcoholics Anonymous empower people to do together what they cannot do alone. These groups encourage codependents "to switch from a shame-based system to a system of loving and accepting ourselves 'as is.'"⁵⁵

VI. CONCLUSION

Once the battered woman syndrome is understood, then the need to humanize the process of procuring orders of protection can develop. Since battered women become victims of their own history and are sometimes reluctant to stand up for themselves, judges should consider sitting at a table in the center of the courtroom

54. TIMMEN L. CERMAK, *DIAGNOSING AND TREATING CO-DEPENDENCE* 11 (1986).

55. MELODY BEATRICE, *CODEPENDENTS' GUIDE TO THE TWELVE STEPS* 75 (1990).

with each woman who seeks an order of protection in order to ease the burden. Sometimes, a judge may even hear these *ex parte* petitions in chambers with a court reporter in attendance. The women then are able to communicate more fully because of the private nature of the hearing. As a result, these women are able to disclose information regarding sensitive areas such as incest, rape, and other tragic situations such as sexually transmitted diseases. Thus, by humanizing the process and by readily granting *ex parte* orders of protection, judges will provide a safe, quiet harbor for the battered woman and both she and society will benefit.