

REPORT

Introduction

Domestic violence is a pattern of behavior in which one intimate partner uses physical violence, coercion, threats, intimidation, isolation and emotional, sexual or economic abuse to control the other partner in the relationship. The violence is not defined by physical acts, rather it is a combination of factors that impact the entire family, community, and workplace. Abuse knows no economic, racial, ethnic, religious, age or gender limits – no one can count on not being a victim in their lifetimes. Although anyone, regardless of gender may be a victim of domestic violence, women are at a significantly greater risk of intimate partner violence than men. By conservative estimates, 1.5 million women in the United States are assaulted by their intimate partners every year.¹ The victim and perpetrator may be married or unmarried; heterosexual, gay or lesbian; living together, separated or dating. In fact, more than 4 in every 10 incidents of domestic violence involves non-married persons² and 53% of victims of domestic violence were abused by a current or former boyfriend or girlfriend.³ Moreover, studies indicate that teens who are victims of domestic violence and older persons who experience domestic violence frequently are victimized by persons with whom they are not married. Acknowledgement of the various types of relationships that victims of domestic violence have with their perpetrators is recognized by Congress and President Bush, as indicated by passage of the Violence Against Women Act of 2005 wherein both dating violence and elder abuse are fully integrated into the funding programs authorized.⁴

Many states require that those seeking civil protection orders meet current or former relationship requirements. Several of the requirements mandate that the parties are or have been married or are or have been living together. Other requirements include having a child in common with the perpetrator of the violence or being related by blood or marriage to the perpetrator. Much of the violence experienced in intimate relationships happens outside of these parameters. By definition, those who experience violence in a dating relationship are precluded from seeking protection if the former criteria are not met.

The result is that those of all ages who are in dating relationships, whether teens or elderly, often are without recourse for protection through the civil protection order. While other civil remedies may be available, it is the civil protection order that is recognized by law enforcement for purposes of arresting offenders. Typically, it is only the violation of a civil protection order that carries the criminal sanctions necessary for police enforcement.

Legal protections provided to victims of domestic violence through civil protection orders must include the almost 50% of survivors of domestic violence victims who are not married to, living

¹ *National Violence Against Women Survey*, National Institute of Justice and Centers Disease Control and Prevention, July 2000.

² Bureau of Justice Special Report: Intimate Partner Violence, May 2000.

³ Bureau of Justice Statistics, Special Report: Intimate Partner Violence and Age of Victim, 1993-1999, Washington, DC (2001).

⁴ H.R. 3402 EAS, Sec. 40002 (2005)(“Violence Against Women and Department of Justice Reauthorization Act of 2005”).

with, or have a child in common with the perpetrator of the violence and should provide protections to survivors who are dating the batterer, regardless of their age or gender, or that of the perpetrator. Although more than half of the states' civil protection order statutes permit victims of domestic violence to obtain a protection order against their dating partner, several do not, leaving many victims without access to justice.

Current Law in Most States Provides Protections to Dating Victims of Domestic Violence

One of the most effective tools available to victims of domestic violence to ensure their safety and to reduce violence is the legal system, particularly the civil protection order.⁵ Beginning with Pennsylvania and the District of Columbia in the 1970s, by 1989 every state had enacted legislation to authorize protective orders to prevent further domestic violence.⁶ Orders are issued by civil courts and are intended to prevent future abuse. Protection orders include a variety of provisions that vary from state to state requiring, *inter alia*, that the batterer (1) stay a certain distance from the victim of domestic violence and her children, (2) not hit or otherwise abuse the victim and (3) not contact the victim in any way. Orders of protection vary in their duration (emergency, temporary or "permanent"), and in many jurisdictions remedies required in a protection order may include temporary custody of children, child support and forms of restitution.⁷ In these ways, orders of protection are intended to provide tangible, specific protection from abuse for victims of domestic violence.

Today, 40 states allow adults who are dating to obtain a civil protection order against their dating partner.⁸ Of those 40 states, 6 require an intimate or romantic relationship⁹ and 3 require a sexual relationship.¹⁰ Thirty-five (35) states allow for minors to obtain civil protection orders against their dating partners, with various restrictions depending upon the age of the minor.

⁵ See e.g., Amy Farmer & Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, 21 CONTEMPORARY ECONOMIC POLICY 158 (April 2003).

⁶ Leigh Goodmark, *Symposium, The Legal Response to Domestic Violence: Problems and Possibilities, Law is the Answer? Do We Know That For Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 St. Louis U. Pub. L. Rev. 7, 10. (2004).

⁷ OFFICE FOR VICTIMS OF CRIME, U.S. DEP'T OF JUST., LEGAL SERIES BULLETIN 4, ENFORCEMENT OF PROTECTION ORDERS 1 (Jan. 2002).

⁸ ALASKA STAT. § 18.66.990(5)(C) (2005), ARK. CODE ANN. § 9-15-103(4)(A) (2005), CAL. FAM. CODE § 6211 (2002), COLO. REV. STAT. § 13-14-101(2) (2006), CONN. GEN. STAT. § 46b-15 (2006), D.C. CODE ANN. § 16-1001(5)(B) (2004), FLA. STAT. ch. 784.046 (2005), HAW. REV. STAT. § 586-1 (2004), IDAHO CODE § 39-6093 (2005), 750 ILL. COMP. STAT. 60/103-103(6) (2005), IND. CODE § 34-26-5 (2004), IOWA CODE § 236.2(e) (2006), KAN. CIV. PROC. CODE § 60-3102 (2003), LA. REV. STAT. ANN. § 46:2151 (2004), ME. REV. STAT. ANN. tit. 19A § 4002(4) (2004), MD. CODE ANN., FAM. LAW § 4-510 (2004), MASS. GEN. LAWS ch. 209A, §1 (2004), MICH. COMP. LAWS § 600.2950 (2004), MINN. STAT. § 518B.2 (2005), MISS. CODE ANN. § 93-21-3 (2004), MO. REV. STAT. § 455.010(5) (2005), MONT. CODE ANN. § 45-5-206 (2005), NEB. REV. STAT. § 42-903 (2003), NEV. REV. STAT. 33.018 (2003), N.H. CODE ADMIN. R. ANN. 173-B:1 (2004), N.J. STAT. ANN. § 2C:25-19 (2006), N.M. Stat. Ann. § 40-13-2 (2005), N.C. GEN. STAT. § 50B-1 (2005), N.D. CENT. CODE § 14-07.1-01 (2005), OKLA. STAT. tit. 22, § 60.1 (2005), OR. REV. STAT. § 107.705 (2005), 23 PA. CONS. STAT. § 6102 (2004), R.I. Gen. Laws § 8-8.1-1 (2003), TENN. CODE ANN. § 36-3-601 (2003), TEX. FAM. CODE ANN. § §71.0021 (2003), VT. STAT. ANN. tit. 15 § 1101 (2003), WASH. REV. CODE § 26.50.010 (2004), W. VA. CODE §48-27-204 (2005), WIS. STAT. § 813.12 (2005), WYO. STAT. ANN. § 35-21-102 (2005)

⁹ ARK. CODE ANN. § 9-15-103(4)(A) (2005), COLO. REV. STAT. § 13-14-101(2) (2006), FLA. STAT. ch. 784.046 (2005), IOWA CODE § 236.2(e) (2006), MINN. STAT. § 518B.2 (2005), N.H. CODE ADMIN. R. ANN. 173-B:1 (2004).

¹⁰ ME. REV. STAT. ANN. tit. 19A § 4002(4) (2004), OR. REV. STAT. § 107.705 (2005), 23 PA. CONS. STAT. § 6102 (2004).

While those of all ages and genders who are in dating relationships are entitled to protection from abuse, there are some categories of victims who are particularly vulnerable:

Unmarried College-Age Women and Teenage Girls Ages 16 to 24 Experience the Highest Rates of Domestic Violence

Recent surveys of high school and college students indicates that they experience the highest rates of domestic violence per capita and the vast majority of them are not married to, live with, or have a child in common with the perpetrator. Most of them experienced this violence at the hands of a person with whom they were dating. Nearly 1 in 5 teenage girls who have been in a relationship report that their boyfriend threatened violence or self-harm when presented with a breakup.¹¹ Thirteen percent (13%) of teenage girls who have been in a relationship report being physically hurt or hit.¹² Forty percent (40%) of teenage girls ages 14 to 17 say they know someone their age who has been hit or beaten by a boyfriend. Between 30 and 50% of female high school students report having experienced teen dating violence. Twenty-one percent (21%) of college students report they have experienced dating violence by a current partner and 32% report experiencing dating violence by a previous partner.¹³ Sixty percent (60%) of acquaintance rapes on college campuses occur in casual or steady dating relationships.¹⁴

Domestic Violence Occurs at the Same Rates in Same-Gender Relationships as it Does in Opposite-Sex Relationships

Twenty to thirty-five percent (20-35%) of men and women in gay and lesbian relationships experience domestic violence.¹⁵ To ensure that the same protections are provided to victims of domestic violence in same-gender relationships, protection order statutes must not require marriage between the victim and the partner as a prerequisite, since same gender couples may not marry in most states in the country.

Survivors of domestic violence who are in a dating relationship with the perpetrator of the violence but are not married to, live with or have a child in common with the perpetrator are no less victims of violence than those who are. Protection for these victims is most readily obtained through the civil protection order statutes. The goal of the statutes is to prevent abuse wherever it is occurring in the domestic relationship. By urging states to amend their protective order statutes to include victims of dating violence, the American Bar Association will be recognizing the reality of domestic violence and of survivors of that violence and encouraging states, local governments, and territories to do the same.

¹¹ Liz Claiborne Inc., Study on Teen Dating Abuse, Teenage Research Unlimited, www.loveisnotabuse.com (February 2006).

¹² Id.

¹³ C. Sellers and M. Bromley, "Violent Behavior in College Student Dating Relationships," *Journal of Contemporary Justice* (1996).

¹⁴ I. Johnson and R. Sigler, "Forced Sexual Intercourse on Campus," *Journal of Contemporary Criminal Justice* (1996).

¹⁵ Lundy, S., "Abuse That Dare Not Speak Its Name: Assisting Victims of Lesbian and Gay Domestic Violence in Massachusetts," 28 *New England Law Review* 273 (Winter 1993).

Respectfully Submitted,

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