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DOMESTIC VIOLENCE: ILLINOIS RESPONDS TO THE PLIGHT OF THE BATTERED WIFE—THE ILLINOIS DOMESTIC VIOLENCE ACT

INTRODUCTION

The term domestic violence encompasses many categories of violent acts between family members; one of the most pervasive is wife beating. It is estimated that as many as 50% of all women will be battered during their lives. Although the high

1. The network of family violence extends from grandparents to infants and spans the generations in between. See generally J. Eekelaar & S. Katz, Family Violence (1978); J. Renvoieze, Web of Violence (1978). This comment deals with wife beating, but the term “wife” necessarily includes cohabitants since the “right” to batter arises from the relationship of the parties rather than their legal status. The use of violence against a spouse is not limited to wives, however, and the existence of husband beating should be noted. See Bates, A Plea for the Battered Husband, 11 Fam. L. 90 (1981).

2. One of the most visible results of wife beating is the high rate of homicide it produces. FBI, Uniform Crime Reports 11-12 (1980), states that criminal homicide is largely a societal problem over which law enforcement has little control. 51% of the murders committed in 1980 were perpetrated by relatives or acquaintances. 16% of the killings occurred within the family; half of those involved killing a spouse. Id. at 12. See infra note 28.

3. M. Straus & G. Hotaling, The Social Causes of Husband-Wife Violence 27 (1980). Straus and Hotaling applied the incidence rate in their study of 2,143 couples to the nation’s 47 million couples and projected that approximately 1.8 million wives are beaten by their husbands annually. The authors suggest, however that this figure is a drastic understatement and maintain that a truer figure is 50-60%. Id. at 31. See also T. Davidson, Conjugal Crime 3 (1978) (domestic violence touches 50% of American marriages); A. Strauss, R. Gelles & S. Steinmetz, Behind Closed Doors: Violence in the American Family 3 (1980) (spousal violence occurs in at least one of every six homes every year); L. Walker, The Battered Woman 19 (1979) (50% of all women are battered) [hereinafter cited as Walker]; Fields, Representing Battered Wives, or What to Do Until the Police Arrive, 3 Fam. L. Rep. (BNA) 4025 (1977) (54% of the women who seek a divorce from Brooklyn legal services are victims of wife beating); Note, The Case for Legal Remedies for Abused Women, 6 N.Y.U. Rev. L. & Soc. Change 135, 136-37 (1977) (estimates range from 1,000,000 to 28,000,000).

rate of wife beating has been known throughout history, scant attention has been paid to the plight of battered women. Over the past several years, however, public awareness has increased, resulting in legislation in virtually every state passed specifically to deal with the problem of spousal abuse. The recent Illinois Domestic Violence Act is a bold and creative effort to provide protection to an abused spouse. Although flawed in some respects, the Act provides an excellent framework within which policy changes can occur. This comment addresses issues concerning battered women and the Act's attempt to alleviate some of the difficulties encountered by battered wives in obtaining relief from abuse.

MARRIAGE, CHASTISEMENT, AND THE COMMON LAW

To understand societal acceptance of wife beating, one need only look at the attitudes toward women and marriage at common law. Historically, the view of the marriage license as a license to batter is well documented. The right of a husband to chastise his wife arose from the traditional view that a wife was her husband's property. The early common law viewed the husband as a "domestic monarch" while his wife lost all legal iden-
As head of his family, a husband had control over his wife’s personal and property rights; he also obtained custody of his wife. Since the husband was made responsible for the wife’s actions, the common law gave him the right to control her. To enforce this right of control, a husband was allowed to “claim the ancient privilege” of beating his wife for correctional purposes.

English common law formed the basis of American law on domestic relations. The doctrine of merger was transplanted to the colonies; husband and wife became one, and the husband was the one. As in England, the wife was subject to many disa-

9. “By marriage, the husband and wife are one person in the law... the very being and legal existence of the woman is suspended during the marriage or at least is incorporated into that of her husband under whose wing [and] protection she performs everything.” 1 BLACKSTONE, COMMENTARIES ON THE LAW OF ENGLAND 444 (Cooley 3d ed. 1884). This is known as the doctrine of merger.

10. E. PECK, THE LAW OF PERSONS AND OF DOMESTIC RELATIONS 189 (3d ed. 1930). Peck suggests that “the headship of the husband... grows rather out of the existing and recognized customs of civilization, and the natural qualities of the parties (the greater strength and activity of the man, the greater gentleness and especially the maternal function of the woman.)” Id.

11. At common law, a wife could not enter into contracts, operate her own business, convey or dispose of property, nor bring an action in the courts without her husband’s consent. H. CLARK, DOMESTIC RELATIONS 724-26 (3d ed. 1980).

12. In re Cochrane, 8 Dowl. 630 (Eng. 1840) (husband has the right to kidnap and confine his wife). A husband could also obtain from an ecclesiastical court a decree of restitution of conjugal rights enforceable by attachment of the wife’s person. This method of enforcement was abolished by an Act to Amend the Matrimonial Causes Act, 47 Vict. 1884, ch. 68 § 5. In 1891, however, a husband locked his wife in his house for refusal to live with him, and she had to obtain a writ of habeas corpus for her release. Regina v. Jackson, 1 Q.B. 671 (1891).

13. “For as [the husband] is to answer for her misbehavior, the law thought it reasonable to intrust him with this power of restraining her, by domestic chastisement in the same moderation that a man is allowed to correct his apprentices or his children.” 1 BLACKSTONE, COMMENTARIES ON THE LAW OF ENGLAND 444 (Cooley 3d ed. 1884).

14. In re Cochrane, 8 Dowl. 630, 633 (Eng. 1840) (husband may lawfully beat his wife, but not in a violent or cruel manner). See also In re Price, 2 Foster & Finl. 263, 175 Eng. Rep. 1052 (1860) (husband may forcefully regain custody of his wife); Rex v. Lister, 1 Strange 478, 93 Eng. Rep. 645 (1722) (where wife makes undue use of her liberty, husband may lay her under restraint). In England, the right of domestic chastisement was legally abolished in Regina v. Jackson, 1 Q.B. 671 (1891).

15. See supra note 9. See also Thompson v. Thompson, 218 U.S. 611 (1910) (common-law theory of merger requires a complete identity of interests and a single head with power and control); Haggett v. Hurley, 91 Me. 542, 40 A. 561 (1898) (as head of family, husband acquires all of wife’s personal and real property to insure unity of purpose).

16. See, e.g., Thompson v. Thompson, 218 U.S. 611 (1910) (entire legal existence of the woman incorporated into that of the husband); Adams v. Kellogg, 1 Am. Dec. 18 (Conn. 1786) (wife by marriage is made one with the
bilities upon coverture. Similarly, a husband's right to physically coerce his wife into obedience was explicitly acknowledged by American courts as part of inherited common-law traditions. Modified in America, the use of chastisement was limited to the "rule of the thumb" by which a husband could use a whip no larger than his thumb for the purpose of enforcing domestic discipline. Some courts chose not to invade the domestic forum unless there was permanent injury, theorizing that public exhibition of family quarrels made reconciliation impossible and "encourage[d] insubordination." Other courts used a weighing process and refused to "inflict upon society the greater evil of raising the curtain upon domestic privacy, to punish the lesser evil of trifling violence." Marital privacy was the overriding concern and courts preferred to "draw the curtain, shut out the public gaze, and leave the parties to forget and forgive."
In the latter half of the nineteenth century, the married woman's position improved partly as a result of Married Women's Property Acts.\(^{23}\) By the end of the century, courts had explicitly rejected the right of chastisement and characterized it as a "revolting precedent."\(^{24}\) Yet, vestiges of the old established practices remain. Although the law no longer views marriage as an owner-chattel relationship, traditional attitudes continue to influence the parties' roles within a marriage. For example, in many states the husband is still considered the head of the family.\(^{25}\) Conflicts arise when a husband attempts to assert outmoded concepts of authority within the family structure and the home begins to operate more like a prison than a shelter.\(^{26}\)


24. Harris v. State, 71 Miss. 462, 14 So. 266 (1894). Mississippi had been the first state to expressly recognize the right of chastisement. See supra note 18 and accompanying text. See also Fulgham v. State, 46 Ala. 143, 146-47 (1871) (rejected husband's privilege "to beat her with a stick, to pull her hair, choke her, spit in her face or kick her about the floor, or to inflict upon her other like indignities"); Commonwealth v. McAfee, 108 Mass. 458 (1871) (manslaughter conviction upheld where husband beat his wife to death).

25. As head of the family, the husband chooses the domicile. See Crawley v. Bauchens, 13 Ill. App. 3d 791, 300 N.E.2d 603 (1973) (domicile of wife for custody determination is that of her new husband), aff'd, 57 Ill. 2d 360, 312 N.E.2d 238 (1974); Hildebrand v. Hildebrand, 105 Ill. App. 2d 261, 244 N.E.2d 866 (1969) (constructive desertion where wife refused to move to husband's domicile); Valentin v. D.G. Swanson & Co., 25 Ill. App. 2d 285, 167 N.E.2d 14 (1960) (wife has a duty to follow husband to shelter he provides as head of the household).

Similarly, it is customary for a wife to assume her husband's surname. In Petition of Hauptly, 262 Ind. 150, 312 N.E.2d 857 (1974), the Indiana Supreme Court found the trial court's refusal to grant a petition for a change back to the maiden name unreasonable where the trial court theorized that a change of name might embarrass petitioner's child. On appeal, the state asserted, "[the wife] believes that the fact that she is the breadwinner of the family should be publicized so that all will know her husband had been emasculated and that she is the head of the family." Id. at 153, 312 N.E.2d at 861 (Hunter, J., concurring). See generally Hughes, And Then There Were Two, 23 Hastings L.J. 253 (1971).

26. A former batterer who started Abusers Changing Themselves (ACT), an Illinois self-help group in Chicago and Champaign, suggested
Violence itself results partly from a power struggle to establish dominance within the family. Without negative reinforcement that such conduct is criminal, the violence continues and often escalates, forcing some battered women to defend themselves by using drastic methods which can result in the death of the woman or her spouse. In addition, family violence is self-perpetuating. It is cyclic in nature and operates as a role model for children who become the next generation of abusers and victims. Studies clearly link batterers with a childhood marred by abuse. A battered child, or one who observes that men have been socialized to batter. He stated, "I thought I was controlling my family, being a good father." Chicago Tribune, Aug. 22, 1982, at 5, col. 5. (emphasis added).

27. Although the value of a homemaker's services has been recently recognized, society still expects the "breadwinner" to be the head of the household. For example, stress caused by a lay-off or unemployment has a direct correlation to an increase in wife abuse. One husband who had abused his wife both physically and psychologically for nearly eight years admitted that his violence was triggered when his wife went to work while he became a househusband. Id. One commentator attributes wife beating to several factors: (1) high-level conflict; (2) the nation's frequent use of violence to achieve desired ends; (3) the training of children to be violent by their parents; (4) the link between love and violence; (5) the male dominant nature of the family system which corresponds to the use of violence to maintain dominance; and (6) various economic, social, and criminal inequalities which combine to lock women into brutal marriages. Straus, Wife-beating: How Common and Why, FAMILY VIOLENCE 41 (1977) [hereinafter cited as FAMILY VIOLENCE].

28. Study of Female Killers finds 40% were Abused, N.Y. Times, Dec. 20, 1977 at 20, col. 6. For nearly eighteen months, the superintendent of the Cook County Jail's women's center interviewed every woman charged with murder or manslaughter for killing their male partners. Over 40% of the women had killed their husbands or lovers as a result of physical abuse. Id. See generally E. BOCHNAK, WOMEN'S SELF DEFENSE CASES (1981); Note, The Battered Wife's Dilemma: To Kill or to be Killed, 32 HASTINGS L.J. 895 (1981).

29. The lessons that are learned as a child provide the model by which one's own children are taught. One author suggests that there are three consequences of this learning process. First, a child learns that those who love him the most are also allowed to hit him. Second, because the punishment is used to train the child to avoid dangers, physical violence is established as morally acceptable. Third, the child learns that when something is important, physical force is justified. FAMILY VIOLENCE, supra note 27, at 45. Straus asserts that these lessons learned from the direct observance of physical violence set the pattern for future behavior. Id. See also FLEMING, supra note 3, at 276-82 (children who see violence as a way of life perpetuate such violence as adults); MARTIN, supra note 3, at 23-25 (for children, violence becomes the norm).

30. The correlation between being an abuser and having been an abused child is very high. In a study based on data from 1,146 families with a child age 3-17 living at home, the incidence of child abuse occurred at the rate of 14 out of every 100 children. STRAUS, Family Patterns and Child Abuse in a Nationally Representative American Sample, THE ABUSED CHILD IN THE FAMILY AND IN THE COMMUNITY 213 (1978). Straus found that children of wife-beaters beat their own children 39% more often than children of men who did not abuse their wives. During the year of the survey,
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tering as an acceptable method of solving disputes, tends to repeat the pattern of abuse as an adult.

RESPONSE OF THE LEGAL SYSTEM

Despite this history, traditional attitudes of privacy within the marriage continue to influence police and prosecutorial response. That a man's home is his castle is an accepted doctrine is shown by examining police response to domestic violence calls. In a study of Kansas City domestic violence homicides, the police had been called at least once in over 80% of the cases, and in 50% of the cases, the police had been called five or more times. In a study of calls to Chicago police, it was determined that more calls were attributable to domestic disturbances than to murder, aggravated assault, battery, and all other serious crimes combined.

Notwithstanding the high number of calls to police, most departments have a policy of adjustment rather than arrest. Departmental attitudes generally reflect the priorities placed on various crimes. If the police training is such that marital batteries are not viewed as crimes, then it is not surprising that police make little effort to invoke the criminal laws against an abuser. The lack of police intervention in domestic violence is attributed to various factors. Traditionally, police have had little

in families where the husband hit his wife, the incidence of child abuse was 129% greater than in other families. See also FLEMING, supra note 3, at 272-74 (the correlation between adult abusers who were also abused as children is 49.1%).


32. Parnas, The Police Response to the Domestic Disturbance, 1967 Wis. L. Rev. 914, 916 [hereinafter cited as Police Response]. The figures remain high, and the Chicago Police Department estimates that over 40% of all calls were catalogued to “domestic disturbance” during 1981, making this category of calls the largest. Further, approximately 80% are repeat calls. Address by Lt. Rizzly, Chicago Police Department, Chicago Bar Association’s Battered Women Panel, Feb. 8, 1982.

33. MARTIN, supra note 3, at 93-100.

34. Some departments use screening procedures in which domestic disturbance calls are given low priority. Professor Parnas found this to be the case in his study of Chicago Police. Police Response, supra note 32, at 916. Through screening, a dispatcher who takes the call may refer the caller to an appropriate agency or may attempt to solve the matter over the phone. See also FLEMING, supra note 3, at 170-75 (Chicago and New York police departments minimize the seriousness of wife-abuse through screening policies).

35. See generally K. DAVIS, POLICE DISCRETION (1975) (study of Chicago’s selective police enforcement techniques); Parnas, Police Discretion and Diversion of Incidents of Intra-Family Violence, 36 LAW & CONTEMP. PROB. 539 (1971).
training in handling domestic violence. When a police car is dispatched, the officers have a great deal of discretion in resolving the dispute, and they may feel that marital problems are civil matters or personal disputes to be solved without outside interference. While police consider domestic disturbances trivial, part of the dislike which police officers have for domestic violence calls can be traced to the extreme risk of injury in responding to these calls. Given police attitudes toward domestic violence, it is not surprising that arrests are very rare in these cases.

One striking illustration of the problems a woman faces in attempting to obtain police protection from an abusive husband is shown in the case of Hartzler v. City of San Jose. In Hartzler, the administrator of the estate of Ruth Bunnell brought an action for wrongful death due to police negligence. After her estranged husband had called and told her that he was coming over to kill her, Mrs. Bunnell requested immediate police assistance, but the police instead suggested that she call again when

36. In Chicago, in a 14-week period with 490 hours of training, less than one hour dealt with "disturbances at a residence." Police Response, supra note 32, at 916-17. See also Buzawa & Buzawa, Legislative Responses to the Problem of Domestic Violence in Michigan, 25 Wayne L. Rev. 859, 863 (1979) (until 1978, Detroit had only three hours of lecture on domestic training).

37. See Parnas, Police Discretion and Diversion of Incidents of Intra-Family Violence, 36 Law & Contemp. Prob. 539, 542 (1971). "Policemen, as are most males, are taught self-reliance and the 'fight your own battles' philosophy from the cradle. Similarly, we are socialized into the conscious perceptions of masculine-feminine roles. In our society this translates into dominance-submission terms. The man is the boss, the owner; the female, the subordinate." Martin, supra note 3, at 96 (quoting Commander James D. Bannon of the Detroit Police Department).

38. Police Response, supra note 32, at 914. Nationwide, disturbance calls produced the largest number of assaults on police officers (33%). Further, 12% of the police fatalities occurred while officers were responding to disturbance calls. FBI, Uniform Crime Reports 333, 338 (1980).

39. "[P]olice arrest practices vary with the relational nature of complainant-suspect conflicts. The probability of arrest is highest when the citizen adversaries have the most distant social relation to one another, i.e., when they are strangers." Black, The Social Organization of Arrest, 23 Stan. L. Rev. 1087, 1097 (1971). One reason for police apathy may be the expected outcome of an arrest situation. When the conviction rate is nearly nonexistent, the view that domestic violence is not a crime is reinforced. See Inslaw, Arrest Convictability as a Measure of Police Performance 12 (April 23, 1981). Using a nationally representative survey, this study produced data on the conviction rate for various crimes. Convictions were drastically reduced when a prior relationship existed between the victim and offender. Offenses in which the parties were "friends or acquaintances" had a conviction rate of 50-60% of the rate for offenses in which the parties were strangers. When a family relationship existed, convictions were obtained only 25-35% as often.

40. 46 Cal. App. 3d 6, 120 Cal. Rptr. 5 (1975).
her husband actually arrived. Forty-five minutes later, Mack Bunnell arrived and stabbed his wife to death. The police did not respond until a neighbor called sometime later that evening. During the year prior to her death, Mrs. Bunnell had made at least 20 calls to police to complain that her husband was committing violent acts against her and her two daughters. The California Court of Appeal affirmed the dismissal of the complaint because there was no special duty to protect Mrs. Bunnell.

On a more positive note, where twelve women brought an action against the New York City Police Department for failure to provide police protection from assaults, the trial court refused to dismiss the complaint. The court declared:

For too long, Anglo-American law treated a man's physical abuse of his wife as different from any other assault, and indeed as an acceptable practice. If the allegations of the instant complaint—buttressed by hundreds of pages of affidavits—are true, only the written law has changed; in reality, wife beating is still condoned, if not approved, by some of those charged with protecting its victims . . . the police owe a duty of protection to battered wives in the

41. The department refused to send assistance in response to her call. Id. at 8, 120 Cal. Rptr. at 6.
42. These calls resulted in only one arrest for assault. Id.
43. The California Tort Claims Act specifically barred actions "for failure to provide sufficient police protection." Id. The general rule persists that a municipality is not liable for its failure to provide police protection on the theory that any duty of protection is owed the public generally, and re-dress for injury must occur in the form of a public prosecution. See, e.g., Massengill v. Yuma County, 104 Ariz. 518, 456 P.2d 376 (1969) (sheriff, who followed but failed to arrest drunk driver who later caused five deaths, owed duty to public, not to individuals); Riss v. New York, 27 A.D.2d 217, 278 N.Y.S.2d 110 (1967) (woman who called police after threats on her life was refused protection; when a hired assailant blinded her, city held not liable), aff'd, 22 N.Y.2d 579, 240 N.E.2d 860, 293 N.Y.S.2d 897 (1968). A duty to supply protection to a particular individual exists only if some "special relationship" is shown. Such a relationship occurs where the municipality affirmatively assumes a special duty to protect a particular individual. A special relationship was found in Baker v. New York, 25 A.D.2d 770, 269 N.Y.S.2d 515 (1966), where a wife, who had an order of protection, was denied police protection twice before being shot by her husband. In Hartzler, the court found no special relationship to exist, thus no cause of action was stated. 46 Cal. App. 3d at 9, 120 Cal. Rptr. at 7. See generally Annot. 46 A.L.R.3d 1084 (1972).
44. Bruno v. Codd, 90 Misc. 2d 1047, 396 N.Y.S.2d 974 (N.Y. Sup. Ct. 1977) (suit for declaratory and injunctive relief). On appeal, the appellate division reversed on the ground that the record did not present a proper justiciable cause. 64 A.D.2d 582, 407 N.Y.S.2d 165 (N.Y. App. Div. 1978). Although that decision was affirmed, the New York Court of Appeals found the cause was justiciable, but because the parties had agreed to a consent decree, the plaintiffs had "substantially all the relief they reasonably could expect." 47 N.Y.2d 582, 590, 393 N.E.2d 976, 980, 419 N.Y.S.2d 901, 903 (1979).
same manner as they owe it to any citizen injured by another's assault.  

Prosecutors and judges are also influenced by traditional nonintervention attitudes. Prosecutors avoid invoking the criminal process against husbands who assault their wives. Judges, too, believe in the sanctity of marriage and tend to issue orders which attempt to reconcile the parties rather than punish the abuser. Illustrative of this position is the case of a woman who took her abusive former common-law husband to court five separate times within a year and a half. Each time the defendant promised to leave her alone, and each time the judge released him on his "good behavior." During the third attack, she was beaten so badly with a broom handle that her right eye had to be removed at the hospital. Although the judge was informed each time of the previous assaults, he continued to release the abuser.

Despite the legal system's preference to avoid intruding into domestic violence, heightened public awareness and sensitivity has induced responsive action. In Chicago, for example, the police department responded to pressure from the Legal Center for Battered Women and issued a Patrol Division Special Order in 1978. The order outlined the expected proper response of police in wife beating complaints; these complaints were not to be considered a domestic disturbance, but rather a crime requiring investigation.

45. Bruno v. Codd, 90 Misc. 2d 1047, 1048, 396 N.Y.S.2d 974, 975 (N.Y. Sup. Ct. 1977). The trial court denied a motion for certification of the class, but allowed plaintiffs to submit affidavits from both named parties and 48 other abused wives. Id. at 1053-54, 396 N.Y.S. 2d at 979.

46. See Parnas, Prosecutorial and Judicial Handling of Family Violence, 9 CRIM. L. BULL. 733, 740 (1973) (during the first ten months of 1970, out of a total of 5,057 warrant requests only 323 resulted in warrants being issued in Detroit).

47. One author notes the reluctance of judges to impose penalties, preferring marriage counselling and social service disposition. Gates, Victims of Rape and Wife Abuse, WOMEN IN THE COURTS 186-89 (1978). One reason for judicial preference of diversionary programs may be the realization that fines or incarceration could create financial hardship for the whole family. It is necessary, however, to distinguish between those cases that could benefit from mediation and those in which punishment is appropriate. Gates finds this distinction lacking in most judicial dispositions. Id.


49. Patrol Division Special Order 78-18, entitled "Battered Females," was issued on Aug. 11, 1978.

50. The Special Order further provided: (1) if the woman has been injured and the man is present, he should be arrested if the woman wants to sign a complaint; officers can use their discretion in deciding whether a battery had occurred despite lack of visible injuries on the woman's body;
The Legal Center for Battered Women also met with the Cook County State's Attorney's Office and judges from the Circuit Court of Cook County. Thereafter, the State's Attorney's Office issued a memo stating its new policy on battered-woman complaints. The memo stated that the decision whether to prosecute a case should be based on the evidence and not on the status of the parties. The judges agreed to discontinue the practice of requiring the defendant to sign a peace bond in these cases.

Obtaining the necessary policy and procedural changes is the first step in improving police, prosecutorial and judicial response. If the criminal justice system treats battered women's complaints seriously and imposes criminal sanctions, abusers will receive negative reinforcement for their violence.

(2) where there is serious injury and the woman is unable to sign the complaint, the officers should arrest the man on their signed complaint; (3) if the man has left, the woman should be provided with information about legal assistance, counselling and shelter and with information on where to obtain a warrant; and (4) the officers should prepare a case report. Id.

51. The memo of June 20, 1978, by Bernard Carey, State's Attorney of Cook County, suggested that the woman be apprised of the various sentences which could be imposed. Additionally, the assistant state's attorney should amend the charges (from disorderly conduct to battery) where the man was inappropriately charged. Further, the memo recommended that the assistant state's attorney ask the judge for an admonishment against further abuse where the case is continued. Memo, June 20, 1978.

52. ILL. REV. STAT. ch. 38, § 200-1 (1981), provides a procedure whereby judges can "require persons to give security to keep the peace, or for their good behavior." It is not necessary to show a conviction of an offense to obtain a peace bond. ILL. REV. STAT. ch. 38, § 200-15 (1981). If the defendant does not post the required recognizance, he can be jailed. ILL. REV. STAT. ch. 38, § 200-7 (1981). Professor Parnas, in his study of selected practices of Chicago courts, found the procedure to be a sham. No deposit was required, no records were kept, and the judges recognized that the bonds were unenforceable. Parnas, Judicial Response to Intra-Family Violence, 54 MINN. L. REV. 585, 600-05 (1970). See generally Note, Peace and Behavior Bonds—Summary Punishment for Uncommitted Offenses, 52 VA. L. REV. 914 (1966) (questions the constitutionality of peace bonds).

53. Presiding Judge Charles B. Horan issued a memo on January 22, 1979, ordering the municipal court judges to discontinue this practice. The judges also agreed to limit the number and length of continuances granted in certain cases and to continue to advise the defendant that further physical abuse of the victim would result in criminal charges. When social-service supervision or probation is imposed, written conditions of that disposition could require that the defendant not contact or harass the woman and that the defendant attend counselling sessions. These agreements arose out of a discussion held on Feb. 16, 1979, between the Legal Center for Battered Women, the Chicago Council of Lawyers, and judges of the First Municipal District of the Circuit Court of Cook County.
DOMESTIC VIOLENCE LEGISLATION

Legislation Outside Illinois

An alternative response to the problem of wife beating first emerged as a result of efforts in England to provide relief to battered women. In 1971, Erin Pizzey, together with a small group of women, opened Chiswick Women's Aid, the only shelter for battered women in England. Originally established as a community center, it was soon transformed into a shelter for the hundreds of women and children who were seeking to escape violent relationships. Domestic violence became the subject of massive publicity as women came to the Chiswick Women's Aid from all over England. The shelter was soon overflowing with abused women and their children. In 1976, England passed a protection-from-abuse statute, partially in response to the efforts of Erin Pizzey.

During the 1970's, the United States also confronted the problem of wife beating. Publicity about the plight of the battered woman drew attention to the difficult situation which battered women face, and a number of states passed anti-abuse legislation. Many statutes emulated Pennsylvania's Protection From Abuse Act, but a variety of approaches are found when surveying the various state laws. Some states appropriated funding to establish shelters. In other states, the focus

54. The shelter rapidly expanded and shelters opened throughout England and Europe. See E. PIZZEY, SCREAM QUIETLY OR THE NEIGHBORS WILL HEAR (1974). A few of these shelters did exist in the United States before Erin Pizzey's work was published. Haven House in California housed six hundred women and two thousand children from 1965-72 before it closed due to financial problems. In Maine, a refuge for women operated from 1967-69, closing due to lack of federal funds. MARTIN, supra note 3, at 197-98. Clearly, though, Chiswick Women's Aid was the starting point for the establishment of shelters dealing specifically with the problem of domestic violence. See WALKER, supra note 3, at 192-95.


was simplifying access to the courts. Still other states concentrated on improving training techniques for better police enforcement in dealing with family situations, or allowed the police to arrest without a warrant where they believed an assault had occurred. Some states included cohabitants in their definition of family, allowing extended protection to these members of the household.

The Illinois Domestic Violence Act

Illinois' response to domestic violence embodies several of the various approaches taken by other states. The Illinois Domestic Violence Act, effective March 1, 1982, provides new tools for protecting a battered wife. The Act has four general purposes: (1) recognition of domestic violence as a serious crime; (2) consideration of the economic disadvantage of the abused victim; (3) police involvement to encourage cooperation and support; and (4) expansion of civil and criminal remedies.
A new concept in remedies provided by the Act is the order of protection, which replaces the civil injunction. Prior to the passage of the Act, a battered wife had to either begin a criminal proceeding or obtain a civil injunction; in both cases the result was unsatisfactory. In the criminal proceeding, a husband would commonly receive conditional supervision or a suspended sentence and be released to abuse his victim again. If a wife obtained a civil injunction and her husband violated it, she would be told by the police that this was now a civil matter, i.e., that the injunction was enforceable only by contempt proceedings. The order of protection was designed to remedy these defects. Similar to an injunction, the order is a written judicial order directing an abuser to refrain from specified behavior and to meet particular responsibilities. A court may take any of the following actions:

1. prohibit the abuser from threatening or continuing abuse;

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68. See supra note 66.


70. This situation left the victim without protection if contempt proceedings could not be begun immediately, e.g., if the victim was battered during a weekend. Studies have shown that the weekend is a peak period for abuse. See, e.g., Roy, A Current Survey of 150 Cases, Battered Women 54 (M. Roy ed. 1977) (69% of respondents indicated that abuse took place on a weekend).

71. An order can be final, preliminary or temporary. Ill. Rev. Stat. ch. 40, § 2301-3 (1981). An order may remain in effect for one year if obtained in an independent action. If issued in an action as preliminary relief under the IMDMA, the order expires at entry of the judgment of divorce or separation. In criminal actions, orders expire with the final disposition of the charges. Ill. Rev. Stat. ch 40, § 2302-11 (1981). An order may have multiple extensions for a total duration of one year.

(2) grant exclusive possession of the residence to the victim or require the abuser to provide other housing;  
(3) establish temporary support, custody, and visitation rights;  
(4) prohibit child snatching;  
(5) require or suggest counselling for an abuser;  
(6) restrain the abuser from damaging or disposing of marital property;  
(7) require the abuser to pay actual monetary compensation for losses suffered as a direct result of the abuse;  
(8) require an abuser to pay court costs and attorney's fees;  
(9) bar the abuser from contact with the victims and from entering the residence, school or place of business of the victims.

Delineating the boundaries of the Act's scope remains a problem. As currently drafted, the Act extends protection to "family or household members" which includes spouses, former spouses, individuals sharing a common household, and parents and children. This definition may be broader than intended since, under the guise of an order of protection, a form of "palimony" might be available to cohabitators.

In Hewitt v. Hewitt, the Illinois Supreme Court, in construing the Illinois Marriage and Dissolution of Marriage Act

73. ILL. REV. STAT. ch. 40, § 2302-8(c)(2) (1981). Exclusive possession is available where the parties are spouses, or where the victim has an interest in the property, or where the defendant has a duty to support the victim or minor children. Exclusion of the defendant does not, however, affect title to the property.

74. ILL. REV. STAT. ch. 40, § 2302-8(c)(7) (1981). Support and/or maintenance are available in accordance with the standards set forth in §§ 504—505 of the IMDMA.


76. ILL. REV. STAT. ch. 40, § 2302-8(c)(6) (1981). The property must be held by the plaintiff solely or jointly.

77. ILL. REV. STAT. ch. 40, § 2302-8(c)(8) (1981). Compensatory losses include medical expenses, loss of earnings, out-of-pocket losses, and moving expenses. The right to trial by jury is available under this subsection.


80. ILL. REV. STAT. ch. 40, § 2301-3 (1981). Abuse is defined as "striking, threatening, harassing or interfering with the personal liberty . . . but excludes any reasonable discipline of a minor child. . . ." Id. at § 2301-3(1) (as amended; P.A. 82-888, Aug. 5, 1982).

81. The remedy of exclusive possession, for example, is available to a cohabitor who has either a joint interest in the property or a minor child whom the defendant is legally obligated to support. See supra note 73.

82. 77 Ill. 2d 49, 394 N.E.2d 1204 (1979). The trial court denied a cause of action for division of property by cohabitators Victoria and Robert Hewitt. They had lived together for 15 years and had 3 children. At the time of filing, Robert had an income from his dental practice in excess of $80,000 per year. Id. at 52-54, 394 N.E.2d at 1205. The appellate court reversed, relying principally on Marvin v. Marvin, 18 Cal. 3d 660, 557 P.2d 106, 134 Cal. Rptr. 815 (1976). 62 Ill. App. 3d 861, 380 N.E.2d 454 (1978). The Illinois Supreme Court reversed the appellate court and affirmed the trial court's dismissal of the complaint. 77 Ill. 2d 49, 394 N.E.2d 1204 (1979). This decision has evoked extensive commentary. See, e.g., Levin & Spak, Hewitt v. Hewitt—A Dis-
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(IMDMA), applied the doctrine of illegality and expressly rejected property claims of cohabitators. The court found that cohabitation without marriage violated public policy in that it amounted to a common-law marriage and the IMDMA limited recovery in nonmarital relationships to putative spouses. A conflict is created if the Act is construed to allow a cohabitant to obtain rights which have been expressly denied under the IMDMA as announced in Hewitt. The order of protection, as now defined, includes cohabitators among those eligible for the remedy of exclusive possession or alternate living expenses. It is in conflict with existing Illinois law and should be re-examined by the legislature.

An action for an order of protection can be commenced by petition in civil court, in conjunction with an action under the IMDMA, or in a criminal proceeding as a condition of pre-trial release or post-trial probation or supervision. Since the vari-

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83. 77 Ill. 2d at 58-59, 394 N.E.2d at 1208. Immorality as a ground for refusal to enforce agreements can be traced to Pearce v. Brooks, L.R., 1 Ex. 213 (1866). In Pearce, plaintiffs sued defendant, a known prostitute, for payment on a lease agreement for carriage rental. The court held the contract illegal on the ground that it promoted immorality, since the defendant used the carriage to ply her trade. Id. at 215. Courts have often used this doctrine to void contracts involving sexual consideration. See, e.g., In re Estate of White, 15 Ill. App. 3d 200, 303 N.E.2d 569 (1973) (no implied contract to pay for services when a "family" relationship existed). See also Restatement of Contracts § 539 (1932).

84. The petition alleged that Victoria had provided financial aid to Robert for his professional education. 77 Ill. 2d at 53, 394 N.E.2d at 1205.

85. Such a public policy argument was used in Jarrett v. Jarrett, 78 Ill. 2d 337, 400 N.E.2d 421 (1979), where the court granted the husband's petition for a change of custody of three children from their mother on the ground that she was living in a continuing conjugal relationship with a man to whom she was not married. The dissent noted that "courts should not impose personal preferences . . . and are well advised to leave to the theologians the question of the morality of the living arrangement into which the plaintiff had entered." Id. at 351, 400 N.E.2d at 427 (Goldenhersh, J., dissenting).


87. Ill. Rev. Stat. ch. 40, § 305 (1981). The IMDMA only grants legal recognition to putative spouses if they have a good faith belief in the existence of the marriage.


ous remedies\footnote{See supra notes 72-79 and accompanying text.} are available in any of these alternative actions, a problem of forum shopping arises.\footnote{An order of protection may be sought in any county where the abuse occurred or where the parties reside. ILL. REV. STAT. ch. 40, § 2302-5(a) (1981). For example, when an attorney brings an independent action for an order of protection, he may, for tactical reasons, choose a forum highly inconvenient to the defendant. The Act provides, however, that “objection to venue is barred if not made within such time as [the] response is due.” ILL. REV. STAT. ch. 40, § 2302-5(c) (1981). Further, the Act grants the circuit court jurisdiction to issue orders of protection. ILL. REV. STAT. ch. 40, § 2302-1 (1981). Such a broad grant of jurisdiction can create practical problems where, for example, a court is unfamiliar with the issues necessarily involved in obtaining an order.} Also, it is possible that a criminal court or municipal court may hear matters traditionally reserved for the domestic relations courts. Problems created by concurrent jurisdiction and forum shopping remain to be resolved by future legislation.

One other important issue raised by the Act is the denial of the right to trial by jury. In an action to obtain or modify an order of protection, the defendant has no right to trial by jury, except on the issue of compensatory damages.\footnote{Traditionally, the contempt power was considered equitable in nature and, therefore, jury trials were not available. 3 W. HOLDsworth, History of English Law 391-94 (5th ed. 1942); Dobbs, Contempt of Court: A Survey, 56 Cornell L. Rev. 183 (1971). The longstanding rule in Illinois is that there is no right to trial by jury in cases of civil contempt. Barclay v. Barclay, 184 Ill. 471, 56 N.E. 821 (1900). The United States Supreme Court, however, has held that there is a right to trial by jury in criminal contempt cases. Duncan v. Louisiana, 391 U.S. 145 (1968) (right to jury trial extends only to serious offenses). The rule has evolved to allow the right to a jury trial to attach where the punishment could exceed six months imprisonment or a $500 fine. County of McLean v. Kickapoo Creek, Inc., 51 Ill. 2d 353, 282 N.E.2d 720 (1972). Accord Bloom v. Illinois, 391 U.S. 194 (1968). But see Muniz v. Hoffman, 422 U.S. 454 (1975) (cases where potential fine exceeds $500 may not require jury trials). See generally Ingram & Bellaver, The Right to a Jury Trial in Criminal Contempt Cases, 65 ILL. B.J. 768 (1977).} The defendant is not ordinarily entitled to a jury trial in a contempt of court proceeding to enforce the order.\footnote{Although the Act prohibits a jury trial in a proceeding to obtain or modify an order of protection, see supra note 93, the Act does not purport to deny any existing right to trial by jury “in a proceeding to enforce a provision of an order of protection.” ILL. REV. STAT. ch. 40, § 2302-13 (1981). Problems arise where, for example, violation of the order incurs criminal liability, and the right to trial by jury attaches. The entire action, however,
equipped for this situation since trial by jury is unavailable in proceedings under the IMDMA.97

Violation of an order of protection prohibiting abuse or granting exclusive possession frequently poses the most danger to a victim. Therefore, the Act makes a violation of either of these orders a Class A Misdemeanor,98 a criminal offense, which allows the police to provide immediate protection. Since many acts of violence occur on weekends, when courts are unavailable to hold contempt proceedings, the right to arrest provides immediate relief and deters repetition of abuse. Violations of orders containing one of the other listed remedies can lead to civil or criminal contempt proceedings.99

The Act also clarifies law enforcement responsibilities. Police may arrest, without a warrant, an abuser who violates an order of protection.100 Police may also make an arrest when probable cause that certain crimes have been committed exists.101 Verification of an order is facilitated through the use of the centralized Department of Law Enforcement Computer Bank.102 This device is useful to combat the problem of an abusive spouse who destroys the victim's copy of the order.

So that statistical data may be compiled, police officers are required by the Act to make a written report of any bona fide allegation.103 The Act also requires police to assist the victim by providing or arranging for transportation to a medical facility or shelter or by accompanying the victim to her residence to remove personal belongings.104 Police are required to provide a pamphlet, written in English and Spanish, which details the victim's rights and includes at least one referral to a social service

is still a dissolution of marriage, and trial by jury is unavailable. See infra note 97 and accompanying text.

97. Proceedings under the IMDMA traditionally have been deemed equitable in nature. In the absence of express statutory provisions, there is no right to trial by jury in equity actions. Martin v. Strubel, 367 Ill. 21, 10 N.E.2d 325 (1937). The right to trial by jury has been expressly prohibited in proceedings under the IMDMA. ILL. REV. STAT. ch. 40, § 103 (1981).

98. ILL. REV. STAT. ch. 40, § 2302-12(a) (1981). A misdemeanor may be charged only when the abuser had actual notice of the protection order.


100. ILL. REV. STAT. ch. 40, § 2303-1(b) (1981).


102. The order is transmitted by the clerk of the court to the sheriff of the county in which the court is located. The sheriff then furnishes copies to the Department of Law Enforcement for indexing. ILL. REV. STAT. ch. 40, §§ 2303-2(b), 2303-10 (1981).


104. ILL. REV. STAT. ch. 40, § 2303-4 (1981). Recognizing the lack of police response, this section explicitly provides that "arresting the abusing party where appropriate" is a reasonable method of preventing abuse.
agency.\textsuperscript{105} If the police choose not to make an arrest, the Act requires that a police report be made, and that the victim be informed of the importance of preserving evidence and of her right to initiate criminal action.\textsuperscript{106} The Act protects police officers from civil liability for good faith enforcement of its provisions.\textsuperscript{107}

The Act, however, has no provision mandating police training in domestic violence calls.\textsuperscript{108} Since these calls represent a large segment of routine patrol work, more emphasis should be placed on police training in crisis-intervention techniques.\textsuperscript{109} Effective enforcement of the Act's provisions can occur only when police, who are usually the first link with the legal system, are able to view domestic violence as criminal.

In recognition of the lack of effective judicial response, the Act creates guidelines for judicial decision-making.\textsuperscript{110} Before an order of protection can be issued, the court must find that abuse, as defined in the Act,\textsuperscript{111} has occurred.\textsuperscript{112} Once this threshold requirement has been satisfied, the decision to grant or deny any

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\item \textsuperscript{105} ILL. REV. STAT. ch. 40, § 2303-4(a)(3) (1981). The pamphlet must also include a summary of the available procedures and the police officer's name and badge number.
\item \textsuperscript{106} ILL. REV. STAT. ch. 40, § 2303-4(b) (1981).
\item \textsuperscript{107} ILL. REV. STAT. ch. 40, § 2303-5 (1981). Civil liability is imposed only where a police officer's act is the result of willful and wanton misconduct.
\item \textsuperscript{108} Some states do provide for police training within their domestic violence legislation. See supra note 60.
\item \textsuperscript{109} See supra note 32. Between March 1, and July 22, 1982, the Chicago Police Department received 1,624 calls for disturbances caused by a husband beating his wife. During this period only 2 arrests were made for violation of an order of protection. Chicago Tribune, Aug. 22, 1982, at 5, col. 4. Illinois provides for minimum training for law enforcement officers in the Illinois Police Training Act, ILL. REV. STAT. ch. 85, §§ 501–512 (1981); in addition to specifying 23 other subjects, the curriculum for permanent police officers includes "specific training in techniques for immediate response to and investigation of cases of domestic violence." ILL. REV. STAT. ch. 85, § 507(a) (1981). The statute, however, does not require that any minimum number of training hours be devoted to any particular subject. The Police Training Institute, a school established by the University of Illinois to train police officers within the state, has recently included specific training on domestic violence under the Illinois Domestic Violence Act. ILL. REV. STAT. ch. 144, §§ 63(a)–63(d) (1981). The recruit and in-service training program details police responsibilities under the Act and provides information on duration and content of orders of protection. ILLINOIS DOMESTIC VIOLENCE ACT: A LAW ENFORCEMENT OFFICER'S MANUAL (prepared by Candace Wayne, J.D., under the direction of the Illinois Coalition Against Domestic Violence, 1982).
\item \textsuperscript{110} ILL. REV. STAT. ch. 40, § 2302-8 (1981).
\item \textsuperscript{111} See supra note 80.
\item \textsuperscript{112} ILL. REV. STAT. ch. 40, § 2302-8(a) (1981).
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The particular remedy must be based on factors set out by the Act.\textsuperscript{113}

In the amendatory section, the Act updates Illinois law by giving the abused wife the right to sue for an intentional tort to her person committed by her husband during coverture.\textsuperscript{114} Prior to the Act, spouses could not sue each other for personal injury whether the tort was intentional or negligent.\textsuperscript{115} Under the Act, a spouse who is the victim of an intentional tort can recover medical expenses, loss of earnings, or other damages for injuries sustained, notwithstanding the parties' marital status.

The new Domestic Violence Act reflects Illinois' attempt to curb the incidence of spousal abuse. This solution to the widespread problem of domestic violence must be complemented by offering immediate relief to a battered woman until legal protections can be implemented. The Act recognizes that separation of the parties may be necessary to prevent further abuse.\textsuperscript{116} Since the primary source of safe shelter for the battered victim will be the family home, the Act provides a procedure for obtaining an expedited order of protection.\textsuperscript{117} In some instances, it may be necessary for the victim to leave her home and seek another shelter. The number of victims in need of shelters, how-

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\item \textsuperscript{113} The Act prohibits the court from basing its decision to grant or deny a remedy on whether the victim has acted in self defense or has left the residence to avoid further abuse. ILL. REV. STAT. ch. 40, § 2302-8(b).
\item Factors to be considered include the frequency, severity and pattern of the abuse and the danger of child abuse. Where the court has denied a remedy, it is required to state the reasons for its refusal. Id. at § 2302-8(d).
\item Article IV of the Act amended various Illinois statutes; § 403 is an amendment to ILL. REV. STAT. ch. 40, § 1001 (1981). See P.A. 82-621 § 403 (1981) (text of amendment).
\item The common-law theory of merger was responsible for spousal immunity from suit. The Married Women's Act of 1874, ILL. REV. STAT. ch. 68, did not refer specifically to torts to the person, and the Illinois Supreme Court, refusing to read such a disability into the statute, allowed suit for negligence. Brandt v. Keller, 413 Ill. 503, 109 N.E.2d 729 (1953). At its next session, however, the legislature amended that Act so that "neither husband nor wife may sue the other for a tort to the person committed during coverture." ILL. REV. STAT. ch. 68, § 1 (1953 amendment). The Illinois Supreme Court upheld the statute as constitutional. Heckendorn v. First Nat'l Bank, 19 Ill. 2d 190, 166 N.E.2d 571 (1960). Later, in Steffa v. Stanley, 39 Ill. App. 3d 915, 350 N.E.2d 886 (1976), an appellate court affirmed the doctrine of interspousal immunity. Although it found the concept outdated, the court noted that it could not judicially amend the statute. Id. at 919, 350 N.E.2d at 889.
\item Ex parte relief is available to prevent irreparable injury likely to occur. Excluded from \textit{ex parte} relief are the remedies of compensatory damages and money for counselling, fees or costs. Id. at § 2302-4(a). See generally Taub, \textit{Ex Parte Proceedings in Domestic Violence Situations: Alternative Frameworks for Constitutional Scrutiny}, 9 HOFSTRA L. REV. (1980).
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ever, far exceeds the space available. Illinois has provided funding, through the Domestic Violence Shelters Act, in an

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118. Results of the first national survey conducted in 1978 of emergency shelter programs for battered women and their children identified only 128 programs in existence in the entire United States. Of the 89 shelters which responded, 45 were less than a year old. A. Roberts, *Sheltering Battered Women* (1981). By 1980, 300 shelters were estimated to be in operation across the country. 7 FAM. L. REP. (BNA) 2298 (1981). There are currently 21 shelters in Illinois; the five which serve metropolitan Chicago with its population of 5.2 million people have a total of 158 beds. Chicago Tribune, Aug. 22, 1982, at 5, cols. 1-4. Since August, 1982, two more shelters have opened in the Chicago area with facilities for 30 women and children each. Interview with Barbara Engel, Director of Women's Services, Loop Center YWCA, Chicago, Illinois, Oct. 9, 1982. See also Fleming, *supra* note 3, at 351-95; Martin, *supra* note 3, at 197-204.


The constitutionality of a portion of the Domestic Violence Shelters Act was challenged in Crocker v. Finley. In *Crocker*, the trial court refused to dismiss Janice Crocker's petition challenging the validity of the legislation relating to the $5.00 surcharge. Crocker v. Finley, No. 82, ch. 1, slip op. at 6 (Cir. Ct. Cook County Aug. 18, 1982). The court found that the $5.00 surcharge is not a filing fee, but rather a "tax on litigation for a non-court purpose and a violation of due process." *Id.* at 14. Further, the court found that since the surcharge is imposed solely upon marriage dissolution plaintiffs, it violates the equal protection clauses of both the federal and state constitutions because there is no rational basis for the distinction between these litigants and any other litigants. *Id.* at 21. Finally, the court determined that the surcharge violates the prohibition against "special legislation" contained in the Illinois Constitution, Art. IV, § 13. *Id.* at 24. "Under the 1970 Constitution, the General Assembly is placed under a duty to pass only general laws, whenever possible," and "it is the duty of the court to determine if a 'general law' can be made applicable." *Id.* Since no other persons filing lawsuits were required to pay a similar surcharge, not even those who filed seeking legal separation or a declaration of invalidity, the statute placed an undue burden on a portion of litigants and conferred immunity on others. *Id.* at 26.

The *Crocker* suit is a class action and challenges only the $5.00 filing fee surcharge on a petition for dissolution; it does not affect the additional $10.00 surcharge placed on a marriage license fee. This memorandum of
effort to meet this need. Adequate shelters, together with liberal use of the remedy of exclusive possession, is necessary to provide battered women sufficient protection from further abuse.

CONCLUSION

Domestic violence has been the subject of a flood of legislation, but the legislation is new only in that it specifically concerns violence in the family. Historically, laws were not applied to batteries occurring within the marital relationship. With the advent of domestic violence legislation, however, major policy changes concerning marital batteries have occurred. The Illinois Domestic Violence Act, with its expansion of criminal and civil remedies, contains a comprehensive framework within which a battered woman can seek relief.

A specific law aimed at preventing future violence is only one component of the process which will reduce spousal abuse. The attitudes of those who are charged with enforcing the new law must be scrutinized and modified, if necessary, to achieve compliance with the Act's mandate. In the first four-and-a-half months that the Act was in effect, only 74 orders of protection were issued in Cook County, whereas 207 orders were issued in DuPage, a county with one-eighth the population of Cook. A Cook County Circuit Court judge suggests that police are "winking" at the Act. He opined that the low rate of orders stems from the fact that attorneys want to avoid the "ticklish nightmare" and prefer civil injunctions to which no criminal penalty is attached.\(^{120}\)

It appears that enlightenment of the legal profession remains a formidable task. Civil injunctions, lacking adequate enforcement provisions, do not provide the protection necessary for a battered woman to obtain relief from abuse. The order of protection must be implemented as the method of relief available to battered victims. Even with its arrest provisions, the Act can only become a powerful tool if police are not allowed to "wink" at domestic violence.

Making the necessary attitudinal changes is a complex process. Because marriage affects nearly all individuals in society, preconceived notions of the parties' roles will necessarily make

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120. Chicago Tribune, July 18, 1982, at 4, col. 1. While 704 orders of protection were issued in Illinois, all but 326 were issued in the six-county Chicago metropolitan area. As of August 2, 1982, only 110 orders of protection had been issued in Cook County. Statewide, 880 orders were issued during this period. Chicago Tribune, Aug. 22, 1982, at 5, col. 4.
this change a slow one. Before the Act’s provisions can provide the relief intended for victims of battering, domestic violence must be viewed as unacceptable. Although there are those who suggest that attitudes cannot be legislated, eventually private attitudes will conform to the policy embodied in the law. Illinois has taken a major step in passing the Act. Reduction of spousal abuse can only occur, however, if its provisions are enforced.

Mary Lou Boland