

Chapter 57

Domestic Violence Patients

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Civil Protection Orders
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Conclusion

Domestic violence occurs when one intimate partner uses physical violence, coercion, threats, intimidation, isolation, and/or emotional, sexual, and economic abuse to maintain power and control over the other intimate partner.¹ Domestic violence is also described as a “pattern of interaction” in which one intimate partner is forced to change his or her behavior in response to the abuse or threats of the other partner.² Synonyms for domestic violence include partner violence, relationship violence, dating violence, teen dating violence, intimate partner abuse, spouse abuse, domestic abuse, wife abuse, wife beating, and battering.³

Persons most likely to experience domestic violence include (1) women who are single or who have recently separated or divorced, (2) women who have recently sought an order of protection, (3) women who are younger than 28 years of age, (4) women who abuse alcohol or other drugs, (5) women who are pregnant, (6) women whose partners are excessively jealous or possessive, (7) women who have witnessed or experienced physical or sexual abuse as children, and (8) women whose partners have witnessed or experienced physical or sexual abuse as children.⁴ Domestic violence affects people from all races, religions, age groups, sexual orientations, and socioeconomic levels.⁵

Despite its widespread occurrence,⁶ most domestic violence is largely unrecognized or ignored by professionals, including physicians,⁷ family therapists,⁸ psychotherapists,⁹ and law enforcement officials.¹⁰ Importantly, health care professionals can play a crucial role in the diagnosis, treatment, and referral of victims, helping to break the often intergenerational cycle of domestic violence.¹¹ Physicians can screen,¹² assess, and intervene efficiently and effectively by eliciting a history of violence,¹³ asking specific questions when battering is suspected,¹⁴ documenting the physical findings that often accompany domestic violence,¹⁵ assessing the victim’s immediate and future safety,¹⁶ and communicating to the victim all realistic options.¹⁷ A few states have enacted laws that specifically require medical staff to report suspected domestic violence,¹⁸ but many experts suggest that it is “absolutely contraindicated” to report cases of domestic violence to any agency or authority without the victim’s direct request and consent.¹⁹ These experts believe that mandatory reporting of domestic violence often increases the survivor’s

sense of powerlessness and may increase the risk of further harm, including the risk of homicide.²⁰ The theory that mandatory reporting may deter victims from seeking medical care is not well supported by available empirical observations.²¹

CIVIL PROTECTION ORDERS

In all U.S. jurisdictions the victim of domestic violence can obtain by statute a civil protection order (CPO).²² Most states authorize emergency or temporary (2- to 4-week) CPOs if the victim (at an ex parte hearing) can prove immediate danger of future violence.²³ Courts also issue longer (1- to 3-year) CPOs after a full hearing, by consent, or by default.²⁴ Although statutes of limitation typically do not apply to persons requesting CPOs, some courts may not grant an order if the most recent threat or incident of abuse occurred several months before the filing of a petition for a CPO.²⁵ In most states an abused adult can file on his or her own behalf.²⁶ An adult also can file on behalf of a child or decision-incapable adult.²⁷ A few states allow minors to petition for protection on their own behalf.²⁸

Basis for Granting

State laws define the relationships that must exist between the parties before a CPO will be granted. Recognized targets of a CPO include current or former spouses,²⁹ family members who are related by blood or marriage,³⁰ current or former household members,³¹ persons who share a child in common,³² unmarried persons of different genders living as spouses,³³ persons in same sex relationships,³⁴ persons in dating or intimate relationships,³⁵ and persons offering refuge to victims of domestic violence.³⁶

Courts and legislatures have identified several types of acts as abuse sufficient to support the issuance of a CPO.³⁷ Acts of abuse against the petitioner include threats,³⁸ interference with personal liberty,³⁹ harassment,⁴⁰ stalking,⁴¹ emotional abuse,⁴² attempts to inflict harm,⁴³ sexual assault,⁴⁴ marital rape,⁴⁵ assault and battery,⁴⁶ burglary,⁴⁷ criminal trespass,⁴⁸ kidnapping,⁴⁹ and damage to property (including pets).⁵⁰ The standards of proof for issuance or extension of a CPO include “preponderance of the evidence,” “preponderance of the evidence that the petitioner is facing a clear and present or imminent danger,”

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and “reasonable cause or grounds to believe” that abuse occurred, that there is an emergency, or that the petitioner is in immediate and present danger.⁵¹

Contents

CPOs typically require that the respondent shall⁵² (1) not molest, assault, harass, or in any manner threaten or physically abuse the petitioner and/or his/her child(ren);⁵³ (2) stay 150 yards away from the petitioner’s home, person, workplace, children, place of worship, and day care provider;⁵⁴ (3) not contact petitioner and/or his/her children in any manner (personally, in writing, by mail or telephone, or through third parties);⁵⁵ (4) vacate the residence at (location) by (date and time) (the police department shall stand by and shall give respondent 15 minutes to collect his or her personal belongings, which include clothes, toiletries, and one set of sheets and pillowcases; no other property may be removed from the premises without petitioner’s permission; the police shall take all keys and garage openers from respondent, check to see that they are the right ones, and then turn keys over to the petitioner);⁵⁶ (5) relinquish possession and/or use of the following personal property as of (date and time);⁵⁷ (6) turn over to the police any and all weapons that the respondent owns or possesses and all licenses the respondent has authorizing the possession of or purchase of weapons;⁵⁸ (7) participate in and successfully complete a counseling program;⁵⁹ (8) relinquish custody of minor children to petitioner until further order of the court or the expiration date of the order;⁶⁰ (9) have rights of visitation with minor child(ren) under specified conditions;⁶¹ (10) pay spousal and child support as designated;⁶² and (11) pay for specified repairs, medical or health insurance costs, attorney’s fees, and court costs.⁶³

Enforcement

In the majority of states, violation of a CPO is a crime for which the police can arrest the offender, even if the violation did not occur in the presence of the officer.⁶⁴ The statutory trend is to augment civil or criminal contempt enforcement with misdemeanor charges and to heighten the criminal classification for violation of a CPO.⁶⁵ CPOs can and do remain in effect despite the parties’ reunification or the petitioner’s invitation to the abuser to enter her residence.⁶⁶

In *United States v. Dixon*,⁶⁷ the Supreme Court ruled that double jeopardy would not bar a battered woman from enforcing her CPO through criminal contempt proceedings while the state proceeds with a criminal prosecution for crimes the respondent committed against the battered woman at the time he violated the CPO, as long as the contempt proceeding and the criminal prosecution each require proof of additional elements.⁶⁸

Consequences of Violation

The sentencing of an individual after a criminal contempt conviction or a trial for crimes committed against family

members has several important goals, including (1) stopping the violence; (2) protecting the victim, the children, and other family members; (3) protecting the general public; (4) holding the offender accountable for the violent conduct; (5) upholding the legislative intent to treat domestic violence as a serious crime; (6) providing restitution for the victim; and (7) rehabilitating the offender.⁶⁹ State courts have upheld a variety of sentences, including jail terms, monetary sanctions, bonds, probation, community service, electronic monitoring, and injunctions.⁷⁰

The Violence Against Women Act

The Violence Against Women Act (VAWA), which amends various sections of the United States Code and Rule 412 of the Federal Rules of Evidence, was signed by President Clinton on September 13, 1994. This comprehensive legislation accomplished the following:

1. Established a federal civil rights cause of action for victims of gender-motivated crimes of violence.⁷¹
2. Provided that protective orders (including ex parte orders) issued in one state are enforceable in other states as long as due process requirements are met in the issuing state.⁷²
3. Required that the U.S. Postal Service protect the confidentiality of addresses of domestic violence shelters and abused persons.⁷³
4. Permitted battered immigrant spouses and children of U.S. citizens and legal residents to self-petition the Immigration and Naturalization Service for legal resident status or to file for legal resident status even if their marriage to a U.S. citizen or lawful permanent resident is legally terminated after the petition is filed.⁷⁴
5. Permitted battered immigrant spouses and children of U.S. citizens and legal residents and parents of battered children of U.S. citizens and legal residents residing in the U.S. for at least 3 years to obtain suspension of deportation if deportation would result in extreme hardship to the alien or the alien’s parent or child.⁷⁵
6. Created federal criminal penalties for crossing a state line to violate a protection order or to commit domestic violence against a spouse or intimate partner.⁷⁶
7. Mandated restitution enforceable through suspension of federal benefits, and an opportunity for the victim to inform the court regarding the danger posed by pretrial release of the defendant.⁷⁷
8. Funded a continuously operating toll-free hotline that provides the caller with names of local shelters, referrals, and domestic violence programs.⁷⁸

Regarding federal sex crimes, VAWA provides for pretrial detention,⁷⁹ payment for testing for sexually transmitted diseases,⁸⁰ and increased sentences for repeat sex offenders or where the victim of a federal sex offense is under 16 years of age.⁸¹ VAWA also amends Federal Rule of Evidence 412 to prohibit introduction of evidence regarding the victim’s sexual history.⁸²

Most courts confronted with constitutional challenges to VAWA have found the act to be a valid exercise of congressional power under the Commerce Clause.⁸³

However, in *U.S. v. Morrison/Brzonkala v. Morrison*,⁸⁴ the Fourth Circuit United States Court of Appeals held that rape and other violent crimes against women are not economic or commercial activities and are not individually connected to interstate commerce. Consequently, the court ruled that these crimes could not be regulated under the act. The Supreme Court of the United States heard oral argument in this matter on January 11, 2000.

CRIMINAL DOMESTIC VIOLENCE PROSECUTIONS

When police have probable cause to believe that domestic violence has occurred, many states mandate and others permit warrantless arrests.⁸⁵ Exigent circumstances also may give rise to constitutionally permissible warrantless searches.⁸⁶ Respondents in domestic violence cases have been criminally prosecuted for a broad range of acts.⁸⁷ Until recently, most federal cases involving domestic violence have been prosecuted under the Assimilated Crimes Act (ACA).⁸⁸ This act authorizes federal prosecutions for crimes not contained in the United States Code when a criminal offense under state law is committed within a federal enclave or in an area under the exclusive jurisdiction of the United States. Under the ACA, state substantive law is incorporated into the federal prosecution, and the federal prosecutor steps into the shoes of the state prosecutor for purposes of the charged offense.⁸⁹ Cases involving criminal racketeering also incorporate state law crimes of violence, including murder or kidnapping.⁹⁰ As of 1996, amendments to the Gun Control Act of 1968 prohibit persons convicted of domestic violence offenses from possessing firearms in or affecting commerce.⁹¹

In most states a defendant is justified in killing an attacker if the defendant did not provoke the attack, reasonably believed the attacker posed an imminent or immediate threat of death or serious bodily harm, and used only force proportionate to the force used or threatened against the defendant.⁹² The defendant's belief that the attack was imminent and that the response was necessary for protection must have been reasonable; moreover, the defendant must have been under no duty to retreat or unable to retreat.⁹³

For most of the twentieth century, victims of repeated acts of domestic violence who killed their partners could not prove self-defense because courts believed that the attack was not necessary, the use of deadly force was excessive, and the victim was the aggressor in the events immediately preceding the killing.⁹⁴ In the 1970s, however, psychologist Lenore Walker studied several hundred women in an effort to explain the psychological and behavioral patterns that commonly appear in women who have been physically and psychologically abused by an intimate partner over an extended period. Analogizing to scientific research on dogs, Walker theorized that the experience of repeated and unpreventable abuse, along with the social conditioning of women to be subservient, created in battered women a state of "psychological paralysis"

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that rendered them unable to seek escape or help, even when it might be available.⁹⁵ Walker coined the term *battered woman syndrome*, which soon provided the basis for expert testimony designed to convince a jury that the defendant reasonably believed she had to kill to save herself, even during an ebb in violence.⁹⁶

Invoking the syndrome, however, may not always advance justice for battered women who kill.⁹⁷ Experts therefore have encouraged a redefinition of the "battered woman" because testimony concerning the experiences of battered women refers to more than their psychological reactions to violence and because battered women's diverse psychological realities are not limited to one particular "profile."⁹⁸ As the debate over the proper role of domestic violence expert testimony continues in the legal and scientific literature, courts have begun to admit behavioral science evidence in domestic violence cases.⁹⁹

IMPACT OF DOMESTIC VIOLENCE IN OTHER AREAS OF LAW

The role of law in domestic violence cases extends beyond CPOs and criminal prosecutions. Children must be supported, as well as protected; the rights and benefits of employment must be maintained; tort actions may be appropriate; and the validity of prenuptial agreements may be imperiled. Policies having the potential to discriminate against victims of domestic violence may raise constitutional issues of equal protection or due process.¹⁰⁰

Child Custody and Support

Batterers often assault their children, and the risk of child abuse and kidnapping increases when a marriage is dissolving.¹⁰¹ The physical and emotional consequences for children who experience domestic violence include medical problems, substance abuse, suicide attempts, eating disorders, nightmares, fear of being hurt, loneliness, bed wetting, and delinquent behavior such as fighting, prostitution, truancy, crimes against other people, running away, dropping out of school, teenage pregnancy, cognitive disorders, and low self-esteem.¹⁰²

To prevent the offender from using custody and support litigation as a means to extend or maintain control and authority after separation from the victim, courts have been advised to draft orders that (1) specify times of visitation, telephone calls, and participation in school or extracurricular activities; (2) designate the circumstances of exchange or transfer of the children; (3) provide for the safety of the children and the vulnerable parent, including, for example, supervised visitation, injunctions against threatening conduct, and prohibitions against asking the children about the activities of the other parent; (4) account for the current and future needs of the children and the custodial parent; (5) require the offender to participate in educational services designed for batterers; and (6) specify circumstances or conditions under

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which custody or visitation orders may be altered.¹⁰³ All states permit courts to consider domestic violence in relationship to “the best interest of the child.”¹⁰⁴ Congress and some states have adopted a presumption against award of joint or sole custody to the abusive parent.¹⁰⁵ Judges may be required to permit testimony about domestic violence and its impact on children and the nonabusive parent.¹⁰⁶

Prenuptial Agreements

Domestic violence may influence prenuptial agreements in three ways. First, battering may provide a defense to the enforcement of an otherwise valid prenuptial agreement.¹⁰⁷ Second, domestic violence may give rise to tort claims that may offset preclusions of equitable economic distribution found in many prenuptial agreements.¹⁰⁸ Third, a prenuptial agreement can include a provision that the occurrence of domestic violence invalidates the terms of the contract.¹⁰⁹

Employment Issues

Many victims of domestic violence are harassed at work by their former or current spouses or partners.¹¹⁰ Victims also may miss work because of injuries, court dates, or the need to cooperate with criminal investigations.¹¹¹ Job performance may be undermined by depression, fear, and other psychological effects of battering.¹¹²

Employers may incur liability if domestic violence occurs in the workplace or if they fail to respond properly.¹¹³ Theories of liability may include the Occupational Safety and Health Administration’s “general duty” clause,¹¹⁴ *respondeat superior*, duty to warn,¹¹⁵ wrongful discharge in violation of public policy¹¹⁶ or an employee’s privacy rights, and negligent hiring, retention, security, and/or supervision.¹¹⁷ Employees who are victims of domestic violence also are protected by workers’ compensation statutes,¹¹⁸ unemployment insurance or benefit laws,¹¹⁹ and statutes that preserve benefits for persons cooperating with the judicial process.¹²⁰ Perhaps the biggest challenge for employers dealing with domestic violence is to balance employer interests in protecting employees and ensuring workplace safety with employee interests in privacy and freedom from defamation and discrimination.¹²¹

CONCLUSION

All medical and legal professionals must improve their abilities to identify and confront domestic violence. Appropriate and effective recognition and intervention require vigilance, a knowledge of and a willingness to ask the right questions, and a sense of obligation to help society end this undesirable phenomenon. Knowledge of legal considerations should improve the collaboration of health care workers, legal professionals, and community programs seeking to control domestic violence—a major public health problem.

Endnotes

1. Valente, *Domestic Violence and the Law*, in *The Impact of Domestic Violence on Your Legal Practice* 1-1-1-7 (Goelman, Lehrman, & Valente eds., 1996).
2. Dutton, *The Dynamics of Domestic Violence: Understanding the Response from Battered Women*, 68 Fla. Bar J. 24 (1994). Most victims or survivors of domestic violence are women, and most batterers or perpetrators are men. See Bureau of Justice Statistics, U.S. Department of Justice, *Violence Between Intimates* 2-3 (1994).
3. Alpert, *Domestic Violence*, in *Current Diagnosis* 105-109 (9th ed., Conn, Borer, & Snyder eds., W.B. Saunders, Philadelphia, 1997).
4. *Id.* at 106.
5. *Id.* at 105.
6. National surveys estimate that at least 2 million women each year are battered by an intimate partner, and crime data from the Federal Bureau of Investigation record about 1500 murders of women by husbands or boyfriends each year. Overall, the Bureau of Justice Statistics reports that women sustained about 3.8 million assaults and 500,000 rapes a year in 1992 and 1993; more than 75% of these violent acts were committed by someone known to the victim, and 29% of them were committed by an intimate—a husband, an ex-husband, a boyfriend, or an ex-boyfriend. These figures are believed to be underestimates. See Panel on Research on Violence Against Women, National Research Council, *Understanding Violence Against Women* (Crowell & Burgess eds., National Academy of Sciences, 1996). See also Abbott et al., *Domestic Violence Against Women: Incidence and Prevalence in an Emergency Department Population*, 273 J.A.M.A. 1763 (1995).
7. See, e.g., Council on Ethical and Judicial Affairs, American Medical Association, *Physicians and Domestic Violence: Ethical Considerations*, 267 J.A.M.A. 3190 (1992); Sugg & Inui, *Primary Care Physician’s Response to Domestic Violence: Opening Pandora’s Box*, 267 J.A.M.A. 3157 (1992); McLeer & Anwar, *A Study of Battered Women Presenting in an Emergency Department*, 79 J. Public Health 65 (1989).
8. See, e.g., Avis, *Where Are All the Family Therapists? Abuse and Violence Within Families and Family Therapy’s Response*, 18 J. Marital Family Ther. 225 (1992); Harway & Hansen, *Therapist Perceptions of Family Violence*, in *Battering and Family Therapy: A Feminist Perspective*, 42, 52 (Hansen & Harway eds., Sage Publications, Newbury Park 1993).
9. See, e.g., Hansen & Harway, *supra* note 8, at 45-47; Sesan, *Sex Bias and Sex-Role Stereotyping in Psychotherapy with Women: Survey Results*, 25 Psychotherapy 107 (1988).
10. See, e.g., L.W. Sherman, *Policing Domestic Violence: Experiments and Dilemmas* 25-27 (Free Press, New York 1992).
11. See, e.g., *supra* note 3, at 105; Warshaw, *Identification, Assessment and Intervention with Victims of Domestic Violence*, in *Improving the Health Care Response to Domestic Violence: A Resource Manual for Health Care Providers* 49 (Family Violence Prevention Fund, 1995).
12. A letter to the *Journal of the American Medical Association* reported the following experience with initiating screening protocols:
I asked eight consecutive patients who had arrived at the clinic with routine gynecologic complaints unrelated to domestic violence whether they had ever been physically abused. The results were horrifying. All eight women had been physically assaulted by their intimate partners within the past year. One patient, who had come to the office for an oral contraceptive pill refill, went directly to the district attorney’s office after talking about her dangerous situation at home. Another patient started to cry as she related the details of her physical and emotional injuries. Review of the otherwise thorough charts of

- these women made it apparent that no physician had asked whether these patients had ever been threatened or harmed. The women were waiting for their physicians to inquire; they showed no hesitancy in talking about their experiences.
- Tracy, *Domestic Violence: The Physician's Role*, 275 J.A.M.A. 1708 (1996).
13. *Supra* note 3, at 106. Appropriate questions for eliciting a history of violence include: (1) Have you ever been hit, hurt, or threatened by your husband or boyfriend or partner? (2) What happens when you and your partner have a disagreement at home? (3) Have you ever been threatened, intimidated, or frightened by your partner? (4) Are you afraid for your safety or for that of your children because of anyone you live with or are close to? (5) Would you leave your partner if you could? (6) Do you feel safe in your home? (7) Have you ever needed to see a doctor or go to an emergency room because someone did something to hurt or frighten you?
 14. *Id.* at 107. Appropriate additional questions when domestic violence is suspected include: (1) How were you hurt? (2) Has this happened before? (3) Could you tell me about the first episode? (4) How badly have you been hurt in the past? (5) Have you ever gone to an emergency room for treatment? (6) Have you ever been threatened with a weapon, or has a weapon ever been used on you? (7) Have your children ever seen you threatened or hurt? (8) Have your children ever been threatened or hurt by your partner?
 15. *Id.* at 107. Objective manifestations of domestic violence may include (1) bilateral or multiple injuries, (2) injuries in different stages of healing, (3) evidence of rape or sexual assault, (4) an explanation by the victim that is inconsistent with the type of injury, (5) delay between the time of injury and the arrival of the victim at the health care facility, and (6) prior repetitive use of emergency services for trauma.
 16. *Id.* at 107. Indicators of escalating risk include an increase in the severity or frequency of assaults, increasing or new threats of homicide or suicide by the partner, the presence or availability of a firearm, and the abuser's known criminal record of violent crime.
 17. *Id.* at 108. Health care professionals (HCPs) can help the victim understand that she does not deserve to be hurt or threatened by anyone under any circumstances, particularly by someone she loves. The only provocation that justifies the use of physical force against another is an initial act of violence that puts the person attacked in reasonable fear of imminent danger. In other words, only batterers are responsible for their violence.

HCPs also can (1) convey their concern for the victim's safety; (2) advise or refer for specific medical treatment, psychological counseling, safety planning, legal assistance, support groups, or emergency shelter or funds; (3) minimize the prescription of sedating or tranquilizing medications; and (4) evaluate the need to report the violence to a governmental agency.

See American Medical Association, *Domestic Violence: A Directory of Protocols for Healthcare Providers* (1992); American Medical Association, *Diagnostic and Treatment Guidelines on Domestic Violence* (1992); American Medical Association, *Diagnostic and Treatment Guidelines on Family Violence* (1995).
 18. See, e.g., Cal. Penal Code §11161 (West 1996).
 19. *Supra* note 3, at 107; Hyman, Schillinger & Lo, *Laws Mandating Reporting of Domestic Violence: Do They Promote Patient Well-Being?*, 273 J.A.M.A. 1781 (1995).
 20. *Id.* See also *Policy Statement of the American College of Emergency Physicians on Mandatory Reporting of Domestic Violence to Law Enforcement and Criminal Justice Agencies*, 30 Ann. Emerg. Med. 561 (1997).
 21. Houry, Feldhaus, Thorson & Abbott, *Mandatory Reporting Laws Do Not Deter Patients from Seeking Medical Care*, 34 Ann. Emerg. Med. 336 (1999).
 22. Klein & Orloff, *Civil Protection Orders*, in *The Impact of Domestic Violence on Your Legal Practice* 4-1-4-5 (Goelman, Lehrman & Valente, eds., 1996). See also Keilitz, *Civil Protection Orders: A Viable Justice System Tool for Deterring Domestic Violence*, 9 Violence and Victims 79 (1994).
 23. Klein & Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, 1031-1043 and accompanying notes 1420-1509 (1993).
 24. *Supra* note 22, at 4-1.
 25. *Supra* note 23, at 900-905 and accompanying notes 599-632.
 26. *Id.* at 842-847 and accompanying notes 204-226. For an extended discussion of efforts to improve accessibility to the courts for battered women appearing *pro se*, see *id.* at 1048-1065 and accompanying notes 1541-1632.
 27. *Id.* at 846.
 28. *Id.* at 844.
 29. *Id.*, at 814-816 and accompanying notes 38-48.
 30. *Id.* at 816-820 and accompanying notes 49-69.
 31. *Id.* at 838-842 and accompanying notes 182-203.
 32. *Id.* at 824-829 and accompanying notes 94-127.
 33. *Id.* at 829-832 and accompanying notes 128-149.
 34. *Id.* at 832-835 and accompanying notes 150-168.
 35. *Id.* at 835-837 and accompanying notes 169-174.
 36. *Id.* at 837-838 and accompanying notes 175-181.
 37. See, e.g., *Knuth v. Knuth*, 1992 Minn. App. LEXIS 696 (Minn. Ct. App. June 19, 1992).
 38. *Supra* note 23, at 859-863 and accompanying notes 316-353.
 39. *Id.* at 858-859 and accompanying notes 308-315.
 40. *Id.* at 866-869 and accompanying notes 367-406.
 41. *Id.* at 874-876 and accompanying notes 445-465.
 42. *Id.* at 869-873 and accompanying notes 407-437.
 43. *Id.* at 864-866 and accompanying notes 354-366.
 44. *Id.* at 854-858 and accompanying notes 296-307.
 45. *Id.*
 46. *Id.* at 849-854 and accompanying notes 237-295. Case law indicates that battery is the most common criminal ground for issuance of a CPO. Courts have issued CPOs for shoving an infant's face against a door; physically restraining, striking, kicking, punching, choking, slapping, or throwing cold water on the petitioner; yanking the petitioner by the hair; pulling out the petitioner's pubic or other hair; throwing the petitioner on the floor; bruising a child's back, legs, and buttocks; twisting the petitioner's wrist; pounding the petitioner's head on the floor; attempting to push the petitioner's face in the toilet; and ordering trained dogs to attack the petitioner.
 47. See, e.g., N.J. Stat. Ann. §2C:25-19 (West 1992); Wash. Rev. Code Ann. §10.99.020 (West 1992).
 48. See, e.g., Del. Code Ann. tit. 10, §945 (1993); N.J. Stat. Ann. §2C:25-19 (1992).
 49. *Id.*
 50. *Supra* note 23, at 873-874 and accompanying notes 438-444.
 51. See, e.g., *id.* at 1043-1048 and accompanying notes 1510-1540.
 52. *Supra* note 22.
 53. For extended discussion of "no further abuse" clauses, see, e.g., *supra* note 23, at 914-918 and accompanying notes 712-743.
 54. For extended discussion of "stay away" provisions, see, e.g., *id.* at 918-925 and accompanying notes 744-782.
 55. For extended discussion of "no contact" provisions, see, e.g., *id.* at 925-931 and accompanying notes 783-822.
 56. For extended discussion of "orders to vacate," see, e.g., *id.* at 931-936 and accompanying notes 823-856.

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57. For extended discussion of "property rights," see, e.g., *id.* at 937-941 and accompanying notes 857-886.
58. For extended discussion of orders concerning weapons, see, e.g., *id.* at 941-944 and accompanying notes 887-909.
59. For extended discussion of treatment and counseling issues, see, e.g., *id.* at 944-949 and accompanying notes 910-950.
60. For extended discussion of custody issues, see, e.g., *id.* at 949-981 and accompanying notes 951-1140.
61. For extended discussion of visitation issues, see, e.g., *id.* at 982-990 and accompanying notes 1141-1208.
62. For extended discussion of spousal and child support issues, see, e.g., *id.* at 997-1000 and accompanying notes 1244-1263.
63. For extended discussion of other forms of monetary relief, see, e.g., *id.* at 990-996 and accompanying notes 1209-1243. See also *id.* at 1000-1006 and accompanying notes 1264-1300.
64. See *id.* at 1095-1099 and accompanying notes 1828-1851.
65. *Id.* at 1097-1098 and accompanying notes 1840-1841. For extended discussion of acts constituting civil and criminal contempt, see, e.g., *id.* at 1102-1112 and accompanying notes 1871-1939.
66. See, e.g., *Cole v. Cole*, 556 N.Y.S. 2d 217 (Fam. Ct. 1990); *City of Reynoldsburg v. Eichenberger*, No. CA-3492, 1990 Ohio App. LEXIS 1613 (Apr. 18, 1990); *People v. Townsend*, 538 N.E. 2d 1297 (Ill. App. Ct. 1989); *State v. Kilponen*, 737 P. 2d 1024 (Wash. Ct. App. 1987); *supra* note 23, at 1112-1117 and accompanying notes 1940-1973.
67. 509 U.S. 688 (1993).
68. For extended discussion of the contemnor's due process rights, see, e.g., *supra* note 23, at 1120-1129 and accompanying notes 1992-2039.
69. See N.D. Lemon, *Domestic Violence: A Benchguide for Criminal Cases* 151 (1989).
70. For extended discussion of sentencing issues in domestic violence cases, see, e.g., *supra* note 23, at 1129-1142 and accompanying notes 2040-2105.
71. 42 U.S.C. §13981 (1994). Victims may sue in federal or state court and seek compensatory and punitive damages, an injunction or a declaratory judgment, and attorney's fees. A prior criminal action is not required to pursue the civil remedy.
72. 18 U.S.C. §2265 (1994).
73. 42 U.S.C. §13951 (1994).
74. 8 U.S.C. §1151 (1994).
75. 8 U.S.C. §1254 (1994).
76. 18 U.S.C. §§2261, 2262 (1994). In *U.S. v. Page*, No. 96-4083 (6th Cir. 1998), the Sixth Circuit held that the Violence Against Women Act does not criminalize domestic violence that occurs before interstate travel. Rather the statute covers only domestic violence occurring "in the course of or as a result of" such travel. Consequently the statute criminalizes the aggravation of injuries inflicted before interstate travel only so long as the worsening of the injuries was caused by intentional violent conduct during interstate travel.
77. 18 U.S.C. §§2263, 2264 (1994).
78. 42 U.S.C. §10416 (1994).
79. 18 U.S.C. §§2241-48 (1994).
80. 42 U.S.C. §14011 (1994).
81. 18 U.S.C. §2245(2) (1994).
82. 28 U.S.C. §2074 (1994).
83. See, e.g., *U.S. v. Lankford*, No. 98-10645 (5th Cir. 1999); *U.S. v. Page*, 167 F. 3d 325, 334 (6th Cir. 1999); *U.S. v. Gluzman* 154 F. 3d 49, 50 (2d Cir. 1998), *cert. denied*, 119 S.Ct. 1257 (1999).
84. *U.S. v. Morrison/Brzonkala v. Morrison*, 169 F. 3d 820 (1999).
85. *Supra* note 23, at 1148-1158 and accompanying notes 2151-2201. See also Wanless, *Notes: Mandatory Arrest: A Step Toward Eradicating Domestic Violence, But Is It Enough?*, U. Ill. L. Rev. 533 (1996). One of the goals of mandatory arrest statutes is to change police officers' attitudes that domestic partners should be left to resolve their disputes privately and that domestic violence is not a serious crime.
86. *Supra* note 23, at 1157.
87. See, e.g., *id.* at 1142-1148 and accompanying notes 2106-2150.
88. 18 U.S.C. §13 (Repl. 1997).
89. *United States v. Kearney*, 750 F. 2d 787 (9th Cir. 1984).
90. 18 U.S.C. §1961 (Repl. 1997).
91. 18 U.S.C. §922 (g)(9). The constitutionality of these amendments has been upheld in *Gillespie v. City of Indianapolis*, No. 98-2691 (7th Cir. 1999).
92. See, e.g., *People v. Evans*, 259 Ill. App. 3d 195, 197 Ill. Dec. 278, 631 N.E. 2d 281 (1994); Stone, *Defense*, in *The Impact of Domestic Violence on Your Legal Practice* 7-5-7-8 (Goelman, Lehrman & Valente, eds., 1996); W.R. LaFave & A.W. Scott, *Criminal Law*, 454-463 (2d ed., West, St Paul, Minn. 1986).
93. *Id.*
94. See, e.g., *State v. Nunn*, 356 N.W. 2d 601 (Iowa App. 1984); *Commonwealth v. Grove*, 363 Pa. Super. 328, 526 A. 2d 369 (1987); *People v. Aris*, 215 Cal. App. 3d 1178, 264 Cal. Rptr. 167 (1989); *State v. Stewart*, 243 Kan. 639, 763 P. 2d 572 (1988).
95. L.E. Walker, *The Battered Woman* 42-55 (1979); L.E. Walker, *The Battered Woman Syndrome* 95-104 (1984). Walker suggested that an abusive relationship can be described as a cycle with three phases: (1) the tension-building phase, characterized by slight instances of physical or emotional abuse; (2) the acute battering phase, characterized by more frequent and escalated instances of violence; and (3) the loving contrition phase, characterized by the offender's apologies and repeated promises to change his behavior. The term *battered spouse* refers to a woman who has been through the cycle at least twice. In phase one the woman's tendency to avoid the batterer may reinforce the pattern of abusiveness. Women in phase two tend to cope with frenzies of violence and wait for an ebb in the flow of abuse. Relief and dread are common to women in phase three; this lull in the abuse may inflict the most severe psychological trauma on the woman. See L.E. Walker, *Terrifying Love: Why Battered Women Kill and How Society Responds* 43-62 (1989).
96. See, e.g., *Developments in the Law: Domestic Violence*, 106 Harvard L. Rev. 1574 (1993); Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 Women's Rights L. Rep. 195 (1986).
97. The profiles of battered women who kill their partners often do not fulfill the criteria of "learned helplessness" or "psychological paralysis." See, e.g., Meier, *Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice*, 21 Hofstra L. Rev. 1295 (1993); Allard, *Rethinking Battered Woman Syndrome: A Black Feminist Perspective*, 1 U.C.L.A. Women's L.J. 191 (1991); Schopp et al., *Battered Woman Syndrome, Expert Testimony, and the Distinction Between Justification and Excuse*, 1 U. Ill. L. Rev. 45 (1994); Stark, *Re-presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 Alb. L. Rev. 973 (1995); Maguigin, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. Pa. L. Rev. 379 (1991); Dutton, *Understanding Women's Response to Violence: A Redefinition of Battered Woman Syndrome*, 21 Hofstra L. Rev. 1191 (1993); Callahan, *Will the "Real" Battered Woman Please Stand Up? In Search of a Realistic Definition of Battered Woman Syndrome*, 3 Am. U. J. Gender and L. 117 (1994).
98. See, e.g., Walker, *Battered Woman Syndrome and Self-Defense*, 6 Notre Dame J. L. Ethics and Pub. Policy 321 (1992) (defining battered women's syndrome as a form of posttraumatic stress

- disorder); Stark, *supra* note 97, at 1201 (suggesting that battered women are subject to entrapment or coercive control by the perpetrator); Dutton, *supra* note 97. Dutton proposes that (1) descriptive references should be made to "expert testimony concerning battered women's experiences," rather than to "battered woman syndrome" per se; (2) the scope of testimony concerning battered women's experiences should be framed within the overall social context that is essential for explaining battered women's responses to violence; and (3) evaluation and testimony concerning battered women's psychological reactions to violence should incorporate the diverse range of traumatic reactions described in the scientific literature, and should not be limited to an examination of learned helplessness, posttraumatic stress disorder, or any other single reaction or "profile."
99. See, e.g., *State v. Kelly*, 97 N.J. 178, 478 A. 2d 364 (1984); *State v. Gallegos*, 104 N.M. 247, 719 P. 2d 1268 (Ct. App. 1986); *Commonwealth v. Stonehouse*, 521 Pa. 41, 64, 555 A. 2d 772, 784 (1989); *State v. Koss*, 49 Ohio St. 3d 213, 551 N.E. 2d 970 (1990); *Arcoren v. United States*, 929 F. 2d 1235 (8th Cir. 1991) (holding that Federal Rule of Evidence 702 encompasses the use of psychiatric and psychological evidence).
 100. In *Navarro v. Block*, No. 96-5569 (9th Cir. 1999), the Ninth Circuit addressed the issue of whether domestic violence crimes result in severe injury or death less frequently than nondomestic violence crimes that are considered 911 emergencies. Citing a lack of evidence supporting an assumption that domestic violence crimes are less injurious than nondomestic violence crimes, the court reversed and remanded a trial court ruling that 911 dispatcher policy equating domestic violence calls with "not-in-progress" calls, and equating nondomestic violence calls with "in-progress" calls, was rational and reasonable.
 101. Bowker et al., *On the Relationship Between Wife Beating and Child Abuse*, in *Perspectives on Wife Abuse* 158, 164 (Yllo & Bograd eds., 1988); Pagelow, *Effects of Domestic Violence on Children and Their Consequences for Custody and Visitation Agreements*, 7 *Mediation Q.* 347 (1990); P.G. Jaffe et al., *Children of Battered Women* 2 (1990); Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 *Mich. L. Rev.* 1, 5 (1991); G.L. Greif & R.L. Hegar, *When Parents Kidnap* 30 (1993); Edleson, *Mothers and Children: Understanding the Links Between Woman Battering and Child Abuse*, in *A Report of the Violence Against Women Research Strategic Planning Workshop* (Nat'l Inst. of Justice, Washington, D.C. 1995).
 102. Judicial Subcommittee, Commission on Domestic Violence, American Bar Association, *Judicial Checklist*, in *The Impact of Domestic Violence on Your Legal Practice* 13-7 (Goelman, Lehrman & Valente eds., 1996).
 103. See, e.g., Hart & Hofford, *Child Custody*, in *The Impact of Domestic Violence on Your Legal Practice* 5-1-5-6 (Goelman, Lehrman & Valente eds., 1996). For a discussion of child support issues in the context of domestic violence, see Haynes, *Child Support*, in *The Impact of Domestic Violence on Your Legal Practice* 5-7-5-10 (Goelman, Lehrman & Valente eds., 1996).
 104. See, e.g., Dakis & Karan, *Judicial Intervention*, in *The Impact of Domestic Violence on Your Legal Practice* 13-1-13-9 (Goelman, Lehrman & Valente eds., 1996).
 105. See, e.g., H.R. Con. Res. 172, 101st Cong., 2d Sess. (1990); see also National Council on Juvenile and Family Court Judges, *Family Violence: A Model State Code* 33 (1994).
 106. *Supra* note 104, at 13-1.
 107. See *Foran v. Foran*, 834 P. 2d 1081 (Wash. Ct. App. 1992) (holding that, even where evidence of premarital domestic violence was not sufficient to support a finding that the wife was coerced into signing, it could show that it inhibited her willingness to seek independent counsel).
 108. See, e.g., *Snedaker v. Snedaker*, 660 So. 2d 1070 (Fla. Dist. Ct. App. 1995) (upholding award of \$125,000 for assault and battery claims despite valid prenuptial agreement that severely limited battered woman's recovery in divorce).
 109. See Berner & Klaw, *Prenuptial Agreements*, in *The Impact of Domestic Violence on Your Legal Practice* 6-1-6-3 (Goelman, Lehrman & Valente eds., 1996).
 110. See, e.g., New York Victim Service Agency, *The Cost of Domestic Violence: A Preliminary Investigation of the Financial Cost of Domestic Violence* (1987). In 1992 nearly 20% of the women killed in the workplace were murdered by a current or former husband or male partner. Bureau of Labor Statistics, National Census of Fatal Occupational Injuries (Aug. 3, 1995).
 111. See, e.g., Alaska Stat. §12.61.010(5) (1995); 18 Pa. Cons. Stat. §4957(a).
 112. See, e.g., Kuperberg & Lieblein, *Corporate Liability*, in *The Impact of Domestic Violence on Your Legal Practice* 10-6-10-10 (Goelman, Lehrman & Valente eds., 1996).
 113. *Id.* at 10-6.
 114. Occupational Safety and Health Act of 1970, §5(a)(1), 29 U.S.C. §651, §654(a) (1994) (requiring an employer to "furnish each of his employees employment and a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees").
 115. See, e.g., 82 *Am. Jur. 2d Workers' Compensation* §73 (1992).
 116. See, e.g., *Tart v. Colonial Penn. Ins. Co.*, No. 2019 (Pa. C.C.P. Sept. 1985) (holding that a cause of action existed).
 117. *Supra* note 112, at 10-7.
 118. 82 *Am. Jur. 2d Workers' Compensation* §§358, 359 (1992 & Supp. 1995); Cal. Lab. Code §3208.3 (Deering 1995) (holding that California's workers' compensation statute encompassed compensation for a victim's psychiatric injury caused by work-related violence).
 119. See, e.g., Me. Rev. Stat. Ann. tit. 26, §1193 (1)(A)(4) (West 1995). Unemployment benefits may not be denied, for example, if a domestic violence victim is discharged after being absent from work due to injuries from battering, because the absence would not reflect an "intentional disregard of the employer's interests." See *Boynton Cab Co. v. Neubeck*, 296 N.W. 636 (Wis. 1941).
 120. *Supra* note 104.
 121. See, e.g., Keller, Snell & Wilmer, *Workplace Violence: The Employer's New Catch-22* (1995); Larson, *Employment Screening*, §§2.10, 3.04(1)(a), 3.04(2)(a)(b), 9.11 (1995). Also, as of 1996, at least 13 states had enacted laws designed to restrict insurance discrimination on the basis of domestic violence. These states are Arizona, California, Connecticut, Delaware, Florida, Indiana, Iowa, Maine, Massachusetts, Minnesota, New Hampshire, Pennsylvania, and Tennessee. See Fromson, *Insurance Discrimination Against Victims of Abuse*, in *The Impact of Domestic Violence on Your Legal Practice* 10-21 (Goelman, Lehrman & Valente eds., 1996).

