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**The Legal Response to Violence against Women in the United States of America:  
Recent Reforms and Continuing Challenges**

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\* *The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.*

## I. INTRODUCTION<sup>1</sup>

For centuries, the legal system in the United States of America routinely ignored or

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supplement to criminal prosecution, because the victim (rather than the prosecutor) is in charge of a civil suit, civil actions are governed by a lower burden of proof than criminal cases, and a successful civil case typically results in money damages, which many victims find more helpful than incarceration of the perpetrator.<sup>11</sup> Furthermore, federal law, unlike state and local law, applies throughout the country, is more visible to the general public, and is viewed as embodying principles that are fundamental to the nation as a whole.<sup>12</sup> For all these reasons, VAWA's civil rights provision was a particularly promising vehicle for legal reform.

However, six years after VAWA was signed into law, the United States Supreme Court held that Congress lacked authority under the federal Constitution to enact the civil rights provision.<sup>13</sup> As a result of this decision, which is open to criticism on numerous grounds,<sup>14</sup> VAWA's civil rights provision is no longer in effect. Nevertheless, it continues to be influential. Several states and localities have passed or introduced legislation modeled on VAWA's civil rights provision.<sup>15</sup> Federal legislation to restore the civil rights provision in a narrower version that would meet constitutional requirements has been introduced but not enacted.<sup>16</sup>

## B. Other Provisions

Aside from the civil rights provision, the Violence Against Women Act of 1994 contained dozens of other innovative measures. (The civil rights provision was the only section of VAWA that was invalidated by the Supreme Court.) Among its many accomplishments, the legislation made it a federal crime to cross state lines in order to commit domestic violence or to violate a protection order; mandated restitution awards in federal sex crime cases and interstate domestic violence cases; required states to give full faith and credit to protection orders issued in other states; expanded the rape shield protections in the Federal Rules of Evidence; and reformed immigration law to help battered immigrant women escape their abusers.<sup>17</sup>

The statute authorized the appropriation of 1.62 billion dollars in federal funds to support a broad range of programs, including training of police, prosecutors, and judges; support of battered women's shelters, community domestic violence projects, and rape prevention programs; creation of a national toll-free domestic violence telephone hotline; and research and data collection.<sup>18</sup> The requirements imposed on grant recipients were devised to serve a variety of goals, such as improving outreach to victims in underserved minority populations and encouraging government agencies to collaborate with non-governmental organizations.<sup>19</sup> The outpouring of federal funds triggered by VAWA has had enormous positive impact.<sup>20</sup>

The reforms instituted by the 1994 VAWA legislation have paved the way for further advances. Immigration law provides a good example. T The re826e8r (.) Tj 6 Tw (w3 0 TD TD /F0eroo Tj 9

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suspension of deportation proceedings and acquire lawful permanent residency status. When VAWA was amended in 2000, it expanded access to the

## B. Compulsory Criminal Justice Interventions

In the past, perpetrators of domestic violence were rarely arrested, prosecuted, and convicted.<sup>31</sup> In reaction to this climate of tolerance for domestic violence, reformers pressed for aggressive interventions by the criminal justice system. Empirical studies suggest that arresting batterers has a deterrent effect on their commission of subsequent abuse.<sup>32</sup> New approaches adopted in many jurisdictions include mandatory arrest policies, which require police to arrest anyone who they have probable cause to believe has committed domestic violence, and “no-drop” prosecution policies, which prevent prosecutors from complying with a victim’s request to drop charges against the abuser.<sup>33</sup>

Feminists are divided on the question of whether compulsory criminal interventions are desirable. While many have welcomed a more vigorous legal response to domestic violence, others express concern that these policies deprive women of autonomy, have a disproportionate impact on minority communities, endanger women by triggering retaliatory violence by the batterer, and increase the likelihood that battered women themselves will be arrested and prosecuted.<sup>34</sup> Although no consensus has emerged, some feminists have steered a middle course by endorsing “pro-arrest” and “pro-prosecution” approaches instead of inflexible, mandatory policies.<sup>35</sup>

A particularly harsh type of mandatory intervention is the practice of jailing a victim who refuses to testify against the abuser.<sup>36</sup> Victims can and should be encouraged to testify, and they will often agree to do so, especially if they are provided with supportive counseling and advocacy services.<sup>37</sup> However, forcing a woman to testify against her will punishes the victim. With adequate training, police and prosecutors can learn how to gather and use other types of evidence in order to convict batterers without the victim’s testimony.<sup>38</sup>

In fact, even after mandatory policies are adopted, police and prosecutors sometimes fail to comply with them.<sup>39</sup> In the case of *Town of Castle Rock v. Gonzales*,<sup>40</sup> a woman complained repeatedly to her local police department that her estranged husband had violated a protection order by abducting their three daughters. The police took no action, despite a state statute that instructed police to arrest or seek a warrant for the arrest of an offender who has violated a protection order. The man later killed all three children.<sup>41</sup> After losing her lawsuit in the United States Supreme Court, the plaintiff in this case filed a claim with the Inter-American Commission on Human Rights, which is currently pending.<sup>42</sup>

## C. Criminal Defense of Battered Women

When a battered woman is prosecuted for killing or attacking her abuser, it is crucial that she be given an opportunity to show that she was acting in self-defense. Traditionally, the

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Civil protection orders for domestic violence are not the only type of protection orders that are offered. Criminal protection orders are often available in connection with domestic violence prosecutions, and in some jurisdictions, they are issued automatically in all such cases.<sup>50</sup> Some states have multiple different statutory schemes to provide civil protection orders for elder abuse, stalking, harassment, and other situations, in addition to domestic violence.<sup>51</sup>

Protection orders are among the most effective legal remedies available for domestic violence.<sup>52</sup> According to a study by the National Center for State Courts, which surveyed women six months after they had obtained civil protection orders, over 85 percent of the women felt their lives had improved since getting the order, over 80 percent felt safer, and 65 percent of the orders had not been violated.<sup>53</sup> Several other studies also show a high level of satisfaction among women who have obtained orders.<sup>54</sup> Studies measuring abusers' compliance with protection orders are more mixed, with several showing that half or more of abusers committed subsequent abuse against their victims after the issuance of a protection order.<sup>55</sup> Interestingly, the number of women satisfied with their protection orders exceeds the number whose orders have not been violated. This may reflect the fact that the order has reduced the abuse even if it has not eliminated it.<sup>56</sup> It may also reflect the fact that many women feel empowered by the court's issuance of a protection order, because of the message it communicates to the batterer that his behavior is unacceptable and society takes domestic violence seriously.<sup>57</sup>

Protection orders are not a panacea, however. Their effectiveness depends on proper enforcement. Depending on the facts and the law of the jurisdiction, violation of a temporary or final order may be a felony or misdemeanor, civil or criminal contempt of court, or both. However, enforcement is uneven.<sup>58</sup>

There are additional problems with protection orders. Some women find the process of obtaining an order difficult or intimidating. Others are deterred from seeking an order because they do not want to sever ties with the abuser. Currently, most protection orders prohibit or severely restrict contact between the abuser and victim. Protection orders that forbid further

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orders are difficult to enforce, imply that both parties are equally at fault, and can create serious legal problems for the victim.<sup>60</sup> Although both federal and state laws discourage the issuance of mutual protection orders, they continue to be granted.<sup>61</sup>

#### E. Civil Damages Actions

Under certain circumstances, domestic violence victims can bring tort actions against the abuser and against the police or other third parties that should have prevented the violence but failed to do so.

Recent doctrinal changes have made it easier for victims to bring civil suits against their abusers. Some states have extended the statute of limitations for domestic violence claims by statute or through the application of rules concerning duress, insanity, and continuing tort. The ancient common law doctrine of interspousal tort immunity, which prohibited one spouse from suing the other, has been abandoned in most states. When a tort claim is contemplated at the time of divorce, some states permit or require the tort claim to be joined with the divorce action, while



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In 1990, California became the first state to make stalking a crime. Today, stalking is a crime under the laws of all states.<sup>69</sup> Many states offer civil protection orders to stalking victims under domestic violence statutes or other statutes specifically addressing stalking or harassment.<sup>70</sup> At the federal level, the Violence Against Women Act was amended in 1996 to create a federal criminal offense of interstate stalking; this provision was later expanded when the Violence Against Women Act was amended in 2000 and 2005.<sup>71</sup>

Cyberstalking (that is, the use of the Internet or electronic communication devices to stalk another person) is a growing problem. Some states explicitly cover cyberstalking in their stalking statutes.<sup>72</sup>

### G. Child Custody and Visitation<sup>73</sup>

A man who abuses his spouse or partner poses a danger not only to his adult victim but also to his children. Men who abuse women have a high rate of committing child abuse. Even when children are not the intended target of abuse, they can be accidentally injured during an episode of violence between adults. Furthermore, exposure to domestic violence is emotionally traumatic for children and may teach them that abuse of women is normal and acceptable.<sup>74</sup> Domestic violence tends to escalate following separation, and a man may use access to the children as a way to continue abusing and controlling his former spouse or partner.<sup>75</sup> Since a child's well-being is directly tied to that of his or her primary parent, the safety of both abused women and their children should be a paramount consideration in child custody and visitation decisions.<sup>76</sup>

In 1990, Congress unanimously passed a non-binding resolution urging  
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other legal personnel who are biased and/or uninformed about domestic violence.<sup>84</sup> The myth persists that a man's abuse of his adult partner has no bearing on his fitness as a parent.

There is ample evidence that being a victim of domestic violence actually places women at a disadvantage in custody and visitation proceedings.<sup>85</sup> To a judge or other observer, an abuser might appear more credible, stable, reasonable, and sympathetic than his traumatized victim.<sup>86</sup> Judges and other legal actors often make the unwarranted assumption that women fabricate or exaggerate claims of domestic violence to manipulate the outcome of a child custody or visitation dispute.<sup>87</sup> Fathers' rights groups have argued vigorously that it is unfair to deny men access to their children and have lent credibility to the concept of Parental Alienation Syndrome, a theory that has never been scientifically validated and that blames mothers for making false abuse allegations and compelling children to reject their fathers.<sup>88</sup> By filing repeated motions for custody and visitation, abusers can use the legal system itself as a vehicle to harass the victim and exhaust her emotional and financial resources.<sup>89</sup>

Court orders requiring that a third party oversee the exchange of children at the beginning and end of visitation, or requiring that visitation periods be supervised by a third party, are becoming increasingly common.<sup>90</sup> Allowing the abuser's relatives or friends to act as supervisors is dangerous since they may be unable or unwilling to control his behavior.<sup>91</sup> Supervised visitation centers are available in a growing number of locations but are expensive to establish and operate, with the result that demand exceeds supply.<sup>92</sup> The federal government has provided funding to support the establishment of supervised visitation centers.<sup>93</sup> However, the quality of supervised visitation programs is inconsistent.<sup>94</sup> Furthermore, supervision does not eliminate the risk that the abuser will use visitation as an opportunity to harm the adult victim and/or the child.

Some states have statutes or case law recognizing that when available arrangements are inadequate to ensure the safety of the adult victim and/or child, both custody and visitation should be denied to the abusive parent.<sup>95</sup> Nevertheless, it remains extremely rare for a court to deny a father access to his children, even when he has committed domestic violence.<sup>96</sup>

#### H. Abused Mothers, "Failure to Protect," and Child Abuse and Neglect

In child abuse and neglect proceedings, abused mothers are sometimes blamed for exposing their children to domestic violence. A recent lawsuit successfully challenged the New York City child protection agency's practice of automatically finding that children exposed to domestic violence were neglected and removing them from their mothers in order to place them into foster care.<sup>97</sup> Child abuse and neglect proceedings should target the perpetrators of domestic violence rather than the victims and should recognize that the protection of children is often best achieved by protecting their mothers.<sup>98</sup>

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Similar issues arise when a battered woman is accused of failing to protect her child from

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## VI. GENERAL OBSERVATIONS

Perhaps the most successful aspect of legal reform concerning violence against women in the United States is the sheer number and variety of legal remedies that are available. For instance, depending on the facts and the law of the jurisdiction, a battered wife has the option of seeking any or all of the following: a criminal prosecution, a civil protection order, a divorce, a legal separation, a civil personal injury suit against her husband, a civil rights claim against him, a civil suit (possibly including a discrimination claim) against the police or other third parties for failing to protect her from the abuse, and an award from a government victim compensation program.<sup>121</sup>

Since the population of the United States is diverse, and the situations of individual women vary, it is important to offer a range of legal interventions. While criminal penalties make an important statement that violence against women is taken seriously as an offense against society, they may not be helpful to all women. Women of color are often reluctant to become involved with the criminal justice system because of its history of discrimination against members of minority groups.<sup>122</sup> Immigrant women have an additional disincentive for exposing their partners to criminal prosecution, because of the risk that the perpetrator will be deported.<sup>123</sup>

Although reliable statistics on violence against women are difficult to obtain, there are data suggesting that rates of violence against women decreased during the 1990s and that legal reforms are at least partly responsible for that reduction.<sup>124</sup> Nevertheless, a number of significant challenges remain.

### A. Implementation

In the process of reforming the law concerning violence against women, one of the most pressing challenges is implementation. Progressive laws are worth little if they are not carried out properly by police, prosecutors, judges, and others in positions of power.

Problems with implementation include both underenforcement and overenforcement. For example, in domestic violence protection orders, some judges refuse to include a provision evicting the offender from the home even when the victim has requested it, while other judges insist on including an eviction provision even when the victim does not want it.<sup>125</sup> At the same time that some police officers fail to arrest domestic violence offenders (even in the presence of mandatory arrest statutes), others automatically arrest anyone suspected of committing domestic violence – including women who fought back in self-defense.<sup>126</sup> While some prosecutors are reluctant to interfere in the relationship between a domestic violence victim and abuser, others require the victim to separate from the abuser as a prerequisite for receiving assistance.<sup>127</sup>





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Legal reform has made some progress toward meeting women's material needs. Civil protection orders and tort claims offer the possibility of monetary recovery for victims, particularly if the abuser or other defendant has financial resources or insurance coverage.<sup>150</sup> Some federal, state, and local laws contain protections for victims of violence against women in the areas of housing and employment; however, these provisions are generally modest in their scope and application.<sup>151</sup> Federal welfare law was amended in 1996 to create the Family Violence Option, which permits domestic violence victims to be exempted from certain restrictions on receiving public assistance payments. States were given the choice of whether to adopt this policy, and some chose not to do so. Furthermore, in places where the Family Violence Option has been adopted, it has generally been inadequate.<sup>152</sup> Under VAWA, states seeking certain federal grants must certify that they do not require victims to pay for forensic medical exams or for filing and service costs associated with domestic violence prosecutions.<sup>153</sup> Still, anecdotal evidence indicates that the practice of billing victims for these items has not disappeared.

The piecemeal reforms offering material resources for victims of violence against women are a good start but are insufficient to meet women's needs. In general, the U.S. legal system is more focused on guaranteeing negative rights (such as the right to be free from government interference with certain freedoms) than positive rights (affirmative government obligations to fulfill basic socioeconomic needs). The law on violence against women is no exception.

#### E. Access to Legal Resources

To take full advantage of available legal reforms, women must have access to assistance from attorneys, victim advocates, counselors, and interpreters if needed. Although steps have been taken to increase access to these resources, the supply remains inadequate to meet the demand.<sup>154</sup>

### VII. CONCLUSION

Despite significant progress on improving the legal response to violence against women in the United States, much work remains to be done. Domestic violence, rape and sexual assault, sexual harassment, and other forms of violence against women continue to occur at unacceptably high levels. Frequently, women are reluctant to report incidents to authorities and do not avail themselves of existing legal remedies. Law can play a vital role in the effort to end violence against women. Advocates for the rights of women must continue to monitor the legal system to ensure that it lives up to its promise.



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<sup>1</sup> Portions of this paper previously appeared in other publications by the author.

<sup>2</sup> In the absence of any word that adequately describes those who have experienced violence, this paper uses the well-known term “victim.” The alternative term “survivor,” although preferable in some respects, is relatively unfamiliar to the legal system.

<sup>3</sup> There are significant differences among jurisdictions in what legal rules have been adopted as well as how they are interpreted and implemented. *See, e.g.*, American Bar Association Commission on Domestic Violence, Statutory Summary Charts, <http://www.abanet.org/domviol/statutorysummarycharts.html> (last visited July 29, 2008) (providing state-by-state comparisons of statutes concerning violence against women). Because of the breadth of the topic, this paper does not purport to be comprehensive.

<sup>4</sup> Pub. L. No. 103-322, 108 Stat. 1902 (1994). In my former capacity as Senior Staff Attorney at the NOW Legal Defense and Education Fund, I was involved in the effort to draft and enact the Violence Against Women Act of 1994; however, the views expressed herein are my own.

<sup>5</sup> *See, e.g.*, Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006); Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1491 (2000).

<sup>6</sup> Pub. L. No. 103-322, title IV, subtitle C, 108 Stat. 1941-42 (codified in relevant part at 42 U.S.C. § 13981).

<sup>7</sup> 42 U.S.C. §§ 1988, 13981(c).

<sup>8</sup> Sally F. Goldfarb, *The Supreme Court, the Violence Against Women Act, and the Use and Abuse of Federalism*, 71 *FORDHAM LAW REVIEW* 57, 74-75 (2002) (citing cases).

<sup>9</sup> Sally F. Goldfarb, *Applying the Discrimination Model to Violence Against Women: Some Reflections on Theory and Practice*, 11 *AMERICAN UNIVERSITY JOURNAL OF GENDER, SOCIAL POLICY & THE LAW* 251, 254-59 (2003).

<sup>10</sup> As discussed in Part V below, federal civil rights legislation has also been used to prohibit sexual harassment in employment and education.

<sup>11</sup> Sally F. Goldfarb, *Violence Against Women and the Persistence of Privacy*, 61 *OHIO STATE LAW JOURNAL* 1, 55-56 (2000).

<sup>12</sup> *See* Goldfarb, *supra* note 8, at 92, 143.

<sup>13</sup> *United States v. Morrison*, 529 U.S. 598 (2000) (holding that Congress exceeded its powers under the Commerce Clause and Section 5 of the Fourteenth Amendment when it enacted the VAWA civil rights provision).

<sup>14</sup> *See, e.g.*, Goldfarb, *supra* note 8; Sally F. Goldfarb, “No Civilized System of Justice”: *The Fate of the Violence Against Women Act*, 102 *WEST V* *Goldfarb, supra* ,

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<sup>19</sup> See Pub. L. No. 103-322, title IV, subtitles A & B, 108 Stat. 1903-41 (1994).

<sup>20</sup> See OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEPARTMENT OF JUSTICE, 2006 BIENNIAL REPORT TO CONGRESS ON THE EFFECTIVENESS OF GRANT PROGRAMS UNDER THE VIOLENCE AGAINST WOMEN ACT (describing programs funded by VAWA grants).

<sup>21</sup> For a summary of immigration provisions of the 1994 and 2000 legislation, see Janice Kaguyutan et al., *The Violence Against Women Act of 1994 and 2000: Immigration Protections for Battered Immigrants*, 6 DOMESTIC VIOLENCE REPORT 33 (2001).

<sup>22</sup> Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, title VIII, 119 Stat. 2960 (2006).

<sup>23</sup> *Id.* at subtitle D; Leslye E. Orloff & Hema Sarangapani, *Governmental and Industry Roles and Responsibilities With Regard to International Marriage Brokers: Equalizing the Balance of Power Between Foreign Fiancés and Spouses*, 13 VIOLENCE AGAINST WOMEN 469 (2007).

<sup>24</sup> See, e.g., National Network to End Violence Against Immigrant Women et al., Joint Press Release: Government's Newly-Announced Directive Will Benefit Thousands of Immigrant Victims of Domestic Violence (Apr. 24, 2008).

<sup>25</sup> See *supra* Part II (discussing the Violence Against Women Act). See also, e.g., 18 U.S.C. § 922(g)(8)-(9) (prohibit

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<sup>31</sup> For an overview of the history of the legal system's response to domestic violence, see Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO LAW REVIEW 1487, 1494-99 (2008).

<sup>32</sup> See CHRISTOPHER D. MAXWELL ET AL., U.S. DEPARTMENT OF JUSTICE, THE EFFECTS OF ARREST ON INTIMATE PARTNER VIOLENCE: NEW EVIDENCE FROM THE SPOUSE ASSAULT REPLICATION PROGRAM (2001) (analyzing five studies showing that arrest had a deterrent effect on batterers, but that the deterrent effect was modest in comparison to the relationship between recidivism and such factors as the batterer's age and prior criminal record); Joan Zorza, *Must We Stop Arresting Batterers?: Analysis and Policy Implications of New Police Domestic Violence Studies*, 28 NEW ENGLAND LAW REVIEW 929 (1994) (arguing that empirical studies demonstrate that arrest is generally the best available method of deterring future violence); *but see, e.g.*, Janell D. Schmidt & Lawrence W. Sherman, *Does Arrest Deter Domestic Violence?*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 43 (Eve S. Buzawa & Carl G. Buzawa eds., 1996) (asserting that arrest reduced recidivism among some batterers but increased it among others).

<sup>33</sup> Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE JOURNAL OF LAW & FEMINISM 3, 14-16 (1999); Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARVARD LAW REVIEW 1849 (1996). See also AMERICAN BAR ASSOCIATION COMMISSION ON

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<sup>39</sup> Sack, *supra* note 36, at 1697-99 (describing police and prosecutor resistance to mandatory domestic violence enforcement policies); Joan Zorza, *The Criminal Law of Misdemeanor Domestic Violence, 1970-1990*, 83 JOURNAL OF CRIMINAL LAW & CRIMINOLOGY 46, 65 (1992) (same).

<sup>40</sup> 545 U.S. 748 (2005) (holding that police did not violate plaintiff's procedural due process rights).

<sup>41</sup> *Id.*

<sup>42</sup> See Caroline Bettinger-Lopez, Jessica Gonzales v. United States: *An Emerging Model for Domestic Violence & Human Rights Advocacy in the United States*, 21 HARVARD HUMAN RIGHTS JOURNAL (forthcoming 2008).

<sup>43</sup> See LENORE E. WALKER, *THE BATTERED WOMAN* (1979).

<sup>44</sup> See Linda L. Ammons, *Mules, Madonnas, Babies, Bathwater, Racial Imagery, and Stereotypes: The African-American Woman and the Battered Woman Syndrome*, 1995 WISCONSIN LAW REVIEW 1003.

<sup>45</sup> For further discussion of battered woman syndrome and related issues, see KATHARINE T. BARLETT ET AL., *GENDER AND LAW* 520-25 (4th edition 2006); SCHNEIDER, *supra* note 34, at 29-34, 79-83; Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICHIGAN LAW REVIEW 1, 34-43 (1991).

<sup>46</sup> Goldfarb, *supra* note 31, at 1503.

<sup>47</sup> For information on protection orders, see, for example, PETER FINN & SARAH COLSON, NATIONAL INSTITUTE OF JUSTICE, *CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT* (1990); Goldfarb, *supra* note 31; Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA LAW REVIEW 83; Tct

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<sup>60</sup> Sack, *supra* note 36, at 1682-84; Elizabeth Topliffe, Note, *Why Civil Protection Orders Are Effective Remedies for Domestic Violence But Mutual Protective Orders Are Not*, 67 INDIANA LAW JOURNAL 1039 (1992).

<sup>61</sup> Sack, *supra* note 36, at 1683-84; AMERICAN BAR ASSOCIATION COMMISSION ON DOMESTIC VIOLENCE, STATES PERMITTING OR PROHIBITING MUTUAL PROTECTIVE ORDERS WITHOUT A SEPARATE PETITION (July 2007), <http://www.abanet.org/domviol/statutorysummarycharts.html> (follow “Statutes Prohibiting Mutual Protective Orders” link).

<sup>62</sup> For discussion of the issues in this paragraph, see, for example, SCHNEIDER ET AL., *supra* note 28, at 697-730, 737-43; Jennifer Wriggins, *Domestic Violence Torts*, 75 SOUTHERN CALIFORNIA LAW REVIEW 121 (2001).

<sup>63</sup> BARLETT ET AL., *supra* note 45, at 497-99 (citing cases based on the equal protection clause or on “special relationship” theory). However, such cases are often unsuccessful. *See, e.g.*, *Town of Castle Rock v. Gonzalez*, 545 U.S. 748 (2005) (holding that plaintiff did not have a constitutionally protected property interest in police enforcement of a protection order); *EEin this p.08r)alezuido, ( FF.3d 865) d Cir.195 -6.752.75 T*

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<sup>74</sup> On the impact of domestic violence on children, see, for example, Goldfarb, *supra* note 31, at 1519-20; Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 WEST VIRGINIA LAW REVIEW 237, 239-52 (1999).

<sup>75</sup> Barbara J. Hart, *State Codes on Domestic Violence: Analysis, Commentary and Recommendations*, 43 JUVENILE & FAMILY COURT JOURNAL 1, 33-34 (1992); Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW 657, 704-05 (2003).

<sup>76</sup> See NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *supra* note 27, at § 402(1) (recomm

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- <sup>91</sup> See, e.g., Sarah M. Buel, *Domestic Violence and the Law: An Impassioned Exploration for Family Peace*, 33 FAMILY LAW QUARTERLY 719, 736-37 (1999); Straus, *supra* note 90, at 249-50.
- <sup>92</sup> See Clement, *supra* note 90; Family Violence Project, *supra* note 79, at 221; Straus, *supra* note 90.
- <sup>93</sup> OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEPARTMENT OF JUSTICE, GUIDING PRINCIPLES: SAFE HAVENS: SUPERVISED VISITATION AND SAFE EXCHANGE GRANT PROGRAM (2007); OFFICE ON VIOLENCE AGAINST WOMEN, *supra* note 20, at 133-41.
- <sup>94</sup> Clement, *supra* note 90, at 302; Straus, *supra* note 90, at 235.
- <sup>95</sup> See AMERICAN LAW INSTITUTE, *supra* note 78, at § 2.11 comment f; Goodmark, *supra* note 74, at 259; Klein & Orloff, *supra* note 47, at 988-90.
- <sup>96</sup> See, e.g., Family Violence Project, *supra* note 79, at 216; Kernic et al., *supra* note 81; Straus, *supra* note 90, at 239-40.
- <sup>97</sup> *Nicholson v. Scopetta*, 820 N.E.2d 840 (N.Y. 2004); *Nicholson v. Williams*, 203 F. Supp. 2d 153 (E.D.N.Y. 2002).
- <sup>98</sup> See Leigh Goodmark, *Achieving Batterer Accountability in the Child Protection System*, 93 KENTUCKY LAW JOURNAL 613 (2004-05).
- <sup>99</sup> SCHNEIDER, *supra* note 34, at 148-68; G. Kristian Miccio, *A Reasonable Battered Mother?: Redefining, Reconstructing, and Recreating the Battered Mother in Child Protective Proceedings*, 22 HARVARD WOMEN'S LAW JOURNAL 89 (1999).
- <sup>100</sup> SUSAN SCHECHTER & JEFFREY L. EDLESON, EFFECTIVE INTERVENTION IN DOMESTIC VIOLENCE & CHILD MALTREATMENT CASES: GUIDELINES FOR POLICY AND PRACTICE (1999); Meier, *supra* note 75, at 660, 715.
- <sup>101</sup> THE GREENBOOK NATIONAL EVALUATION TEAM, THE GREENBOOK INITIATIVE FINAL EVALUATION REPORT (2008).
- <sup>102</sup> See BARTLETT, *supra* note 45, at 790-821.
- <sup>103</sup> AMERICAN BAR ASSOCIATION COMMISSION ON DOMESTIC VIOLENCE, SEXUAL ASSAULT CIVIL PROTECTION ORDERS (CPOS) BY STATE (Aug. 2007), <http://www.abanet.org/domviol/statutorysummarycharts.html> (follow "Civil Protection Orders: Sexual Assault" link).
- <sup>104</sup> BARTLETT, *supra* note 45, at 790-821; Lynn Hecht Schafran, *Writing and Reading About Rape: A Primer*, 66 ST. JOHN'S LAW REVIEW 979 (1993).
- <sup>105</sup> See BARTLETT, *supra* note 45, at 797 (describing state laws).
- <sup>106</sup> See, e.g., *State v. Colbath*, 540 A.2d 1212 (N.H. 1988); Susan Estrich, *Palm Beach Stories*, 11 LAW & PHILOSOPHY 5, 21-27 (1992); Schafran, *supra* note 104, at 1036.
- <sup>107</sup> See S. Rep. No. 102-197, at 46 (1991).
- <sup>108</sup> Pub. L. No. 103-322 § 40141 (1994).
- <sup>109</sup> Schafran, *supra* note 104, at 1020-21.
- <sup>110</sup> See Michelle J. Anderson, *Marital Immunity, Intimate Relationships, and Improper Inferences: A New Law on Sexual Offenses by Intimates*, 54 HASTINGS LAW JOURNAL 1465 (2003); Jill Elaine Hasday, *Contest and Consent: A Legal History of Marital Rape*, 88 CALIFORNIA LAW REVIEW 1371 (2000).
- <sup>111</sup> On the advantages and pitfalls of DNA testing, see, for example, James Dao, *Lab's Errors in '82 Killing Force Review of Virginia DNA Cases*, N.Y. TIMES, May 7, 2005, at A1; Julia Preston, *After 32 Years, Clothing Yields DNA Key to Dozens of Rapes*, N.Y. TIMES, Apr. 27, 2005, at A1; Julia Preston, *Prosecutor Seeks to End Time Limit in Rape Cases*, N.Y. TIMES, Apr. 29, 2005, at B1.

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<sup>112</sup> See CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* (1979); Reva B. Siegel, *Introduction*, in *DIRECTIONS IN SEXUAL HARASSMENT LAW* 1, 8-11 (Catharine A. MacKinnon and Reva B. Siegel eds., 2004).

<sup>113</sup> *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).

<sup>114</sup> *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998) (establishing an affirmative defense in certain sexual harassment cases for e



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<sup>130</sup> See Goldfarb, *supra* note 31, at 1517. Specialized domestic violence courts also have potential drawbacks, including a high rate of burnout among judges and other staff and the risk of exposing domestic violence victims to punitive child protection proceedings. *See id.*

<sup>131</sup> See FINN & COLSON, *supra* note 47, at 53, 57; *Developments in the Law: Legal Responses to Domestic Violence*, 106 HARVARD LAW REVIEW 1498, 1512, 1517 (1993).

<sup>132</sup> See Diane L. Rosenfeld with Kirstin Scheffler, *GPS Monitoring Systems for Batterers: Exploring a New Paradigm of Offender Accountability and Victim/Survivor Safety*, 12 DOMESTIC VIOLENCE REPORT 49 (2007).

<sup>133</sup> See Darren Gowen, *Remote Location Monitoring - A Supervision Strategy to Enhance Risk Control*, 65-SEP FEDERAL PROBATION 38 (2001).

<sup>134</sup> See, e.g., LINDA G. MILLS, *INSULT TO INJURY* (2003) (promoting the use of “Intimate Abuse Circles”); Christine Fiore & Kristen O’Shea, *Women in Violent Relationships – Experiences With the Legal and Medical Systems*, in *INTIMATE PARTNER VIOLENCE* 18-1, 18-14 to 18-15 (Kathleen A. Kendall-Tackett & Sarah M. Giacomoni eds., 2007) (surveying proposals for alternative approaches); Donna Coker, *Enhancing Autonomy for Battered Women: Lessons From Navajo Peacemaking*

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<sup>148</sup> *See generally* BATTERED WOMEN