

CLEARINGHOUSE REVIEW

JOURNAL OF POVERTY LAW

INSIDE

Welfare Reform

Violence Against
Women Affecting
the Workplace

Unemployment
Compensation

New Protections for
Immigrant Women and
Children

Mutual Restraining
Orders

Mediation

Removal of Children
from Victims

Child Custody and
Visitation

Relocation Rights



Representing Battered Women During Welfare Reform

Mutual Restraining Orders in Domestic Violence Civil Cases

By Mary U. O'Brien

Mary U. O'Brien is a staff attorney at the National Center on Women and Family Law, Inc., 275 Seventh Ave., Suite 1206, New York, NY 10001-6708; (212) 741-6438, HN1193@handsnet.org. She also continues to serve part-time as a staff attorney at the Legal Aid Society of Morris County in Morristown, NJ.

I. Introduction

Mutual restraining orders result when a trial court imposes restraints on both parties to a domestic violence matter; they usually prohibit each from having contact with, and from committing further acts of abuse against, the other party. Depending upon the domestic abuse laws of the state in question, they can be based upon either civil or criminal complaints.

Mutual civil orders of protection may be entered under several circumstances. Both parties may have applied for an order of protection, and, after a hearing, the court may find each to have committed an act of abuse prohibited by that state's statute. In some instances, mutual civil restraining orders may issue upon consent of the parties. The most offensive mutual civil orders result when the judge presiding over a domestic violence matter grants a restraining order to the victim and also issues restraints against her, even though the respondent has not applied for such relief. /1/ The last two types of mutual restraining orders are subject to due process questions, /2/ and all three types are dangerous for the victim. /3/ This article focuses on mutual civil orders of protection since they are more common than mutual criminal orders of protection. It includes a discussion of why these orders are dangerous and some defensive strategies that counsel should consider to avoid their entry.

II. Why Mutual Restraining Orders Are Dangerous

Mutual civil restraining orders create substantial problems for victims of domestic violence. /4/ First, they generate the impression before the court, the police, and other persons that both parties are equally abusive. Courts entering mutual orders fail to recognize that the true victim may have acted in self-defense and that the other party is not afraid of her. In some instances, mutual orders are entered in the absence of proof that the initial complainant committed an act of abuse against her batterer. Once a mutual order is entered, however, that order usually does not state the specific type or degree of abuse each party committed, so both litigants are subsequently identified as batterers without any written distinctions characterizing the act of abuse each perpetrated.

Second, mutual restraining orders may subject both parties to subsequent criminal charges and immediate arrest, even where one party is falsely accused by the other. If children are in the household and the victim is arrested, they may be placed with the actual abuser. Or if both parents

are arrested and no relative or friend is available to care for the children, they may end up in foster care. In some instances, abusers repeatedly file false criminal charges against their victims, thereby disrupting their victims' daily activities and rendering them unable to maintain custody of children or to sustain employment.

In some states, a presumption exists that custody should be awarded to the nonabusive parent and domestic violence is a factor the court must or is encouraged to consider in determining custody disputes. /5/ Domestic violence victims subject to mutual orders of protection, however, lose that benefit and protection because they may be viewed by judges hearing their custody matters as being as violent as their abusers. /6/ Once a victim has been labelled abusive or potentially abusive, she is not likely to get sympathy from the court -- a problem that could ultimately affect her rights to custody and support. /7/ In addition, because parents who lose custody are usually required to pay child support, a domestic violence victim subject to a mutual restraining order may lose her day in court, lose access to justice, and end up in worse shape than when she started.

Mutual restraining orders that are imposed after only one party to domestic violence has filed a complaint or petition alleging abuse violate the victim's right to notice and due process. /8/ Such orders are often issued against the initial petitioner without an opportunity for her to be heard, and sometimes without even an oral allegation by the respondent that he was subjected to abuse. /9/ Usually the trial court makes no findings of fact that each party committed one or more acts of abuse or that the original petitioner poses a threat to the respondent or that she was not acting in self-defense. /10/ Due process requirements must be met prior to imposition of any restraints against a party because of one's basic constitutional liberty interest in being unrestrained and also because of the impact mutual restraints can have upon further civil or criminal litigation between parties to these matters. /11/

Mutual restraining orders create problems for law enforcement. When police officers are called to the scene of a domestic dispute and the parties are subject to a mutual restraining order, the police will not know which party has violated the order unless one party has obvious physical injuries. Too often, in such instances, police arrest both parties, thereby further victimizing the victim and any children in the household. /12/

In addition, mutual restraining orders perpetuate gender bias against women. Studies have documented that serious violence against women by male partners occurs much more often than violence against men by female partners and that injuries to women are more severe than to men. /13/

Mutual orders of protection fail to make abusers accept responsibility for their behavior since they permit abusers to claim that their partners were also abusive. Domestic violence experts believe abusers must accept responsibility if they are to change their behavior. /14/ In addition, the victim is likely to suffer embarrassment and humiliation when family, friends, work associates, and other acquaintances learn she too has been classified as an abuser. Victims' self-esteem is usually already low, and when they are characterized as batterers it may drop even lower. /15/

For all of these reasons, it is critical that practitioners who represent domestic violence victims be aware of the pitfalls of mutual civil restraining orders and of defensive strategies to prevent their entry.

III. Due Process Objections to Mutual Restraining Orders

Individuals have a basic constitutional right to due process beginning with the right to adequate notice of charges against them and the nature of any relief sought. /16/ Within this framework, one is entitled to the right to appear and be heard and to participate in the proceeding in a meaningful manner. /17/ Mutual restraining orders have been repeatedly criticized for their failure to comply with due process requirements, yet they continue to be issued despite their fundamental constitutional defects. /18/

Mutual restraining orders imposed in the absence of due process protections not only fail to survive constitutional review but also serve actually to punish and further victimize victims who cannot defend themselves. Indeed, because of the possible imposition of a mutual restraining order, victims must consider whether to proceed with a hearing at all since they could be labeled also as abusers and be restrained from certain activities. /19/ Furthermore, victims without counsel may not be aware of the possibility of arrest and incarceration resulting from mutual restraints. /20/ If given advance notice of the hearing, the victim could make an informed decision as to whether to proceed. Alternatively she could dismiss her complaint and either wait unfortunately for a more serious domestic violence incident to occur or have weaker restraints incorporated into a matrimonial agreement if the parties are married or into a custody or support matter if the parties are unmarried.

State laws concerning mutual restraining orders vary greatly from one state to another and do not always address due process requirements. For example, Illinois law prohibits mutual orders of protection unless both parties file written pleadings, prove past abuse by the other party, and the court, after a hearing, makes findings and issues separate orders. /21/ Under Maryland law, courts may issue mutual orders of protection only when both parties have filed a petition and when the court finds by clear and convincing evidence that mutual abuse has occurred and that both parties acted primarily as aggressors and not primarily in self-defense. /22/ California's statute is similar to Maryland's. /23/ In Utah, mutual orders of protection are prohibited except in extenuating circumstances or if the court finds such an order is necessary to protect both parties and the parties consent to the order's entry. /24/ New Jersey prohibits mutual restraining orders by consent; they may be entered only when both parties have filed complaints and a finding is made or admission obtained that each has committed an act of domestic violence. /25/

Even where state laws have been enacted to ensure that due process is afforded to litigants, some trial judges disregard the statutory law as well as the relevant case law. /26/

In 1995, appellate tribunals in Oklahoma, Minnesota, and Texas handed down opinions reversing the trial courts' issuance of mutual restraining orders which had been imposed upon victims without consideration of their due process rights. /27/ In each of these cases, the respondent had been awarded an order of protection against his victim, without the respondent having filed a

complaint or petition alleging abuse of any sort, without advance notice to the victim that she should be prepared to defend herself, and without even an oral allegation by the respondent that he had been abused. /28/ In each, mutual restraints were imposed by judicial fiat, although in Mechtel and Moreno, the victim had alleged substantial incidents of abuse. /29/ Most surprisingly, in two of these cases, Baker v. Baker and Mechtel v. Mechtel, the trial courts gave no weight to earlier published opinions in each state holding that mutual restraining orders violated the petitioner's right to notice and the opportunity to prepare a defense. /30/ In Baker and in Moreno v. Moore, the trial courts also overlooked state law that required that a petition alleging specific acts of abuse be filed and served in order for a litigant to obtain an order of protection. /31/

The trial court in Baker justified issuance of mutual restraints because it concluded that petitioner's statements to respondent had provoked him to confront her at a friend's home, grab her, and twist her arm. /32/ However, finding that petitioner had not been "put on notice that at the scheduled hearing . . . she would be subjected to allegations of domestic abuse" and that "her rights" could be "affected by judicial process," the appellate court determined that petitioner had been denied her constitutional rights. /33/

In Moreno, the trial court's actions were even more egregious. Texas state law prohibits mutual restraining orders unless consented to by the parties or unless separate petitions are filed by the parties and the trial court makes findings of fact following an evidentiary hearing. /34/ In Moreno, the victim's testimony, which included her assertion that respondent had threatened her with a knife and had used Mace against her, established a substantial history of abuse by the respondent. But the trial court, without making findings of fact, refused to enter a protective order unless the order was mutual. /35/ Although the published opinion is unclear as to the basis for this decision, respondent alleged that petitioner damaged some personal property, he contradicted her testimony about one incident, and he denied the use of Mace. /36/ When petitioner's counsel argued that imposition of mutual restraints was prohibited by the Family Code, since respondent had not filed a complaint and the parties had not agreed to a mutual order, the court reportedly stated, "Get somebody else" to hear the case. /37/

Mecht, Baker, and Moreno are recent examples of situations in which counsel's effective appellate advocacy served to protect their clients from the potential for continuing negative consequences arising from mutual restraining orders. /38/ In addition, the appellate courts' decisions served to instruct the judiciary that its indifference toward or ignorance of a litigant's basic constitutional rights will not be tolerated.

On the federal level, the Violence Against Women Act of 1994 (VAWA) requires that full faith and credit be given by a sister state (or Indian tribe) to a protective order issued by another state (or Indian tribe) in certain circumstances. /39/ However, mutual restraining orders entered in the absence of a complaint by both parties and without specific findings are excepted from VAWA's full-faith-and-credit requirement. /40/

Advocates representing clients who are subject to a mutual restraining order entered in another state should make several inquiries. First, the advocate should determine whether state law in the client's state of residence sets forth any specific requirements that must be met immediately or within a specific time period so as to require the state's courts and law enforcement personnel to recognize

the client's foreign order of protection as valid under the VAWA, and whether the client has complied with such requirements. /41/ In most cases, clients should be advised to comply with applicable state law to ensure their personal safety. Second, the advocate should ascertain whether both parties to the mutual order of protection were accorded their due process rights by the trial court in the state where the order was entered. If the client's batterer was awarded an order of protection against her and she was not accorded due process, the advocate should explore alternative means of defeating that portion of the order. Useful information as to accepted local or state procedures can sometimes be obtained by informally contacting court personnel who deal with domestic abuse matters regularly, the local prosecutor who is assigned to family violence matters, other local attorneys with domestic violence expertise, and even state court administrative personnel assigned to domestic violence matters. If litigation is required to defeat that part of the order, the advocate should weigh the benefits of immediately proceeding against the risk of probably having to notify the batterer of the commencement of those proceedings in the foreign court and revealing to the abuser the client's general location. If the client believes the abuser knows her location, and other possible remedies are determined to be inappropriate or nonexistent, litigation should probably be commenced immediately, provided steps are taken to protect her from retaliatory violence and harassment.

Victims' advocates in states where domestic abuse statutes fail to address the VAWA exception to full-faith-and-credit recognition of foreign orders of protection should seek enactment of remedial legislation to ensure that mutual restraining orders are prohibited unless due process requirements are met. The VAWA is supportive of this goal since it limits funding to states that do not pass laws that comply with due process requirements. /42/ In addition, state legislators need to develop uniform, specific procedures for litigants to follow to ensure that foreign orders of protection are in fact accorded full faith and credit when a party relocates to another state; such legislation also would assist parties who seek to have declared null and void those portions of mutual orders entered without due process.

Although due process requirements represent a well-intentioned effort of legislators and courts to satisfy objections to mutual restraining orders imposed without requisite notice and a hearing, as noted above, some trial courts continue to ignore these fundamental procedures. /43/ Moreover, simply meeting those due process objections falls far short of abating the severe consequences a victim may suffer once she is also labeled an abuser.

IV. Cross-Complaints: Proceed with Caution

It is not uncommon for an abuser who has been served with his victim's complaint or petition for protection to then file a cross-complaint or cross-petition against her. Occasionally, after a serious incident, the true abuser may arrive at the courthouse or local authority before his victim and be the initial complainant, especially if he has previously sought advice of counsel.

A recent New Jersey case, *Mann v. Mann*, demonstrates the disastrous results that can occur when a victim, served with a cross-complaint for a domestic violence restraining order at the final hearing on her own domestic violence complaint, failed immediately to request an adjournment to prepare a defense or to consider alternative strategies. /44/ The trial court refused to find husband guilty of

committing either criminal trespass or harassment, the offenses with which he had been charged, but did find by a preponderance of the evidence that wife had committed acts of domestic violence under state law (criminal mischief and harassment). /45/ Consequently, wife's complaint was dismissed, and husband was granted a final restraining order that, inter alia, awarded him sole possession of the marital residence and custody of their children. /46/ In its opinion affirming the trial court's action, the appellate court found that husband's service of his domestic violence complaint upon his wife immediately prior to final hearing on her complaint was not prejudicial to her interests since no contemporaneous objection on that basis had been made. /47/

Mann should be fair warning of the need to stop and critically evaluate the strengths and weaknesses of a domestic violence matter before proceeding to a hearing involving cross-complaints. A common tactic among sophisticated defense counsel is to advise defendants in domestic violence matters to file a cross-complaint if even a slight possibility of success exists. This is an excellent defense strategy because if both parties are determined to be abusive, the true victim will not receive any benefit from the court's consideration of abuse in awarding custody. In other instances, the abuser may be able to intimidate the victim into dismissing her complaint by using this technique. Worse yet, an alleged abuser may even be awarded an order of protection and receive custody, as in Mann.

Advocates should also be cognizant of, and attempt to evaluate before the hearing, any known prejudices of the individual judge who is to hear the case and how that court views victims who are charged with abuse. Where counsel learns in advance that a particular judge may be biased toward men or holds women to a higher standard of behavior than men, counsel should try to have the case reassigned to a judge who has a reputation for fairness to all litigants.

These words of caution are not to suggest that it is impossible to prevail on behalf of the real victim where cross-complaints are pending, especially if the facts regarding the recent incident in question are favorable and there is a substantial history of abuse. In such cases, if the client wants to proceed, she should do so. For example, if the client can establish either that her abuser is lying about her conduct or that she fought back in self-defense or in defense of another person, she should be treated as a battered victim by the court. /48/ Or if her abuser is quite large and she is much smaller than him, a trial judge could well believe that she could not have made her abuser fearful for his personal safety. It is especially important to prove that the client has good reason to continue to be afraid of her abuser, that she is incapable of intimidating him or seriously harming him, and that she has sustained severe injuries and/or is likely to sustain severe injuries if she is not awarded an order of protection. In short, it is imperative to demonstrate through the client's testimony, the testimony of other witnesses if available, and other evidence, such as visible signs of injury, pictures, medical or police records, torn or ripped clothing, or other destroyed property, that the client is the only victim.

V. Options to Proceeding on Mutual Complaints

In some situations, to avoid the possible entry of mutual restraints or entry of a protective order against the client and dismissal of the client's complaint, it is ultimately preferable to negotiate dismissal of cross-complaints. This may be necessary, for example, where counsel has reason to

believe that the client will be a poor witness or that the court hearing the matter may perceive the client to be equally responsible for violent behavior and where there are serious problems of proof.

Victims' advocates have encountered clients who lack detailed memories of specific incidents of abuse or who, because of the ongoing nature of the violence and indignities perpetrated upon them, cannot distinguish one incident from another or cannot tie any incident to a particular time frame. Victims who use alcohol to self-medicate themselves in an effort to dull their pain or who are intimidated into drinking by their batterers may have difficulty remembering specific incidents. /49/ Some victims repress memories of abuse in order to enable them to face each new day. /50/ Time and events are blurry to those victims because one day is as difficult as another. If a cross-complaint has been filed against such a client, and counsel doubts that the client will be able to testify with specificity, counsel would be wise to consider whether the client should proceed to a hearing.

Other limited options available to such a client include seeking safety in a battered women's shelter and allowing her complaint to be dismissed or trying to persuade the batterer to reach an agreement that provides at least limited protection. Such agreement can be incorporated into a matrimonial order or included in a custody or support order, with the domestic violence cross-complaints dismissed.

Where there is a strong possibility that the trial court could find that the client provoked her abuser's attack, even though the act of abuse she committed may have been much less substantial than that inflicted upon her, defensive strategies should also be considered. For example, in *Moreno*, it appeared that the trial judge believed the victim committed an act of criminal mischief, which he viewed as provocation for her abuser to retaliate with force. /51/

Similarly, even in those cases in which the client asserts that she acted in self-defense, counsel must evaluate whether the court could find her act as threatening as that of her abuser. Since domestic violence cases are extremely fact sensitive, it may be helpful to evaluate, by carefully questioning the client as to her recent and past history of abuse, whether she was a primary aggressor or if she acted primarily in self-defense. If counsel determines that the client was not a primary aggressor and that she acted primarily in self-defense, this should be elicited through testimony in court. In those states where courts must consider, before issuing a mutual order of protection, which party was the primary aggressor and which party was primarily acting in self-defense, counsel can use such testimony to fashion a persuasive argument that a cross-complaint against the client should be dismissed. /52/ Even in states that do not require consideration of these factors by the trial court, an excellent argument can be presented based upon this theory, with reference to statutory authority in other states and to the model code. /53/

Other proof problems counsel are likely to encounter include the probable lack of even one witness to corroborate all or part of a client's story. This can be crucial, especially where a judge is unsure which party to a matter is more credible. If police were called to the scene of the incident, or officers investigated the incident shortly after it occurred, records and other information should be available from the police and the officer subpoenaed to court. Even a friend, relative, or any other person with relevant firsthand information can greatly enhance the victim's credibility in recounting events in court. While objectively evaluating the likelihood of success in any matter can

be very difficult if cross-complaints are pending, counsel clearly should recommend proceeding to hearing only when well informed of the relevant law in each case and only after thoroughly evaluating the client's own ability to tell her story credibly.

As alluded to above, in some states if parties are seriously contemplating divorce or separation, or have actually filed a matrimonial, custody, or support action, clients may be advised to enter into consent orders or agreements in that action -- conditioned upon the dismissal of domestic violence cross-complaints -- that will provide for mutual or individual restraints against specific conduct. Such orders can be tailored to suit the needs of the parties and to ensure that any mandatory arrest provisions of a specific state's domestic abuse act cannot be invoked. /54/ However, since mutual or individual restraints incorporated into another family law order are less enforceable than those in domestic violence final restraining orders, the victim is afforded only minimal protection from abuse. /55/ Consequently, nondomestic violence restraining orders should be considered only if the client's case is weak in terms of proof and she is faced with a cross-complaint.

Restraints in the matrimonial or other family law action may serve to avoid exposing the client to possible criminal and/or contempt charges for violations of a domestic violence restraining order that requires immediate arrest /56/ or to possible adjudication as an abuser where such judgment could have a negative impact upon her quest for child custody. /57/ If necessary, restraints in a matrimonial or other family action can be enforced by way of filing a motion for enforcement of the litigant's rights. Only in rare instances would orders obtained on such enforcement motions call for the incarceration of a party. If abuse that falls within the conduct prohibited by the state's abuse-prevention statute recurs, the client should still be able to file a new complaint and obtain a final domestic violence restraining order. /58/ Where this strategy is utilized and the abuser is represented, he should be warned by his counsel to refrain from violent and abusive behavior or he will face the certainty of further domestic violence court proceedings. Where the opposing party is unrepresented, counsel may request the court to admonish both parties about this possibility.

If the client is not party to another family matter, or does not want to file a matrimonial, custody, or support action, she may choose to negotiate dismissal of mutual complaints and voluntarily separate from the abuser, rather than be subject to the punitive effects of an alleged violation of a restraining order. If a client chooses this route, she should be urged to have a safety plan, which could include staying at a battered women's shelter or with family or friends at least temporarily. In this instance, the client is likely to be very discouraged and to feel legitimately that the legal system has failed her.

Finally, even though she may have a strong case, the client may decide to dismiss her complaint voluntarily and to return to her abuser if the abuser also dismisses his complaint. While this decision is frustrating to advocates, the client must be allowed to make it for herself, even though her abuser probably filed his complaint primarily to intimidate her into returning to him. Some victims must experience repeated incidents of truly violent attacks upon themselves before they make the final decision to leave their batterers permanently. /59/ Other victims are able to leave only when they realize the impact of the violence upon their children or when their children are being physically abused. /60/

VI. Representing a Victim Against Whom Restraints Have Been Entered

Advocates representing a client against whom a restraining order has been entered, or who is a party to mutual restraints, should determine whether dismissal of the complaint and dissolution of the restraint can be negotiated. Otherwise, counsel must offer the client strong words of advice. That all contact with the other party should be avoided, particularly if certain alleged violations of the restraints could result in the client's immediate arrest, should be emphatically made clear to the client. Where children must be exchanged for visitation purposes, cautionary language should be included in the order of protection to allow limited contact between the parties for that purpose only, preferably at a police station or with a third party present to facilitate the exchange and to serve as a witness if required in the future.

Despite appropriate advice to represented litigants, they, as well as litigants who are unrepresented and uninformed of the law, sometimes are charged with violations that result in their arrest. /61/

Dual arrests are a particular problem in states where the law mandates the arrest of offenders charged with certain violations of restraining orders. In states with strong mandatory arrest statutes, and where police are mandated to arrest at the scene of a domestic violence incident if they have probable cause to believe a family offense has been committed, researchers have documented a substantial increase in arrests of both parties, even when mutual restraints have not been ordered. /62/ According to a source in New York City, when police receive complaints of assault from both parties, most officers arrest both and let a judge decide whether one party acted in self-defense. /63/ Another New York City advocate /64/ reports an increase in calls from victims who have been arrested along with their abuser since the state's mandatory arrest statute applicable to family violence became effective on January 1, 1996. /65/ Some women may resist seeking assistance from police at all to enforce an order of protection or when attacked because they have a justifiable concern that they may be arrested themselves. /66/

VII. Conclusion

The continuing deprivation of domestic violence victims' basic due process rights in civil courts can and should be addressed by continuing education of the judiciary in each jurisdiction. /67/ Training should emphasize that the legislative intent underpinning each state's domestic violence laws is to protect victims of family violence and to deter further violence. Judges should also know that domestic violence is emotionally damaging to children, who may be abused as well, and that children who witness domestic violence are at a higher risk of becoming violent themselves. /68/ Finally, judges should be educated about the importance of making batterers accountable for their behavior and about the dynamics of domestic violence, /69/ as many (though by no means all) are appointed or elected without ever having practiced family law or have had no substantive contact with this issue prior to assuming the bench. Understanding the dynamics of domestic violence is important because judges, as well as police and other service providers, become frustrated with litigants who repeatedly obtain restraining orders, dismiss them, reconcile, and are reinjured by abusers. /70/

Advocates interested in ameliorating the unintended consequences of mandatory arrest statutes recommend more comprehensive police training as well as the adoption of legislation directing police, before effectuating dual arrests, to consider the comparative injuries of the parties, to determine who is the primary aggressor, and to investigate the history of abuse between parties as well as the potential for future injury and the issue of self-defense. /71/ In addition, many recommend increasing the availability of victims' services, such as shelters and victims' advocates, so women are more able to avoid contact with their abusers and informed of the law and other resources available to them. Others recommend increasing victims' access to legal counsel and trained domestic violence court personnel, who can intervene and assist victims, as a way to limit the unfortunate consequences of dual arrests. Finally, and crucially, more meaningful prosecution of batterers should ultimately force them to accept responsibility for their conduct and should help in convincing them to modify their behavior. /72/

Until such laws are enacted and improved safeguards are put into place, victims' advocates must be alert to the need to defend their clients vigorously against the imposition of mutual restraints. Advocates should also be aware of the various options they may use to avoid abusive issuance of mutual restraint orders and the improper enforcement of sanctions for violating such orders.

Footnotes

/1/ Catherine F. Klein, *Full Faith and Credit: Interstate Enforcement of Protective Orders Under the Violence Against Women Act of 1994*, 29 A.B.A. Family L. Q. 253, 266 (1995); see also National Council of Juvenile & Family Ct. Judges, *Model Code on Domestic and Family Violence Sec. 310* (1994) (hereinafter *Model Code*), which prohibits mutual protection orders unless proper due process considerations are observed.

/2/ Klein, *supra* note 1.

/3/ Joan Zorza, *Women Battering: High Costs and the State of the Law*, 28 *Clearinghouse Rev.* 383, 392 (Special Issue 1994).

/4/ *Id.* at 392 -- 93.

/5/ Nechama Masliansky, *Key Issues in Child Custody*, in this issue; National Center on Women & Family Law, *State Custody Laws with Respect to Domestic Violence* (July 1995) (Item No. 131); see also Ala. Code Sec. 30-1-130 to 136 (Michie Supp. 1995) (effective July 31, 1995).

/6/ See Klein, *supra* note 1, at 267 & n.57; Zorza, *supra* note 3, at 393.

/7/ See Zorza, *supra* note 3, at 393.

/8/ See *id.* at 392.

/9/ *Id.*

/10/ Id.

/11/ See Klein, supra note 1, at 267.

/12/ See Zorza, supra note 3.

/13/ Id.; see also National Center on Women & Family Law, Resources on Gender Bias in the Courts (Aug. 1994) (Item No. 199); Russell P. Dobash et al., The Myth of Sexual Symmetry in Marital Violence, 39 Soc. Problems 71 -- 91 (1992).

/14/ Zorza, supra note 3, at 392; see also Lee H. Bowker, Ending the Violence 73 -- 74 (1986); Daniel Willbach, Ethics and Family Therapy: The Case Management of Family Violence, 15 J. Marital & Fam. Therapy 43, 48 (1984).

/15/ See Zorza, supra note 3.

/16/ U.S. Const. amend. XIV, Sec. 1.

/17/ Baker v. Baker, 904 P.2d 616, 619 (Okla. Ct. App. 1995) (Clearinghouse No. 50,911) (citing Bailey v. Campbell, 862 P.2d 461, 469 (Okla. 1991)).

/18/ Id. at 617 -- 18; see also Mechtel v. Mechtel, 528 N.W.2d 916 (Minn. Ct. App. 1995) (Clearinghouse No. 50,657); Moreno v. Moore, 897 S.W.2d 439 (Tex. Ct. App. 1995).

/19/ See Klein, supra note 1.

/20/ See Zorza, supra note 3, at 392 -- 93.

/21/ Ill. Rev. Stat. ch. 750, para. 60/215 (Smith-Hurd Supp. 1996).

/22/ Md. Code Ann., Fam. Law Sec. 4-506(c)(2) -- (3) (1995).

/23/ Cal. Fam. Code Sec. 6305 (West Supp. 1996) (amended by 1995 Cal. Stats. 246, Sec. 2).

/24/ Utah Code Ann. Sec. 30-6-4.5 (1995).

/25/ N.J. Stat. Ann. Sec. 2C:25-29(a); State of New Jersey Domestic Violence Procedures Manual 45 n.18 (1994).

/26/ See Baker, 904 P.2d 616; Mechtel, 528 N.W.2d 916; Moreno, 897 S.W.2d 439.

/27/ Baker, 904 P.2d 616; Mechtel, 528 N.W.2d 916; Moreno, 897 S.W.2d 439.

/28/ See Mechtel, 528 N.W.2d at 918; Baker, 904 P.2d at 617 -- 18; Moreno, 897 S.W.2d at 441 -- 42; FitzGerald v. FitzGerald, 406 N.W.2d 52, 53 -- 54 (Minn. Ct. App. 1987) (Clearinghouse No.

42,616); *Gibilisco v. Gibilisco*, 875 P.2d 447, 448 -- 49 (Okla. Ct. App. 1994) (Clearinghouse No. 49,854).

/29/ *Mechtel*, 528 N.W. 2d at 917; *Moreno*, 897 S.W.2d at 440 -- 41.

/30/ *FitzGerald*, 406 N.W.2d 52; *Gibilisco*, 875 P.2d 447.

/31/ *Baker*, 904 P.2d at 619; *Moreno*, 897 S.W.2d at 442.

/32/ *Baker*, 904 P.2d at 618.

/33/ *Id.* at 619.

/34/ *Moreno*, 897 S.W.2d at 441; see also Tex. Family Code Ann. Secs. 71.11, 71.12(a), 71.121 (Vernon Supp. 1996).

/35/ *Moreno*, 897 S.W.2d at 440 -- 41.

/36/ *Id.* at 441.

/37/ *Id.* at 441; see also Gender Bias Task Force of Texas Final Report 67 -- 68 (Feb. 1994), which says that approximately 50 percent of attorneys responding to a survey reported that judges frequently issued mutual restraining orders even when only one party presented evidence of abuse.

/38/ See *Baker*, 904 P.2d 616; *Mechtel*, 528 N.W.2d 916; *Moreno*, 897 S.W.2d 439.

/39/ Violence Against Women Act of 1994 (VAWA), 18 U.S.C. Sec. 2265.

/40/ 18 U.S.C. Sec. 2265(c); see also *Klein*, *supra* note 1.

/41/ See *Klein*, *supra* note 1, at 257 -- 66, for a discussion of existing state procedures and a model approach for enforcement of foreign protection orders under the VAWA.

/42/ 18 U.S.C. Sec. 2101(c)(3); see also *Klein*, *supra* note 1, at 267 -- 68.

/43/ E.g., *Baker*, 904 P.2d 616; *Mechtel*, 528 N.W.2d 916; *Moreno*, 897 S.W.2d 439.

/44/ *Mann v. Mann*, 637 A.2d 170 (N.J. Super. Ct. App. Div. 1993).

/45/ *Id.* at 171.

/46/ *Id.*

/47/ *Id.* at 172.

/48/ Lenore Walker et al., *Domestic Violence & the Courtroom: Understanding the Problem -- Knowing the Victim* (1995).

/49/ Jerry P. Flanzer, *Alcohol and Family Violence: Then to Now -- Who Owns the Problem*, in *Aggression, Family Violence & Chemical Dependency* 61-79 (Ronald T. Potter-Efron & Patricia S. Potter-Efron eds., 1990); Heather R. Hayes & James G. Emshoff, *Substance Abuse and Family Violence*, in *Family Violence Prevention & Treatment* 281 (Robert L. Hampton et al. eds., 1993); conversations with domestic violence victims' advocates at Jersey Battered Women's Services (JBWS), Morris County, N.J. (1990 -- 96); Evan Stark & Anne H. Flitcraft, *Spouse Abuse, in Violence in America: A Public Health Approach* 140 -- 41 (Mark L. Rosenberg & Mary Ann Fenly eds., 1991). The latter authors indicate abused women are 16 times more likely to become alcoholics and 9 times more likely to abuse drugs than women who are not battered.

/50/ Conversations with domestic violence victims' advocates at JBWS (1990 -- 96).

/51/ Moreno, 897 S.W.2d at 440 -- 41.

/52/ E.g., Md. Fam. Code Ann. Sec. 4-506(C)(2), (3) (1995); Cal. Fam. Code Sec. 6305 (West Supp. 1996).

/53/ E.g., Md. Fam. Code Ann. Sec. 4-506(C)(2), (3) (1995), Utah Code Ann. Sec. 30-6-4.5 (1995); Model Code, Sec. 310 (and commentary thereon).

/54/ National Center on Women and Family Law, *Mandatory Arrest: Problems and Possibilities A-1 to A-28* (1994); Zorza, *supra* note 3, at 393; see also N.J. Stat. Ann. Sec. 2C:25-31 (West 1995); N.Y. Crim. Proc. L. Sec. 140.10(4) (McKinney Supp. 1996).

/55/ Such orders are not entitled to full faith and credit under 18 U.S.C. Sec. 2265. Also, mandatory arrest statutes may apply only to orders of protection obtained under a state's domestic abuse laws. See also Joan Zorza, *Protecting the Children in Custody Disputes When One Parent Abuses the Other*, 29 *Clearinghouse Rev.* 1113, 1125 n.107 (Apr. 1996); National Center on Women and Family Law, *Voter Address Confidentiality for Domestic Violence Advocates* (1995) (Item No. 65), as to limited application of states' laws protecting the confidentiality of a victim's location.

/56/ National Center on Women and Family Law, *supra* note 54; Zorza, *supra* note 3, at 393; N.J. Stat. Ann. 2C:25-31 (West 1995); N.Y. Crim. Proc. L. Sec. 140.10(4) (McKinney Supp. 1996).

/57/ See *supra* note 5 and accompanying text.

/58/ This relief may not be available in every state. See *Felton v. Felton*, No. 95-646 (Ohio Ct. App. Dec. 11, 1995), on appeal, No. 96-0198 (Ohio Sup. Ct. filed Jan. 25, 1996). In *Felton*, the Ohio Court of Appeals affirmed the trial court's dismissal of appellant's postdivorce petition for an order of protection, in part because it found that she was adequately protected by a no-molestation provision incorporated into the parties' divorce judgment. The reviewing court indicated that there had been no need for petitioner to seek an order of protection and that in the interests of judicial

economy the trial judge's order to respondent to abide by the terms of the no-molestation clause was an adequate disposition of the matter.

/59/ Zorza, *supra* note 55, at 1117; Lenore E. Walker, *The Battered Woman* 234 -- 39 (1979); Mary Marecek, *Breaking Free From Partner Abuse* 51 -- 64 (1993).

/60/ Lee H. Bowker, *Ending the Violence* 88 -- 94 (1986).

/61/ See National Center on Women and Family Law, *supra* note 54, at 16 -- 23.

/62/ *Id.*

/63/ Conversation with Maureen Geogolis, Deputy Director, Victims Services Police Programs (DVPP/DVIEP), New York, N.Y. (Apr. 29, 1996).

/64/ Conversation with Katya Frischer, Esq., Urban Justice Center, New York, N.Y. (Apr. 23, 1996).

/65/ N.Y. Crim. Proc. L. Sec. 140.10(4) (McKinney Supp. 1996).

/66/ See National Center on Women and Family Law, *supra* note 54, at 16 -- 23; Zorza, *supra* note 3, at 393.

/67/ See Walker, *supra* note 48; Janet Carter et al., *Domestic Violence in Civil Court Cases -- A National Model for Judicial Education* (1992).

/68/ Walker, *supra* note 48; Carter et al., *supra* note 67, at 2, 20 -- 54; see also National Center on Women and Family Law, *supra* note 54, at 23 -- 35.

/69/ See Walker, *supra* note 48; Janet Carter et al., *supra* note 67.

/70/ Walker, *supra* note 48; Janet Carter et al., *supra* note 67; National Center on Women and Family Law, *supra* note 54, at 29, 33 -- 34.

/71/ National Center on Women and Family Law, *supra* note 54, at 26 -- 34.

/72/ *Id.*