

Call for Justice, LLC—United Way 2-1-1 Training Paper

Session 4: Legal Resources for Domestic Abuse Survivors

June 28 and 29, 2012: Joint Presentation by Rana S. Alexander, Esq., Battered Women’s Legal Advocacy Project, and Jennifer Polzin, Chief of Resource Development & Communications, Tubman.

Featured Speakers’ Topic

This month, Rana Alexander and Jennifer Polzin will discuss legal and other issues facing domestic abuse survivors in Minnesota.

A question and answer session will follow the presentation.

What is Domestic Abuse?

Domestic abuse occurs when interactions between family or household members result in violence or threatened violence. It can encompass any act designed to prevent a family or household member from obtaining a safe space. Specifically, Minnesota law defines domestic abuse to include:

- Physical harm, bodily injury, assault (such as hitting, slapping, pushing, stabbing, choking, burning) between family or household members;
- Threats of physical harm or assault which make a family or household member afraid of imminent physical harm, bodily injury or assault;
- Threats to commit a crime or terrorist threats (including brandishing a weapon);
- Criminal sexual conduct committed against a family or household member by another family or household member; and
- Interference with an emergency call, including preventing someone from calling 9-1-1.

National statistics reflect that 1 in 4 women will experience domestic violence in her lifetime. For men, 1 in 33 will be a victim of an attempted or completed rape.

The majority (73%) of family violence victims are female. Females were 84% of spousal abuse victims and 86% of abuse victims where the abuser was a boyfriend. (2006 statistics.)

Boys who witness domestic violence are twice as likely to abuse their own partners and children when they become adults.

Resources for Abuse Survivors

1. Orders for Protection—Civil Protections

All of you are aware of Orders for Protection. You may not know the specifics of how an OFP is obtained or the effect of an order once in place.

In short, an OFP is a civil court order signed by a judge that provides for protection from harm by a family or household member. The order tells the abuser to stop the abuse or face serious legal consequences, like arrest.

The process for obtaining an OFP starts with the abuse survivor completing an Affidavit and Petition for Order for Protection (see the accompanying Affidavit that Zoey completed). As you can see, it is a “check-the-box/fill-in-the-blank” type of document—helping to standardize and streamline the process. Unfortunately, the form is 7 pages long, which may intimidate some people.

RED FLAG: As you know, taking the first steps to confront and stop an abuser is extremely difficult for any domestic abuse survivor. Fortunately, the system doesn’t require that the survivor go at it alone. There are a number of resources—shelters, trained advocates, counselors, and attorneys—who will assist the survivor. This, of course, is the type of message to convey to any abuse survivor during their call to 2-1-1.

An OFP may order a number of different protections for the abuse survivor. These include ordering:

- That the abuser not cause the survivor and her/his children any physical harm or “fear of immediate physical harm;”
- That the abuser have no contact with the survivor and her/his children via any form of contact, including telephone or email;
- That the abuser be excluded from any common dwelling they occupied;
- That the abuser pay child support and/or maintenance (alimony) during the pendency of the order or until a more formalized hearing/proceeding can occur;
- That the abuser not harm any pets that might be common with the survivor and her/his children; and
- Additionally, in some instances, the Judge may order that the abuser not acquire or possess a firearm.

A petitioner (the abuse survivor) can receive an *ex parte* OFP without the respondent (the abuser) being present. (“Ex parte” denotes where only one party to a court proceeding appears before or communicates with the Judge.) In order to receive an *ex parte* order, there must be evidence of “imminent or immediate danger.” If this is shown, an *ex parte* order will be issued for a temporary time period, usually seven days.

One disadvantage to an *ex parte* OFP is that the protections for the survivor which the Court can order are more limited. In addition, the *ex parte* OFP is of a limited duration, usually only seven days. After that, the survivor's petition is set for a full hearing where the abuser may be present and can testify or present evidence why the OFP shouldn't be issued. If an OFP is issued after that hearing, the protections afforded the survivor are broader.

If an *ex parte* OFP isn't issued, a hearing can be requested by the survivor. Again, this would be a hearing where the abuser can be present. Sometimes, abusers don't show or appear for the hearing on an OFP petition; in that case, the OFP can still be issued, thus protecting the survivor.

The protections granted by the Order for Protection can last up to two years initially. The survivor can petition to extend the protections once the initial term has expired. Ultimately, it's possible that an OFP can be extended for as long as 50 years.

Unlike most civil court filings, there is no filing fee associated with requesting an OFP.

2. Domestic Assault—Criminal Protections

Whereas OFPs are civil proceedings, there can be a criminal aspect to domestic abuse. The crime of "Domestic Assault," is defined as intentional bodily harm or attempted bodily harm or any act intended to cause the fear of such harm or death, where the act is taken against a family or household member. (Minnesota Stats. Sec. 609.2242.) The law categorizes Domestic Assault as a misdemeanor, gross misdemeanor or felony depending the frequency of repeat assaults over a given time period. Consequently, the abuser's punishment could be jail or prison time or a fine or both.

There are various laws concerning an abuser's right to possess a firearm. For example, federal law prohibits anyone convicted of a misdemeanor crime of domestic violence from possessing a firearm for life. (18 U.S.C. Sec. 922(g)(9).) The law in this area can be very fact specific, but we mention firearms because they sometimes are involved in domestic abuse and crimes of violence.

RED FLAG: If the abuse incident becomes a criminal matter, the abuse survivor may lose the ability to control the outcome. With a criminal case, it is the local City or County Attorney, rather than the survivor, who drives how the matter proceeds. The practical effect is that in order for there to be a conviction, the survivor usually must testify against the abuser; additionally, the survivor's say on how the abuser is punished may be greatly diminished. This may not be necessary information for a 2-1-1 referral, but we've red-flagged to highlight the huge difference between Domestic Abuse (OFPs) and Domestic Assault (potential jail or prison sentences).

3. Harassment Restraining Orders

A Harassment Restraining Order (HRO) is a court order that instructs a harasser to stop harassing the victim and/or to have no contact with the victim. Much like an OFP, the court may issue an order without the harasser present in court if the judge reasonably believes that the respondent could further harass the petitioner.

Harassment is defined as:

- A single incident of physical or sexual assault; or
- Repeated instances of intrusive or unwanted acts, words, or gestures that have a significant negative effect on one's safety, security or privacy.

If the court declines to issue an OFP, it may still issue a HRO. Unlike an OFP, however, the court filing fee (\$320) applies to filing a petition for a HRO. That fee may be waived if the petitioner is low income or if the petitioner alleges that the harasser intends to harm the petitioner or engage in other threatening conduct.

4. Minnesota's Anti-Stalking Statute

Minnesota defines "stalking" as engaging in "conduct which the actor knows or has reason to know would cause the victim...to feel frightened, oppressed, persecuted, or intimidated, and causes this reaction on the part of the victim regardless of the relationship between the actor and victim." (Minn. Stats. Sec. 609.749.)

The law is broadly phrased and covers whether the stalker "follows, monitors or pursues" another through "technological or other means" including repeated phone calls, text messages or the electronic delivery of letters or messages (email). The law provides for graduated penalties ranging from gross misdemeanor to felony. The statute also tracks the domestic assault statute, and a judge may prohibit a convicted stalker of possessing a pistol for at least three years. If a firearm is used in conjunction with the stalking incident, the stalker can be prohibited from possessing any firearm for the rest of his/her life.

5. Advocacy-based Resources for Survivors

Victim advocates are professionals trained to support victims of abuse or crime. Advocates offer victims information, emotional support, and help in locating resources and in completing paperwork. Sometimes, advocates go to court with victims. Advocates may also contact organizations, such as criminal justice or social service agencies, to obtain help or information for survivors. Some advocates staff crisis hotlines, run support groups, or provide in-person

counseling. Victim advocates may also be called victim service providers, victim/witness coordinators, or victim/witness specialists.

Advocates’ responsibilities vary depending on their job description and where they work.

There is a difference between domestic violence advocates who work for private nonprofit organizations and those advocates who work for City/County Attorney’s offices. (One significant difference is in the level of confidentiality afforded the survivor.) Some advocates are paid staff, and others are volunteers.

Victim advocates are not required to be licensed or certified, but many advocates have academic degrees that prepare them to work with victims. They may have studied social work, criminal justice, education, or psychology. Advocates often receive significant additional training on the specific knowledge and skills they need on the job.

Advocates do not tell survivors what to do. They present the survivor with options and information. Even with confidentiality rules and laws, all advocates must report certain types of information to the authorities. For example, they have to report any type of threat to a person (such as clients threatening to hurt themselves or someone else), and they have to report the abuse or neglect of children.

The Minnesota Supreme Court has ordered that domestic abuse advocates be permitted to sit at counsel table for OFP proceedings. Additionally, in other proceedings, advocates are permitted to confer with the survivor and at the court’s discretion, address the court. Advocates are also able to assist domestic abuse survivors in preparing petitions for protection orders. In doing these activities, advocates are specifically exempted from any claim they are engaging in the unauthorized practice of law.

6. Emergency Shelters/Support Services

We understand that you’ve been trained on the emergency shelters that exist in the Twin Cities metro area and across the state. In an effort to be comprehensive—and because this is such an important area for crucial information—we’ve provided a *Minnesota Directory of Domestic Violence Service Providers* as part of your training materials.

To reinforce a couple of key points: the Day One program (866-223-1111; www.dayoneservices.org) tracks openings in emergency shelters state-wide. This is a good starting point for any domestic abuse survivor.

In the Twin Cities, there are resources for women of African American, Asian, Korean, Jewish, Christian, Native American, and Hispanic descent (see the Directory). One starting point is Tubman (612-825-0000; www.tubman.org).

RED FLAG: For an initial referral, it's crucial that a domestic abuse survivor first get referred to a program that has a victim advocate service. This is so the survivor can undergo proper triage, and so that the survivor's immediate needs can be assessed. Initial referrals should not be made to attorneys or legal advice resources, such as the Battered Women's Legal Advocacy Project. Attorneys and legal advice resources come into the picture only after the survivor is in a safe place and has been advised of her/his options by a trained advocate or mental health professional.

Sexual Violence Compared to Domestic Abuse

Part of our learning curve has been to distinguish "domestic abuse" from "sexual violence." Whereas domestic abuse (at least in terms of obtaining an OFP) involves violence or threats of violence, it must also involve a family or household member. In contrast, "sexual violence" is defined as an incident where sexual behavior or contact is used as a weapon to gain power and control over someone else. It includes any sexual behavior or contact into which someone is tricked, forced or coerced. Hence, sexual violence isn't limited to family or household members, but certainly it can involve such actors.

The Sexual Violence Center operates a 24 hour hotline (612-871-5111)

(www.sexualviolencecenter.org) and as well, provides 24 hour medical advocacy for sexual violence survivors. In addition, the SVC provides 1:1 counseling along with support groups and legal advocacy and clinics. Each clinic date is the second Thursday of every month from 6 p.m. to 8 p.m. **Location:** Sexual Violence Center, 3757 Fremont Avenue North Minneapolis. **Details:** Free legal clinic to survivors of sexual violence. Individuals sign up for a 30 minute one-to-one appointment with an attorney. Discussions are typically geared toward non-criminal issues. Youth are able to access this clinic, as well as adults. This clinic is staffed by the Minnesota Women Lawyers and administered by the Volunteer Lawyers Network. **Contact:** E-mail Direct Services Coordinator at mclose@sexualviolencecenter.org or call 612-871-5100 ext. 14.

Legal Resources for Domestic Abuse

Primary Legal Referral—Twin Cities and Suburbs:

Tubman is a primary legal resource for domestic abuse survivors in the Twin Cities and suburbs. They help survivors obtain Orders for Protection, and they use volunteer attorneys for family law cases in Hennepin, Washington and Ramsey counties. They also host self-represented legal clinics where attorneys will provide brief legal advice. Finally, they offer criminal court advocacy (the Domestic Assault variation of domestic abuse) where they track as the abuser makes his/her way through the criminal court system.

Tubman Legal has many different phone numbers. We do not recommend trying to master those numbers, and instead, we recommend calling **612-871-0118**. We are advised this number will route callers to the right legal resource.

Note: for shelter needs, there is no screening for income. The screening is to determine if the caller is a victim of abuse (defined fairly broadly) and whether Tubman has available space.

Another Twin Cities primary legal resource for domestic abuse is Cornerstone (952-884-0330)(www.cornerstone.org). They will provide legal assistance for OFPs, and have both family court advocates and criminal justice intervention advocates.

The Domestic Abuse Project (612-874-7063)(www.domesticabuseproject.org) also provides legal advocacy for survivors—safety planning, accompaniment to criminal court hearings, OFPs. (Note: DAP also provides therapy services for both the abuser and the survivor.)

Home Free (763-559-4945)(www.homefreeprograms.org) also provides survivor advocacy; they serve a larger geographic area. The Home Free website is very limited.

Fallback Referrals:

As a fallback referral, Hennepin County residents should be referred to the Hennepin County Domestic Abuse Service Center (612-348-5073)(www.mncourts.gov/district/4/?page=369).

The fallback referral for Ramsey County residents should be Bridges to Safety (866-223-1111)(www.bridgestosafety.org/).

Other Legal Resources—but not primary/only after a survivor has talked to an advocate:

The Battered Women’s Legal Advocacy Project provides state-wide coverage. The BWLAP offers legal advice to domestic abuse survivors and their advocates. The project is all telephone-based; it does not offer in-person representation or walk-in service.

The BWLAP does not have a 24-hour phone line. They prefer to work with survivor advocates rather than the survivors themselves. **Their phone is 612-343-9842 (www.bwlap.org).**

This Month’s Tips

- 1. As you can tell, this month’s referral training is a bit different in that usually, the survivor of domestic abuse should not first be referred to a lawyer, but instead to a domestic abuse survivor program.**

2. You may have callers who ask, “What should I do?” We are advised that the best response is “I can’t tell you what to do, but I encourage you to talk to an advocate.”
3. Remember, that sometimes, a proper response is to tell the caller to dial 9-1-1.

Thanks for your input and attention!

Ellie and Jillian

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