

HB

385

Alaska State Legislature

Session:
State Capitol
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Representative Lesil McGuire
Chair, Judiciary Committee

SPONSOR STATEMENT

HB 385

"An Act relating to awarding child custody; and providing for an effective date."

Domestic violence is often a significant factor in divorce and child custody proceedings. According to the Administration for Children and Families, U.S. Department of Health and Human Services, domestic violence is the leading cause of injury to women in the United States. The American Psychological Association, the American Medical Association, the American Bar Association Center on Children and the Law, and numerous other organizations have recommended that if domestic violence has occurred in a relationship, the offender should not receive sole or joint legal or physical custody of children. A unanimous Joint Resolution of Congress, H. Con. Res. 172, adopted in 1990, urged states to adopt the statutory presumption "that it is detrimental to the child to be placed in the custody of the abusive spouse."

When children witness violence in the home, they have been found to suffer many of the symptoms that are experienced by children who are directly abused. Children exposed to domestic violence face increased risks that they will be killed or injured by the violence, that their emotional, physical and mental development will be adversely affected, and that they will be neglected or abused. We commonly encounter the mistaken assumption among professionals, including judges and custody evaluators, that children are in less danger from a batterer once a couple is no longer living together, when the reality is often the opposite.

By the end of the 2002 legislative session, 23 states had adopted the approach of the Model Code of the Family Violence Project of the National Council of Juvenile and Family Court Judges. This model state statute clearly states that there should be a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. It emphasizes that the safety and well-being of the child and the parent who is the victim must be primary.

Unfortunately, courts sometimes apply psychological pressures that keep women tied to their abusers. "Friendly parent" statutes ask courts to assess each parent's willingness to co-parent when making custody decisions. Despite their reasonable reluctance to co-parent, battered women may end up being labeled "uncooperative," with an increased risk of losing their children to theirs and their children's abuser. This perpetuates family violence from one generation to the next at great social cost to Alaskan society. Amazingly, "Studies show batterers are able to convince authorities that the victim is unfit or undeserving of sole custody in approximately 70% of challenged cases." (American Judges Association). Friendly parent statutes are often the tool used by abusive parents against the protective parent.

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HB 385 serves to better protect children from the effects of domestic violence by achieving consistency between Alaska child protection statutes and child custody statutes. This bill incorporates the sense of the legislature in AS 47.10.011 (6), (7) & (8) and 1999's House Joint Resolution No. 36 that the effects of witnessing domestic violence is harmful to children, that parenting by a perpetrator of domestic violence places a child at a substantially higher risk of being directly abused, and that the sexual molestation of a child by their parents makes them unfit.

The bill also modifies our statutes "friendly parent" provision that inadvertently harms children, particularly in circumstances involving domestic violence, child abuse/sexual abuse and neglect. Alaska is in the minority of states that still have a "friendly parent" provision that inadvertently harms children, particularly in circumstances involving domestic violence, child abuse/sexual abuse and neglect. Also, while Alaska's child custody statutes specifically mention domestic violence as a factor to be considered, they allow wide discretion and do not give it special weight. It is simply one additional factor when considering the best interests of the child.

Effects of this violence on children have high costs in human lives and to our communities. Research has consistently shown that children who witness violence suffer a wide range of short and long-term emotional and behavioral problems that often follow them for life. These children are at higher risk for psychosomatic disorders, stuttering, anxiety and fears, sleep disruption, excessive crying, problems in school, drug and alcohol abuse, sexual acting out, running away, and even suicide. Boys who witness their fathers' abuse of their mothers or siblings are more likely to inflict severe violence as adults. Data suggest that girls who witness abuse may tolerate abuse as adults more than girls who do not.

Alaska ranks in the top 5 states in the nation for per capita rates of domestic violence. The rate of Alaskan women being killed by a partner is 1.5 times the national average. Alaska has 6 times the national average of reported child sexual assault. In 3 out of 4 reported cases, the victim knew the offender; the most commonly reported type of sexual abuse is a father who commits incest with his daughter--usually the eldest daughter. (AK Dept. of Health & Social Services)

HB 385 sends a clear message that we wish to halt the perpetuation of family violence from generation to generation and that perpetrators will be held accountable.

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CSHB 385(JUD)

"An Act relating to awarding child custody; and providing for an effective date."

EXPLANATION OF CHANGES

(Between Version Q and Version W)

ADOPTED BY THE HOUSE JUDICIARY COMMITTEE

Amendment 1 - Page 4, lines 7
Delete "only"

Page 4, lines 7, after "by"
Delete, "clear and convincing"
Insert "a preponderance of the evidence"

Explanation - These changes amend the original language found in the original version of HB 385 which set the evidentiary requirement to overcome the rebuttable presumption at "clear and convincing evidence". The amendment adopted by the House Judiciary Committee reduced that requirement to "a preponderance of the evidence" which comports to the general evidentiary standard in other civil proceedings. The intent of the amendment is to maintain the rebuttable presumption, but to make the standard more reasonable to overcome.

Amendment 2 - Page 5, line 2, after "parent"
Insert "unless the court finds that the domestic violence renders the parent unable to safely parent the child"

Explanation - The intent of this change was only to recognize the possibility that the abuse by one parent to the other could be so severe as to render the non-abusive parent physically incapable of their parenting responsibilities while recognizing other effects of the abuse do not constitute grounds for denying custody to the non-abusive parent.

Amendment 3 - Page 5, line 2, after "constitute"
Delete "a"
Insert "the sole"

Explanation - The intent of this amendment was to clarify that, in general, suffering from the effects of abuse (psychological, emotional, or otherwise) do not constitute any basis for denying custody to the non-abusive parent except when the court deems those effects to be so severe that the parent is completely incapable of their parental duties.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 385(JUD)
 (H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Awarding Child Custody BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative McGuire
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

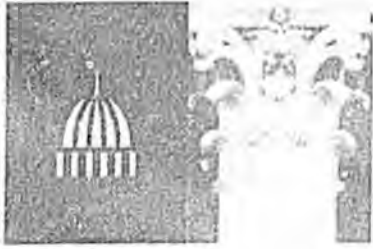
POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 385.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 2/25/04 4:33 PM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/25/2004
 Agency Alaska Court System



AUG./SEPT. 2003

National Conference of State Legislatures

LEGISBRIEF

BRIEFING PAPERS ON THE IMPORTANT ISSUES OF THE DAY

VOL. 11, No. 36

When Children Witness Domestic Violence

By Stephanie Walton

Children exposed to violence at home also are more likely to become perpetrators or victims of domestic abuse as adults.

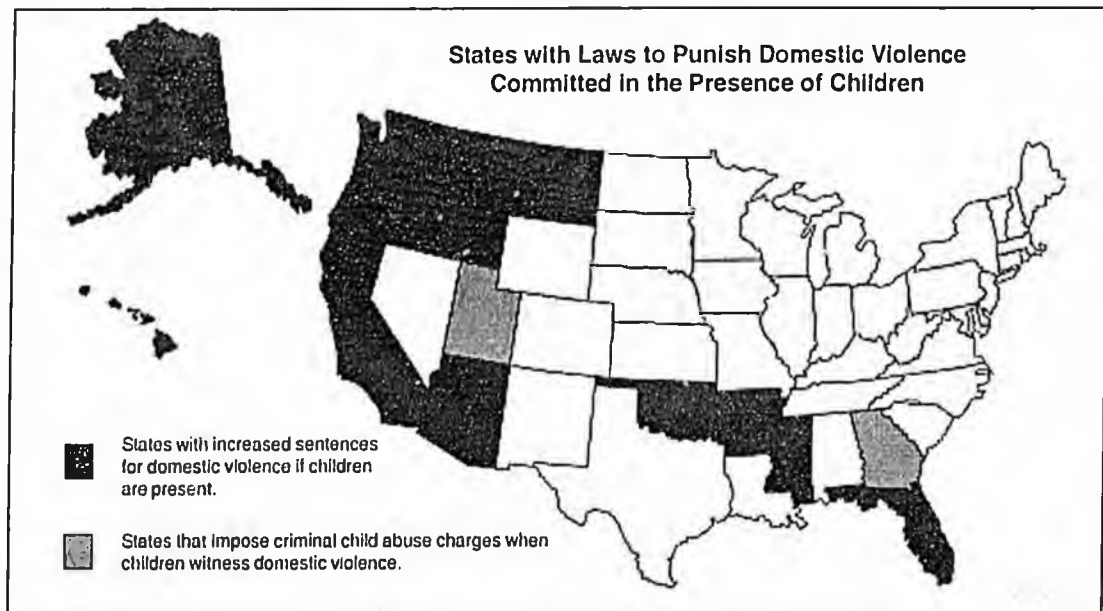
In homes where one partner abuses the other, children also are more likely to be abused. Hundreds of studies have documented the negative effects for children exposed to violence. Even when they aren't physically abused, they can show symptoms of trauma, which include:

- Increased aggression.
- Depression, anxiety and fear.
- Lower scores on verbal, motor and cognitive skills tests.
- Physical symptoms, including headaches, stomach aches, ulcers and asthma.

Children exposed to violence at home also are more likely to become perpetrators or victims of domestic abuse as adults, according to the American Psychological Association.

State Action

At least 12 states allow or mandate increased penalties for a perpetrator if a child witnessed the domestic violence. Most of these laws allow courts to increase sentences, while a few require stiffer sentences. Oklahoma law, for example, requires the minimum penalty for domestic violence to be increased to a six-month sentence if a child is present. There is a one-year sentence for a second or subsequent violation in the presence of a child. In Oregon, a fourth-degree domestic violence assault is raised from a Class A misdemeanor to a Class C felony if a child is present. Delaware, Georgia and Utah can charge defendants with a separate crime of child abuse when children witness a violent episode.



In most states, these laws are only a few years old, but their effects are already apparent. In Multnomah County, Ore., felony domestic violence charges rose nearly 150 percent after the stricter sentencing law was passed. Prosecutors in Georgia and Utah report they use the child abuse charges as additional "bargaining chips," leading to more convictions. Law enforcement officers in these states also are more likely to note in their crime reports whether children were present during a domestic violence incident. In addition, prosecutors are more likely to report the affected families to child welfare agencies, even though the laws don't require it.

Advantages and Disadvantages. Proponents of stiffer laws argue that criminal laws for violence in the presence of a child increase batterer accountability. In some states children become eligible for crime victim services and compensation. The laws also increase public awareness of the harm on children. Also, prosecutors have another way to pursue charges if the adult victim doesn't cooperate. Finally, a study commissioned by the National Institute of Justice suggests that such laws educate prosecutors, police and the courts about the harmful effects on children.

Opponents argue that prosecutors who use these laws as bargaining chips trivialize the real damage inflicted on children. They also note that since prosecutors are more likely to report families to child welfare agencies in states with these laws, workers need to be trained to understand the dynamics of family violence. Without training, they may hold victims responsible for exposing children to violence and remove them from the family. This can further traumatize both the children and the victim parent—although in some instances, the removal may be warranted. Children also may be required to testify against the batterer in court. This can frighten and confuse them, especially if the batterer is a parent. Finally, opponents say these laws increase the burden on the criminal justice system when state budgets already are severely strained.

Other Approaches. Some states have taken different approaches. Alaska law includes witnessing domestic violence as civil child maltreatment, and authorizes child welfare intervention. Advocates claim, however, that, in some cases, removing children penalizes the victim for the perpetrator's behavior. She may be held responsible for failing to protect her children. Child welfare agencies are removing children from homes even under more general "failure to protect" regulations.

Other states, including Alaska, focus efforts at the local level, providing cross-training for domestic violence workers, child welfare agencies, police officers, prosecutors, judges, probation officers and others who need to understand how witnessing domestic violence affects children. Localities in Colorado, Massachusetts and a number of other states place domestic violence advocates in child welfare offices to increase communication and understanding between the two systems.

It will take time to understand how states can best respond to help domestic violence victims and their children, but everyone agrees on the ultimate goal: keeping families safe.

Selected References

- Christian, Steve. "Children's Exposure to Domestic Violence: Is It Child Abuse?" *State Legislative Report* (National Conference of State Legislatures) 27, no. 1 (January 2002).
- Schechter, Susan, and Jeffrey L. Edleson. *Effective Interventions in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice*. Reno, Nev: National Council of Juvenile and Family Court Judges, 1999.
- Whitcomb, Debra. "Prosecutors, Kids, and Domestic Violence Cases." *NIJ Journal*, no. 248 (2002).

Contact for More Information

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Proponents of stiffer laws argue that they increase batterer accountability.

Opponents argue that prosecutors may hold victims responsible for exposing children to violence.

Other states focus efforts at the local level.

domestic violence; and community organizing. The conclusion, Part VI, notes that while the passage of such statutes is not a "quick fix" to the fundamental problems presented by these cases, the process of enactment and implementation of the presumption statutes is worthwhile, as another step on the long road toward the elimination of domestic violence.

II. DEVELOPMENT OF REBUTTABLE PRESUMPTION STATUTES

A. *Historical Custody Standards*

Until the 1970s and the advent of no-fault divorce, abuse by one parent of the other was considered quite relevant to custody decisions throughout the United States, as this was evidence of the abuser's poor morals.² While the rate of divorce was low, victims of domestic violence were usually awarded custody of the parties' children.³

A significant change in custody decisions took place in the 1970s, as most U.S. states amended their divorce laws from fault-based divorce to no-fault divorce.⁴ Under the new regime, domestic violence was no longer seen as relevant by divorce courts; judges were trained to look toward the future, not admit evidence of past misdeeds, and to consider the parents as generally equally qualified to be custodians of children.⁵ Unless the children were physically harmed, what a husband did to his wife⁶ was not seen as relevant to his ability to parent.⁷

No-fault divorce was generally hailed as a progressive move,

2. Naomi R. Cahn, *Civil Images Of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 VAND. L. REV. 1041, 1043 (1991).

3. *Id.*

4. *Id.* See also Note, *Developments in the Law: Legal Response to Domestic Violence, VI. Battered Women and Child Custody Decisionmaking*, 106 HARV. L. REV. 1597, 1597 (1993).

5. Lynne R. Kurtz, *Protecting New York's Children: An Argument for the Creation of a Rebuttable Presumption Against Awarding a Spouse Abuser Custody of a Child*, 60 ALB. L. REV. 1345, 1347 (1997).

6. While domestic violence can be committed by either sex, most domestic violence is committed by men against women. The U.S. Dept. of Justice reported in 1998 that a woman is seven to fourteen times more likely to be severely injured by an intimate than a man is. Patricia Tjaden & Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey*, NATIONAL INSTITUTE OF JUSTICE, at <http://www.ncjrs.org/pdffiles/172837.pdf> (last visited Oct. 3, 2001).

7. Cahn, *supra* note 2, at 1044; Kurtz, *supra* note 5, at 1347.

both by feminists and by fathers' rights groups.⁸ Fathers' rights groups celebrated this as a move away from what they saw as gender bias, whereby mothers were allegedly awarded custody solely by virtue of their sex. However, the emphasis on no longer making findings of fault set the stage for courts refusing to consider domestic violence as a relevant factor in custody decisions. Domestic violence was not seen as affecting the best interests of the child unless the child was also physically abused.⁹ And even though the overlap between partner abuse and physical child abuse is great,¹⁰ courts often failed to acknowledge this connection in making custody decisions.¹¹

B. Move To Allow, Then Require Courts To Consider Domestic Violence In Custody Decisions

By the 1980's, the domestic violence movement had become a vocal presence, and was developing some sophistication in terms of changing entrenched policies. Advocates began to call for legislators and courts to protect children from batterers.¹² Feminists stressed the harmful effects of exposure to domestic violence on children, and stated that it is not actually possible to be a violent husband and a good father.¹³

At the same time, there was a strong trend toward trying to keep fathers close to their children. Father's rights groups pushed for, and succeeded in getting, legislation stressing the importance of joint custody.¹⁴ Families were no longer seen as "broken," but

8. LENORE J. WEITZMAN, *THE DIVORCE REVOLUTION* (1985); MICHAEL WHEELER, *NO-FAULT DIVORCE* (1974); Erin R. Melnick, *Reaffirming No-Fault Divorce: Supplementing Formal Equality with Substantive Change*, 75 IND. L. J. 711, 714 (2000); Herma Hill Kay, *Equality and Difference: A Perspective on No-Fault Divorce and Its Aftermath*, 56 U. CIN. L. REV. 1, 2 (1987). See generally, Herma Hill Kay, *An Appraisal of California's No-Fault Divorce Law*, 75 CAL. L. REV. 291 (1987); Howard Krom, *California's Divorce Law Reform: A Historical Analysis*, 1 PAC. L. J. 156 (1970).

9. Charlotte Germane et al., *Mandatory Custody Mediation and Joint Custody Orders in California: The Danger for Victims of Domestic Violence*, 1 WOMEN'S L.J. 175, 179 (1985).

10. PETER G. JAFFE ET AL., *CHILDREN OF BATTERED WOMEN*, 20-21 (1990); see *infra* note 35 (citing social science literature about effects of domestic violence on children).

11. Germane et al., *supra* note 9.

12. *Id.*

13. *Id.*

14. Nancy K. Lemon, *Joint Custody as a Statutory Presumption: California's New Civil Code Sections 4600 and 4600.5*, 11 GOLDEN GATE U. L. REV. 485, 505, 510, 516 (1981); Germane et al., *supra* note 9, at 181-182.

instead were "in transition," with the goal being that both parents were still involved in their children's lives.¹⁵ In some cases, courts gave fathers more time with their children than they had generally spent with them while living with the children's mother; in these cases the goal was not merely to continue the father/child relationship, but to try to strengthen it.

Legislatures started to respond to both these groups. Some states enacted laws stating that domestic violence could be taken into account in making custody decisions, but leaving the decision up to the judge whether or not to even admit such evidence.¹⁶ Other states went further, actually mandating that judges consider domestic violence.¹⁷

A few states passed laws stating that perpetration of domestic violence was detrimental to children.¹⁸ Others required that judges state their reasons for awarding custody to alleged or proven batterers on the record¹⁹ or make findings of fact that joint custody is not detrimental to the children despite the violence, if joint custody were granted in a domestic violence case.²⁰

Meanwhile, many states were also enacting laws allowing for or preferring joint custody of children. Some states created presumptions favoring joint custody if the parents agreed to it²¹ or required judges to state their reasons for denying joint custody.²²

In all too many cases, these two trends worked at cross-purposes. Given the high rates of domestic violence in the U.S.,²³ especially among divorcing couples,²⁴ there were many cases in

15. Germane et al., *supra* note 9, at 181-82.

16. See Barbara J. Hart, *Custody and Visitation Decision-Making When There are Allegations of Domestic Violence*, at <http://www.mincava.umn.edu/hart/telecon.htm>.

17. See, e.g., ALASKA STAT. § 25.20.090 (Michie 2000); OHIO REV. CODE ANN. § 3109.04 (West 2000).

18. The Family Violence Project of the Nat. Council of Juv. & Fam. Ct. Judges, *Family Violence in Child Custody Statutes: An Analysis of State Codes and Legal Practice*, 29 FAM. L. Q. 199, 225-227 (1995) [hereinafter Family Violence Project].

19. See, e.g., CAL. FAM. CODE § 3011 (West 1994), N.H. REV. STAT. ANN. § 458:17(II)(c) (1992).

20. See, e.g., N.H. REV. STAT. ANN. § 458:17(II)(c) (1992); OHIO REV. CODE ANN. § 3109.04 (West 2000).

21. See, e.g., CONN. GEN. STAT. ANN. § 46b-56a (1995); N.H. REV. STAT. ANN. § 458:17(II)(c) (1992); see also Lemon, *supra* note 14, at 500 (discussing the legislative history of the first joint custody statute in the U.S.).

22. See, e.g., CONN. GEN. STAT. ANN. § 46b-56a (1995); N.H. REV. STAT. ANN. § 458:17(II)(c) (1992).

23. Tjaden & Thoennes, *supra* note 6.

24. Estimates of the incidence of wife-beating range from at least one in three marriages to up to one-half of all marriages. M. STRAUS ET AL., BEHIND CLOSED

which courts were presented with one parent arguing for joint custody and the other parent arguing that the history of domestic violence should preclude such a decision. Starting in 1991, some states resolved this conflict by enacting statutes creating a presumption against custody to batterers.²⁵

III. INCREASING SUPPORT FOR ENACTMENT OF REBUTTABLE PRESUMPTIONS AGAINST CUSTODY TO BATTERERS

A. Policy Statements

There were several bases for this new trend. The first U.S. national policy statement supporting a rebuttable presumption in domestic violence cases was H. R. Congressional Resolution 172: "It is the sense of Congress that, for purposes of determining child custody, credible evidence of physical abuse of a spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse."²⁶ While Congress does not have the authority to tell states how to handle custody decisions, this Resolution was intended to encourage states to pass their own statutes establishing such presumptions.

In 1994, the National Council of Juvenile and Family Court Judges released the Model Code on Domestic and Family Violence.²⁷ This Code was developed in conjunction with legislators, the American Bar Association, the American Medical Association, domestic violence experts, prosecutors, and defense counsel over a period of three years.²⁸ Section 401 of the Model Code states:

In every proceeding where there is at issue a dispute as to

DOORS: VIOLENCE IN THE AMERICAN FAMILY 31 (1980); Eisenberg & Micklow, *The Assaulted Wife: 'Catch 22' Revisited*, 3 WOMEN'S RTS. L. REP. 138 (1977); Laurie Woods, *Litigation on Behalf of Battered Women*, 7 WOMEN'S RTS. L. REP. 39, 41 (1981). See also HOFF ET AL., INTERSTATE CHILD CUSTODY DISPUTES AND PARENTAL KIDNAPPING: POLICY, PRACTICE AND LAW 3-15 (1982) (scope of wife battering and the extent of underreporting).

25. Family Violence Project, *supra* note 18, at 208.

26. H.R.J. Res. 172, 101st Cong. (1994) (sponsored by Rep. Constance Morella and passed unanimously on Oct. 25, 1990).

27. NAT. COUNCIL OF JUV. AND FAM. CT. JUDGES, MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE (1994), [hereinafter MODEL CODE].

28. Christine L. Bailey & Maureen Sheeran, *The Model Code on Domestic and Family Violence: A Call for Legislative Action and Community Response*, NEV. PUB. AFF. REV. 24 (Legis. Issues: 1995).

the custody of a child, a determination by the court that domestic or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence.²⁹

The American Bar Association (ABA) passed a resolution in August 1989 that joint custody is inappropriate in cases in which spouse abuse, child abuse, or parental kidnapping is likely to occur.³⁰ In 1994, the ABA published a report to its president suggesting the adoption of statutes creating a presumption against custody to batterers.³¹ In July 2000 the ABA adopted new policy statements with respect to domestic violence and custody, and recommended that states and lawyers take action to provide for the safety of adult and child domestic violence victims during visitation and visitation exchanges.³²

In 1996, the American Psychological Association also recommended that states adopt such statutes:

In matters of custody, preference should be given to the nonviolent parent whenever possible, and unsupervised visitation should not be granted to the perpetrator until an offender-specific treatment program is successfully completed, or the offender proves that he is no longer a threat to the physical and emotional safety of the child and the other parent.³³

Similarly, the Uniform Adoption Act provides for terminating a father's rights if "the respondent has been convicted of a crime of violence or of violating a restraining or protective order, and the facts of the crime or violation and the respondent's behavior indicate that the respondent is unfit to maintain a relationship of

29. MODEL CODE, *supra* note 28, § 410, at 33.

30. A.B.A. HOUSE OF DELEGATES, APPROVED RESOLUTIONS RELATED TO DOMESTIC VIOLENCE (1989); *see also* A.B.A. Model Joint Custody Statute, 15 FAM. L. REV. 1494, 1495 (1989) (requiring courts to consider domestic violence in making joint custody awards).

31. Howard Davidson, THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN: A REPORT TO THE PRESIDENT OF THE A.B.A. (1994).

32. Linda D. Elrod & Robert G. Spector, *A Review of the Year in Family Law: Redefining Families, Reforming Custody Jurisdiction, and Refining Support Issues*, 34 FAM. L.Q. 607, 626 (Winter, 2001). For content of new A.B.A. policies, see <http://www.abanet.org> (last visited Oct. 3, 2001).

33. A.B.A., VIOLENCE AND THE FAMILY, 99 (1996).

parent and child with the minor³⁴

1. Social Science Literature

Another reason statutes establishing a presumption against custody to batterers were enacted was the growing body of social science literature showing the often severe and long-lasting effects of domestic violence on children.³⁵ This literature also argued that joint custody was contraindicated when there has been family violence.³⁶

2. Mothers Losing Custody

Furthermore, studies and articles started to show that when fathers in general or batterers in particular fought for custody, they usually won.³⁷ There are also many cases in which mothers initially

34. UNIFORM ADOPTION ACT § 3-504 (1994).

35. ENDING THE CYCLE OF VIOLENCE: COMMUNITY RESPONSES TO CHILDREN OF BATTERED WOMEN (E. Peled et al., eds., 1995); P.G. JAFFE ET AL., CHILDREN OF BATTERED WOMEN (1990); D.A. Wolfe et al., *Children of Battered Women: The Relation of Child Behavior to Family Violence and Maternal Stress*, 53 J. CONSULTING & CLINICAL PSYCHOL. 657 (1985); N.Z. Hilton, *Battered Women's Concerns About their Children Witnessing Wife Assault*, 7 J. INTERPERSONAL VIOLENCE 77 (1992); J.R. Johnston & L.E.G. Campbell, *Parent-child Relationships in Domestic Violence Families Disputing Custody*, 31 FAM. & CONCILIATION CTS. REV. 282, 282-83 (1993); M. Roy, *Children in the Crossfire*, HEALTH COMM. (1988); P.G. Jaffe et al., *Child Witnesses of Woman Abuse: How Can Schools Respond?*, 14 RESPONSE TO VICTIMIZATION OF WOMEN AND CHILDREN 12 (1992); D. G. Saunders, *Child Custody Decisions in Families Experiencing Wife Abuse*, 39 SOC. WORK 51 (1994).

36. L. Crites & D. Coker, *What Therapists See That Judges May Miss: A Unique Guide to Custody Decisions When Spouse Abuse is Charged*, JUDGES J. 9-13 (Spring, 1988); Germane et al., *supra* note 9; M. D. Pagelow, *Justice for Victims of Spouse Abuse in Divorce and Child Custody Cases*, 8 VIOLENCE & VICTIMS 69 (1993); Pauline Quirion, *Increased Protection for Children from Violent Homes: The Presumption Against Awarding Child Custody to a Batterer*, 16 MASS. FAM. L. J. 67 (1998); Saunders, *supra* note 35, at 56 (citing R. E. Emery and M. M. Wycer, *Divorce Mediation*, 42 AM. PSYCHOLOGIST 472 (1987)).

37. Pagelow, *supra* note 36 (citing R. Geffner & M. Pagelow, *Victims of Spouse Abuse*, in TREATMENT OF FAMILY VIOLENCE: A SOURCEBOOK 81-97 (R. T. Ammerman & M. Hersen, eds.) (1990)); L. A. Marks, *Mandatory Mediation of Family Law and Domestic Violence Cases*, NCADV VOICE, 18-22 (Winter, 1988); M. B. Liss & G. B. Stahly, *Domestic Violence and Child Custody*, in BATTERING AND FAMILY THERAPY: A FEMINIST PERSPECTIVE 175 (M. Hansen & M. Harway, eds., 1993); J. Zorza, *Protecting the Children: Custody Disputes When One Parent Abuses the Other*, 29 CLEARINGHOUSE REV. 1113 (April 1996) (citing R. I. ABRAMS AND J. M. GREANEY, REPORT OF THE GENDER BIAS STUDY OF THE SUPREME JUDICIAL COURT [OF MASSACHUSETTS] 62-63 (1989) that stated fathers won in seventy percent of contested custody cases and noting that this report also cites similar findings from California and the entire nation); M. A. Mason & A. Quirk, *Are Mothers Losing Custody? Read My Lips: Trends*

or eventually lost custody due to their inability to get along with the fathers. In some of these, in which there were no allegations of partner abuse, the court first awarded joint custody, then found after awhile that this was unworkable due to continued conflict between the parents.³⁸

In other cases, there was extensive evidence of partner abuse. The fact that a formerly battered mother and her former batterer are not able to co-parent effectively is not at all surprising. However, it is very unfortunate that many courts are still so unaware of how domestic violence dynamics enter into custody cases. One wonders why the court ever expected people in this situation to suddenly be able to cooperate.

An example of such a case is found in *In re Marriage of Devilbiss*.³⁹ In that case, the evidence included fifteen police reports, testimony by the daughter that the father used to hit the mother, and allegations that he also choked the daughter.⁴⁰ However, the court ignored this evidence in its order changing the joint custody order to "rotating custody."⁴¹ Under this arrangement, the daughter was ordered to live with her mother for seven months each year and with her father for five months.⁴² The court noted that the parents had not been able to cooperate as required by the joint custody order.⁴³ Another example is found in

in Judicial Decision-Making in Custody Disputes—1920, 1960, 1990, and 1995, 31 FAM. L. Q. 215 (1997) (citing a study finding that fathers won in sixty-three percent of contested custody cases, Lisa Genasci, *Increasingly, Working Mothers Lose in Custody Fights*, L.A. TIMES, January 20, 1995, at D8); Mary Lynne Vellinga, *Custody Laws Under Fire: Parents Who Batter Often Allowed to Retain Joint Care*, SACRAMENTO BEE, March 23, 1997, at A1.

38. See, e.g., *In re Marriage of Cobb*, 988 P.2d 272, 273 (Kan. Ct. App. 1999) (court briefly mentions without comment allegations that father abused child, then changed joint custody award to sole custody to father due to parents' inability to co-parent); *Brown v. Brown*, 19 S.W.3d 717, 722-23 (Mo. Ct. App. 2000) (without any allegations of abuse, the court modified the joint custody arrangement to sole custody to the father because of the mother's unwillingness to co-parent and that the father is best suited to make decisions in the best interests of the child); *Thomas v. Thomas*, 991 P.2d 7, 10 (N.M. Ct. App. 1999) (noting no allegations of abuse, the court changed joint custody to sole to father due to parents' inability to co-parent).

39. 719 N.E.2d 375 (Ill. App. Ct. 1999).

40. *Id.* at 378-80.

41. *Id.* at 383.

42. *Id.* at 380 (affirming the trial court's ruling that the daughter live with the father from the first Saturday after the end of the school year to the first Saturday of November).

43. *Id.* at 385.

Canty v. Canty,⁴⁴ in which the trial court modified the joint legal and split physical custody award to sole physical custody with the father, in spite of his admitting that he had committed domestic violence on the mother.⁴⁵ The appellate court upheld this order, noting that the evidence of domestic violence was merely one factor in the best interests analysis.⁴⁶

In all too many cases, batterers are in effect using the family courts to re-victimize their victims.⁴⁷ Instead of preventing this, courts sometimes collude with this behavior by awarding the batterer joint custody, sole custody, or extensive unsupervised visitation. While examining appellate cases decided in states without such a presumption or before the enactment of the presumption is beyond the scope of this article, it is noteworthy that in many such cases judges clearly ignored extensive histories of domestic violence in making custody decisions.⁴⁸

IV. DESCRIPTION OF STATUTES ESTABLISHING PRESUMPTIONS AGAINST CUSTODY TO BATTERERS

A. Overview

In response to the growing body of policy statements, studies, articles and cases, states started to adopt statutes establishing a rebuttable presumption against custody to batterers.⁴⁹ As of January 2001, there were sixteen states plus the District of

44. 874 P.2d 1000 (Ariz. Ct. App. 1994).

45. *Id.* at 1005.

46. Arizona later amended its custody statute to provide that domestic violence created a presumption against custody to the batterer. ARIZ. REV. STAT. § 25-403 (2000).

47. This problem is described at length in Leigh Goodmark, *From Property to Personhood: What the Legal System Should do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237 (1999). See also, Quirion, *supra* note 36, at 67.

48. See cases described in Goodmark, *supra* note 47, at 254-75. See also, NANCY K. D. LEMON, DOMESTIC VIOLENCE & CHILDREN: RESOLVING CUSTODY AND VISITATION DISPUTES, FAMILY VIOLENCE PREVENTION FUND, 39-40 (1995). But see *Bruscato v. Bruscato*, 593 So. 2d 838 (La. Ct. App. 1992) (remanding case for more thorough evaluation and retrial where batterer father was awarded sole custody even though rebuttable presumption was not yet in effect).

49. For an argument in favor of the adoption of such a presumption in Massachusetts, see Pauline Quirion et al., *Commentary: Protecting Children Exposed To Domestic Violence In Contested Custody And Visitation Litigation*, 6 B.U. PUB. INT. L.J. 501 (1997). A similar argument in New York is found in Kurtz, *supra* note 6, at 1346.



American Bar Association

Return to: <http://www.abanet.org/domviol/stats.html>

American Bar Association Commission on Domestic Violence

PREVALENCE

Domestic violence crosses ethnic, racial, age, national origin, sexual orientation, religious and socioeconomic lines.

- by the most conservative estimate, each year 1 million women suffer nonfatal violence by an intimate.
Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesignated Survey (NCJ-154348), August 1995, p. 3.
- by other estimates, 4 million American women experience a serious assault by an intimate partner during an average 12-month period.
American Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 10.
- nearly 1 in 3 adult women experience at least one physical assault by a partner during adulthood.
American Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 10.
- 28% of all annual violence against women is perpetrated by intimates.
Bureau of Justice Statistics Special Report: National Crime Victimization Survey, Violence Against Women (NCJ-145325), January 1994.
- 5% of all annual violence against men is perpetrated by intimates.
Bureau of Justice Statistics Special Report: National Crime Victimization Survey, Violence Against Women (NCJ-145325), January 1994.
- during 1994, 21% of all violent victimizations against women were committed by an intimate, but only 4% of violent victimizations against men were committed by an intimate.
Bureau of Justice Statistics Special Report: Sex Differences in Violent Victimization, 1994 (NCJ-164508), September, 1997, pp. 1-3.
- in 1993, approximately 575,000 men were arrested for committing violence against women. approximately 49,000 women were arrested for committing violence against men.
American Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 10.

RACE

Race is not indicative of who is at risk of domestic violence.

- domestic violence is statistically consistent across racial and ethnic boundaries.
Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesignated Survey (NCJ-154348), August 1995, p. 3.

AGE

Batterers and victims may experience domestic violence at any age.

- women ages 19-29 reported more violence by intimates than any other age group.
Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 4.
- women aged 46 or older are least likely to be battered by an intimate.
Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 4.
- in a 1990 restraining order study, the age of abusers ranged from 17 - 70. two-thirds of the abusers were between the ages 24 and 40.
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? (1996), p.195.

GENDER

An overwhelming majority of domestic violence victims in heterosexual relationships are women.

- 90 - 95% of domestic violence victims are women.
Bureau of Justice Statistics Selected Findings: Violence Between Intimates (NCJ-149259), November 1994.
- as many as 95% of domestic violence perpetrators are male.
A Report of the Violence against Women Research Strategic Planning Workshop sponsored by the National Institute of Justice in cooperation with the U.S. Department of Health and Human Services, 1995.
- much of female violence is committed in self-defense, and inflicts less injury than male violence.
Chalk & King, eds., Violence in Families: Assessing Prevention & Treatment Programs, National Resource Council and Institute of Medicine, p. 42 (1998).
- during 1992-1993, women were 6 times more likely to experience violence by an intimate partner than men.
Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 1.
- the chance of being victimized by an intimate is 10 times greater for a woman than a man.
Bureau of Justice Statistics Special Report: National Crime Victimization Survey, Violence Against Women, 1994.
- 70% of intimate homicide victims are female.
Bureau of Justice Statistics Selected Findings: Violence Between Intimates (NCJ-149259), November 1994.
- male perpetrators are 4 times more likely to use lethal violence than females.
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.44, table 7.

SAME-SEX BATTERING

Domestic violence occurs within same-sex relationships with the same statistical frequency as in heterosexual relationships.

- the prevalence of domestic violence among Gay and Lesbian couples is

approximately 25 - 33%.

Barnes, *It's Just a Quarrel*, American Bar Association Journal, February 1998, p. 25.

- **battering among Lesbians crosses age, race, class, lifestyle and socio-economic lines.**
Lobel, ed., *Naming the Violence: Speaking Out About Lesbian Battering*, 183 (1986).
- **each year, between 50,000 and 100,000 Lesbian women and as many as 500,000 Gay men are battered.**
Murphy, *Queer Justice: Equal Protection for Victims of Same-Sex Domestic Violence*, 30 Val. U. L. Rev. 335 (1995).
- **while same-sex battering mirrors heterosexual battering both in type and prevalence, its victims receive fewer protections.**
Barnes, *It's Just a Quarrel*, American Bar Association Journal, February 1998, p. 24.
- **seven states define domestic violence in a way that excludes same-sex victims; 21 states have sodomy laws that may require same-sex victims to confess to a crime in order to prove they are in a domestic relationship.**
Barnes, *It's Just a Quarrel*, American Bar Association Journal, February 1998, p. 24.
- **many battered Gays or Lesbians fight back to defend themselves - it is a myth that same-sex battering is mutual.**
Murphy, *Queer Justice: Equal Protection for Victims of Same-Sex Domestic Violence*, 30 Val. U. L. Rev. 335 (1995).
- **by 1994, there were over 1,500 shelters and safe houses for battered women. many of these shelters routinely deny their services to victims of same-sex battering.**
Murphy, *Queer Justice: Equal Protection for Victims of Same-Sex Domestic Violence*, 30 Val. U. L. Rev. 335 (1995).
- **same-sex batterers use forms of abuse similar to those of heterosexual batterers. they have an additional weapon in the threat of "outing" their partner to family, friends, employers or community.**
Lundy, *Abuse That Dare Not Speak Its Name: Assisting Victims of Lesbian and Gay Domestic Violence in Massachusetts*, 28 New Eng. L. Rev. 273 (Winter 1993).

BATTERED IMMIGRANT WOMEN

Battered immigrant women face unique legal, social and economic problems.

- **domestic violence is thought to be more prevalent among immigrant women than among U.S. citizens.**
Anderson, *A License to Abuse: The Impact of Conditional Status on Female Immigrants*, 102 Yale L. J. 1401 (April 1993).
- **immigrant women may suffer higher rates of battering than U.S. citizens because they come from cultures which accept domestic violence, or because they have less access to legal and social services than U.S. citizens. in addition, immigrant batterers and victims may believe that the penalties and protections of the U.S. legal system do not apply to them.**
Orloff et al., *With No Place to Turn: Improving Advocacy for Battered Immigrant Women*, Family Law Quarterly, vol. 29, no. 2, 313 (Summer 1995).
- **a battered woman who is not a legal resident, or whose immigration status depends on her partner, is isolated by cultural dynamics which may prevent her from leaving her husband or seeking assistance from the legal system. these factors contribute to the higher incidence of abuse among immigrant women.**
Orloff et al., *With No Place to Turn: Improving Advocacy for Battered Immigrant Women*, Family Law Quarterly, vol. 29, no. 2, 313 (Summer 1995).

- some obstacles faced by battered immigrant women include: a distrust of the legal system arising from their experiences with the system in their native countries; cultural and language barriers; and fear of deportation.
Orloff et al., *With No Place to Turn: Improving Advocacy for Battered Immigrant Women*, Family Law Quarterly, vol. 29, no. 2, 313 (Summer 1995).
- a battered immigrant woman may not understand that she can personally tell her story in court, or that a judge will believe her. based on her experience in her native country, she may believe that only those who are wealthy or have ties to the government will prevail in court. batterers often manipulate these beliefs by convincing the victim he will prevail in court because he is a male, a citizen or that he has more money.
Orloff et al., *With No Place to Turn: Improving Advocacy for Battered Immigrant Women*, Family Law Quarterly, vol. 29, no. 2, 313 (Summer 1995).
- although a victim may be in the country legally by virtue of her marriage to the batterer, their status may be conditional; in this situation it is common for a batterer to exert his control over his wife's immigration status in order to force her to remain in the relationship.
Jang, *Caught in a Web: Immigrant Women and Domestic Violence*, National Clearinghouse (Special Issue 1994), p. 400.
- undocumented women may be reported to Immigration and Naturalization Services by law enforcement or social services personnel from whom they may seek assistance.
Jang, *Caught in a Web: Immigrant Women and Domestic Violence*, National Clearinghouse (Special Issue 1994), p. 397-399.
- a battered immigrant woman is often trapped in an abusive relationship by economics. she may have legal or practical impediments to obtaining employment or public assistance.
Jang, *Caught in a Web: Immigrant Women and Domestic Violence*, National Clearinghouse (Special Issue 1994), p. 403.
- battered immigrant women who attempt to flee may have no access to bilingual shelters, financial assistance or food. it is unlikely that she will have the assistance of a certified interpreter in court, when reporting complaints to police or a 911 operator, or even in acquiring information about her rights and the legal system.
Orloff et al., *With No Place to Turn: Improving Advocacy for Battered Immigrant Women*, Family Law Quarterly, vol. 29, no. 2, 313 (Summer 1995).

WELFARE RECIPIENTS

Domestic violence may affect a woman's ability to financially support herself and her children.

- past and current victims of domestic violence are over-represented in the welfare population. the majority of welfare recipients have experienced domestic abuse in their adult lives, and a high percentage are currently abused.
Raphael & Tolman, *Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare*, p. 20 (1997).
- abused (past or current) welfare recipients experience higher levels of health or mental health problems such as a physical disability, or serious or acute depression.
Raphael & Tolman, *Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare*, p. 21 (1997).
- 15 - 50% of abused women report interference from their partner with education, training or work.
Raphael & Tolman, *Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare*, p. 22 (1997).

- welfare studies show that abused women do seek employment, but are unable to maintain it. it is possible that domestic violence presents a barrier to sustained labor market participation.
Raphael & Tolman, *Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare*, p. 22 (1997).
- examples of abusers' sabotage of their victims' attempts to work include: calling her employer and ordering the victim to quit; making allegations requiring the victim to appear before the police, court or social services; threatening to kill the victim; committing suicide in front of the victim; sabotaging the victim's car; beating her up on the way to an interview; stealing her work uniforms; starting fights each day before school or work; breaking the victim's writing arm repeatedly; manipulating her schedule by demanding visitation with the children; stalking; starting fights or threatening abuse which affects her ability to concentrate at work; or encouraging continued drug addiction.
Raphael & Tolman, *Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare*, pp. 10-14 (1997).
- between one- and two-thirds of welfare recipients reported having suffered domestic violence at some point in their adult lives; between 15 - 32% reported current domestic victimization.
Raphael & Tolman, *Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare*, p. 21 (1997).

RECIDIVISM

Battering tends to be a pattern of violence rather than a one-time occurrence.

- during the six months following an episode of domestic violence, 32% of battered women are victimized again.
Bureau of Justice Statistics: *Preventing Domestic Violence Against Women*, 1986.
- 47% of men who beat their wives do so at least 3 times per year.
AMA Diagnostic & Treatment Guidelines on Domestic Violence, SEC: 94-677:3M:9/94 (1994).
- short term (6-12 week) psycho-educational batterer-intervention programs helped some batterers stop immediate physical violence but were inadequate in stopping abuse over time. some batterers became more sophisticated in their psychological abuse and intimidation after attending such programs.
American Psychl. Ass'n, *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family* (1996), p. 85.
- six months after obtaining a protection order: 8% of victims reported post-order physical abuse; 26% reported respondent came to or called their home or workplace; 65% reported no further problems.
CPOs: *the Benefits and Limitations for Victims of Domestic Violence*, National Center for State Courts Research Report, 1997.

CHILDREN

Domestic violence has immediate and long term detrimental effects on children.

- each year, an estimated 3.3 million children are exposed to violence by family members against their mothers or female caretakers.
American Psychl. Ass'n, *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family* (1996), p. 11.

- in homes where partner abuse occurs, children are 1,500 times more likely to be abused.
Department of Justice, Bureau of Justice Assistance, Family Violence: Interventions for the Justice System, 1993.
- 40-60% of men who abuse women also abuse children.
American Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 80.
- fathers who batter mothers are 2 times more likely to seek sole physical custody of their children than are non-violent fathers.
American Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 40.
- in one study, 27% of domestic homicide victims were children.
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p. 45, table 11.
- when children are killed during a domestic dispute, 90% are under age 10; 56% are under age 2.
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.51, table 28.

DATING VIOLENCE

Violence against intimates may occur even though the victim does not live with her abuser.

- violence against women occurs in 20% of dating couples.
American Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 10.
- an average of 28% of high school and college students experience dating violence at some point.
Brustlin, S., Legal Response to Teen Dating Violence, Family Law Quarterly, vol. 29, no. 2, 331 (Summer 1995) (citing Levy, In Love & In Danger: a teen's guide to breaking free of an abusive relationship, 1993).
- 26% of pregnant teens reported being physically abused by their boyfriends. about half of them said the battering began or intensified after he learned of her pregnancy.
Brustlin, S., Legal Response to Teen Dating Violence, Family Law Quarterly, vol. 29, no. 2, 333-334 (Summer 1995) (citing Worcester, A More Hidden Crime: Adolescent Battered Women, The Network News, July/Aug., national Women's Health Network 1993).
- victims of dating violence report the abuse takes many forms: insults, humiliation, monitoring the victim's movements, isolation of the victim from family and friends, suicide threats, threats to harm family or property, and physical or sexual abuse. their abusers also blamed them for the abuse, or used jealousy as an excuse.
Brustlin, S., Legal Response to Teen Dating Violence, Family Law Quarterly, vol. 29, no. 2, 336 (Summer 1995) (citing Gamache, Domination and Control: The Social Context of Dating Violence, in Dating Violence, Young Women in Danger, Levy, ed. 1991).
- 25 - 33% of adolescent abusers reported that their violence served to "intimidate," "frighten," or "force the other person to give me something."
Brustlin, S., Legal Response to Teen Dating Violence, Family Law Quarterly, vol. 29, no. 2, 335 (Summer 1995).

SELF-DEFENSE

Many battered women attempt to physically defend themselves

from abuse.

- marital homicide differs significantly by gender: a large proportion of the killings by women are acts of self-defense, while almost none of the killings by men are acts of self-defense.
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project: Executive Summary, 1997.
- defensive action by battered women to protect themselves or their children is often interpreted by law enforcement as an act of domestic violence. the number of battered women arrested for committing acts of violence against their partners has disproportionately increased in communities that overuse "dual arrest."
Promising Practices Initiatives Report on the Expert Panels on Domestic Violence, Sexual Assault and Stalking Technical Assistance Project, U.S. Department of Justice, 1997.

PHYSICAL INJURY AND MEDICAL TREATMENT

Victims of domestic violence often require medical care, although they may conceal the cause of their injuries.

- female victims of violence are 2.5 times more likely to be injured when the violence is committed by an intimate than when committed by a stranger.
Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 4.
- because domestic abuse is an ongoing cycle producing increasingly severe injuries over time, battered women are likely to see physicians frequently.
Children's Safety Network, Domestic Violence: A Directory of Protocols for Health Care Providers (1992) p. (I).
- the rate of domestic violence detection by emergency room doctors is low.
Abbott et al., Domestic Violence Against Women: Incidence and Prevalence in an Emergency Department Population, Journal of the American Medical Association, vol.273, no. 22, 1763, 1766 (June 1995).
- although battered women comprise 20 - 30% of ambulatory care patients, only 1 in 20 is correctly identified as such by medical practitioners.
Hyman et al., Laws Mandating Reporting of Domestic Violence: Do They Promote Patient Well-Being?, Journal of the American Medical Association, vol. 273, no. 22, 1781 (June 1995).
- one study found that less than 3% of women visiting emergency rooms disclosed or were asked about domestic violence by a nurse or physician.
Abbott et al., Domestic Violence Against Women: Incidence and Prevalence in an Emergency Department Population, Journal of the American Medical Association, vol. 273, no. 22, 1763, 1766 (June 1995).
- the use of emergency room protocols for identifying and treating victims of domestic violence has been found to increase the identification of victims by medical practitioners from 5.6% to 30%.
Children's Safety Network, Domestic Violence: A Directory of Protocols for Health Care Providers (1992) p. (I).
- 17% of those who visit emergency rooms for treatment are documented as having come as a result of being injured by an intimate.
Bureau of Justice Statistics: Violence-Related Injuries Treated in Hospital Emergency Departments (NCJ-156921), August 1997. p. 5.
- 37% of women injured by violence and treated in an emergency room were injured by an intimate; less than 5% of men injured by violence and treated in an emergency room were injured by an intimate.
Bureau of Justice Statistics: Violence-Related Injuries Treated in Hospital Emergency Departments (NCJ-156921), August 1997. p. 5.

- 243,000 people receiving emergency room treatment for violence-related injuries in 1994 had been injured by an intimate. female victims outnumbered males 9 to 1.
Bureau of Justice Statistics: Violence-Related Injuries Treated in Hospital Emergency Departments (NCJ-156921), August 1997, p. 5.
- "acute domestic violence" was the reason for 1 out of 9 patients emergency room visit among women with a current partner.
Abbott et al., Domestic Violence Against Women: Incidence and Prevalence in an Emergency Department Population, *Journal of the American Medical Association*, vol. 273, no. 22, 1763, 1765 (June 1995).
- one study of women visiting emergency rooms for treatment found that 54% had been threatened or injured by an intimate partner at some time in their lives, and 24% reported having been injured by their current partner in the past.
Abbott et al., Domestic Violence Against Women: Incidence and Prevalence in an Emergency Department Population, *Journal of the American Medical Association*, vol. 273, no. 22, 1763, 1765 (June 1995).

LAW ENFORCEMENT

Intervention of the police and the court system can be improved in domestic violence cases.

- every state allows its police to arrest perpetrators of misdemeanor domestic violence incidents upon probable cause, and more than half of the states and the District of Columbia have laws requiring police to arrest on probable cause for at least some domestic violence crimes.
Zorza, Mandatory Arrest for Domestic Violence: Why it may prove the best first step in curbing repeat abuse, *Criminal Justice*, vol. 10, no. 3, p. 66 (Fall 1995).
- only about one-seventh of all domestic assaults come to the attention of the police.
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p. 3.
- female victims of domestic violence are 6 times less likely to report crime to law enforcement as female victims of stranger violence.
American Psychol. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 10.
- when an injury was inflicted upon a woman by her intimate partner, she reported the violence to the police only 55% of the time. she was even less likely to report violence when she did not sustain injury.
Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 5.
- some studies indicate that arresting a batterer increases recidivism, while some studies indicate that arrest serves as a deterrent for future domestic violence.
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p. 46 (1996).
- arresting a batterer may reduce violence in the short term, but may increase violence in the long term.
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p. 43, 49 (1996).
- the varying effect of arrest on abusers may be related to the amount the batterer has to lose from facing the social consequences of arrest. the single most consistent result of studies of the effect of arrest on batterers is that unemployed suspects become more violent after an arrest, and employed suspects do not.
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? pp. 48-49 (1996).
- even if arrest may not deter unemployed abusers, arrest still deters the vast majority of abusers.
Zorza, The Criminal Law of Misdemeanor Domestic Violence, 1970-1990. *The Journal of Criminal Law & Criminology* (Northwestern School of Law), vol. 83, no. 1, p. 66 (1992).

- possession of a gun by anyone subject to a protection order is prohibited by federal law.
The Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. 922(g)(8).
- purchase or ownership of a gun by anyone convicted of a misdemeanor domestic violence offense is prohibited by federal law.
Domestic Violence Offenders Gun Ban (1996), 18 U.S.C. 922(g)(9).

PROTECTION ORDERS

Protection orders decrease, but do not eliminate, the risk of continuing abuse or homicide.

- a protection order issued by one U.S. state or Indian tribe is valid and enforceable in any other U.S. state or Indian tribe.
Violence Against Women Act of 1994, 18 U.S.C. 2265.
- in cases of marital or dating violence, which accounted for 82% of all protection order cases, 90% of defendants were male.
Adams & Powell, Tragedies of Domestic Violence: A qualitative analysis of civil restraining orders in Massachusetts, Office of the Commissioner of Probation, Massachusetts Trial Court, p. 9 (1995).
- 35% of women with temporary protection orders did not return for a protection order because respondent stopped battering her; 17% because service of process was not achieved.
CPOs: the Benefits and Limitations for Victims of Domestic Violence, National Center for State Courts Research Report, 1997.
- more than 17% of domestic homicide victims had a protection order against the perpetrator at the time of the killing.
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.46, table 15.
- although the majority of batterers do not have criminal records, the majority of batterers brought to court by their victims for a protection order had criminal records.
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p. 10 (1996).
- protection order defendants who had prior criminal histories were more likely to violate the order than those who did not.
Adams & Powell, Tragedies of Domestic Violence: A Qualitative Analysis of Civil Restraining Orders in Massachusetts, Office of the Commissioner of Probation, Massachusetts Trial Court, p. 17 (1995).
- in one study, nearly half of the victims who obtained a protection order were re-abused within two years.
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p. 10 (1996).
- the majority of women who seek temporary protection orders have complaints of serious abuse: physical assaults, threats to kill or harm her, or attempts or threats to take the children.
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p. 216 (1996).
- in one study of women seeking temporary protection orders, 56% has sustained physical injuries.
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p. 216 (1996).
- 60% of women in one study reported acts of abuse after the entry of a protection order, and 30% reported acts of severe violence.
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p. 223 (1996).
- entry of a protection order did not appear to deter most types of abuse, but it did

significantly reduce the likelihood of acts of psychological abuse such as preventing the victim from leaving her home, going to work, using a car or telephone, and stalking and harassing behaviors.

Buzawa & Buzawa ed., *Do Arrests and Restraining Orders Work?* p. 228-229 (1996).

- one study showed 80% of women with temporary protection order said the order was somewhat or very helpful in sending the batterer a message that his actions were wrong. less than 50% of the women thought that the batterer believed he had to obey the order.
Buzawa & Buzawa ed., *Do Arrests and Restraining Orders Work?* p. 218 (1996).
- most violations of protection orders leading to an arrest occurred within 90 days of the entry of the order.
Buzawa & Buzawa ed., *Do Arrests and Restraining Orders Work?* p. 200 (1996).
- 60% of those obtaining protection orders in one study reported violations within one year.
Buzawa & Buzawa ed., *Do Arrests and Restraining Orders Work?* p. 240 (1996).
- calls to police due to violations of protection orders were high, but the arrests were rare.
Buzawa & Buzawa ed., *Do Arrests and Restraining Orders Work?* p. 239 (1996).
- 17% of protection order defendants in a 1995 study were arraigned for a violation of the order within one year.
Adams & Powell, *Tragedies of Domestic Violence: A Qualitative Analysis of Civil Restraining Orders in Massachusetts*, Office of the Commissioner of Probation, Massachusetts Trial Court, p. 15 (1995).<
- 6% of protection order defendants were convicted of violating the order.
Adams & Powell, *Tragedies of Domestic Violence: A Qualitative Analysis of Civil Restraining Orders in Massachusetts*, Office of the Commissioner of Probation, Massachusetts Trial Court, p. 17 (1995).

STALKING

Batterers may attempt to frighten or control their victims through stalking.

- some advocates believe up to 80% of stalking cases occur within intimate relationships.
Domestic Violence, *Stalking and Anti-Stalking Legislation, an Annual Report to Congress under the Violence Against Women Act*, National Institute of Justice Research, April 1996, p. 3.
- if stalking occurs within an intimate relationship, it typically begins after the woman attempts to leave the relationship.
Domestic Violence, *Stalking and Anti-Stalking Legislation, an Annual Report to Congress under the Violence Against Women Act*, National Institute of Justice Research, April 1996, p. 1.

SEPARATION VIOLENCE

When a woman leaves her batterer, her risk of serious violence or death increases dramatically.

- separated/divorced women are 14 times more likely than married women to report having been a victim of violence by their spouse or ex-spouse.
Bureau of Justice Statistics: *Female Victims of Violent Crime*, 1991.
- women separated from their husbands were 3 times more likely to be victimized by spouses than divorced women, and 25 times more likely to be victimized by spouses

than married women.

Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 4.

- 65% of intimate homicide victims physically separated from the perpetrator prior to their death.
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.47, table 17.

HOMICIDE

Domestic homicide is often the culmination of an escalating history of abuse.

- female homicide victims are more than twice as likely to have been killed by an intimate partner than are male homicide victims.
Bureau of Justice Statistics: Female Victims of Violent Crime, December, 1996.
- 88% of victims of domestic violence fatalities had a documented history of physical abuse.
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, pp.46-48, tables 14-21.
- 44% of victims of intimate homicides had prior threats by the killer to kill victim or self. 30% had prior police calls to the residence. 17% had a protection order.
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, pp.46-48, tables 14-21.
- for homicides in which the victim-killer relationship was known, 31% of female victims were killed by an intimate. 4% of male victims were killed by an intimate.
Bureau of Justice Statistics Special Report: Sex Differences in Violent Victimization, 1994 (NCJ-164508), September, 1997, p. 1.
- 70% of intimate-partner homicide victims are women.
Bureau of Justice Statistics Selected Findings: Violence Between Intimates (NCJ-149259) November, 1994.
- a woman is the perpetrator in 19% of domestic homicides.
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.44, table 7.
- when a woman is the perpetrator of a domestic homicide, typically the abuser was killed during an assaultive incident in which the woman was the victim.
Browne, When Battered Women Kill, pp. 135-137 (1987).
- in a 1967 study, 60% of husbands who were killed by their wives precipitated their own deaths by being the first to use physical force or threaten with a weapon.
Browne, When Battered Women Kill, p. 10 (1987).
- homicides committed by victims during a battering incident were often committed with the abuser's own weapon.
Browne, When Battered Women Kill, p. 140 (1987).
- a 1978 study found that almost all of the wives who had killed their husbands had previously been beaten by their husbands.
Browne, When Battered Women Kill, p. 10 (1987).
- of women killed in 1992, their relationship to the killer was known in 69% of homicides. of this percent, 28% were killed by spouse, ex-spouse, boyfriend or ex-boyfriend.
Bureau of Justice Statistics: National Crime Victimization Survey, 1995.

- of men killed in 1992, their relationship to the killer was known in 59% of homicides. of this percent, 3% were killed by spouse, ex-spouse, girlfriend or ex-girlfriend.
Bureau of Justice Statistics: National Crime Victimization Survey, 1995.

MULTIPLE-VICTIM HOMICIDE

In some domestic homicides, the perpetrator kills more than one person.

- in 1994, 38% of domestic homicides were multiple-victim, usually combining a spouse homicide and suicide, or child homicide.
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.45, table 12.
- where there are multiple victims in a domestic homicide, 89% of perpetrators are male.
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.52, table 29.

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SENATE COMMITTEE REPORT

DATE: 04/02/04

FURTHER: Judiciary

DATE TURNED
IN TO OFFICE: 4.16.04

Health, Education and Social Services Committee considered CS FOR HOUSE BILL NO. 385(JUD)

HB 385 AWARDDING CHILD CUSTODY

"An Act relating to awarding child custody; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
ACS	2/25			✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>Bettye Davis</i>	X			
<i>[Signature]</i>				
CHAIR: <i>[Signature]</i>	✓			



Alaska State Legislature

Please enter into the record my testimony to the Senate HESS
committee name

Committee on HB 385, dated 4-16-04
bill # / subject public hearing date

Senators,

My name is Ronda Blough, I live in Kenai, Alaska. I am the mother of 3 children and step-mother of 2 children. I have been divorced and am now remarried with a combined family of 7. I give you this background information so it will be easier to understand why I am writing you.

My basic issue is with the initial custody placement of children where by precedence the mother generally gets the benefit of the doubt as to who can provide the best home for the child resulting in the standard 70/30 split of custody. Very rarely in disputed cases does the father get to even be considered as a candidate for equal custody in disputed cases, therefore attorneys generally will not advise them to even try, no matter how good of a person the father is.

The system points to the poor mother left at home to raise the children with no income or help, however in society today that is rarely the case. Women are dominant in the workforce today and divorced or not usually are pursuing a career in the midst of raising a family, just as the men are. Women want equality in every ,and more power to them, but in this area there are some that would like a double standard. Both parents deserve the right to equal time with the child if that is what either parent wants.

Instituting an opportunity for both parents to be equally be involved in a childs life as a matter of precedence at the inception of a divorce or separation would promote a more peaceable and cooperative relationship with regards to the children. As it is now women have this sense of empowerment, if they are so inclined, simply because precedence has dictated policy. The legal system needs to have the tools necessary to ensure that the parents have an equal opportunity to parent a child. The only reference in any of the custody statutes that mention anything equal is the temporary custody Sec. 25.20.070.

I know that there are other issues that this affects, but the fact is that there are changes needed in a lot of areas. The placement and best interest of the child should be considered before anything else. A child will only be a child for so long, the other issues surrounding this revision will always be there and be able to be dealt with at some point in time, but the ability to have the much desired influence and involvement in a child's life by either parent will not, and should not in any way harm that ever-so-important time in life. A case can always be argued if there is a prevailing problem, and many are, like ours. Parents do not as far as I know go to court to fight for less custody and they do not fight over custody if they can agree. What is there to fight over when shared custody starts at equal.

The following should be added to HB 385, under Section 1. AS 25.20.060, and below (a)

AS 25.20.060

(c) The court **shall primarily provide for equal access to both parents** if shared custody is determined by the court to be in the best interest of the child, **unless the presumption under AS 25.24.150(g) is present.** An award of shared custody shall assure that the child has frequent and continuing contact with each parent to the maximum extent possible.

The language is consistent with that of Section 2 HB 385 and Sec. 25.20.070 referring to temporary custody. At some point in time it was considered to be in the best interest of the child to be with both parents equally for the interim. There is no reason for that not to be considered primarily in the best interest of the child when initially determining permanent custody of a child.

The additional language is of course pointing towards the obvious need to protect the welfare of the child if that need in fact exists.

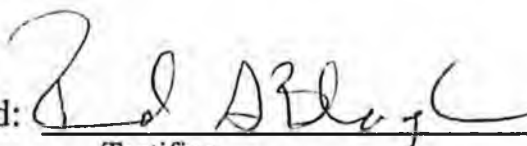
This would give parents the option, should they want it, to be as involved in their child's every day life as much as possible, while establishing grounds for cooperation between the parents immediately as opposed to one parent having "control" over the other and mis-using their custody award to cause harm to the relationship between the child and the other parent.

This bill speaks a lot for the establishment or re-establishment of custody on behalf of offenders of violent crimes, but it does not give either parent the benefit of having equal custody if there are no grounds to establish that the parents are otherwise not qualified.

Please feel free to call me at any time to discuss this issue and I will be happy to persuade you should you have any doubts as to the necessity of this revision.

Thank you,

Ronda A. Blough

Signed:  Ronda Blough

Testifier

Self

Representing (optional)

PO Box 1630 Kenai, AK 99611

Address

Phone number