

# HOW KENTUCKY'S CIVIL LEGAL AID PROGRAMS ASSIST VICTIMS OF DOMESTIC VIOLENCE: ONE PROGRAM'S PERSPECTIVE

By Richard A. Cullison

**D**omestic Violence is one of our society's most insidious social problems. Nationally, one in four women will experience it sometime during their lifetime. Indeed, one-third of female murder victims in the United States are killed by an intimate partner.<sup>1</sup>

Domestic violence is one of the most significant barriers women face in securing and maintaining employment.<sup>2</sup> Frequently, the violence will escalate as soon as the victim is about to finish a job training course. Sometimes, the perpetrator will harass the victim at work shortly after she begins a job so she<sup>3</sup> will get fired and continue to be economically dependent upon the perpetrator.<sup>4</sup> Children who grow up in homes where domestic violence is present are much more likely to be victimized by child abuse than those who do not. Children who witness this violence often suffer cognitive or behavioral problems.<sup>5</sup>

For a variety of cultural and socioeconomic reasons, the problem is more acute in Kentucky, where one-third of its women will experience domestic violence.<sup>6</sup> Kentucky was ahead of many states when twenty-five years ago, it passed KRS 403.715, a protective order statute which now provides for three-year domestic violence orders. Upon finding that an act of domestic violence occurred and that it might happen again, the District, or Family Court, judge may, *inter alia*, restrain the perpetrator<sup>7</sup> from committing further acts of domestic violence or having contact with the victim; protect the parties' property; and direct

that the perpetrator vacate a residence he shares with the victim.<sup>8</sup> The statute further empowers the court to "Enter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse."<sup>9</sup>

Kentucky's domestic violence laws make it a Class A misdemeanor to violate a protective order, and mandate that a police officer arrest the perpetrator upon probable cause that he has violated such an order.<sup>10</sup> Since protective orders are to be entered on standard forms and entered into the computerized Law Information Network of Kentucky (LINK), all police officers in the Commonwealth have immediate access to all protective orders.<sup>11</sup>

KRS 403.750 also permits the Court to enter a child custody and child support order as to the parties' children.<sup>12</sup> While domestic violence is present at all socioeconomic levels, single parents who have a family income below the poverty level are seven times more likely to become victims than those at high income levels.<sup>13</sup> Consider a typical case where the mother has a full time \$8.00 per hour job and two children in her custody. Her \$16,640 per year is 90% of the federal poverty level of \$18,310 for a family of three. If the father/perpetrator has a full time \$15.00 per hour job, he could be ordered under Kentucky's child support schedule to pay approximately \$6,500 per year in child support,<sup>14</sup> putting the mother's annual income at \$23,140, which is 126% of the federal poverty level. According to the statistics, this will reduce her risk of becoming a victim again. For this reason, it is important that advocates seek child support and judges

consider child support requests in Domestic Violence Proceedings. Low-income victims frequently lack the resources to pursue child support in separate dissolution of marriage or child custody actions, and Kentucky's four regional civil legal aid programs do not have sufficient resources to accept every "worthy" case.

There is a significant body of research establishing that statutory schemes such as Kentucky's that are designed to protect victims from domestic violence are effective in addressing this critical societal problem. In 2003, a study conducted by medical practitioners verified that having a domestic violence order in effect is vital for a victim's continued safety:

"In this interview study, we found consistent and substantial decreased risks of Subsequent IPV (intimate partner violence) among abused women who obtained CPOs (civil protective orders) and an apparent dose-response relationship according to the duration of the CPO. Based on these findings and those of our recent police record-review study, CPOs appear to be one of the few widely available interventions for victims of IPV that has demonstrated effectiveness..."<sup>15</sup>

While Kentucky's Domestic Violence Statutory Scheme is somewhat "*pro-se*" friendly, victims need the services of attorneys to help with their long term legal needs because:

"Abusers frequently attempt to regain control over victims who have separated from them by filing numerous court motions, violating existing court orders, or harassing victims during lengthy court proceedings.... Even when abusers do not use the court system as a new battleground, victims may face complex legal problems resulting from the violence.... Representation by counsel can assist victims to obtain the legal relief to which they are entitled."<sup>16</sup>

Where victims in a community have access to an affordable attorney who is knowledgeable about domestic violence, the incidence of domestic violence in that community has been shown to decline. Two economists conducted a study of communities showing a decline in the rate of domestic violence. They concluded that while most services provided to victims "did not impact the likelihood of abuse," the availability of attorneys to represent victims "...has a significant negative effect on the incidence of abuse." Furthermore,

"... the availability of legal services in the county of residence has a significant negative effect on the likelihood that an individual woman is battered.... Because legal services help women with practical matters such as protective orders, custody, and child support they appear to actually present women with real, long-term alternatives to their (abusive) relationships."<sup>17</sup>

A six-year study recently released by the Legal Aid Society of Southwest Virginia reached the same conclusion that where victims have easy access to attorneys, the incidence of domestic violence in their community declines.<sup>18</sup>

In light of the significance of the domestic violence problem, Kentucky's effective remedial statutory scheme, and the proven effectiveness of civil protective orders in redressing the problem, all four of Kentucky's civil legal aid societies have set their priorities to include providing legal services to victims of domestic violence.<sup>19</sup> Kentucky Legal Aid attorneys who handle this type of work receive training not only on this substantive area of the law, but also on the dynamics of domestic violence. When they learn that in many instances a victim, for a variety of psychological and socio-economic reasons, is likely to reconcile with a perpetrator several times before making a break, it is less frustrating for the lawyer who "wins the case" only to discover that his or her client reconciled shortly thereafter. Legal aid attorneys are taught not to be judgmental but to be ready to assist again

when the former client's safety requires it. "Victims who receive appropriate assistance at an early stage increase their chances of obtaining the protection and physical security they need to leave their abusers permanently."<sup>20</sup> Legal aid attorneys learn about "safety planning," and the availability of other community resources that can serve their clients.

Unfortunately, Kentucky's Legal Aid Programs do not have sufficient resources to accept every client who needs help. One program, Legal Aid of the Bluegrass, tries to provide representation in Protective Order Proceedings if:

- 1) The violence is especially brutal;
- 2) The alleged perpetrator is represented and seeking custody of the children;
- 3) The domestic violence, though real, is difficult to prove;
- 4) A mutual protective order was issued without sufficient basis; or
- 5) The victim needs the order but will not make a good case herself, or the Court might be hostile to the argument she would need to make.

Kentucky's Legal Aid Programs do not have the resources to take every DVO case into Circuit Court for further relief, such as for dissolution of marriage or a permanent custody order. They tend to accept these cases only where the perpetrator sues in Circuit Court in a *de facto* effort to overturn the Protective Order, or where the Protective Order is not adequate to protect the client or her family.

Legal Aid of the Bluegrass represents immigrant victims of domestic violence in certain immigration cases. Its experience has been that the domestic violence

presented in these cases tends to be even more brutal, perhaps because the victims do not seek help as quickly as do some of our other clients. In addition to the concerns that typical domestic violence clients have, the immigrant victim may worry, at times with good cause, that if she seeks protection, she might end up in deportation proceedings and never see her children again. To address adequately the immigrant client's safety and family law needs, lawyers need to address her immigration law needs as well.<sup>21</sup> Federal law provides several paths to permanent residency for immigrant victims of crime.<sup>22</sup>

Each of Kentucky's Legal Aid Programs could use more *pro bono* attorneys to assist them in representing domestic violence victims. It is fulfilling work, and the Kentucky Legal Aid Programs can provide some assistance to your volunteer effort. If you would like to volunteer, call your local legal aid office or email Jackie Duncan, Kentucky's statewide *pro bono* coordinator, at the Access to Justice Foundation: [jduncan@ajfky.org](mailto:jduncan@ajfky.org).<sup>®</sup>

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#### ENDNOTES

1. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, <http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm> (2006).
2. Sandra K. Danziger and Kristin S.

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- Seefeldt (2003), Barriers to Employment and the 'Hard to Serve': Implications for Services, Sanctions, and Time Limits, *Social Policy and Society*, Vol. 2, pp. 151-160.
3. Domestic Violence is not exclusively a problem encountered by women; there are male victims too. Since a significant majority of victims are female, the female gender will be used herein for the victim and the male gender for the perpetrator.
  4. Interview with George D. Kent, PhD., Executive Director, Life Learning Center, Covington, KY, April 2, 2009.
  5. U.S. Dept. of Health & Human Services, *A Nation's Shame: Fatal Child Abuse and Neglect in the United States* (1995); Howard Davidson, *The Impact of Domestic Violence on Children* (ABA, 1994); Dr. Einat Peled et al., eds., *Ending the Cycle of Violence: Community Responses to Children of Battered Women*, (1995).
  6. Travis A. Fritsch and Hong Wu, (2003) *Kentucky Intimate Partner Violence Surveillance Project: 2002 Population-Based Telephone Survey*, Kentucky Injury Prevention & Research Center; Cabinet for Health and Family Services, Department for Public Health; Cabinet for Families and Children; and Centers for Disease Control & Prevention, Lexington, KY.
  7. The perpetrator must be a family member or a member of an unmarried couple. KRS 403.725; *Barnett v. Wiley*, 103 S.W.3d 17 (Ky. 2003).
  8. Usually the initial order is an *ex parte* one per KRS 403.740. The Court will enter a new order per KRS 403.750 if domestic violence is established at a hearing.
  9. KRS 403.750(1)(h).
  10. KRS 403.673; KRS 403.760(2).
  11. KRS 403.737.
  12. KRS 403.750(1)(e) and (f).
  13. *Intimate Partner Violence*, Bureau of Justice Statistics Special Report (May 2000).
  14. KRS 403.212.
  15. Victoria L. Holt, PhD, MPH, Mary A. Kernic, PhD, MPH, Marsha E. Wolf, PhD, Frederick P. Rivara, MD, MPH; "Do Protection Orders Affect the Likelihood of Future Partner Violence and Injury?," *American Journal of Preventive Medicine*, Volume 24, Number 1 (January 2003).
  16. Deborah Goelman, Esq., Roberta Valente, Esq. with special assistance of Diane Welsh; American Bar Assoc., Commission on Domestic Violence, *When will They Ever Learn? Educating to End Domestic Violence: A Law School Report* (December 1997).
  17. Amy Farmer, Walton College of Business, University of Arkansas; and Jill Tiefenthaler, Colgate University, *Explaining the Recent Decline in Domestic Violence*, pp.11,13,18, and 19 (2003).
  18. *Legal Services Corporation Update*, [http://www.lsc.gov/press/updates\\_2009\\_detail\\_T246\\_R6.php](http://www.lsc.gov/press/updates_2009_detail_T246_R6.php); (April 7, 2009).
  19. Each of Kentucky's four regional legal aid programs must review its priorities periodically to assure that they address the low-income communities' most pressing legal problems; 45 CFR Part 1620.
  20. Deborah Goelman, Esq., Roberta Valente, Esq., with special assistance of Diane Welsh, American Bar Assoc., Commission on Domestic Violence, *When Will They Ever Learn? Educating to End Domestic Violence: A Law School Report* (December 1997).
  21. For a detailed discussion of how LABG implemented the immigration component into its domestic violence work see Richard A. Cullison, "Implementing an Immigration Component with a LSC Program's Domestic Violence Work," *Management Information Exchange Journal*, Vol. XXI, No. 1 p. 48 (Spring 2007).
  22. 8 USC Section 1154(a); 8 USC Sections 1101(a)(15)(U) and (T).

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Cullison began his legal aid career as a staff attorney with the Northern Kentucky Legal Aid Society in 1977, and he became its director in 1984. Northern Kentucky Legal Aid merged with Northeast Kentucky Legal Services in 1998 and Central Kentucky Legal Services in 2002, at which time its dba name became Legal Aid of the Bluegrass. The opinions stated in the article are the author's alone and are not necessarily those of the KBA or anyone else in the legal aid community.