

HOME SWEET HOME?: NEW JERSEY'S PREVENTION OF DOMESTIC VIOLENCE ACT OF 1991

[The] system fails battered women every time it fails to give the loud clear message 'You do not deserve to be beaten'. . . . Give battered women a place to be safe, give them a way to be independent. Give them the opportunity to leave their dark and frightening world of abuse. Break the rage. Unclench the fists. Open the doors. Let life begin.¹

I. Introduction

In New Jersey an act of domestic violence occurs every nine minutes and twenty-six seconds.² Eighty-five percent of the victims of such acts are women.³ Today battering is the single major cause of injury to women in the United States, more common than automobile accidents, rapes, and muggings combined.⁴ Nevertheless, domestic violence knows few boundaries, for it occurs among all races and socioeconomic groups.⁵

¹ Arlene R., *Preface to ADVISORY COMM. ON DOMESTIC VIOLENCE, SUMMARY REP. ON N.J. PUBLIC HEARING ON DOMESTIC VIOLENCE (1988)* (on file with the *Seton Hall Legislative Bureau*).

² N.J. ST. POLICE UNIFORM CRIME REPORTING UNIT, NINTH ANN. DOMESTIC VIOLENCE REP., at 1 (1991). Note, however, that New Jersey's rate of domestic abuse actually *increased* from the 1990 report which stated such acts occurred approximately every 10 minutes and 21 seconds. *Id.*

³ *Id.* at 7. This author acknowledges that acts of domestic violence occur to men, as well as children and the elderly. Due to the prevalence of such acts among women, however, this note will deal only with this aspect of domestic violence. See generally Katie Monagle, *On the Legislative Front*, Ms., Sept./Oct., 1990, at 45; REP. COUNS. ON SCI. AFF.: VIOLENCE AGAINST WOMEN, at 9 (1991) [hereinafter REP. COUNS. SCI. AFF.]. The provisions of the 1991 Act are also applicable to men and the elderly via N.J. STAT. ANN. § 2C: 25-19 (West Supp. 1992).

⁴ REP. COUNS. SCI. AFF., *supra* note 3, at 2. This report notes that at an American Medical Association National Leadership Conference, Surgeon General Antonia Novello, MD, reported "that violence by intimate partners is the leading cause of injury for women, 'responsible for more injuries than car crashes, rape and muggings combined . . . [b]ut sadly the medical community has yet to consistently identify these women as victims . . .'" *Id.*

⁵ NAT'L WOMAN ABUSE PREVENTION PROJECT, DOMESTIC VIOLENCE FACT SHEET (citing M.A. SCHULMAN, U.S. GOVERNMENT PRINTING OFFICE, SURVEY OF SPOUSAL VIOLENCE AGAINST WOMEN IN KENTUCKY (1979)). See generally REP. COUNS. SCI.

Acceptance of such behavior has a long history.⁶ In 1768, in his *Commentaries on the Laws of England*, Sir William Blackstone described the husband's right to "chastise his wife moderately to enforce obedience to his lawful command."⁷ Furthermore, the common law established a rule for such chastisement, the "rule of thumb," which stated that "a husband could discipline his wife with any reasonable instrument, including a rod no thicker than his thumb."⁸ In the United States, early state courts accepted this "doctrine," thus not holding a husband liable for a "moderate" beating of his wife.⁹ It was not until the 1870's that state supreme courts began to abolish this exception.¹⁰

Despite this more "enlightened" law, it was not until 1981, with the passage of the Prevention of Domestic Violence Act [hereinafter 1981 Act], that New Jersey took its first step in addressing this domestic violence crisis.¹¹ The 1981 Act sought to give battered women suppressed by societal attitudes towards

AFF., *supra* note 3, at 10. This report notes that "[n]ationally randomized samples now document the diverse socioeconomic backgrounds of victims. . ." *Id.*

⁶ See Nancy Blodgett, *Violence in the Home*, A.B.A. J., May 1, 1987, at 67.

⁷ *Id.* See also SIR WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, 154-59 (George Chase ed., 4th ed. 1938)(1768). The rationale underlying this belief was that by marriage, the husband and wife became one person in the law. *Id.* at 154. Accordingly, the legal existence of the woman became suspended or consolidated into her husband who was to protect her. *Id.* Due to this "unity", the husband was required to answer for his wife's actions. *Id.* Thus, if she "misbehaved" the "law thought it reasonable to entrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentices or children." *Id.* at 159.

⁸ See Blodgett, *supra* note 6. See also Gary Richard Brown, *Battered Women and the Temporary Restraining Order*, 10 WOMEN'S RTS. L. REP. 261, 262 (1988), which recognizes that under common law, only excessive violence was actionable against spouses. *Id.* (citing *State v. Rhodes*, 61 N.C. 445 (1868)(a husband is not liable for violence which "without question [would] have . . . constituted a battery if the subject had not been the defendant's wife.")).

⁹ See Blodgett, *supra* note 6. The author notes that in 1824 the "rule of thumb" was first cited by a state supreme court. *Id.* The Mississippi court held that a husband who abided by this 'standard' would not be held liable for assault and battery. *Id.* Courts continued to adhere to this line of thought until the later portion of the nineteenth century. *Id.* Hence, "[i]n 1852, a North Carolina decision held that inflicting a nonpermanent injury from which the wife could recovery did not constitute assault." *Id.* See generally Amy Eppler, Note, *Battered Women and the Equal Protection Clause: Will the Constitution Help Them When the Police Won't?*, 95 YALE L. J. 788, 792 (1986).

¹⁰ See Blodgett, *supra* note 6.

¹¹ See N.J. Stat. Ann. § 2C:25-1 - 16. (West 1982) (repealed 1991). See also *infra* notes 16-26 and accompanying text.

victims of domestic violence,¹² a new legal weapon.¹³ Despite this valiant effort, the 1981 Act proved ineffective in a number of areas in meeting the needs of domestic violence victims. Namely, it did not succeed in providing adequate police and judicial response or in ensuring that victims were informed of the protection available under the statute.¹⁴

In 1990 the New Jersey Legislature, along with other government agencies and a number of advocates for victims of domestic violence, responded to the problems of the 1981 legislation. These efforts resulted in the Prevention of Domestic Violence Act of 1991, enacted in November 1991, which sought to provide better protection for victims of domestic violence.¹⁵

This note will begin by summarizing the key provisions and goals of the 1981 legislation. Secondly, incidents and tragedies stemming from the 1981 Act which spurred the need for change will be discussed. Next, the Prevention of the Domestic Violence Act of 1991, will be examined with an emphasis on the major modifications of the 1981 Act. Finally, this note will analyze these changes and their ability to alter the domestic violence crisis in New Jersey.

II. Prevention of Domestic Violence Act of 1981 and Subsequent Amendments

In 1981 New Jersey faced the realization that in the realm of domestic violence legislation it was lagging behind most states regarding police intervention, protective orders, and data collec-

¹² See generally Lipman Announces Introduction of Domestic Violence Legislation, Press Release, Jan. 8, 1981 [hereinafter Lipman Press Release] (on file with Seton Hall Legislative Bureau). In proposing this legislation, Senator Lipman noted society's attitude toward domestic violence is epitomized in the Old English proverb: "A woman, a spaniel, a walnut tree, the more you beat them the better they be." *Id.*

¹³ *Id.* See also N.J. STAT. ANN. § 2C:25-2 (West 1982) (repealed 1991). The legislature declared that through the 1981 Act it sought to "assure victims of domestic violence the maximum protection from abuse the law can provide." *Id.* Moreover, there was recognition that previous societal attitudes regarding domestic violence has substantially impaired both law enforcement and the judicial system from providing equal treatment in such situations. *Id.*

¹⁴ ADVISORY COMM. ON DOMESTIC VIOLENCE, SUMMARY REP. ON N.J. PUBLIC HEARING ON DOMESTIC VIOLENCE (1988) [hereinafter PUBLIC HEARING SUMMARY]. See also *infra* notes 48-67 and accompanying text.

¹⁵ See N.J. STAT. ANN. § 2C:25-17-33 (West Supp. 1992).

tion and reporting.¹⁶ Due to their extensive experience with battered women, the New Jersey Coalition for Battered Women [hereinafter Coalition for Battered Women] and New Jersey Legal Services [hereinafter NJLS] recognized the need for change and prepared and proposed domestic violence legislation to Senator Lipman (D-Essex) and Assemblywoman McConnell (D-Mercer/Middlesex/Somerset).¹⁷ Through the legislation, the two organizations ideally sought to increase societal awareness of domestic violence.¹⁸ Moreover, they sought to end the corresponding inadequate and often dissimilar treatment of domestic violence by the police and the judicial system.¹⁹ Accordingly, the goals set forth in the 1981 Act sought to: provide support for necessary police involvement; improve access to the system, especially in emergencies; improve judicial response and remedy; and to establish better recordkeeping to provide an accurate account of instances of domestic violence for future government agencies.²⁰

As originally drafted by NJLS and the Coalition for Battered Women, the 1981 domestic violence legislation was more comprehensive than the enacted version. In this sense, the draft was ahead of its time as the importance of a number of provisions was not recognized until nearly ten years later when they were adopted with the Prevention of Domestic Violence Act of 1991 [hereinafter 1991 Act].²¹ Nevertheless, because the close of the

¹⁶ Lipman Press Release, *supra* note 12.

¹⁷ See N.J. COALITION FOR BATTERED WOMEN AND N.J. LEGAL SERVICES, ORIGINAL WORKING DRAFT PREVENTION OF DOMESTIC VIOLENCE ACT (1981) [hereinafter ORIGINAL DRAFT] (on file with the *Seton Hall Legislative Bureau*). See also Lipman Press Release, *supra* note 12, which notes that "[d]omestic violence is a critical problem that until recently has been ignored." *Id.*

¹⁸ ORIGINAL DRAFT, *supra* note 17.

¹⁹ *Id.*

²⁰ N.J. COALITION FOR BATTERED WOMEN ET AL., LEGISLATIVE PROPOSAL (1981). See also *infra* note 21.

²¹ See ORIGINAL DRAFT, *supra* note 17. This original draft possessed strong language and comprehensive terms to protect victims of domestic violence. Hence, the term "co-habitants" was defined without the additional requirement placed in the 1981 Act that such a person be a "member of the opposite sex." *Id.* at 2. In addition, the types of conduct which would constitute an act of domestic violence were more numerous and extensive than what was protected under the 1981 Act. *Id.* Overall, these recommendations were adopted in whole or in part in the 1991 Act.

However, this original draft also mandated that a victim could "demand that

legislative session was near, the parties involved in passing the 1981 Act agreed to enact the domestic violence legislation with few changes and undertake the fine tuning later.²²

Subsequent amendments enacted in July, 1982, reflected this agreement. Thus, these revisions are a product of negotiations between the Coalition for Battered Women, NJLS, Senator Lipman's office and the State Bar Association.²³ As with all such negotiation processes, both sides realized some gains as well as some losses. The bill thus appeared to be strengthened by the addition of "harassment"²⁴ to the definition of domestic violence and the establishment of guidelines designed to assist the court when issuing an order for relief.²⁵ The legislation, however, was slightly weakened by the deletion of a mandate for police officers to remain at the site of the alleged abuse at the victim's request.²⁶

Nevertheless, the major provisions of the 1981 Act following these 1982 amendments offered a new type of protection for victims of domestic violence. Following the July, 1982, amendments training was made mandatory for all law enforcement officers;²⁷ police officers were empowered with the ability to arrest without a warrant if there was reason to believe that the

the officer present drive [him or her] to the nearest hospital or otherwise assist [him or her] or accompany [them] to a place of safety or shelter." *Id.* at 4. A victim was also empowered with the right to demand the officer remain on the scene until the victim could leave the scene or otherwise ensure his or her safety. *Id.* Neither of these provisions were adopted in the 1991 Act.

²² Letter from Sandy Clark, New Jersey Coalition for Battered Women to Maura B. Johnson, *Seton Hall Legislative Journal* (July 1, 1992) (unpublished letter on file with the *Seton Hall Legislative Bureau*).

²³ See Letter from Nadine Taub, Rutgers Law School Women's Rights Litigation Clinic, to June Weaver, Community Relations, Young Women's Christian Association (Nov. 23, 1982)(unpublished letter on file with the *Seton Hall Legislative Bureau*). Taub states that following the 1982 amendments, she perceived the Act to be significantly weakened. *Id.* See also Letter from June Weaver, Community Relations, Young Women's Christian Association, to Nadine Taub, Rutgers Law School Women's Rights Litigation Clinic (Dec. 17, 1982)(unpublished letter on file with the *Seton Hall Legislative Bureau*). The author declares that "[t]he revisions were decided through compromise to garnish as much support within the courts, the police, and prosecutor's office and from members of the Bar Association . . . [and are] a welcome channel for offering judicial relief to victims of Domestic Violence in New Jersey. . . ." *Id.*

²⁴ N.J. STAT. ANN. § 2C:25-3(10) (West 1982)(repealed 1991).

²⁵ See N.J. STAT. ANN. § 2C: 25-13 (West 1982)(repealed 1991).

²⁶ See Weaver, *supra* note 23. See also ORIGINAL DRAFT, *supra* note 17, at 4.

²⁷ N.J. STAT. ANN. § 2C:25-4 (West 1982) (repealed 1991).

accused committed a crime, violated a protective order, or if there was probable cause²⁸; and courts were allowed to grant civil orders to determine child custody, possession of property, or award monetary compensation.²⁹

With time serving to test the strength of this new legislation, the need for subsequent amendments was recognized in 1988. As a result, a mandatory arrest requirement was implemented for situations in which a victim exhibited "signs of injuries caused by an act of domestic violence."³⁰ But because this phrase was not defined in the 1981 Act, it provided a vague and subjective standard for police officers.³¹ A clarification was also added which stated that a violation of any provision of a domestic violence order was a criminal contempt offense.³² Moreover, a statewide procedure was established to guide law enforcement agents when making arrests for violations of domestic violence orders.³³ In spite of the seeming advances, the amendment included a procedural provision which appeared to undermine the spirit of the 1981 Act by requiring the victim to be transported with the offender to the police station, the court or some other appropriate place.³⁴

Nevertheless, the enactment of these amendments was not the final attempt to improve the 1981 Act, whose deficits became obvious during the ten year period following its implementation.³⁵ Soon after the enactment of the early 1988 amendments, negotiations between the Coalition for Battered Women, the Administrative Office of the Courts, the Attorney General's Office, the State Judicial Committee, and Mercer County Legal Aide resulted in further clarification of the statute.³⁶ "The major issue

²⁸ N.J. STAT. ANN. § 2C:25-5 (West 1982) (repealed 1991).

²⁹ N.J. STAT. ANN. § 2C: 25-13 (West 1982) (repealed 1991).

³⁰ N.J. STAT. ANN. § 2C: 25-5 (West 1982) (repealed 1991). *See also* N.J. COALITION FOR BATTERED WOMEN, SUMMARY OF NEW AMENDMENTS TO THE PREVENTION OF DOMESTIC VIOLENCE ACT, at 1 (1988) [hereinafter N.J. COALITION FOR BATTERED WOMEN] (on file with the *Seton Hall Legislative Bureau*).

³¹ *See* N.J. COALITION FOR BATTERED WOMEN, *supra* note 30. *See also infra* notes 94-105 and accompanying text.

³² N.J. STAT. ANN. § 2C:25-15(b) (West 1982 & Supp.) (repealed 1991).

³³ N.J. STAT. ANN. § 2C:25-15.1 (West 1982 & Supp.) (repealed 1991).

³⁴ N.J. STAT. ANN. § 2C:25-15.1 (West 1982 & Supp.) (repealed 1991). *See also* N.J. COALITION FOR BATTERED WOMEN, *supra* note 30.

³⁵ *See infra* notes 36-45 and accompanying text.

³⁶ SANDY CLARK, N.J. COALITION FOR BATTERED WOMEN, SUMMARY OF THE NEW

of debate was how violations of restraining orders should be handled."³⁷ The 1981 Act originally limited such violations to criminal contempt procedures.³⁸ This second round of amendments in 1988 proposed to expand the handling of such violations to civil proceedings.³⁹ Despite the Coalition for Battered Women's belief that limiting these violations to criminal proceedings "would [allow them] to be considered and handled more seriously," the amendment was passed.⁴⁰ As per the Coalition for Battered Women's request, this round of amendments included a requirement that a victim's right to proceed in both criminal and civil contexts be stated on the domestic violence complaint.⁴¹ It was also mandated that these options be explained to the victim by court intake personnel.⁴²

In a final attempt to salvage the 1981 Act, additional amendments were introduced in 1989 and 1990. Thus, in 1989 the Act's legislative declaration was expanded to recognize the elderly and disabled as frequent victims of domestic violence.⁴³ The

AMENDMENTS TO THE PREVENTION OF DOMESTIC VIOLENCE ACT PROPOSED BY S-2011 (1988)(on file with the *Seton Hall Legislative Bureau*).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* Clark notes:

[t]hese [civil] proceedings have certain potential advantages which theoretically would be unfortunate to lose. For example, the defendant can be arrested and brought immediately before the judge. Sanctions can include stiff fines and/or jail time. Practically speaking, however, the civil proceedings in most cases have been used in conjunction with a notification summons (in lieu of arrest), a non-immediate hearing and a warning by the court. In some counties, repeat offenders are not even subjected to stronger sanctions.

Id.

⁴⁰ CLARK, *supra* note 36.

⁴¹ *Id.* Clark notes that "[t]his language serves the additional purpose of clarifying that civil proceedings are not to be used 'in lieu of' criminal proceedings, but may be used 'in addition to' them." *Id.* Furthermore, it is also noted that the Division of Criminal Justice made a commitment to prosecute more acts of domestic violence and appropriate violations of restraining orders. *Id.* See also N.J. STAT. ANN. 2C:25-15-a (West 1982 & Supp.) (repealed 1991).

⁴² CLARK, *supra* note 36.

⁴³ N.J. STAT. ANN. § 2C:25-2 (West 1982 & Supp.) (repealed 1991). Accordingly, the New Jersey Legislature declared:

that the health and welfare of some of its most vulnerable citizens, the elderly and disabled, are at risk because of incidents of reported and unreported domestic violence, abuse and neglect which are known to include acts which victimize the elderly and disabled emotionally, psy-

police training course was amended to reaffirm the importance of such training and recognize its applicability to the elderly and disabled.⁴⁴ In 1991, specific guidelines were set forth for judges to follow during bail proceedings.⁴⁵

Despite the continued attempts of the legislature, the Coalition for Battered Women, NJLS and other agencies to strengthen the existing domestic violence legislation, over time it became clear that there was a definite need for change.⁴⁶ Few events made this need for change as clear as the tragedies which occurred to domestic violence victims when the existing legislation and system failed them.⁴⁷

III. *The 1981 Domestic Violence Legislation and the Need for Change*

In 1985, Debbie Evans was kidnapped from the parking lot of her Roselle, New Jersey, office by her former live-in boyfriend, Clifton Mc Kenzie.⁴⁸ During the following three days, Ms. Evans was repeatedly raped and beaten in her apartment by her kidnaper-

chologically, physically and financially; because of age, disabilities or infirmities, this group of citizens frequently must rely on the aid and support of others; while the institutionalized elderly are protected under P.L. 1977, c.239 (C. 52:27G-1 et seq.), elderly and disabled adults in noninstitutionalized or community settings may find themselves victimized by family members or others upon whom they feel compelled to depend. [Thus, it] must be recognized and addressed on an equal basis as violence against spouses and children in order to fulfill our responsibility as a society to protect those who are less able to protect themselves.

Id.

⁴⁴ N.J. STAT. ANN. § 2C:25-4 (West 1982 & Supp.) (repealed 1991). See PUBLIC HEARING SUMMARY, *supra* note 14, at 1, which states that despite the fact the statute mandated such training, "there appear[ed] to be a lack of clarity about the content of such training [which] leaves too much discretion to the individual communities . . . [and] there [was] great disparity in the nature and duration of training in this area." *Id.* See also *infra* notes 85-93 and accompanying text.

⁴⁵ See Memorandum from Robert D. Lipscher, Administrative Director of the Courts, to New Jersey Assignment Judges (Apr. 26, 1991)(on file with the Seton Hall Legislative Bureau). See also N.J. STAT. ANN. § 2C:25-26-c-e (West Supp. 1992).

⁴⁶ See generally Sandra Gardner, *Family Violence Law: Mixed Reviews*, N.Y. TIMES, Sept. 25, 1983, at K1. In this article, an Essex County Prosecutor states "[the 1981 Act] has had no recognizable effect and [is] rarely used." *Id.*

⁴⁷ See *infra* notes 48-67 and accompanying text.

⁴⁸ See Jeffrey Kanige, *Suit Against Roselle Police Set to Move Forward*, N.J. L. J., June 27, 1991, at 4.

per.⁴⁹ With the aid of her family, Ms. Evans finally escaped.⁵⁰ Although Ms. Evans reported this trauma to the Roselle Police, she was never told she could file criminal charges or seek a protective order under the 1981 Act.⁵¹ After meeting with the Roselle police, Ms. Evans spent the weekend at her mother's home.⁵² On the following Monday morning, she "set out for the Roselle police headquarters, but was never seen alive again."⁵³ One month later her frozen body was discovered in the trunk of a car parked in front of a motel in Edison, New Jersey.⁵⁴ Mrs. Evans' former boyfriend, Clifton Mc Kenzie, was subsequently convicted of her murder in Union County Superior Court in 1988.⁵⁵

In September 1988, Nicolae Vutca threatened to kill his wife and was subsequently arrested with bail set at \$25,000.⁵⁶ Shortly after this arrest, Vutca had his bail reduced to \$500 and was set free.⁵⁷ This reduction was made by a different judge who was not aware that Mr. Vutca was a paroled murderer who had previously

⁴⁹ *Id.* During this time, Ms. Evans' family notified the Roselle Police of her disappearance and their belief that the victim was being held by Mc Kenzie. *Id.* The response of the Roselle Police was to send a patrol car to Ms. Evans' apartment on the third day following the incident, but the "officers, 'using little ingenuity and even less imagination' couldn't get into the building and left." *Id.*

⁵⁰ *Id.* Finally, Ms. Evans was able to escape when her sister and brother went to the apartment themselves. *Id.* When they knocked on the door, Ms. Evans answered and her attacker escaped through a window. *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Jeffrey Kanige, *Roselle Case Settles*, N.J. L. J., Oct. 3, 1991, at 8. See also *Case Against Borough of Roselle Settled Day Before Trial*, P.R. Newswire, Sept. 24, 1991, available in LEXIS, Nexis Library, Newspaper File. This article cites Ms. Evans' case as "a nightmare of a young woman who was the victim of discrimination and indifference of a police department that did not police or protect." *Id.*

⁵⁵ Kanige, *supra* note 54. Ms. Evans' sister, Regina Brown, subsequently brought suit in federal court alleging that the Roselle police failed to adequately respond to her sister's pleas for help even after she was kidnapped and repeatedly raped and beaten by her former live-in boyfriend, Clifton Mc Kenzie. *Id.* Following six years of litigation, the case settled for \$1.3 million dollars the day before the trial was to begin. *Id.*, see also *Thurman v. City of Torrington*, 595 F. Supp. 1521 (D. Conn. 1984), in which a wife and her son successfully brought a civil rights action against the city and its police officers, alleging that plaintiffs' constitutional rights were violated by the nonperformance or malperformance of official duties by police in response to threats and assaults by the wife's estranged husband. *Id.* See generally Paul Reidinger, *Unequal Protection*, A.B.A. J., Mar. 1989, at 102.

⁵⁶ David Brooks, *Rules Set Out for Domestic Violence Cases*, N.J. L. J., Sept. 22, 1988, at 1.

⁵⁷ *Id.*

served four years in prison for the stabbing death of his girlfriend.⁵⁸ The judge did not even contact the prosecutor's office prior to this substantial bail reduction.⁵⁹ Subsequently, Mr. Vutca used court records to track his wife and his brother-in-law in Pennsylvania where he killed them and then committed suicide.⁶⁰

On May 30, 1990, Kathy Quagliani appeared in front of a Bergen County Superior Court Judge seeking protection from her husband, Henry Quagliani, who she alleged punched her and knocked her to the floor a few days earlier.⁶¹ The judge allowed her husband to return home after issuing an in-house restraining order which allowed Mr. Quagliani to co-habitate with his wife, but to "stay out of his wife's bedroom and not to harass or disturb her."⁶² On July 11, 1990, Ms. Quagliani filed another harassment complaint against her husband under the 1981 Act.⁶³ Appearing before the same judge, no action was taken, thus due to the continued enforcement of the in-house restraining order,

⁵⁸ *Id.*

⁵⁹ Brooks, *supra* note 56. Under the 1981 Act, a judge was not required to notify the prosecutor's office before initiating a bail reduction. Accordingly, prior to the establishment of bail guidelines for the 1981 Act in April, 1991, "prosecutors sometimes were not notified when bail was about to be reduced, especially if the original bail was set at night and the reduction hearing—when new information was available—was the following morning." *Id.* at 15. *See also infra* note 60.

⁶⁰ Brooks, *supra* note 56. Citing the mishandling of the Evans case, Chief Justice Wilentz six days following the murder/suicide, distributed a memorandum to all assignment judges which established a four-prong procedure for setting bail in domestic violence cases. Judges were instructed: (1) not to reduce bail without prior notice to the prosecutor; (2) not to reduce bail set by another judge, without the second judge knowing the first judge's reasons for setting the higher bail; (3) to determine a defendant's prior record before setting bail; [and] (4) to keep a victim's address confidential. *Id.* Furthermore, the Chief Justice declared:

[b]y and large the [domestic violence] program in place is effective . . . [y]et, with it all, a mistake happens and makes us realize that despite all of our efforts we still have not done enough; it challenges us to seek additional ways to make secure the protections we offer victims of domestic violence.

Id. at 15. This memorandum later became part of the 1981 Domestic Violence Act through amendments adopted in April, 1991. It was also made part of the 1991 Act in N.J. STAT. ANN. § 2C:25-26-c-e (West Supp. 1992). *See also supra* note 45.

⁶¹ Allyson Lee Moore, *No Punishment for Judge in Battered Spouse Case*, N.J. L. J., Sept. 26, 1991, at 5.

⁶² Henry Sorkow, *Good Law Does Not People Make*, N.J. L. J., Sept. 19, 1991, at 15. *See also infra* note 64.

⁶³ Moore, *supra* note 61.

Ms. Quagliani remained with her abusive husband.⁶⁴ Six days later, Ms. Quagliani was allegedly beaten by her husband with a bat in front of their twelve year old son.⁶⁵ She subsequently lapsed into a coma and died six days later.⁶⁶ Her husband, Henry Quagliani, awaits his murder trial in the Bergen County Jail Annex in lieu of one million dollars bail.⁶⁷

These are just a few tragic examples created in part by the weaknesses of the 1981 Act. Despite the righteous efforts of those involved in the 1981 Act to "assure the victims of domestic violence the maximum protection from abuse the law can provide,"⁶⁸ events prior to the enactment of the 1991 Act made it obvious that stronger, more detailed legislation would be the only means for giving domestic violence victims a "lethal weapon" of defense. The New Jersey Legislature responded to this need with the enactment of the 1991 Act.

IV. Prevention of Domestic Violence Act of 1991

A. Legislative History

In 1988, the Advisory Council on Domestic Violence [hereinafter "Council"], government representatives and a group of volunteers met to evaluate the six years which had elapsed since the creation the 1981 Act.⁶⁹ Although the 1981 Act was recog-

⁶⁴ *Id.* See also *Mistreating Judge Kahn*, N.J. L. J., Dec. 9, 1991, at 14. That editorial notes that under the 1981 Act, the issuing of an in-house restraining order was left to the discretion of the judge. *Id.* Moreover, the only guidelines regarding the issuing of such orders was a 1986 memorandum from Chief Justice Wilentz, which was not law and hence not binding. *Id.* The majority of the Wilentz memorandum was adopted into the 1991 Act in N.J. STAT. ANN. § 2C:25-29-13 (West Supp. 1992). See generally *infra* notes 127 - 129 and accompanying text.

⁶⁵ Moore, *supra* note 61. See also Sorkow, *supra* note 62. The author, Presiding Judge of the Superior Court of New Jersey, Family Part, Bergen County from 1978 to 1990, states that "when the law fails to protect, it is evidence that what we practice is an imperfect art, not a science." *Id.* Hence, despite tragedies like those of Ms. Quagliani, the Domestic Violence Act is an absolute necessity which recognizes "that violence in the home is not a norm but rather a distinct anti-social act." *Id.*

⁶⁶ Moore, *supra* note 61. See also Thomas Moran, *In Memory of a Battered Woman*, THE RECORD, July 31, 1992, at B1. One year following Ms. Quagliani's death, in front of the Hackensack courthouse where she sought protection, 30 friends and sympathizers gathered to plant a dogwood tree in her memory. *Id.*

⁶⁷ Moran, *supra* note 66. Mr. Quagliani has pleaded not guilty and plans to institute an insanity defense at his trial scheduled for January, 1993. *Id.*

⁶⁸ N.J. STAT. ANN. § 2C:25-2 (West 1982 & Supp.) (repealed 1991).

⁶⁹ N.J. COMM. ON SEX DISCRIMINATION IN THE STATUTES, PREVENTION OF DOMES-

nized as innovative for its time, these organizations realized that the law "was passed in the infancy of the study of battering as a psychological and social phenomenon."⁷⁰ Therefore, armed with improved domestic violence studies and "a new societal sensitivity to all kinds of physical abuse," these groups set out to establish a "new and improved" domestic violence act.⁷¹ Accordingly, in September 1988, the 1981 Act was examined in four public hearings conducted by the Council throughout New Jersey.⁷² Recommendations were made based on the personal and professional experiences of attorneys, prosecutors, police, client advocates and battered women.⁷³

Following these hearings, two Council subcommittees met to "digest the recommendations made by the public."⁷⁴ The suggestions of these two groups were introduced to the Commission on Sex Discrimination in the Statutes, which created a draft of a bill encompassing all of these recommendations.⁷⁵ Following numerous negotiations and amendments, a bill was created which gained the support of "victim advocates, police, prosecutors, women's groups, and the courts."⁷⁶ Due to the across the board backing of this legislation, the bill had much support in both the assembly and senate.⁷⁷ Thus, each round of amendments was unanimously ratified in both houses and was approved on August 14, 1991.⁷⁸

TIC VIOLENCE ACT OF 1991 [hereinafter N.J. COMM. ON SEX DISCRIMINATION] (on file with the *Seton Hall Legislative Bureau*).

⁷⁰ *Id.*

⁷¹ *Id.* The Commission also cites "the 1980's enchantment with law and order" as perhaps just as important in producing change, for it "made it more acceptable for advocates to suggest imprisoning abusers, but also crowded the state's corrections facilities, so that judges may have been less likely to actually jail abusers." *Id.*

⁷² *Id.* See generally PUBLIC HEARING SUMMARY, *supra* note 14.

⁷³ N.J. COMM. ON SEX DISCRIMINATION, *supra* note 69.

⁷⁴ *Id.* One subcommittee focused on police services, while the other examined the judiciary's response to family violence. *Id.*

⁷⁵ *Id.* See generally ADVISORY COMM. ON DOMESTIC VIOLENCE, FIRST ANN. REP., at 5 (1990).

⁷⁶ N.J. COMM. ON SEX DISCRIMINATION, *supra* note 69. See also 78 N.J. LEGIS. INDEX No. 22 at S. 2230 (Jan. 21, 1992). S. 2230 was sponsored by Sen. Wyons M. Lipman (D-Essex) and Sen. Joseph Bubba (R-Passaic/Essex). *Id.* On February 28, 1991, S. 2230 was substituted for A. 4208, the assembly's domestic violence bill. *Id.* A. 4208 was sponsored by Assemblywomen Ford (D-Ocean) and Mullen (D-Camden/Atlantic/Gloucester). *Id.*

⁷⁷ See 78 N.J. LEGIS. INDEX, *supra* note 76, at S. 2230.

⁷⁸ *Id.*

B. *Law as Passed*

The Prevention of Domestic Violence Act of 1991 became effective with much hope and fanfare in Trenton, New Jersey, on November 14, 1991.⁷⁹ Although numerous sources shed light on the failings of the 1981 Act, the four public hearings conducted by the Council produced "many valuable insights into how law enforcement, social service agencies and the courts can improve the system designed to protect victims and their families."⁸⁰ Overall, a large portion of the recommendations stemming from these hearings were adopted and appear to substantially strengthen the domestic violence law. This section will highlight the key recommendations adopted in the 1991 Act, specifically noting the modifications from the 1981 Act.

1. Clarification of Definitions and Terms

Throughout the 1991 Act, the legislators sought to clarify and expand the definitions and terms of the 1981 Act. These changes included a substitution of the term "victim of domestic violence" for "cohabitants."⁸¹ Moreover, the 1991 Act contains no requirement that a cohabitant be a member of the opposite sex or related to the victim.⁸² Thus, the 1991 Act creates the potential for actions by elderly people who are abused by "care-takers who are not related to them [or] lesbians and gay men caught in violent relationships."⁸³ Finally, the definition of "domestic violence" has also been expanded to include homicide, terroristic threats and criminal trespass, thus bringing the total number of domestic violence offenses to thirteen.⁸⁴

2. Police Training and Response to Domestic Violence

A major concern expressed at the public hearings was the

⁷⁹ See generally Kathy Barrett Carter, *New Domestic Violence Law Sounds Great, But . . .*, N.J. L. J., Nov. 14, 1991, at 17.

⁸⁰ PUBLIC HEARING SUMMARY, *supra* note 14, at introduction.

⁸¹ N.J. STAT. ANN. § 2C:25-19-d (West Supp. 1992).

⁸² *Id.* See also N.J. STAT. ANN. § 2C:25-3 (West 1982)(repealed 1991) (former statute required that a victim be related to, or a member of the opposite sex of the alleged abuser).

⁸³ N.J. COMM. ON SEX DISCRIMINATION, *supra* note 69.

⁸⁴ N.J. STAT. ANN. § 2C:25-19 (West Supp. 1992). This section lists the following thirteen offenses as constituting an act of domestic violence:

inconsistent and, at times, inappropriate response of police officers to domestic violence complaints. Included in these concerns were: 1) a failure to notify victims of the rights and remedies available; 2) a reluctance to remove batterers from domestic violence situations; 3) substitution by police officers of a "cooling off period" as a "cure" for domestic violence; and lastly, 4) initiation of a "dual arrest strategy," thus taking both the victim and the abuser into custody.⁸⁵ Moreover, "some officers have been known to minimize the situation, openly sympathiz[ing] with the perpetrator, and deny[ing] victims access to local domestic violence program staff."⁸⁶ In order to combat this crucial problem which clearly undermines the Act's goal to protect victims, a statewide system of education and training was recommended.⁸⁷

The 1991 Act attempts to tackle this void which was created by the 1981 Act's failure to establish a detailed police training program.⁸⁸ The legislative finding in the 1991 Act declares that it "encourages the training of all police and judicial personnel in the procedures and enforcement of this act and about the social and psychological context in which domestic violence occurs."⁸⁹

(1) Homicide	N.J. Stat. Ann. § 2C:11-1
(2) Assault	N.J. Stat. Ann. § 2C:12-1
(3) Terroristic threats	N.J. Stat. Ann. § 2C:12-3
(4) Kidnapping	N.J. Stat. Ann. § 2C:13-1
(5) Criminal restraint	N.J. Stat. Ann. § 2C:13-2
(6) False imprisonment	N.J. Stat. Ann. § 2C:13-3
(7) Sexual assault	N.J. Stat. Ann. § 2C:14-2
(8) Criminal sexual conduct	N.J. Stat. Ann. § 2C:14-3
(9) Lewdness	N.J. Stat. Ann. § 2C:14-4
(10) Criminal mischief	N.J. Stat. Ann. § 2C:17-3
(11) Burglary	N.J. Stat. Ann. § 2C:18-2
(12) Criminal trespass	N.J. Stat. Ann. § 2C:18-3
(13) Harassment	N.J. Stat. Ann. § 2C:33-4

Id.

⁸⁵ PUBLIC HEARING SUMMARY, *supra* note 14, at 1. See also Brown, *supra* note 8, at 266. This article notes that "[w]hile a dual arrest serves the mitigating function of removing the threat of continued abuse, a pattern of dual arrests would create a disincentive for battered women seeking police intervention." *Id.*

⁸⁶ PUBLIC HEARING SUMMARY, *supra* note 14, at 1.

⁸⁷ *Id.*

⁸⁸ See N.J. STAT. ANN. § 2C:25-4 (West 1982 & Supp.) (repealed 1991). See generally *supra* note 44 and accompanying text.

⁸⁹ N.J. STAT. ANN. § 2C:25-18 (West Supp. 1992).

The Legislature then goes beyond this rhetoric and establishes more definite guidelines,⁹⁰ including a uniform statewide system of education and training for law enforcement officers and the judiciary.⁹¹

The reoccurring problem of police officers' failure to adequately notify victims of the options available under the 1981 Act has also been remedied through the 1991 legislation. Although the 1981 Act contained a provision for a "victims' bill of rights" which informed a domestic violence victim in English and Spanish of the options available under the Act, the 1991 Act mandates that a police officer must *explain* this notice to the victim.⁹² The Legislature, however, did not take the additional step of adopting some of the stronger recommendations made at the public hearings. Thus, the Legislature rejected reenactment of a provision contained in the original version of the 1981 Act which required officers to notify the victim that they may opt to be transported by the police for medical treatment or request the police to remain at the site of the abuse to provide protection for the victim.⁹³ Nevertheless, the 1991 Act does appear to provide a greater likelihood that a victim will be made aware of his or her rights under the statute.

3. Mandatory Arrest Provision

The mandatory arrest provision which became part of the 1981 Act via the 1988 amendments, also drew much criticism at the public hearings.⁹⁴ The original mandatory arrest provision was limited only to situations in which a victim "exhibit[ed] signs of injuries."⁹⁵ This vague terminology was not defined in the

⁹⁰ See generally N.J. DIV. CRIM. JUST., IN-SERVICE TRAINING FOR POLICE OFFICERS (1991) [hereinafter IN-SERVICE TRAINING] (this manual details the teaching strategies to be employed during the training of law enforcement officers); N.J. DIV. CRIM. JUST., DOMESTIC VIOLENCE PROCEDURES MANUAL (1991) [hereinafter D.V. MANUAL] (this manual details the procedures to be followed by both law enforcement and the judiciary).

⁹¹ See N.J. Stat. Ann. § 2C:25-20 (West Supp. 1992). This section also mandates that the Division of Criminal Justice will develop the training programs and review their success every two years. *Id.* Additionally, the Attorney General must ensure that all New Jersey law enforcement agents receive this training. *Id.*

⁹² N.J. STAT. ANN. § 2C:25-23 (West Supp. 1992).

⁹³ See PUBLIC HEARING SUMMARY, *supra* note 14, at 2. See generally *supra* note 21.

⁹⁴ See generally *supra* notes 30-31 and accompanying text.

⁹⁵ *Id.* See also N.J. STAT. ANN. § 2C:25-5 (West 1982) (repealed 1991).

1981 Act.⁹⁶ In addition, those present at the hearings noted that despite this compulsory provision, many officers were still reluctant to arrest an alleged perpetrator.⁹⁷ Furthermore, victims who defended themselves against attacks of domestic violence were often arrested.⁹⁸

The "new and improved" mandatory arrest provisions appear to broaden the reach of this section and strengthen its impact. Under the 1991 Act, an officer is mandated to arrest and sign a criminal complaint⁹⁹ against the accused abuser if: 1) a victim exhibits signs of injury; 2) a warrant is in effect; 3) there is probable cause to believe there is a violation of a restraining order; 4) there is probable cause to believe a weapon was involved in the act of domestic violence.¹⁰⁰ Furthermore, it is specifically stated that the term "exhibits [signs of injuries]" is to "be liberally construed to mean any indication that a victim has suffered bodily injury, which shall include physical pain or any impairment of physical condition."¹⁰¹ Where there is probable cause to believe an act of domestic violence has occurred, an officer may make an arrest or sign a criminal complaint despite the fact that none of the situations invoking the mandatory provision are present.¹⁰² An officer is required to use discretion and contemplate

⁹⁶ See generally N.J. STAT. ANN. § 2C:25-5 (West 1982) (repealed 1991).

⁹⁷ PUBLIC HEARING SUMMARY, *supra* note 14, at 2. See generally Eppler, *supra* note 9, at 791-93. Eppler notes that "[t]he police non-arrest policy is most commonly justified by a belief in 'family privacy,' a doctrine dictating that the state should not intervene in domestic matters." *Id.* at 791 (citing U.S. CIVIL RTS. COMM., UNDER THE RULE OF THUMB at 96 (1982)); Barbara K. Finesmith, *Police Response to Battered Women: A Critique and Proposals for Reform*, 14 SETON HALL L. REV. 74, 84-87 (1983) (detailing the history of police response to domestic violence calls); Jessica L. Goldman, Note, *Arresting Wife Batterers: A Good Beginning to Stopping a Pervasive Problem*, 69 WASH. U. L. Q. 843, 849-54 (1991).

However, it must also be noted that police response to domestic violence calls may be attributed in part to the fact that such violence often turns on the law enforcement officer. "[I]n 1982 . . . a fourth of all the officers injured in [N.J.] were assaulted on domestic violence calls." Gardner, *supra* note 46 (citing N.J. ST. POLICE, N.J. ST. REP. 1982)). See generally Goldman, *supra*, at 851-52.

⁹⁸ PUBLIC HEARING SUMMARY, *supra* note 14, at 2-3.

⁹⁹ N.J. COMM. ON SEX DISCRIMINATION, *supra* note 69. The requirement that a police officer sign a criminal complaint was added to the 1991 Act with the hope that it would reduce "the likelihood that a victim will be required to do so, or pressured to limit her complaint to non-criminal family court proceedings." *Id.*

¹⁰⁰ See generally N.J. STAT. ANN. § 2C:25-21-a (West Supp. 1992).

¹⁰¹ N.J. STAT. ANN. § 2C:25-21-c-1 (West Supp. 1992).

¹⁰² N.J. STAT. ANN. § 2C:25-21-b (West Supp. 1992). See also D.V. MANUAL, *supra*

"other factors" besides physical injury when making an arrest where no signs of physical injury are present.¹⁰³ Additionally, an officer is called upon to consider "the comparative extent of the injuries, the history of domestic violence between the parties, if any, and any other relevant factors" to determine who the domestic violence victim is in situations where both parties exhibit injury.¹⁰⁴ Finally, a victim's use of "reasonable force in self defense" is given support in this section, which specifically states "no victim shall be denied relief or arrested or charged under this act" because they have used such force.¹⁰⁵

At the hearings, "[a] number of counties reported that police routinely confiscate and seize all weapons and firearms in the home as an added measure of protection."¹⁰⁶ Hence, the 1991 Act amended the arrest provision to authorize a police officer who has probable cause to believe an act of domestic violence has occurred to question persons present regarding the presence of weapons.¹⁰⁷ Moreover, any weapons which the officer "reasonably believes would expose the victim to a risk of serious bodily injury" may be seized.¹⁰⁸ Under this new detailed provision, a prosecutor who receives the seized weapon may petition the Family Part of the Superior Court, Chancery Division, within forty-five days to obtain title.¹⁰⁹ If such an action is not insti-

note 90, at 44 n. 40. This manual advocates that "[s]hort term incarceration has been shown to be a very effective deterrent in domestic violence cases: very often, being put in jail finally forces batterers to realize that their actions will not be condoned and that the court will take whatever steps are necessary to stop their actions." *Id.*

¹⁰³ N.J. STAT. ANN. § 2C: 25-21-c-1 (West Supp. 1992).

¹⁰⁴ N.J. STAT. ANN. § 2C:25-21-c-2 (West Supp. 1992).

¹⁰⁵ N.J. STAT. ANN. § 2C:25-21-c-3 (West Supp. 1992).

¹⁰⁶ PUBLIC HEARING SUMMARY, *supra* note 14, at 3.

¹⁰⁷ N.J. STAT. ANN. § 2C:25-21-d-1-a (West Supp. 1992).

¹⁰⁸ N.J. STAT. ANN. § 2C:25-21-d-1-b (West Supp. 1992). *See also* IN-SERVICE TRAINING, *supra* note 90, at 6. The teaching strategy advocated in this manual notes that "[t]he officer must be able to demonstrate a reasonable belief that a particular weapon may be used by the suspect because the state law definition of weapons is so broad that it includes just about every possible object that could cause serious bodily injury." *Id.*

¹⁰⁹ N.J. STAT. ANN. § 2C:25-21-d-3 (West Supp. 1992). *See generally* Ronald Dolon et al., *Police Practices and Attitudes Toward Domestic Violence*, 14 J. POLICE SCI. ADMIN. 187, 188 (1986). This article notes that prior studies have demonstrated that the "best predictors of a violent act occurring are, in rank order, the presence of a gun. . ." *Id.* (citing R.K. Breedlove et al., *Domestic Violence and the Police*, POLICE FOUNDATION, Washington D.C. (1977).

tuted, the weapons are automatically returned.¹¹⁰ Thus, the arrest provisions of the 1991 Act clearly empower both police officers and victims with new "weapons" in the fight against the domestic violence crisis.

4. Judicial Enforcement & Training

Another problem echoed at the public hearings concerned "the judiciary and an apparent lack of uniformity around the interpretation, implementation and enforcement of the [1981] Act."¹¹¹ Moreover, there was a "perceived insensitivity of various judges and court personnel regarding the plight of battered women."¹¹² This fact is exemplified in tragic examples such as the Kathy Quagliani case,¹¹³ which demonstrates that the judiciary was often ill equipped to comprehend the magnitude of the domestic violence crisis.

Accordingly, the 1991 Act sets out to cure this ill through the establishment of a statewide system of training for all judges and judicial personnel "who are likely to encounter situations of domestic violence."¹¹⁴ Furthermore, like the police training program, it "stress[es] the enforcement of criminal laws in domestic situations, the protection of the victim, and the use of available community resources."¹¹⁵ The Administrative Office of the Courts is mandated by the statute to develop and approve this course,¹¹⁶ which will hopefully provide the judicial system with a greater understanding of the plight of the victims of domestic violence.

¹¹⁰ N.J. STAT. ANN. § 2C:25-21-d-3 (West Supp. 1992).

¹¹¹ PUBLIC HEARING SUMMARY, *supra* note 14, at 3.

¹¹² *Id.* See also Gardner, *supra* note 46. In this article, June Weaver of the New Jersey Coalition for Battered Women notes that "[s]ome judges aren't that sensitive . . . [w]hat happens is sometimes on a Friday the police will refer a woman to court on Monday so they don't have to wake up the judge." *Id.*

¹¹³ See *supra* notes 61-67 and accompanying text.

¹¹⁴ N.J. STAT. ANN. § 2C:25-20 (West Supp. 1992). Those who are to be trained include Chancery Judges, Family Part, Municipal Court Judges, and court in-take personnel. See also D.V. MANUAL, *supra* note 90, § II, at 6. This training manual declares that "[l]aw enforcement officials, Municipal Court staff and Superior Court staff must be advised that victims should never be turned away because of the inconvenience of arranging off-hours emergency relief" *Id.*

¹¹⁵ N.J. STAT. ANN. § 2C:25-20 (West Supp. 1992).

¹¹⁶ *Id.*

5. Disclosure of Court Records

As evidenced in the case of Nicolae Vutca, the husband who used court records to locate and subsequently kill his wife¹¹⁷, the 1981 Act's provisions regarding disclosure of a domestic violence victim's address often proved dangerous and, at times, deadly. The public hearings also demonstrated the inadequacies of this 1981 provision. Very often the address of the victim appeared on court records, even though the statute stated that criminal complaints arising from domestic violence "shall waive any requirement that the victim's location be disclosed."¹¹⁸ The 1991 Act attempts to provide greater protection for a victim for both criminal and civil complaints by providing that "[t]he victim's location shall remain confidential and shall not appear on any documents or records to which the defendant has access."¹¹⁹

6. Pre-hearing Case Conferencing

Another grave problem with the 1981 Act which was addressed at the public hearings was a tendency of some judges to encourage victims of domestic violence to meet with the accused abuser before any formal hearings in an attempt to "iron out" the problem prior to any court appearance.¹²⁰ Those present at the hearing expressed outrage at this form of "mediation" which they reasoned to be invalid due to the "imbalance in power which occurs within the context of abusive relationships"¹²¹

Other problems stemming from the unequal bargaining power often present in situations of domestic violence have been addressed in both the 1991 Act and the Domestic Violence Procedures Manual [hereinafter D.V. Manual].¹²² The D.V. Manual states that regarding consent orders, "it is the policy of the state

¹¹⁷ See *supra* notes 56-60 and accompanying text.

¹¹⁸ PUBLIC HEARING SUMMARY, *supra* note 14, at 4. See generally N.J. STAT. ANN. 2C:25-9 (West 1982) (repealed 1991).

¹¹⁹ N.J. STAT. ANN. § 2C:25-26-c (West Supp. 1992). See also N.J. STAT. ANN. § 25-28-b (West Supp. 1992) which states "[t]he court shall waive any requirement that the petitioner's place of residence appear on the complaint." *Id.* This section was also part of the 1981 Act in N.J. STAT. ANN. § 2C:25-12-b (West 1982 & Supp.) (repealed 1991).

¹²⁰ PUBLIC HEARING SUMMARY, *supra* note 14, at 5.

¹²¹ *Id.*

¹²² D.V. MANUAL, *supra* note 90 (this manual details the procedures to be followed by law enforcement and the judiciary).

that the court not entertain a consent order from the parties unless there is a finding of domestic violence against the defendant."¹²³ The 1991 Act also addresses the problem of unequal power in the domestic violence context by declaring that "[a]t no time shall the plaintiff be asked or required to serve any order on the defendant."¹²⁴

7. In-house Restraining Orders

The failure of in-house restraining orders was made blatantly obvious with the death of Kathy Quagliani, allegedly killed at the hands of her abusive husband who was allowed to remain in their home due to the issuance of such an order.¹²⁵ Those present at the public hearing deemed this method of intervention "as an exercise in futility because [it] is based on the false assumption that by merely advising the victim and her assailant to leave each other alone, the violence will cease."¹²⁶

The 1991 Act addresses this weakness in the prior statute through the integration into the current law of a 1986 memorandum by Chief Justice Wilentz.¹²⁷ This memorandum emphasizes that in-house restraining orders are very limited in nature and should only be issued when, among other things, "the plaintiff specifically and voluntarily requests such an order"¹²⁸ Moreover, in an administrative directive issued in February, 1992, Chief Justice Wilentz detailed the proper procedures for issuing such an order, and re-emphasized the "critically important nature of this subject, and the intolerably high price paid by victims when in-house restraints are unadvisably granted and then violated"¹²⁹ The adoption of the Chief Justice's recom-

¹²³ See Eric Spevak, *A New and Improved Domestic Violence Law*, N.J. L. J., Feb. 10, 1992, at 6 (citing D.V. MANUAL, *supra* note 90)). This article also states that under this directive, "the plaintiff and defendant could not by consent agree that the defendant not return to the scene of the violence without the defendant admitting the act of domestic violence pleaded in the complaint." *Id.* at 24.

¹²⁴ N.J. STAT. ANN. § 2C:25-28-o (West Supp. 1992).

¹²⁵ See *supra* notes 61 - 67 and accompanying text.

¹²⁶ PUBLIC HEARING SUMMARY, *supra* note 14, at 6.

¹²⁷ See Chief Justice Robert N. Wilentz, *Administrative Directive No. 2-92-Procedures For Issuance of In-House Restraining Orders*, N.J. L. J., Feb. 24, 1992, at 52. See also N.J. STAT. ANN. § 2C:25-29-b-13 (West Supp. 1992).

¹²⁸ N.J. STAT. ANN. § 2C:25-29-b-13-a (West Supp. 1992).

¹²⁹ Wilentz, *supra* note 127.

mentations into the 1991 Act clearly attempts to prevent any further tragedies from the issuance of an in-house restraining order.

8. Child Custody and Visitation

The critical problem surrounding child custody and visitation was made clear during the public hearings when participants observed that when a victim is residing in a shelter program, the abusive spouse is often given "liberal" visitation rights.¹³⁰ "[I]n effect, this situation provides the defendant with both the knowledge of the victim's whereabouts and the opportunity to further harass her and her children."¹³¹ Battered women are also often denied custody based solely on the fact they have sought refuge in a shelter.¹³² In such a situation the abusive parent is often given custody due to the fact "the courts frequently operate under the false assumption that an individual who abuses his spouse is still a good parent."¹³³

The 1991 Act attempts to harshly combat these concerns by empowering the victim of domestic violence with the ability to limit and deny visitation to the alleged perpetrator.¹³⁴ A victim may make a request to the court for an "investigation or evaluation by the appropriate agency to assess the risk of harm to the child prior to the entry of a visitation order."¹³⁵ Denial of such a request must be placed on the court record and may only be made where it is deemed "arbitrary or capricious."¹³⁶ A court shall also consider suspension of a visitation order if plaintiff certifies under oath that the "defendant's access to the child . . . has threatened the safety and well-being of the child."¹³⁷ Further-

¹³⁰ PUBLIC HEARING SUMMARY, *supra* note 14, at 7.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ See generally Spevak, *supra* note 123. See also *infra* note 137.

¹³⁵ N.J. STAT. ANN. § 2C:25-29-b-3-a (West Supp. 1992).

¹³⁶ *Id.* See also *Cosme v. Figuero*, 609 A.2d 523, 526 (N.J. Super. Ct. Ch. Div. 1992). The *Cosme* court held that based on the negative presentation of the burden of proof standard (i.e. denial should be issued only upon a finding that the request is arbitrary or capricious), the burden is on the defendant to prove same by a preponderance of the evidence. *Id.* See generally Stephen P. Bann, *Children-Domestic Violence-Family Law*, N.J. L. J., July 20, 1992, at 50.

¹³⁷ N.J. STAT. ANN. § 2C:25-29-b-3-b (West Supp. 1992). See also *Cosme*, 609 A.2d at 528. Interpreting this section, however, the *Cosme* court held that due to the fundamental nature of a parent's right to the care and companionship of his or her

more, the plight of the domestic violence victim is aided by the presumption in the 1991 Act that the court "shall presume that the best interests of the child are served by an award of [temporary] custody to the non-abusive parent."¹³⁸ Thus, given these provisions and the fact "that these complaints are brought very quickly, it seems improbable that visitation would be given to the alleged abuser under these circumstances."¹³⁹

9. Monetary Relief

Despite the fact the 1981 Act contained provisions for a variety of monetary relief including child support, and reimbursement for some damages, many judges were reluctant to issue such orders.¹⁴⁰ Such monetary relief can be of crucial importance to victims of domestic violence, for "[i]t is a well-documented fact that battered women often remain in abusive relationships for financial reasons. . . ."¹⁴¹

The 1991 Act's response to this need is limited in scope, for it still makes the issuance of such support discretionary, rather than mandatory.¹⁴² However, there is an implementation of some strong new provisions authorizing emergent monetary relief to the victim and other dependents,¹⁴³ or requiring a defend-

child, that section provides "questionable sufficiency of due process." *Id.* Hence, suspension of visitation is improper except in only the most extreme cases. *Id.* See generally Bann, *supra* note 136.

¹³⁸ N.J. STAT. ANN. § 2C:25-29-b-11 (West Supp. 1992).

¹³⁹ Spevak, *supra* note 123, at 24.

¹⁴⁰ PUBLIC HEARING SUMMARY, *supra* note 14, at 9.

¹⁴¹ *Id.* See also REP. COUNS. SCI. AFF., *supra* note 3, at 11. In discussing the long term effects of abuse on women, this report recognizes the extremely harsh impact domestic violence has on its victims:

Effects of [this] trauma are exacerbated by the fact that the aggressor is someone they may love, someone they are supposed to be able to trust, and someone on whom they may depend. Unlike the victims of strangers, victims of marital violence in fact have a legal, financial, and role relationship with their assailants; confounding their decisions on what to do about the violence as well as the psychological sequelae. In such cases, perceptions of vulnerability, loss, and betrayal or hopelessness may be especially severe . . . [v]iolence at home typically leaves no place in which defenses can be let down.

Id. (citing A. Browne, *The Victims' Experience: Pathways to Disclosure*, 28 PSYCHOTHERAPY 150, 150-56 (1991)).

¹⁴² N.J. STAT. ANN. § 2C:25-29-b (West Supp. 1992) (at the domestic violence hearing a judge may grant an order for relief).

¹⁴³ N.J. STAT. ANN. § 2C:25-29-b-10 (West Supp. 1992).

ant to reimburse either plaintiff or any third party who has compensated the victim.¹⁴⁴ Additionally, under the 1991 Act, a judge may grant "either party temporary possession of specified personal property, such as an automobile, checkbook, documentation of health insurance, an identification document, a key, and other personal effects."¹⁴⁵ If fully enforced, these provisions seem to provide a victim with increased monetary relief and thus an even greater opportunity to leave an abusive situation.

10. Orders for Relief

Regarding orders of relief under the 1991 Act, the legislators expanded both the factors to be considered by a judge when issuing such orders and the types of relief which may be granted. Thus, a judge is now mandated to contemplate "[t]he existence of a verifiable order of protection from another jurisdiction" before issuing an order.¹⁴⁶ Additionally, a plaintiff may be granted an order which restrains the defendant from making any harassing communication with the victim or their family.¹⁴⁷ Hence, regarding orders of relief, the 1991 Act seems to provide both increased judicial guidance and protection for domestic vio-

¹⁴⁴ N.J. STAT. ANN. § 2C:25-29-b-4 (West Supp. 1992). See also *Sielski v. Sielski*, 604 A.2d 206, 210 (N.J. Super. Ct. Ch. Div. 1992), holding that punitive damages were warranted against defendant for his intentional and malicious torture of plaintiff. *Id.* Noting that the defendant's acts of domestic violence toward plaintiff included "lift[ing] the plaintiff out of bed by grasping her hair, punch[ing] her about the head and shoulders, attempt[ing] to shove the plaintiff's head in the toilet and viciously and sadistically yank[ing] and twist[ing] the plaintiff's pubic hair," the *Sielski* Court declared that "one is hard-pressed to find a situation where punitive damages are more deserved." *Id.*

¹⁴⁵ N.J. STAT. ANN. § 2C:25-29-b-9 (West Supp. 1992).

¹⁴⁶ N.J. STAT. ANN. § 2C:25-29-a-6 (West Supp. 1992).

¹⁴⁷ N.J. STAT. ANN. § 2C:25-29-b-7 (West Supp. 1992). See also D.V. MANUAL, *supra* note 90, § II at 2. The manual emphasizes that it is important to note that harassment, with or without physical contact, is specifically included in the 1991 Act. *Id.* Furthermore, the manual declares:

it is essential that a victim complaining of harassment not be turned away because the action complained of appears to be minor as compared with other acts of domestic violence. Moreover, dealing with domestic violence at the harassment level often prevents the escalating cycle of violence that occurs in many family violence situations. Trivializing this type of domestic violence is not only contrary to the intent of the Legislature, it also misses an opportunity for prevention or early intervention.

D.V. MANUAL, *supra*, § II, at 3.

lence victims.¹⁴⁸

11. Enforcement of Restraining Orders

Lack of enforcement of restraining orders was a common and serious problem stemming from the 1981 Act. The problem most often cited regarding the enforcement of such orders is that it did not occur in a uniform manner.¹⁴⁹ Rather, there was variation from county to county, "[i]n many cases, there simply [was] no enforcement; very often police [told] the victim that they [could not] arrest the perpetrator unless they witness[ed] the violation"¹⁵⁰

The 1991 Act seems to address this issue head-on, by proclaiming that violation of an order under this act constitutes contempt, which if it results in a conviction of a second or non-indictable domestic violence offense, requires a minimum term of thirty days in jail.¹⁵¹ Additionally, if a police officer establishes that there is probable cause that the defendant is in contempt, the perpetrator shall be arrested, taken into custody, and transported to have bail set according to the procedures set forth in the section.¹⁵² Where there is insufficient probable cause, the officer "shall advise" the complaining party regarding the proce-

¹⁴⁸ See *Torres v. Lancellotti*, 607 A.2d 1375, 1378 (N.J. Super. Ch. Div. 1992). In *Torres*, the court rejected the notion that a temporary restraining order should automatically be set aside due to a "temporary [or single incident of] reconciliation". *Id.* In *Torres*, plaintiff, alleging she was beaten by her live-in boyfriend, had a temporary restraining order issued under the 1991 Act. *Id.* at 1376. At the time of the final hearing, defendant moved to set aside the restraining order, claiming that one brief sexual encounter between plaintiff and defendant during their separation acted as a "de facto vacation of the order". *Id.* Noting that the 1991 Act "has expanded [its] coverage and effect", the *Torres* Court established a requirement that before a court vacates an order based upon reconciliation or mutual violation they must consider all factors set forth in N.J. STAT. ANN. § 2C:25-29-a, as well as any other additional circumstances. *Id.* at 1377. Accordingly, only "true reconciliation" should cause dismissal of an order, not a short or temporary encounter. *Id.* at 1378.

¹⁴⁹ PUBLIC HEARING SUMMARY, *supra* note 14, at 10.

¹⁵⁰ *Id.*

¹⁵¹ N.J. STAT. ANN. § 2C:25-30 (West Supp. 1992).

¹⁵² N.J. STAT. ANN. § 2C:25-31 (West Supp. 1992). The procedures are set forth in this section as follows:

(a) On weekends, holidays and other times when the court is closed, the law enforcement officer shall transport the defendant to either the police station or the municipal court or such other place as the law enforcement officer shall determine is proper. The law enforcement officer shall:

ture to sign a criminal complaint against the violator.¹⁵³ In addition, the 1991 Act removes the prior requirement that an officer transport both the victim and the abuser following a violation of a court order.¹⁵⁴ Hence, the contempt provision, like much of the 1991 Act, seems to strengthen the "judicial weapons" available to victims of domestic violence.

V. Conclusion and Analysis

New Jersey enacted the Prevention of Domestic Violence Act of 1991 in an attempt to declare that "it is time to take the crime of domestic violence out of the closet and to use the most effective means the state has to treat it as the crime which it really is."¹⁵⁵ The detailed provisions of the 1991 Act seem to exemplify this sentiment. Each section seeks to draw upon the lessons learned from the 1981 Act and improve the legislation by giving domestic violence victims a "lethal legal weapon" against their abusers.

However, the ultimate test of the 1991 Act's strength will be

(1) Sign a complaint concerning the incident which gave rise to the contempt charge;

(2) Telephone the appropriate judge assigned pursuant to this act and request bail be set on the contempt charge;

(3) If the defendant is unable to meet the bail set, take the necessary steps to insure that the defendant shall be incarcerated at police headquarters or at the county jail; and

(4) On the next working day notify the clerk of the Family Part of the new complaint, the amount of bail, defendant's whereabouts and all other necessary details. In addition, if a municipal court judge set the bail, notify the clerk of that municipal court of this information.

(b) During regular court hours, the law enforcement officer shall transport the defendant to the Family Part of the Chancery Division of the Superior Court or to such other place as the law enforcement officer shall determine is proper. The law enforcement officer shall complete and sign a complaint concerning the incident which gave rise to the contempt charge, and the defendant shall have bail set by a judge that day.

Id.

¹⁵³ N.J. STAT. ANN. § 2C:25-32 (West Supp. 1992).

¹⁵⁴ N.J. STAT. ANN. § 2C:25-31-b (West Supp. 1992). *See also* N.J. STAT. ANN. § 2C:25-15.1 (West 1982 & Supp.) (repealed 1991) (statute required that both the victim and alleged abuser be transported together to jail or other appropriate place following a violation of a court order); *see supra* note 34 and accompanying text.

¹⁵⁵ Senator Wynona Lipman, Remarks at the Bill Signing of S. 2230/A.4208 at the Ocean County Courthouse (Aug. 14, 1991) (transcript on file with the *Seton Hall Legislative Bureau*).

its impact on the daily lives of victims of domestic violence. Although the 1991 Act was created in part in an attempt to prevent future tragedies like those of Debbie Evans¹⁵⁶ and Kathy Quagliani¹⁵⁷, it will be the implementation of the Act by the judiciary and the police which will shape the future and success of this legislation.

An essential element in the success of the 1991 Act will be police response, which is frequently the first contact a domestic violence victim has with the 'system'. Undoubtedly, the 1991 Act's arrest provision has been strengthened from the 1981 Act. However, the amount of discretion present in this section may detract from the statute's impact. This arrest provision requires a police officer responding to a domestic violence call, which is often a stressful and violent situation, to determine the extent of any injuries, any history of domestic violence between the parties and other relevant factors.¹⁵⁸ Although some discretion is an obvious necessity in such circumstances, this standard may go too far. For with such "discretion comes a definition of the situation, which ultimately relates back to [the] values, attitudes, and perceptions [of an officer]."¹⁵⁹ An officer who does not view a domestic violence situation as "serious" police work may use this discretion to ignore such an incident. Moreover, even since the implementation of 1991 Act, "many women seeking orders of protection show facial bruises and their husbands have not been arrested."¹⁶⁰

One cannot, however, ignore that progress has been made under both the 1981 Act and the current legislation.¹⁶¹ Hope-

¹⁵⁶ See *supra* notes 48-55 and accompanying text.

¹⁵⁷ See *supra* notes 61-67 and accompanying text.

¹⁵⁸ See N.J. STAT. ANN. § 2C:25-21-c-2 (West Supp. 1992). See also *supra* notes 94-105 and accompanying text.

¹⁵⁹ Michael G. Brei & Ronald L. Simons, *An Examination of Organizational and Individual Factors that Influence Police Response to Domestic Disturbances*, 15 J. POLICE SCI. ADMIN. 93, 103 (1987); see generally Finesmith, *supra* note 97, at 84-87; Goldman, *supra* note 97, at 849-54.

¹⁶⁰ Moran, *supra* note 66, at B2.

¹⁶¹ *Id.* In this article, Linda Villano, Co-President of the North Jersey chapter of the National Organization for Women, noted this progress when she stated: When I got my first divorce back in the Seventies, my husband tried to strangle me. . . The police came in, looked at my neck, denied there were any marks, and threw me out of the house. My name was on the deed. That kind of thing was prevalent in the Seventies. It doesn't hap-

fully, the detailed training of police officers provided by the 1991 Act will be implemented in a manner which will successfully eradicate pre-existing societal attitudes towards domestic violence.

Despite the fact the future of the 1991 Act may demonstrate there will be a need for some improvements, overall it is a valiant and successful effort to aid victims of domestic violence. It offers such victims a stronger law which allows for greater police and judicial intervention and powerful rights against their abusers.

The key to eliminating New Jersey's domestic violence crisis is education; not just of law enforcement agents and the judiciary, but all segments of society. All must be made aware that:

In a world where violence is applauded, where it is used as a means of control, there is an unspoken sanction to the man who batters. The system . . . must send a clear and loud signal that there is no silent right to violence. That a blow struck by a loved one will be met with the same justice that a stranger's blow meets.¹⁶²

Through its Prevention of Domestic Violence Act of 1991, New Jersey has established a powerful signal that domestic abuse will not be tolerated.

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pen anymore, so in a sense we've come a long way. But we've still got a long way to go.

Id.

¹⁶² PUBLIC HEARING SUMMARY, *supra* note 1.