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Jane C. Murphy

University of Baltimore School of Law, jmurphy@ubalt.edu

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Legal protection for domestic violence victims: a guide for the treating physician

Jane C. Murphy, J.D.

*Ms. Murphy is an associate professor
at the University of Baltimore
School of Law.*

The staggering dimensions of the problem of domestic violence have been well documented. Women and children are overwhelmingly the victims.¹ They come from all racial, ethnic, religious, and social-economic groups and from all age levels and educational backgrounds.² Battering by a spouse or intimate partner is the single largest cause of injury to women in the United States, greater than car accidents, rapes, and muggings combined.³ Each year, more than one million women seek medical treatment for injuries inflicted by a husband, ex-husband, or boyfriend.⁴ Studies estimate that 22% to 35% of women who visit emergency rooms do so for injuries directly inflicted by an intimate partner or for symptoms related to the stress of living in an abusive relationship.⁵

Effective and appropriate intervention includes developing protocols to identify victims, acknowledging the cause of their injuries, and providing them with information about legal and community resources. This article provides an overview of the civil and criminal law remedies available to victims of domestic violence in Maryland. Understanding both the benefits and limitations of the legal system's response to victims can help physicians provide appropriate follow-up information to patients and help prevent further injuries.

Legal remedies

A victim's first interaction with the legal system—often her first call for help to anyone—is usually an encounter with police in response to a 911 call. Although some police departments in Maryland have developed training and protocols to better protect victims of domestic violence, lack of such protocols or failure to follow them appears to be common. Effective October 1, 1994, law enforcement officers must give domestic violence victims written notice of services available in the community, including shelter, counseling, and their legal options available in Maryland's civil and criminal courts.⁶

Physicians and others who see victims of domestic violence on a regular basis must take an active role in providing these women with information about their rights. Physicians seeing victims in emergency rooms may be particularly well placed to supplement the information provided by police at the scene.

Initiating a criminal case. The first step for victims to ensure that the batterer is punished is to get a copy of the "incident report" that police make at the scene. If the police file an incident report, new legislation requires that a copy be provided to the victim upon request. If the police do not file an incident report, the victim should request that one be completed by going to her local police station and providing information about the incident. The police *must* prepare a report, which may be necessary if no arrest is made and the victim wants to file her own criminal charges.

The police may arrest a batterer at the scene if they have a warrant or "probable cause" to believe a violation of the law has occurred. The law regarding what constitutes probable cause is complex and depends, in part, on the level of injuries suffered by the victim and the victim's relationship to the abuser. Recent legislation has made it easier for police to arrest an alleged abuser without a warrant. The new law raises from two to 12 hours after an alleged battering the time within which the victim must make a report to police in order for the police to conduct a warrantless arrest.⁷ The time limit was extended based on advocates' testimony that a two-hour limit is unrealistic because victims are often detained for longer than two hours seeking medical care. In any event, victims should know that police have authority under some circumstances to make an arrest at the scene. When the police make an arrest, the victim need not take any further action before receiving a summons to testify.

If the police cannot or will not make an arrest, victims should know that *they* can initiate criminal charges by bringing a copy of the incident report to a court commissioner. Commissioners, located at each of the local district courts, review citizens' complaints and issue a criminal summons if they think, based on an interview with the victim and the incident report, that there is probable cause to believe a crime was committed. The victim will have to be firm and persistent, however, to initiate a criminal case.

Prosecution and trial of criminal charges. The effectiveness of the criminal justice system in protecting victims is limited by both the laws of the state of Maryland and the way they are implemented. Although Maryland has no specific "domestic violence" crime, a batterer may be prosecuted based on a variety of criminal statutes that should be equally applicable whether the offense is committed against a stranger or one's intimate partner. These include assault⁸ (threat or

attempted battery), battery⁹ (unjustified, offensive, and non-consensual application of force by direct or indirect physical contact with no requirement of physical injury), false imprisonment¹⁰ (deprivation of liberty without consent or justification), or child abuse.¹¹ Two relatively new laws also make criminal certain behavior often associated with batterers. Criminal harassment¹² includes a broad range of behavior, such as following the victim, or repeatedly going to the victim's home and/or workplace if these actions are done over a period of time, seriously annoy or alarm the victim, and are done for that purpose. The statute unfortunately carries very limited penalties. The crime of stalking carries much stiffer penalties, but the stalker's actions must be shown to have placed the victim or a third person in fear of serious injury or death.¹³

The law, however, creates some unfortunate barriers to prosecution. For example, until 1989, rape was not considered a crime in Maryland when the victim was married to the abuser. Even under the new marital rape statute, prosecution can occur only when force was used in the rape and the parties have been separated for three months.¹⁴

Another barrier to prosecution is "spousal privilege," a rule of evidence that provides that one spouse cannot be forced to testify against the other. The rationale for the rule relates to the state's traditional reluctance to undermine the "sanctity" of the marital relationship. Although the rationale would seem to have little applicability when one spouse has been charged with injuring the other, until recently the only exception to the privilege was a charge involving abuse of a child under age 18. Recent legislation created another narrow exception when one spouse is accused of assault and battery against the other and the victim invoked spousal privilege in a previous prosecution for the same crime within the previous year.¹⁵ Given the power and control a batterer exerts over the victim, it is unlikely that women freely make the decision to invoke the privilege. In any event, when a woman is the only witness to her husband's abuse, her decision to invoke the privilege, however made, often makes criminal prosecution difficult or impossible.

In addition to these barriers to criminal prosecution that are built into current law, the effectiveness of criminal prosecution depends on the policies and practices of prosecution offices around the state. Some state's attorneys offices in Maryland have developed specialized units and innovative policies to promote prosecution of batterers and provide protection and support for victims throughout the process. Some prosecutors and judges, however, may still view domestic violence as a private family matter and give it a lower priority than stranger-to-stranger assaults. Such attitudes affect the decision to prosecute, the level of bail, and sentencing. Even in Baltimore City, where there is a specialized unit for prosecution of

domestic violence offenses and judges receive training in the dynamics of domestic violence, 57% of the cases handled by the state's attorney's Domestic Violence Unit in 1993 were dismissed or put in the inactive docket.¹⁶ In the relatively few domestic violence cases in which convictions were obtained, very few offenders received jail time.¹⁶ Thus, given the limitations of criminal prosecution, it is particularly important to advise domestic violence victims of their other legal remedies.

Civil protection orders. Civil protection orders, in which the court can order an abuser to vacate the family home, provide temporary protection from abuse for victims and/or their children. The procedure is relatively simple and the vast majority of victims who seek such relief go to court without a lawyer. The victim goes to the local district or circuit court to obtain an "ex parte" order (so named because the alleged abuser is not present in court when it is issued), fills out a form (petition) provided by the clerk's office, and then tells her "story" to a judge. To be eligible for relief under the statute, the victim first must demonstrate that she is related by blood or marriage to the abuser, or has a child in common with him, or is a former spouse, or has cohabited with him for at least 90 days during the last year.¹⁷ Next, she must have suffered abuse as defined by the statute (serious physical injury or the threat of such injury; battery; attempted or completed rape or sexual offense; or false imprisonment). If the victim is covered by the statute, the judge can issue an order that, among other things, requires the abuser to refrain from further abuse and to vacate the family home. The order also can grant the victim custody of minor children.

The order must be delivered to the abuser by a law enforcement officer. It is in effect for approximately seven days until a hearing is held, which the abuser may attend. At the second hearing, the victim can get a "protective order" that will remain in effect up to 200 days. Again, the judge can grant custody of minor children and order the abuser to vacate the family home and refrain from abuse. In addition, the judge can order the abuser to pay support for children or a spouse and to obtain counselling for batterers, drug abuse, or alcoholism.

Properly drafted protection orders are effective in eliminating or reducing domestic abuse.¹⁸ They can provide victims the "safe place" they need to make long-term decisions to protect themselves and their children.

Physician's legal responsibilities: reporting requirements

Child abuse. Notwithstanding any law on privileged communications, any health care practitioner acting in a professional capacity who has reason to believe that a child has been

subjected to abuse must notify the local department of social services or the appropriate law enforcement agency.¹⁹ A physician with reason to believe a child has been subjected to neglect must notify the local department of social services. If the professional is acting as a staff member of an institution (e.g., hospital), the head or designated head of the institution must be notified immediately and given all the information required by the statute.

Vulnerable adult. A "vulnerable adult" is one who lacks the physical or mental capacity to provide for his or her daily needs. Notwithstanding any law on privileged communications, any health care practitioner who contacts, examines, attends, or treats a vulnerable adult and has reason to believe that the person has been subjected to abuse, neglect, self-neglect, or exploitation must notify the local social services department. If the health care practitioner is acting as a staff member of a hospital or public health agency, the head or designated head of the institution must be notified immediately and given all the information required by the statute.²⁰

Institutionalized person. A person who believes an individual in a facility has been abused (physically injured or sexually abused in any way) must promptly give as much information as possible (orally or in writing) to the appropriate law enforcement agency.²⁰

Developmentally disabled person. A person who believes an individual with developmental disability has been abused (physical injury that is inflicted willfully with gross recklessness, inhumane treatment, or sexual abuse) must promptly report the abuse to the executive director or administrative head of the institution, who then must make an oral or written report to the appropriate law enforcement agency.²⁰

Spousal abuse. In Maryland, there is no requirement to report domestic violence. The victim is responsible for reporting the abuse to the proper authorities. Such laws do exist, however, in other states (e.g., Kentucky, California). Although it can be argued that mandatory reporting of spousal abuse may promote patient safety or even save lives, it also may put victims at risk of retaliatory harm by their abusers. Given the uncertainties surrounding criminal prosecution discussed above, women may be put at such risk without any real promise of protection. Furthermore, because many women feel ambivalent about identifying themselves as victims and subjecting their partners to official reprimand, mandatory reporting could discourage women from receiving needed medical attention unless the legal system in Maryland—both the statutory framework and those who implement it—becomes more responsive to victims.

Recent legislation requires the Maryland Department of Health and Mental Hygiene to develop and implement pilot domestic violence protocols in three hospitals in the state.²¹

Perhaps these programs, along with the efforts of other hospitals and committed health care practitioners around the state, will provide the model for effective intervention for victims of domestic violence.

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