



2003

Comments: Katsenelenbogen v. Katsenelenbogen: Through the Eyes of the Victim — Maryland's Civil Protection Order and the Role of the Court

Richard A. DuBose III
University of Baltimore School of Law

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/ublr>



Part of the [Law Commons](#)

Recommended Citation

DuBose, Richard A. III (2003) "Comments: Katsenelenbogen v. Katsenelenbogen: Through the Eyes of the Victim — Maryland's Civil Protection Order and the Role of the Court," *University of Baltimore Law Review*: Vol. 32: Iss. 2, Article 4.
Available at: <http://scholarworks.law.ubalt.edu/ublr/vol32/iss2/4>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Review by an authorized administrator of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

KATSENELENOBOGEN v. KATSENELENOBOGEN: THROUGH THE EYES OF THE VICTIM – MARYLAND’S CIVIL PROTECTION ORDER AND THE ROLE OF THE COURT.

I. INTRODUCTION

Sixty-two men, women and children died in Maryland as a result of domestic violence in 1999.¹ This means that one person dies approximately every six days in Maryland at the hands of a loved one.² Of those victims, twenty-six were female, twenty-six were male, and ten were suicide victims who killed themselves after murdering their loved ones.³ Nationally, it is estimated that there are approximately four million incidents of domestic violence against women alone each year.⁴ Additionally, the United States Surgeon General found that “the single largest cause of injury to women in the United States” is the result of beatings by their husbands, ex-husbands, or lovers and that these beatings accounted for an astounding one-fifth of all hospital emergency room visits by women in the United States.⁵

Notwithstanding these statistics, domestic violence has historically gone unnoticed. Heightened legal and social scrutiny of domestic violence did not occur until recent decades.⁶ Since then, domestic abuse has gained widespread public attention.⁷ State legislatures began to recognize the problem and mandated a response.⁸ The Maryland General Assembly reacted in 1980 by enacting the domestic violence statute.⁹ Over the following decades the Maryland legislature broad-

-
1. Crime in Maryland-The 1999 Maryland Uniform Crime Report (1999).
 2. *Id.*
 3. *Id.* It is estimated that only 10% of domestic violence crimes were reported in 1999. *Id.*
 4. *Developments in the Law-Legal Responses to Domestic Violence*, 106 HARV. L. REV. 1498, 1501 (1993) [hereinafter *Developments in the Law*]; see also Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 809 (1993) (“Most national estimates are obtained from surveys which have typically excluded the very poor, those who do not speak English fluently, those whose lives are especially chaotic, military families, and persons who are hospitalized, homeless, institutionalized, or incarcerated.”).
 5. Joan Zorza, *The Criminal Law of Misdemeanor Domestic Violence, 1970-1990*, 83 J. CRIM. L. & CRIMINOLOGY 46, 46 (1992) (quoting Nikki R. Van Hightower & Susan A. McManus, *Limits of State Constitutional Guarantees: Lesson from Efforts to Implement Domestic Violence Policies*, 49 PUB. ADMIN. REV. 269 (1989)).
 6. *Developments in the Law*, *supra* note 4, at 150-53.
 7. Klein, *supra* note 4, at 810.
 8. See *id.*
 9. MD. CODE ANN., FAM. LAW §§ 4-501 to 4-516 (Supp. 2002); see also Coburn v. Coburn, 342 Md. 244, 252, 674 A.2d 951, 955 (1996); see *infra* Part III.

ened the availability of protections to victims of domestic violence.¹⁰ Passing the statute provided both civil and criminal remedies for victims of domestic violence for the first time in Maryland.¹¹ Included in this statutory provision was the availability of the civil protection order.¹² The Court of Appeals of Maryland in *Katsenelenbogen v. Katsenelenbogen*,¹³ recently clarified the proper standard for the issuance of the civil protection order that is, perhaps, the most integral weapon against domestic violence.¹⁴

Parts II and III of this Comment will explore both the historical background and Maryland's legislative action, which preceded the *Katsenelenbogen* decision.¹⁵ Part IV of this Comment details the procedural aspects of Maryland's, as well as other states' current domestic violence statutes.¹⁶ Part V explores the *Katsenelenbogen* decision and its impact on Maryland's domestic violence jurisprudence.¹⁷ Finally, Parts VI and VII of this Comment will illustrate, notwithstanding the problems inherent in the battle against domestic violence, that through greater education and awareness within the legal community, the civil protection order and the courts can play a vital role in winning this battle.¹⁸

II. HISTORICAL BACKGROUND

Historically, women and children were effectively ignored under common law.¹⁹ The early Anglo-American common law provided that the husband was the "master of his household" and permitted him to use "chastisement" or "corporal punishment" on his wife so long as the punishment did not permanently injure her.²⁰ The medieval doctrine of covertures erased the identity of women upon their marriage while mandating that they assent to the sexual advances of their hus-

10. See *infra* Part III.

11. See MD. CODE ANN., FAM. LAW § 4-508 (Supp. 2002).

12. See *id.* §§ 4-505 - 4-506.

13. 365 Md. 122, 775 A.2d 1249 (2001).

14. *Id.* at 138-39, 775 A.2d at 1259. The required standard is an individualized objective standard measuring a victim's fear of imminent serious bodily harm. *Id.*; see *infra* note 203 and accompanying text; see also *infra* Parts V. & VI.

15. See *infra* notes 19-112 and accompanying text.

16. See *infra* notes 113-169 and accompanying text.

17. See *infra* notes 170-205 and accompanying text.

18. See *infra* notes 206-55 and accompanying text; see also Klein, *supra* note 4, at 811; Regina DuFresne and Jonathan S. Greene, *Increasing Remedies for Domestic Violence: A Study of Maryland's Domestic Violence Act in the Courtroom*, 6 MD. J. CONTEMP. LEGAL ISSUES 155, 172 (1995). See generally Peter Finn and Sarah Colson, *Civil Protection Orders: Legislation, Current Court Practice, and Enforcement*, NAT'L INST. OF JUSTICE (Mar. 1990).

19. See Judge Michael J. Voris, *The Domestic Violence Civil Protection Order and the Role of the Court*, 24 AKRON L. REV. 423, 423-24 (1990).

20. Reva B. Siegel, "The Rule of Love": *Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2118 (1996).

bands.²¹ It is apparent that women were treated as mere property interests of the husband until the early nineteenth century.²²

Unfortunately, the treatment of children during this era paralleled that of women.²³ This abuse not only affects the women but also the children who, in most cases, witness this violence against their mothers.²⁴ Statistically, between fifty-three and seventy percent of men who beat women also abuse children.²⁵ Additionally, children were often injured while their mothers were being beaten by the reckless behavior of their fathers.²⁶ Unfortunately, although indicative of the attitude at that time, the first juvenile court providing child protection was not established until 1899, more than sixty years after one of the first reported cases of child abuse.²⁷

Courts gradually began to recognize the rights of both women and children. Yet, while the courts refused to endorse chastisement, they often avoided intervention under the veil of family privacy.²⁸ As long as the family member was not permanently injured, the courts considered it better for the families to "draw the curtain, shut out the public gaze, and leave the parties to forget and forgive."²⁹

By the beginning of the twentieth century, state legislatures around the country made some progress towards protecting women and children.³⁰ Cities began establishing domestic relations courts staffed with social workers to help alleviate the problems of domestic violence.³¹ However, both the criminal and civil justice systems continued to take a "therapeutic" role rather than one of punishment.³² Families were urged to seek counseling and attempt to reconcile.³³ For example, as recently as the 1960's police officers were simply encouraged to preserve the peace when answering domestic violence phone calls rather than arrest the abuser.³⁴

21. Voris, *supra* note 19, at 423-24.

22. *Id.* at 423.

23. *Id.* at 423-24.

24. Zorza, *supra* note 5, at 46-47.

25. *Id.* at 47.

26. *Id.* Sixty-two percent of sons over the age of fourteen who attempted to intervene to protect their mothers were injured. *Id.*

27. Voris, *supra* note 19, at 424.

28. IRA M. ELLMAN, ET AL., FAMILY LAW: CASES, TEXT, PROBLEMS 162 (3d ed. 1998) (hereinafter "ELLMAN"); Seigel, *supra* note 20, at 2118.

29. ELLMAN, *supra* note 28, at 162 (quoting North Carolina v. Oliver, 70 N.C. 60 (1874)).

30. *Id.*; Seigel, *supra* note 20, at 2117-18.

31. ELLMAN, *supra* note 28, at 162. These shelters, however, were virtually non-existent in Maryland during the early stages of the fight against domestic violence.

32. See ELLMAN, *supra* note 28, at 162.

33. *Id.*

34. *Id.* at 161-62. The training bulletin of the International Association of Chiefs of Police offered these instructions for domestic violence encounters:

The advent of the women's movement during the 1970's finally brought about a gradual retreat from the legal and law enforcement community's "therapeutic" view on domestic violence.³⁵ Currently, many cities have shelters for battered women and mechanisms by which they can obtain protection and live in relative safety.³⁶ For women, years of arduous protesting and lawsuits finally effectuated change.³⁷

An example of such change was the United States government's response via the Violence Against Women Act ("VAWA").³⁸ Unfortunately, a divided United States Supreme Court subsequently ruled this Act unconstitutional in *United States v. Morrison*.³⁹ Although the Court ruled the civil remedy of the VAWA unconstitutional,⁴⁰ Chief Justice Rehnquist endorsed the available criminal sanctions "as an appropriate exercise of Congress' Commerce Clause authority."⁴¹ The endorsement of a federal criminal remedy for "interstate crimes of abuse" aided in this ongoing fight.

Maryland, just as the rest of the nation, has benefited from this Act.⁴² This Act has made available in Maryland "grants to encourage arrests"⁴³ as well as "civil legal assistance"⁴⁴ for those in need.⁴⁵ After

For the most part these disputes are personal matters requiring no direct police action Once inside the home, the officer's sole purpose is to preserve the peace. . . attempt to soothe feelings, pacify parties . . . suggest parties refer their problem to a church or a community agency In dealing with family disputes the power of arrest should be exercised as a last resort. The officer should never create a problem when there is only a family problem existing.

Id. at 163.

35. *See id;* see also Jane Murphy, *Engaging With the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 AM. U.J. GENDER SOC. POL'Y & L. (forthcoming 2002) [hereinafter Murphy].
36. ELLMAN, *supra* note 28, at 163.
37. *Id.*
38. Violence Against Women Act of 1994, Pub. L. No. 103-332-108 Stat. 1796 (1994).
39. 529 U.S. 598 (2000).
40. *Id.* The approach taken by the Supreme Court has been criticized. Riva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and Family*, 115 HARV. L. REV. 949, 1024-25, 1035-44.
41. *United States v. Morrison*, 529 U.S. 598, 613-14 n.5 (2000).
42. Office on Violence Against Women, *State by State Office on Violence Against Women Grant Activities*, at <http://www.ojp.usdoj.gov/vawo/stategrants.htm> (last visited Feb. 2, 2003).
43. Office on Violence Against Women, *Grants to Encourage Arrest Policies*, at <http://www.ojp.usdoj.gov/vawo/map/arrest/1998/mdgtea.htm> (last visited Feb. 2, 2003).
44. Office on Violence Against Women, *Civil Legal Assistance Grant Program*, at <http://www.ojp.usdoj.gov/vawo/map/civil/2000/mdcla.htm> (last visited Feb. 2, 2003).
45. Office on Violence Against Women, *Maryland*, at <http://www.ojp.usdoj.gov/vawo/map/md.htm> (last visited Feb. 2, 2003).

the advent of the VAWA, several states attempted to battle the domestic violence problem within their own borders.⁴⁶

Finally, the legislature enacted the federal Violence Against Women Act of 2000 ("VAWA II").⁴⁷ While the first version of the Act made important strides against domestic violence, VAWA II mandated a national commitment aimed at fighting the ongoing problem of domestic violence through federal funding.⁴⁸ The statute sends federal money to state law school clinics, domestic violence shelters and legal service offices in an effort to promote the fight against domestic violence at the state level.⁴⁹

Notwithstanding the respective efforts of the federal and state governments, domestic violence still exists and is still widely considered a personal matter not within the reach of the courts or law enforcement.⁵⁰ This is the precise reason why all fifty states now have a version of the civil protection order,⁵¹ which mandates both court and law enforcement participation in instances where persons eligible for relief are in fear of harm.⁵²

III. MARYLAND'S LEGISLATIVE RESPONSE

A. *The 1980 Domestic Violence Act*

Maryland was late in joining the rest of the country in granting some form of statutory protection against domestic violence.⁵³ In the years preceding 1980, a victim of domestic violence was without substantial redress under the law.⁵⁴ In 1980, however, the Maryland Leg-

46. Martha R. Burt et al., *Evaluation of the Stop Block Grants to Combat Violence Against Women Act of 1994, The Violence Against Women Act of 1994: 1996 Report*, at <http://www.ncjrs.org/vaw-chp3.htm> (last visited Feb. 2, 2003).

47. *Violence Against Women Act of 2000*, Pub. L. No. 106-386, 1114 Stat. 1464 (2000).

48. Murphy, *supra* note 35, at nn.21-24 and accompanying text.

49. *Id.*

50. See, e.g., South Mountain Community College, Counseling Department, *Domestic Violence*, at http://www.smc.maricopa.edu/services/counseling/domestic_violence.html (last visited Sept. 14, 2002) (explaining that only half of domestic violence victims report the crime to the police because they consider it to be a private or personal matter).

51. For an in-depth analysis of state civil protection order statutes, see Klein, *supra* note 4; see also *Developments in the Law*, *supra* note 4, at 1515-18, 1535-43.

52. See Elizabeth Topliffe, *Why Civil Protection Orders Are Effective Remedies for Domestic Violence but Mutual Protective Orders Are Not?*, 67 IND. L.J. 1039, 1042-43 (1992). The standard for the issuance of the civil protection order varies within each state, although they are all designed to remove the petitioner from a dangerous situation. See *infra* Part IV for a comparison.

53. See Susan Carol Elgin, *Domestic Violence: Is Maryland Responding?*, 28 MD. BAR J. 43 (1995).

54. *Id.*

islature enacted the Domestic Violence Act ("1980 Act").⁵⁵ At that time, the frequency of domestic violence throughout the state was unknown because domestic assaults were grouped along with statewide assault numbers, which made it difficult to ascertain the effectiveness of the Act.⁵⁶

The 1980 Act was only a beginning in what was, and still is, an ongoing battle against domestic violence.⁵⁷ The statute, as enacted in 1980, was restrictive in terms of whom it protected and the time limit of the order.⁵⁸ The definition of abuse was confined to: 1) causing serious bodily harm, 2) placing another in fear of imminent serious bodily harm, or 3) sexual abuse of a child as defined in the criminal code.⁵⁹ The 1980 Act only protected a "household member" who was defined as a "spouse, blood relative or step relation as long as the members resided together when the abuse occurred."⁶⁰ Additionally, couples that were not married could not obtain protection under the 1980 Act.⁶¹

In terms of the duration of the order, the original act only allowed for a temporary *ex-parte* order to last for five days and a subsequent protective order to last for only fifteen days, including the time the temporary order was in effect.⁶² Such a short period of time provided little help in preventing subsequent abuse.⁶³ The inadequacies of the 1980 Act were revealed in that, after its inception, only 12 domestic violence programs existed, operating only 4 shelters. Although several changes were made to the 1980 Act in the following years, Maryland's laws still ranked "among the worst in the nation for providing protection to victims."⁶⁴

B. The 1992 Amendments

Fortunately for Maryland's domestic violence victims, the legislature recognized these problems and responded with a major overhaul of the 1980 Act in 1992.⁶⁵ The changes effectively extended the window

55. MD. CODE ANN., FAM. LAW §§ 4-504 – 4-516 (Supp. 2002); Elgin, *supra* note 53, at 43. This act included relief via the civil protection order. MD. CODE ANN., FAM. LAW §§ 4-504.1 – 4-506.

56. Elgin, *supra* note 53, at 43. Domestic assault statistics were not separately compiled until 1982. *Id.*

57. *Id.* at 44.

58. *Id.*

59. *Id.*; see *supra* note 68 and accompanying text for the current, more expansive, definition.

60. Elgin, *supra* note 53, at 44.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*; see also DuFresne, *supra* note 18, at 155 (stating that Maryland's civil protection order was ineffective because it afforded protection to a narrow group of individuals for a relatively limited amount of time).

65. Elgin, *supra* note 53, at 44; see also DuFresne, *supra* note 18, at 155.

of relief in comparison to the original statute.⁶⁶ The changes “expanded the classes of persons eligible for relief, added types of relief and extended the possible length of orders.”⁶⁷

The amendments expanded the definition of “abuse” to its current meaning: “battery or assault and battery, serious bodily injury or threat of such an injury; rape or sexual assault offense; or attempted rape or sexual offense; false imprisonment and abuse of a child or vulnerable adult.”⁶⁸ Further amendments in the following years added mental injury to a child to this definition.⁶⁹ Clearly, these changes created an avenue for protection that was missing from the 1980 Act.⁷⁰

Furthermore, the 1992 amendments afforded protection to those who previously were without redress.⁷¹ The amendments expanded the group of persons eligible for relief under the act to include “former spouses, current spouses who were not household members, cohabitants and vulnerable adults.”⁷²

The type of relief granted was also expanded to include emergency family maintenance.⁷³ Maryland judges were empowered to grant the petitioner exclusive use and possession of the family home, or the automobile, for employment and childcare purposes.⁷⁴ Additionally, the order now protects a victim much longer than 15 days.⁷⁵ Maryland courts currently have the authority to grant an order for a year in duration.⁷⁶

66. Elgin, *supra* note 53, at 44; *see also* DuFresne, *supra* note 18, at 155.

67. Elgin, *supra* note 53, at 44; *see also* DuFresne, *supra* note 18, at 155.

68. Elgin, *supra* note 53, at 44-45; *see also* MD. CODE ANN., FAM. LAW § 4-501(b) (Supp. 2002).

69. Elgin, *supra* note 53, at 45. In the years preceding this amendment, Maryland was the only state in the nation that failed to recognize mental injury to children. *Id.* The Act defines “mental injury” as “observable, identifiable, and substantial impairment of a child’s mental or psychological ability to function. The mental illness needs to be verified by two of the following: 1) licensed physician, 2) licensed psychologist or licensed social worker.” *Id.*

70. *Id.*

71. *Id.*; *see also* DuFresne, *supra* note 18, at 157.

72. Elgin, *supra* note 53, at 45. “Cohabitant” is defined as a “person who has shared a sexual relationship with the respondent and resided with the respondent in the home for a period of at least 90 days within 1 year before the filing of the petition.” MD. CODE ANN., FAM. LAW § 4-501(d) (Supp. 2002).

73. Elgin, *supra* note 53, at 45. Emergency family maintenance includes “financial support to be paid by the abuser to the victim during the period of the order.” *Id.*; *see also* MD. CODE ANN., FAM. LAW § 4-501(g) (Supp. 2002).

74. MD. CODE ANN., FAM. LAW § 4-506(d) (Supp. 2002); *see also* Elgin, *supra* note 53, at 45.

75. *See* Elgin, *supra* note 53, at 44.

76. MD. CODE ANN., FAM. LAW. § 4-506(g) (Supp. 2002).

C. *The 1994 Domestic Violence Act*

The changes in 1992 elevated Maryland domestic law from the ranks of the nation's worst;⁷⁷ however, Maryland's domestic violence victims and the legislature continued to work on the complex problems inherent in domestic disputes.⁷⁸ In 1994, the legislature amended the 1980 Act to allow Maryland's police officers to arrest an abuser without a warrant if they have probable cause to believe the abuser violated an already existing order.⁷⁹ In addition to the expanded arrest capabilities, under these new amendments, police are also authorized to remove any firearms from the family home.⁸⁰

Additional changes granted more protection to a victim of domestic violence.⁸¹ In charges of assault and battery, the court can compel a spouse-victim to testify against the abuser if "1) the charge is the second offense within the same year and 2) the spouse-victim refused to testify when sworn in a previous trial invoking 'spousal privilege.'"⁸² Additionally, in *Coburn v. Coburn*, the court of appeals held that the Maryland Rules of Evidence section 404(b) is inapplicable in protective order hearings.⁸³ The court explained that the purpose of admitting evidence of prior abuse in domestic violence protective order hearings is not to prove the respondent's propensity for violence, but to prove the likelihood of future abuse.⁸⁴

D. *Were These Changes Effective?*

The results of a study conducted by Maryland's non-profit Public Justice Center, just after the amendments, were positive.⁸⁵ In the study, trained volunteers observed over two hundred domestic vio-

77. DuFresne, *supra* note 18, at 155; see Elgin, *supra* note 53, at 44.

78. See DuFresne, *supra* note 18, at 177; Elgin, *supra* note 53, at 45-46.

79. MD. CODE ANN., FAM. LAW § 4-515; see also Elgin, *supra* note 53, at 46.

80. MD. CODE ANN., FAM. LAW § 4-511.

81. See Elgin, *supra* note 53, at 46.

82. MD. CODE ANN., CTS. & JUD. PROC. § 9-106 (2002); see also Elgin, *supra* note 53, at 46.

83. *Coburn v. Coburn*, 342 Md. 244, 259-60, 674 A.2d 951, 959 (1996) (holding that allegations of prior history of abuse are admissible at a protective order hearing regardless of whether such allegations were sufficiently pleaded in the original petition for protection); see also MD. R. EVID. § 5-404(b) (2002).

84. *Coburn*, 342 Md. at 260, 674 A.2d at 959.

85. See DuFresne, *supra* note 18, at 176-77. The compilation and report of this study are comprehensively discussed in the DuFresne article. *Id.* DuFresne comments that while there existed some room for error in the study (i.e. courtroom observers had to guess petitioners' and respondents' ages by sight), the safeguards taken by the Public Justice Center in conducting, compiling, and reporting the study helped ensure its credibility. *Id.* at 164, 167. For a detailed description of the study's methodology see section III of the DuFresne article. *Id.* at 163-64.

lence cases in six different jurisdictions.⁸⁶ The volunteers studied and collected data on numerous matters ranging from the characteristics of the petitioners, respondents and lawyers, to the duration of the hearings, in an attempt to ascertain the effectiveness of changes in the law.⁸⁷

The findings indicate that victims, lawyers and judges are taking advantage of the more expansive relief available under the 1994 version of the statute.⁸⁸ For example, in many cases, abusers were ordered away from the victims' school, place of employment and home.⁸⁹ Furthermore, some judges took full advantage of newly added provisions, granting sole use and possession of the family vehicle to victims during the order's duration.⁹⁰ Additionally, almost all the orders granted were of longer duration than that offered by the 1980 statute.⁹¹ It is important to note, however, that not all judges took full advantage of the additional protections available to the petitioner.⁹² A few judges ordered protective orders of only 30 days, the shortest duration available under more recent version of the Act.⁹³ Moreover, in a couple of cases, judges failed to utilize any of the new remedies now available after the amendments.⁹⁴

A recent study titled, *Ecological Model of Battered Women's Experience Over Time*,⁹⁵ indicates that while problems still exist with the implementation of the civil protection order statute, the increased availabil-

86. *Id.* at 155-56. The jurisdictions included were Anne Arundel County, Baltimore City, Baltimore County, Howard County, Montgomery County and Prince George's County. *Id.* at 156 n.5.

87. *Id.* at 156.

88. *Id.* at 176.

89. *Id.* According to the study, the court ordered, at the *ex-parte* level, the respondent to stay away from the victim's residence in 75% of the cases. *Id.* at 170. In 50% of the cases at the *ex-parte* level, the judges ordered the abuser to vacate the home. *Id.* In 40% of the cases at the *ex-parte* level, the abusers were ordered to remain away from the petitioner's place of work. *Id.* The protective order hearing stage saw more consent orders, extensions and continuances. *Id.* at 174. In the forty-seven cases where the judge found in favor of the petitioner, however, the respondent was ordered to refrain from making abusive threats 85.1% of the time. *Id.* The respondent was ordered to refrain from contacting or harassing the petitioner in 61.7% of these cases. *Id.* Finally, at the protective order stage, the respondent was ordered to vacate the home only 29.8% of the time. *Id.*

90. DuFresne, *supra* note 18, at 176.

91. *Id.* (stating that just over half of the orders granted were at or near the 200-day limit).

92. *See id.*

93. *Id.*

94. *Id.*

95. Murphy, *supra* note 35. The study was funded by an award from the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. *Id.* at n.30. The study was conducted by Mary Ann Dutton, Ph.D. (Georgetown University Medical Center); Lisa Goodman, Ph.D. (Boston College); Dorothy Lennig, Esq., out of the House of Ruth Domestic Violence Legal Clinic, Baltimore, Maryland; and by Jane C. Murphy, Esq., Pro-

ity of protection under the statute has proven effective in curbing some domestic violence in Maryland.⁹⁶ While the purpose of the study was not directly aimed at determining the effectiveness of the civil protection order, the process revealed the important role the civil protection order can play in the life of the battered women.⁹⁷

The study examined the experiences of 406 women who sought redress from domestic violence.⁹⁸ These women were asked to fill out a questionnaire that listed thirty-nine possible domestic violence preventative strategies.⁹⁹ These thirty-nine strategies were divided into "public" and "private" responses and were further subdivided into six categories of strategic responses termed: "Placating, Resistance, Safety Planning, Legal, Formal/Network, and Informal Network."¹⁰⁰ The study revealed that these women employed a combination of these strategic responses in an attempt to remedy their respective problems.¹⁰¹

The study also revealed some alarming statistics regarding the implementation of the civil protection order.¹⁰² More than half of the women who filed for civil protection orders never received the order.¹⁰³ Furthermore, of the ninety-nine percent of the women who obtained the initial *ex-parte* order, only forty-one percent of these women were granted the full protection order.¹⁰⁴ Thirty-nine percent of the women never returned for the mandatory second hearing necessary to obtain the full protection order, and the law enforcement of-

fessor of Law and Director of the Family Law Clinic at the University of Baltimore School of Law. *Id.* at nn.31-32.

96. *Id.* at nn.53-58 and accompanying text.

97. *Id.* at n.35 and accompanying text. Murphy indicates "the primary purposes of the study was to identify and predict the patterns over time of battered women's experiences of violence and abuse, their appraisals of risk, and strategic response to violence." *Id.*

98. *Id.*

99. *Id.* at nn.37 - 44 and accompanying text.

100. *Id.* Placating: private strategies intended to change batterer behavior, do not challenge his control, may or may not involve direct communication with the batterer; Resistance: private strategies intended to change batterer behavior, directly challenge his control, may or may not involve direct confrontation with the batterer; Safety Planning: private strategies which are not intended to change batterer behavior, intended to increase resources and/or options for escaping or preventing a future assault, does not involve direct communication with the batterer; Legal: public strategies intended to change the batterer behavior, involves the use of the legal system; Formal/Network: public strategies intended to change batterer behavior or increase resources/options for escape, involves use of community (non-legal) resources; Informal Network: private strategies which are not intended to change batterer behavior, involves the use of informal resources such as family and friends. *Id.* at nn. 39-44 (citing ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING, 81 (2000)).

101. Murphy, *supra* note 35, at n.45 and accompanying text.

102. *Id.* at nn.53-56 and accompanying text.

103. *Id.*

104. *Id.*

ficers responsible for serving the aggressor failed to do so in half of all cases.¹⁰⁵

At first glance, these statistics appear to indicate that the expansion of the available protections afforded by the civil protection statute were ineffective. As Murphy indicates, however, some women chose not to return for the second hearing because the initial *ex-parte* order was effective against the aggressor.¹⁰⁶ In fact, after interviewing women who applied for an *ex-parte* order but never returned for the full order hearing, many indicated that the *ex-parte* order "sent . . . [the aggressor] a message."¹⁰⁷ Aside from the use of private methods to prevent abuse, filing for a civil protection order ranked among the top ten in both the most commonly used and most helpful strategies for battered women.¹⁰⁸

Taken collectively, both studies indicate that the civil protection order process is not perfect.¹⁰⁹ Overall it appears, however, that the legislature has set the table for future proactive decisions. The new relief available allows for judicial flexibility when fashioning the appropriate relief.¹¹⁰ Now that the Maryland legislature has provided the basis for protection, the onus falls in the hands of lawyers and judges to educate not only themselves, but also the victims.¹¹¹ Unfortunately, an uneducated legal community and a public that lacks awareness of the available remedies vitiate the steps taken by the Maryland legislature.¹¹²

105. *Id.* Courts are reluctant to grant a full protection order in the absence of service of process for fear of violating an aggressor's due process rights. *See infra* Part VI.C.

106. *Id.* at n.86 and accompanying text.

107. Murphy, *supra* note 35, at n.86. Other responses included: "He knows she's serious; *Ex -parte* was enough time for her to get her own place; Got what she wanted, he stayed away; Good because cops check on him; Everything went the way she wanted and he's staying away; Yes, keeping him away." *Id.*

108. *Id.* at app. A & B.

109. *Id.* Notwithstanding the expanded protection, the civil protection process still has its imperfections. As Murphy indicates, most of the women who file for civil protection orders are employed and obtaining a full protective order requires at least a minimum of two court appearances. *Id.* at n.71 and accompanying text. Additionally, as the above-mentioned statistics indicate, law enforcement failed to serve the aggressor with the *ex-parte* order over half of the time. *Id.* at n.56 and accompanying text. Also, the lack of available, affordable legal representation increased the difficulty in obtaining a full protection order. *Id.* at n.75 and accompanying text.

110. *Id.* at 177.

111. *See* Coburn v. Coburn, 342 Md. 244, 254, 674 A.2d 951, 956 (1995) (discussing that standardized, pre-printed forms are available for individuals unfamiliar with the statute); *see also* Klein, *supra* note 4, at 812-13.

112. *See* Klein, *supra* note 4, at 813.

IV. PRACTICAL APPLICATION OF THE CIVIL PROTECTION ORDER PURSUANT TO MARYLAND'S STATUTORY PROVISION

A. Purpose

The purpose of the domestic abuse statute¹¹³ "is to protect and 'aid victims of domestic abuse by providing an immediate and effective remedy.'"¹¹⁴ The statute helps establish a basic level of protection for a temporary period of time.¹¹⁵ The protective order is effective because of the statute's provisions that prohibit further abuse, threats of abuse, harassment and contact with the victim.¹¹⁶

Courts are also authorized, under the statute, to craft orders that are responsive to each petitioner's respective situation.¹¹⁷ For example, when petitioner and respondent live together, it is rare that a simple court order to stop the abuse will have the desired effect. In cases such as these, the court can order the abuser to vacate the common home and grant the petitioner exclusive use and possession.¹¹⁸ The statute defines "abuse" as an act that causes serious bodily harm, or an act that places a person eligible for relief¹¹⁹ in fear of imminent serious bodily harm.¹²⁰

B. Scope

Section 4-501 of the statute authorizes the person eligible for relief to file a petition alleging abuse against the alleged abuser, and re-

113. MD. CODE ANN., FAM. LAW §§ 4-501 – 4-516 (Supp. 2002).

114. *Coburn*, 342 Md. at 252, 674 A.2d at 955 (quoting *Barbee v. Barbee*, 311 Md. 620, 623, 537 A.2d 224, 225 (1988)); *see also* MD. CODE ANN., FAM. LAW § 4-515 (Supp. 2002). Section 4-515 states:

- (a) *Established; purposes* - (1) The Secretary shall establish a program in the Department of Human Resources to help victims of domestic violence and their children; (2) The purpose of the program is to provide for victims of domestic violence and their children, in each region of this State:
- (i) Temporary shelter or help in obtaining shelter;
 - (ii) Counseling
 - (iii) Information;
 - (iv) Referral; and
 - (v) Rehabilitation.

Md. Code Ann., Fam. Law § 4-515.

115. *See* MD. CODE ANN., FAM. LAW § 4-505 (Supp. 2002).

116. *See id.* § 4-506(d)(1)(2).

117. *See id.* § 4-506(d).

118. *See id.* § 4-506(d)(4).

119. *Id.* § 4-501(b)(1); *see id.* § 4-501(1). The statute instructs the courts as to those who are eligible for relief. They include current or former spouses, cohabitants, relatives by blood, marriage, or adoption, parents, stepchildren, individuals who reside or resided with alleged abuser for at least 90 days out of the last year before filing, vulnerable adults, and individuals who have a child in common with the alleged abuser. *Id.* The protection was not always this expansive. *See infra* Part III.

120. MD. CODE ANN., FAM. LAW § 4-501(b)(1).

questing immediate and temporary relief from violence.¹²¹ A petitioner can file in any district court or circuit court of Maryland.¹²² The petition is completed under oath and may include information of prior or pending actions between the parties the location of the respondent; financial relief requested and the location of any child or vulnerable adult subject to the alleged abuse if known.¹²³ Also authorized by the statute is "emergency family maintenance,"¹²⁴ mandating that a respondent temporarily provide support to the victim of abuse and to any children living in the home.¹²⁵

Temporary child custody orders are another available remedy.¹²⁶ As previously discussed, children are often in harm's way when abuse occurs in the home,¹²⁷ however, temporary custody orders can help alleviate such a risk.¹²⁸ Children are often the most important aspect

121. MD. CODE ANN., FAM. LAW § 4-501(h).

122. *Id.* § 4-501(f). The *Katsenelenbogen* decision is indicative of a procedural problem inherent in the statutes practical application. At the district court level, the judge has the discretion to move the hearing up to the circuit court level. An appeal from a circuit court decision to the Court of Special Appeals of Maryland, however, could prove timely. The order's duration is finite, lasting only one year. *Id.* § 4-506(g). By the time the appeal is heard by the Court of Special Appeals of Maryland, the order may have expired, rendering the appeal moot. For example, both the *Coburn* and *Katsenelenbogen* appeals were rendered moot. *Katsenelenbogen*, 365 Md. at 125, 775 A.2d at 1251; *Coburn*, 342 Md. at 250, 674 A.2d at 954. Yet, the magnitude of the issues mandated the Court of Appeals of Maryland's attention. *Katsenelenbogen*, 365 Md. at 125, 775 A.2d at 1251; *Coburn*, 342 Md. at 250, 674 A.2d at 954. It is doubtful that the Court of Appeals of Maryland will grant certiorari to subsequent protection order appeals in the wake of *Katsenelenbogen*. Thus, the domestic violence victim would be better served if the statute mandated the district court as the first forum, because an appeal to the circuit court would most likely occur before the order's expiration, allowing for at least one appellate review in a reasonable amount of time (before the order expires). See Petitioner's Brief at 23, *Katsenelenbogen v. Katsenelenbogen* (No. 139).

123. MD. CODE ANN., FAM. LAW § 4-504(b)(ii)(1-6) (Supp. 2002).

124. *Id.* § 4-506(d)(9).

125. *Id.* The legislative history of this section of the statute describes the need for such a remedy:

Short term financial relief can be critical to victims of domestic violence as a temporary measure to provide emergency help to victims of abuse who are extricating themselves from violent relationships. The use and possession of a home will not provide protection if a victim will be evicted for failure to pay the rent or mortgage, or does not have enough money for food or other necessities. To a victim whose childcare responsibilities prevent her from being self-supporting, such short-term financial relief provides an alternative to living in a chronically violent relationship.

Petitioner Brief at 17, *Katsenelenbogen* (No. 139) (quoting Letter from Attorney General J. Joseph Curran, Jr. to the Honorable Walter M. Baker, Chairman of the Senate Judicial Proceedings Committee (February 11, 1992) (in support of bill #282)).

126. MD. CODE ANN., FAM. LAW § 4-506(d)(7) (Supp. 2002).

127. See *supra* notes 23-27 and accompanying text.

128. Petitioner's Brief at 18, *Katsenelenbogen* (No. 139).

of a victim's life.¹²⁹ A batterer recognizes this reality and often threatens to harm the children, obtain custody, or deprive the victim of access to the children.¹³⁰ A temporary custody order via a petition for a civil protection order can help remove this method of abuse from the batterer.¹³¹ Without the availability of such an order, many victims would be without protection or redress and remain in an abusive situation.¹³²

Visitation is an issue closely related to custody. Section 4-506(d)(8)¹³³ authorizes the court to grant visitation to the respondent.¹³⁴ The provision, however, advises the courts to pay close attention to the safety needs of the child.¹³⁵ If the court finds that the safety of a child or a person eligible for relief is in question, the court can deny visitation altogether.¹³⁶

C. Procedure/Application

In order for a person eligible for relief to benefit from the availability of protection under the statute, he or she must first file a petition.¹³⁷ Relief under the statute is designed for *pro se* applicants.¹³⁸ Standard pre-printed forms are available to aid the petitioner who is unfamiliar with the specific legal requirements of the statute.¹³⁹ The form also allows the petitioner to check off the desired remedies, such as emergency family maintenance or sole use and possession the family vehicle.¹⁴⁰ Once a petition is filed, the petitioner appears before the court in an *ex-parte* hearing.¹⁴¹

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. MD. CODE ANN., FAM. LAW § 4-506(d)(8) (Supp. 2002). Although not specifically stated in the body of the text, the statute also allows the court to grant temporary use and possession of the family vehicle, to order the parties to counseling, to order the respondent to surrender any firearm to law enforcement for duration of the order and to order the respondent to pay all filing fees and costs of the proceeding. *Id.* §§ 4-506(d)(10) - 4-506(d)(13).

134. *Id.* § 4-506(d)(8).

135. *Id.*

136. *Id.* This provision also allows for supervised visitation. The court has wide discretion to fashion the visitation order in a manner most beneficial to the child or victim. *Id.*; see also *ABA Resolution of Safe Visitation Orders*, Report adopted by the ABA House of Delegates (Annual Meeting, July 2000) ("When crafting visitation orders, creating safety provisions that provide for continued and consistent protection during visitation and visitation exchanges is critical.").

137. MD. CODE ANN., FAM. LAW § 4-505(a)(1).

138. *Coburn v. Coburn*, 342 Md. 244, 254, 674 A.2d 951, 956 (1996).

139. *Id.*

140. *Id.*

141. *Id.*

At this hearing, if a court finds that there are "reasonable grounds to believe that a person eligible for relief has been abused," the court can issue the temporary *ex-parte* protective order.¹⁴² The petitioner can substantiate her claim by presenting physical evidence such as photographs, medical records, witnesses, her own testimony or anything else within reason that will help her case.¹⁴³ The statute gives the court wide discretion, based on the petition and the evidence presented, to grant the order and the applicable requested relief.¹⁴⁴

The *ex-parte* order lasts only seven days.¹⁴⁵ The temporary nature of the *ex-parte* order is purposeful.¹⁴⁶ The legislature wanted to ensure that all due process concerns were addressed.¹⁴⁷ Because the hearing is *ex-parte*, the court mandates a subsequent hearing before the order can take on its most permanent form.¹⁴⁸ This second hearing provides the alleged abuser with notice and a chance to be heard.¹⁴⁹ A court may extend the *ex-parte* order as needed, but only for 30 days.¹⁵⁰ As previously mentioned, long-term orders are not issued until a second, full hearing.¹⁵¹

At this second hearing, the alleged abuser has a chance to present evidence to contest the petitioner's earlier allegations.¹⁵² If the respondent fails to appear, "the court may issue a final protective or-

142. MD. CODE ANN., FAM. LAW § 4-505(a)(1) (Supp. 2002); *see also supra* note 135 and accompanying text.

143. *Coburn*, 342 Md. at 254, 674 A.2d at 956.

144. *See id.* at 255, 674 A.2d at 956-57.

145. *Id.* at 255, 674 A.2d at 956 (citing MD. CODE ANN., FAM. LAW § 4-505(c)(1) (Supp. 2002)).

146. *See Coburn*, 342 Md. at 259-60, 674 A.2d at 959.

147. *Id.* at 261, 674 A.2d at 959.

148. *Id.*

149. *Id.* at 255, 674 A.2d at 956.

150. *Id.* (citing MD. CODE ANN., FAM. LAW § 4-505(b) & (c) (Supp. 2002)).

151. *Id.* The second full hearing allows a judge to grant an order with a duration of twelve months. MD. CODE ANN., FAM. LAW § 4-506(g).

152. *Coburn*, 342 Md. at 255, 374 A.2d at 956. (citing MD. CODE ANN., FAM. LAW § 4-506(a) (Supp. 2002)). The statute does not specifically address the type of evidence allowed at a final hearing although section 4-506(e) does provide the court with some guidance when it discusses the order to vacate the home. The factors are:

- 1) the housing needs of any minor child living in the home,
- 2) the duration of the relationship between the respondent and any person eligible for relief,
- 3) title to the home,
- 4) pendency and type of criminal charges against the respondent,
- 5) the history and severity of abuse in the relationship between the respondent and any person eligible for relief,
- 6) the existence of alternative housing for the respondent and any person eligible for relief, and
- 7) the financial resources of the respondent and the person eligible for relief.

Id. at 256, 674 A.2d at 957 (citing MD. CODE ANN., FAM. LAW § 4-506(e)(1-7) (Supp. 2002)). Also important in the evidentiary determination of abuse is the form that allows the petitioner to include evidence "known to the peti-

der . . . as long as the respondent has been served with the temporary protective order or the court otherwise has personal jurisdiction over the respondent.”¹⁵³

If the court finds by clear and convincing evidence that abuse has occurred, then the court is authorized to grant a final order, and utilize all the relevant remedies.¹⁵⁴ The *Coburn* court notes several sections within the Family Law Act that direct a court as to what constitutes clear and convincing evidence.¹⁵⁵ Evidence of a previous abuse and the severity of the abuse are both examples of what may constitute clear and convincing evidence that abuse has or may occur.¹⁵⁶

The statute also provides for a modification of the final order if all the affected persons are notified and a hearing occurs.¹⁵⁷ At the modification hearing, based on the petitioner's evidence, a court can extend the order for six months beyond the time limit of section 4-506(g).¹⁵⁸

D. State Comparison

Similar remedies are prevalent throughout the country.¹⁵⁹ Every state has a civil protection order statute.¹⁶⁰ All but six states have similarly broad statutory provisions that give the courts wide discretion when fashioning custody and visitation arrangements under these orders.¹⁶¹ Similarly, at least forty states and territories have provisions that provide for emergency family maintenance.¹⁶² Additionally, the

tioner concerning previous injury.” *Id.* at 256-57, 674 A.2d at 957 (citing MD. CODE ANN., FAM. LAW § 4-504(b)(ii)(1) (Supp. 2002)).

153. *Id.* at 255, 674 A.2d at 956.

154. *Id.* (citing MD. CODE ANN., FAM. LAW § 4-506(c)(1)(ii) (Supp. 2002)). When determining what is “clear and convincing,” the court looks to several factors all of which are listed. *See supra* note 152 and accompanying text.

155. *Coburn*, 342 Md. at 256-57, 674 A.2d at 957.

156. *Id.* (citing MD. CODE ANN., FAM. LAW § 4-506(c)(1)(ii) (Supp. 2002)). For a further discussion concerning the evidentiary standards see *infra* Part V.

157. *Id.* (citing MD. CODE ANN., FAM. LAW § 4-506(c)(1)(ii) (Supp. 2002)).

158. *Id.* at 255, 674 A.2d at 956.

159. *See Klein, supra* note 4, at 1043-44; *see also infra* Part VI.B.

160. *See supra* note 51.

161. Petitioner's Brief at 20, *Katsenelenbogen* (No. 139). States permitting courts to award temporary custody protective order proceedings include: Maryland, North Carolina, South Carolina, Virginia and West Virginia. *See* MD. CODE ANN., FAM. LAW § 4-506(6) (Supp. 2002); N.C. GEN. STAT. § 50B-3:(a)(4) (2000); S.C. CODE ANN. § 20-4-60(c)(1) (Law Co-op. 2000); VA. CODE ANN. § 16.1-279, 1 (A)(7) (Michie 2000); W. VA. CODE § 48-27(503)(3) (2000).

162. Petitioner's Brief at 20-21, *Katsenelenbogen* (No. 139). States permitting courts to award temporary financial relief in protective order proceedings include: Maryland, North Carolina, South Carolina, and West Virginia. *See* MD. CODE ANN., FAM. LAW § 4-506(d)(9) (Supp. 2002); N.C. GEN. STAT. § 50B-3:(a)(6) & (7) (2001); S.C. CODE ANN. § 20-4-60(c)(2) (Law Co-op.

National Council of Juvenile and Family Court Judges advocate similar provisions.¹⁶³ Surprisingly, only thirty-eight states and the District of Columbia offer the protection of a civil protection order to a child of one or both of the parents involved in the dispute.¹⁶⁴

The presence of a child of unmarried parents also permits several state courts to issue civil protection orders between the parents of the child.¹⁶⁵ Additionally, forty-one states offer civil protection orders to unmarried partners of different genders that live together as spouses.¹⁶⁶

Eight progressive states have expanded their definition of persons eligible for relief under a civil protection order to include parties in a dating relationship.¹⁶⁷ Overall, most states are continually taking

- 1985 & Supp. 2001); W. VA. CODE ANN. § 48-27-503(4) & (5) (Michie 2001).
163. See FAMILY VIOLENCE: A MODEL STATE CODE § 306(3)(d) (Nat'l Council of Juvenile & Family Court Judges, 1994).
164. Klein, *supra* note 4, at 820; see also MD. CODE ANN., FAM. LAW § 4-506(d)(9) (Supp. 2002); N.C. GEN. STAT. § 50B-3:(a)(6) & (7) (2001); S.C. CODE ANN. § 20-4-60(c)(2) (Law Co-op. 1985 & Supp. 2001); W. VA. CODE ANN. § 48-27-503(4) & (5) (Michie 2001); Diehl v. Drummond, 2 Pa. D. 376, 378-79 (1989) (limiting the forum for the issuance of a civil protection order for a child to the juvenile courts).
165. Klein, *supra* note 4, at 824; see also Robinson v. United States, 317 A.2d 508, 510-11 (D.C. Cir. 1974) (holding that a protection order may be issued on behalf of a child against the child's mother's boyfriend with whom she and the child had lived for three years).
166. *Id.* at 824; see also Yankoskie v. Lenker, 526 A.2d 429, 432 (Pa. Super. Ct. 1987) (articulating five factors that are characteristic of persons living together as spouses: 1) the duration of the relationship, 2) the frequency of contact, 3) the parties financial interdependence, 4) whether the parties raised the children together, and 5) whether the parties engaged in tasks designed to maintain a common household). *But see* Jackson v. United States, 357 A.2d 409 (App. D.C. 1976) (holding no mutual residence for purposes of issuing a protection order where couple only lived together for three months, the defendant did not pay rent, the petitioner considered the apartment hers, the couple had no children in common, and the defendant gave his mother's address as his residence).
167. CAL. FAM. CODE § 6211 (West 1994) ("person with whom the respondent has had a dating or engagement relationship"); MASS. GEN. LAWS ANN. ch. 209A, § 1 (West 1992). Defining family or household members as those who:
 [A]re or have been in a substantive dating or engagement relationship, which shall be adjudged by district, probate or Boston municipal courts consideration of the following factors: 1) the length of time of the relationship; 2) the type of relationship; 3) the frequency of interaction between the parties; and 4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.
 MASS. GEN. LAWS ANN. ch. 209A, § 1(e)(1) (West 1992); N.H. REV. STAT. ANN. § 173-B:1(XV) (2001) ("Intimate partners" means persons currently or formerly involved in a romantic relationship, whether or not such relationship was ever sexually consummated"); N.M. STAT. ANN. § 40-13-2 (Michie 2002) ("person with whom petitioner has had a continuing personal relationship"); N.D. CENT. CODE § 14.07.1-01 (Supp. 2001) ("family

strides to expand their respective domestic violence protection acts.¹⁶⁸ It is now up to the legal communities throughout the United States to employ this progressive legislation. The Court of Appeals of Maryland took a step in that direction with its decision in *Katsenelenbogen v. Katsenelenbogen*.¹⁶⁹

V. RECENT DEVELOPMENTS

The Court of Appeals of Maryland recently clarified a decision by the court of special appeals in *Katsenelenbogen*.¹⁷⁰ In so doing, the court emphatically stated that the lower court's decision did not weaken the state's efforts to obviate domestic violence.¹⁷¹ The court held: 1) that a trial court's fashioning of appropriate relief in domestic violence cases should not be concerned with the consequences that such relief might have in other litigation, and (2) the proper standard for determining whether a victim's fear of imminent serious bodily harm is reasonable, thus warranting a protective order, is an individualized objective one.¹⁷²

In this case the parties were married in April of 1986, and had three children.¹⁷³ The marital home was titled in the names of both parties.¹⁷⁴ Mrs. Katsenelenbogen was a pediatric nurse and worked approximately twenty-four hours a week.¹⁷⁵ She took medication for a chronic back problem, and had a live-in nanny to help care for the children.¹⁷⁶

or household member' means . . . persons who are in a dating relationship . . . (or) any other person with a sufficient relationship to the abusing person"); 23 PA. CONST. STAT. ANN. § 6102 (West 2002) ("sexual or intimate partners"); WASH. REV. CODE ANN. § 26.50.010(2) (West 2002). A dating relationship is defined under the statute as a social relationship between persons sixteen years of age or older that is romantic in nature. *Id.* § 26.50.010(3). Factors that the court may consider in making this determination include: (a) the length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties. *Id.*; W. VA. CODE ANN. § 48-27-207 (Michie Supp. 2001) ("are or were dating").

168. See generally Klein, *supra* note 4, at 912.

169. See *supra* note 13.

170. *Id.*

171. *Katsenelenbogen*, 365 Md. at 135, 775 A.2d at 1257.

172. *Id.* at 137-39, 775 A.2d at 1258-59. The Court of Appeals of Minnesota took a similar approach when it ruled that a court may issue a civil protection order, "not only for actual physical harm, but also for acts which inflict the fear of imminent bodily injury." Klein, *supra* note 4, at 848 (citing *Hall v. Hall*, 408 N.W.2d 626 (Minn. App. 1987)). The court added that while the court must find some overt action indicating abuse, the court does not need to find an "overt physical act." *Id.* (citing *Knuth v. Knuth*, 1992 WL 145387 (1992)).

173. Petitioner's Brief at 2, *Katsenelenbogen* (No. 139).

174. *Katsenelenbogen*, 135 Md. App. at 322, 762 A.2d at 200.

175. *Id.*

176. *Id.*

On or about December 9, 1999, Mrs. Katsenelenbogen asked Mr. Katsenelenbogen to move out of the marital home, and he refused to leave.¹⁷⁷ On January 1, 2000, Mr. Katsenelenbogen advised the live-in nanny that she was fired and would have to vacate the marital home because he wanted to use the room that she had been occupying.¹⁷⁸ When Mrs. Katsenelenbogen learned of this, and after consulting her lawyer, she told Mr. Katsenelenbogen that he could not force the nanny to leave.¹⁷⁹ During that conversation between the parties, Mr. Katsenelenbogen used a cordless telephone to call the police.¹⁸⁰ While making the call, he walked out of the house onto the driveway, and Mrs. Katsenelenbogen followed him.¹⁸¹ One of the parties' children, Alexander, age 9, followed Mrs. Katsenelenbogen.¹⁸² After Mr. Katsenelenbogen finished his conversation with the police, he dialed another number and began speaking in Russian.¹⁸³ Mrs. Katsenelenbogen continued to request the phone, and according to her, Mr. Katsenelenbogen shoved her by placing his left hand on her shoulder.¹⁸⁴ Also, according to Mrs. Katsenelenbogen, Alexander placed himself between them, and Mr. Katsenelenbogen then shoved the child.¹⁸⁵ Mr. Katsenelenbogen "testified that . . . [Mrs. Katsenelenbogen] followed him, but he denied any contact."¹⁸⁶ Prior to January 1, 2000, there was no record of Mr. Katsenelenbogen ever abusing his wife.¹⁸⁷

Mrs. Katsenelenbogen filed a petition for protection from domestic violence on January 3, 2000.¹⁸⁸ In that petition she stated that, "she was filing it on behalf of herself and Alexander, claiming, 'shoving,' 'threats of violence,' and 'mental injury of a child.'"¹⁸⁹ The incident that occurred on January 1, 2000, was described in an attachment to the petition.¹⁹⁰ The *ex-parte* order was issued on January 3, 2000, and a hearing on the order was scheduled for January 10, 2000.¹⁹¹

At the January 10th hearing, both Mr. and Mrs. Katsenelenbogen testified.¹⁹² The circuit court issued a protective order, reciting that Mrs. Katsenelenbogen was a person eligible for relief due to the Janu-

177. *Id.*

178. *Id.*

179. *Katsenelenbogen*, 135 Md. App. at 322, 762 A.2d at 201.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.* at 322-23, 762 A.2d at 201.

184. *Katsenelenbogen*, 135 Md. App. at 322, 762 A.2d at 201.

185. *Id.* at 323, 762 A.2d at 201.

186. *Id.*

187. *Id.*

188. *Id.*

189. *Katsenelenbogen*, 135 Md. App. at 323, 762 A.2d at 201.

190. *Id.*

191. *Id.*

192. *Id.*

ary 1, 2000, incident in which Mr. Katsenelenbogen shoved his wife and their nine-year old son, Alexander.¹⁹³ According to the order that was executed by the court, Mrs. Katsenelenbogen was “badly shaken” and “afraid for her safety.”¹⁹⁴ On the protective order the only abuse cited was an act, “which placed a person eligible for relief in fear of imminent serious bodily harm.”¹⁹⁵

The protective order was effective until January 3, 2001.¹⁹⁶ In addition, the court ordered that: Mr. Katsenelenbogen was not to contact Mrs. Katsenelenbogen except for purposes of visitation and to vacate the family home; custody of the three children was awarded to Mrs. Katsenelenbogen; emergency family maintenance was awarded to the wife; and exclusive use and possession of the family vehicle was awarded to Mrs. Katsenelenbogen.¹⁹⁷

The court’s holding noted that the legislature made every attempt to ensure that the filing of a civil protection order would only occur in genuine instances of abuse.¹⁹⁸ The legislature requires all petitioners to file the petition under oath, and the petitioners must reveal any prior or pending actions between the parties.¹⁹⁹ The statute also provides an avenue for modification.²⁰⁰ The court opined that, with these safeguards in place, other courts must not concern themselves with the consequences the order may have on pending or subsequent litigation.²⁰¹

The court also clarified the standard by which the petitioner’s fear is measured.²⁰² The court held that it is an individualized objective standard- “one that looks at the situation in the light of the circumstances as would be perceived by a reasonable person in the petitioner’s position.”²⁰³ The court added that a person “may well be sensitive to non-verbal signals or code words that have proved threatening in the past to that victim but which someone else, not having that experience, would not perceive to be threatening.”²⁰⁴ Accordingly, when Mr. Katsenelenbogen shoved his wife and their child, the

193. *Id.*

194. *Katsenelenbogen*, 135 Md. App. at 323, 762 A.2d at 201.

195. *Id.*

196. *Id.*

197. *Id.*

198. *Katsenelenbogen*, 365 Md. at 135-37, 775 A.2d at 1257-58.

199. MD. CODE ANN., FAM. LAW § 4-504(b) (Supp. 2002).

200. *Id.* § 4-507(a).

201. *See Katsenelenbogen*, 365 Md. at 135-37, 775 A.2d at 1257-58. *Contra Piper v. Layman*, 125 Md. App. 745, 753, 726 A.2d 887, 891 (1999) (discussing the “stigma” that attaches to a respondent when an order is issued against him/her).

202. *Katsenelenbogen*, 365 Md. at 138, 775 A.2d at 1259.

203. *Id.*

204. *Id.* at 139, 775 A.2d at 1259. Social science research indicates that threats of this type, if left unchecked, will commonly escalate into physical violence. Klein, *supra* note 4, at 859. Courts throughout the United States recognize a wide range of varying threats that will substantiate the issuance of a civil

court issued an order.²⁰⁵ With these newly defined standards in mind, one can now explore the role of the court in fashioning relief through a civil protection order.

VI. ANALYSIS

A. *Analysis of The Court of Appeals Decision in the Instant Case.*

The Court of Appeals of Maryland began its analysis of the court of special appeals' decision by examining the arguments of the petitioner.²⁰⁶ The petitioner claimed the lower court erred in three ways.²⁰⁷ First, that the court of special appeals' decision suggests that certain types of domestic violence are permissible.²⁰⁸ Second, that the petitioner argued that the lower court placed too much emphasis on the protective order's subsequent effect on future litigation.²⁰⁹ Finally, the petitioner argued that future petitioners could view the lower court decision as endorsing an objective standard, rather than an individualized objective standard for measuring the fear of imminent bodily harm.²¹⁰

The Court of Appeals of Maryland then addressed each argument. The court disposed of the first argument by stating that the lower court did not intend "any such absurd conclusion," adding that the

protection order, with the most common being a death threat. *Id.* at 860-61.

205. *Katsenelenbogen*, 135 Md. App. at 127, 762 A.2d at 1252-53.

206. *Katsenelenbogen*, 365 Md. at 134, 775 A.2d at 1256-57.

207. *Id.* 365 at 134-40, 775 A.2d at 1257-60; *see also* Petitioner's Brief at 12, *Katsenelenbogen* (No. 139).

208. *Katsenelenbogen*, 365 Md. at 134, 775 A.2d at 1257; Petitioner's Brief at 12, *Katsenelenbogen* (No. 139).

209. *Katsenelenbogen*, 365 Md. at 135, 775 A.2d at 1257; *see also* Petitioner's Brief at 26-27, *Katsenelenbogen* (No. 139). Petitioner argues in her brief that while a protective order may have some effect on a future custody proceeding, courts still are bound by the "best interest of the child" standard and the presence of an order only lends to that determination and should not be ignored. *Id.* at 26-30. The Petitioner's argument is not wholly unreasonable in light of the statements made by the Court of Special Appeals of Maryland:

If a protective order is issued without a sufficient legal basis, those consequences frequently cannot be erased. In that situation, the alleged perpetrator may suffer unfairly from the direct consequences of the order itself, which may include removal from his or her home, temporary loss of custody . . . [t]he alleged perpetrator may also suffer from the social stigma that attaches to the order.

Katsenelenbogen, 135 Md. App. at 335, 762 A.2d at 207.

210. *Katsenelenbogen*, 365 Md. at 138, 775 A.2d at 1259; *see also* Petitioner's Brief at 26-30, *Katsenelenbogen* (No. 139). Petitioner argued that the "reasonable petitioner in that litigant's shoes is necessary . . . [because] [d]omestic violence, by definition, is not an offense that occurs between strangers." *Id.* at 33. Another argument, not mentioned by the Court of Appeals of Maryland, offered by the petitioner was that the "persons eligible for relief" covers such a wide range of people that a reasonable standard would simply be unfair. *See id.* at 33-34.

lower court would have reversed the decision outright if it meant to classify the abuse in the instant case as insufficient to warrant a protective order.²¹¹

In response to the petitioner's second argument, the court of appeals noted nothing in the court of special appeals' opinion indicating that the respondent, Mr. Katsenelenbogen, deserves extra protection in subsequent litigation.²¹² The court of appeals did concede that a protective order may have an effect on subsequent litigation, however, the court should only be concerned with doing what is "reasonably necessary . . . to assure the safety and well-being of those entitled to relief."²¹³ Additionally, as the petitioner argued, the legislature included several safeguards to prevent any spurious claims.²¹⁴ The court indicated that the difficulty of overcoming the "clear and convincing" standard, the requirement that the petitioner take an oath and the requirement that the petitioner reveal all other collateral litigation between the parties, provide ample protection to the respondent.²¹⁵

Finally, the court addressed the final issue: the proper standard for measuring a petitioner's fear of imminent bodily harm pursuant to § 4-501(b).²¹⁶ The petitioner urged that the standard be "a reasonable petitioner in that litigant's shoes."²¹⁷ The court agreed with the petitioner, stating that the proper standard is an "individualized objective one."²¹⁸

The court cited *State v. Marr*,²¹⁹ a recent decision by the court that involves a similar individualized objective standard "applied in determining whether a criminal defendant offering the defense of self-defense had reasonable grounds to believe himself or herself in

211. *Katsenelenbogen*, 365 Md. at 134-35, 775 A.2d at 1257.

212. *See id.* at 135, 775 A.2d at 1257.

213. *See id.* at 137, 775 A.2d at 1258.

214. *See id.* at 135-36, 775 A.2d at 1257-58; *see* Petitioner's Brief at 22-24, *Katsenelenbogen* (No. 139).

215. *See Katsenelenbogen*, 365 Md. at 135-36, 775 A.2d at 1257. Petitioner also mentions that the requirement of *de novo* review is yet another protection against the dubious petitioner. Petitioner's Brief at 23, *Katsenelenbogen* (No. 139); *see also* *Barbee v. Barbee*, 311 Md. 622, 537 A.2d 225 (1988). The petitioner also adds that trial court judge continually offered advice to the parties during the hearing for the final order, thus providing an additional safeguard to the respondent. Petitioner's Brief at 24, *Katsenelenbogen* (No. 139).

216. *See Katsenelenbogen*, 365 Md. at 139, 775 A.2d at 1259-60; *see supra* note 203 and accompanying text.

217. *Id.* at 138, 775 A.2d at 1259.

218. *Id.* Petitioner also argued domestic violence is intimate and specific and that a petitioner would be ill served by an "externally constructed" and "non-individualized paradigm." *See* Petitioner's Brief at 34-35, *Katsenelenbogen* (No. 139).

219. 362 Md. 467, 765 A.2d 645 (2001).

apparent or immediate danger of death or serious bodily harm.”²²⁰ In that case, the court noted that the “objective standard does not require the jury to ignore the defendant’s perceptions in determining the reasonableness of his or her conduct . . . so long as a reasonable person in the defendant’s position could also reasonably perceive the facts or circumstances in that way.”²²¹ The court added in *Marr* that the issue is not whether the defendant’s perception is right or wrong, “but whether a reasonable person with that background could perceive the situation in the same way.”²²² Finally, the court clarified any residual ambiguity remaining in the court of special appeals decision by stating “[a]ny special vulnerability or dependence by the victim, by virtue of physical, mental, or emotional condition or impairment, also must be taken into account.”²²³

The Court of Appeals of Maryland made it clear that courts were not to examine the subsequent effect the civil protection order will have on future litigation.²²⁴ The ruling further solidifies the court’s role as an impartial fact finder. While this ruling is imperative if the civil protection order is to remain effective, some argue it still leaves room for the dubious petitioner attempting to gain a tactical advantage in future litigation.²²⁵ The court cannot ignore the motives of the

220. *Katsenelenbogen*, 365 Md. at 138-39, 775 A.2d at 1259.

221. *Id.* at 139, 775 A.2d at 1259. Petitioner also noted a similar standard is used in sexual harassment cases. Petitioner’s Brief at 38, *Katsenelenbogen* (No. 139). Sexual harassment cases in Maryland utilize an individualized objective standard. *Id.* Before 1986, however, this was not the case. It was not until an influential dissent by Judge Keith in *Rabidue v. Osceola Refining Co.*, 805 F.2d 611 (6th Cir. 1986) that courts began to recognize the need for an individualized standard. *Id.* The Maryland Legislature also recognized the necessity of the individualized objective standard in battered women syndrome cases. *Id.* at 40. In *Banks v. State*, 92 Md. App. 422, 608 A.2d 1249 (1992), the court recognized that habitual victims of abuse are “expert[s] at recognizing the warning signs of an impending assault from [their] partner[s].” 92 Md. App. at 429, 608 A.2d at 1252.

222. *Katsenelenbogen*, 365 Md. at 139, 775 A.2d at 1259; see also *Parker v. State*, 66 Md. App. 1, 9, 502 A.2d 510, 514 (1986) (holding that when evaluating whether the arrest was proper, the court did not use a generic reasonable person standard, instead, it found that the proper standard is to view the circumstances “from that of the prudent and cautious police officer on the scene”). This type of standard is necessary in the instant case. While some may not consider a shove sufficient enough to place a petitioner in fear of imminent bodily harm, Mrs. Katsenelenbogen had chronic back problems that permanently disabled her. *Id.* at 126, 502 A.2d at 1251. As a result, she had a reduced work schedule, a handicapped parking permit, medication and used the assistance of a nanny. *Id.* at 126, 502 A.2d at 1252. Under these conditions, it is clear that a shove would constitute abuse as defined by the statute. *Id.* at 139, 502 A.2d at 1259. In the absence of an individualized objective standard, however, such actions may not warrant protection. Petitioner’s Brief at 35, *Katsenelenbogen* (No. 139).

223. *Katsenelenbogen*, 365 Md. at 139, 775 A.2d at 1260.

224. *Id.* at 137, 775 A.2d at 1258.

225. *Katsenelenbogen*, 135 Md. App. 317, 343, 762 A.2d 198, 212.

petitioner. Although the statute is designed to prevent further harm, such harm could manifest in the form of perjury.

The court, however, made the correct decision in the instant case. The civil protection order can be used for effective and immediate relief if drafted properly.²²⁶ The benefits afforded to victims who seek relief via the civil protection order arguably outweigh the burden of the few specious petitioners who attempt to gain a tactical advantage in future litigation between the parties.

B. Standards Applied in Other States

Other states have adopted individualized objective standards when confronted with similar situations.²²⁷ Two states actually employ a subjective standard.²²⁸ Ohio uses a subjective state of mind standard when determining if a petitioner is in fear of imminent serious harm, so long as, that state of mind is not "utterly irrational."²²⁹ Similarly, North Carolina case law articulates the language of the standard as "placing the aggrieved party . . . in fear of imminent serious bodily injury."²³⁰

Two other states consider their test to be objective, however, they individualize them.²³¹ New Jersey mandates a court look to the petitioner's "objective fear" but then classify the fear as that "which a reasonable victim similarly situated would have under the circumstances."²³² North Dakota defines its standard in the following manner: "Intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person. Disorderly conduct does not include constitutionally protected activities."²³³ The highest court in North Dakota further elucidated in *Williams v. Spilovoy*²³⁴ that "[b]ecause of previous physical or

226. Klein, *supra* note 4, at 813. A properly drafted and enforced civil protection order is an effective way to reduce domestic violence. *Id.* Lack of sufficient detail, irregular enforcement and an uneducated legal community, however, vitiate the order's effectiveness. *Id.*

227. Petitioner's Brief at 45, *Katsenelenbogen* (No. 139).

228. *Id.*

229. *Id.* (citing *Eichenberger v. Eichenberger*, 613 N.E.2d 678, 682 (Oh. App. 1992)).

230. *Id.* (citing *Brandon v. Brandon*, 513 S.E.2d 589, 595 (N.C. App. 1999)) ("The plain language used by our legislature does not require a trial court to attempt to determine whether the plaintiff's actual subjective fear is objectively reasonable under the circumstances.").

231. Petitioner's Brief at 46, *Katsenelenbogen* (No. 139).

232. *Id.* (citing *Carfagno v. Carfagno*, 672 A.2d 751, 758 (1995)). The New Jersey standard takes into account the "power and control" element present in most instances of domestic abuse. *Id.* Under this type of standard, Mr. Katsenelenbogen's actions, such as abusing the family pet, isolating his disabled wife by firing her live in nanny, verbally abusing his wife in front of their children, would all be considered. *Id.*

233. *Id.* (citing N.D. CENT. CODE § 12.1-31.2-01(1) (Supp. 2001)).

234. 536 N.W.2d 383 (N.D. 1995).

emotional abuse, in some instances, the person restrained is well aware that his or her mere presence is sufficient to cause such emotional stress as to adversely affect the safety, security, or privacy of the other person."²³⁵ Accordingly, a North Dakota court may issue protective orders based on the mere presence of a respondent.²³⁶

C. Constitutional Analysis

Maryland's legislature, like most other states, has made every attempt to ensure that the protective order statute is constitutional.²³⁷ The initial *ex-parte* hearing raises some due process concerns because the respondent is not present.²³⁸ The constitutionality of this process, however, has been upheld because the temporary order is granted in emergency situations and is of limited duration.²³⁹ Also, in Maryland, a court can grant a final order notwithstanding the absence of the respondent.²⁴⁰ The Maryland court warns, however, that sufficient notice in the form of service of process must precede the final order hearing as to satisfy due process notice concerns.²⁴¹

While Maryland's civil protection order statute has not faced a constitutional challenge, domestic violence statutes, including the civil protection order provisions, have endured a myriad of constitutional challenges around the country.²⁴² Several courts have ruled that the language of these statutes are not unconstitutionally vague.²⁴³ A Wisconsin court upheld the state's civil protection standard against the

235. *Id.* at 385 (N.D. 1995) (citing *State v. Monson*, 518 N.W.2d 171 (N.D. 1994)); see also Petitioner's Brief at 47, *Katsenelenbogen* (No. 139).

236. Petitioner's Brief at 47, *Katsenelenbogen* (No. 139); see also *Williams*, 536 N.W.2d at 385.

237. See Klein, *supra* note 4, at 905 n.633 (stating that Arkansas had the only statute struck down on a constitutional basis but has since revised that statute as to make it constitutional).

238. See Voris, *supra* note 19, at 431 (citing *Boyle v. Boyle*, 12 Pa. D. & C.3d 767 (C.P. Alleg. 1979); *Missouri v. Marsh*, 626 S.W.2d 223 (Mo. 1982); *Marquette v. Marquette*, 686 P.2d 990 (Okla. Ct. App. 1984)).

239. Voris, *supra* note 19, at 431. Ohio's temporary order lasts for ten days as compared to Maryland's that lasts only seven. *Id.*; *Coburn*, 342 Md. at 255, 674 A.2d at 956.

240. *Coburn*, 342 Md. at 255, 674 A.2d at 956.

241. *Id.* at 255-56, 674 A.2d at 956-57. The court also states that as long as the court has some personal jurisdiction over the respondent, it can issue the final order in the absence of the defendant. *Id.* at 255, 674 A.2d at 956.

242. See *supra* Part VI.C.

243. See Klein, *supra* note 4, at 905-06 nn.637-644. In *Gilbert v. State*, 765 P.2d 1208, 1210 (Okla. Crim. App. 1988), the court ruled that a civil protection order that ordered the respondent not to "visit" the victim or "otherwise interfere" with his wife was not unconstitutionally vague. See Klein, *supra* note 4, at 905 n.637. Similarly, a Missouri court held in *Kreitz v. Kreitz*, 750 S.W.2d 681, 685 (Mo. Ct. App. 1988), that a protective order that prevented the husband from entering the marital home was not unconstitutionally vague or overbroad in light of the physical damage the husband had done in the house. See Klein, *supra* note 4, at 905 n.640.

constitutional arguments that the statute was irrational and unreasonable to effectuate its statutory purpose.²⁴⁴ The petitioner argued that the statute deprived him of liberty interests in his home, family and reputation.²⁴⁵ The petitioner also argued that the application of the statute results in cruel and unusual punishment and violates the fundamental rights implied in the Ninth Amendment.²⁴⁶ The court dismissed these constitutional claims and upheld the statute.²⁴⁷

Similarly, state courts have upheld civil protection statutes against freedom of speech, association and equal protection challenges.²⁴⁸ The procedural aspects of most civil protection statutes have also been upheld against constitutional challenges.²⁴⁹ A Maine court upheld the state's civil protection statute against a procedural challenge stating that the statute is civil in nature and does not violate the respondent's constitutional right to a jury trial, notwithstanding the availability of possible criminal sanctions for a subsequent contempt.²⁵⁰ Finally, a Minnesota court held that a civil protection statute that mandated clerks to assist petitioners in filing for protection orders did not violate the constitutional doctrine of separation of powers.²⁵¹

VII. CONCLUSION

The answer to the domestic violence problem is an elusive one. While the civil protection order is not a cure-all, it does offer immediate and temporary relief from abuse.²⁵² This avenue must remain open in the interest of safety for abused spouses and children.

Many courts around the country adopt a similar view of the civil protection order, and similar domestic violence statutes.²⁵³ The statutes have withstood numerous constitutional challenges and remain in effect today.²⁵⁴ The Maryland judiciary, like the aforementioned

244. See Klein, *supra* note 4, at 907 (citing *Master v. Eisenhart*, No. 90-2897 1991 Wisc. App. LEXIS 1270 (Wisc. Ct. App. Sept. 18, 1991)).

245. *Id.*

246. *Id.* (dismissing the constitutional challenges to the civil protection statutes).

247. *Id.*

248. *Id.* at 907-08 nn.654-57; *Schramek v. Bohren*, 429 N.W.2d 501, 502 (Wis. Ct. App. 1988); *Illinois v. Blackwood*, 476 N.E.2d 742, 743, 746 (Ill. App. Ct. 1985) (noting that finding the respondent in contempt of the civil protection order for calling his ex-wife a prostitute and then threatening to kill her did not violate respondent's free speech rights).

249. See Klein, *supra* note 4, at 908 nn.662-64 (citing *Cooke v. Naylor*, 573 A.2d 376 (Me. 1990)).

250. *Id.*

251. *Id.* at 908-09 nn.668-69 (citing *Minnesota v. Errington*, 310 N.W.2d 681 (Minn. 1981)).

252. See *supra* Part IV.

253. See *supra* notes 126-35.

254. *Id.*

states, recently and emphatically reminded the state that its civil protection order statute was alive and well and will continue to protect women and children from abuse.

The court of appeals' recent clarification of Maryland's standard for the issuance of the civil protection provides a consistent standard for both the courts and petitioners. This consistency will hopefully make Maryland's civil protection order that much more effective in the state's battle against domestic violence. The legal communities of Maryland should follow the high court's lead and get involved.²⁵⁵ Armed with this ruling and the changes in Maryland's Domestic Violence Act, the legal communities throughout the state should take affirmative action against the state's perpetual domestic violence problems. The court of appeals' endorsement of the civil protection order should go a long way in helping the victims, and their advocates fight this battle.

Richard A. DuBose III

255. The Murphy article indicates that having an attorney present during the application process "substantially increased the rate of success in obtaining a protection order." Murphy, *supra* note 35, at n.76 and accompanying text. The VAWA clinics are not enough. Pro bono volunteer work could alleviate some of the difficulties that face battered women and substantially increase the number of those who receive full protection.