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Comments: Who Turned out the Lights?: How Maryland Laws Fail to Protect Victims of Domestic Violence from Third-Party Abuse

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WHO TURNED OUT THE LIGHTS?: HOW MARYLAND LAWS FAIL TO PROTECT VICTIMS OF DOMESTIC VIOLENCE FROM THIRD-PARTY ABUSE.¹

I. INTRODUCTION

Janette and Rick's relationship was tumultuous. They lived together for seven years, but within a month of moving in with each other, Rick began to berate Janette on a constant basis, calling her stupid, worthless and ugly. Eventually, physical violence joined the verbal abuse, and Janette became an expert at covering bruises with long-sleeved shirts and heavy makeup. Finally, after having to call the police one night during a particularly violent episode where Rick threw her down the stairs, Janette worked up the courage to get a protective order. The judge ordered Rick to vacate the residence they shared, but, less than forty-eight hours later, Janette came home to find that the electricity and water was shut off. Even with a protective order against him, Rick was still winning the control game.

Historically, violence in the home has "gone unnoticed."² In recent decades, changes occurred in both the "legal and social scrutiny" of domestic violence, and state legislatures began to take action by forming laws that responded to the issue of domestic violence.³ Not until 1980 did the Maryland General Assembly react to the largely private phenomenon of violence between intimates by enacting the first of Maryland's domestic violence statutes.⁴ Over the next twenty-five years, the state legislature increased the types of protection available to victims of domestic violence.⁵ Today, Maryland has both civil and criminal methods in place to protect victims and deter abusers.⁶ However, the statutes fall short when it comes to protecting victims from third-party abuse.

The remedies available under the law do not guarantee victims will remain safe from harm once a civil protective order is granted.

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1. Third-party abuse is the term the author uses in this Comment to refer to two types of abuse. First, abuse from the batterer using third-parties to affect his victim, such as the removal from insurance coverage or the shut off of utilities. Second, abuse that occurs when third-parties themselves negatively impact the victim through no fault of her own, such as when landlords evict parties that have been involved in domestic violence.
 2. Richard A. DuBose III, Comment, *Katsenelenbogen v. Katsenelenbogen: Through the Eyes of the Victim - Maryland's Civil Protection Order and the Role of the Court*, 32 U. BALT. L. REV. 237, 237 (2003).
 3. *See id.*
 4. *Id.*; *See* MD. CODE ANN., FAM. LAW § 4-501 *et seq.* (LexisNexis 2004 & Supp. 2005).
 5. DuBose, *supra* note 2, at 237-38.
 6. *See* MD. CODE ANN., FAM. LAW §§ 4-501 to -512.

If an abuser truly wants to harm his victim, or even kill her, a protective order or a short jail sentence will not stop him.⁷ The Maryland Legislature may not be able to prevent every incident of abuse, but there are holes in the law that can, and should be filled.

Maryland laws do not prevent abusers from using third-parties such as landlords or utility, telephone and insurance companies to continue harassing and in some instances harming, their victim.⁸ A judge may order an abuser to vacate the residence the abuser shares with his victim in either a temporary or final protective order.⁹ Upon being ordered to vacate the residence, the abuser may contact any of the above mentioned third-parties and discontinue services, thus leaving their victims on the streets, in the cold, uninsured or all of the above.¹⁰ The batterer may also use the court system and state agencies, such as Child Protective Services, to create more obstructions to his victim's abuse-free life.¹¹ Moreover, Maryland laws currently fail to protect victims from landlords in private and publicly funded residences that may try to evict victims of domestic violence for violating lease requirements related to maintaining peace. Finally, Maryland also lacks laws that would protect victims from discrimination in the workplace.

Part II of this Comment will explore the background and evolution of domestic violence law in the United States and in Maryland. Part III will discuss problems that victims face with housing agencies and landlords, including obtaining and keeping both private and public housing. Part IV will discuss both the use of third-parties by the abuser to continue to control his victim, as well as problems victims face with third-parties alone. Part IV also examines how other jurisdictions respond to these particular issues.

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7. For the purposes of this Comment, abusers will be referred to with male pronouns while victims will be referred to with female pronouns. This is not to say that there are no female batterers or male victims, just that the majority of intimate violence involves females as the victims and males as the abusers. See, e.g., Reva B. Siegel, "*The Rule of Love*": *Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2172 (1996) ("The Justice Department has estimated that 90% to 95% of domestic violence victims are women. Compared to men, women [are] about six times more likely to experience violence committed by an intimate.").
 8. The Maryland Legislature has not yet recognized harassment as a form of abuse in the Family Law Article. However, the definition section does qualify as abuse the following: "[A]ct[s] that cause[] serious bodily harm; . . . act[s] that place[] a person eligible for relief in fear of imminent serious bodily harm; . . . assault in any degree; . . . rape or sexual offense . . . or attempted rape or sexual offense; . . . or false imprisonment and stalking." MD. CODE ANN., FAM. LAW § 4-501.
 9. See MD. CODE ANN., FAM. LAW §§ 4-505(a), 4-506(d)(4).
 10. Abusers might terminate a lease or refuse to pay rent, turn off utilities to the home he was forced to vacate under the order, or remove family members from medical insurance coverage in an effort to punish his victim further. See *infra* note 136.
 11. See *infra* Part IV(D).

Finally, Part V will make suggestions for changes to Maryland's domestic violence statute.

II. BACKGROUND OF DOMESTIC VIOLENCE LAW

A. *The Common Law*

At common law, "the Right of Chastisement . . . allowed a man to beat his wife as long as the instrument used was thinner than his thumb."¹² In 1874, the Supreme Court of North Carolina nullified this right, but also "instructed that 'if no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive.'"¹³

The common law suspended a woman's legal existence during marriage and incorporated it into that of her husband, further supporting the husband's dominance with the ancient law of coverture, which made the husband and wife one person in the law after they were married.¹⁴ The husband had to answer for his wife's behavior, thus the law "thought it reasonable to entrust him with [the] power of refraining her by domestic chastisement."¹⁵ Both the courts and law enforcement felt domestic violence was not a matter under their jurisdiction.¹⁶

B. *Grassroots Changes*

It was not until the 1970s with the rise of the feminist movement, that the issue of domestic violence began to receive deserved attention.¹⁷ Grassroots organizations started with shelters for victims, but soon recognized the need for systemic legal changes, and thus advocated for "effective civil and criminal justice interventions"¹⁸ Slowly, civil remedies began to appear in the states' laws, and by 1989, all fifty states and the District of Columbia had civil protective order statutes.¹⁹

While changes were occurring in the civil system, advocates simultaneously fought to have recognition of domestic violence as

12. Elena Salzman, Note, *The Quincy District Court Domestic Violence Prevention Program: A Model Legal Framework for Domestic Violence Intervention*, 74 B.U. L. REV. 329, 336 (1994).

13. *Id.* (quoting *State v. Oliver*, 70 N.C. 60, 61 (1874)).

14. William Blackstone, 1 *Commentaries* *275, *285-86.

15. *Id.* at *289-90.

16. See Leigh Goodmark, *Law is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 13 (2004).

17. See *id.* at 9.

18. *Id.*

19. *Id.* at 10.

a crime. The 1970s also saw the emergence of laws that criminalized domestic abuse.²⁰ Unfortunately, forming a law does not guarantee its enforcement, and some states recognized that mandatory arrest laws were needed to encourage law enforcement agencies to properly implement these domestic violence laws.²¹ The mandatory arrest laws were soon followed, in some jurisdictions by prosecutors' offices adopting "no-drop" policies, which precluded victims from dropping criminal charges against their abusers.²²

While the individual states made monumental changes over the past few decades, the federal government began to lend a hand with a response of its own in the 1990s.

C. *Violence Against Women Act—The Federal Response*

In 1994, Congress passed legislation known as the "Violence Against Women Act" (VAWA), which was "designed to prevent and redress domestic violence, rape, and other violent crimes against women."²³ The purpose of the Act was "to combat violence and crimes against women on the streets and in homes."²⁴ There were originally five subchapters of VAWA.²⁵ "In recognition of the social and economic impact of domestic violence on the country as a whole," Congress made a specific section for protection of women against domestic violence.²⁶ Subtitle B, which is found in 18 U.S.C. §§ 2261-2265, is titled "Safe Homes for Women."²⁷ The Act currently penalizes any person who travels between states or foreign countries with the

20. *Id.* at 13.

21. *See id.* at 15. Professor Goodmark stated that "police were reluctant to move from a 'walk around the block [to cool off]' regime to one where allegations of domestic violence required police to investigate and . . . arrest." *Id.* at 14-15.

22. *Id.* at 16-17. Despite civil protective orders, victims often fear retaliation by their abusers for the institution of criminal charges. *See id.* at 16. The fear causes many victims to ask the prosecutor to drop the criminal charges, or refuse to testify or provide other evidence when the prosecution chooses to go forward. *See id.* No-drop policies take the onus off of the victim and render threats against her ineffective. *See id.*

23. Sally F. Goldfarb, "No Civilized System of Justice": *The Fate of the Violence Against Women Act*, 102 W. VA. L. REV. 499, 500 (2000).

24. 1 DOMESTIC TORTS: FAMILY VIOLENCE, CONFLICT AND SEXUAL ABUSE 80 (Thomson/West rev. ed. 2005).

25. *See id.*

26. Amy Keane, Annotation, *Validity and Applicability of Violence Against Women Act (VAWA)*, 19 U.S.C.A. §§ 2261-2265, 195 A.L.R. FED. 319, 329 (2004). "Domestic violence in the [U.S.] has wide-ranging impact—from the . . . suffering experienced . . . by victims, to the social and economic effects [on] . . . the country. The Bureau of National Affairs estimated that between \$3 to 5 billion is lost by businesses annually from . . . absenteeism and lost productivity caused by domestic violence." *Id.* at 329-30.

27. 18 U.S.C. §§ 2261-65 (2005); Safe Homes for Women Act of 1994, Pub. L. No. 103-322, § 4(b), 108 Stat. 1925-41; *see also* Keane, *supra* note 26, at 330.

“intent to kill, injure, harass, or intimidate a spouse or intimate partner, and who in the course . . . of such travel, commits or attempts to commit a crime of violence against that spouse or intimate partner.”²⁸ The statute “also penalizes a person who makes a spouse or intimate partner travel between states or sovereignties ‘by force, coercion, duress, or fraud’” and who either commits or attempts to commit a crime of violence against that victim.²⁹ Additionally, any “person who travels between states . . . or who causes another person to do so, in violation of a protection order, violates the VAWA.”³⁰ This subtitle also provided: increased federal funding for battered women’s shelters; federal funding for a national domestic violence hotline; the establishment of “grant programs to encourage arrests in domestic violence cases;” domestic violence education for people working with victims; and “improve[d] coordination of local domestic violence services.”³¹ In 2000, the U.S. Supreme Court deemed another subtitle of VAWA unconstitutional in *U.S. v. Morrison*,³² but this did not affect Subtitle B. In 1996 and 2000, Congress revised and expanded the remaining subchapters of the Violence Against Women Act (VAWA II).³³

D. Maryland’s Response to Domestic Violence

In 1980, the Maryland General Assembly enacted the State’s first domestic violence statute.³⁴ The statute was fairly narrow concerning whom it protected and the time limit of the protective

28. Keane, *supra* note 26, at 330 (quoting 18 U.S.C. § 2261(a)(1)).

29. *Id.* (quoting in part 18 U.S.C. § 2261(a)(2)).

30. *Id.*

31. Goldfarb, *supra* note 23, at 504-05.

32. 529 U.S. 598 (2000). The *Morrison* Court held that Subtitle C of VAWA, which allowed civil rights claims to be brought when a person had committed a crime of violence motivated by gender, was unconstitutional. *Id.* Congress identified gender-motivated violence as a denial of women’s rights to equality and sought to create a remedy designed to “protect against the bias element of crimes of violence motivated by gender.” See Goldfarb, *supra* note 23, at 507 (quoting H.R. CONF. REP. NO. 103-711, at 385 (1994)). The subtitle allowed plaintiffs to recover compensatory and punitive damages, injunctive and declaratory relief, attorney’s fees and other relief the court found appropriate. See 42 U.S.C. § 13981 (2005). The Court held that Congress did not have the power to do this under the Commerce Clause or the Fourteenth Amendment and struck down subtitle C. *Morrison*, 529 U.S. at 617.

33. Goldfarb, *supra* note 23, at 541. “In 1996, VAWA was amended to create an additional federal crime of interstate stalking.” *Id.* In 2000, “Congress passed the Violence Against Women Act of 2000,” which “reauthorize[d] and expand[ed] federal funding for programs to combat violence against women; amend[ed] the provisions concerning the crimes of interstate stalking, interstate domestic violence and interstate violation of a protection order; strengthen[ed] the requirements for granting full faith and credit to protection orders; and provided for additional federal studies of various aspects of violence against women.” *Id.*

34. DuBose, *supra* note 2, at 241.

order.³⁵ “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”³⁶ The 1980 statute 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.’”³⁷ Individuals who were not married could not get protection under the 1980 Act.³⁸ Moreover, the duration of the order was minimal to say the least. A temporary order only lasted for five days and a subsequent final order “lasted for fifteen days, including the time the temporary order was in effect.”³⁹ Laws like this reflect the mindset that domestic violence is only a temporary issue and that the batterers just need time to cool down so the situation will work itself out.⁴⁰

Over the next decade, the State Legislature recognized there were several problems with the 1980 Act in terms of leaving certain victims without protection and, in 1992, responded with a “major overhaul.”⁴¹ The amendments to the Act expanded the definition of abuse to include “‘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.’”⁴² In addition, the Amendments offered protection to those who previously did not have it. The persons eligible for relief then included former and current spouses who were not household members, as well as cohabitants and vulnerable adults.⁴³ Furthermore, the type of relief granted was expanded to accord Maryland judges the power to award emergency family maintenance (EFM), present the petitioner exclusive use and possession of the family home or the automobile for childcare and employment purposes, and grant the protective order for up to 200 days.⁴⁴

35. *See id.* at 242.

36. *Id.*

37. *Id.* (quoting Susan Carol Elgin, *Domestic Violence: Is Maryland Responding?* 28 MD. BAR J. 43, 44 (1995)).

38. *Id.*

39. *Id.*

40. *See Goodmark, supra* note 16, at 13-14 (noting that police officers believed that domestic violence was a “private matter” and would instruct the couple to “walk around the block”).

41. DuBose, *supra* note 2, at 242.

42. *Id.* at 243 (quoting MD. CODE ANN., FAM. LAW § 4-501(b) (LexisNexis Supp. 2002)).

43. *Id.*

44. *Id.* Although the amendments allow for the protective order to be granted for up to one year, it is not a mandatory time requirement. Judges have discretion when it comes to determining the length of a protective order. *See id.* at 245. Some studies indicate that “[a] few judges order[] protective orders of only 30 days, the shortest duration available under . . . the Act.” *Id.*; accord Regina DuFresne &

The Legislature further amended the Domestic Violence Act in 1994 “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.”⁴⁵

A few changes have occurred since the 1994 Amendments. “In 1995, the General Assembly allowed the court to waive the filing fees for the issuance of a temporary . . . protective order.”⁴⁶ “In 1996, the General Assembly provided that a law enforcement officer may remove a firearm from a domestic violence scene.”⁴⁷ In 1997, there was an increase in the available relief period from 200 days to twelve months.⁴⁸ In 1998, the General Assembly increased the fine an abuser could be assessed for violating a protective order from \$500 to \$1,000; they also adopted separate penalties for the first violation, second violation and any subsequent violations.⁴⁹ In May of 2005, the statute’s definition of abuse was widened to include stalking.⁵⁰ The Maryland Legislature has been reluctant to further broaden the definition of abuse in the Domestic Violence Act to include harassment, malicious destruction of property or trespass.⁵¹ Persons eligible for relief may file a petition alleging abuse and request immediate relief from violence in any District or Circuit Court in Maryland or at any court commissioner’s office when the courts are closed.⁵²

III. HOUSING ISSUES FACED BY VICTIMS OF DOMESTIC VIOLENCE

A. *Housing Issues in General for Domestic Violence Victims*

As a practical matter, domestic violence survivors continually face myriad forms of housing discrimination in admissions and occupancy, as well as in evictions, regardless of whether they continue living with their abuser or if they are trying to live on

Jonathan S. Greene, *Increasing Remedies for Domestic Violence: A Study of Maryland’s 1992 Domestic Violence Act in the Courtroom*, 6 MD. J. CONTEMP. LEGAL ISSUES 155, 172, 176 (1995).

45. DuBose, *supra* note 2, at 244.

46. *Triggs v. State*, 382 Md. 27, 46, 852 A.2d 114, 126 (2004).

47. *Id.*

48. *Id.*

49. *Id.* at 47, 852 A.2d at 126.

50. MD. CODE ANN., FAM. LAW § 4-501(b)(vi) (LexisNexis Supp. 2005).

51. H.B. 327, 2005 Leg., 420th Session (Md. 2005). These actions are covered in the Maryland Peace Order statute that grants a restraining order to those not eligible for relief under the Protective Order statute. See MD. CODE ANN., CTS. & JUD. PROC. § 3-1503(a) (LexisNexis 2002 & Supp. 2005). A Peace Order protects the petitioner from the actions defined as “abuse” in section 4-501 of the Family Code and the actions of harassment, malicious destruction of property and trespass. *Id.* Neither the House nor Senate agreed to include these other actions in the definition of abuse, striking them from the proposed legislation. H.B. 327.

52. MD. CODE ANN., FAM. LAW § 4-503 (a)(2)(iii).

their own.⁵³ Women who have brought criminal proceedings may be screened out of housing opportunities if their names appear in background checks due to mandatory arrest policies when police cannot identify the perpetrator of the violence.⁵⁴ Victims often lack a solid work or credit history because their abusers prevent them from “holding a steady job [or] maintaining financial independence.”⁵⁵ On the other hand, women who have a source of income may be forced to abandon that resource in an effort to escape abuse because their abusers may know where they work and will harass them there.⁵⁶ Additionally, finding references for landlords may be difficult if the abuser cuts the victim off from friends and family.⁵⁷

Sometimes landlords will “punish” a victim of abuse by demanding, as a condition of tenancy, that no violence occur in the future; these conditions are not imposed on other residents.⁵⁸ Also, when a victim is living with her abuser, but only the abuser’s name appears on the lease (as is quite common in an abuser’s quest for control), housing authorities might say they cannot evict the abuser and allow the victim to stay in the home.⁵⁹

B. Issues Facing Domestic Violence Victims in Public Housing

“Women living in poverty are at special risk” of facing homelessness due to domestic violence.⁶⁰ Although domestic abuse pervades all social and economic levels, women of lower socio-economic status usually face the highest rates of violence.⁶¹ For women living in public housing, the risk of losing the home

53. Danielle Pelfrey Duryea, *Court Recognizes Domestic Violence Survivor’s Fair Housing Challenge to Eviction*, 35 HOUSING LAW BULLETIN 181, 181 (2005).

54. *Id.* In Maryland, police may arrest both parties even if the victim called for help if her abuser has visible injuries such as scratches or torn clothing. Often, these injuries on the batterer are defensive marks inflicted by the victim in an attempt to protect herself. *See also infra* note 67.

55. Duryea, *supra* note 53, at 181.

56. *See* Elizabeth J. Thomas, *Building a Statutory Shelter for Victims of Domestic Violence: The United States Housing Act and Violence Against Women Act in Collaboration*, 16 WASH. U. J.L. & POL’Y 289, 292 (2004).

57. *See* Duryea, *supra* note 53, at 181.

58. *Id.*

59. *Id.* However, if the woman gets a protective order and the judge orders the abuser to vacate, while simultaneously giving the victim use and possession of the family home, then the victim can use that court order to convince the housing authorities to let her stay in the unit. *See* MD. CODE ANN., FAM. LAW § 4-513(e)(3), (6)-(7).

60. Duryea, *supra* note 53, at 181.

61. Thomas, *supra* note 56, at 293. However, the link between poverty and domestic violence may be the other way around in that domestic violence is a primary cause of poverty because many women are forced to leave home to escape the abuse with nowhere to go and no resources. *See id.*

and income on which they depend provides “a further disincentive from leaving an abusive relationship.”⁶²

Although some women may lose their shelter when fleeing from violence in their home and have nowhere else to go because they lack resources, others may be evicted as a result of the violence in their home.⁶³ “During the term of the lease, [public housing] tenants must abide by the terms established by their local [Public Housing Agency (PHA)].”⁶⁴ Under the United States Housing Act, public housing landlords are allowed to terminate leases of tenants who engage in, or allow others to engage in, criminal activity, in order to curb illegal activity in public housing.⁶⁵ This termination policy is commonly known as the “one-strike policy” and was originally put in place in 1996 as “an attempt to curb drug-related . . . criminal activity in public housing,” but its reach “extends to all activities that pose a potential threat to other people in the housing complex.”⁶⁶

An episode of abuse may cause the victim, the perpetrator, or a neighbor to call the police. If criminal charges are placed against the abuser, or in cases where both parties are arrested, the public housing landlord may use the criminal activity to terminate the lease.⁶⁷ Although the one-strike rule is important to curb illegal activity in public housing, “permitting [landlord] discretion in situations where tenants . . . do not possess actual control over persons involved in the alleged activities, may actually deter the legislative intent of fighting crime.”⁶⁸

Even if no arrest takes place, and thus no criminal activity can be pinpointed to terminate a lease, landlords in public housing may terminate leases for violations, such as causing a disturbance.⁶⁹ “Many women in public housing fear their landlord will terminate

62. *Id.* at 294.

63. Duryea, *supra* note 53, at 181.

64. Thomas, *supra* note 56, at 306.

65. *Id.* at 298-99.

66. *Id.* at 299-300.

67. Interview with Angelique Green-Manning, Legal Advocate, House of Ruth Maryland Domestic Violence Legal Clinic, in Baltimore, Md. (January 6, 2006). Based on calls received by victims, mutual arrest occurs approximately 20-30% of the time when arrests are made for domestic violence calls. *Id.* Often when a victim has fought back in self-defense and there are marks, cuts or bruises on both parties, the police cannot necessarily tell who was the instigator of the incident and must arrest both parties. *Id.* Another way victims often get a criminal record comes from their abusers filing retaliatory charges against the victim because she either called the police or filed charges against the abuser already. *Id.*

68. Thomas, *supra* note 56, at 306. Instead of fighting crime the law might prevent some people from coming forward because victims may hesitate to contact law enforcement or press charges for fear of losing their housing. *See id.* at 305.

69. *Id.* at 299 n.49.

their leases if they cause a disturbance.”⁷⁰ Primarily, “the abuse itself may constitute a disturbance,” especially if other tenants complain about the noise.⁷¹ Also, “law enforcement response and the resulting commotion could . . . create a disturbance.”⁷² In order to avert a disturbance, victims may succumb quietly to the abuse in order to pacify the abuser’s rage and avoid calling the police.⁷³

C. *Issues Found in Private Housing*

Although the Fair Housing Act prohibits discrimination based on race, sex, ethnicity, age, disability or sexual orientation, it does not forbid discrimination against domestic violence victims.⁷⁴ Landlords of private rental spaces are allowed to determine who may live on their property, as long as it does not violate the Fair Housing Act. Landlords often perform criminal background or credit checks.⁷⁵ For victims of domestic violence, the landlord may place conditions on their tenancy, such as prohibiting violence on the property or restricting the tenant from permitting the abuser to visit the rental unit.⁷⁶

D. *Advancements in the Law*

1. Federal Law Advancements

Recently, the United States District Court for the District of Vermont recognized a domestic violence survivor’s “claim of disparate treatment as a *prima facie* case of sex discrimination under the Fair Housing Act” in the case of *Bouley v. Young-Sabourin*.⁷⁷ Young-Sabourin owned a three-unit private rental property and rented one of the apartments to Bouley.⁷⁸ Three months into the lease, Bouley’s husband attacked her and was arrested.⁷⁹ He later pled guilty to criminal charges related to the attack, and Bouley applied for and obtained a protective order.⁸⁰ Young-Sabourin’s apartment manager decided that Bouley did not conform with the image of a domestic violence victim since she

70. *Id.* at 305.

71. *Id.*

72. *Id.*

73. *Id.*

74. See 42 U.S.C.S. § 3604(a) (LexisNexis 2000).

75. See Lenora M. Lapidus, *Doubly Victimized: Housing Discrimination Against Victims of Domestic Violence*, 11 AM. U. J. GENDER SOC. POL’Y & L. 377, 384-85 (2003).

76. Duryea, *supra* note 53, at 181.

77. *Id.*; see *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005).

78. Duryea, *supra* note 53, at 181.

79. See *Bouley*, 394 F. Supp. 2d at 677.

80. *Id.*

was not in shock and had expressed anger toward her husband.⁸¹ The landlord “was also dubious of [the] abuse claim because she had seen Bouley with a male visitor not long after the attack” and felt Bouley did not appear to want to reconcile with her husband.⁸² The following day, “Young-Sabourin made a list of reasons to evict Bouley that included the domestic violence incident.”⁸³

Bouley’s complaint initially alleged sex discrimination based on a “disparate impact theory” claiming discrimination “against domestic violence victims on the basis of their victim status disproportionately affects women in violation of the Fair Housing Act.”⁸⁴ After realizing that the landlord’s and manager’s depositions revealed that neither believed Bouley behaved “normally for a woman who had been victimized” and that both felt Bouley was “equally responsible for the incident that led to [her husband’s] arrest,” the attorneys advanced the claim under a “disparate treatment” theory instead.⁸⁵ Ultimately, Bouley settled with her landlord before the case went to trial, but not before the court had recognized a legitimate violation of the Fair Housing Act.⁸⁶

Another area of advancement occurred in 2005 when Congress considered national legislation to protect the housing rights of abuse survivors in public and other federally assisted housing.⁸⁷ The VAWA was to be reauthorized in 2005 and would otherwise have expired by the end of September 2005.⁸⁸ Known as Senate Bill 1197, the legislation included a new subtitle, “Housing Opportunities and Safety for Battered Women and Children,”⁸⁹ devoted to housing issues.⁹⁰ There were significant Congressional

81. Duryea, *supra* note 53, at 182.

82. *Id.* The landlord even asked Bouley about her husband and her religious beliefs, insinuating that Bouley should forgive her husband for his behavior. *See id.* Bouley refused to talk about the matter and asked the landlord to leave. *See id.*

83. *Id.*

84. *Id.*

85. *Id.* “Under the disparate treatment theory . . . housing discrimination against a woman because she fails to conform to . . . gender stereotypes violates the Fair Housing Act.” *Id.* It was determined that the landlord and apartment manager acted on three different gender stereotypes: First, “that domestic violence can be provoked and that sometimes . . . both parties are responsible” (as both the landlord and manager believed was true in this case); second, “that victims do not get angry” and because Bouley expressed anger at her husband it “was proof that she had violent potential;” and third, “that men who appear to be ‘upright’ and ‘honorable’ . . . do not beat their wives.” *Id.*

86. *See id.* at 181.

87. *Id.* at 185.

88. *Id.*

89. Violence Against Women Act of 2005, S. 1197, 109th Cong. (1st Sess. 2005).

90. Duryea, *supra* note 53, at 185. The legislation proposed an appropriation of \$150 million over five years “to fund collaborative efforts between domestic violence organizations and housing providers, programs to combat family violence in

findings on the issue including: “[A] strong link between domestic violence and homelessness;”⁹¹ “an existing problem of housing discrimination against survivors of domestic violence;”⁹² “a severe lack of emergency, transitional, and long-term housing options for . . . victims and their children . . . ; barriers to housing access as a direct result of domestic abuse . . . ; and challenges faced especially by victims living in rural areas.”⁹³ “The proposed housing provisions emphasize . . . a government-advocate collaboration” in order to make millions of dollars available to “[PHAs], owners of assisted housing, and victim advocacy organizations.”⁹⁴ Another notable provision would “amend the public housing and Section 8 voucher programs to prevent victims of domestic and sexual violence from being evicted from or denied access to public and assisted housing on the basis of their victim status or their abusers’ criminal activity.”⁹⁵ Of course, laws passed and laws implemented are two different things; time will tell whether these new provisions are effective.

Eleven different housing industry organizations objected to parts of the VAWA Reauthorization Bill.⁹⁶ Their chief concerns were the Bill’s “proposed changes to occupancy and eviction procedures”⁹⁷ The coalition of housing organizations did not agree with the “implicit limits on PHA and property owner authority to engage in ‘one-strike’ eviction and termination policies”⁹⁸ These industry organizations argue that the Bill’s changes would “inadvertently protect household members and guests engaged in criminal activity where a tenant has claimed to be a domestic violence victim.”⁹⁹ Despite these expressed concerns, the Bill passed in both the House and Senate and was enacted in January 2006.¹⁰⁰

public, Indian, and other federally assisted housing, and enhancements to traditional housing resources for survivors of domestic violence.” *Id.*

91. *Id.* See also *supra* Part III(B).

92. Duryea, *supra* note 53, at 185. See also *supra* in Part III(A), (B) and (C).

93. Duryea, *supra* note 53, at 185.

94. *Id.*

95. *Id.* at 186.

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.* at 187. Advocates for the Bill respond that it is unreasonable to “evict domestic violence victims on the basis of their abuser’s criminal violence . . . [and] that the bill preserves landlords’ rights to evict anyone engaging in criminal conduct, including abusers.” *Id.*

100. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (codified in 42 U.S.C. § 13701).

2. Individual State Law Advancements

A handful of states have gone beyond the national laws passed in Congress through the new VAWA, and passed laws to protect domestic violence victims from discrimination and punishment from the landlord in both public and private housing. Rhode Island, Wisconsin, Arizona, and most recently, Colorado, have all passed laws that prohibit discrimination by landlords on the basis of domestic violence victim status.¹⁰¹

The different states' laws all have a common theme of preventing or prohibiting discrimination against victims of domestic violence. In 2002, Rhode Island created a law that makes it "unlawful and against public policy to discriminate against a tenant or applicant for housing solely on the basis that said tenant or applicant is a victim of domestic violence."¹⁰² The wording is extremely direct and clear—it is unlawful to discriminate against these victims based on their status.

Wisconsin's law states, "[n]o claim that an individual's tenancy would constitute a direct threat to the safety of other persons or would result in substantial damage to property may be based on the fact that a tenant has been or may be a victim of domestic abuse"¹⁰³ Although less direct, Wisconsin's law precludes landlords from using typical excuses for not accepting victims of domestic violence for tenancy.

Arizona's law goes further than the other states' laws because it prohibits provisions in rental agreements that would disadvantage a person suffering from domestic abuse.¹⁰⁴ Specifically, a rental agreement shall not provide that the tenant: "Agrees to waive or limit the tenant's right to summon a peace officer or other emergency assistance in response to domestic violence . . . [or] [a]grees to payment of monetary or other penalties for summoning a peace officer or other emergency assistance in response to domestic violence"¹⁰⁵

Colorado joined these other states in 2005 when the governor signed legislation which provided that a domestic violence victim cannot be held liable for unlawful detention of real property as a result of abuse.¹⁰⁶ Furthermore, the law states abusive behavior cannot be considered a substantial violation of a lease by the victim of that abuse, but the landlord still has the right to evict the

101. Duryea, *supra* note 53, at 184.

102. R.I. GEN. LAWS § 34-37-2.4 (Supp. 2005).

103. WIS. STAT. § 106.50 (2002 & Supp. 2005).

104. ARIZ. REV. STAT. ANN. § 33-1315 (Supp. 2005).

105. *Id.*

106. COLO. REV. STAT. § 13-40-104(4)(a) (Supp. 2005).

abuser.¹⁰⁷ This part of the law should satisfy both landlords and tenants because landlords do not have to allow abusers to stay on the property and cause disturbances, but victims will not be punished for their status either. Finally, the new law allows victims to break their leases by a written notice to landlords.¹⁰⁸

Currently, Maryland has no state law in place to protect victims of domestic violence from housing discrimination. Now that President George W. Bush has signed the VAWA Reauthorization, people living in federally subsidized housing will be afforded the protections mentioned in the previous section. Unfortunately, this still allows private owners to discriminate against tenants that face domestic abuse. Maryland needs to look at other states' examples and formulate legislation that will put a stop to housing discrimination based on domestic violence.

IV. ISSUES WITH OTHER THIRD-PARTIES

A. Employers

Another area where victims of domestic abuse face discrimination is employment. "Up to one half of domestic violence victims report that they have lost a job due, at least in part, to the violence in their lives"¹⁰⁹ In states that lack protective laws, employers can get away with firing employees who take time off from work to attend to issues related to domestic violence.¹¹⁰ Several states do have laws that "prohibit employers from firing or retaliating against domestic . . . violence victims in certain circumstances. Many of these laws provide that employers cannot fire or take other actions against employees who take time off from work to address domestic . . . violence."¹¹¹

Illinois currently has the most comprehensive law prohibiting discrimination against victims of domestic violence, whereas other states have laws specifically prohibiting employment discrimination.¹¹² In 2005, eleven states had laws against

107. COLO. REV. STAT. § 13-40-107.5 (2005).

108. COLO. REV. STAT. § 38-12-402(2)(a) (Supp. 2005).

109. *State Law Guide: Employment Discrimination Against Victims of Domestic and Sexual Violence*, 1 (2006), available at <http://www.legalmomentum.org/issues/vio/discrim.pdf>.

110. *See id.* There are a number of possible reasons why an employee may be missing work, including: recuperation at home from injuries sustained from the abuse, hospital stays due to injury from abuse, attempts to find alternate housing or emergency shelter, court visits for civil protective orders or criminal cases against the abuser. An employee may even take time off from work fearing the abuser will go and find her there.

111. *Id.*

112. *Id.* at 2. In fact, Illinois is the only state that has such a broad and general law. Other states have laws aimed specifically at employment discrimination. The Illinois law states, "an employer with fifty or more employees—or a state or local

employment discrimination.¹¹³ Currently, seven other states have recent legislative proposals for laws that would prohibit this type of discrimination.¹¹⁴

Maryland, once again, proves woefully deficient in laws that protect victims of domestic violence from third-party abuse, having only an Executive Order addressing the problem. The Executive Order “prohibit[s] unfair treatment of state employees based solely on their status as victims of domestic violence.”¹¹⁵ This is problematic for two reasons. First, the order states that unfair treatment cannot be based *solely* on one’s status as a domestic abuse victim. The employer may apparently use this status as part of a reason for unfair treatment of an employee. Second, the order only “protects” victims that are state employees. This leaves a large number of employees, the ones that are not employed by the State, unprotected against discrimination for their status as domestic violence victims. Maryland needs to update and broaden this Executive Order, or needs to create legislation that tackles this issue.

Of the eleven states that have current laws against employment discrimination, California, Illinois and Rhode Island have the most inclusive laws. Maryland legislators must examine these states’ laws in order to enact legislation that adequately protects victims of domestic violence. This could be done by taking the lead from the laws discussed below.

California’s two laws prohibit employers from firing, or discriminating against, an employee who is a victim of domestic violence who takes time off to obtain or attempt to obtain judicial relief to help ensure his or her health, safety or welfare or that of his or her child.¹¹⁶ Additionally, where the employer has at least twenty-five employees, the employer cannot discharge or discriminate against a victim who takes time off to seek medical attention, obtain services from a domestic violence shelter or

government agency or school district—may not fail to hire, fire, harass, otherwise discriminate or retaliate against any individual because the individual is, or is perceived to be, a victim of domestic . . . violence.” *Id.* The law also provides that “public agencies cannot deny or reduce benefits or otherwise sanction a victim of domestic . . . violence . . . [and must] provide victims with up to 12 weeks off from work.” *Id.*; see 820 ILL. COMP. STAT. 180/1-45 (Supp. 2006).

113. See CAL. LAB. CODE §§ 230, 230.1 (West 2003 & Supp. 2006); COLO. REV. STAT. § 24-34-402.7 (2005); CONN. GEN. STAT. § 54-85B (Supp. 2006); FLA. STAT. § 11A-61 (2005); HAW. REV. STAT. § 378-72 (Supp. 2005); 820 ILL. COMP. STAT. 180/1-45 (Supp. 2006); ME. REV. STAT. ANN. tit. 25, § 850 (Supp. 2005); MD. CODE. REGS. 01.01.1998.25 (1998); N.Y. PENAL LAW § 215.14 (McKinney 1999); N.C. GEN. STAT. § 95-241 (2005); R.I. GEN. LAWS § 12-28-10 (2002).

114. See *State Law Guide*, *supra* note 109. The states are: Kentucky, Louisiana, Massachusetts, New Jersey, Oklahoma, Pennsylvania and Tennessee. See *id.*

115. MD. CODE. REGS. 01.01.1998.25 (1998).

116. CAL. LAB. CODE § 230 (West 2003).

program, get counseling, participate in safety planning or relocate.¹¹⁷ The law is particularly thorough in that it addresses both the victims who choose to go through the court system to get relief and the victims who use other services, such as shelters or counseling.¹¹⁸

Like the California statutes, Illinois' law prevents certain employers from discriminating or retaliating against individuals who are victims or family members of victims, who must take time off from work to prepare for, or participate in, civil and/or criminal trials related to the domestic abuse.¹¹⁹ Although the Illinois law does not cover victims who use other services like counseling, as the California law does, the law requires employers to make reasonable accommodations for the victim suffering from the violence, such as "changed telephone number, transfer, modified schedule, or time off"¹²⁰ Moreover, the law states that such employers cannot take actions against an individual on the basis of disruptions (threatened or actual) of the workplace by an abuser, and public agencies cannot deny or reduce benefits or otherwise sanction a victim of domestic violence.¹²¹ The first part of this is similar to the new housing provisions of VAWA that do not allow public housing landlords to evict victims based on their abuser's behavior.¹²²

Although Rhode Island's law does not cover the scope that the California and Illinois laws cover, the law is unique from other states' laws in that it "prohibits an employer from refusing to hire, discharging, or discriminating against an individual solely because the individual seeks or obtains a protective order or refuses to seek or obtain such an order."¹²³ This is the only law that prohibits employers from refusing to *hire* someone based on the applicant's status as a victim of domestic abuse or the applicant's decision to seek a protective order, whereas the remaining ten states have laws that prevent discrimination against someone who is already an employee.¹²⁴

In 2002, despite not having a statute in place to address employment discrimination against victims of domestic violence, the Superior Court of Massachusetts denied a motion of a

117. CAL. LAB. CODE § 230.1 (West 2003 & Supp. 2005).

118. *Id.*

119. See 820 ILL. COMP. STAT. 180/1-45 (Supp. 2006).

120. *State Law Guide*, *supra* note 109, at 2; see 820 ILL. COMP. STAT. 180/30. The "time off" portion appears to cover the victim's need to seek other services such as a shelter or counseling without specifically stating as much. See 820 ILL. COMP. STAT. 180/1-45.

121. See 820 ILL. COMP. STAT. 180/30(a).

122. See Duryea, *supra* note 53, at 186.

123. *State Law Guide*, *supra* note 109, at 3; R.I. GEN. LAWS. § 12-28-10 (2002).

124. See *supra* note 109.

defending employer to dismiss a discrimination claim brought by a former employee.¹²⁵ Sophia Apessos was employed by Memorial Press Group (MPG) from June 1999 through July 2000.¹²⁶ “During that time she suffered verbal and physical abuse from her then husband.”¹²⁷ On Saturday, July 29, 2000, Mrs. Apessos was beaten by her husband and she sought help from the local police.¹²⁸ The police arrested her husband, charged him with assault and battery, and helped Mrs. Apessos obtain a temporary protective order since the courts were closed.¹²⁹ On Saturday evening, the plaintiff called her supervisor and “left a voice message that she would be absent on Monday in order to attend court proceedings.”¹³⁰ Along with the court proceedings for an extension of the protective order and the arraignment of her husband that Monday, Mrs. Apessos went to the police station to have photos taken of her face for evidence, and later returned home to have her door locks changed.¹³¹ On Monday afternoon, the plaintiff called her supervisor at work to explain the need to meet the locksmith and to say she would be back at work the next morning.¹³² When Mrs. Apessos arrived at work that Tuesday morning, MPG’s human resources director terminated her.¹³³ The court determined that Mrs. Apessos had stated a claim upon which relief could be granted.¹³⁴

Since this case, the Massachusetts Legislature has proposed a law that would “prohibit employers from discriminating or retaliating against victims of domestic violence . . . who take time off to take various steps to address the violence . . . [and] an employee may file a civil action against the employer . . . and may be restored to her original or equivalent position and awarded lost wages and benefits.”¹³⁵

B. Insurance Carriers

Third-parties that do not know of the domestic abuse situation in a household may cause further harm to the victim through

125. *Apessos v. Memorial Press Group*, 2002 Mass. Super. LEXIS 404, *13 (Mass. Super. Ct. 2002).

126. *Id.* at *1.

127. *Id.*

128. *Id.*

129. *Id.* at *1-2.

130. *Id.* at *2.

131. *Id.*

132. *Id.*

133. *Id.* at *3.

134. *Id.* at *13. There was no further history on the case. The employer possibly chose to settle the case, rather than go forward, once it was made clear that Ms. Apessos had a rightful civil complaint.

135. *State Law Guide*, *supra* note 109, at 4; *see also* S.B. 1091, 184th Gen. Court (Mass. 2005).

manipulation by the abuser. Abusers can find creative ways to punish their victims that are not physical per se, but that will hurt the victims nonetheless. One of these ways is through terminating the victim's insurance. Abusers can use all varieties of insurance as a means of controlling their victims, medical insurance being the most common.¹³⁶ Abusers have also been known to terminate their victim's car insurance to prevent them from driving and have threatened to take the children off of the medical insurance policy and then hurt them.¹³⁷

In Maryland, there are no laws prohibiting one spouse from removing the other spouse, or their children-in-common, from a medical insurance policy. The only ways a victim can avoid being left without coverage is to submit to her abuser's demands, or to file for divorce and ask the court to enjoin her spouse from removing her or the children from his medical insurance policy.¹³⁸ It is within the court's equitable powers to make such an order, and a judge may be inclined to make such a ruling when either children are involved, or the petitioning spouse has a serious medical condition.¹³⁹

C. Utility/Phone Companies

After a victim obtains a protective order, her abuser may attempt to control her emotionally in less obvious ways. For example, an abuser can shut off the utilities or telephone services.¹⁴⁰ Often, these bills are set up in the abuser's name (as yet another means of control).¹⁴¹ When a woman receives a protective order from the court, there is often an order directing the abuser to vacate the shared home.¹⁴² In Maryland, and in nearly every other state in the nation, the abuser can legally have the services shut off if he chooses to do so in retaliation, and it is

136. Interview with Angelique Green-Manning, Legal Advocate, House of Ruth Maryland Domestic Violence Legal Clinic, in Baltimore, Md. (January 6, 2006). Ms. Green-Manning stated that it is not uncommon to have a caller say that the abuser took her off of the medical insurance coverage, especially when the victim has a serious medical condition, in retaliation for something the victim did that displeased the abuser. *Id.* The advocate estimated that she received calls of this nature about once a week. *Id.*

137. *Id.* According to the advocate, this type of behavior is more about controlling the victim. *Id.* The abuser knows the victim will often do whatever she can to protect her children from experiencing harm, even giving in to the abuser's demands. *Id.*

138. *Id.*

139. *Id.*; see also MD. R. 15-502(b) (LexisNexis 2006) (providing the court the power to grant an injunction "upon the terms and conditions justice may require").

140. Interview with Angelique Green-Manning, Legal Advocate, House of Ruth Maryland Domestic Violence Legal Clinic, in Baltimore, Md. (January 6, 2006).

141. *Id.*

142. *Id.*; see MD. CODE ANN., FAM. LAW § 4-506(d)(4) (2004).

possible for the overdue payments or the reconnection fees to be too expensive for the victim. Granted, these third-party utility companies may not know this is happening, but safeguards can be put in place to help the victim make such transitions in the precarious time following the issue of a civil protective order.¹⁴³

1. Telephone Shut-Off

For a victim, having the telephone service shut off can be extremely distressing, especially if that victim has used the telephone to call for help or support in the past. There are no cases in Maryland involving telephone service shut-off, but a court in New Jersey held that shutting off a phone service was not domestic violence when proof of other violence did not exist.¹⁴⁴

Mrs. Corrente filed a domestic violence complaint against the defendant, her husband, from whom she was separated, stating that he called her at work “threatening drastic measures if [she] did not supply [him] with money to pay bills.”¹⁴⁵ When Mrs. Corrente returned home that afternoon, her phone service was disconnected and she later discovered her husband had his sister shut the service off for him.¹⁴⁶ The trial court found that domestic violence had occurred based on the plaintiff’s fear and called the defendant’s behavior harassment.¹⁴⁷ The appellate court overturned the decision on the grounds that the behavior “was neither repeated nor a course of conduct” as is required by the state’s statute.¹⁴⁸ The appellate court stressed that neither Mrs. Corrente’s complaint nor the trial judge’s finding asserted any *history* of domestic violence.¹⁴⁹ Although the appellate court did not go to the next step and say it would affirm the trial court’s ruling in the context of regular abuse, it seems logical to make that assumption.

A Colorado case cites a wiretapping statute in finding behavior by an abuser to be illegal.¹⁵⁰ Stephan Shepard, while in a struggle with his wife over a small camping hatchet, cut the telephone cord to prevent his daughter from calling 911.¹⁵¹ Wiretapping is

143. See *infra* Part V for suggested amendments to the Domestic Violence Prevention Act.

144. Corrente v. Corrente, 657 A.2d 440, 442 (N.J. Super. Ct. App. Div. 1995).

145. *Id.* at 441.

146. *Id.*

147. *Id.* at 442. The plaintiff was alarmed by the defendant’s threat to take “drastic measures.” *Id.* at 441. The trial court saw this as a threat of possible harm, whereas the appellate court determined no violence had occurred. *Id.* at 442. Perhaps the drastic measure was for the defendant to disconnect the line for lack of money, not as a threat to the plaintiff’s well-being.

148. *Id.* at 444.

149. *Id.*

150. People v. Shepard, 983 P.2d 1 (Colo. 1999).

151. *Id.* at 2.

considered a class six felony in Colorado, and the statute states that anyone who is not a sender of a telephone communication commits wiretapping if he knowingly prevents, by any means, the sending of a message through a telephone wire.”¹⁵² Although the statute is not part of any domestic violence prevention act, it is an example of how statutes outside the family law code may be used to avail victims.¹⁵³

Maryland has a wiretapping statute;¹⁵⁴ however, there are no published cases where a victim of domestic violence has alleged, in a criminal complaint, the act of wiretapping. Of course, there is nothing stopping the legislators from putting this wiretapping offense in the rest of the Domestic Violence Prevention Act found in the Family Law Article section of the Maryland Code. In Part V, the amended statutes created by the author will demonstrate how this could be done.

2. Utility Shut-Off

Maryland’s Protective Order statute allows for the judge to order the abuser to vacate the shared home.¹⁵⁵ At times, the abuser will not want to cooperate with the person whom he sees as responsible for “kicking” him out of his home.¹⁵⁶ Several victims face the problem of gas and electric or water disconnection initiated by their abuser.¹⁵⁷ For some victims, this can be a mere annoyance, whereas others feel harassed or further victimized.¹⁵⁸ Unfortunately, for a number of women, their new single status leaves them with a financial burden they cannot shoulder, and a disconnection of utilities can lead to reconnection fees or overdue bills that their abuser refused to pay before he was forced to vacate.¹⁵⁹

152. *Id.* at 3.

153. *See also* *People v. Richardson*, 983 P.2d 5 (Colo. 1999). *Richardson* was based on the same wiretapping statute and another domestic violence situation. *Id.* at 6. *Richardson* attacked his live-in girlfriend and when she tried to call 911 he attempted to get the phone away from her. *Id.* When he failed to get the phone, he cut the line and proceeded to sexually assault her. *Id.*

154. MD. CODE ANN., CTS. & JUD. PROC. § 10-402(a)(1) (LexisNexis 2002 & Supp. 2005). The statute makes it a felony punishable by up to five years in prison or a \$10,000 fine for anyone who intercepts or attempts to intercept any wire, oral or electronic communication. *Id.* at § 10-402(b).

155. MD. CODE ANN., FAM. LAW § 4-506(d)(4) (LexisNexis 2004). In situations where the victim is not a spouse, this can only occur when either the victim’s name is also on the lease, or the victim has shared the home with the abuser for at least 90 days in the last year. *Id.* If the victim’s name is not on the lease, she will not be given this relief and will need to move out and find a place of her own.

156. Interview with Angeliqne Green-Manning, Legal Advocate, House of Ruth Maryland Domestic Violence Legal Clinic, in Baltimore, Md. (January 6, 2006).

157. *Id.*

158. *Id.*

159. *Id.*

A legal advocate at the House of Ruth Maryland Domestic Violence Legal Clinic estimated that at least one victim per week calls and reports that her utilities have been disconnected by her abuser.¹⁶⁰ More often than not, the victim cannot afford the expense of past-due payments or the reconnection fee and will have to borrow money from a relative or apply for emergency aid at the Department for Social Services.¹⁶¹

If Maryland amended the protective order statute to include prevention of utility shut-off, it could truly be a leader in our country, demonstrating more effective laws to protect victims. Currently, only one state has a statute that specifically forbids the defendant in a civil protective order case from shutting off any utilities.¹⁶² Massachusetts' definition section of the Abuse Prevention chapter states that when a court gives a vacate order, the defendant "shall not shut off or cause to be shut off any utilities . . . to the plaintiff."¹⁶³ This is not to say that the abuser should be required to pay for utilities when he no longer lives on the premises, but instead of having them shut off, he could have the bill transferred over to the victim's name.

D. Child Protective Services

Another third-party that has caused further grief to abused women is the state child protection agency. These agencies often become involved because of the abuse that is occurring towards the mother.¹⁶⁴ Batterers have been known to get child protective services involved as a means to further control and inflict harm upon their victims.¹⁶⁵

1. Child Protective Services Initiated Intervention

In New York, a federal action was brought on behalf of three mothers and their children who were separated "because the mother had suffered domestic violence, to which the children were exposed, and the children were for that reason deemed neglected

160. *Id.*

161. *Id.*

162. *See* MASS. GEN. LAWS ANN. ch. 209A, § 1 (West 1998).

163. *Id.*

164. Interview with Angelique Green-Manning, Legal Advocate, House of Ruth Maryland Domestic Violence Legal Clinic, in Baltimore, Md. (January 6, 2006). The agencies are concerned with the safety of children who live in a household where domestic abuse occurs. *Id.* The author does not disagree with Child Protective Services getting involved when the children are being injured (physically or emotionally) as a result of the abuse. However, emphasis should be placed in helping the victim and her children escape the abuse instead of further rendering the family incomplete by placing the children in foster care.

165. LUNDY BANCROFT & JAY G. SILVERMAN, THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS 74 (2002).

by her.”¹⁶⁶ Since the New York City Administration for Children’s Services classified the children of these women as “neglected,” the children were removed from their homes.¹⁶⁷ The children merely witnessed the abuse and were not subject to the physical abuse themselves; the mothers did not respond to the abuse with violence.¹⁶⁸ The U.S. District Court for the Eastern District of New York, concluded that the city “may not penalize a mother, not otherwise unfit, who is battered by her partner, by separating her from her children, nor may children be separated from the mother, in effect visiting upon them the sins of their mother’s batterer.”¹⁶⁹ On appeal, the Second Circuit held that the trial court had not abused its discretion, but certified three questions to the Court of Appeals of New York.¹⁷⁰ The questions were intended to determine whether a mother, who is a victim of domestic abuse, but who does not shield her child from seeing that abuse, is harming the child and is thus an unfit parent.¹⁷¹ The Court of Appeals of New York answered all three questions in the negative.¹⁷²

There are no published cases in Maryland pertaining to this issue, but mothers who suffer from abuse in Maryland may find themselves in a situation similar to what the mothers in New York City faced. Instead of taking the children away to “protect” them from witnessing the abuse, resources should be put into keeping the mother with her children away from the abusive situation. Instead of placing children in foster care, state money should be

166. *Nicholson v. Scoppetta*, 820 N.E.2d 840, 842 (N.Y. 2004). The Court of Appeals of New York opinion was in response to three certified questions sent by the United States Court of Appeals for the Second Circuit, which was hearing a federal class action suit brought by the mothers claiming that the Administration for Children’s Services had a policy to remove children from mothers who were victims of domestic violence without probable cause or due process of law. *Id.* at 842-43. The plaintiffs believed that policy was “an unlawful interference with their liberty interest in the care and custody of their children in violation of the United States Constitution.” *Id.* at 843.

167. *Id.* at 842.

168. *See id.* at 842-43.

169. *Id.* at 843 (quoting *In re Nicholson*, 181 F. Supp. 2d 182, 188 (E.D.N.Y. 2002)).

170. *Id.* at 843-44. The first question was whether “the definition of ‘neglected child’ under [the state code] include[s] instances in which the sole allegation of neglect is that the parent or other person legally responsible for the child’s care allows the child to witness domestic abuse against the caretaker.” *Id.* at 844. The second question was whether “the injury or possible injury, if any, that results to a child who has witnessed domestic abuse against a parent or other caretaker constitutes ‘danger’ or ‘risk’ to the child’s ‘life or health’ as those terms are defined in [the state code].” *Id.* at 847. The third question was whether “the fact that the child witnessed such abuse suffice[s] to demonstrate that ‘removal is necessary’ . . . or that ‘removal was in the child’s best interest’ . . . or must the . . . agency offer additional, particularized evidence to justify removal.” *Id.* at 854. All three questions were answered in the negative. *Id.* at 840.

171. *See id.* at 841.

172. *Id.* at 840.

spent to support organizations that help abused mothers and their children start a new life on their own. Placing a child in foster care can affect a child as negatively as that child viewing abuse in the home.¹⁷³

2. Batterer Initiated Intervention by Child Protective Services

Some batterers will see Child Protective Services (CPS) as another means of imposing control over their victims. Abusers will threaten to take the children away by calling CPS to allege that the mother abuses the children, is a drug addict or any other false claims.¹⁷⁴ If CPS becomes involved, the children may be taken into foster care, or, if the batterer has moved out of the home, the children may be placed with him.¹⁷⁵ In cases where the children are not biologically related to the batterer, the abuser can appeal to CPS and act, quite convincingly, as a “concerned, somewhat detached [man] who simply [wants to] ‘help her with her problems with her children.’”¹⁷⁶ In cases where child protective workers lack experience and awareness of the dynamics in an abusive relationship, the abuser can succeed in using the child protective system against the victim.¹⁷⁷

V. SUGGESTIONS FOR CHANGE IN MARYLAND’S STATUTES

A. *Positive Aspects of Maryland Domestic Violence Law*

Despite certain shortcomings, Maryland does have some functional laws in place. Maryland has a fairly comprehensive list of persons eligible for relief under the statutes.¹⁷⁸ Law

173. See *id.* at 849. The author recognizes there is a large correlation between children experiencing violence in the home and those children later being violent or susceptible to violence themselves when they are adults. See BANCROFT & SILVERMAN, *supra* note 165, at 1. There is no intention to downplay the seriousness of the effect on children witnessing abuse, merely a suggestion that taking the child away from his/her family is not necessarily the best decision when trying to help that child.

174. See BANCROFT & SILVERMAN, *supra* note 165, at 74. The claims the abuser makes may or may not be true, but often CPS “fail[s] to take domestic violence into account” when they are evaluating the situation and will hold the mother “responsible for the effects on the children of the batterer’s behavior.” *Id.* at 74.

175. *Id.*

176. *Id.*

177. *Id.*

178. The definition of person eligible for relief includes:

Current or former spouse of the [abuser]; a cohabitant of the [abuser]; a person related to the [abuser] by blood, marriage, or adoption; a parent, stepparent, child or stepchild of the [abuser] or of the person eligible for relief who resides or resided with the [abuser] or person eligible for relief at least 90 days within [one] year before

enforcement officers who respond to requests for help are required to inform victims of their rights to file criminal charges and to give a written notice that includes the telephone number of a local domestic violence program.¹⁷⁹ Women who file for the issuance or service of either an interim, temporary or final protective order, or a witness subpoena, are not required to pay any filing fees or costs.¹⁸⁰ Furthermore, the list of relief available upon the issuance of a final protective order is fairly complete.¹⁸¹

Maryland also has an excellent resource for financial aid to women who have suffered from domestic violence and have been successful in pressing criminal charges—the Maryland Criminal Injuries Compensation Board.¹⁸² There are extremely stringent conditions that must be met in order to benefit from the Board.¹⁸³ These conditions may cause some victims to be unable to apply for this aid, highlighting the need for more financial aid specifically allocated for domestic violence victims coming not just from non-profit associations, but from the government as well.

the filing of the petition; a vulnerable adult; or an individual who has a child in common with the [abuser].

MD. CODE ANN., FAM. LAW § 4-501(l) (LexisNexis 2006).

179. *Id.* at § 4-503(a). As the law enforcement officers are often the first contact a victim has with the justice system that is meant to protect her, the officers provide an invaluable service by supplying this information.
180. *Id.* at § 4-504(c). This is especially important for women who do not have access to funds due to their abuser's control, or women who simply cannot afford court fees due to their socio-economic status.
181. Relief can include any or all of the following: an "order to the respondent to refrain from abusing or threatening to abuse;" an order to "refrain from contacting, attempting to contact or harassing;" an order to the respondent to "refrain from entering the home of any person eligible for relief;" an award of temporary use and possession of the home (and/or car) to the petitioner, along with a vacate order given to the respondent; an order to the respondent to "remain away from the place of employment, school or temporary residence" of the petitioner or any of her family members' homes; an order for the respondent to "remain away from a child care provider;" an award of temporary custody of a common minor child to the petitioner; an establishment of temporary visitation with a minor child (if the court finds it safe for the child and the petitioner); awarding "emergency family maintenance" to the petitioner if the respondent is found to have a duty of support; directing either party to attend counseling or a domestic violence program; an order to surrender "any firearms in the respondent's possession for the entire duration of the protective order;" or an order to the respondent "to pay filing fees and costs." *Id.* at § 4-506(d).
182. The Maryland Criminal Injuries Compensation Board provides financial assistance for innocent victims of crime. MD. CODE ANN., CRIM. PROC. § 11-802 (LexisNexis 2002 & Supp. 2005). They may help compensate victims who suffered physical injury by helping with payment of medical expenses and providing payment for some lost wages that stem from the crime. *Id.* at § 11-810.
183. The crime must have been reported to the police within 48 hours after the occurrence of the crime. *Id.* at § 11-810(a)(1)(iii). The Board must find that "a crime or a delinquent act was committed" that caused either "physical injury or death to the victim" or psychological harm that required mental health counseling. *Id.* at § 11-810(a)(1)(i)-(ii). If the Board finds the victim contributed in any way to her injuries, the Board may reduce the award or reject the claim. *Id.* at § 11-810(d)(1).

B. *Suggestions for Improvement*

The first opportunity for improvement is remedying the lack of laws protecting victims from housing discrimination. Federal lawmakers have already taken some action with the new provisions in VAWA.¹⁸⁴ There is still the problem of potential discrimination in private housing. Maryland legislators should create a statute that combines the best parts of the Rhode Island, Arizona and Colorado statutes.¹⁸⁵ An ideal statute would not only prevent discrimination against victims when they apply for housing, but would also not allow abusive behavior, by the abuser, to be a breach of a victim's lease.¹⁸⁶ Such a statute would prevent landlords from including lease provisions that deter victims from calling the police in response to violence.

Another progressive step Maryland can take is to enact laws that preclude employers from discriminating against prospective or current employees based on their status as a victim of domestic violence. The current Executive Order only protects state employees; this needs to be expanded.¹⁸⁷ Several other states can provide Maryland state legislators with a place to start.¹⁸⁸

Having a law against employment discrimination is especially important for the victims who already have jobs and need to maintain them in order to preserve their self-sufficiency.¹⁸⁹ Moreover, a law in this area would help those who have yet to leave their abuser for fear of retaliation at work while they attend court proceedings.¹⁹⁰

Maryland lawmakers could easily solve the problem of abusers' tactics of disconnecting utilities and telephone services to harass their victims. Massachusetts lawmakers included within the definition of "vacate order" that the abuser shall not turn off or cause to be turned off any of the utilities.¹⁹¹ The addition of a "no shut off" policy would fit nicely into the relief section of the protective order statute.¹⁹²

Another way to improve Maryland's current domestic violence laws would be to enhance the penalties for domestic violence

184. *See supra* Part III(D)(1).

185. *See supra* Part III(D)(2).

186. *See* Appendix A. The appendix includes sample statutes and citations to indicate where the author feels the statute would best fit in the Code.

187. *See supra* text accompanying note 114.

188. *See supra* Part IV(A).

189. *See* Appendix A.

190. *See id.*

191. *See supra* text accompanying note 163.

192. *See* Appendix A.

crimes.¹⁹³ Several other states have “enhanced penalties”¹⁹⁴ that treat crimes involving domestic violence alone, or specific factors coupled with domestic violence, more stringently. There are eight categories of statutes that are defined as “enhanced penalties.”¹⁹⁵ When a particular crime has anything to do with domestic violence, for example, an assault and battery on a pregnant spouse, some states make the penalties more severe.¹⁹⁶ In Maryland, assaulting a spouse or intimate partner is illegal, but there is no statutorily enhanced sentence for an assault on a partner versus an assault on a perfect stranger. In fact, of the eight enhanced penalty categories, Maryland only has a statute that falls into one: protection order violations.¹⁹⁷ As of 2005, twenty-one states have enhanced penalties for stalking associated with domestic violence, and eleven states punish the abuser more often if the violence was done in front of a child.¹⁹⁸ The apparent philosophy behind the enhanced penalties is that when there are tougher consequences, abuse is less likely to occur.¹⁹⁹ Maryland legislators should consider enhancing penalties for batterers.

VI. CONCLUSION

Maryland’s catalogue of domestic violence laws has progressed since the movement to address domestic abuse started in the 1970s, producing the first state statute in 1980. Just as the nation’s laws have improved over time with the additions to the VAWA,²⁰⁰ Maryland has made some important changes to help protect victims of domestic violence.²⁰¹ Among the most effectual changes were the addition of non-spouses to the definition of persons eligible for relief, the expansion of the definition of abuse

193. See EVE ZAMORA, ENHANCED PENALTIES FOR DOMESTIC VIOLENCE CRIMES 2005, available at

<http://data.ipharos.com/bwjp/documents/Enhanced%20Penalties%202005.pdf>.

194. *Id.* The term used in Zamora’s paper refers to sentencing, fines, charging, protection order violations, repeat offenders and mandatory treatment. *Id.*

195. *Id.* These categories range from “aggravating factors” and “child witnesses” to “protective order violations” and “stalking.” *Id.*

196. *Id.*

197. *Id.* at 2. When an abuser violates a protective order, there are potential punishments that include either fines or jail time. *Id.* at 85. The reality, however, is that abusers that violate a protective order are rarely fined or sent to jail on a first or even second violation of the order.

198. *Id.* at 2-4.

199. The author is unaware of any studies that either corroborate or undermine this belief. There is a valid argument that some abusers will continue their violent ways despite harsher penalties, however, the laws may cause some potential abusers to think twice before raising a hand in violence.

200. See *supra* Part II(C).

201. See *supra* Part II(D).

and the operative time period for protective orders.²⁰² These changes embraced a broader range of behavior and victims to be protected under the statutes.

Although Maryland's domestic violence laws are far from the archaic days of beating your wife with nothing wider than your thumb, there is a great deal of ground that has yet to be covered. Women who are victims of domestic violence continue to face adversity when dealing, not only with their abuser, but with third-parties as well. There are viable options available to law makers that would make a victim's transition from an abusive environment safer and more successful. These options must be explored to guarantee all of Maryland's citizens protection from harm and equality of treatment.

Anique Drouin

202. *See supra* Part II(D). Although it was an important step for the Legislature to increase the time period of the protective order to one year, there is a good argument that it should be expanded further.

Appendix A

MD. CODE ANN., REAL PROP. §8-215: Private Housing Rental to Known Victims of Domestic Violence

(a) An owner may not discriminate against a potential or current tenant on the basis of his/her status as a victim of domestic violence when deciding whether to sign a lease agreement with him/her.

(1) An owner/landlord may not include special provisions in a lease for a victim of domestic violence that is not in a typical lease for the property. This is including, but not limited to:

(A) any provisions that would make it a breach of the lease agreement to contact law enforcement in the event of domestic violence; or

(B) any provisions that make abusive behavior on the part of the abuser a substantial violation of the victim's lease.

MD. CODE ANN., LAB. & EMPL. § 1-203: Discrimination Against Victims of Domestic Violence

(a) Retaliation — No employer shall retaliate against or fire an employee who is a victim of domestic violence or is a family member of a victim:

(1) who misses work to obtain judicial relief to ensure the health, safety, and welfare of themselves or their children; or

(2) whose abuser causes actual or threatened disturbances in the workplace.

(b) Accommodations — An employer must make reasonable accommodations for victims of domestic violence such as:

(1) changed work schedule;

(2) changed work telephone extension or number;

(3) transfer of location, if possible;

(4) reasonable time off to relocate or seek medical assistance or mental health counseling.

(c) Hiring — An employer may not refuse to hire someone based solely on his or her status as a victim of domestic violence.

MD. CODE ANN., FAM. LAW § 4-506: Final Protective Orders

(d) The final protective order may include any or all of the following relief:

(1) order the respondent to refrain from abusing or threatening to abuse any person eligible for relief;

(2) order the respondent to refrain from contacting, attempting to contact, or harassing any person eligible for relief;

(3) order the respondent to refrain from entering the residence of any person eligible for relief;

(4) where the person eligible for relief and the respondent are residing together at the time of the abuse, order the respondent to vacate the home immediately and award temporary use and possession of the home to the person eligible for relief or, in the case of alleged abuse of a child or alleged abuse of a vulnerable adult, award temporary use and possession of the home to an adult living in the home, provided that the court may not grant an order to vacate and award temporary use and possession of the home to a nonspouse person eligible for relief unless the name of the person eligible for relief appears on the lease or deed to the home or the person eligible for relief has shared the home with the respondent for a period of at least 90 days within 1 year before the filing of the petition; *the respondent shall not cut off or cause to be cut off any utilities or telephone lines, but may arrange to have said utilities transferred to the petitioner's name* (emphasis added to indicate author's addition to the statute).