2011

Revisions to Minnesota Domestic Violence Law Affords Greater Protection to Vulnerable Victims

Shannon M. Heim

Follow this and additional works at: http://open.mitchellhamline.edu/wmlr

Recommended Citation
Available at: http://open.mitchellhamline.edu/wmlr/vol37/iss2/13
REVISIONS TO MINNESOTA DOMESTIC VIOLENCE LAW AFFORDS GREATER PROTECTION TO VULNERABLE VICTIMS

By Shannon M. Heim†

I. INTRODUCTION
II. A CONCISE HISTORY OF DOMESTIC VIOLENCE LAW IN MINNESOTA
III. RECENT DEVELOPMENTS IN MINNESOTA DOMESTIC VIOLENCE LAW
   A. Increased Legal Protections for Victims Promote Fairness in the Justice System
   B. Inclusion of Companion Animals in Domestic Violence Laws Removes an Existing Barrier for Victim Safety
   C. New Provisions Protect Personal Data of Victims
   D. The Authorization of a Pilot Electronic Monitoring Program Promotes Victim Safety
IV. EVOLVING DOMESTIC VIOLENCE LAWS ALONE CANNOT GUARANTEE GREATER SAFETY TO MINNESOTA WOMEN

† Attorney, Dorsey & Whitney LLP. Ms. Heim specializes in telecommunication and First Amendment issues. Ms. Heim also serves on the Board of Directors of the Domestic Abuse Project. The opinions expressed in this article are those of Ms. Heim and do not represent the opinion of the Domestic Abuse Project, Dorsey & Whitney, or any client of the firm.
“Nothing good ever comes from violence.” Martin Luther

I. INTRODUCTION

Domestic violence shreds the fabric of families and undermines the civil society all families rely upon. Domestic violence remains the “single largest cause of injury to women in the United States.” Every year more than 1.8 million women in the United States report that they “are raped, stalked or assaulted by an intimate partner.” In Minnesota, between twenty and forty women die every year from intimate partner violence. Occasionally,


2. Victims of domestic violence may be male or female. This article uses feminine pronouns for consistency, but by no means minimizes the real and continuing intimate partner violence experienced by men. Amanda Schmesser wrote an interesting article discussing the role of gender stereotypes in domestic violence literature. Amanda J. Schmesser, Real Men May Not Cry, But They Are the Victims of Domestic Violence: Bias in the Application of Domestic Violence Laws, 58 SYRACUSE L. REV. 171, 173 (2007) (“Because any violence in the home will cause harm not only to the victim, but to the perpetrator and to others who bear witness to the abuse, we have a duty to address the issue of domestic violence as it relates to all victims, including men.”).

3. Establishing the right of women to live without violence has been a long road. See David Michael Jaros, Unfettered Discretion: Criminal Orders of Protection and Their Impact on Parent Defendants, 85 IND. L.J. 1445, 1451 (2010) (“In the 1970s, the criminal justice system’s refusal to intervene to protect battered women was pervasive.”); LEGAL MOMENTUM, KEY LEGAL CASES FOR WOMEN’S EQUALITY 1873–2007, at Introduction (Jennifer Brown ed., 2008), available at http://www.legalmomentum.org/assets/pdfs/key-legal-cases.pdf.


6. See MINN. COAL. FOR BATTERED WOMEN, THE 2006 FEMICIDE REPORT 3
episodes of abuse garner public attention and call attention to a chronically private crime. However, most domestic violence occurs in the shadows, and victims have only the law to protect them.

Domestic violence law evolved from a patchwork of state laws, first introduced in the late 1970s, to a more national framework in 1993. The growing public awareness of domestic violence and the advocacy of a multitude of women’s rights groups resulted in passage of the Violence Against Women Act (VAWA) and the creation of a private right of action for gender-specific violence.


8. As critical as the law is to protecting women, the political and social will to implement it remains a critical component and occasional roadblock. Laurie S. Kohn, What’s So Funny About Peace, Love and Understanding? Restorative Justice as a New Paradigm for Domestic Violence Intervention, 40 SETON HALL L. REV. 517, 529 (2010) (discussing how principles of restorative justice can best be used in the realm of domestic violence).

9. F. Andrew Hessick, Rethinking the Presumption of Constitutionality, 85 NOTRE DAME L. REV. 1447, 1472 (2010) (arguing that the presumption of constitutionality does not actually implement the three goals given as the reasoning for the doctrine).


11. 42 U.S.C. § 13981(b) (1994), invalidated by United States v. Morrison, 529 U.S. 598 (2000). Although the law included a private right of action, it did not withstand legal challenge. The Supreme Court held Congress lacked authority to enact the civil remedy provision under the Commerce Clause of the U.S. Constitution. Morrison, 529 U.S. at 617 (“We accordingly reject the argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct’s aggregate effect on interstate commerce.”). For further discussion of the Supreme Court’s treatment of the VAWA, see Brenton T. Culpepper, **Missed...**
The national legal framework provided by VAWA and the funding allocated by Congress succeeded in training law enforcement, prompting further intervention by previously underfunded social services, and ultimately saving more women.12 “Between 1993 and 2008, the rate of intimate partner violence against females declined 53 percent and the overall rate of female homicides fell 43 percent . . . .”13 Unfortunately, a significant need for domestic violence intervention and support remains in Minnesota and throughout the nation.14 A 2006 study examined the services provided by the nongovernmental agencies in Minnesota over a twenty-four hour period.15 It found that 972 adults and children sought housing, advocacy, and counseling services.16

This article discusses the evolution of domestic violence law in Minnesota,17 which has historically served as a national touchstone for progressive thinking in the area of domestic violence intervention.18 The law needs to continue to evolve to address a growing understanding of which law and social systems offer the greatest opportunity to break the underlying cycle of violence. The article then examines the revisions made to Minnesota domestic

---

Opportunity: Congress’s Attempted Response to the World’s Demand For the Violence Against Women Act, 43 VAND. J. TRANSNAT’L L. 733 (2010) (arguing that the Supreme Court in Morrison should have affirmed the VAWA); F. Andrew Hessick, supra note 9, at 1472 (discussing the standards of judicial review of constitutionality); Judith Resnik, Categorical Federalism: Jurisdiction, Gender, and the Globe, 111 YALE L.J. 619, 625–30 (2001) (discussing the reasoning behind the Morrison decision).


13. Id.


15. Id.

16. Id.


violence law during 2010. A combination of significant need, forward-thinking legislators, and an active nonprofit community resulted in early legal protections for Minnesota women and children. The 2010 changes to Minnesota law uphold that

19. See 2010 Minn. Laws 735 (the final Senate bill revised several existing statutes including Minnesota Statute sections 518B.01, 13.871 and 609.498). The evolution of domestic violence jurisprudence and the increasing use of mandatory arrest provoked much discussion and debate within the academic community. See G. Kristian Miccio, A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women’s Movement, 42 Hous. L. Rev. 237, 241–42 (2005) (arguing that the feminist origins of the battered women’s movement have become lost in a driving effort to protect women who cannot or will not protect themselves); see also Reconceiving Civil Protection Orders, supra note 4, at 1488–89; cf. Rebecca Hulse, Privacy and Domestic Violence in Court, 16 Wm. & Mary J. Women & L. 237, 254–55 (2010) (examining the impact of technology on women’s privacy interests in court).


21. Research done in Minnesota regarding whether mandatory arrest effectively prevents future domestic violence became the “catalyst for a shift in national policy.” See Kathleen K. Curtis, Comment, The Supreme Court’s Attack on Domestic Violence Legislation—Discretion, Entitlement, and Due Process in Town of Castle Rock v. Gonzales, 32 Wm. Mitchell L. Rev. 1181, 1182–83 (2006) (describing the impact of Town of Castle Rock v. Gonzales on domestic violence prevention law). The Minneapolis Police Foundation and the Minneapolis Police Department conducted an experiment to test whether arresting a likely perpetrator of domestic violence at the scene impacted the likelihood of reoffending. Police Foundation Research Brief: Police Responses to Domestic Violence, PoliceFoundation.org, http://www.policefoundation.org/docs/domesticresponse.html (last visited Nov. 8, 2010). “[T]he study showed that arrest was the most effective way to keep them from committing further violence.” Id. Recent studies have confirmed the
Next, the article analyzes potential roadblocks to diminishing violent crime in Minnesota homes. The article concludes that Minnesota’s laws continue to offer evolving protections to abuse victims, but the implementation of those laws and the lack of adequate, stable funding contribute to a challenging environment for victims.

II. A CONCISE HISTORY OF DOMESTIC VIOLENCE LAW IN MINNESOTA

Minnesota’s criminal domestic violence laws have evolved since first being codified in 1979. Some changes in the law have effectively met the intended end while others have not been as successful. Minnesota law defines domestic abuse to mean the original conclusion that recidivism rates decrease for offenders who are arrested. See Emily J. Sack, Battered Women and the State: The Struggle for the Future of Domestic Violence Policy, 2004 Wis. L. Rev. 1657, 1678 (2004) (outlining the history of the domestic violence movement and the derivative policies that have emerged from groups internal and external to the movement).

22. See generally MINN. STAT. § 518B.01 (2008) (codified as amended at MINN. STAT. § 518B.01 (2010)).

23. Recently, Minneapolis Police Chief Timothy J. Dolan received the Verizon Wireless HopeLine Law Enforcement Partnership Award. “Minneapolis, Minnesota, Police Chief Timothy J. Dolan Receives HopeLine Law Enforcement Partnership Award, VERIZON WIRELESS (May 11, 2010), http://news.vzw.com/news/2010/05/pr2010-05-10b.html. “He supported the implementation of city-wide domestic abuse training for all 800 Minneapolis police officers which has led to better evidence collection and police reports, resulting in an 18 percent increase in successful prosecutions.” Id. (quoting Carol Arthur, the executive director of the Domestic Abuse Project of Minneapolis). The St. Paul Police Department was also recently recognized for its dedication to domestic violence victims. The department implemented a screening process to help officers assess the likelihood of violence in the home leading to death. Madeleine Baran, St. Paul Cops to Focus on Domestic Violence Cases, MINN. PUB. RADIO (Aug. 5, 2009) http://minnesota.publicradio.org/display/web/2009/08/05/domestic-violence/.


following “if committed against a family or household member by a family or household member:
(1) physical harm, bodily injury or assault;
(2) the infliction of fear of imminent physical harm, bodily injury or assault; or
(3) terroristic threats\textsuperscript{27} . . . criminal sexual conduct\textsuperscript{28} . . . or interference with an emergency call.\textsuperscript{29}

Protections for victims have strengthened, and the judicial system has implemented innovative solutions to the unique challenges of domestic violence cases.\textsuperscript{30} Minnesota embraced mandatory arrest procedures for domestic violence cases before it became a common law enforcement practice.\textsuperscript{31} The Minnesota legislature steadily strengthened the criminal penalties for abusers while improving protections for victims.\textsuperscript{32}

In 2005, Minnesota passed a groundbreaking law that categorized strangulation during a domestic assault as a felony.\textsuperscript{33} Studies identified strangulation as a key indicator of future domestic homicide,\textsuperscript{34} but prosecution of strangulation rarely

dramatic increase in child neglect reports that the legislature repealed the change in 2000. \textit{Id.}
\textsuperscript{27} See MINN. STAT. § 609.713(1) (2008) (defining terroristic threats for the purpose of MINN. STAT. § 518B.01).
\textsuperscript{28} See MINN. STAT. §§ 609.342–.345, 609.78 (2008) (defining criminal sexual conduct for the purpose of MINN. STAT. § 518B.01).
\textsuperscript{30} Hennepin County created a dedicated courtroom for domestic violence cases. \textsc{See Minnesota Judicial Branch: Fourth District Domestic Abuse Service Center, http://www.mncourts.gov/district/4/?page=369 (last visited Nov. 8, 2010).}
\textsuperscript{31} \textsc{See generally Research Dep’t, Minn. House of Representatives, Domestic Abuse Laws in Minnesota: An Overview (2007).} The important improvements to domestic abuse laws owe much to the robust nonprofit community in Minnesota and the receptiveness of the Minnesota legislature to the domestic violence issues.
\textsuperscript{32} \textsc{See id.}
\textsuperscript{33} MINN. STAT. § 609.2247 (2008). Strangulation was newly defined as “intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.” \textit{Id.} at (1)(c). Many states have followed Minnesota’s lead and created a felony strangulation crime.
resulted in significant incarceration. A study conducted by WATCH, a nonprofit court monitoring organization, found that during the first six months of implementation there was an “increased number of convictions for both felony and misdemeanor strangulation charges than prior to the law’s passage.” During the same time period, the average sentence for strangulation increased from twenty-one days to 194 days. The success of the strangulation laws in identifying and dealing with the high potential of a lethal outcome underscores the need to provide adequate tools to law enforcement and the courts.

The recent economic recession and increasing unemployment resulted in a dramatic increase in domestic violence. Advocates and legal professionals sought intervention from the Minnesota legislature to close loopholes and provide additional tools to the courts to break the cycle of violence. The legislature accepted many of the changes sought, but the revisions in the law lack necessary funding for full implementation.

---

35. See Heather Wolfgram, WATCH, THE IMPACT OF MINNESOTA’S FELONY STRANGULATION LAW 3 (2007). As part of the research study, Wolfgram quoted an unnamed judge who stated, “This law is doing what we hoped it would do; it is drawing attention to the potential lethality of this crime. More resources are being devoted to this type of case. We have also increased the consequences, and in some ways educated the public on domestic violence.” Id.

36. Heather Wolfgram, NAT’L COAL. AGAINST DOMESTIC VIOLENCE, IMPACT OF MINNESOTA’S FELONY STRANGULATION LAW 1 (June 2007).

37. Id. at 2. Creation of a felony strangulation statute “increases the likelihood that actors in the legal system will at least inquire into the issue of strangulation, and perhaps even be convinced that training should be conducted in their offices, police stations and courtrooms.” Archana Nath, Survival or Suffocation: Can Minnesota’s New Strangulation Law Overcome Implicit Biases in the Justice System?, 25 LAW & INEQ. 253, 273 (2007) (discussing Minnesota’s Domestic Assault by Strangulation statute and its impact).


41. See S.F. 2437, 2009 Leg., 86th Sess. (Minn. 2010) (bill as existing during
III. RECENT DEVELOPMENTS IN MINNESOTA DOMESTIC VIOLENCE LAW

In 2010, the Minnesota legislature further strengthened the state’s domestic violence laws in an effort to protect victims. The revisions to Minnesota’s domestic abuse law built on existing provisions to close loopholes, increased penalties for violent behavior, and created an experimental new pilot program to allow courts to electronically monitor domestic abuse offenders on pretrial release. These provisions, particularly when taken as a whole, offer significant new legal protections for victims of domestic abuse in Minnesota.

A. Increased Legal Protections for Victims Promote Fairness in the Justice System

Criminal cases necessarily focus on the alleged conduct of the offender and corresponding rights guaranteed to him. The intimate relationship between abuser and victim necessitates that the law take the needs and safety of the victim into account to effectively address the underlying cycle of violence. Encouraged by Minnesota nonprofit organizations, Minnesota lawmakers revised the domestic violence laws to strengthen existing protections and provide additional prosecutorial options.

---

42 Id. 
43 See generally MINN. STAT. § 609.498(3) (2010). 
44 See S.F. 2437, 86th Sess., at 735 (Minn. 2010). 
45 The U.S. Constitution guarantees criminal defendants the right to remain silent, the right to confront their accusers, and the right to a public defender. See U.S. CONST. amends. V and VI. 
46 Not all states have domestic violence laws that take the needs of the victim into account, but research suggests that decreasing violence requires the law to address underlying issues. 
47 The Minnesota Coalition for Battered Women led the fight, offering testimony to the legislature and coordinating lobbying by its membership. 
48 See S.F. 2437, 86th Sess., at 735 (Minn. 2010); see generally MINNESOTA
Some of the revisions reflect straightforward changes to existing law. For example, the new law clarifies the domestic abuse no contact orders and orders for protection, either pretrial or part of a sentence, are to be considered “private” data that will not be included in public databases. The law also repeals the domestic abuse no contact order in section 518B.01, subdivision 22 and created a new no contact order as section 629.75 that includes stronger provisions. It also increases the maximum bail for nonfelony domestic assaults to ten times the highest cash fine for violations of Minnesota Statute section 518B.01 (Orders for Protection and Domestic Abuse Orders), 609.2242 (Domestic Assault) and 629.75 (Domestic Abuse No Contact Order).

The new law also expands tampering with a witness by creating a third-degree offense. Victims of domestic violence often face unrelenting pressure from their abusers to drop criminal charges, not cooperate with prosecution, or give false testimony to repudiate the abuse allegations. Minnesota Statute section 609.498 generally prohibits tampering with a witness, but the offense is categorized as a felony or gross misdemeanor. The new third-degree offense lowers the burden to prove tampering with a witness and deems a person guilty of a misdemeanor for any act intended to coerce a person’s testimony. The proof required to sustain a cause of action may be by a specific act or the totality of the circumstances. Although creating a third-degree offense may appear to be a weak addition to a prosecutor’s toolbox, it actually


49. See MINN. STAT. § 13.871 (2008). Data that is collected pursuant to an Order for Protection may, in contrast, be shared with the victim. Id.
50. See S.F. 2437, 86th Sess., at 735 (Minn. 2010).
51. See id.
52. MINN. STAT. § 609.498(2)(a) (2010).
53. See generally Nath, supra note 37.
54. MINN. STAT. § 609.498(3) (2010).
55. Id. Scholars have debated the true nature of criminal and civil Orders for Protection. A growing number argue that an Order for Protection may be used to “entrap” women. See Nina W. Tarr, Civil Orders for Protection: Freedom or Entrapment?, 11 WASH. U. J.L. & POL’y 157, 158 (2003). “The original concept of an Order for Protection as a means of helping women escape social entrapment has been undermined because many state agents now use the existence of one as a means to coerce and control women.” Id.
may prove to be a valuable supplement in the context of domestic violence.\textsuperscript{57}  

The law also extends the area for protection around the residence or dwelling of a person seeking an ex parte domestic abuse Order for Protection.\textsuperscript{58}  Rather than simply prohibiting the subject of an Order for Protection from entering a dwelling, the revised law also allows an ex parte order to exclude a person from a “reasonable area surrounding the dwelling or residence.”\textsuperscript{59}  It is not unusual for an abusive partner to linger outside the residence or dwelling of a victim in an effort to intimidate her.\textsuperscript{60}  There was little law enforcement could do if there was no overt act and the Order for Protection did not, indeed could not, include the proximity around the house.\textsuperscript{61}  This change to the law represents a real tool for law enforcement that will likely have a measurable benefit.\textsuperscript{62}  

The new law modifies the crime of stalking to make the elements of the crime more applicable to domestic violence cases.\textsuperscript{63}  It removes the word “intentional” from the existing statute.\textsuperscript{64}  The law still requires the actor’s conduct to demonstrate that he “knows or has reason to know” the victim will feel frightened or threatened.\textsuperscript{65}  Perhaps most importantly, the law expands general gross misdemeanor stalking to include contact through third parties, sending text messages, and communication through assistive devices for the visually or hearing impaired.\textsuperscript{66}  This development represents a critical step forward in protecting victims

\textsuperscript{57} Domestic violence advocates anticipate that the new third-degree offense will prove to be a useful addition to limiting the overt coercion often found in domestic violence criminal cases. Only time and applicable data will fully prove the point.  
\textsuperscript{58} See Minn. Stat. § 518B.01(7) (2010).  
\textsuperscript{59} Id. An ex parte order may also direct the care, possession, or control of the pet, and direct the respondent to refrain from abusing or injuring any pet. Id. A more extensive discussion of pets in domestic violence situations can be found below. See infra Section III.B.  
\textsuperscript{60} See Tarr, supra note 55, at 158 (discussing history of Orders for Protection).  
\textsuperscript{61} See generally id.  
\textsuperscript{62} As with so many of the new and existing provisions in domestic violence law, implementation and enforcement remain key elements of success.  
\textsuperscript{64} Id. § 609.749(1)(a) (“In a prosecution under this section, the state is not required to prove that the actor intended to cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated . . . .”). The word “harassment” was also removed from the statute. Id.  
\textsuperscript{65} Id.  
\textsuperscript{66} Id. § 609.749(2)(1), (4), (6).
of domestic violence from being repeatedly victimized by the offender via third parties. It also highlights the need to approach domestic violence cases with a sensitive eye toward the unique needs of victims and an understanding of the unique vulnerability of those victims.

B. Inclusion of Companion Animals in Domestic Violence Laws Removes an Existing Barrier for Victim Safety

Victims of domestic violence commonly state that they feel as though they have lost the ability to control virtually all parts of their lives. The abuser exerts leverage upon the victim through any means available. Studies and anecdotal evidence suggest that companion animals are ruthlessly abused and used in an effort to control and further victimize women. Police officers in St. Paul

67. A common tactic for offenders to evade orders for protection and no contact orders is to have third parties attempt to intimidate victims into dropping the case or not cooperating with the prosecutor. See generally Sack, supra note 21, (discussing the history and future of the domestic violence movement).

68. Minnesota law already provides an address confidentiality program for Minnesota residents. See Safe at Home, OFFICE OF THE SEC’y OF STATE, http://www.sos.state.mn.us/index.aspx?page=1473 (last visited Nov. 9, 2010). Citizens may establish a confidential address through the Secretary of State’s office that allows them to use a mail forwarding service to shield their actual address. Id.; see also MINN. STAT. § 5B.03 (2008).

69. “Victims who have been abused by intimate partners often come to the system believing they have lost control of their lives.” Kohn, supra note 8, at 529.

70. Minnesota has taken steps to address the fact that abusers leverage control over victims in a variety of ways. See, e.g., MINN. STAT. § 518B.01(7)(a)(6)–(7) (2008 & amended 2010) (outlining the court’s authority to issue ex parte orders to prevent abuse or injury to pets and to provide for the proper care of pets). The court is encouraged to make provisions in an order for protection for the custody and safety of companion animals. See id. “In domestic violence situations, abusing pets is a damaging and terrifying way for a batterer to control, intimidate, and hurt other members of the family.” Pets in Orders for Protection, MINN. VOTERS FOR ANIMAL PROTECTION, http://votersforanimals.org/issues-legislation/current-campaigns/pets-in-orders-for-protection/ (last visited Nov. 9, 2010).

71. One victim recounted how an abuser used a pet rabbit to terrorize his family: “[He] hung a pet rabbit in the garage and summoned his wife. When she came with the baby on her shoulder, her husband began skinning the animal alive. Then he held the boy next to the screaming rabbit. ‘See how easy it would be?’” Frank R. Ascione, Battered Women’s Reports of Their Partners’ and Their Children’s Cruelty to Animals, 1 J. OF EMOTIONAL ABUSE 119, 130 (1998).

72. Id. at 125. “Nearly three-quarters (71 percent) of the women with pets reported that their male partner had threatened to hurt or kill and/or had actually hurt or killed one or more of their pets.” Id.; see also Joseph G. Sauder, Enacting and Enforcing Felony Animal Cruelty Laws to Prevent Violence Against Humans, 6 ANIMAL L. 1, 2 (2000) (arguing the correlation between violence toward an
are already asking domestic violence victims whether their abuser has ever harmed an animal. The question about animals can clue in officers to sociopathic behavior... and the possibility that a person’s next act might be hurting a human being.

Orders for protection and no contact orders represent some of the most important opportunities to shield victims of domestic violence, but until recently there was no provision to include companion animals in those orders. The revised law permits a court issuing a domestic abuse no contact order to direct the “care, possession or control” of a companion pet and to “refrain from physically abusing or injuring any pet.” The court may also directly protect companion animals in an ex parte order. By recognizing the need to include animals in orders for protection, the Minnesota legislature provides an important tool to the courts to protect women.

animal and a human is high).


74. Id. The department worked with several groups to develop the new plan, including noted domestic violence advocacy group Praxis International, based in Duluth. See Blueprint for Safety, PRAXIS INT’L, http://www.praxisinternational.org/praxis_blue_print_for_safety.aspx (last visited Nov. 9, 2010).

75. Some scholars argue that the criminal justice system tends to misuse orders for protection to address parenting issues. See David Michael Jaros, Unfettered Discretion: Criminal Orders of Protection and Their Impact on Parent Defendants, 85 IND. L.J. 1445, 1458–59 (2010) (delineating the history of protective orders from usage in domestic violence cases to current application to neglectful parents, arguing that the low burden of proof and procedural rights pose significant harm to parents).

76. See generally MINN. STAT. § 518B.01 (2009). Battered women’s advocates fought hard for civil orders for protection and no contact orders, and state legislatures, including Minnesota’s, responded in the 1970s. See Sack, supra note 21, at 1667–68. Decades later these orders still provide the quickest, most economical protection women may obtain.

77. Id. § 518B.01 (7) (6)–(7).


C. New Provisions Protect Personal Data of Victims

When victims of domestic violence decide to leave their abuser, they rely on their ability to hide their whereabouts from the offender to remain safe. Unfortunately, the criminal justice system is not well designed to keep information confidential from a defendant, whose rights are paramount. Minnesota law has made many efforts to safeguard victims of violent crime, but the revisions made by the legislature in 2010 offer additional protections that specifically benefit domestic violence victims.

The revised domestic violence legislation creates an additional subdivision to section 13.871 that specifically addresses orders for protection and no contact orders. The new section categorizes all abuse victim data collected pursuant to the issuance of an order for protection or a no contact order as “private data.” Protecting victim data provides an essential mechanism to reassuring victims that seeking law enforcement and judicial intervention does not leave an easily followed paper trail.

80. The most dangerous period of time for a victim of domestic abuse is the time right after he or she leaves the abuser. See Cari Fais, Denying Access to Justice: The Cost of Applying Chronic Nuisance Laws to Domestic Violence, 108 COLUM. L. REV. 1181, 1197 (2008) (stating that staying can be safer than leaving until a strong and reliable network is established); see also Carrie Chew, Domestic Violence, Guns, and Minnesota Women: Responding to New Law, Correcting Old Legislative Need, and Taking Cues From Other Jurisdictions, 25 HAMLINE J. PUB. L. & POL’Y 115, 116 (2003) (stating that “[s]eparation violence,’ which is the phenomenon that can occur at the time of leaving a relationship, is often the most dangerous period for a survivor of domestic violence”).

81. See generally MINN. STAT. § 5B.01 (2010) (recognizing implicitly that defendants often know the victim’s address by pointing to the fact that victims of abuse often establish new addresses in order to avoid their abusers); see also Rebecca Hulse, Privacy and Domestic Violence in Court, 16 WM. & MARY J. WOMEN & L. 237, 254–55 (2010). “The presumption of openness in court proceedings and records is codified in the U.S. Constitution, most prominently in the Sixth Amendment which ensures criminal defendants a public trial.” Id. at 255.

82. For example, Minnesota law currently protects data on victims of domestic abuse that may be submitted to government by grantees for social services and housing services. See MINN. STAT. § 13.871(3) (2009).

83. Minnesota statutes protect violent crime victim data in several ways. See MINN. STAT. § 5B.01 (2009).


86. See id. § 299C.46(6)(c) (2010). Private data is defined by Minnesota Statute section 13.02(12) as data that is not available to the public, including criminal defendants, but accessible to victims. Id.

87. See generally Tarr, supra note 55 (discussing the role of law enforcement and judicial intervention in orders for protection).
D. The Authorization of a Pilot Electronic Monitoring Program Promotes Victim Safety

Importantly, the new law authorized any Minnesota district court to initiate a pilot project allowing judges to order electronic monitoring for domestic abuse offenders on pretrial release.\footnote{In 2008, section 629.72(2a)(b) of the Minnesota Statutes authorized the Tenth Judicial District to use a pilot electronic monitoring program, stating that “district courts in the Tenth Judicial District may order, as a condition of release, a person arrested on a charge of [domestic violence] to use an electronic monitoring device to protect the victim’s safety.” The 2010 revision allows any district court to initiate a pilot program, stating “the chief judge [of a judicial district] . . . may conduct a pilot project for implementation of the electronic monitoring standards.” Act of May 10, 2010, No. S.F. 2437, § 12, 2010 Minn. Laws 745 (codified as amended at § 629.72(2a)(b) (2010)), available at https://www.revisor.mn.gov/laws/?id=299&doctype=Chapter&year=2010&type=0.}

Statistically, the time immediately after an offender’s arrest and release or after a victim attempts to leave an abuser poses the most danger.\footnote{See Fais, supra note 80, at 1197 (“It is not only a lack of financial resources and social support that may prevent victims from leaving an abusive home. Leaving may be dangerous.”).} “Strange though it may seem—staying can be safer than leaving, at least until a strong and reliable network is established.”\footnote{Id. (citing Courtney N. Esposito, Communities Can Help Victims Become Survivors, TIMES (Trenton, N.J.), Jan. 6, 2008, at A9). Nicole Brown Simpson remains a vivid cautionary tale regarding the danger for women who attempt to leave their abusers. See Andrea Dworkin, In Nicole Brown Simpson's Words, L.A. TIMES, Jan. 29, 1995, available at http://www.nostatusquo.com/ACLU/dworkin/InNicolesWord.html.}

Tracking an offender may provide a level of security for women who sought police intervention or tried to remove themselves and their children from an abusive home.\footnote{Electronic monitoring has generally been used for post-conviction monitoring as a condition of early release or an alternative to jail for property crimes. See Scott Vollum, Electronic Monitoring: A Research Review, CORR. COMPENDIUM, July 2002, at 3, available at http://www.allbusiness.com/public-administration/justice-public-order/906228-1.html.} Unfortunately, it is unclear whether or not any districts will utilize the program since the legislature allotted no money to fund it.\footnote{See Act of May 10, 2010, No. S.F. 2437, § 12, 2010 Minn. Laws 745 (codified as amended at § 629.72(2a)(b) (2010)); Mike Cook, Electronic Monitoring for Domestic Abusers Gets Division OK, SESSION DAILY (Feb. 19, 2010), http://www.house.leg.state.mn.us/hinfo/sessiondaily.asp?storyid=2038. There is no evidence that the Tenth Judicial District ever even attempted to implement the electronic monitoring program.}

Only time will tell if electronic monitoring actually results in enhanced security, but the message sent by the system clearly signals to offenders and victims...
that tracking offenders and protecting victims is taken seriously in Minnesota.

The language of the statute suggests that the pilot program will likely become permanent if the data demonstrates improved security for victims. In a district conducting a pilot program, the chief judge must convene an advisory group including representatives from law enforcement, prosecutors, defense attorneys, court administrators, judges, and battered women’s organizations. The district must develop standards for the use of electronic monitoring devices to protect victims of domestic abuse and for evaluating the effectiveness of the program. The statute does not provide a funding source for the electronic monitoring system, so it is unclear which, if any, districts will actually utilize the opportunity for a pilot program.

IV. EVOLVING DOMESTIC VIOLENCE LAWS ALONE CANNOT GUARANTEE GREATER SAFETY TO MINNESOTA WOMEN

Minnesota domestic violence laws provide a bounty of tools for law enforcement and courts to address intimate partner abuse. Yet “[e]ven in Minnesota, which has been a pioneer in the fight against domestic violence, implementation problems that have continued since the beginning of domestic violence laws leave countless abused women without legal remedies.”

The revisions to the law passed in 2010 supplement existing laws, but work
remains to be done.\textsuperscript{99} Only time and research will prove whether the most recent revisions to the law make a measurable difference; nonetheless, some potential roadblocks are identifiable.\textsuperscript{100}

The needs of domestic violence victims in rural areas of Minnesota have gone mostly unmet, even though the rates of abuse may be higher in rural areas.\textsuperscript{101} Most social services, including victim advocates and women’s shelters, are available to domestic violence victims in Hennepin and Ramsey counties, but it is much more difficult to find adequate availability in the suburban and rural portions of the state.\textsuperscript{102} “This lack of resources encompasses not only a lack of domestic violence shelters, but also an insufficiency in educational and job opportunities, housing, health care, legal services, and child care.”\textsuperscript{103} Allocation of scarce resources may suggest that money be focused in the densest population areas, but that should not distract from the significant need in more sparsely populated Minnesota counties.\textsuperscript{104} For example, few nonprofits can find funding for services in rural Minnesota that are commonly found in Hennepin and Ramsey Counties.\textsuperscript{105} In addition to providing legal protections, additional

\textsuperscript{99} For example, Minnesota law does not protect domestic abuse victims who lose their jobs due to abuse. \textit{See} Meg Hobday, \textit{Domestic Violence Comes to Work}, 67 BENCH & B. MINN. 20, 22–23 (Mar. 2010) (“Employment laws and policies should not require employees to seek court relief . . . because in some circumstances, such efforts only exacerbate the violence.”).

\textsuperscript{100} Scholars recognize that laws in isolation cannot effect meaningful change. \textit{See} Sack, supra note 21, at 1725–26 (“Policymakers and practitioners came to recognize that an effective domestic violence response required the coordination and integration of all parts of the justice system, as well as community-based victim advocates who could provide counseling and services to domestic violence victims.”).


\textsuperscript{102} \textit{See} Wendy Boka, \textit{Domestic Violence in Farming Communities: Overcoming the Unique Problems Posed by the Rural Setting}, 9 DRAKE J. AGRIC. L. 389, 397 (2004) (analyzing Texas as “perhaps the most striking example of the lack of domestic violence resources in rural areas”). Research suggests that agrarian communities continue to believe that domestic violence represents a family issue that should be resolved in private. \textit{Id.} at 394–95.

\textsuperscript{103} \textit{Id.} at 397.

\textsuperscript{104} The need can be particularly acute in rural areas where an attitude of denial of the fundamental problem pervades the community. \textit{See id.}

\textsuperscript{105} \textit{See} Laurel Druley, \textit{Funding Cuts Hurt Domestic Violence Shelters}, MINN. PUB. RADIO (Aug. 12, 2002), http://news.minnesota.publicradio.org/features/200208/12_druley_abusefunds-m/ (discussing the impact of cutting state funds for domestic abuse resources and the scarcity of resources for victims of domestic
funds need to be allocated to the education of all relevant constituencies in rural areas: women must be empowered to identify domestic violence as a crime, health care practitioners must learn to identify the more subtle symptoms of abuse, and the larger community must overcome the notion that family violence should remain a private matter. Although the pace of change in rural areas is likely to be slow, it is important to incorporate rural areas and their unique challenges into any discussion of domestic violence in Minnesota.

Enforcement of existing domestic violence laws has improved substantially over the last decade, but examples of law enforcement failures abound. As law enforcement agencies face steeper budget cuts, critical training of officers on effective responses to domestic violence situations may cease to receive priority funding or even adequate funding. The front line response of law enforcement in making an arrest or enforcing an existing Order for Protection requires sufficient training and an understanding of the long-term impacts those decisions have for all parties involved. Research has clearly demonstrated that effective

---

106. Boka, supra note 102, at 402–03.
107. Id. at 403–04.
108. Id. at 405–06, 410–11.
109. See Lisa R. Pruitt, Gender, Geography & Rural Justice, 23 BERKELEY J. GENDER, L. & JUST. 338, 354 (2008) (“Studies from the late 1970s and early 1980s suggest that rural residents interact personally with others in their community and that they are slow to alter their traditions and cultural heritage.”); see also id. at 357–58.
111. See generally Town of Castle Rock v. Gonzales, 545 U.S. 748, 767 (2005) (holding that Jessica Gonzales could not recover damages after the police failed to enforce an Order for Protection, when her husband murdered their three daughters and opened fire on the police station).
112. Federal funding for training and for mandatory arrest programs remains in doubt until VAWA is again reauthorized. See Hagan, supra note 110, at 990. State funding sources have been difficult to maintain in the difficult economic climate. Funding remains a perennial problem. Additional funding for the training of child protection workers would also increase the success of identifying hazardous situations and making accurate assessments. See Lois A. Weithorn, Protecting Children from Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment, 53 HASTINGS L.J. 1, 138 (2001) (discussing the impact of exposure to domestic violence on children and how to prevent it).
113. See Kit Kinports & Karla Fischer, Orders of Protection in Domestic Violence...
law enforcement intervention presents the best opportunity to break the cycle of violence and save lives.  

Incidents of dating violence among youth and teenagers have increased exponentially in the last decades.  

“Intimate violence among teenagers is a social problem of epidemic proportion that has remained largely unrecognized by the domestic violence movement and by lawmakers.” The introduction of a cycle of violence to an entire generation of children will have a potentially catastrophic impact as those teenagers reach adulthood. Model juvenile codes have been proposed to address the problem, but expanding existing domestic violence law and funding would likely provide a better mechanism for addressing the problem.

Some academics argue that incorporating the principles of restorative justice into domestic violence jurisprudence may provide additional options for families who desire to address the issue of the violence without permanent disintegration of the family. Restorative justice is “a process of bringing together the individuals who have been affected by an offense and having them agree on how to repair the harm caused by the crime.”

Although restorative justice principles generally require the victim and

Cases: An Empirical Assessment of the Impact of the Reform Statutes, 2 TEX. J. WOMEN & L. 163, 166–67 (1993) (arguing that “the effectiveness of protection orders depends on the willingness of judicial and law enforcement officials to issue and enforce them to the extent authorized by statute”).


116. Id. at 423.

117. The rising level of teenage violence may, at least in part, owe its origins to the violence the teens witnessed as children. See generally Weithorn, supra note 112, at 5–6. “[T]hese children [from violent homes] are more likely than are children from nonviolent homes to develop emotional and adjustment problems as adults, including repetition of the patterns of violence they observed as children.” Id. at 6.

118. Accord Ells, supra note 26, at 210–11, 218 (concluding that a model juvenile code implemented in a piecemeal fashion would have limited usefulness).

119. See Condon, supra note 114, at 495.

offender to mediate their dispute in an informal setting, in the area of domestic violence it remains critical that the offender deal with his personal issues underlying his violent behavior before mediation of any sort should be considered.\textsuperscript{121} Therapy for abusive men and restorative parenting therapy remain critical elements of family wellness and should be a required precursor to any attempt at restorative justice in the domestic violence context.\textsuperscript{122} It is increasingly difficult to find availability for men to attend therapy programs, even when mandated by the court as a condition of sentencing and release.\textsuperscript{123}

Empirical data suggests that most battered women do not want to leave their abusive partner; they just want the abuse to stop.\textsuperscript{124} On its face, restorative justice may offer a mechanism for women to confront their abusers and resolve the dispute between them, but that solution fails to incorporate the complex dynamics of an abusive intimate relationship. Research demonstrates that men who successfully complete court-approved therapy programs are less likely to reoffend and thereby break the cycle of violence.\textsuperscript{125} Without adequate funding, the legal system can only address the effects of the violence, lacking the resources necessary to reach the core problem.

\textsuperscript{121} See Kohn, supra note 8, at 534–36. Although Ms. Kohn posits a symbiotic relationship between restorative justice and the legal system, there is no evidence to suggest that any of the models she discusses can work without an element of individual therapy for the offender.\textsuperscript{122} See id. at 531–32.\textsuperscript{123} The Domestic Abuse Project offers one of the only remaining men’s therapy programs in the Minneapolis area. Other groups that once offered therapy have ceased as funding sources declined and demand for advocacy and women’s services radically increased. See generally Domestic Abuse Project, http://www.mndap.org/services.asp#Thera (last visited Oct. 21, 2010). Although there are other programs also offering men’s therapy, access to them is limited and the waiting list can be long. For a list of their programs, see BROTHERPEACE TWIN CITIES, http://www.eurowrc.org/11.men_violent/men-program-en/02.men_program.htm (last visited Oct. 21, 2010).\textsuperscript{124} Domestic violence laws often focus on separating the abuser from his victim. See Goldfarb, supra note 4, at 1488–89. Research suggests that many victims do not want to end the relationship; they just want the abuse to stop. Id.\textsuperscript{125} Empirical data suggests that the recidivism rate of men who complete a domestic violence therapy program is significantly lower than men who do not. The DAP Quick Facts 2009 reported that “[p]erpetrators completing DAP family violence counseling services will have committed no acts of family violence at 12 month follow up.” While DPA’s target non-recidivist rate was seventy percent, in 2009 the actual rate was ninety percent. This statistic is submitted annually to Hennepin County. See Domestic Abuse Project, Quick Facts 2009 (on file with author).
If stronger laws alone provided a perfect mechanism to break the cycle of violence, Minnesota would yield among the lowest rates of violence in the nation. While stronger laws provide additional tools to address domestic violence, those laws must work in tandem with enforcement and continued community support. Data and experience demonstrate that laws must work in tandem with educated enforcement and societal awareness. A bifurcated approach between community education to enhance prevention of violence and a strengthened enforcement of existing criminal laws creates the best opportunity for a violence-free environment for Minnesota families.

126. Minnesota is widely acknowledged as enjoying a strong, diverse array of legislative tools available to law enforcement and the judicial system. See Aviva Breen, Progressive Minnesota? A Perspective on Women’s Issues in the Legislature, 33 WM. MITCHELL L. REV. 397, 408 (2006) (analyzing whether Minnesota is really progressive on gender issues). In 1979, Minnesota was only the second state in the nation to create an Order for Protection. Id.

127. See Kohn, supra note 8, at 521–22. “[D]espite these enormous advances, domestic violence continues to flourish in the United States.” Id. at 520.