



Domestic Violence Legal Remedies in Other States

By Rebecca E. Shiemke

Michigan has made significant progress in responding to domestic violence by passing laws criminalizing domestic violence that hold batterers accountable for their criminal acts and compensate victims for their injuries. Subsequently, in 1983 the state enacted provisions for personal protection orders in domestic relationships and in 1993 extended the remedy to stalking victims. Also in 1993, the Michigan legislature expressed its opinion about the importance of addressing domestic violence in child custody matters when it amended the Child Custody Act to add MCL 722.23(k), mandating the consideration of domestic violence in any custody or parenting time dispute. While these efforts are substantial, there are additional opportunities for Michigan to expand its protection and remedies related to domestic violence. This article will survey laws and remedies offered in other states that provide additional relief to domestic violence survivors and their families.¹

The Model Code on Domestic and Family Violence

In 1994, the National Council of Juvenile and Family Court Judges developed the Model Code on Domestic and Family Violence to encourage states to adopt legislation for effective intervention in domestic violence cases.² The Model Code is comprehensive in its approach and addresses criminal penalties, civil protection orders, child custody, and prevention and treatment. Each chapter within the Model Code may be independently adopted or modified by state legislatures.

Child Custody and Parenting Time

In most states, including Michigan, domestic violence is a factor courts must consider in a child custody dispute. In Michigan, however, it is only one of several factors and is not accorded any

FAST FACTS:

Michigan has made significant progress in responding to domestic violence. Domestic violence is a crime, personal protection orders are available, and domestic violence must be considered in any custody or parenting time dispute.

Recognizing the negative impact of domestic violence on children, 23 states have adopted a rebuttable presumption against awarding custody to a perpetrator of domestic violence.

Thirty-three states have extended unemployment insurance benefits to victims of domestic violence who are forced to leave jobs or are discharged due to consequences of domestic violence.

special weight. As a result, domestic violence survivors risk losing custody of their children to their abusive partners. In response, 23 states have adopted a rebuttable presumption against awarding custody to a perpetrator of domestic violence. Many of these state statutes have adopted or modeled their statute from the Model Code, which provides:

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that domestic or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence.³

Parent cooperation is another factor courts consider. Many custody statutes, Michigan's included, list a parent's willingness to facilitate a close relationship between the child and the other parent as a factor in determining custody.⁴ Frequently referred to as the "friendly parent" provision, this factor is often weighted against domestic violence survivors who have a reasonable reluctance to co-parent out of fear of harm to themselves or their children. To combat the effect of this factor on survivors, at least six states that include the friendly-parent standard provide for an exemption when domestic violence exists.

Two states that do not address the friendly-parent standard still recognize the need for domestic violence survivors to protect their children. Both New York and Tennessee provide that if a parent makes a good-faith allegation that the child is the victim of abuse, neglect, or domestic violence and acts in good faith to protect the child or seek treatment, then that parent shall not be deprived of custody or visitation based on that belief or the reasonable actions taken.⁵

In the tragic situation in which a parent is convicted of murdering the other parent or a child of the parties, several states prohibit an award of custody or parenting time, require supervised parenting time, or create a rebuttable presumption against awarding parenting time. New York creates a self-defense exception to the ban if the convicted parent was a victim of domestic violence by the murder victim and the domestic violence was causally related to the murder.⁶

Many domestic-relations cases are referred to mediation as an alternative to litigation. In cases involving domestic violence, mandated mediation is often inappropriate when there is an imbalance of power between the parties. As a result, the majority of states, including Michigan, provide either a complete ban or an opt-out when domestic violence is present.⁷ In a handful of those states, if a survivor voluntarily agrees to mediation, it can only proceed with protective conditions. Finally, Texas provides that a court may decline to enter a judgment based on a mediated settlement if the circumstances impaired the domestic violence survivor's ability to make decisions.⁸

Personal Protection Orders

In Michigan, personal protection orders protect domestic violence survivors by restraining abusers from engaging in specific behaviors that would harm or threaten harm to the survivor. An abuser may also be restrained from removing a minor child, but only if the petitioning party has legal custody. However, other states have recognized the link between domestic violence and harm to children, and those states permit a court to award custody of a minor child in a protective order proceeding, usually pending a full hearing. Some states other than Michigan also permit the court to award support and restitution and prohibit abuse of certain animals.

Address Confidentiality Programs

Although victims seeking a personal protection order in Michigan may protect their address, Michigan has no other address confidentiality program. Thirty-two states have passed laws establishing address confidentiality programs to help domestic violence victims who need to relocate and keep their location confidential. These programs give victims a substitute legal address to use in place of their physical address and can be used whenever an

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address is required for public records, such as voter or drivers' license registries. Mail is received at the substitute address and forwarded to the victim's true address.⁹

Housing

Many victims of domestic violence report losing their housing because of the violence in their lives and often need to relocate to a new and safer residence. Michigan recently joined 14 other states when it enacted a law allowing victims of domestic violence, stalking, and sexual assault to terminate a lease early.¹⁰ Yet many states have enacted additional laws to counteract some of the other housing problems faced by victims.¹¹ Eight states prohibit landlords from discriminating against tenants on the basis of their status as victims of domestic violence. Six states prohibit landlords from barring or limiting victims from calling police or emergency assistance in response to an incident of domestic violence. Ten states provide a defense against eviction for a victim of domestic violence. Five states permit landlords to bifurcate leases and evict abusers. Three states hold the abuser liable for unpaid rent or damages due to domestic violence. Ten states permit or require landlords to change locks on a domestic violence victim's unit.

Unemployment Insurance Benefits

Under Michigan law, a person who leaves a job because of domestic violence is ineligible for unemployment benefits. Thirty-three states have extended access to unemployment insurance benefits to victims of domestic violence.¹² Most of these states provide benefits to victims who are forced to leave jobs as well as those who are discharged because of consequences of domestic violence. Several states also extend eligibility to stalking and sexual assault victims. Access to benefits provides survivors with the economic security needed to leave a job to seek safe housing, medical treatment, or legal relief.

Conclusion

Domestic violence survivors require a broad range of options and remedies, some of which must come as legislative reform that recognizes and responds appropriately to family violence. However, the possibility of negative and unintended consequences of legislative reform highlights the importance of systemic readiness before implementation. Thus, any reform must be accompanied by training, education, and the availability of adequate supportive resources. ■

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FOOTNOTES

1. The American Bar Association Commission on Domestic Violence has developed several statutory charts, available at <<http://www2.americanbar.org/domesticviolence/Pages/StatutorySummaryCharts.aspx>>. All websites cited in this article were accessed August 9, 2011.
2. See Model Code on Domestic and Family Violence (1994), available at <http://www.ncjfcj.org/images/stories/dept/fvd/pdf/modocode_fin_printable.pdf>.
3. *Id.* at §401.
4. MCL 722.23(j).
5. NY Dom Rel Law §240(1-a)(4); Tenn Code Ann §36-6-112.
6. NY Dom Rel Law §240(1-c)(a).
7. MCR 3.216(C), (D).
8. Tex Fam Code Ann §153.0071(e-1)(1).
9. The National Center for Victims of Crime, *Address Confidentiality Programs* (2009), available at <http://www.ncvc.org/src/main.aspx?dbID=DB_AddressConfidentialityPrograms160>.
10. MCL 554.601b.
11. National Law Center on Homelessness and Poverty, *State Laws and Legislation to Ensure Housing Rights for Survivors of Domestic and Sexual Violence* (2008), available at <http://www.nlchp.org/content/pubs/DV_Housing_State_Laws_Aug20081.pdf>.
12. Legal Momentum, State Law Guide, *Unemployment Insurance Benefits for Victims of Domestic Violence* (2010), available at <<http://www.legalmomentum.org/assets/pdfs/unemployment-insurance.pdf>>.

