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Florida's Domestic Violence Injunction: How Our Past Shapes Our Future

Bryan M. Truyol Esq.*

I. INTRODUCTION

The National Football League's mishandling of Ray Rice's case¹ has placed domestic violence on the public's minds.² This multi-billion dollar corporation's fumble of a single domestic violence incident forced it to change its entire internal policy on domestic violence.³ Three years later, and the attack remains on the nation's mind. In the past year, the shadows of domestic violence have reemerged due to the Ezekiel Elliott suspension teeter-totter.⁴ This is a far cry from what was our society's view on domestic violence in 1978, the year before the domestic violence civil injunction statute was enacted in Florida.⁵

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¹Louis Bien, *Ray Rice Suspended 2 Games By NFL After Assault Arrest* (July 24, 2014, 10:20 AM), <http://www.sbnation.com/nfl/2014/7/24/5824682/ray-rice-suspension-assault-ravens>; see also Louis Bien, *A Complete Timeline of the Ray Rice Assault Case* (Nov. 28, 2014, 2:08 PM), <http://www.sbnation.com/nfl/2014/5/23/5744964/ray-rice-arrest-assault-statement-apology-ravens>.

²See Nat'l Inst. of Justice, *Domestic Violence, Stalking, and Antistalking Legislation, An Annual Report to Congress under the Violence Against Women Act* (1996). (Similarly, the O.J. Simpson trial aided the enactment of the Violence Against Women Act and helped bring the problem of domestic violence under a national microscope). See also Charlotte Alter, *How the OJ Simpson Case Helped Fight Domestic Violence* (June 12, 2014), <http://time.com/2864428/kardashian-oj-simpson-domestic-violence/>.

³Katie Sharp, *NFL Announces New Domestic Violence Policy* (August 28, 2014, 4:06 PM), <http://www.sbnation.com/nfl/2014/8/28/6079465/nfl-announces-new-domestic-violence-policy>.

⁴Jeanna Thomas, *Domestic Violence Expert Shares Details of NFL's Ezekiel Elliot Investigation* (August 21, 2017, 10:28 AM), <https://www.sbnation.com/2017/8/21/16163940/ezekiel-elliott-nfl-investigation-domestic-violence-expert-tonya-lovelace>.

⁵Fla. Laws Ch. 79-402 (1979).

In Florida, most lawyers and victims are well aware of how protective the current statute is.⁶ Nonetheless, most do not know what led to the passing of this statute. The recent incidents depicted in the media have shown us how far our society has come since 1979. Nevertheless, by looking at what led Florida legislators to enact this protective statute, we will find ways to improve the statute as it currently stands and further realize its original legislative intent.

In 1979, the Florida legislators realized that the main goal for filing a petition for a domestic violence injunction should be prevention. In gearing the statute towards this goal, they focused on the role of spouse abuse centers in helping victims obtain restraining orders. This coincided with the women's rights movement of the 1960's and 1970's, which called for social equalization of women through different legal realms, including family court.⁷ The goal throughout the nation and Florida became domestic violence prevention.

In striving to improve the domestic violence legal system, it is important to note that the Florida statutes are amongst the most protective domestic violence statutes in the nation.⁸ But the system is still not perfect. For instance, a domestic violence center can provide great emotional and moral support for the victim when filing a domestic violence injunction petition. However, the centers are not required to provide legal assistance. Accordingly, research shows that these women, who often have low income, need legal representation in the civil hearings.⁹ This and several other problems can be fixed by examining what was happening in Florida in the 1960's and 1970's. The social and legislative objectives of the 1979 statute can help improve the law. The world of domestic violence of the 1970's can provide useful insight into how to deal with domestic violence problems in 2016.

To accomplish this original goal, the current Florida statute should be amended. An amendment to the statute enumerating the requirements for a domestic violence center would be the most effective way of fulfilling the 1979 legislative intent and fully realizing what was socially occurring in Florida in the 1960's and

⁶See FLA. STAT. § 741.30.

⁷See generally Victory Hesford, *Feeling Women's Liberation*, 1-2 Duke U. Press ed., 2013.

⁸*Cf.* Jay B. Rosman, *Domestic Violence: Recent Amendments to the Florida Statutes*, 20 Nova L. Rev. 117, 164-66 (1995) (discussing Florida's statutory progress in dealing with domestic violence).

⁹Peter Finn & Sarah Colson, *Civil Protection Orders: Legislation, Current Court Practice, and Enforcement* 4, Nat'l Inst. of Justice, (1990).

1970's. The quickest way to accomplish this would be to require current domestic violence centers to have an attorney call-list as a requirement to receive funding and certification. This solution would solve a few problems that surround current civil domestic violence litigation. There are a number of lobbying groups that could take on this cause. By amending the current legislation to make the call-list a requirement, actual domestic violence would be curtailed. Unfortunately, the difficulties in amending or enacting legislation can be overwhelming. To overcome this obstacle, the domestic violence centers can accomplish this initiative on their own without statutory amendment. By reaching out to local law school clinics and young attorneys seeking hands-on experience, these centers would be able to avoid the politics and focus on helping victims and preventing domestic violence.

This paper attempts to solve the problems in civil domestic violence cases by examining some of Florida's social and legal history. Part I will examine the general background surrounding domestic violence and the courts. It will also discuss what was happening socially in the country leading up to the 1960's and 1970's. Subsection A will discuss Florida's social history regarding domestic violence, particularly the women's liberation movement and the changes it brought about in the 1960's and 1970's. This section will show how much progress women made prior to 1979. On the other hand, Subsection B will discuss what information Florida legislators used when formulating the statute in 1979 and what their legislative intent was. It will show that the legislators, based on two reports, understood the role that spouse abuse centers would play in helping victims obtain injunctive relief for domestic violence and drafted the statute with that understanding.

In Part II, I will identify the need for statutory change and why the current statute still needs to be improved upon. The statistics show that domestic violence is still a preventable crime. Furthermore, the growing number of false claims; the court clerk's improper involvement in cases; the difficulty of laypeople meeting the statutory burden; low-income women's lower rates of success in obtaining relief; the general phenomenon of unrepresented victims not obtaining adequate relief, or no relief at all; and domestic violence centers' inadequacy at legally helping victims are all problems in domestic violence cases that still need to be solved. Part III posits how to solve these problems and better serve the original legislative intent in the coming years by focusing on what was happening in Florida in the social and legal spheres in the 1970's. I

conclude that the legislative intent for the 1979 statute, to protect victims and prevent abuse, can be further developed. Specifically, domestic violence centers can be improved by implementing an attorney call-list. All the above-mentioned problems affecting the current domestic violence legislation can be solved by this attorney call-list. This is analogous to how Florida legislators combatted similar problems in 1979, with the overarching goal being prevention. Subsection A and B of this section give alternative ways to implement this change to meet the original legislative intent. I conclude this paper by summarizing that the need for improvement can be achieved by simply analyzing what was happening, both socially and legislatively, in Florida in 1979.

II. BACKGROUND

To fully understand the state of domestic violence legislation today, particularly in Florida, we must review the history of how the law of domestic violence first started.¹⁰ A man's right to discipline his wife by battering her was a long-standing practice dating as far back as the Roman¹¹ and Medieval¹² periods. In the United States, this right continued well into the nineteenth century.¹³ By the end of the nineteenth century, a man's right to chastise his wife had virtually disappeared.¹⁴ In *Fulgam v. State*, the Alabama State Supreme Court vehemently denounced the right by stating, "[t]he privilege, ancient though it may be, to beat her with a stick, to pull her hair, choke her, spit in her face or kick her about the floor or to inflict upon her other like indignities, is not now acknowledged by our law."¹⁵ But in the 1900's, some courts still refused to give a wife a civil cause of action

¹⁰See Katherine M. Schelong, *Domestic Violence and the State: Responses to and Rationales for Spousal Battering, Marital Rape & Stalking*, 78 MARQ. L. REV. 79, 83 (1994).

¹¹Beirne Stedman, *Right of Husband to Chastise Wife*, 3(4) VA. L. REV. 241 (1917). (Wife abuse was accepted under Rome's "The Laws of Chastisement" as far back as 753 B.C. Cheryl Ward Smith, "The Rule of Thumb," *A Historic Perspective?*, 1(7) FOCUS 1 (1988). However, women gained the right to sue their husbands for unjustified beatings around 202 B.C., at the end of the Punic Wars. *Id.* This right was short-lived with the rise of Christianity. *Id.*)

¹²Emma Hawkes, *The "Reasonable" Laws of Domestic Violence in Late Medieval England*, DOMESTIC VIOLENCE IN MEDIEVAL TEXTS 57 Eve Salisbury et al. eds., 1st ed. (2002) (explaining that in Medieval England, wife abuse was permitted to the extent that it was reasonable).

¹³*Bradley v. State*, 2 Miss. 156 (1824) (overruled by *Harris v. State*, 71 Miss. 462 (1894)).

¹⁴See generally *Fulgam v. State*, 16 Ala. 143 (1871).

¹⁵*Id.* at 146-47.

against her husband because they feared it would open the floodgates to litigation.¹⁶ Moreover, most family court judges at the time believed domestic violence was a private matter that should not be brought into the public arena.¹⁷

The later part of the twentieth century proved to be more fruitful for women's rights, even though women had obtained the right to vote as early as 1920.¹⁸ Women's employment and social status had begun to change as far back as the 1940's with World War II.¹⁹ Some scholars believe that World War II was the true starting point for women's rights in America.²⁰ Conversely, other scholars contend that the rise in women's rights was short-lived after the war with the return of their husbands to the workforce.²¹ These scholars claim that the rise in feminism soon died down with the end of the war, with most women returning to their traditional roles as homemakers.²² The 1950's proved to be mostly uneventful for women, and domestic violence was still hidden behind the blinds of the bedroom window.

The social and legal culture surrounding domestic violence finally began to change in the 1960's and 1970's. By the time mid-1960's came around, women's rights groups were being formed all around the country, calling for a change in different areas of the law.²³ But it was difficult to completely erase the centuries of wife beatings. For example, one article in Time magazine in 1964 even claimed that a man hitting his wife could be therapeutic.²⁴ By the

¹⁶Michelle J. Nolder, *The Domestic Violence Dilemma: Private Action in Ancient Rome and America*, 81 B.U. L. REV. 1119, 1136 (2001) (citing Elizabeth Pleck, *Domestic Tyranny: The Making of Social Policy Against Family Violence from Colonial Times to the Present*, 10 Oxford U. Press (1987)). Compare *State v. Black*, 60 N.C. 266 (1864) (refusing to interfere in a domestic violence incident where the battery was not excessive because it was an issue best left to the parties), with *State v. Rhodes*, 61 N.C. (Phil.) 453 (1868) (holding that a husband's right to beat his wife was abolished, but that courts should be disinclined to interfere).

¹⁷*Id.*, at 1136.

¹⁸See U.S. Const. amend. XIX.

¹⁹Gary R. Mormino, *World War II, The History of Florida* 345 Michael Gannon ed., 3d ed. (2013).

²⁰*Id.*

²¹*Id.*

²²*Id.* at 346.

²³Barbara Hart, *The Legal Road to Freedom, Battering and Family Therapy: A Feminist Perspective* (M. Hansen & M. Harway eds., (1993) (it took until the late 1970's for the law to become an ally of battered women).

²⁴Eliana Dockterman, *50 Years Ago, Doctors Called Domestic Violence 'Therapy'* (Sept. 25, 2014), <http://time.com/3426225/domestic-violence-therapy/>.

early 1970's, "women had greater legal and political opportunities and authority," thus allowing them to heighten public awareness of domestic violence and battered women's reports, and establish battered women's shelters.²⁵ The 1970's would hold many radical changes for women, especially in the area of civil domestic violence.²⁶ Florida would serve as a microcosm for what was happening around the country.

A. A CHANGE IN FLORIDA'S CULTURE

World War II signaled a change for women's role not only in Florida, but in America.²⁷ Women were suddenly more active in the workplace. Although the change was occurring all across the country, Florida newspapers did not hesitate in expressing their opinions. An article in the *Daytona Beach Evening News* wrote, "Womanpower is available everywhere. Women are eager to give it whenever and wherever they can. Why does not the government take steps to organize, recognize, and use this valuable asset?"²⁸ The women's rights movements' initiative against domestic violence would coincide with the rise of women in the workforce and push for equality in the workplace.²⁹

The 1940's had set up a platform for women to rise socially, especially in Florida. After World War II, Florida enjoyed a high influx of nonresidents, which may have helped to change the old Southern mentality of Florida by diversifying its population.³⁰ Throughout the early twentieth century, women were laboring to have state and federal laws treat them as equals amongst men.³¹ However, from 1920 to 1960 women did not achieve much in the

²⁵Nolder, *supra* note 16.

²⁶Nolder, *supra* note 16, at 1136-37; *see also* Suzanne K. Steinmetz, *The Battered Husband Syndrome*, 2 *Victimology: An Int'l J.* 499 (1977) (stating that although many were aware of "the battered wife syndrome," it was not until 1977 that the public became familiar with the term "the battered husband syndrome").

²⁷Mormino, *supra* note 19, at 346.

²⁸*Daytona Beach Evening News*, (October 5, 1942) (the *Tampa Morning Tribune* had similar praise for women's role in the workforce). *See also* Mormino, *supra* note 20. (The Tampa Bay area would prove to be pivotal in the women's rights movement, especially in the area of domestic violence).

²⁹It is for this reason that it was difficult to find sources that solely focused on the domestic violence initiatives of the women's rights movement in Florida.

³⁰Joan S. Carver, *Women in Florida*, 41 *J. POL.* 941, 941-42 (1979).

(Historically, the Southern states were the most hesitant in granting women social and legal progress).

³¹*Id.*

legal arena in Florida, despite having two women elected to political office.³² In the 1943 Florida legislature, State Representative Mary Lou Baker introduced the “Women’s Emancipation Bill,” which after passing, “strengthened the rights of married women to manage their separate estates and to sue and be sued independently of their husbands.”³³ Nevertheless, throughout the entire country, including Florida, domestic violence laws were not an issue throughout the first six decades of the twentieth century.³⁴

In the 1960’s, the women’s movement “discover[ed] wife abuse.”³⁵ Nevertheless, women’s rights still lagged behind. For instance, in 1970, women were slightly more than half the population in Florida.³⁶ Unfortunately, they still retained a social and legal status of a minority group.³⁷ Slowly, “Florida moved to the forefront of the Southern states in the progress made by women.”³⁸ Not surprisingly, there was a drastic increase in women law students in the 1970’s.³⁹ Moreover, women began to hold more political offices and strongly supported enacting legislation that would improve the status of, and access to courts for, women.⁴⁰ This swing of activism by women in Florida politics would serve as the bedrock for legal changes in the coming years.

Florida had been similar to other states by being “slow to advance from the common law doctrines that considered a wife as dependent of her husband.”⁴¹ For example, until the 1970’s a wife could not handle her own property.⁴² However, changes in the law soon made Florida one of the most progressive states, not only in the South, but in the entire nation on the topic of women’s rights.⁴³ Spearheaded by this social movement, Florida strove for each of its laws to be completely gender-equal. For example, sex discrimination had been virtually eliminated in family law as

³²*Id.* at 944.

³³Mormino, *supra* note 19.

³⁴*See* Schelong, *supra* note 10, at 94-95 (citing R. EMERSON DOBASH AND RUSSELL DOBASH, *VIOLENCE AGAINST WIVES: A CASE AGAINST THE PATRIARCHY* 23 (1979)).

³⁵Schelong, *supra* note 10, at 95 (referencing Elizabeth M. Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 973, 979-80 (1991)).

³⁶Carver, *supra* note 30.

³⁷*Id.*

³⁸*Id.* at 945.

³⁹*Id.* at 946. In 1966, women comprised 1.9 percent of students in Florida’s two state law schools. But by 1978, that figure had risen to 37 percent. *Id.*

⁴⁰*Id.* at 947.

⁴¹*Id.* at 951.

⁴²*Id.*

⁴³*Id.* at 952.

evidenced by Florida adopting no-fault divorce in 1971 and alimony for home-makers in 1978.⁴⁴ Rape had now become sexual battery and the definition of prostitution now covered men and women.⁴⁵ Spouse abuse and displaced homemaker acts that passed in the late 1970's aided women who had long been subjected to unequal and unfair treatment by their spouses.⁴⁶ Now that sexual discrimination had been wiped off Florida's law books, women needed to be protected from their history of discrimination. This would be shown by the laws that soon followed the women's civil rights movement, including the right to file for a domestic violence injunction.⁴⁷

The women's liberation movement in the 1960's and 1970's pioneered the establishing of women's support centers and creating telephone crisis lines.⁴⁸ Many of the domestic abuse agencies that spawned from the 1970's movement offered some type of legal assistance,⁴⁹ but the spouse abuse centers would not. Battered women had suddenly started identifying themselves and seeking assistance.⁵⁰ Women's advocates and lawyers began to look for legal solutions to help these victims.⁵¹ The spouse abuse centers, along with their operating cost, soon engulfed the domestic violence legislation, and the focus shifted to improving these centers.⁵² Due to the social change of the 1970's, legislators became aware of the importance these spouse abuse centers would play in helping domestic violence victims.

The efforts of the women's rights movement soon began to manifest throughout cities in all of Florida. In Tampa, women's rights groups stemmed from around the University of South Florida campus.⁵³ By the mid-1970's, self-help institutions, such as rape crisis centers and battered women's shelters were the most visible signs of the feminist movement in the Tampa area.⁵⁴ This trend

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶*Id.*

⁴⁷*Id.*

⁴⁸Hart, *supra* note 23.

⁴⁹*E.g.*, Legal Advocacy, AVDA A Community of Hope Aid to Victims of Domestic Abuse, Inc., <http://www.avdaonline.org/legal-advocacy> (last visited Oct. 18, 2018).

⁵⁰Hart, *supra* note 23.

⁵¹*Id.*

⁵²See Joan Zorza, *Women Battering: High Costs and the State of the Law*, 28 CLEARINGHOUSE REV. 383 (1994).

⁵³STACY L. BRAUKMAN, *ONE FEMINISM IS NOT ENOUGH: BLACK AND WHITE WOMEN'S ACTIVISM IN TAMPA, 1960-1988* 40 (Univ. of S. Fla. 1992).

⁵⁴*Id.*

spread all over Florida. By 1977, fourteen shelters in Florida had grouped together to form a network of battered women's advocates, which would later incorporate as the Florida Coalition Against Domestic Violence.⁵⁵ These local grassroots efforts began to change the culture in Florida, which soon prompted legal change. In effect, Florida, as a whole, had gone from one of the most restrictive states to one of the most socially progressive states for domestic violence victims. But the law lagged behind society's views. In 1976, only two states allowed for domestic violence civil injunctions.⁵⁶ In the late 1970's, the Florida legislature eventually began catching up.

B. A CHANGE IN FLORIDA'S LEGISLATION

Before 1979, the criminal justice system was the only venue a battered spouse had for any type of relief in Florida.⁵⁷ Even though victims had a recourse for relief through criminal court, police often ignored or disregarded domestic violence calls.⁵⁸ The situation began to significantly change when in 1977, the law was amended to provide a police officer "could arrest without a warrant when it appeared that domestic violence had resulted in bodily harm, or when the officer believes that 'there is danger of violence unless the person alleged to have committed a battery or child abuse is arrested without delay.'"⁵⁹ This amended statute withstood a constitutional challenge in *LeBlanc v. State*,⁶⁰ which was the first Florida case to use the term "domestic violence."⁶¹

Interfamilial immunity doctrines had long barred the battered spouse's case in the civil realm.⁶² It was time for a change. Florida legislators enacted a law in 1979 that allowed victims to seek civil relief for domestic violence. The 1979 law authorized a person who

⁵⁵See Florida Coalition Against Domestic Violence, <http://www.fcadv.org/> (last visited Oct 18, 2018).

⁵⁶Kellie K. Player, *Recent Development, Expanding Protective Order Coverage*, 43 ST. MARY'S L.J. 579, 584 (2012) (citing Judith A. Smith, *Battered Non-Wives and Unequal Protection-Order Coverage: A Call for Reform*, 23 YALE L. & POL'Y REV. 93, 99-100 (2005)).

⁵⁷Steven Scott Stephens, § 14:2. *Historical Perspective*, 23 FLA. PRAC., FLA. FAM. L 14(2) (2015).

⁵⁸E. Erez and J. Belknap, *Policing Domestic Violence*, in ENCYCLOPEDIA OF POLICE SCIENCE (W. Bailey ed., 1995).

⁵⁹Stephens, *supra* note 57.

⁶⁰*Leblanc v. State*, 382 So. 2d 299 (Fla. 1980).

⁶¹Stephens, *supra* note 57.

⁶²*Id.* In fact, the immunity doctrine would not be abrogated until 1985. Lansing C. Scriven, *The Florida Legislature Tolls the Death Knell for Interspousal Immunity in Tort*, 13 FLA. ST. U. L. REV. 725, 728-29 (1985).

had filed a complaint with law enforcement to also file a petition in civil court for a restraining order against their abusive spouse.⁶³ Furthermore, the statute allowed for the issuance of a restraining order without the petitioner being legally represented, nor that the order be conditional upon a divorce proceeding.⁶⁴ It specifically defined spouse abuse as “any assault, battery, or other physical abuse by a person upon his or her spouse.”⁶⁵ The law also required spouse abuse centers to “provide minimum services which shall include, but not be limited to, information and referral services, counseling services, temporary emergency shelter for more than 24 hours, and educational services for community awareness relative to the incidence of spouse abuse, the prevention of such abuse, and the care, treatment, and rehabilitation for persons engaged in or subject to spouse abuse.”⁶⁶ From this law, it is initially clear that the legislative intent was to prevent further domestic violence with the help of the spousal abuse centers because of all the services the centers would provide to the victim.⁶⁷

In its 1979 Regular Session, the Florida legislature made significant progress towards providing domestic violence victims with a legal venue for seeking restraining orders against their abusive spouses. As originally drafted, House Bill 1782 and Senate Bill 1257 would create a cause of action in civil court for abused spouses and their dependents to seek a restraining order against the abuser. However, both bills were formulated with different intents to reach the same goal of domestic violence prevention.

In passing the 1979 law, Florida’s senators knew how important spouse abuse centers and their role would be in helping

⁶³1979 Fla. Laws Ch. 79-402 (reading “Any person who has filed a complaint of spouse abuse with a law enforcement agency and who files a verified petition alleging spouse abuse with the clerk of the circuit court... shall be entitled to have the court issue a restraining order with such terms and conditions as the court deems advisable with respect to the facts alleged in the verified petition.”)

⁶⁴*Id.* (reading “The issuance of such an order shall not require that the party alleging spouse abuse be represented by an attorney nor shall such a restraining order be conditioned upon any dissolution of marriage proceedings.”)

⁶⁵*Id.*

⁶⁶1979 Fla. Laws Ch. 79-409.

⁶⁷The information that I collected in order to write this section was largely based on a Senate Staff Analysis, A Report Submitted to the Committee on Health and Rehabilitative Services, and A Report to the Legislature from the Department of Health and Rehabilitative Services, Spouse Abuse Program. Much of the information surrounding a bill from this time period was not properly saved and archived. As a result, not all the information that the Florida legislature received for these two corresponding bills will ever be known.

victims obtain restraining orders.⁶⁸ For Senate Bill 1257, the main intent was to specify the Department of Health and Rehabilitative Service's responsibility to "establish certain rules and to set minimum standards for certification of a spouse abuse center."⁶⁹ Specifically, one of the predicted effects of the proposed changes was that a spouse abuse center "must receive and house victims of spouse abuse."⁷⁰ It would also require that the spouse abuse centers provide services including: (1) information and referral; (2) counseling; (3) temporary emergency shelter for more than 24 hours; and (4) educational services for community awareness.⁷¹ Under the proposed legislation, police officers would be allowed to advise an alleged victim⁷² of the spousal abuse centers and their services.⁷³

On the other hand, the Committee on Health and Rehabilitative Service's Report ("Committee Report") to the Florida House of Representatives shows how different the House's intent was with its proposed bill. Although both houses in the Florida legislature agreed that the focus of the bill should be to improve the spouse abuse centers, House Bill 1782 focused more on the issuance of restraining orders.⁷⁴ "Spouse abuse centers ha[d] reported problems relating to the inability to issue restraining orders against spouses alleged to have engaged in spouse abuse."⁷⁵ The House Bill's intent was to alleviate these problems by allowing for issuance of a restraining order against the abuser.⁷⁶

⁶⁸1979 Fla. Laws Ch. 79-402

⁶⁹*Id.*

⁷⁰*Id.*

⁷¹*Id.*

⁷²The definition of victim would prove to be a matter of great change in this area of law. Originally, the Senators were not only concerned about the role of the spouse abuse centers, but also about who would be protected. *See id.* at 2. The term "victim" was not defined in the existing statute. *Id.* However, the proposed bill defined "victim" to include the abused spouse and "any dependent of such individual, including a child." *Id.* Therefore, the Senate was able to recognize that domestic violence affected more people than just the spouse-victim. *Id.* But the intended Senate bill fell flat by limiting the class of domestic violence victims. For example, the proposed bill did limit the definition of "spouse" to include only married persons. *Id.* This meant that live-in boyfriends and girlfriends could not seek relief from the court. *See id.*

⁷³*Id.*

⁷⁴Fla. H. Comm. on HRS, HB 1782 (1979) A Report Submitted to the Committee on Health and Rehabilitative Services 1 (June 6, 1979) (available at Fla. Dep't of State, Fla. State Archives, Tallahassee, Fla.).

⁷⁵*Id.*

⁷⁶*Id.*

The Committee Report's prediction of this legislation was that a person who had filed a criminal complaint of spousal abuse with a law enforcement agency and a petition alleging spouse abuse with the civil circuit court, could be "entitled to have the court issue a restraining order."⁷⁷ Moreover, the Florida House of Representatives did not want victims' lack of income to pay for attorneys' fees to be the reason why victims did not seek a restraining order. As a result, the bill "provides that the victim of spouse abuse need not be represented by an attorney at the hearing."⁷⁸

Both the House and Senate agreed that spouse abuse centers had to be correctly certified and had to receive and house the spouse abuse victims.⁷⁹ They also agreed on the services that needed to be provided by a spouse abuse center including referral services.⁸⁰ This shows that both sides of Florida's legislature knew how important the spouse abuse centers' roles would be in helping the spouse abuse victims, especially legal assistance.

A Report to the Legislature by the Department of Health and Rehabilitative Services, Spouse Abuse Program ("The Report") shows the real landscape of domestic violence in Florida at the time the 1979 law was enacted and the information that the Florida legislators were receiving while drafting their respective bills. For instance, the Report pointed out that other family members were also affected by domestic violence, even though the primary victim was the battered spouse.⁸¹ The Report urged that these other family members' welfare had to be considered in the law.⁸² One-fourth of the victims in the shelters had reported prior abuse by persons other than the reported abuse.⁸³ Abuse by former mates accounted for 9 percent of the prior abuses, but abuse by parents accounted for 11 percent of prior abuse of these victims.⁸⁴ Additionally, prior incidents of abuse by siblings and other relatives were also reported.⁸⁵ The only other non-spouse family members who could

⁷⁷*Id.*

⁷⁸*Id.*

⁷⁹*Id.*, accord Fla. S. Comm. on HRS, SB 1257, *supra* note 68.

⁸⁰*Id.*, accord Fla. S. Comm. on HRS, SB 1257, *supra* note 68.

⁸¹Fla. J. Legis. HRS, *A Report to the Legislature by the Department of Health and Rehabilitative Services, Spouse Abuse Program* 1 (1979) (available at Fla. Dep't of State, Fla. State Archives, Tallahassee, Fla.).

⁸²*Id.*

⁸³*Id.* at 3.

⁸⁴*Id.*

⁸⁵*Id.*

seek protection under the statute that was passed were dependents of the spouse-victim.⁸⁶

This Report also illustrates the realities of spouse abuse in Florida. At the time, law enforcement agencies regarded spouse abuse as the single most unreported crime, with only one out of ten cases being reported.⁸⁷ Florida statistics indicated that 4.3 percent of married individuals had been severely assaulted by their spouses, with 3.6 percent having faced a lethal weapon in the hands of their spouses.⁸⁸ That meant that in 1979, 83,807 married individuals had been severely assaulted by their spouse.⁸⁹ The highest percentage of these spouse abuse incidents were occurring in Miami-Dade and Monroe Counties.⁹⁰

The Report makes clear that The Spouse Abuse Program, which had only been created a year earlier in 1978, and other programs having an indirect impact on the problem of domestic violence were improving.⁹¹ It directly identified as one of the main needs of abused persons to be counseling and legal assistance.⁹² It mentioned how the new 24-hour hotlines that provided counseling and referrals were vital to protecting victims.⁹³ It also pointed out how shelter and agency staff members were able to provide individual and group counseling to victims, dependents, and even abusers.⁹⁴ Legal services programs within these spouse abuse centers provided support in legal areas such as court procedures, civil rights, and family law.⁹⁵ However, missing from this list was the ability to legally help a victim obtain a restraining order against the abuser. Florida's legislators knew this was an avenue that had to be opened for the victims.

It is clear from the Report that the goal of this legislation was domestic violence prevention and not civil punishment.⁹⁶ It called for ways to monitor and measure how successful the spouse abuse centers and programs could be at preventing domestic violence.⁹⁷

⁸⁶1979 Fla. Laws Ch. 79-402.

⁸⁷Fla. J. Legis. HRS, *supra* note 81, at 5.

⁸⁸*Id.* at 4.

⁸⁹*Id.* at 1. It is important to note that due to lack of uniform reporting, these numbers are actually believed to be an understatement. *Id.* at 5.

⁹⁰*Id.* at 1.

⁹¹*Id.*

⁹²*Id.*

⁹³*Id.*

⁹⁴*Id.* at 2.

⁹⁵*Id.*

⁹⁶*See id.*

⁹⁷*See id.*

One of the clearest preventative measures would turn out to be the domestic violence injunction available to victims in civil circuit court. This inability to help victims obtain injunctive relief made the spouse abuse centers ineffective at protecting victims and preventing further domestic violence, even though the centers still provided many useful services. With the passage of House Bill 1782, Florida finally joined the few states that had enacted domestic violence civil injunction statutes.

The 1979 statute allowed women unprecedented access to the courts as a refuge from domestic violence. Further amendments in later years would help serve the original legislative intent and focus of the 1960's and 1970's feminists.⁹⁸ All these amendments to the 1979 statute were passed with the same goal of bringing civil relief to domestic violence victims. These extensive amendments to the original 1979 statute show how much progress Florida has made in dealing with domestic violence. Nevertheless, further action and amendments may be necessary to fully recognize the original legislative intent.

III. THE NEED FOR CHANGE

Florida is amongst the nation's leaders in protecting victims and preventing further domestic violence. In 1992, thirteen years after the domestic violence injunction statute passed in 1979, the total number of reported domestic violence offenses was 109,449, with only 37,796 arrests.⁹⁹ These offenses escalated in the late 1990's.¹⁰⁰ In 2014, the total number of reported domestic violence offenses had only decreased to 106,882, with 64,460 arrests.¹⁰¹ The total number of offenses has decreased while the number of arrests

⁹⁸For example, it was not until 1984 that the law expressly created a wholly separate civil action for domestic violence injunctions. 1984 Laws Fla. Ch. 84-34, § 10 (1984). This amendment also eliminated the need for the petitioner to have first filed a formal complaint with law enforcement. *Id.* It took another seven years for the law to allow "any family or household member" and not just "spouses" to file for domestic violence injunctions. FLA. STAT. § 741.30 (1991) (this amendment essentially eliminated the requirements of the 1979 act requiring the victim to be the spouse or dependent thereof, and it cemented the view that any family member could be a domestic violence victim).

⁹⁹Florida Department of Law Enforcement, *Florida Crime Trends – Domestic Violence*, https://www.fdle.state.fl.us/Content/getdoc/34aec4dc-149b-46a1-b735-70501238ac06/1992_fwd_dv_victim_offense.aspx (last visited Nov. 19, 2015).

¹⁰⁰*Id.*

¹⁰¹*Id.*

has increased. This shows that Florida's law enforcement has taken a strong interest in eliminating domestic violence in the past 12 years. Nevertheless, these numbers still do not account for the quantity of unreported domestic violence offenses.¹⁰² Further, they do not show the amount of offenses that could have been prevented with a simple civil domestic violence injunction. Prevention is still the number one goal of the civil injunction statute. But if 106,882 offenses show anything, they show these offenses need to be prevented in the first place and domestic violence remains a problem. There are still several unsolved issues that plague civil domestic violence cases such as: (1) the amount of false or exaggerated claims; (2) improper clerk involvement; (3) the inability of petitioners to meet the statutory burden under the statute; (4) low-income women's disadvantage in obtaining injunctive relief; (5) women who are legally represented at these hearings obtain better and more complete relief than women who do not have an attorney; and (6) domestic violence centers cannot provide effective legal assistance to these victims.

A growing problem with the injunctions in Florida is the amount of false or exaggerated claims of domestic violence.¹⁰³ Litigants in a divorce case will often exaggerate or lie about the opposing party committing an act of domestic violence because of the negative weight a domestic violence injunction brings to the determination of parental responsibility and time-sharing with a child.¹⁰⁴ Consequently, some attorneys encourage these false claims in order for their clients to obtain the advantage in determining child custody and time-sharing.¹⁰⁵ Judges and attorneys are aware of these abundant false claims in domestic violence injunctions.¹⁰⁶ Moreover, some of the petitioners do not even attend the return hearings out of fear that their false claim will be exposed to the

¹⁰²See, e.g., *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 891-92 (1992) (acknowledging the underreporting of domestic violence by women).

¹⁰³Cheney Mason, *Spouse Abuse – The Other Victim*, 68 FLA. B.J. 75 (1994); see also Sherrie Bourg Carter, *Assessing the Veracity of Domestic Violence Allegations in Parenting Disputes*, 76 FLA. B.J. 70 (2002).

¹⁰⁴FLA. STAT. § 61.13(3)(m) (stating that evidence of domestic violence is a factor when determining the best interest of the child when determining or modifying parental responsibility, a parenting plan, or the time-sharing schedule); see also FLA. STAT. § 61.13(2)(c)(2) (stating that evidence that a parent has been convicted of a domestic violence crime creates a rebuttable presumption of detriment to the child).

¹⁰⁵See FLA. STAT. § 61.13(3)(m).

¹⁰⁶Mason, *supra* note 103.

judge.¹⁰⁷ Other attorneys strongly believe this to be an improper, deplorable practice that is used by women seeking an advantage in a divorce case.¹⁰⁸ Whatever the reasons may be, there are false or exaggerated claims in domestic violence cases that dilute the system. These claims make it hard to spot, and therefore prevent, actual domestic violence.

Another problem is the improper handling of valid and invalid cases, especially by the court clerks.¹⁰⁹ The statute allows for clerks to help petitioners fill out the basic form.¹¹⁰ Therefore, clerks play a seminal role at the onset of a potential case by helping victims file for an injunction. But some clerks are actually encouraging or dissuading petitioners from filing the petition.¹¹¹ Many petitioners present their case to the clerks “seeking legal advice and, in effect, perhaps the only representation of their claim.”¹¹² As a result, the clerks improperly take on the role of legal advocate, and screen cases. This problem persists because there is not enough training and supervision of these clerks, resulting in two problems.¹¹³ First, some actual victims may be discouraged from filing petitions for domestic violence because they are told they do not have a strong case. Second, some claims may be drastically exaggerated by the clerk improperly adding details to the petition.¹¹⁴ Petitioners may admit on the stand that “the clerk told me to put that down.”¹¹⁵ On the other hand, even if there has been a case of abuse, the petitioner may say, “the clerk advised that ‘since there was no arrest, the court could not enter an injunction.’”¹¹⁶ Although these clerks are statutorily

¹⁰⁷*Id.*

¹⁰⁸Lynn D. Wardle, *Marriage and Domestic Violence in the United States: New Perspective About Legal Strategies to Combat Domestic Violence*, 15 ST. THOMAS L. REV. 791, 796 (2003).

¹⁰⁹*Id.*

¹¹⁰FLA. STAT. § 741.28(2)(c)(1) (“The clerk of the court shall assist petitioners in seeking both injunctions for protection against domestic violence and enforcement for a violation thereof as specified in this section.”)

¹¹¹Peter Finn, *Statutory Authority in the Use and Enforcement of Civil Protection Orders Against Domestic Abuse*, 23 FAM. L.Q. 43, 58 (1989).

¹¹²Mason, *supra* note 103 at 76.

¹¹³*Id. Compare* FLA. STAT. § 741.28(2)(c)(6) (providing in part that clerks of court “shall receive training in the effective assistance of petitioners” for domestic violence injunctions), *with* FLA. FAM. L. R. P. 12.610(b)(4)(A) (requiring the court clerks to “assist the petitioner in obtaining an injunction for protection against domestic, repeat, dating, or sexual violence, or stalking as provided by law”).

¹¹⁴Mason, *supra* note 103 at 76.

¹¹⁵*Id.*

¹¹⁶*Id.*

required to help these petitioners fill out the petition, they are not allowed to practice law and give improper legal advice.¹¹⁷ The statute requires domestic violence clerks to receive special training, but some clerks never receive training and sincerely believe these actions are correct.¹¹⁸ As a result, clerks improperly take on the role of an attorney in domestic violence cases. Victims are never given adequate legal representation so actual domestic violence is not prevented.

The next problem also relates to the petitioner's difficulties when initially filling out the petition. Although the fill-in-the-blank petition forms are simple enough that "even persons with little education can fill [it] out easily,"¹¹⁹ many people have trouble drafting the petition. One of the major deficiencies in a filed petition is that that petitioner will "fail[] to allege a factual background that is legally sufficient to justify the injunction."¹²⁰ In fact, many petitioners will allege some domestic violence incident that occurred many months or years before filing.¹²¹ This is not enough to meet the standard that the petitioner must be "a victim of domestic violence or have reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence."¹²² These alleged moot events remove the petitioner's right to an injunction given the above-stated standard.¹²³ Therefore, these useless petitions are likely to be denied and fail to prevent further violence.¹²⁴

Domestic violence injunctions can be especially inadequate for victims with low income.¹²⁵ Many of these abused spouses cannot leave the abusers because they are financially dependent on their abusers.¹²⁶ It is for this exact reason that the statute provides "this cause of action for an injunction shall not require that either party

¹¹⁷*Id.* (citing FLA. STAT. § 741.30(2)(c)(1)-(5)).

¹¹⁸Mason, *supra* note 103 at 76.

¹¹⁹Wardle, *supra* note 108.

¹²⁰Finn, *supra* note 111.

¹²¹Mason, *supra* note 103 at 76.

¹²²FLA. STAT. § 741.30(6)(a).

¹²³Mason, *supra* note 103, at 76.

¹²⁴*See* Finn, *supra* note 111, at 45 (stating that one of the biggest criticisms of domestic violence protection orders is their inability to prevent further violence).

¹²⁵TK Logan, Lisa Shannon, Robert Walker & Teri Marie Faragher, *Protective Orders: Questions and Conundrums*, 7 TRAUMA, VIOLENCE & ABUSE 175, 185-86 (2006).

¹²⁶*See generally* Tamara Rice Lave, *Thinking Critically About How to Address Violence Against Women*, 65 U. MIAMI L. REV. 923, 930 (2011) (stating that these low income women "may be too dependent on their batterers for food and shelter" and they do not have the sufficient income or resources to leave).

be represented by an attorney.”¹²⁷ Moreover, the statute also provides that “the assessment of a filing fee for a petition for protection against domestic violence is prohibited.”¹²⁸ However, as found by the National Institute of Justice Civil Protection Order study, these victimized women need an attorney to represent them at these civil injunction hearings.¹²⁹ Therefore, the reason for allowing victims to appear as pro se litigants may actually be hurting them by not having an attorney because the petition is more likely to be denied or not include as extensive remedies.¹³⁰ These results lead to an ineffective injunction, if any at all, which fails to prevent further domestic violence.

The most puzzling issue is that in many cases, actual domestic is not prevented simply because these petitioners do not have the assistance of counsel. This problem is supported by the aforementioned studies and theories that low-income women do not fare as well in court as those with higher incomes, because they are unable to afford legal representation. Both statutes, the 1979 and current one, provide that a petitioner need not be represented by counsel.¹³¹ By not statutorily allowing for attorney’s fees and costs in civil domestic violence cases, the Florida legislature has basically removed family law attorneys’ incentive to help in domestic violence cases. Nevertheless, the National Institute of Justice Civil Protection Order study found that battered women “are in direct need of assistance from attorneys in civil protection order proceedings.”¹³² Women who are represented in domestic violence injunction hearings are much more likely to actually receive an injunction against the abuser, as opposed to those who appear as pro se litigants.¹³³ Moreover, these injunction orders are more likely to “contain more effective and complete remedies” for those women who have legal representation at these hearings.¹³⁴ Unfortunately,

¹²⁷FLA. STAT. § 741.30(1)(f).

¹²⁸FLA. STAT. § 741.30(2)(a).

¹²⁹Finn & Colson, *supra* note 9.

¹³⁰*See id.*

¹³¹1979 Fla. Laws Ch. 79-402, *accord* FLA. STAT. § 741.30.

¹³²Catherine F. Klein and Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 812 (1993) (citing Peter Finn and Sarah Colson, National Inst. of Justice, *Civil Protection Orders: Legislation, Current Court Practice, and Enforcement* 4 (1990)).

¹³³Klein & Orloff, *supra* note 133 (referencing Karen Czapan斯基, *Domestic Violence, the Family, and the Lawyering Process: Lessons from Studies on Gender Bias in the Courts*, 27 FAM. L.Q. 247, 249 (1993)).

¹³⁴*Id.*

only a few attorneys have been trained in domestic violence litigation.¹³⁵ As a direct result, actual domestic violence is not prevented by not allowing for attorney's fees and costs because these victims would receive more adequate relief if they were represented by counsel.

The final problem is that domestic violence centers do not help victims secure a domestic violence injunction for two reasons. First, many domestic violence centers and programs are extremely supportive for the victim during the legal process. For example, C.A.R.E., a Florida-based domestic violence support program, provides "support and encouragement during legal proceedings and guide[s] survivors through the protective order process."¹³⁶ Nevertheless, these programs rarely have an attorney on-staff or can provide the victim with an attorney who will be willing to legally help them. These supportive domestic violence advocates are non-attorneys whose jobs are to support and inform domestic violence victims.¹³⁷ Actions that these non-attorney advocates can take include: (1) accompanying the victim through the filing process; (2) providing the victim with support and counseling; (3) providing information to petitioners or witnesses who do not understand the legal process; and (4) being present at injunction hearings for emotional support.¹³⁸ But these advocates from the domestic violence centers cannot provide legal representation. Therefore, the spouse abuse centers still do not fully help with the legal process of obtaining an injunction.

The second reason is that the domestic violence centers' inability to assist victims is compounded by their inability to provide an effective referral to legal aid. The websites for these programs state that they can provide a referral service to the local legal aid for those victims who choose to seek a civil injunction.¹³⁹ However, that does not solve the problem for victims who are not getting legal representation. Legal aid services only provide their services to

¹³⁵Klein & Orloff, *supra* note 133, at 813.

¹³⁶The Center for Abuse and Rape Emergencies, Inc., *Court Advocacy*, <http://carefl.org/programs-services/> (last visited Oct. 18, 2018).

¹³⁷John W. Smith. NORTH CAROLINA ADMIN. OFFICE OF THE COURTS, NORTH CAROLINA DOMESTIC VIOLENCE BEST PRACTICES GUIDE FOR DISTRICT COURT JUDGES 36-37 (2010) (specifically cited in the Miami-Dade's Judges' Bench Book for Domestic Violence, Civil Cases).

¹³⁸*Id.*

¹³⁹*See* The Lodge, Certified Domestic Violence Center, *Court Advocacy* <http://www.thelodgemiami.org/program.html#court> (last visited Oct. 18, 2018) (providing that they operate on a referral system to legal services, such as Legal Aid, only upon request).

completely indigent clients.¹⁴⁰ Therefore, although victims who may be struggling financially, if they are not below the poverty guidelines, they will not receive legal assistance from legal aid services. Domestic violence centers cannot remedy the problem nor prevent actual domestic violence by referring victims to services that cannot take the case. As a result, some cases never get to the courtroom and further domestic violence is not thwarted.

The above-mentioned problems with domestic violence are happening in 2015, not 1979. Therefore, society needs to acknowledge that domestic violence is still a serious problem, even in Florida. The focus needs to shift on ways to overcome these hurdles, either legally or through our own initiatives.

IV. IMPROVING THE LAW

A simple solution to these problems would be for domestic violence centers to implement a call-list of attorneys who would be willing to take civil domestic violence cases at a pro bono rate. It would be a similar practice as a criminal court assigning cases to local criminal defense attorneys who are listed on a call-list. But the ones implementing the call-list for the civil domestic violence cases would be domestic violence centers. It would be a simple procedure. Family law attorneys looking to get experience, and even already experienced attorneys, would sign up to be on the call-list. When a victim goes to a domestic violence center and decides that they would like to seek a restraining order against their abuser, the domestic violence center can call one of the listed attorneys. The attorney can then accept to represent the victim for just the domestic violence aspect of the case. The attorney can meet with the victim and help her fill out and file a domestic violence petition. Once the attorney has filed the completed petition, he or she can represent the victim on a limited basis and make sure the victim attends the hearing.

An attorney call-list can help reach the overall goal of domestic violence prevention. It could accomplish this by solving all the problems that plague civil domestic violence procedures today, which are discussed in the paragraphs below. By solving these problems and preventing further domestic violence, both the 1970's

¹⁴⁰See generally Dade Legal Aid, *Cases and Clinics* <http://www.dadelegalaid.org/cases-we-handle/> (last visited Oct 18, 2018). In order to qualify for Dade Legal Aid, a client's income cannot be over 150% of the Federal Poverty Guidelines. *Id.*

women's rights movement's goals and 1979 Florida legislative intent is met.

This call-list would serve the intent of the 1970's feminist movement because it will help all victims, regardless of gender or income, obtain injunctive relief. The 1970's feminist movement focused on equalization in all areas of life, including the home and access to the courts.¹⁴¹ If an attorney call-list is implemented, all women (and other victims) will be treated equally. They will all have legal representation at domestic violence injunction hearings. Moreover, they will not be turned down because of their income. The attorney call-list will not discriminate and all victims will have equal footing. Therefore, all domestic violence victims will have equal access to the courts through attorneys working at a pro bono rate. As a result, actual domestic violence is prevented, victims no longer have to endure abuse at home nor worry about compensating an attorney, and all victims will have an equal access to the family courts.

This attorney call-list also serves the original Florida legislative intent of 1979. Legislators were aware of the importance of spouse abuse centers.¹⁴² The legislative intent for the statute was the issuance of restraining orders.¹⁴³ Spouse abuse centers had in fact complained about the difficulty in helping victims obtain restraining orders.¹⁴⁴ This problem persists today. Domestic violence centers are still not able to help in obtaining restraining orders. As a result, the only way to fulfill the legislative intent of the 1979 Florida legislature would be to implement an attorney call-list that directly involves domestic violence centers in helping victims obtain injunctive relief. Moreover, this call-list also serves the basic 1979 goal of prevention because it helps true domestic violence victims seeking injunctive relief. Additionally, the several below-mentioned unforeseeable problems are all resolved with the call-list and truly serve the 1979 Florida legislative intent of domestic violence centers' roles in obtaining injunctive relief for victims. Furthermore, the goal of prevention is developed by having all victims be legally represented at these injunction hearings. Therefore, even if the Florida domestic violence statutes are some of the most protective statutes in the United States, it is still not perfect because the

¹⁴¹Schelong, *supra* note 10.

¹⁴²Fla. H. Comm. on HRS, *supra* note 74, accord Fla. S. Comm. on HRS, *supra* note 68.

¹⁴³Fla. H. Comm. on HRS, *supra* note 74.

¹⁴⁴*Id.*

domestic violence centers' role in victims obtaining injunctive relief is insufficient. By implementing an attorney call-list for the domestic violence centers, the original legislative intent of the 1979 statute will be fulfilled.

Besides serving the 1970's women's rights movement's goal and 1979 Florida legislative intent, the attorney call-list would also solve a host of problems that remain in civil domestic violence today. The first problem an attorney call-list would solve is that it would reduce the number of false claims because of the attorneys' involvement in the cases. If attorneys are able to help victims in filing petitions, they will initially have to screen the cases, weeding out the unsupported claims. A majority of attorneys will detect these false claims. Nevertheless, some attorneys will inevitably encourage their clients to petition for injunctive relief based on exaggerated claims.¹⁴⁵ However, attorneys are not professionally allowed to engage in frivolous litigation.¹⁴⁶ This only furthers the need for these attorneys to be educated on domestic violence. Moreover, there will not be that many false claims being filed in these cases because the overwhelming majority of victims in domestic violence centers are actual victims, and are not just looking for an advantage in their divorce cases. Therefore, an overall increase in attorney presence better serves victims and prevents further domestic violence through the issuance of more complete injunctions.

The second problem an attorney call-list would solve is that it would end the court clerks' improper involvement in cases. If an attorney performs the initial intake interview and files the petition for a victim, then the victim would never need to go to the clerks' office and the clerk would never get the chance to dissuade or encourage claims, as they are often criticized for doing.¹⁴⁷ Simultaneously, this would end the criticisms that clerks do not receive the proper training, because their exposure to helping victims filing claims would be decreased and limited. As a result, an attorney call-list would help bring forth the authentic domestic violence cases (that clerks are dissuading) and reduce false or exaggerated cases (that clerks are encouraging). The end result is

¹⁴⁵Mason, *supra* note 103, at 75.

¹⁴⁶R. REGULATING FLA. BAR 4-3.1 ("A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.")

¹⁴⁷Mason, *supra* note 103, at 76.

that true domestic violence cases are litigated and potential victims are protected.

The third problem an attorney call-list would solve is that victims seeking relief will not need to worry about filling out a petition because an attorney will do it on their behalf. By having domestic violence centers implement the call-list, actual victims will no longer have to go through the trouble of writing a petition with the pressure of meeting the statutory burden. Moreover, an attorney will draft the petition in a reasonable manner to meet the burden of a “reasonable belief of imminent harm” as required by the statute.¹⁴⁸ When victims draft petitions without the help of an attorney, they often bring up old events or events that otherwise do not meet the statutory burden.¹⁴⁹ As a result, even though they may be actual victims of domestic violence, they may not get the injunctive relief they need. If they were to have an attorney through this process, counsel would be able to draft a petition in a manner to meet the burden, and thereby give injunctive relief to an actual domestic violence victim.

The fourth problem an attorney call-list would solve is that it would help low-income women, who are usually disadvantaged in litigation. These women are often plagued by domestic violence disputes. They are so financially dependent on their abusers that they often go unheard.¹⁵⁰ By having legal representation to help them in filing a petition and during the hearing, they have an equal chance of obtaining relief as women who have higher income and can afford an attorney.¹⁵¹

All victims, who seek injunctive relief, will be legally represented because the attorney call-list will not employ the Federal Poverty Guidelines. The local Legal Aid services that provide their services to those who cannot afford private legal representation, will not need to handle domestic violence cases. Instead, attorneys hungry for experience will handle the cases, regardless of victims’ income. The attorneys will help protect victims through the issuances of protective injunctions, and thereby prevent further domestic violence.

The next problem an attorney call-list would solve is that it will help real victims obtain relief, thereby preventing future domestic violence. Research shows that domestic violence victims fare better

¹⁴⁸FLA. STAT. § 731.30(5)(a).

¹⁴⁹See Wardle, *supra* note 108.

¹⁵⁰Lave, *supra* note 126.

¹⁵¹Klein & Orloff, *supra* note 133.

when they are legally represented in court for domestic violence injunction hearings.¹⁵² Moreover, victims obtain more complete relief and are more likely to obtain relief in the first place if they are legally represented.¹⁵³ If domestic violence centers incorporate the proposed call-list, victims will have access to proper legal assistance, which in turn can help their cases. Therefore, domestic violence would actually be prevented by allowing the victims to be legally represented.

The final problem an attorney call-list would solve is the domestic violence centers' inability to help with the legal process of obtaining an injunction. This proposed change will actually empower the domestic violence centers in helping victims. The centers will now be able to enlist the help of licensed attorneys and get victims the legal representation they need. Accordingly, these victims, who would be legally represented, would achieve more complete relief more frequently.¹⁵⁴ Therefore, domestic violence will be prevented by providing domestic abuse centers with an attorney call-list.

V. IMPLEMENTING A LEGISLATIVE CHANGE

This attorney call-list can be accomplished in two different ways. First, the statute can be amended to include "create and use an attorney call-list" as one of the requirements for a domestic violence center.¹⁵⁵ The alternative is for domestic violence centers to implement an attorney call-list on their own initiative and not through a statutory amendment.

The manner in which to enhance Florida's domestic violence statutes and meet the 1979 legislative intent, is to actually amend the statute that governs domestic violence centers' requirements, Florida Statute section 39.905(1). The legislative amendment process can often be a confusing, convoluted process. But the law can provide for more responsibilities in order for a domestic abuse center to be certified. The original law required for the spouse abuse centers to take on a number of several duties in order to be certified.¹⁵⁶ Therefore, an amendment to the current legislation

¹⁵²*Id.*

¹⁵³*Id.*

¹⁵⁴Klein & Orloff, *supra* note 133, at 812.

¹⁵⁵See Appendix A. It is a copy of the first subsection of the current statute with the proposed changes in italics.

¹⁵⁶1979 Fla. Laws Ch. 79-409.

requiring spouse abuse centers to maintain an attorney call-list is not beyond the type of laws the legislators can amend.

Currently, a domestic violence center does not need to provide legal referral services.¹⁵⁷ It only requires that these centers “provide minimum services that include, but are not limited to, information and referral services, counseling and case management services.”¹⁵⁸ Domestic violence centers are not currently providing this attorney call-list simply because it is not expressly required in the statute. By changing the statute to include this amendment, they will be required to provide the attorney call-list.¹⁵⁹ Nevertheless, by the statute stating that the statutory list is not exhaustive, it gives the domestic violence centers freedom to provide more services (including the proposed call-list). Moreover, there is nothing preventing the domestic violence centers from adopting the call-list on their own initiative.

The problem in amending the law is that it requires money, lobbying, and politics. This proposal would first need a lobbying group or other politically-powerful organization to support it financially. Although there are several possible lobbying groups that would take on this cause, it would require a lot of time, money, and effort. These groups would also need to have the ears of a few politicians who are willing to support this change and introduce a bill in their respective legislative house. There are several reasons, besides lack of money or support groups, which may prompt legislators to not support a change in certification requirement for domestic violence centers to include attorney call-lists.

One reason why it may be difficult to amend the statute to require domestic violence centers to implement an attorney call-list is that there is no constitutional right to counsel in civil cases, which is the principle reason for its prominent use in criminal courts. Moreover, this call-list only works so well in criminal court because there is a fundamental right to counsel when a person’s life and liberty are at stake.¹⁶⁰ But criminal court call-lists are not found in the state statutes or Constitution: they are court-made. Therefore,

¹⁵⁷See FLA. STAT. § 39.905(1).

¹⁵⁸FLA. STAT. § 39.905(1)(c). The statute has more requirements for a domestic violence center than stated in this paper. But for the purposes of this paper, the only relevant subsection is quoted.

¹⁵⁹See Appendix A.

¹⁶⁰See *Gideon v. Wainwright*, 372 U.S. 335 (1963); see also *Walker v. State*, 150 Fla. 476, 477 (Fla. 1942).

although the primary reason for having call-lists may be different in civil law than from criminal law, they may still be just as effective.

Another reason why it may be difficult to generate support for this proposition is that it calls for an escalated presence of attorneys. Some people will most likely suggest that this increase in attorney presence may lead to more frivolous claims being filed.¹⁶¹ Family law attorneys are often criticized for filing fake or exaggerated domestic violence claims in order for their client to gain the upper hand in a divorce case, especially when children are involved.¹⁶² Another concern may be the lack of quality representation because the pro bono attorneys may not have the financial incentive to be fully prepared. However, there are two simple solutions to this problem.

First, this problem can be avoided for the same reasons it does not arise in criminal court. Criminal defense attorneys do not want to make mistakes in a case that the court selected for them using the call-list. Similarly, an attorney assigned a domestic violence case will not want to file frivolous claims because their reputations will suffer, even though it is a domestic violence center using the call-list and not the court. Moreover, a majority of these attorneys will be young attorneys seeking experience. They will not want to botch any case by filing frivolous or exaggerated claims. In all likelihood, they will want to put their best foot forward and stop themselves from filing frivolous claims. For these same reasons, the attorneys will be prepared for court even though they are not getting paid.

Second, a more simple solution to the problem of attorneys filing frivolous claims is to enhance the domestic violence legal education for attorneys.¹⁶³ Simple seminars and specialized continuing legal education courses will increase the average family attorney's knowledge of domestic violence. Moreover, it will discourage them from filing frivolous claims. At the same time, it may also encourage attorneys, who are not on the call-list, to handle these cases pro bono for prospective clients.

Increasing attorney training in domestic violence both locally and nationally will improve the legal system as a whole for domestic

¹⁶¹See Mason, *supra* note 103 (stating that domestic violence claims are frequently encouraged by lawyers in a divorce case to gain the advantage in a child custody issue).

¹⁶²*Id.*

¹⁶³See Wardle, *supra* note 108 (calling for an increase in attorney awareness and education in the domestic violence field).

violence.¹⁶⁴ The need for attorney involvement may also be met by recruiting pro bono attorneys and training them in the sensitive area of civil domestic violence injunctions.¹⁶⁵

VI. AN ALTERNATIVE TO STATUTORY AMENDMENTS

As explained, the political process of enacting or amending legislation is not always simple. The 1979 legislative intent can still be realized without a change in the current statute. Domestic violence centers can actively search for young attorneys looking to accept these pro bono cases. There is nothing in the statute that prevents the domestic violence centers from taking these actions. If a legislative change is politically impossible at this point in time, then domestic violence centers can take matters into their own hands and implement an attorney call-list on their own initiative.

There are two ways in which domestic violence centers can accomplish this initiative. First, the centers can cater to young attorneys who are just starting out, who need experience in the area of family law and are will to take the cases pro bono. Second, the centers can reach out to local law schools that currently have, or are willing to start, domestic violence clinics, where students (supervised by licensed attorneys) help victims in the legal process of domestic violence relief. Law schools often have clinics covering areas of family law that can specifically help low-income domestic violence victims.¹⁶⁶ Both these solutions would be basically cost-free to the domestic violence centers. In return, they will have several attorneys (or law students) willing to participate because of the hands-on experience they will receive. Moreover, with these two possible options, the domestic violence centers would not have to go through the hassle of enacting or amending current legislation.

¹⁶⁴Klein & Orloff, *supra* note 132, at 813.

¹⁶⁵*Id.* at 814.

¹⁶⁶Florida International University's College of Law, Legal Practice, offers a low-bono program catering to those families that do not qualify for pro-bono services but cannot afford a private attorney. Sydney Pereira, *Many families struggle to afford a lawyer. This FIU program could help.*, MIAMI HERALD (August 25, 2017, 5:06 PM), <http://www.miamiherald.com/news/local/education/article169419472.html>.

VII. CONCLUSION

Now that society is actually acknowledging the problems surrounding domestic violence, it is time to fix the problems. The goal of the 1970's women's rights movement was for women to have equal access to the courts and not be subjected to violence in the home.¹⁶⁷ The movement strove for equalization to better protect women.¹⁶⁸ Similarly, the 1979 Florida legislature focused on giving spouse-victims a civil remedy that would prevent domestic violence.¹⁶⁹ In doing so, they acknowledged the pivotal role that domestic violence centers would have in helping these victims obtain injunctive relief.¹⁷⁰

Domestic violence would be prevented and victims better served if domestic violence centers were to implement an attorney call-list. The call-list would fulfill the goal of the 1970's women's rights movement and the 1979 legislative intent, and would also solve a few issues that plague civil domestic violence injunctions today. This attorney call-list could be realized in either of two ways. First, the Florida legislature could amend the statute to require domestic violence centers to implement an attorney call-list in order to be certified and receive state funding. Alternatively, domestic violence centers could adopt an attorney call-list on their own initiative, given the fact that amending a statute is a tedious task. Regardless of the route taken, the destination is the same: victims are better protected and further violence is prevented.

¹⁶⁷Schelung, *supra* note 10.

¹⁶⁸*Id.*

¹⁶⁹Fla. H. Comm. on HRS, *supra* note 74.

¹⁷⁰*Id.*

Appendix A

The proposed statutory amendment is italicized.

Florida Statute 39.905 Domestic violence centers.—

(1) Domestic violence centers certified under this part must:

(a) Provide a facility which will serve as a center to receive and house persons who are victims of domestic violence. For the purpose of this part, minor children and other dependents of a victim, when such dependents are partly or wholly dependent on the victim for support or services, may be sheltered with the victim in a domestic violence center.

(b) Receive the annual written endorsement of local law enforcement agencies.

(c) Provide minimum services that include, but are not limited to, information and referral services, counseling and case management services, temporary emergency shelter for more than 24 hours, a 24-hour hotline, training for law enforcement personnel, assessment and appropriate referral of resident children, and educational services for community awareness relative to the incidence of domestic violence, the prevention of such violence, and the services available for persons engaged in or subject to domestic violence. If a 24-hour hotline, professional training, or community education is already provided by a certified domestic violence center within its designated service area, the department may exempt such certification requirements for a new center serving the same service area in order to avoid duplication of services.

(d) Create and use an attorney call-list. The domestic violence center must have a list of attorneys who are willing to represent victims in civil domestic violence injunction hearings on a pro bono basis. Upon request from a victim indicating that he or she would like to obtain a civil injunction against his or her abuser, a staff member from the domestic violence center must call an attorney from the list and inquire if the attorney would be willing to represent the victim on the limited basis of the civil injunction hearing. Unless otherwise instructed by the victim, the center must continue to search for an attorney from the list who will represent the victim at the civil injunction hearing. In order to create and maintain this attorney call-list, a domestic violence center must actively seek to recruit attorneys to participate in the call-list. The domestic violence centers may also engage local law schools for assistance. Information with regards to a civil injunction must be provided in accordance with subsection (c) of this statute.

(e) Participate in the provision of orientation and training programs developed for law enforcement officers, social workers, and other professionals and paraprofessionals who work with domestic violence victims to better enable such persons to deal effectively with incidents of domestic violence.

(f) Establish and maintain a board of directors composed of at least three citizens, one of whom must be a member of a local, municipal, or county law enforcement agency.

(g) Comply with rules adopted pursuant to this part.

(h) File with the coalition a list of the names of the domestic violence advocates who are employed or who volunteer at the domestic violence center who may claim a privilege under s.90.5036 to refuse to disclose a confidential communication between a victim of domestic violence and the advocate regarding the domestic violence inflicted upon the victim. The list must include the title of the position held by the advocate whose name is listed and a description of the duties of that position. A domestic violence center must file amendments to this list as necessary.

(i) Demonstrate local need and ability to sustain operations through a history of 18 consecutive months' operation as a domestic violence center, including 12 months' operation of an emergency shelter as provided in paragraph (c), and a business plan which addresses future operations and funding of future operations.

(j) If its center is a new center applying for certification, demonstrate that the services provided address a need identified in the most current statewide needs assessment approved by the department. If the center applying for initial certification proposes providing services in an area that has an existing certified domestic violence center, the center applying for initial certification must demonstrate the unmet need in that service area and describe its efforts to avoid duplication of services.