

AGENTS FOR CHANGE

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Agents for Change
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Battered Women's Legal
Advocacy Project, Inc.

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Minnesota's Supreme Court holds that Child Protection Workers can be Sued in a Wrongful Death Suit

In a decision handed down on April 21, 2005 by the Minnesota Supreme Court, a wrongful death suit can be brought against the county and county child protection workers if they were negligent in their investigation of reports of child abuse and neglect as required by the Child Abuse Reporting Act (CARA), Minn. Stat. § 626.556 (2004). In *Radke vs. County of Freeborn*, the Court held that a special duty was created under CARA, which required the county and their child protection workers to investigate reports of child abuse and neglect.

On April 21, 2001, nineteen-month-old Makaio was beaten to death by Paul Gutierrez, a friend of his mother's. In the months before Makaio's death, Makaio's father, Matthew Radke, reported to the police and to doctors four times his concerns about Makaio's welfare. Both the police and doctors made reports to the county's child protection department. On three occasions, one the day that Makaio died, a child protection worker visited Makaio's home, but none of them further investigated the situation nor took any protective action on Makaio's behalf. Mr. Gutierrez was convicted of two counts of first-degree murder by criminal sexual conduct and by child abuse and one count of second-degree murder.

Mr. Radke then filed a civil lawsuit against Freeborn County and two of the county's child protection workers for wrongful death of his son. The district court dismissed his case and the Court of Appeals affirmed the dismissal. However, Minnesota's Supreme Court disagreed and reversed the decision of the district court and the Court of Appeals finding that the Freeborn County and their child protection workers did have a special duty to protect Makaio from abuse.

In general, a governmental unit does not have any duty to prevent one person from injuring another, this is call the "public duty rule". However, the governmental unit can create a special duty of care if there is an undertaking of responsibility to protect a particular class of persons from the risks associated with a particular harm. The Court held that when a statute makes certain acts mandatory for a governmental unit to protect a particular class of persons, then that special duty is created. The Court found that CARA mandates mandatory reporters to report abuse. CARA then mandates (shall) the proper authority to conduct an assessment, collect available and relevant information and remove the child if necessary. Because CARA mandates an investigation for a particular class of people, i.e. abused and neglected children, a special duty has been created to protect these children from abuse and neglect.

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Thank you to our Volunteers and Interns!

As the semester winds down, BWLAP wants to extend a gigantic thank you to our volunteers and interns! The work that you all have done has been amazing and fantastic. In their short time here at BWLAP, the interns and volunteers have created 2 new Technical Assistant Packets, 1 new manual, updated a number of the chapters in the Agent for Change manual, updated 3 Technical Assistant Packets, got a good start on a statewide resource manual, completely updated and revised our database, answered numerous phone calls and conducted tons of random research at the whim of the staff! THANK YOU Nora, Lesley, Melanie, Katie, Erin and Heather!

Host a New Laws Training!

New Laws is an annual training held by BWLAP to update advocates and others about laws affecting battered women. While the trainings are geared towards domestic violence advocates, anyone is welcome to attend. The scope of this training ranges from criminal law to family law and government benefits. Each year BWLAP holds the training in six (6) locations throughout the state – two in the North, two in the South, one metro and one in central Minnesota. Last year we held trainings in Minneapolis, Carlton, Crookston, Fergus Falls, Princeton and Windom. We need local agency hosts for the coordination of the training logistics. The host finds a local training site, makes arrangements for food, and supplies information regarding lodging and directions. BWLAP will pay for all the costs. The biggest benefit of hosting the training is you don't have to travel as the training is in your hometown! Like last year, the trainings will be held on Monday/Tuesday and Thursday/Friday and will be held in late August, early September.

Another way to provide input for New Laws is to submit ideas and scenarios that you have experienced over the past year that we could use as example exercises or training topics. Potential topics include: immigration, housing issues for battered women, mutual OFP, custody issues in OFP proceedings, or state vs. tribal jurisdiction. Please e-mail staff@bwlap.org with your comments or if your agency would like to host a training.

Renters' Credit in a Holding Pattern

As of print of this newsletter, Renters' Credit reduction is in a holding pattern. Senate actions on the State budget to date have NOT included a cut to the Renters' Credit. However, there has been no change in the House or the Governor's budget and their version still includes a cut to the Renters' Credit. There is also a separate bill in the House, HF1679, that would cut the Renters' Credit by 31.5%, the Governor has proposed a cut of 25%, although there has been no legislative action on the House proposals. We continue to believe that our best hope for avoiding a cut to the Renters' Credit lies in the Senate.

What does all of this mean? It means that you still have time to voice your opinion to the Governor and your representative about how important the Renters' Credit is! We have made significant progress in the Senate; we need to not give up now. We need to tell Governor Pawlenty and our state representatives that they cannot balance the budget on the backs of the poor. Call or write the Governor and your state representatives and tell them that Renters' Credit is important to you. If you have a story about what you have spent your Renters' Credit on, let them know. If you live in Greater Minnesota, tell your representative how reducing the Renters' Credit will harm your communities. You can also write a letter to the editor or distribute an Action Alert. If you would like more information on the Renters' Credit, check out BWLAP's website at www.bwlap.org. There you will find information about the Renters' Credit, tips on writing an editorial, a sample action alert and arguments to make about why the Renters' Credit is so important. If you are interested in how you or your organization can be involved, have questions about Renter's Credit, want more information or have a story to tell, please call Rana at 612-343-9844 or e-mail her at rana@bwlap.org.

Punto de Vista Latino

Hablemos de hechos y no de pre-conceptos

Se dice que los “inmigrantes ilegales”, como a algunos les gusta llamar despectivamente, tienen la responsabilidad de la escasez de fuentes de trabajo en Minnesota y además son también culpables de que los salarios bajen en lugar de subir.

También se dice que los “inmigrantes ilegales” abusan de los beneficios públicos constituyendo una carga económica y social para nuestra comunidad.

Confrontemos estos dichos con datos oficiales obtenidos de National Immigration Law Center.

1. De acuerdo con el Censo de Población de los Estados Unidos del año 2000, los inmigrantes en Estados Unidos constituyen el 11% de la población, alcanzando, en ese momento, la suma de 30 millones. (Considerando que estos números tienen 5 años, ahora la cifra seguramente alcanza los 35 millones).
2. Uno de cada 5 niños en los Estados Unidos, es nacido de una familia de inmigrantes.
3. Inmigrantes y ciudadanos americanos viven unidos en familias: 85% de las familias de inmigrantes con niños ostentan, entre sus miembros, diferente estatus jurídico inmigratorio.
4. Los inmigrantes contribuyen significativamente a la economía de los Estados Unidos. En el año 2000, la población inmigrante constituyó el 15% del total de la fuerza laboral.
5. También en el 2000 los hombres inmigrantes de 16 años o mayores, tuvieron una participación laboral más alta (80%) que los de la misma edad nacidos en el país (74%).
6. De acuerdo con la Academia Nacional de Ciencias, el beneficio social neto de la administración del seguro social en los Estados Unidos, por el período 1998-2022, será de \$ 500 billones, pero sólo si la corriente inmigratoria se mantiene constante.
7. Los inmigrantes trabajan en puestos de baja retribución, con escasos beneficios. Aún cuando el 7.1% de todos los trabajadores son no ciudadanos, casi el 20% de todos los trabajadores recibiendo bajos salarios son inmigrantes.
8. Casi el 43% de los inmigrantes ganan menos de \$ 7.5 por hora, comparado con el 28% de los trabajadores en general.
9. Sólo el 26% de los inmigrantes que trabajan tienen aseguranza.
10. Los inmigrantes usan beneficios sociales en menor proporción que los ciudadanos. Además, los inmigrantes no vienen a este país buscando beneficios sociales sino buscando nuevas oportunidades para vivir mejor.
11. Los beneficios de welfare no determinan tampoco el lugar de asentamiento de los inmigrantes. Entre los años 1995 y 2000 el número de familias inmigrantes con niños creció el doble de rápido en estados que tienen escasa ayuda para inmigrantes como ser Arkansas y Texas, comparado con estados que tienen una política de beneficios más generosa para los inmigrantes como California y Massachusetts.
12. Cerca del 33 % de ciudadanos de bajos ingresos usó Medicaid en el año 2001, comparado con solo el 13.2% de inmigrantes de bajos ingresos.
13. Familias de inmigrantes con hijos tienen porcentajes de uso de TANF (Temporary Assistance for Needy Families) menores que familias de ciudadanos de bajos ingresos con hijos.
14. Las restricciones de beneficios sociales para los inmigrantes la sufren principalmente los niños.
15. Un tercio de todos los niños en los Estados Unidos que podrían ser elegibles para Medicaid, pero que no están enrolados, son hijos de familias inmigrantes.
16. Aún cuando niños estadounidenses viviendo con padres no ciudadanos son elegibles para estampillas de alimentos, entre 1994 y 1999 su participación en Food Stamp Program declinó un 35%.

(continued on page 5)

The *Radke* decision raises many questions about the future application of this court case. Could this standard be used to form a special duty between the police and a victim of domestic violence who has an order of protection? Only time will tell. However, this is still a great victory in the quest to end violence against children! The Radke opinion is available at: <http://www.courts.state.mn.us/opinions/sc/current/opa030797-0421.htm>

No Child Left Behind Act: Providing Education for Homeless Children

Battered women and their children are often forced to leave their homes because of the violence in their lives. They go to shelters, live with friends or relatives, and sometimes, they end up on the streets. In all of these situations, the woman and her children are homeless. Children in these situations suffer horribly, unsure of where they will be tomorrow and if they will be safe. School might be the only constant thing in their lives. Alternatively, mothers, who left their home in haste, may find it frustrating to register their child(ren) at a new school, because they may no longer have the necessary documents. In these situations, the No Child Left Behind Act can be used to keep a child in their school of origin for the rest of the school year, or to allow registration without all of the commonly required documents.

In 2002, the No Child Left Behind Act amended and incorporated the McKinney-Vento Act, which provides for education for homeless children. The McKinney-Vento Act is the federal law that entitles children who are homeless to a free and appropriate public education. It requires schools to remove barriers to their enrollment, attendance, and success in school.

Changing schools is incredibly difficult on children because they will lose friends, teachers, and academic progress. In fact, it can take up to six months for a child to recover academically after changing schools. Homeless children have lower test scores and lower overall academic performance than their peers who do not change schools. The No Child Left Behind Act recognizes these difficulties and has accordingly mandated a number of things:

- School districts must allow homeless children to stay in their school of origin unless it is not in the best interests of the child or the parent or guardian decides to place the child in a different school;
- The child can remain in the school of origin until the end of the school year;
- The school must provide and pay for the transportation of the child to the school of origin at the request of the parent;
- If the school refuses to retain the child in their school of origin, the school must provide a written explanation as to why the child cannot stay in their current school and provide information on how to appeal the decision.

The No Child Left Behind Act also makes it easier for a homeless child to become enrolled in new school. The Act mandates that:

- A school cannot deny enrollment to a child because they lack the necessary forms. The school is required to immediately enroll the child and contact the old school for the forms such as previous academic records, medical records, proof of residency or other documentation.
- A school cannot deny enrollment to a child because of a lack of immunizations.

To access any of these rights, the woman or her advocate should contact the school's homeless liaison or local educational agency liaison. For more information and definitions of the terms used in the Act, BWLAP has written a technical assistance packet on the No Child Left Behind Act and how it supports homeless children, which can be found on our website at www.bwlap.org/publications.html. If there are further questions, concerns or suggestions, please contact Rana at rana@bwlap.org.

(Punto de Vista Latino continued)

17. De acuerdo a estadísticas oficiales los niños nacidos en familias de inmigrantes son más proclives a no recibir una buena atención social que los niños nacidos en familias de ciudadanos:

- Son más proclives a ser pobres cuando crezcan (24% versus 16%).
- Más proclives a no tener seguro médico (22% v. 10%)
- Más proclives a no tener una alimentación suficiente y segura (37% v. 27%).

Evidentemente, con estos números oficiales a la vista, es claro que los inmigrantes no son una carga para la economía de este país sino que, por el contrario, con su sacrificio fortalecen las bases económicas de esta sociedad, percibiendo a cambio escasos beneficios.

Conceal and Carry Law Found Unconstitutional by the Court of Appeals

In a decision issued on April 12, 2005, Minnesota's Court of Appeals upheld the ruling of the Ramsey County District Court that the "Conceal and Carry Law" is unconstitutional. In *Unity Church of St. Paul, et. al, v. State of Minnesota*, 2005 Minn. App. LEXIS 390 (Minn. Ct. App., 2005) the court held that the Minnesota Citizens Personal Protection Act (more commonly known as the "Conceal and Carry Law") violates Article 4, Section 17 of the Minnesota Constitution, which requires a bill to embrace only one subject.

The conceal and carry bill was slated to be articles 2 and 3 of chapter 28 in the Minnesota statutes. Article 2 related to handgun permits, who can have them and who can issue them, created new firearm crimes and modified existing crimes. Article 3 would have prevented violent felons from being able to possess a firearm forever. However, article 1 of chapter 28 contained boilerplate Department of Natural Resources related amendments.

The Unity Church of St. Paul argued that the DNR and handguns are not connected to each other and therefore the law violates Minnesota's constitutional requirement that a bill only embrace one subject. The Court of Appeals agreed with Unity Church and the District Court and found that DNR and handgun permits are not "germane" to a single subject or connected with each other under a general theme. The Court also found that media attention or hot discussion about the bill does not change the constitutionality of the law. The Court found that "[t]he proper inquiry on a constitutional challenge under Minn. Const., art. [4], § 17 is whether the law is germane to a single subject, not whether a bill was hotly debated or whether it passed through legislative committees unnoticed" 2005 Minn. App. LEXIS 390 (Minn. Ct. App., 2005).

It is unlikely however that the Court of Appeals decision will result in other Minnesota law's being repealed. The Court stated that in 148 years, there have only been 60 cases challenging a law based on single-subject grounds and of those 60 cases only 5 of those challenges were successful. As long as there is a "mere filament" connecting the various sections of the bill, the court should uphold the law as constitutional. However, we still have to wait and see if the State will appeal the decision by the Court of Appeals and if they do, what conclusion the Minnesota Supreme Court will come to.

Hennepin County's Domestic Abuse Service Center is Moving!

As a member of the Hennepin County Domestic Abuse Service Center (DASC) Team, I have some exciting news to report. On Thursday, April 28th, we will be moving into a newly constructed office space across the hall from where we are currently located in the Government Center. The office will be closed on that day and will reopen on Friday, April 29th. A tremendous amount of planning and work has gone into the space, and it is amazing. A Grand Opening is currently scheduled for May 26, 2005, from 10:00 a.m. to 2:00 p.m. I encourage you to stop by and witness the collaboration and Hennepin County's continuing commitment to victims of domestic violence. ~Kimberly

**CHECK OUT OUR
WEBSITE!
WWW.BWLAP.ORG**

Immigration Corner

Development, Relief, and Education for Alien Minors Act. (DREAM Act)

Minnesota Senate has passed a bill called the Minnesota DREAM Act, that, if passed by the House of Representatives, would benefit our young immigrant students. At Federal level also, if there is a bill that has high possibilities to be passed, because of its bi-partisan support, is the DREAM Act. Both projects, named the same, will benefit immigrant undocumented students.

The DREAM Act addresses the tragedy of young people who grew up in the United States, whose first language is English, graduated from our high schools, but cannot pursue higher education because of lack of documentation. Those young students in the majority of the cases derive their immigration status solely from their parents: when their parents are undocumented or don't have a clear immigration status, they don't have any mechanism to apply for a legal permanent residency.

Even though both bills have the same primary goal, they have different scope and provisions. The Federal DREAM Act would provide mechanisms to enable young immigrants to apply for legal permanent resident status by enacting two major changes in the law:

- Eliminate a federal provision that discourages states from providing in-state tuition without regard to immigration status; and
- Permit some immigrant students who have grown up in the U.S. to apply for temporary legal status and eventually obtain permanent status and become eligible for citizenship if they meet certain conditions.

The Federal DREAM Act sets up a two-stage process to apply for legal status. Immigrant students who have grown up in the United States, graduated from high school here, and can demonstrate good moral character would qualify for "conditional lawful permanent resident" status, which last up to six years. To qualify they need to demonstrate that have come to the United States before they were 16 years old or at least 5 years before the date of the bill's enactment. During the conditional period the immigrant is required to go to college or join the military. At the end of that period, those who met the following requirements would be eligible for regular lawful permanent resident status. Those requirements are:

- Either graduated from a 2-year college or studied for at least 2 years towards a B.A. or higher degree; or
- Served in the U.S. armed forces for at least 2 years.
- Have maintained during the whole conditional period the requirement of good moral character.

Minnesota DREAM Act would not contain any provision regarding immigration status, as this topic is exclusively reserved to federal law. Minnesota's DREAM Act would allow undocumented students to qualify for in-state tuition rates at state universities and colleges under the conditions that the student has attended high school in Minnesota for at least two years, has graduated from a Minnesota high school and has registered and been accepted to a public college or university. The Minnesota DREAM Act would not change the resident status of immigrants, nor would it make them eligible for state grants, but would allow for those students to pay resident tuitions instead of unaffordable international tuitions. Similar laws have passed in other states; recently one has passed in Texas.

This is a matter of fairness with this young generation of immigrants who were brought into the United States by their parents. They will remain in the U.S. because this is their place now, and the less we can do for them is to give them an equal opportunity to pursue their future.

Supreme Court Hears Restraining Order Case

Recently the Supreme Court heard arguments in *Castle Rock v. Gonzalez*, 366 F.3d 1093 (10th Cir., 2004) that will determine if a police department can be held accountable for failing to enforce an order for protection when the state has a statute mandating enforcement of that order. Jessica Gonzalez has sued the Castle Rock, Colorado police department, in the amount of 30 million dollars for failure to enforce her order for protection she had against her husband Simon. Under Colorado state law, similar to Minnesota's statute Sec. 518B.01, subd. 14(e), the police are required (shall arrest) to enforce court-ordered restraining orders by arresting violators when there is probable cause.

Jessica called the police five (5) consecutive times when her husband broke into her home and took her three minor daughters with him. At midnight, desperate because she was not receiving appropriate response from law enforcement, she went to the police department in person. The police officers took an incident report, but did nothing to find or detain Jessica's husband. Few hours later Simon showed up at the police station and from his truck opened fire. The police fired back, as a result, Simon was killed. Jessica's three little girls, who were in the truck with Simon, were found shot and killed with multiple gunshots to their heads.

Jessica Gonzalez lawyers argued that by failing to enforce the order of protection, in light of the Colorado statute mandating enforcement of that order, the police violated her 14th Amendment right to due process. The Tenth Circuit Court of Appeals agreed and reversed the dismissal of her case and sent it back to the district court for further proceedings. The Tenth Circuit held that Ms. Gonzalez has a procedural due process claim which relief can be granted because she has a property interest in the enforcement of her restraining order because the wording of the Colorado statute (shall arrest). This interest was taken from her without due process when the police refused to enforce her restraining order. The Court stated: "[t]he statute promised a process by which her restraining order would be given vitality through careful and prompt consideration of an enforcement request, and the constitution requires no less. Denial of that process drained all of the value from her property interest in the restraining order" 366 F.3d 1093, 1117 (10th Cir., 2004). Castle Rock has appealed the Tenth Circuit's decision and is asking the United States Supreme Court to dismiss Ms. Gonzalez's lawsuit.

The mere fact that the U.S. Supreme Court decided to hear the arguments in this case has tremendous importance. If the Castle Rock, Colorado, police department is finally condemned, this case will make be landmark in the history of violations of orders for protection. This case will allow domestic violence victims/survivors throughout the county with OFPs to have real enforcement of their orders. We will follow this case closely!

A Call for Pro/Low Bono Attorneys

BWLAP is calling for pro/low bono attorneys to represent battered women throughout the State. If you are an attorney and interested in helping battered women in a variety of legal situations, please e-mail us at staff@bwlap.org and let us know. If you are an organization that has a list of attorneys who will represent battered women in either a pro or low bono way, let us know. Through pro/low bono attorneys, we can make sure that all battered women receive the representation that they need and deserve.

Would You Like to Receive *Agents for Change* Via E-mail?

If so, let us know! We can either e-mail each new addition of *Agents for Change* to you or let you know when the newsletter is posted on our website.

If you are interested in receiving this newsletter in electronic form instead of on paper, send an e-mail to info@bwlap.org and let us know how you would like to receive the newsletter.

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BWLAP is a Minnesota-based, statewide, non-profit organization that provides legal information, consultation, training, litigation support, and policy development assistance to battered women, their advocates, civil/criminal justice, and social service systems.

MARK YOUR CALENDARS!

June 17, 2005 at 1:00 pm
Board of Trustees Meeting

★ Would you like to serve on ★
★ BWLAP's Board? ★
★ We are taking applications. If you are ★
★ interested, please e-mail: ★
★ info@bwlap.org ★

BWLAP extends its heartfelt
gratitude to our funders:

It is only with the help of our funders that we may help others. *Thank you!*

- Department of Justice – Legal Assistance for Victims Grant
- Office of Justice Programs (ex-MCCVS)
- Minneapolis Foundation
- Bremer Foundation
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