

AGENTS FOR CHANGE

Volume 15, Issue 4

August 2005

Agents for Change
is a publication of the
Battered Women's Legal
Advocacy Project, Inc.

1611 Park Ave South
Suite 2
Minneapolis, MN 55404

Office: 612.343.9842

Toll Free: 800.313.2666

Fax: 612.343.0786

Email: info@bwlap.org

Web: www.bwlap.org

Staff

Dorian Eder

Maria Gloria Fressia

Rana SA Fuller

Kimberly Weinacht

Preparing Battered Women for Custody Evaluations

As advocates, most of us have worked with battered women in divorce and custody proceedings. When custody is contested, a Judge usually orders a custody evaluation in order to assess each parent's ability to provide for the child using the 13 best interest factors set forth in Minn. Stat. 518. Instinctively, we tend to reassure battered women that they shouldn't fear the evaluation, especially in cases where domestic violence has been substantiated and the mother has been the primary caretaker.

Increasingly, however, we hear from battered women that domestic violence is not accounted for in the evaluation process, and that many evaluators are recommending custody be awarded to the batterer. It also appears that the more insistent battered mothers are that domestic violence be considered, the more likely they are to lose custody.

While we feel that the history of domestic violence is absolutely relevant to the child's best interest, we must also confront the troubling trend away from this by providing battered mothers with good information and advice in their custody evaluations. To this end, the following provides an overview of what to expect from a custody evaluation.

Best Interest Factors

Custody evaluations are based on the 13 best interest factors spelled out in the law (BWLAP's Technical Assistance Packet outlining these factors is available at www.bwlap.org/TAPs/TAPfamily.html) It's a good idea to provide battered women with a copy of these factors and go over them together so that everyone has a clear idea of what is being evaluated. Custody evaluations are almost always written by following the 13 best interest factor language and making determinations about each parent on each factor.

The 13th best interest factor concerns each parent's ability to encourage a good relationship with the other, unless abuse has occurred. Though battered women are not supposed to be subject to this factor, we find that a history of domestic abuse is diminishing in significance for custody evaluators. Even though the law is explicit that battered women should not be required to remain 'friendly' with the batterer, evaluators are still predisposed to consider this factor. For this reason,

(Continued on page 4)

Upcoming Events at BWLAP

September 8-9— New
Laws, Marshall

September 15-16—
New Laws, Duluth

September 19-20—
New Laws, Brooklyn
Center

October 3-4— *New!*
Training Location:
New Laws St. Paul

September 22-23
Immigrant And
Refugee Battered
Women

Task Force
Conference at
CLUES

October 10-11—
Minnesota Coalition
for the Homeless and
Minnesota Youth Ser-
vice Association's An-
nual Conference

Plan Ahead for New Laws Training Series!

New Laws is an annual training held by BWLAP to update advocates and others about laws affecting battered women. Each year BWLAP holds the training in six locations throughout the state – two in the North, two in the South, one in the metro area, and one in central Minnesota. While the trainings are geared towards domestic violence advocates, anyone is welcome to attend.

New Laws includes updates on state, federal, and tribal law, case law, and special focus sessions; this year's special focus topic is pro se appeals.

The following is the 2005 New Laws schedule: Alexandria, August 11-12, Lanesboro, August 18-19, White Earth Reservation, August 22-23, Marshall, September 8-9, Duluth, September 15-16 and Brooklyn Park, September 19-20 and NEW LOCATION AND DATE, St. Paul, October 3-4.

If you have any questions, please contact us. CLE credits will be applied for. Hope to see you there!

Second Metro Area New Laws Training

Due to the overwhelming response to our Metro location New Laws training this year, BWLAP has decided to have another Metro training. Therefore our New Laws Training in Brooklyn Center is now CLOSED. The second Metro training will be held at the Minnesota Coalition for Battered Women in St. Paul on October 3-4th.

A new registration form is located on our website at www.bwlap.org. Space is limited, please send your registrations ASAP. Travel and lodging scholarships for MCBW members are available.

Call Gloria at 612 343 9846 for more information.

Our Future Without Homelessness

The Minnesota Coalition for the Homeless and Minnesota Youth Service Association are sponsoring their annual conference. The conference will focus on skill building and best practice training for direct service providers and give attendees the tools they need to help create a future without systemic homelessness.

The training will take place in Alexandria at the Arrowwood resort on Monday, October 10th and Tuesday, October 11th. There will be a specific round table discussion on housing options for rural battered women that Rana Fuller from BWLAP and Linda Riddle from Houston County Women's Resources will be hosting.

For more information contact Minnesota Coalition for the Homeless at 612-870-7073 or www.mnhomelesscoalition.org.

Immigration Corner

Action Alert! VAWA 2005 Reauthorization

VAWA 2005 Reauthorization is expected to be voted on in the Senate Judiciary Committee in the third or fourth week of September. For that reason is now extremely important to contact Senators Dayton and Coleman and ask them to pose a phone call to the Judiciary Committee integrated by Senators Specter, Hatch, DeWine, Brownback, and Cornyn and let them know about the importance of the approval of VAWA 2005 Reauthorization.

On last June while attending the National Immigration Law Center Conference at Washington D.C. BWLAP jointly with Centro Campesino and Asian Women United used the opportunity to visit Senators Dayton and Coleman at their offices in Capitol Hill at Washington D.C. to advocate in favor of VAWA 2005 Reauthorization and for the approval of needed regulations to assure employers around the country to comply fully with labor and migrant protective laws.

Staff from both Senators took notes of all our reasons and arguments and agreed with us on the need our constituents and communities have to get those laws passed. If you need our Senators emails or telephone numbers please contact Gloria at Gloria@bwlap.org or call at (612) 343 9846.

The importance of VAWA 2005 Reauthorization does not need to be pointed out. In particular, those who work with immigrants know that this law is absolutely crucial.

VAWA 2005 Reauthorization provisions will:

- Stop deportation of immigrant victims of domestic violence, sexual assault, and trafficking by:
 - Stopping the Department of Homeland Security from seizing victims of crimes of violence from shelters,
 - Barring the detention and deportation of victims who qualify for VAWA.
 - Ensuring the confidential treatment of immigrant victims' cases so that they can safely access urgently needed relief.
 - Extend immigration relief to all victims of family violence protecting parents abused by their adult U.S. citizen or permanent resident sons and daughters, abused adopted children, and other persons who currently do not have access to any immigration relief.
- Guarantee economic security of immigrant victims and their children by:
 - Granting employment authorization to adult victims who have filed valid VAWA immigration cases.
 - Allowing organizations run by Legal Services to represent all victims of domestic abuse, trafficking, or sexual assault, regardless of immigration status.
 - Providing cooperating witness immigrant victims of domestic violence, sexual assault, child abuse and trafficking access to public benefits.

This aspect regarding the economic security of immigrant victims of crimes of violence is extremely important. These provisions on VAWA 2005 Reauthorization were inspired on the Women Immigrant Safe Harbor (WISH) proposal.

Many battered immigrants, even those who are willing to collaborate with law enforcement and would be entitled to U Visas, are barred from accessing federal public benefits, including TANF, for five years after they establish lawful presence in the United States. It is very difficult for these victims of abuse to escape their abusers and assisting law enforcement, without some sort of financial assistance. Often, these women stay with their abusers simply because they are economically bound to them.

Please, call now!

(Continued from page 1)

we are recommending that battered women be prepared to answer four basic questions before the evaluation:

- 1.) What negative things will your partner say about you as a parent?
- 2.) What makes you a good parent?
- 3.) What concerns do you have about his parenting?
- 4.) In what ways is he a good parent?

Discussing these questions ahead of the evaluation can provide some structure and focus during a stressful situation. Battered mothers should also be prepared to answer the fourth question with at least 3 examples, i.e. “Mark helps Joey practice baseball”. While this may be difficult in many circumstances, it is critical that mothers not appear to be ‘overly hostile’ to the other parent in the context of an evaluation.

Disposition of the Parties

We all know that most batterers have the ability to perform well under observation, and we believe this is one of the reasons battered women are not faring well in custody evaluations. Battered mothers are often legitimately upset, agitated, frightened and/or frustrated by their experience with the courts, in addition to being legitimately afraid for their child’s safety should they lose custody. Furthermore, battered mothers who continue to raise the history of domestic violence as a factor in their custody proceedings (often with our encouragement) may be viewed as incapable of ‘moving on’ and co-parenting in the future.

We generally advise battered mothers to allow documentation of abuse to speak for itself, and to provide copies of such documentation to the evaluator. We also advise battered mothers to do their best to appear calm, rational and friendly whenever possible, and to refocus all statements to the evaluator in terms of the child’s best interests.

Conclusion

For many years, the primary caretaker factor appeared to be the most significant in determining custody. But recently, we have noticed a trend toward weighing the 13th, or ‘friendly parent’ factor more significantly than others. This also matches a general trend toward promoting joint custody. We know from experience that evaluators often disregard a history of domestic violence in determining custody, but this has taken on an added significance as the perceived ability or willingness of the parties to co-operate has come to dominate custody evaluations. In general, we view this as a dangerous trend for battered women and their children.

While this advice is meant in no way to endorse the trend away from considering domestic violence in custody evaluations, we believe it is critical that battered mothers understand fully the context, environment and current risks of the custody evaluation. As always, if you have specific concerns, please call our offices so we can work through the situation with you.

Renters' Credit was Saved!

In the end, the Governor and our legislators agreed to NOT cut the Renters' Credit. Many thanks to all of you who have worked tirelessly to save the Renters' Credit throughout this long legislative process. Your consistent messages and on-going advocacy have been critical to maintaining this important resource for Minnesota's low and moderate-income renters. Now that the session is finally over, it is time to thank and congratulate the policymakers who showed leadership on our issues. Please contact Sen. Pogemiller and Sen. Dean Johnson and thank them for holding the line against the proposed cut in the Renters' Credit.

U.S. Supreme Court Sides with Police in *Castle Rock v. Gonzales* Case

The Supreme Court's ruling in *Town of Castle Rock v. Gonzales*, 125 S. Ct. 2796 on June 27, 2005, dealt a significant blow to domestic violence victims everywhere. According to the Court, a domestic restraining order does not trigger a constitutional right to protection from harm. This means that there can be no guarantee of police protection in domestic violence cases. Enforcement is instead left up to officers' individual discretion. Because of this discretion, police officers are not held liable and victims of domestic violence are left unprotected with no legal recourse. The 7-2 decision reversed the 10th Circuit Court of Appeals and found that the "respondent did not, for Due Process Clause purposes, have a property interest in police enforcement of the restraining order against her husband."

The facts of the case are particularly disturbing. In 1999, Jessica Gonzales' husband abducted her three children, in violation of the restraining order she had against him. She repeatedly called the police for help and even went to the department herself at midnight, but the police officers essentially ignored her. After repeated attempts over several hours to convince the police to get involved in the case, her husband arrived at a police station and opened fire. The police fired back at him, killing him. The bodies of Gonzales' three children were found in the cab of their father's pick-up truck. Ms. Gonzales sued the town of Castle Rock, Colorado claiming it had violated her Fourteenth Amendment right to Due Process of Property. The 10th Circuit agreed stating "[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).

The Supreme Court, however, disagreed with the 10th Circuit and overturned its ruling. Justice Antonin Scalia wrote the opinion of the court. The court argued that Gonzales' interest in protection did not constitute "property," within the meaning of the Due Process Clause, because it was not mandatory. According to the crucial argument of the Court, the Colorado statute did not make police enforcement of restraining orders mandatory. Fourteenth Amendment Due Process rights have been clarified in past cases to afford people an entitlement to certain benefits such as education and welfare benefits that could not be waived by the discretion of public officials. The court said that the wording of the statute and tradition allowed for a great deal of police discretion. He cited numerous instances when police discretion has become an important tradition in many cities, and used this context to find that it was equally important in domestic violence instances. He argued that police have always been allowed discretion and that it would be disastrous to assume that they had to offer protection as an entitlement. The court decision also discussed other important questions of federalism and definitions of property as having a monetary value.

(Continued on page 7)

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

Punto de Vista Latino

Finalmente el Real ID Act fue aprobado por amplia mayoría en ambas cámaras federales. No podía ser de otra manera pues esta ley que es un frontal ataque a los inmigrantes que viven en este país, corrió adjunta a otra ley que adjudicaba una importante remesa de dinero a las actividades antiterroristas y a la intervención militar en Irak.

El Real ID posee disposiciones que supuestamente tratan de impedir que terroristas obtengan asilo político en los Estados Unidos, disposiciones que hacen más fácil la construcción de barreras en las fronteras terrestres de este país, crea nuevas formas de inadmisibilidad y nuevas razones de deportación, y finalmente crea una normativa general que todos los estados deberán aplicar para la expedición de licencias de conducir (en adelante DL) y/o cartas de identificación (en adelante IC).

Mientras que la fecha de efectividad de la ley en los primeros casos es inmediata, en lo que tiene que ver con la DV y la IC, la ley entra a regir a partir de los tres años de su aprobación por el Poder Ejecutivo, esto es en Mayo del 2008.

Hoy nos limitaremos a comentar sobre las repercusiones que esta última parte de la ley – nuevos y mayores requisitos para la obtención de la DL y la IC - tendrá sobre la comunidad de inmigrantes en general y en particular sobre las mujeres maltratadas.

Los requisitos mínimos de aplicación en todo el territorio de los Estados Unidos para la obtención de la DL y/o la IC básicamente son:

- Foto a cara descubierta

- Documento probatorio de la fecha de nacimiento, traducido y legalizado

- Prueba del Social Security Number de la persona o prueba de que la persona no es elegible para tal documento

- Documento probatorio del nombre y del domicilio

- Documento probatorio del estatus migratorio

- El documento deberá mostrar el domicilio real de la persona, no será válido un P.O.Box.

- El documento contará con características de alta tecnología para asegurar su validez

- Las DL y/o IC emitidos para inmigrantes expirarán en la fecha en que expira su estadía legal en los Estados Unidos

- Si el inmigrante tiene un estatus que no expira en fecha determinada, la DL o la IC se emitirá sólo por un año.

- Cualquier DL y/o IC emitida por un estado que no cumpla con estos requisitos básicos no será válida para ningún trámite en que deba intervenir una oficina federal, entendiendo también los aeropuertos internos como oficinas federales

- Los estados que no cumplan con estos requisitos mínimos deben especificar claramente eso en las DL y/o IC que emitan y dichos documentos deberán ser de otro color

- Asimismo los estados que no cumplan con estos requisitos no recibirán ayuda federal

Es evidente que para los inmigrantes indocumentados será imposible en todo el territorio de los Estados Unidos obtener una DL. Es evidente también que se está usando este documento - que básicamente prueba que la persona está apta para conducir y no significa un peligro para los demás en la vía pública - para otros designios totalmente diferentes.

Sin embargo, dado que Minnesota es uno de los estados que ha puesto más trabas para la obtención de una DL o IC por parte de un inmigrante indocumentado podríamos pensar que estos nuevos requisitos mínimos no tendrán mayores consecuencias en nuestro estado.

No es así. Hay aspectos de la nueva ley que serán terribles aún para los ciudadanos. Pensemos en el caso de una mujer maltratada. Luego de que esta ley entre en vigencia ella tendrá que revelar en sus documentos su verdadero domicilio, pues ya no podrá usar un P.O. Box.

Este nuevo requisito tendrá consecuencias devastadoras para las mujeres víctimas de violencia, sean ellas inmigrantes o no.

Si bien este capítulo de la ley no entra en vigencia hasta Mayo del 2008, nada nos asegura que nuestro estado no decida aplicarlo antes de esa fecha modificando las disposiciones estatales. Es por eso que no podemos perder tiempo. Necesitamos informarnos y organizarnos para mostrar nuestro rechazo a estos retrocesos que tiran por tierra las garantías que conseguimos para las mujeres maltratadas luego de tantos años de lucha. Si usted desea más información por favor llame al 612 343 9846 o escriba a Gloria@bwlap.org.

(Continued from page 5)

Justice John Paul Stevens and Justice Ruth Bader Ginsburg dissented. They argued not only that this was an issue for Colorado law and a disturbance of federalism, stating: “[t]here was a time when our tradition of judicial restraint would have led this Court to defer to the judgment of more qualified tribunals.” They also argued that the wording of the Colorado statute implied that it was mandatory to enforce a restraining order and thus constituted property. He used the context of sweeping nation-wide domestic violence legislation from the 1980's and 1990's that sought to combat police officers' discretion. Because many police officers still consider domestic abuse a private, family matter, discretion often leads to ignoring these crimes. States that implemented legislation similar to Colorado's, sought to standardize the procedure of arresting abusers, to effectively eliminate police discretion and better combat domestic violence.

Although this decision is disappointing to many in the domestic violence movement and may signal that this issue is a lost cause federally, groups can still fight at the state level for the same protections. We believe that if there was a tragedy in Minnesota as horrifying as the facts in the case, that the Minnesota Supreme Court would find that domestic violence victims were entitled to enforcement of OFP's in light of the recent decision to hold child protection accountable for not properly investigating child abuse allegations. (See our article in the April 2005 edition of Agents for Change, “Minnesota’s Supreme Court holds that Child Protection Workers can be Sued in a Wrongful Death Suit”). This decision also marks the importance of grassroots operations in training police to identify domestic violence and those in need of protection.

Goodbye to our summer interns, hello to our fall interns

BWLAP would like to say goodbye and THANK YOU to our summer interns; Heather, Dori, Angela, Molly, Elizabeth and Jennifer. Luckily, Sarah and Meghan have decided to continue their internship for another semester! Thank you to you all, without the interns amazing and wonderful help we truly believe that we would have never finished the manual or the new laws packets. Thank you for all of your hard work.

BWLAP would also like to thank Amina, who has been volunteering with us, for her wonderful work in translation. Amina has been translating some of our technical assistance packets into Somali. We are very grateful for her work. Thank you Amina!

Finally, BWLAP would like to welcome Ann as our new intern for the fall. Ann will be working on a variety of issues and we are excited to have Ann join our team for the fall. Welcome!

Do you need technical assistance in MN current domestic violence issues?

**Check out
BWLAP's
Website
www.bwlap.org**

Battered Women's Legal Advocacy Project, Inc.
1611 Park Ave South, Suite 2
Minneapolis, MN 55404

Non Profit Organization
US Postage Paid
St. Paul, MN
Permit 3542

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!

On September 22 -23 BWLAP co-sponsors the IRBWTF Conference. This two-days training will take place at CLUES. Call Gloria for more info!

★ 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!*

- Alkire Foundation
- Elmer and Eleanor Andersen Foundation
- Bremer Foundation
- Bush Foundation
- Department of Justice – Legal Assistance for Victims
- DeLuxe Corporation
- IOLTA
- Initiative Foundation
- Minneapolis Foundation
- Office of Justice Programs (ex-MCCVS)
- Jay & Rose Phillips Foundation
- Star Tribune Foundation
- Target Store
- Archie D. & Bertha Walker Foundation
- WCA Foundation-Pillsbury
- Women's Foundation