

1980

H.B. 835: Ohio's Response to the Domestic Violence Dilemma

Mark R. Chilson
University of Dayton

Follow this and additional works at: <https://ecommons.udayton.edu/udlr>

Recommended Citation

Chilson, Mark R. (1980) "H.B. 835: Ohio's Response to the Domestic Violence Dilemma," *University of Dayton Law Review*. Vol. 5: No. 2, Article 10.

Available at: <https://ecommons.udayton.edu/udlr/vol5/iss2/10>

This Legislative Notes is brought to you for free and open access by the School of Law at eCommons. It has been accepted for inclusion in University of Dayton Law Review by an authorized editor of eCommons. For more information, please contact mschlange1@udayton.edu, ecommons@udayton.edu.

H.B. 835: OHIO'S RESPONSE TO THE DOMESTIC VIOLENCE DILEMMA

I. INTRODUCTION

Domestic violence is most often manifested by repeated, deliberate and severe beatings of family or household members.¹ Victims frequently suffer broken bones, concussions, miscarriages or other physical injuries.² The abused family or household members are also subjected to serious psychological and emotional injuries.³ Even though domestic violence impacts most clearly upon the victims, the assailants, too, are not without injury, often suffering from some type of mental illness, alcohol or drug abuse problem.⁴

The traditional view is that domestic violence does not exist, or if it exists, it must be dealt with privately.⁵ Today this view inappropriately deals with the grave problem of domestic violence. Domestic violence is a silent crisis which exists in every social, economic and ethnic class in our society.⁶

Although domestic violence is generally regarded as a social problem,⁷ it is also a crime which often goes undetected because it is either unreported⁸ or improperly recorded.⁹ In order to provide the appearance of a peaceful family life, a family or household member may be hesitant to report an attack or threat of force to authorities.¹⁰ Emotional and social pressures further compel a victim of domestic abuse

1. Trent, *Wife Beating: A Psycho-Legal Analysis*, Vol. 84, No. 6, CASE & COMMENT 14 (Nov.-Dec. 1979) (citing Schultz, Administrator at the West Virginia University Department of Social Work, *Wife Beating in the Small Community: A Social Policy Analysis 2* (1976)).

2. Gingold, *The Truth About Battered Wives*, MS., Aug., 1976, at 52.

3. *Id.*

4. Buzawa & Buzawa, *Legislative Responses to the Problem of Domestic Violence in Michigan*, 25 WAYNE L. REV. 859, 861 (1979) [hereinafter cited as Buzawa].

5. See, e.g., R. GELLES, *THE VIOLENT HOME* (1972); D. MARTIN, *BATTERED WIVES* (1977); E. PIZZEY, *SCREAM QUIETLY OR THE NEIGHBORS WILL HEAR* (1974).

6. Steinmetz & Straus, *The Family as a Cradle of Violence*, SOCIETY, Sept. 1973, at 50.

7. *Id.*

8. The FBI estimates that domestic violence as a crime, is even more under-reported than rape. Rape is estimated by the FBI to be ten times more frequent than statistics indicate. Durbin, *Wife Beating*, THE LADIES HOME JOURNAL, June 1973, at 62.

9. Typically domestic violence is characterized as an assault and battery or child abuse case. Domestic violence is not recognized as a separate offense in many jurisdictions.

10. D. MARTIN, *BATTERED WIVES* 29-32 (1977).

to stay within the home and not seek outside assistance.¹¹ Central agencies are unavailable in many jurisdictions to catalog incidents of abuse or alleged abuse.¹² Absent a uniform police reporting procedure and a central collection agency, it is virtually impossible to accurately determine the extent of domestic abuse.¹³

H.B. 835¹⁴ responds to many of the problems associated with domestic violence. The bill makes it a crime to commit an act of domestic violence.¹⁵ It establishes civil provisions enabling a victim to obtain temporary protective orders.¹⁶ Police are required by H.B. 835 to receive training in handling domestic abuse.¹⁷ The bill further authorizes a comprehensive system of recording domestic violence by the Ohio Bureau of Criminal Identification and Investigation.¹⁸ These changes provide a legal system which is ready, willing and able to assist other institutions in handling domestic violence.

II. THE MAGNITUDE OF THE PROBLEM

A. Police

Police, prosecutors, and courts, individually and collectively, play an important role in resolving each case of domestic violence. Typically, the first governmental agency which deals with domestic abuse is the local law enforcement agency. Domestic dispute or disturbance

11. *Id.*

12. As of 1976, forty-six states have implemented programs to record details of child abuse. Other domestic violence crimes are unrecorded. See B. DICKENS, REPRESENTING THE CHILD IN COURTS (1978).

13. Available statistics indicate that the amount of annual domestic abuse is staggering. "A 1968 study in Detroit found that 52.8% of all assaults were part of domestic disputes." Buzawa, *supra* note 4, at 860. Woman abuse, as one specific type of domestic violence, is now believed to be one of the most under-reported crimes. Generally, woman abuse is categorically wife abuse or a person living as a wife being abused. Guthrie, *The Battered Wife: A Victim of Most Under-reported Crime*, Cleveland Press, Nov. 3, 1976, § C, at 4, col. 3. Research indicates that battered women are estimated to number twenty-eight million nationwide. R. LANGLEY & R. LEVY, WIFE BEATING: THE SILENT CRISIS (1977). Since 1942, in Detroit, the largest segment of all homicides has consistently been in the domestic relations category. J. Boudouris, Trends in Homicide, Detroit: 1926-1968, at 88 (1970) (unpublished Ph.D. dissertation on microfilm in Wayne State University Library). Domestic violence is not peculiar to any socio-economic, racial, age, educational or geographical group. Studies reveal that victims of domestic abuse come from all walks of life. Steinmetz & Straus, *The Family as a Cradle of Violence*, SOCIETY, Sept. 1973, at 50.

14. Am. Sub. H.B. 835, 112th General Assembly (1978) (codified in OHIO REV. CODE ANN. §§ 109.75, .77, 737.11, 1901.18, .19, 1909.02, 2919.25, .26, 2933.16, 2935.16, 3113.31, .32 (Page 1980) (effective March 27, 1979)).

15. *Id.* § 2919.25.

16. *Id.* § 3113.31.

17. *Id.* §§ 109.73, .77.

18. *Id.* § 3113.32.

calls are the largest single category of service calls that police departments receive.¹⁹ If handled effectively, the initial contact by the local police can provide a peaceful solution to the problem.

Unfortunately, the appearance of effective police intervention often creates an obstacle to the victim's obtaining protection in the law. Any police response to a victim's call, including the normally reluctant response in which the officer only seeks to contain the immediate difficulty rather than become involved in the initiation of a long term remedy, will usually dissuade the victim from pursuing other more effective legal recourse. An officer's hesitancy to effectively interfere in a case of domestic violence may stem from his knowledge that over forty percent of police injuries and more than twenty-two percent of police deaths occur in the line of duty on family dispute calls.²⁰ Furthermore, police do not believe that it is their responsibility to deal with marital or domestic conflicts.²¹

Legal requirements also inhibit effective intervention by police officers. Most state laws require an officer to witness the commission of a crime in order to make an arrest for a misdemeanor.²² Since many acts of domestic violence occur in the home or other private setting, these acts of violence are not usually witnessed by an independent party. They may only be seen by the victim, a spouse or by the children of the family. Also, police often fail to inform the victim of his or her legal right to make a citizen's arrest and thus deny it to a person who is not aware of this alternative.²³ If a victim is cognizant of the citizen's arrest right, the police may still discourage her from using it and refuse to take the offender into custody.²⁴ Police generally avoid domestic disputes because they simply do not know how to properly handle them.²⁵

19. See Buzawa, *supra* note 4, at 861 (citing C. WILT & J. BANNON, DOMESTIC VIOLENCE AND THE POLICE: STUDIES IN DETROIT AND KANSAS CITY 1 (1977)).

20. See Buzawa, *supra* note 4, at 861 (citing FBI UNIFORM CRIME REPORTS, CRIME IN THE UNITED STATES 1977 (1978)).

21. See Buzawa, *supra* note 4, at 863 (citing Social Conflict Task Force: Report 4 (Oct. 24, 1974)).

22. 5 AM. JUR. 2d *Arrest* § 26 (1962).

23. For specific instances of police failure to inform victims of their right to make citizen's arrest, see *Bruno v. Codd*, 46 U.S.L.W. 2042 (Aug. 2, 1977) (General Law). "[T]hey [the police] inform the battered wife that they are unable to render assistance or make an arrest solely because the victim is the wife of her assailant; and that they advise her that her only remedy is to obtain an order of protection from the Family Court."

24. Rockwood, *How To Tell It To The Judge*, Ms. Aug., 1976, at 96. See also *Complaint*, *Scott v. Hart*, No. C-76-2395 WWS (N.D. Cal., filed Nov. 24, 1976).

25. Buzawa, *supra* note 4, at 862 (citing J. Bannan, Law Enforcement Problems With Intra-Family Violence (Aug. 12, 1975) (speech delivered to the American Bar Association, Montreal, Canada)).

The inability of police to prevent or solve domestic violence was illustrated by a 1977 study conducted by the Police Foundation. Between 1971 and 1973, Kansas City police records indicated that calls regarding domestic assault previously occurred at the same location in eighty-five percent of the cases.²⁶ In fifty percent of the cases, the police answered a call four or more times.²⁷ This evidence shows that present police intervention is ineffective in deterring the recurrence of domestic abuse.

H.B. 835 removes many of the obstacles which prevent effective police intervention. Police may no longer disclaim the responsibility of dealing with domestic violence because the statute imposes on them a duty to deal with it.²⁸ Officers investigating a case are required to inform victims of their rights under the criminal and civil provisions of the law,²⁹ and they are required to enforce judicial orders.³⁰ An officer, under the new law, is not required to witness an act of violence before making an arrest.³¹ An arrest can be made solely upon execution of a written statement by the victim.³² Finally, new police officers are required to receive training in handling domestic dispute problems.³³

B. Prosecutor's Office

If the victim has successfully worked with local police to arrest the assailant, the case will be turned over to the prosecutor's office. The prosecutor's office, like the police department, has been criticized for inhibiting a solution to the domestic abuse problem.³⁴ There are several reasons for this criticism. District attorneys have refused to handle cases of domestic violence without even considering the facts.³⁵ A prosecutor may misuse his discretion and refuse to prosecute for his own spurious reasons,³⁶ or he may apply stringent standards before

26. See note 19 *supra*.

27. *Id.*

28. OHIO REV. CODE ANN. § 3113.31(J) (Page 1980).

29. *Id.*

30. *Id.* § 737.11.

31. *Id.* § 2935.03.

32. *Id.*

33. *Id.* §§ 109.73, .77.

34. See authorities cited notes 1 and 4 *supra*.

35. See Memorandum of Law in Support of Motion for Class Certification and Preliminary Injunction at 2, and Complaint for Declaratory and Injunctive Relief at 2, Roguz v. Chandler, No. C - 74-1064 (N.D. Ohio, filed Feb. 4, 1975) (suit settled).

36. *Id.* Prosecutors have advised battered women that they are not permitted to get involved in domestic matters.

agreeing to prosecute a complaint.³⁷ The unavailability of material evidence also hinders prosecutors due to the fact that evidence is often difficult to obtain because domestic violence generally occurs in a private setting. Proof beyond a reasonable doubt may therefore be an insurmountable obstacle. Domestic violence becomes a crime without a solution because it is often an untreated and unprosecuted phenomena.

Although H.B. 835 is an excellent step toward solving the domestic abuse dilemma, it has its limitations. Nothing in the bill is expressly aimed at the prosecutor's office, an agency which may prevent effective responses to the problem. In the future, domestic violence will be closely monitored to determine if the crisis is subsiding. If not, reforms may become necessary, and the prosecutor's office may be a targeted reform area.

C. Courts

Courts have also been cited as contributors to the domestic violence problem in this country.³⁸ The major criticism has been that injunctive relief was not immediately available to victims.³⁹ During the time required to obtain a restraining order, the victim remains vulnerable to brutal and recurrent beatings. The victim may be prohibited from changing living accommodations due to a lack of financial resources. Children who are abused cannot financially support themselves; therefore, they must remain within the household. New research reveals that the psychological effects of repeated abuse weaken a person's ability to escape from or stop abuse.⁴⁰ Continual abuse eventually convinces a person that he or she is indeed inferior and somehow deserves or has caused the assaults.⁴¹ This loss of self-esteem inhibits any independent action.⁴²

37. The San Francisco District Attorney's Office, for example, requires that the following elements exist before the District Attorney will authorize a complaint and seek an arrest warrant before a judge: a crime defined in the penal code, identification of a specific defendant, witnesses (usually three), and documentary proof such as medical records and affidavits of witnesses, severe injuries, as well as willingness of the victim to testify and a history of previous attacks. From material of the San Francisco District Attorney's Office provided by the Women's Litigation Unit of the San Francisco Neighborhood Legal Assistance Foundation, *reported in* D. MARTIN, *supra* note 5, at 109-10.

38. See authorities cited notes 1 and 4 *supra*.

39. *Id.*

40. See note 4 *supra*.

41. Guthrie, *The Battered Wife: A Victim of The Most Under-reported Crime*, Cleveland Press, Nov. 3, 1976, § C, at 4, col. 3.

42. *Id.*

H.B. 835 makes courts more responsive to the problems which domestic violence presents, and victims no longer have to stay home unprotected while their request for relief is considered. The bill provides that the courts may issue immediate temporary protective orders designed to prevent future abuse.⁴³ A court may issue a number of protective orders depending upon the individual case.⁴⁴ These provisions and others should give courts the power to effectively protect victims of domestic violence.

Domestic violence is a perplexing problem which is complicated by its silent nature, by the clear inadequacies of the criminal justice system, and by the attitudes of individuals responding on behalf of government agencies. The state of the law before H.B. 835 has also contributed to the crisis. Our legal system cannot end domestic abuse; however, it may be able to alleviate some of its more undesirable aspects.

III. A RESPONSE: OHIO H.B. 835

H.B. 835⁴⁵ is legislation directed at remedying the fundamental causes of domestic violence. The bill creates a criminal offense which expressly prohibits activity commonly known as domestic violence. It also includes a number of civil provisions designed to protect the victim, provide professional help for the assailant, train police, and accurately record incidents of domestic violence on a local and state basis. These statutory developments represent a major step toward curbing the domestic violence problem in Ohio.

A. Criminal Provisions

H.B. 835 prohibits a person from knowingly causing or attempting to cause physical harm⁴⁶ to a family or household member and from recklessly⁴⁷ causing serious physical harm to a family or household

43. OHIO REV. CODE ANN. §§ 2919.26, 3113.31 (Page 1980).

44. See note 80 *infra*.

45. See note 14 *supra*. The remedies and procedures available in the new law are in addition to, not in lieu of, other available civil and criminal remedies. OHIO REV. CODE ANN. § 3113.31(G) (Page 1980). H.B. 835 specifies that it does not alter other provisions that require certain persons to report child abuse or neglect to the county department of welfare or children services board. *Id.* § 2151.421 (official report of abuse or neglect). In fact, it expands these requirements so that when a petition requesting the issuance of a protection order alleges domestic violence against children, the court must report the abuse to the police. *Id.* § 3113.31(I).

46. "Physical harm to persons means any injury, illness, or other physiological impairment, regardless of its gravity or duration." OHIO REV. CODE ANN. § 2901.01 (Page 1980).

47. Recklessly is defined as a mental state under which a person, "with heedless indifference to the consequences, . . . perversely disregards a known risk that his con-

member.⁴⁸ A family or household member is liberally defined as a spouse, person living as a spouse, parent, child, or any other person related by consanguinity or affinity, who is residing or has resided with the offender.⁴⁹ Whoever commits an act of domestic violence is guilty of a misdemeanor of the first degree, and if the offender has previously been convicted of the same offense, a subsequent violation is a felony of the fourth degree.⁵⁰

The offense created by H.B. 835 is not analogous, in content, to any existing assault offense contained in the Revised Code. None of the existing assault offenses defined in chapter 2903 of the Revised Code contain precisely the same elements as the new law. Many of the assault crimes require proof of some element that does not have to be proved for a domestic violence conviction.⁵¹

The law authorizes a police officer, who has reasonable cause to believe that a crime of domestic violence has been committed, to arrest any person, without an arrest warrant, as long as the officer has reason to believe that that particular person has committed the offense.⁵² A

duct is likely to cause a certain result or is likely to be of a certain nature." *Id.* § 2901.22.

48. *Id.* § 2919.25.

49. *Id.* § 2919.25(D). The scope of the law's protection covers wives who are abused by husbands, husbands who are abused by wives, persons who are abused in common law marriages, parents who are abused by children, children who are abused by parents, and other persons in the household who are abused and are related by consanguinity and affinity.

50. *Id.* § 2919.25(C).

51. For example, section 2903.11, concerning felonious assault, prohibits a person from *knowingly* causing *serious* physical harm, or causing or attempting to cause physical harm by means of a *deadly weapon* or *dangerous ordnance* to another. *Id.* § 2903. Section 2903.12, concerning aggravated assault, prohibits a person, while under extreme emotional distress, from *knowingly* causing *serious* physical harm, or causing or attempting to cause physical harm by means of a *deadly weapon* or *dangerous ordnance* to another. *Id.* § 2903.12. Section 2903.14, concerning negligent assault, prohibits a person from negligently, by means of a *deadly weapon* or *dangerous ordnance*, causing physical harm to another. *Id.* § 2903.14. Section 2903.21, concerning aggravated menacing, prohibits a person from knowingly causing another to believe that the offender will cause *serious physical* harm to the other person or to his property or family.

The new law and the assault laws differ in three respects. First, proof that an alleged offender caused, or led another to believe that he would cause, physical harm for the purposes of the new law would not suffice to prove that the alleged offender caused, or led another to believe that he would cause, serious physical harm. Second, some of the assault sections cited would require proof that the alleged offender used a deadly weapon or ordnance, which would not be necessary for a conviction under the new law. Finally, proof that an alleged offender recklessly did the prohibited act for purposes of the new law would not suffice to prove that the alleged offender knowingly did a prohibited act under the assault sections.

52. OHIO REV. CODE ANN. § 2935.03 (Page 1980).

written statement by a person alleging that an act of domestic violence has been committed constitutes reasonable cause to believe that the person alleged to have committed the offense is guilty of a violation.⁵³ Thereafter, the officer may detain the offender until an arrest warrant is obtained.⁵⁴ An officer is no longer required to witness the commission of the crime in order to effect a warrantless arrest for a misdemeanor.⁵⁵

Courts may issue temporary protective orders designed to ensure the safety and protection of a complainant and other family and household members.⁵⁶ After filing a criminal complaint alleging a violation of section 2919.25, the complainant or the person who made the arrest may file a motion⁵⁷ requesting a temporary protection order as a pretrial condition of release.⁵⁸ The court must conduct a hearing and rule on the motion within twenty-four hours.⁵⁹ The motion may be granted if the court determines that the safety and well being of the complainant are threatened by the continued presence of the alleged offender.⁶⁰ The court has authority to issue various types of protective orders including a requirement that the defendant refrain from entering the residence, school, business or place of employment of the complainant.⁶¹ This provision prevents a defendant from committing other acts of domestic violence while awaiting a hearing.

The court, upon its own motion, may issue a temporary protective order upon determination that the safety and well being of the complainant or other family or household members may be impaired by the continued presence of the defendant.⁶² If the court issues an ex parte order,⁶³ it must have a hearing⁶⁴ within twenty-four hours after the issuance to determine whether the order should remain in effect, be

53. *Id.*

54. *Id.*

55. *Id.* § 2935.03(B).

56. *Id.* § 1901.19.

57. *Id.* § 2919.26(A).

58. *Id.*

59. *Id.* § 2919.26(C).

60. *Id.*

61. *Id.*

62. *Id.* § 2919.26(D).

63. An ex parte order is one made by a court upon the application of one party to a controversy, with neither notice nor an opportunity to be heard given to the other party. SENATE JUDICIARY COMMITTEE, REPORT ON H.B. 835, 112th General Assembly (1978) (report available in the library of the Legislative Service Commission, Columbus, Ohio).

64. This hearing must be conducted under the same standards as a hearing would be if the complainant filed for a temporary protective order. See note 59 *supra*.

modified or be revoked.⁶⁵ The issuance of a temporary protective order does not constitute a finding of guilt, nor may it be introduced into evidence at trial.⁶⁶ The order will remain in effect only until a disposition of the criminal proceeding has occurred.⁶⁷

The court under H.B. 835 is empowered to enforce the protective order in two ways. A violator of the order may be held in contempt of court,⁶⁸ or a second temporary protection order may be issued as a pretrial condition of release if the first order has been violated.⁶⁹ The new order may modify the terms of the order which was violated.⁷⁰

A remedial aspect of the bill is designed to help the assailant cure his or her psychological problem, should one exist. Research indicates that domestic violence may be learned behavior which is perpetuated through generations.⁷¹ The statute permits the court, after a conviction or guilty plea to a domestic violence offense, to suspend the sentence and place the defendant on probation.⁷² Probation is conditioned on satisfactory participation in a clinical program of psychiatric or psychological treatment.⁷³

The criminal provisions of the new law are designed to lessen the likelihood of domestic violence. A separate criminal offense has been created which may be more effective than the traditional assault offenses. Police officers play a more significant role in solving the problems created by domestic violence. A warrantless arrest is now possible and police officers may also seek temporary protective orders for victimized families. Courts can issue temporary protective orders more easily and readily. Additionally, the abuser may be given psychiatric or psychological treatment in order to cure his problem. H.B. 835 is responsive to most of the problems which have perpetuated the crisis. Workable solutions are available which integrate effective programs designed to help both victims and offenders. The police and court systems have been changed to meet the needs of the victims and offenders.

65. See note 62 *supra*.

66. OHIO REV. CODE ANN. § 2919.26(E) (Page 1980).

67. *Id.*

68. *Id.* § 2919.26(F). Contempt of court provisions are located in chapter 2705 of the Ohio Revised Code.

69. OHIO REV. CODE ANN. § 2919.26(F) (Page 1980).

70. *Id.*

71. See note 4 *supra*.

72. OHIO REV. CODE ANN. § 2933.16 (Page 1980).

73. *Id.* The terms and conditions of a clinical program of psychiatric or psychological treatment are not delineated in H.B. 835.

B. Civil Provisions

The law provides a number of civil remedies to victims of domestic violence.⁷⁴ A victim, parent or household member may seek immediate relief, on behalf of himself or another household member by filing a petition⁷⁵ with the domestic relations division of the common pleas court.⁷⁶ The petition must allege that the respondent engaged in domestic violence against a family or household member, must describe the nature of the violence and the relationship of the victim or petitioner to the respondent, and must request appropriate relief.⁷⁷

If the petitioner requests an ex parte order,⁷⁸ the court is required to hold an ex parte hearing on the same day that the petition is filed.⁷⁹ The court may, for good cause shown at the ex parte hearing, enter any appropriate temporary order⁸⁰ that it finds necessary.⁸¹ Immediate

74. Note that the definitions of domestic violence and family or household members are different in civil provisions of the law than they are in the criminal provisions of the law. The civil definitions are as follows:

As used in this section: (1) 'Domestic violence' means the occurrence of one or more of the following acts between family or household members who reside together or have resided together: (a) Attempting to cause or recklessly causing bodily injury; (b) Placing another person by the threat of force in fear of imminent serious physical harm; (c) Committing any act with respect to a child that would result in the child being an abused child as defined in section 2151.031 of the Revised Code. . . . (3) 'Family or household members' means spouses, persons living as spouses, parents and children, or other persons related by consanguinity or affinity.

OHIO REV. CODE ANN. § 3113.31 (Page 1980). Compare § 3113.31 with notes 48 and 49 and accompanying text *supra*.

75. *Id.* § 3113.31(C). The section provides:

(C) A person may seek relief under this section for himself, or any parent of adult household member may seek relief under this section on behalf of any other family or household member, by filing a petition with the court. The petition shall contain: (1) An allegation that the respondent engaged in domestic violence against a family or household member of the respondent, including a description of the nature and extent of the domestic violence; (2) The relationship of the respondent to the petitioner, and to the victim if other than the petitioner; and (3) A request for relief under this section.

76. If there is no domestic relations division in the county where the alleged incident occurred, the complaint would have to be filed with the common pleas courts general division. *Id.* § 3113.31(A)(2). The court is given jurisdiction over all the proceedings established by the act.

77. *Id.* § 3113.31(C).

78. See note 63 *supra*.

79. OHIO REV. CODE ANN. § 3113.31(D) (Page 1980).

80. The ex parte order or a consent agreement devised by the family or household members in conflict, may include: (a) directing the respondent to refrain from abusing the family or household member; (b) granting possession to the petitioner of the residence or household to the exclusion of the respondent when it is owned or leased solely by the petitioner or jointly by the parties; (c) evicting the respondent when he or she has a duty to support the petitioner or minor children living in the residence or

and present danger that domestic violence may occur against a family or household member constitutes good cause.⁸² Immediate and present danger includes, but is not limited to, situations in which the respondent has either threatened the person or has previously engaged in domestic violence against a family or household member.⁸³ The ex parte order allows a court to grant immediate relief, which prevents brutal and recurrent beatings. Before H.B. 835, a petitioner was required to wait for an extended period of time in order for the court to act upon the request.

The respondent is not entitled to notice or an opportunity to be heard at an ex parte hearing.⁸⁴ If the court issues an ex parte order which grants sole possession of the residence or household to the petitioner or evicts the respondent, the court must schedule a full hearing and conduct it within three court days of the ex parte hearing.⁸⁵ Notice and an opportunity to be heard are required for the full hearing. If any

household and is the sole owner or lessee, or by consent agreement allowing the respondent to provide suitable alternative housing; (d) awarding temporary custody of children, or establishing temporary visitation rights if court has determined, or is deciding, such custody or visitation rights; (e) ordering the respondent to provide support for the petitioner or minor children if he or she has such a duty; or, requiring the respondent to maintain support if the respondent customarily provides for the support of the petitioner and minor children; (f) requiring the respondent, victim, or any combination of these persons to seek counseling; and (g) require the respondent to refrain from entering the residence, school, business, or place of employment of the complainant or family or household member. *Id.* § 3113.31(E).

If any of these orders are granted, or if a consent agreement to the same effect is approved by the court, it must be for a fixed time period of one year or less. Any order regarding custody or support must terminate not later than 60 days after the filing of a divorce, dissolution, or separate maintenance suit by either party. *Id.* § 3113.31(E)(3).

No order under the Act can affect title to real property, and the Act provides that a petitioner's right to relief is not affected by leaving the residence or household to avoid further domestic violence. *Id.* § 3113.31(E)(4).

If the petition did not request an ex parte order, or if it requests such an order but the order is not issued after an ex parte hearing, the court is required to proceed as in a normal civil action and grant a full hearing on the matter. The court may issue any order, after a full hearing, that it is authorized to issue after an ex parte hearing. *Id.* § 3113.31(D).

If a civil protection order has been issued under the provisions of the Act in a prior action involving the petitioner and the respondent, the court may include in its protection order an additional prohibition against the respondent returning to the household and a prohibition against the petitioner inviting the respondent to the household while the order is in effect. *Id.* § 3113.31(E)(2).

81. *Id.* § 3113.31(D).

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* See also *id.* § 3113.31(E)(1)(b).

other type of relief is granted by the ex parte order, a full hearing must be held within ten days.⁸⁶

A copy of any civil order or consent agreement that is issued or approved must be delivered to the petitioner, the respondent, and the law enforcement agency with appropriate jurisdiction to enforce the order or agreement.⁸⁷ The court is required to ensure that the respondent's copy of the order be delivered the same day that the order is entered.⁸⁸ Local law enforcement officers are required to enforce the order in accordance with its provisions, including removal of the respondent from the residence or household.⁸⁹ Police officers in municipalities⁹⁰ are now authorized to enforce court orders and consent agreements issued or approved by the court.⁹¹ Further, if a court order or consent agreement is violated, the court may hold the respondent in contempt and punish him or her under chapter 2705 of the Ohio Revised Code.

The civil provisions of H.B. 835 offer tangible protective measures to victims of domestic abuse. Courts and law enforcement agencies can work together to ensure that reported acts of domestic violence are dealt with promptly. Immediate relief is available to a petitioner, and thereafter, local law enforcement officers may enforce all orders of the court obtained as relief. The court is also able to hold a respondent in contempt for violating an order. A primary purpose of these provisions is to deter future acts of domestic violence. Deterring the violence, until another social agency can intervene and rehabilitate the offender with programs or counseling, is a proper role for our courts.

The battle against domestic violence must not end with civil court orders. Other social institutions must intervene and assist. Federal and state agencies could provide clerical assistance, medical personnel could provide psychological care, and churches could provide spiritual support. A concerted effort by society as a whole will provide the most workable solution.

C. Other Provisions

H.B. 835 contains additional provisions which respond to other aspects of domestic violence. The inability of police to deal capably

86. OHIO REV. CODE ANN. § 3113.31(D) (Page 1980).

87. *Id.* § 3113.31(F).

88. *Id.*

89. *Id.*

90. The authorization to enforce court orders and consent agreements only extends expressly to police officers in municipalities. The new law does not specifically confer this authority upon township and county peace officers. *Id.* § 737.11.

91. *Id.* § 3113.31(F). In addition, police officers are required to inform family and household members involved in domestic violence of the civil and criminal procedures available to them. *Id.* § 3113.31(J).

with domestic violence and the unavailability of statistics on the crime have been particularly troublesome. The bill responds to these concerns by requiring new police officers to receive training in handling domestic disputes⁹² and by initiating a comprehensive system of record keeping.⁹³

The bill requires all peace officers, before beginning employment, to receive training in handling domestic dispute situations.⁹⁴ Minimum basic training requires at least fifteen hours in handling domestic disputes.⁹⁵ The bill also recommends that advanced in-service training programs include topics in handling domestic violence.⁹⁶ In the future, officers specially trained in dealing with domestic abuse situations will be better prepared to respond to crisis calls. These officers will be more cognizant of the problems facing an abused family member and will be better equipped to provide effective advice and assistance.

Domestic violence has long been perceived as mysterious because it is often unreported or misreported. In an effort to fully account for domestic violence, H.B. 835 establishes a system of record keeping and reporting whereby local records of incidents are maintained and monthly reports are made to the Bureau of Criminal Identification and Investigation.⁹⁷ The Bureau compiles the data and prepares an annual statistical report on domestic violence.⁹⁸ This insures that all reported incidents of domestic violence will be properly recorded, reported and analyzed.

The importance of the record keeping provision should not be underestimated. The local records must provide, for example, the number of disputes handled by police and the specific action taken by the officer in each instance. This information has a variety of potential uses. The information may be employed by the Ohio Peace Officer Training Council to design effective training programs. Social institutions can resort to this information as part of their counseling for victims of domestic violence. Finally, the General Assembly should use the statistics generated to evaluate the effectiveness of H.B. 835.

92. OHIO REV. CODE ANN. *Id.* §§ 109.73, .77 (Page 1980). This requirement would not apply to anyone serving as a police officer on the effective date of the bill.

93. *Id.* § 3113.32. The record keeping, reporting, compilation of data and annual reporting requirements are repealed four years after the effective date of the Act unless reenacted by subsequent legislation. The first report on domestic violence, which is compiled by the Bureau of Criminal Identification and Investigation, is available after April of 1980.

94. *Id.* § 109.77.

95. *Id.* § 109.73. These rules are established by the Ohio Peace Officer Training Council.

96. *Id.*

97. See note 93 *supra*.

98. *Id.*

IV. CONCLUSION

The significant changes made by H.B. 835 are necessary to curb Ohio's domestic violence dilemma. The bill makes domestic violence a crime which may be prosecuted. Warrantless arrests are now possible, and courts are authorized to issue immediate protective orders as a pretrial condition for release of an alleged offender. In lieu of incarceration, a program of psychiatric or psychological treatment may be ordered for the assailant. These changes recognize the existence of domestic violence, and they provide a criminal system which is more visibly involved in effectuating a solution.

Civil remedies have been established in addition to the criminal sanctions. Immediate injunctive relief is available to a victim. This eliminates the previous time lag between reported violence and relief, thereby protecting a victim from the possibility of retaliatory or recurring abuse. The bill also provides procedural safeguards for the victim and alleged assailant with appropriate *ex parte* and full hearing requirements. Court orders are enforced by the police and contempt proceedings can be utilized against those who violate them. An integrated relief and enforcement system has been created by the civil provisions of H.B. 835. Additional features of the bill include provisions for police training in handling domestic violence and a system of recording incidents of domestic abuse. These features should prove most helpful in dealing with the crisis and recognizing its magnitude.

H.B. 835 has its limitations. No express provision of the bill is aimed at remedying discretionary obstacles existing in the prosecutor's office. The police training requirements also fall short of providing all officers with the knowledge necessary to deal with domestic quarrels. If the prosecutor's office and police training frustrate the effectiveness of H.B. 835, they may become the subject of future legislation.

Nonetheless, H.B. 835 is a progressive law fully responding to the major problems which have perpetuated the crisis. It is impossible at this date to speculate on the impact of this bill. This legislation is only a beginning, and it does not represent a complete solution to the problem. The final solution will necessarily involve more than the courts and police departments. It will involve a conscientious and concerted effort on the part of society as a whole.

Mark R. Chilson

Code Sections Affected: §§ 109.73, 109.77, 737.11, 1901.18, 1901.19, 1909.02, 2919.25, 2919.26, 2933.16, 2935.03, 3113.31, & 3113.32.

Effective Date: March 27, 1979.

Sponsor: Hartley (H).

Committee Judiciary (H & S).