

An Approach to Legal Advocacy for Individual Battered Women

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About this chapter:

This chapter was developed for non-lawyer advocates working with individual battered women. Effective legal advocacy requires a thorough understanding of the law, the courts, and domestic violence. Some of that information is included in other sections of this resource manual and some of the necessary information is very specific to a particular court. Advocates should seek out and master this information.

This chapter is divided into two sections. The first section provides an overview of advocacy in the legal system, including issues for battered women and issues for advocates for battered women. The second section describes a basic approach to legal advocacy called, "*woman-defined legal advocacy*." Woman-defined legal advocacy builds a partnership between the victim and the advocate. The partnership ensures that the knowledge of both the victim and the advocate is incorporated into the victim's safety plan. Woman-defined legal advocacy also ensures that legal system options are used to further the victim's safety plan. In other words, advocates will fit the options into the victim's safety plan rather than trying to make the safety plan fit the options. If followed, the approach will give advocates the foundation for effective and empowering advocacy in the legal system.

The term "woman" is used in this chapter to refer to victims of domestic violence and to describe this approach to advocacy, because the overwhelming majority of victims of domestic violence are women. All victims of domestic violence deserve responsive advocacy. The woman-defined legal advocacy approach builds on the perspective of the victim, and therefore will also be effective when working with male victims and victims who are minors.

CROSS REFERENCE: SECTION IV LAW AND LEGAL ISSUES

Section I

Overview of advocacy in the legal system

Battered women's advocates and others have worked hard to improve the legal system's response to battered women and children. This work has led to many changes, including:

new laws:

such as, mandatory arrest of abusers when the police believe it is more likely than not that a crime was committed, requirements that judges consider evidence of domestic violence when making custody orders

new resources:

such as, community-based advocates working in the courts, family violence offender treatment programs, specialized units for prosecution

new approaches:

such as, training of court personnel, judges, family court staff, clerks, law enforcement, vigorous prosecution, prohibiting or requiring mediation in family cases, etc.

These new laws, resources and approaches make the legal system appealing as an answer or solution to violence against women. New legal system responses have provided women with more options and have helped many women. Yet, the legal system's ability to end violence against women is limited. Before advocating for an individual battered woman, or for systemic changes affecting many battered women, it is essential to understand these limitations. Some of the limitations are inherent in the way the legal system was created, some are the result of balancing different interests, some are the result of ineffective procedures and processes, some the lack of resources, and some the result of bias and ignorance. The rest of this section includes a brief discussion of some of the limitations of the legal system's ability to end violence against women.

□ Issues and barriers for battered women

There are a number of barriers that hinder or even prevent battered women from getting help from the legal system. Some are these barriers are:

□ Cost of representation by an attorney

Representation by an attorney can be a crucial factor in whether or not the legal system will help a battered woman and her children. Often, without a lawyer's help, the legal system will not effectively respond to a woman's safety or other concerns. Without

representation a battered woman is likely to find herself forced to negotiate with her abusive partner or her partner's attorney.

Many women cannot afford to hire an attorney. Many others can't afford to hire a "whole" attorney. This means a woman might have access to some of the options available, but couldn't afford to have an attorney advocate for all options. For example, a woman might have enough money to hire an attorney to file for divorce, have the lawyer attend one brief final court hearing and complete the final papers. This means she would need to come to an agreement with her partner about the divorce, property, custody, visitation, and support. In order to come to an agreement, the woman might need to compromise on issues that might affect her and her children's well-being, ie. custody/visitation, and child support.

□ **Complexity of the legal system**

The legal system has its own set of rules, roles and jargon. When seeking help, a battered woman is faced with numerous issues and questions: such as: Which court must I use?, Will I see a judge?, What can the judge see or hear?, What can the judge order?, How long will the order last?, What do I have to tell the judge to get a court order? What are my rights? Will I have to talk to my abusive partner? What forms must I use? What law or rules must I follow? What does the law or rule mean for me and my children? The law, rules, and day-to-day procedures of a particular court are complex and it is often difficult for an individual battered woman to figure out whether they may help or hurt her, especially if she does not have an attorney advising her.

Even finding out what the law is requires investigation and understanding of the system. "The law" includes statutes passed by the state legislature, statutes passed by the federal congress, state and federal constitutions, executive orders by a governor or the President, judge's decisions and interpretations of the law in individual cases, rules and procedures developed by the judges (sometimes these rules can be very local and even differ from judge to judge).

It is often said that the law is a "double-edged sword"-- a violent and important metaphor for domestic violence advocates to understand and remember. A legal argument or law that can be used to help a battered woman in one situation can often be turned around and used against her. For example, mandatory arrest for a family violence crime may lead to women being arrested even when the "crime" she committed might be legally justified because she was defending herself or her children. Another example might be the use of battered woman's syndrome-type arguments which might help a woman show why she used violence to defend herself, but could also be used to show she is somehow impaired as a parent in a case involving her children.

There is a commonly held view that the law and the legal system answers questions such as, what is right and wrong?, Is a person's behavior against the law or not?

Does a person have a right to something or not? Although this view may be generally true, when those questions are applied to specific situations involving battered women--- the answer to those questions is often--"it depends." It depends on the circumstances or facts and on who you ask. The legislature that created the law may have meant it to mean one thing, the attorney who uses the law to help his client may argue it means something else, the judge who interprets the law may see it differently. This makes legal advocacy for battered women difficult.

Example:

A legislature may create a law to protect the confidentiality of information shared between a battered woman's advocate and a battered woman.

The attorney representing a batterer who is a defendant in a criminal case may argue that although such conversations are confidential, the legislature didn't intend to protect conversations that show a victim is lying or inaccurate about the facts of the alleged crime, because that would violate the defendant's constitutional civil rights. Therefore, the attorney would argue the advocate's records should be handed over to the defendant's attorney to look for such inconsistencies.

The prosecutor in the case might argue that protecting confidential conversations are extremely important and that the legislature was clear about its intent to provide the protection. Therefore, the records should not be given to the defendant's attorney.

The judge listening to such arguments might say that the defendant's attorney is partially correct. Therefore, she might order that the advocate hand the records over to the judge and the judge will determine if the records show any inaccuracies or inconsistencies by the victim. If there are inconsistencies, then the judge will give the records to the defendant.

This example also shows that a particular law must be interpreted in the context of other laws and constitutional rights. This adds additional layers of complexity for advocates.

Even if there is a clear interpretation of the law, how the law is actually implemented may add yet another layer of complexity and confusion for advocates trying to help women through the system.

Example:

The law may say that if there is a domestic violence crime, the person believed to have committed the crime must be arrested and prosecuted. When such a law is

implemented a wide variety of things might actually happen. The police may not make an arrest or they might arrest both the battered woman and her partner. The woman's partner may run away before the police arrive and so "making an arrest" might involve filing for an arrest warrant. If the warrant was approved, the police might not actually go look for the woman's partner, but wait until he was stopped for something else, such as a traffic violation, and then make the arrest under the warrant. This could take weeks or longer. Once the arrest was made, the prosecutor will decide what it means to "prosecute" the case. It might mean deciding not to try to convict the defendant, it might mean dismissing(cancelling) the case against the defendant, or the prosecutor might plea bargain(negotiate) with the defendant or his lawyer. This could mean the defendant might agree to be convicted of a less serious crime than he actually committed, and therefore would face less serious consequences.

□ **The legal system functions in writing and in English**

This adds additional barriers for women who do not read, write, or speak English. Advocacy for such women can be more complex and include different considerations. For example, how will the advocate work to ensure that the advocate and the system are able to communicate accurately and effectively with the woman.

□ **Options available have specific requirements and the remedies are limited**

Legal options, sometimes called *legal remedies*, are often very specific and limited to meet specific goals. Legal remedies may not address many issues, risks or needs of battered women and their children.

Examples:

- A restraining order might be a legal remedy to meet the goal of ending physical violence. Such a remedy would not address the impact of verbal abuse--the "put downs," insults, dismissing of their thoughts and ideas that some battered women describe as the most painful and difficult aspect of domestic violence to endure.
- After being punched by her partner, a woman may want him to stay away from her for awhile and to get some counseling for his alcohol abuse. She also needs him to keep paying the rent. If he was arrested the criminal court might not have a legal remedy to address all her needs. If she and her partner are not married and have no children, it is unlikely a court would, or legally could, order him to pay rent.

□ **Difficulty in enforcing the law**

A battered woman may spend a great deal of time, effort, and money to get an order from a court only to discover there is no easy or effective way to enforce it. Enforcing court orders typically involves returning to court. This will cost time and probably money. The outcome of returning to court to enforce a court order can be uncertain. Sometimes the judge takes no action other than to firmly tell the person who is not following the order that s/he must follow the order. Sometimes the judge changes the order the person didn't obey.

If the behavior that was in violation of a court order was also a crime, then the woman might be able to enforce the order by calling the police. This may also lead to mixed results. For example, the police might not make an arrest or make the person obey the order.

Advocates are familiar with the phrase, "it's only a piece of paper." This usually refers to protective orders or restraining orders and is used to let a woman know that just because a court orders her partner not to hurt her it doesn't mean he won't hurt her. Batterers who won't obey court orders--no matter the consequence--create situations where the legal system can do little-if anything--to protect women and children.

□ **Conflicting goals**

Battered women may have very different goals from the people who work in the legal system.

Example:

The goals of a battered woman seeking help from the criminal court might be to get her partner to go to counseling and try to keep him from being convicted or sent to jail. The goal of the prosecutor handling her case might be to punish the woman's partner by getting a conviction and having him do some jail time or the goal might be to simply "get rid of" the case in whatever way possible. Either way, in this example, the prosecutor's goals are quite different from the woman's goals.

□ **Fees and costs**

There are a variety of fees and costs for using the legal system. Some states require a fee for filing papers in courts, such as divorce papers, custody, or restraining order papers. In some areas, a battered woman must pay for the costs of "serving" (officially giving) copies of the papers to her partner. There are also incidental costs such as the cost of getting an official certified copy of an order. Fees vary from state to state and in certain cases, if the woman is poor, she might be excused from paying the fee or the state will pay it for her.

□ Issues for Advocates

□ Unauthorized practice of law

States require that a person have a license in order to practice law. Practicing law usually means giving legal advice, interpreting statutes or other laws, and speaking for a particular client in court or other forum. Advocates should be aware of what types of advocacy they are permitted to do without a license.

□ Defendant's rights and victim advocacy

In criminal court, advocates are typically working with the victim of a crime. The reality of the domestic violence victim's experience and pain and the risk of future violence are compelling and appropriate concerns for the advocate and the legal system. The defendant's constitutional civil rights are also compelling and appropriate concerns for the advocate and the legal system. Two examples of civil rights are the presumption of innocence until proven guilty and the right to an attorney under certain circumstances. Civil rights are essential components of the legal system that seek to prevent injustice.

Supporting civil rights doesn't mean an advocate is compromising the goals of victim safety and offender accountability. It means the advocate supports the concept that safety and accountability should be accomplished within a fair and just process.

□ Adversarial system, arguments, and conflicts

The legal system is designed to have each side argue its point of view and either come to an agreement or have a judge or jury make decisions about the issues. The system is set up to be adversarial, for players in the system to have very different views, perspectives, and roles. It is a place where disagreements and arguments are the norm and where ultimately there are winners and losers. Sometimes behavior seems contradictory. For example, Attorney Jones may argue to a judge that Attorney Smith (the attorney on the other side of the case) is misinterpreting the law, confused about the facts, and generally doesn't know what he is talking about. Later that morning, an advocate might see Attorneys Jones and Smith walking out of court together laughing and on their way to have lunch. Advocates may be unused to such norms, and in particular, uncomfortable with conflict or disagreement. Understanding the culture of the court is an important part of effective advocacy.

Section II

Approach to legal advocacy

Introduction:

This section describes a basic approach to legal advocacy for individual battered women. If followed, the approach will give advocates the foundation for effective and empowering individual advocacy in the legal system. This chapter does not discuss institutional or systemic advocacy in the legal system. However, advocates working with individual battered women should be vigilant for patterns of barriers that women encounter when seeking help from the legal system and work towards systemic change that would eliminate such barriers.

[See also, *Using Safety Planning as an Approach to Woman-Defined Advocacy*, Davies, J., 1994. This article describes how a focus on women leaving a relationship and an exclusive focus on presenting legal system remedies can lead to ineffective advocacy.]

Effective woman-defined legal advocacy for individual women requires several elements:

***First*, advocates must understand the woman's perspective.**

***Second*, determine whether the legal system may be able to help a woman meet her goals and address her fears.**

***Third*, convey your knowledge about the legal remedies to the woman and analyze them with her.**

***Fourth*, help the woman implement her choices.**

1.

Understanding the woman's perspective.

Effective and safety-enhancing legal advocacy can only be accomplished if the advocate first understands the woman's perspective, what she fears, and what she hopes. The woman's perspective includes how she views her relationship, how she is making decisions about that relationship, what strategies she has already tried, which one's she'll never try and which one she is thinking of trying next. Understanding her perspective means knowing how she is caring for her children. It also means comprehending and valuing what the woman hopes and fears.

A woman may hope:

- he will change
- *this time* he will change
- the children are asleep and don't hear the violence
- the legal system will stop him, change him and if that doesn't work remove him.

A woman's fears may be:

- he won't change
- the children are being affected
- the legal system will make it worse
- that now he'll really "get her" and that he'll take the kids
- if she leaves he'll find her, hurt her, that it will be worse for the children
- she'll be alone
- she doesn't know what will happen.

A woman's hopes and fears for her relationship, for her children, for her life ebb and flow as she tries new strategies to improve things or just to keep things quiet. Often a woman's hope that her partner will change rises when the legal system intervenes.... "he's finally going to get the help he needs" or "someone is finally going to punish him for what he's done to me." All too often these hopes are not realized and the hope/fear balance shifts again...the woman's strategies change and her safety plan will be refined to include what she's learned about the legal system. Understanding a woman's hopes and fears is a key to understanding her perspective.

Examples:

- If a woman hopes she can keep her family together, then many legal remedies will be irrelevant and/or unavailable. ie. custody/visitation, restraining orders that kick her partner out of their home, divorce.
- If a woman's greatest fear is that her children will grow up without the financial resources she believes they need to succeed, then legal strategies that jeopardize her financial security will not effectively address her fears, ie. arrest that will lead to her partner losing his job or legal actions that require her to be in court so much that she loses her job, etc.
- If a woman's hope is that the domestic violence offender education program will be successful she may stay in the relationship to give it a chance.

Another reason to understand her perspective is that the woman has a right to make decisions about her life and her children's lives (unless she jeopardizes them--see below) and advocates must understand a woman's perspective so that the woman can direct the advocacy.

Note on battered mothers and their child/ren:

Advocate's should first understand the mother's perspective about risks to her children, and how she is addressing them, before advocates make judgments about the mother's decision-making or the children's safety.

Example:

A woman may understand that her children are affected by her partner's violence against her, but her greatest fear is that he'll hit the kids. Therefore, she never leaves the kids alone with him. She believes that if she files for divorce her husband will get unsupervised visitation and then she won't be able to be there to protect her children. This belief is well-founded. If an advocate makes a sweeping judgment that the woman must leave her relationship because the children are witnessing violence against their mother the advocate doesn't take the woman's well-thought out safety planning strategy into account. The woman is unlikely to trust or work with the advocate to discover alternative strategies and the children are not better off.

However, if after exploring the woman's perspective, the advocate determines the woman's plan and analysis doesn't address the advocate's legal/ethical requirements to

protect the child/ren then the advocate must act to protect the child/ren.¹ Any action must be done carefully with thorough consideration of the woman's analysis and plans for her children. If it will not further endanger the children, the advocate should try to include the woman in any action the advocate is going to take to protect the children.

Approach basics for understanding a woman's perspective

- Try to create a safe place to talk.
- Listen
 - Start with her concerns, her questions, what she wants to tell you.
 - Validate what the woman is saying
 - Clarify what you don't understand
 - Understand her present safety plan and build on it
 - Understand what resources the woman has available to her without the legal system or other services.
- Respect her right to make decisions for herself and her children.

¹Children's and other person's safety raises a number of legal issues for advocates. Two primary issues are mandatory reporting and the duty to warn. The law does not provide standards that are clear and easy to apply in day-to-day advocacy. A discussion of legal liability issues is beyond the scope of these materials. However, these issues should be considered and included in any guidelines developed for advocate's decision-making about children's and other person's safety

□ **Try to create a safe place to talk.**

Creating a safe place requires paying attention to a range of issues about your physical surroundings, such as:

- Is the place physically safe? Can anyone walk in at any time? If she and her partner are in court at the same time could he find her and threaten her? Are there sheriffs/bailiffs around that understand the danger and will respond?
- Ask yourself, what does it feel like to be there? Is it loud, with many distractions? What's hanging on the wall? How does the typical woman view it? For example, many women who have violent partners do not consider themselves "battered," therefore posters about domestic violence and battering may be ineffective or make some women feel the advocate will not be able to help them.
- Is it "private"? Can others hear what you are saying or see if a woman is afraid, angry, crying or upset? Privacy may encourage women to talk, particularly about the range of very personal matters that are necessary for effective safety planning.

Privacy means that a third party can't overhear a conversation or see written information. Privacy is often a prerequisite for confidential or privileged communications legal protections to be enforced. It is assumed if other people can hear or see the information then the woman didn't intend for it to be kept confidential, and therefore the court and/or the woman's partner has a right to find out what it is. [Confidentiality is a large, complex and important aspect of advocacy which is beyond the scope of this chapter. See: Confidentiality section in this manual and *Protecting Confidentiality of Victim-Counselor Communications*, National Center on Women and Family Law, Inc., 1993.]

CROSS-REFERENCE: CONFIDENTIALITY

It is not always possible to provide the best surroundings to talk with women, however advocates should do what they can and be aware of the impact of their surroundings on the woman.

Listen

Listening involves much more than just hearing the words a woman is speaking. It means trying to put yourself in her shoes, understand her life and how she views and experiences the violence in it. There are a number of things advocates can do to ensure that they truly listen, here are some:

Start with her concerns, her questions, what she wants to tell you

Advocates often don't have a lot of time to talk with women. Sometimes this leads advocates to do all the talking. For example, advocates often say, "I only have 15 minutes so I make sure I list all the services and explain protective orders so she'll know about them." This approach does provide information about services. However, it doesn't explore if the services are, or ever will be, relevant to a particular woman. Most importantly, this approach doesn't establish a relationship or trust between the advocate and the woman. Without such a relationship, it is less likely that a woman would contact the advocate again. Since, in most cases, the advocate is the key to effective use of legal options in the future this approach can limit advocate's ability to help women.

When the advocate starts with the woman's concerns and questions she doesn't waste time talking about irrelevant services or aspects of the legal system. Experience has shown if an advocate finds out the woman's perspective first, she will actually save time. Sometimes, open-ended questions can help an advocate start with the woman's perspective. Questions, such as:

- What made you call the police, this office, etc.?
- What do you want to see happen?
- How do you think I can help you?
- What's your biggest concern right now?

Validate what the woman is saying

This is a simple, yet often neglected, technique for building a woman's confidence in herself and trust in the advocate. Consider using phrases such as:

- you're doing well, you're handling so much, you're doing a great job
- you've made a lot of plans--that's good
- you really care about your kids
- I can tell you've really thought about this a lot
- I understand why you'd want to _____
- other women have told me the same thing
- what you're trying to do is really hard and you've done a lot already
[list strategies she's used]

□ **Clarify what you don't understand**

Don't be afraid to ask questions if you don't understand what the woman is trying to tell you. Advocates may have expertise on general issues of domestic violence or the legal system, but they can't be experts on each individual woman's life--only the woman can. This is particularly important if the woman is from a different culture or background from the advocate's. Asking in a tactful and sensitive way, without judgment, will build trust with the woman and give the advocate information she needs to work effectively with a woman.

□ **Understand her present safety plan and build on it**

Women's safety planning starts with the violence, not the first contact with an advocate. In other words, when a woman experiences violence she responds to it, tries to figure out why it happened and how she can prevent or survive it in the future. A woman would probably not describe this response as a formal "plan." In order to plan for the future and explore options the legal system offers, it is essential for an advocate to know what the woman has tried in the past. Did it work? If not, why does the woman think it didn't? Would she try it again? Would she try it again if the advocate worked with her or if she had new information?

Once the advocate understands past and present plans she can explore with the woman the possibility of modifying or expanding those strategies.

□ **Understand what personal resources the woman has available to her, excluding the legal system and other services.**

Examples:

- A woman doesn't need a protective order because she is going to her brother's house and her partner will not go after her there.
- A woman doesn't want or need a support group because she has a large number of family and friends who support and understand her and her relationship.
- A woman might not need housing, welfare assistance, etc. because she is supporting herself.
- A woman might not need an advocate, because she has a lawyer or the resources to hire a lawyer.

□ **Respect a woman's right to make decisions for herself and her children**

Advocacy does not mean making decisions for a woman. Rather, the role of advocacy is to understand the woman's perspective, provide relevant information and the opportunity for women to make decisions and plans, and then to work with her to implement those plans. Respect for women's self-determination does not mean advocates will passively follow whatever plan a woman pursues. Advocates should be active--but respectful-- participants in a woman's safety planning decisions, providing feedback, information about consequences of particular choices, and alternative suggestions.

A woman's decisions about safety may not focus on responding to physical violence. In addition, her decisions will be based on her views of family, relationships, parenting, security, happiness, economic lifestyle, religion, divorce, etc. Advocates should not presume they know what is best for a woman. A family violence victim, like everyone else, has the legal and moral right to make decisions about her life. Advocates have an ethical responsibility to help women make their own choices, by providing clear, accurate information and support. Advocating for a woman's right to self-determination is the essence of empowerment.

Also, practically speaking, making decisions for a woman is an ineffective way to plan for her safety. It may in fact increase the danger she or her children face.

Example:

A woman's safety plan is to "go along" with her partner's statements in court and to let him continue to live with her. She believes she and her children are safer if he lives with her and she can watch his behavior. The advocate, believing that the defendant is too dangerous to be allowed to live with the victim, asks the judge to order the woman's partner out of their home.

In this example, the advocate's decision to take over decision-making and ignore the woman's safety plan jeopardized the woman's existing safety plan.

It can be difficult for an advocate to avoid making decisions for a woman when the advocate is worried about her. This is especially true when an advocate believes the woman isn't "making decisions in her own best interest." It is also hard when court personnel ask an advocate to make decisions for the woman or the woman asks an advocate to make decisions for her. The key to avoid making decisions for a woman is to recognize when you are doing it.

Examples:

- Telling a woman she needs a court order to keep her husband away from her, when she has no intention of keeping him from the house.
- Telling a woman the best thing she could do is move to a new location, leave her relationship, or get a divorce, without understanding the consequences of these actions.
- Telling a woman she has to leave because of the children, without understanding her safety plan for the children.

Even though a woman has the ultimate right and responsibility to make decisions in her life, there are still many decisions an advocate has to make.² For example, an advocate must decide how she will approach the case, what information to give the woman, what questions to ask, what strategies to focus on, what information to give to the court, etc. In other words, although you, as an advocate, should not make decisions for a woman, it is your job to make sure she is making decisions with a clear understanding of her options and the expected consequences of choosing one option over another.

Note on advocates' hope and fear:

Advocates' hopes and fears are often different from an individual woman's hopes and fears. Advocates have a great fear for women's physical safety. And although many women have a great deal of hope that their partners will change, the advocate typically holds very little. In fact advocates often say to women, "he won't change, the violence will get worse, you have to leave." Some advocates tend to assume that the woman is more afraid of the physical violence than anything else, without exploring what else the woman does fear. Some advocates may not value the woman's hope for change. Advocates might not take her hope seriously and simply view it as just another barrier to getting her to leave. Advocates may not see hope as a coping skill. Since advocate's hope and fear may be very different from those of an individual battered woman, it is essential that advocates are careful to discover the woman's perspective and build on it rather than replace it with the advocate's perspective.

²There are circumstances when an advocate, after exploring the woman's perspective, determines the woman's plan and analysis doesn't address the advocate's legal/ethical requirements, ie. reporting child abuse/neglect. The advocate must then take the action necessary to meet those requirements.

2.

Determine whether the legal system may be able to help a woman meet her goals and address her fears.

It is essential that advocates understand what the legal system has to offer. This means knowing more than just the types of options available. Understanding legal system options requires knowledge of the legal requirements for the option, the process for accessing the option, and an awareness of additional considerations. A framework for understanding what the legal system has to offer follows, along with three examples of applying the framework.

To understand a legal option, the advocate must:

1. **Know the legal option**

- such as, protective order, arrest, custody order, child support order

2. **Know the legal requirements to use the option**

- Who can use the option?
- When they can use it?

3. **Know how to use the option**

- Which court must she go to?
- What forms or other papers must be used?
- What times the court is open?
- What local requirements are there?

4. **Know what other considerations exist**

- Will it enhance the woman and her children's safety?
- Will it help the woman meet her goals?
- Could it make things worse?

Three examples of understanding legal options follow. These examples are hypothetical and not based on any actual law or situation. Advocates must seek out and apply information from their state and courts.

**Example:
Considering Civil Orders of Protection**

Legal requirements	How	Other considerations
<ul style="list-style-type: none"> ▶ recent <i>physical</i> violence or threats ▶ violence must be between a family or household member 	<ul style="list-style-type: none"> ▶ family court ▶ must fill out form and complete a sworn statement describing the violence ▶ judge must review papers and decide if emergency order necessary ▶ only available Mon-Fri. 9am-5pm ▶ sheriff must serve the batterer with the papers ▶ local requirements, e.g. requirements of a local court, clerk, or judge 	<ul style="list-style-type: none"> ▶ woman's perspective on how the order will enhance or hinder her safety plan ▶ sheriff has brief amount of time to serve papers, must know where and when to find batterer ▶ emergency order only lasts 14 days ▶ woman must go to a hearing to have order extended & extension may be limited ▶ batterer could hire an attorney for the hearing ▶ whether or not the woman will have an attorney ▶ custody/visitation concerns ▶ financial and support concerns ▶ may not be effective enforcement of orders ▶ may enhance police response ▶ may "make it worse" batterer may retaliate, escalate the violence ▶ woman's ability to read and write in English if she is representing herself ▶ availability of interpreters

**Example:
Considering prosecution for a crime**

Legal Requirements	How	Other considerations
<ul style="list-style-type: none"> ▶ finding of probable cause (that it was more likely than not) that a crime was committed by the batterer 	<ul style="list-style-type: none"> ▶ police response and investigation ▶ in certain circumstances an arrest warrant signed by a judge is needed ▶ batterer's behavior must meet the requirements of a crime--each crime has specific requirements ▶ prosecutor decides if case will be prosecuted and how ▶ local requirements of a court, prosecutor, e.g. that the woman wants to "press charges" 	<ul style="list-style-type: none"> ▶ woman's perspective on how the prosecution will enhance or hinder her safety plan ▶ if arrested, will the batterer actually be taken away by the police and how soon might he be released ▶ likelihood of prosecution ▶ if conviction, what sentencing and treatment options likely ▶ how easy or difficult it will be for the woman to talk with prosecutor and/or influence the outcome, ▶ availability of victim advocates ▶ custody, visitation, kids safety may not be addressed ▶ financial and support issues may not be resolved ▶ woman may need to come to court several times ▶ arrest, prosecution could escalate or inhibit violence ▶ woman may be arrested, even if she was defending herself and/or the children

Example:
Consideration of custody/visitation orders

Legal Requirements	How	Other considerations
best interest of the child	<ul style="list-style-type: none"> ▶divorce ▶custody case ▶visitation case ▶post-divorce or custody case modification 	<ul style="list-style-type: none"> ▶woman's perspective on how the orders will enhance or hinder her safety plan for herself and her children ▶orders can be modified in the future ▶having a trial or hearing on custody or visitation can cost a lot of money ▶may lead to psychological evaluations of parents and children ▶will the woman have an attorney to represent her, will the father of the children have an attorney ▶judge may order that children be represented by their own attorney (one or both parents may be required to pay for this) ▶some courts/judges do not consider domestic violence by a parent relevant to whether or not that parent should have custody or visitation ▶court orders may be ineffective in addressing abuse of children or victim-parent ▶enforcement of court orders may require the cost/etc. of returning to court and this may be ineffective ▶the violent-parent may not agree to the custody or visitation orders the victim-parent wants and the victim-parent may not be able to afford a trial or hearing so that a judge can decide ▶if the children are at risk from the visiting parent, the judge may or may not order supervised visitation ▶there may be no one available who can properly supervise visitation ▶a woman may have to mediate these issues with an abusive partner

3.

Convey your knowledge about the legal remedies to the woman and analyze them with her.

When talking about what options the legal system might have to help a woman meet her goals, advocates must be careful to avoid jargon. Advocates have jargon. The legal system has jargon. In the legal system, the explanation of jargon often involves more jargon. For example, an **arrest warrant** -- means a **judge found probable cause** that the **defendant** may have committed an **offense**. When advocates use jargon they are communicating ineffectively, wasting time, and potentially misleading women. Know when you hear and use jargon and find new ways of explaining what you are talking about. For example, instead of asking a woman, "Do you want a protective order?" try asking her "Do you want the judge to put it in writing that your partner shouldn't hurt you anymore?"

Analyzing legal options with a woman

- Describe what choices/decisions the woman can make.

Can she decide whether or not to start a court case or an activity within an ongoing case?

OR

Are case decisions made by someone else, such as a prosecutor in a criminal case?

- Explore the consequences for her as an individual if she pursues or does not pursue the legal option.

Has she tried it before? Did it help?

How does she think it might help or hurt this time?

What is the advocate's perspective of the consequences for this particular woman?

What does the woman think now that she has the advocate's information?

Example: If the woman is in this country without documentation will pursuit of a legal remedy lead to immigration issues?

- Explore other alternatives.

The legal system is not the only option for women. Advocates should be sure to explore with the woman all possible options and resources, including domestic violence project services, community services and resources, and other resources the woman may have, e.g. her family, friends, religious community, health provider, employer, etc.

Example: Analyzing legal options with Jane

Jane told the advocate that she called the police last night because her partner John was scarier than usual. She just wanted someone to take John away until he could sober up and calm down. She wished John could get some help for his drinking. Jane doesn't want John to get in trouble, because if he loses his job she'll have no way to pay the rent or support herself and their new baby.

Describe what choices/decisions Jane can make.

Jane lives in a state where there is mandatory arrest for domestic violence crimes. So, once Jane called the police, she was not be able to choose whether or not John was arrested. Jane called the police and they arrested John. In the court where John's case is being handled, the prosecutor makes all the decisions about the case. Jane won't be able to influence the decision whether or not to prosecute. However, if John is prosecuted and convicted, the prosecutor will listen to what sentence she thinks John should receive, including that she wants to stay with John, keep him from going to jail, and get him to go to alcohol counseling.

Explore the consequences for Jane if she pursues or decides not to pursue a legal option.

Since the prosecutor will make the decision whether or not to prosecute John--no matter what Jane thinks--the focus is on exploring the consequences of trying to influence John's sentence if he is convicted. The prosecutor is not sympathetic to Jane's decision to stay with John and this might effect any future domestic violence cases against John handled by the same prosecutor. Another consideration is John's reaction to Jane's statement about his drinking and her request that he be ordered to go to alcohol counseling.

Explore other alternatives for Jane.

Jane has decided to stay with John. Jane can get support and information from the local domestic violence project. Jane has a large family who cares about her and she can seek support from them. She has thought about asking her brother to live with them for awhile, because she believes John won't hurt her if her brother is there. Also, Jane could go to Al-Anon. Jane has also decided to talk to John's brother George, who is a "father figure" to John, about John's drinking. George has been attending "AA" meetings for years and Jane thinks he might be able to get John to realize he needs help with his drinking.

4.

Help the woman implement her choices.

- Strategize with the woman about how she can influence the legal system's response. [If she has an attorney or is getting one then it is the attorney's responsibility to advocate for the woman.] Explain how and when she can advocate for herself, e.g. she can write a letter to the prosecutor, ask to be able to talk at a sentencing or other criminal hearing, or talk with the probation officer assigned to the case.
- Ensure that the advocate and the woman have clear expectations of what action-if any-the advocate will take and what action-if any-the woman will take.
- Make sure the woman knows how to contact the advocate or get help from someone else.

Referrals:

There are three things to keep in mind when making a referral:

1. Referrals must match the woman's choices, priorities, and her perception of her risks.
2. The way the referral is made should encourage and facilitate the woman actually contacting the referral. This might include information about who the woman should talk to, when is the best time to call, will they be able to speak in her language, do they have a specific telephone number for the hearing impaired, what information the woman will have to provide, what requirements the referral has for service, whether there is a waiting list, etc.
3. The advocate should be familiar with the referral and confident that they will be able to respond effectively to a victim of domestic violence and this woman in particular.

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Library

Title: An Approach to Legal Advocacy for Individual Battered Women

Author: Jill Davies

Category: ADVOCACY & VICTIMS

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Abstract

This article details some of the barriers that battered women encounter when dealing with the legal system, including: cost of representation by an attorney; complexity of the legal system; language barriers; limited remedies; difficulty in enforcing the law; conflicting goals; fees & costs. Also addressed are issues that advocates encounter, including: unauthorized practice of law; defendant's rights and victim advocacy; adversarial system conflicts. The article suggests several approaches to legal advocacy for individual battered women and includes a hypothetical.

Internal Comments

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Keywords

advocacy, assessment, children's advocacy, civil law, civil court, legal advocacy, safety pl

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