

## CAN A LEOPARD CHANGE HIS SPOTS?: CHILD CUSTODY AND BATTERER'S INTERVENTION

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John and Kathy were married and had a daughter, Mary Elizabeth.<sup>1</sup> Both parents loved their daughter dearly. Although he never laid a hand on his daughter, John continuously battered his wife.<sup>2</sup> After two protective orders failed to stop the abuse, Kathy sought a divorce.<sup>3</sup> Not surprisingly, a bitter custody battle ensued. Despite Kathy's insistence that John's violence should prevent him from having custody or visitation, the court granted John unsupervised visitation every other weekend, one Monday per month, and three hours every Tuesday.<sup>4</sup> After one such visit, Kathy became worried when John did not return three-year-old Mary Elizabeth on time, so she sought police assistance. Upon investigation, police discovered John and Mary Elizabeth in John's truck in the garage at his home. Both were dead of gunshot wounds; John's gun was found in the truck.<sup>5</sup> John had taken anger management classes.<sup>6</sup>

Although this story is an extreme example of what can happen if a batterer is given unsupervised visitation with his child,<sup>7</sup> it anecdotally disproves the all-too-common view of courts that interspousal violence has little to do with parenting ability and thus, merits little consideration in custody decisions. Hopefully, attitudes will continue to change in recognition of the effects such abuse actually has on children.

Clearly, interspousal abuse is a hazard to victims during the relationship. What courts may fail to realize is that it continues to be a hazard to child witnesses and to victims even after the relationship has been legally dissolved. Children who witness interspousal violence often experience emotional difficulties, including anxiety, depression, increased aggression, and even Post Trau-

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1. See Bonnie Miller Rubin, *Ultimate Revenge in Custody Battles*, CHI. TRIB., Oct. 9, 2002, at C7.

2. See *id.*

3. See Deborah Kadin, *2 Dead in Apparent Murder-Suicide*, CHI. DAILY HERALD, Oct. 3, 2002, at News 4.

4. See *id.*

5. See *id.*

6. *Id.* Although anger management classes are not necessarily specifically designed for batterers, the fact that John had received some treatment still makes this story relevant to the topic of this note.

7. Throughout this note, I will refer to the victims as "she" and batterers as "he." While it is true that women may also abuse men, all of the court cases and studies of batterer programs that I cite in this note involve male batterers and female victims.

matic Stress Disorder.<sup>8</sup> Exposure to interspousal violence during childhood may also lead to involvement in family violence later in life.<sup>9</sup> Children in homes where interspousal abuse occurs are also at a much greater risk of being physically abused themselves.<sup>10</sup> Unfortunately, for victims, divorce is not always the end of the violence. On the contrary, separation often escalates the abuse, and joint custody and unsupervised visitation may give abusers ample opportunity to continue abusing their former spouses.<sup>11</sup> In addition, even if the violence between the former spouses ends after divorce and/or after courts make custody arrangements designed to minimize the contact between the victim and the abuser, there is always the risk that the children will continue to be exposed to interspousal violence if the batterer becomes involved in a new relationship.<sup>12</sup>

In response to the growing body of knowledge about the dynamics of interspousal violence and its effects on children, courts have begun considering interspousal violence in custody decisions.<sup>13</sup> Custody statutes in most states specifically list interspousal violence as a factor to be considered in custody decisions. In some states, there is even a rebuttable presumption that a batterer should not be awarded custody.<sup>14</sup> So, what is a batterer to do if he still wants

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8. Kendell Segel-Evans, *Wife Abuse and Child Custody and Visitation by the Abuser*, ENDING MEN'S VIOLENCE NEWSLETTER (Fall 1989), available at <http://www.mincava.umn.edu/warters/warterse.htm> (last visited May 5, 2003).

9. Some estimate that thirty percent of children who witness interspousal violence become abusive parents. Michele Westerlund, *Abusive Parents and Physical Placement Awards: What More Could Wisconsin Do to Protect its Children?*, 16 WIS. WOMEN'S L.J. 287, 296 (2001) (citing *Report on Domestic Violence: A Commitment to Action*, 28 NEW ENG. L. REV. 313, 334 (1993)); see also H.R. Con. Res. 172, 101st Cong. (1990) (enacted) ("[R]esearch into the intergenerational aspects of domestic violence reveals that violent tendencies may be passed on from one generation to the next.").

10. David Pelcovitz & Sandra J. Kaplan, *Child Witnesses of Violence Between Parents*, 3 CHILD & ADOLESCENT PSYCHIATRIC CLINICS OF N. AM. 745, 749-50 (1994). It is estimated that between 30% and 60% of batterers who physically abuse their spouses also physically abuse their children and that children who are exposed to interspousal abuse are 129% more likely to be abused themselves. *Id.*

11. See Daniel G. Saunders, *Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Research Findings, and Recommendations*, APPLIED RESEARCH FORUM, NATIONAL ELECTRONIC NETWORK ON VIOLENCE AGAINST WOMEN 1, 3, at [http://www.vawnet.org/VNL/library/general/AR\\_custody.html](http://www.vawnet.org/VNL/library/general/AR_custody.html) (last visited May 5, 2003) (noting that "[s]eparation is a time of increased risk of homicide for battered women . . . and these homicides sometimes occur during custody hearings or visitation exchanges of children"). For a chilling account of a woman murdered by her ex-husband when he came to pick up the children for visitation, see the introduction to Westerlund, *supra* note 9, at 287-88. A Canadian study found that a quarter of women who had divorced their abusers had their lives threatened by their ex-husbands during custody visitations. Richard M. Tolman & Jeffrey L. Edleson, *Intervention for Men Who Batter: A Review of Research*, in UNDERSTANDING PARTNER VIOLENCE: PREVALENCE, CAUSES, CONSEQUENCES AND SOLUTIONS 262, 266 (S.R. Stith & M.A. Straus eds., 1995), available at <http://www.mincava.umn.edu/papers/toledl.htm> (last visited May 5, 2003).

12. See Saunders, *supra* note 11, at 3 (noting that more than half of male batterers will later abuse another victim).

13. See, e.g., ALASKA STAT. § 25.24.150(c)(7) (Michie 2003). For a more detailed discussion of the types of statutes providing for a consideration of interspousal violence in custody decisions, see Parts I & II, *infra*.

14. See, e.g., ALA. CODE § 30-3-131 (2003). Again, a more detailed discussion of such statutes can be found in Parts I & II, *infra*.

more visitation with his children? Batterer's intervention programs<sup>15</sup> are one option for treatment of abusive men, and in custody cases courts may look more favorably on men who have completed such programs.<sup>16</sup> But how effective are such programs? Can a court rely on a batterer's completion of such a program to demonstrate that he is "cured" of his violent tendencies?

This note examines the current state of research investigating the effectiveness of such programs in an effort to determine the weight such programs should be afforded in custody decisions. Part I provides a brief overview of the history of custody law and the part interspousal violence plays in custody decisions. Part II looks at the way courts use batterer's interventions in the context of custody determinations. Part III discusses what the interventions are, and Part IV examines current research on the effectiveness of such programs. Finally, Part V provides recommendations for courts based on this research.

### I. A BRIEF HISTORY OF CUSTODY LAW AND THE ROLE OF INTERSPOUSAL VIOLENCE IN CUSTODY DECISIONS

In colonial times, children were treated as the property of their fathers.<sup>17</sup> Gradually, as childhood became romanticized, nurture became an important goal, and as women gained some legal independence from their husbands, the presumption of paternal custody began to shift to the "tender years" doctrine, preferring the mother as nurturer.<sup>18</sup> In the last thirty years, however, all of this has changed;<sup>19</sup> statutes have become gender neutral and courts have even gone so far as to hold that a maternal preference is unconstitutional.<sup>20</sup>

Today, the predominant doctrine in custody law is the "best interests of the child" standard.<sup>21</sup> In addition, in the past twenty or so years, a new trend has developed as an extension of the "best interests" standard—a trend toward joint custody.<sup>22</sup> This trend reflects the belief that children are better off if they maintain relationships with both parents.<sup>23</sup> Much of this trend has been fueled by a strong fathers' rights movement.<sup>24</sup>

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15. In this note, the terms "batterer's intervention," "batterer's counseling," "batterer's treatment," "batterer's program," and "batterer's group" will be used interchangeably to refer to programs for male batterers aimed at ending their violent behavior.

16. See, e.g., *Riedel v. Campos-Riedel*, No. C036947, 2002 Cal. App. LEXIS 8320 (Cal. Ct. App. Sept. 4, 2002) (unpublished opinion).

17. Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth Century America*, in *FAMILY LAW 711, 711* (Leslie J. Harris & Lee E. Teitelbaum eds., 2000).

18. See *id.* at 712.

19. Kathy T. Graham, *How the ALI Child Custody Principles Help Eliminate Gender and Sexual Orientation Bias from Child Custody Determinations*, 8 *DUKE J. GENDER L. & POL'Y* 323, 324 (2001).

20. See, e.g., *Pusey v. Pusey*, 728 P.2d 117, 120 (Utah 1986).

21. See Leslie J. Harris & Lee E. Teitelbaum, *Child Custody*, in *FAMILY LAW 711, 713* (Leslie J. Harris & Lee E. Teitelbaum eds., 2000).

22. See *id.* at 784.

23. *Id.* (noting that some states even have statutes creating a preference for joint custody).

24. See, e.g., [www.fathersrightsinc.com](http://www.fathersrightsinc.com) (featuring legal tips for fathers, including hints at how to get a lower child support settlement).

A preference for joint custody is particularly problematic for battered women.<sup>25</sup> Joint custody frequently translates into continued contact between the abuser and the victim, which all too often means that divorce is no escape from the abuse suffered during the marriage.<sup>26</sup> Together with a preference for joint custody, courts may apply "Friendly Parent" provisions, which prefer a parent who is willing to share custody to a parent who refuses to share.<sup>27</sup> Again, this policy creates a dilemma for battered women—if they refuse to share custody for fear of future abuse, a court may see them as uncooperative and may punish them for it.<sup>28</sup> Moreover, joint custody preferences may be used by abusers simply as a tool to further abuse their victims; even if they do not really want shared custody, they may use the threat of suing for joint or sole custody to gain more power over their victims.<sup>29</sup>

The American Law Institute has gone a step further than the "best interests" standard and joint custody preferences by creating a primary caretaker rule as the basis for custody decisions.<sup>30</sup> Under this rule, the custody arrangement would reflect the child-care arrangements during the marriage; if the mother took care of the children most of the time, she would get primary physical custody of the children.<sup>31</sup> This rule has some advantages that could help battered women. The rule provides greater certainty in custody outcomes.<sup>32</sup> This certainty could benefit battered women by reducing the ability of abusers to manipulate the highly discretionary "best interests" standard in order to gain power over their victims. Hand in hand with increased certainty is the reduction of the finger-pointing that is frequently seen when the "best interests" standard is applied. While the "best interests" standard seems to invite allegations of bad parenting, the primary caretaker rule relies on easily-ascertainable, objective evidence.<sup>33</sup> Accordingly, for battered women, this means that their abusers may have less of an opportunity to psychologically abuse them with accusations of unfit motherhood. It is yet to be seen whether states will accept or reject this rule.

Recognizing the dilemma of battered women in custody proceedings, Congress passed a joint resolution in 1990 encouraging states to create a rebuttable

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25. See Leslie Harris et al., *Making and Breaking Connections Between Parents' Duty to Support and Right to Control Their Children*, in FAMILY LAW 562, 563 (Leslie J. Harris & Lee E. Teitelbaum eds., 2000).

26. See Saunders, *supra* note 11, at 3.

27. See, e.g., CAL. FAM. CODE § 3040(a)(1) (West 2003) (providing that a court must consider "which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent").

28. See, e.g., Riedel v. Campos-Riedel, No. C036947, 2002 Cal. App. LEXIS 8320, at \*17 (Cal. Ct. App. Sept. 4, 2002) (unpublished opinion).

29. See Westerlund, *supra* note 9, at 294.

30. AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS, § 2.09 (Tentative Draft No. 4, 2000).

31. See *id.*

32. Katharine T. Bartlett, *Preference, Presumption, Predisposition, and Common Sense: From Traditional Custody Doctrines to the American Law Institute's Family Dissolution Project*, 36 FAM. L.Q. 11, 19 (2002).

33. See *id.*

presumption that batterers should not have custody of children.<sup>34</sup> Fortunately, many states have heeded the call,<sup>35</sup> and virtually all states now either require or specifically allow courts to consider interspousal violence in custody proceedings.<sup>36</sup> These statutes vary widely. For example, some of the rebuttable presumption statutes apply only to considerations of joint custody,<sup>37</sup> while others create a rebuttable presumption that neither sole nor joint custody should be given to a batterer.<sup>38</sup> Some of the statutes that do not provide for a rebuttable presumption nonetheless require that interspousal violence be considered and that specific findings of fact be made if there is evidence of such violence,<sup>39</sup> while others merely state that interspousal violence shall be considered.<sup>40</sup> These statutes also vary in that some simply allow or require that any interspousal violence be considered,<sup>41</sup> while others require specific findings as to the effect of interspousal violence on the children.<sup>42</sup>

The rebuttable presumption statutes also vary widely in the amount of proof necessary to create the presumption. Some statutes require either one se-

34. H.R. Con. Res. 172, 101st Cong. (1990) (enacted) ("[F]or purposes of determining child custody, credible evidence of physical abuse of one's spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse.").

35. See ALA. CODE § 30-3-131 (2003), ARIZ. REV. STAT. § 25-403 (2003), ARK. CODE ANN. § 9-13-101(c) (Michie 2002), CAL. FAM. CODE § 3044 (West 2003), DEL. CODE ANN. tit. 13, § 705A (2002), D.C. CODE ANN. § 16-914(a)(3)(F) (2003), FLA. STAT. ANN. § 61.13(2)(b)(2) (West 2002), HAW. REV. STAT. § 571-46(9) (2003), IDAHO CODE § 32-717(B)(5) (Michie 2002), IOWA CODE § 598.413(1)(b) (2003), LA. REV. STAT. ANN. § 9:364 (West 2003), MASS. GEN. LAWS ch. 218, § 31A (2003), MINN. STAT. § 518.17(2)(d) (2002), NEV. REV. STAT. § 125.480(5) (2003), N.D. CEN. CODE § 14-09-06.2(1)(j), OKLA. STAT. tit. 43, § 112.2(2) (2003), OR. REV. STAT. § 107.137(1)(d) (2001), S.D. CODIFIED LAWS § 25-4-45.5 (Michie 2002), TEX. FAM. CODE ANN. § 153.004 (Vernon 2002), WIS. STAT. § 767.24(2)(B)(2)(c) (2002). Both Missouri and New Jersey have statutes that allow a rebuttable presumption against granting custody to a batterer when a victim seeks a protective order. See MO. REV. STAT. § 455.050(5) (2003), N.J. STAT. ANN. § 2C:25-29 (West 2003).

36. In addition to the statutes listed in note 35, *supra*, see ALASKA STAT. § 25.24.150(c)(7) (Michie 2003), COLO. REV. STAT. § 14-10-124(1.5)(a)(1) (2002), GA. CODE ANN. § 19-9-1(a)(2)(2002), 750 ILL. COMP. STAT. 5/602(a)(6)-(7) (2003), IND. CODE § 31-17-2-8(7) (2003), KAN. STAT. ANN. § 60-1610(3)(B)(vii) (2002), KY. REV. STAT. ANN. § 403.270(2)(F) & (3) (Banks-Baldwin 2002), ME. REV. STAT. ANN. tit. 19-A § 1653(6) (West 2003), MD. CODE ANN., FAM. LAW § 9-101.1 (2002), MICH. COMP. LAWS § 722.23(3)(k) (2002), MO. REV. STAT. § 452.375(2)(6), (13) (2003), MONT. CODE ANN. § 40-4-212(1)(f) (2002), NEB. REV. STAT. § 42-364(2)(d) (2002), N.H. REV. STAT. ANN. § 458:17(II)(c) (2002), N.J. STAT. ANN. § 9:2-4(c) (West 2003), N.Y. DOM. REL. LAW § 240(1)(a) (McKinney 2003), N.C. GEN. STAT. § 50-13.2(a) (2003), OHIO REV. CODE ANN. § 3109.04(F)(1)(h) (Page 2002), 23 PA. CONS. STAT. § 5303(a)(3) (2002), R.I. GEN. LAWS § 15-5-16(g) (2002), S.C. CODE ANN. § 20-7-1530 (Law. Co-op. 2002), TENN. CODE ANN. § 36-6-106(a)(8) (2002), UTAH CODE ANN. § 30-3-10.2 (2003), VT. STAT. ANN. tit. 15, § 665(b)(9)(2003), VA. CODE ANN. § 20-124.3(9) (Michie 2003), WASH. REV. CODE § 26.09.191(1)-(2) (2003), W. VA. CODE § 48-9-209(a)(3) (2003), W. VA. CODE § 48-9-209(a)(3) (2003), WYO. STAT. ANN. § 20-2-201(c) (2002).

37. See, e.g., MINN. STAT. § 518.17(2)(d) (2002).

38. See, e.g., LA. REV. STAT. ANN. § 9:364(A) (West 2003).

39. See, e.g., MO. REV. STAT. § 452.375(2)(6), (13) (2003).

40. See, e.g., ALASKA STAT. § 25.24.150(C)(7) (Michie 2003).

41. See, e.g., IND. CODE § 31-17-2-8(7) (2003).

42. See, e.g., KY. REV. STAT. ANN. § 403.270(3) (Banks-Baldwin 2002) (providing that "[i]f domestic violence and abuse is alleged, the court shall determine the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents").

vere incident of violence or a pattern of violence.<sup>43</sup> The presumption is only triggered in other statutes when there has been a criminal conviction for inter-spousal violence.<sup>44</sup>

Statutes in many states also provide that any impairment of the victim caused by the abuse shall not be considered in determining the child's best interests.<sup>45</sup> Some statutes require courts to consider the safety of the victim in setting out a visitation plan.<sup>46</sup> Batterer's intervention may or may not be mentioned in these statutes; its role in statutes and case law will be discussed in the next section.

## II. HOW BATTERER'S INTERVENTIONS FIGURE IN CUSTODY DECISIONS

Batterer's interventions may come into play in custody decisions in one of three main ways. First, they may be used as evidence to rebut the presumption that a batterer should not be given custody of the child.<sup>47</sup> Second, visitation may be conditioned on completion of a batterer's program.<sup>48</sup> Third, batterer's treatment may simply be used as evidence in determining the best interests of the child when there is no rebuttable presumption law.<sup>49</sup>

### A. Rebutting Presumption Against Custody

Completion of batterer's counseling may be used as evidence to rebut the presumption against granting sole and/or joint custody to the batterer. Some rebuttable presumption statutes even specifically mention batterer's treatment. For example, Louisiana's rebuttable presumption statute provides:

[T]he presumption shall be overcome only by a preponderance of the evidence that the perpetrating parent has successfully completed a treatment program . . . , is not abusing alcohol and the illegal use of drugs . . . , and that the best interest of the child or children requires that parent's participation as a custodial parent because of the other parent's absence, mental illness, or substance abuse, or such other circumstances which affect the best interest of the child or children.<sup>50</sup>

Other statutes simply list completion of batterer's intervention as a factor to be considered when determining whether the presumption has been rebutted.<sup>51</sup>

Even when a statute does not specifically list batterer's counseling, case law may establish it as evidence that can be used to rebut a presumption against a

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43. See, e.g., N.D. CENT. CODE § 14-09-06.2(1)(j) (2002).

44. See, e.g., S.C. CODE ANN. § 20-7-1530 (Law. Co-op. 2002).

45. See, e.g., N.D. CENT. CODE § 14-09-06.2(1)(j) (2002) ("The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent custody.").

46. See, e.g., GA. CODE ANN. § 19-9-1(a)(2)(A) (2002) ("The court shall consider as primary the safety and well-being of the child and of the parent who is the victim of family violence[.]").

47. See, e.g., LA. REV. STAT. ANN. § 9:364(A) (West 2003).

48. See, e.g., LA. REV. STAT. ANN. § 9:364(C) (West 2003).

49. See, e.g., *Millard v. Millard*, 679 N.Y.S.2d 434, 435 (N.Y. App. Div. 1998).

50. LA. REV. STAT. ANN. § 9:364(A) (West 2003).

51. See, e.g., ARIZ. REV. STAT. § 25-403(O)(2)(2003).

custody award to the batterer.<sup>52</sup> For example, in *Riedel v. Campos-Riedel*,<sup>53</sup> the completion of batterer's counseling was used to rebut the presumption against giving custody to a batterer. In this case, Donald, the father of Christian, had abused his ex-wife, Sophia, throughout their marriage and had even pled guilty to felony spousal abuse.<sup>54</sup> At first, Sophia was awarded primary physical custody and Donald was allowed unsupervised visitation.<sup>55</sup> Later, however, after the court found that Sophia had been making reports of questionable validity to Protective Services that Donald had abused Christian, the court transferred primary physical custody to Donald.<sup>56</sup> The court considered Sophia's uncooperativeness and questionable allegations, as well as the fact that Donald had completed a batterer's treatment program.<sup>57</sup> Based on these factors, the court determined that the presumption against awarding Donald custody had been rebutted.<sup>58</sup>

This case is upsetting for multiple reasons. First, the court initially provided for joint legal custody and unsupervised visitation for Donald, basically assuring contact between the two former spouses, despite the parents' history of interspousal violence.<sup>59</sup> Second, the court held that Donald had overcome the presumption against custody even though Sophia presented evidence that Donald "continued to minimize and deny the abuse," despite his "successful" completion of treatment.<sup>60</sup> It is also compelling to note that Donald was convicted of felony spousal abuse nearly a year *after* he started treatment in a batterer's intervention program, further suggesting that his treatment was not successful.<sup>61</sup> Unfortunately, it is unclear from the case whether he was convicted for incidents that occurred before, during, or after his treatment. Nonetheless, *Riedel* serves

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52. Unfortunately, family law cases involving custody disputes are not often published. The cases that are published are appeals from an earlier judgment, and since many cases are not appealed, it is difficult to tell how judges are actually using batterers' counseling in their decisions. See Kim Susser, *Weighing the Domestic Violence Factor in Custody Cases: Tipping the Scales in Favor of Protecting Victims and their Children*, 27 *FORDHAM URB. L.J.* 875, 884 (2000). The following case discussion is based on what little published case law the author was able to find. For other cases that mention how batterer's treatment may be used to rebut the presumption against awarding custody to the batterer, despite the fact that there was no evidence that the batterer in the particular case had completed such a program, see *Heck v. Reed*, 529 N.W.2d 155, 165 n.6 (N.D. 1995) (discussing what is needed to rebut the presumption and noting that "[a]lthough treatment is not a fail-safe remedy, it may, in certain circumstances, support a finding that domestic violence is not likely to occur in the future"); *Bruner v. Bruner*, 534 N.W.2d 825, 828 (N.D. 1995) (affirming *Heck v. Reed*).

53. No. C036947, 2002 Cal. App. LEXIS 8320 (Cal. Ct. App. Sept. 4, 2002) (unpublished).

54. *Id.* at \*4-5. The court minimized the violence by describing it as "consist[ing] of mainly pushing and shoving, and one incident of hitting when Sophia suffered a minor cut on her finger." *Id.* at \*4.

55. *Id.* at \*6.

56. *See id.* at \*7.

57. *Id.* at \*5.

58. *See id.* at \*24-33.

59. *See id.* at \*5-6. This may also explain Sophia's persistence in making questionable reports to Child Services. She may have been looking for a way to avoid future contact with her former abuser.

60. *Id.* at \*30. Donald did testify that he was not a violent person, and the court found that to be an accurate statement since there was no evidence that he was violent outside of his marriage to Sophia. *Id.* at \*30 n.8.

61. *See id.* at \*5-6.

as an example of a case in which batterer's intervention was likely given more weight than it deserved.

### B. Condition of Visitation

Visitation may also be conditioned on successful completion of batterer's counseling. One of the strictest statutes dealing with this situation is Louisiana's rebuttable presumption statute.<sup>62</sup> It provides that when a history of interspousal violence is found, "the court shall allow only supervised child visitation with that parent, conditioned upon that parent's participation in and completion of a treatment program."<sup>63</sup> To be awarded unsupervised visitation, a batterer must not only complete treatment, but must also show an absence of substance abuse and establish that visitation is in the child's best interest.<sup>64</sup> Louisiana is stricter than most states in requiring completion of a batterer's program before even supervised visitation is allowed.

Case law from other jurisdictions has made shared parental responsibility and supervised visitation contingent on the completion of a batterer's program.<sup>65</sup> Additionally, state statutes often specifically allow a court to order completion of a batterer's program if a history of interspousal violence is found and visitation is awarded.<sup>66</sup>

### C. Best Interests Standard

The third role batterer's treatment plays in custody determinations is in the ascertainment of the child's best interests. For example, in *Millard v. Millard*,<sup>67</sup> a New York case,<sup>68</sup> the court denied the petitioner-mother a modification of a former custody decree.<sup>69</sup> In justifying why the children's best interests were served by remaining with their father, the court noted that, although the father had been convicted of interspousal violence in the past, he had completed an anger management program and thus posed no danger to the children.<sup>70</sup>

Since batterer's interventions clearly may play some role in custody decisions, it is important to determine the weight they should be given. The next

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62. LA. REV. STAT. ANN. § 9:364(C) (West 2003).

63. *Id.*

64. *Id.*

65. See, e.g., *Coulter v. Coulter*, No. 02-0473, 2002 WL 31528589, at \*3 (Iowa Ct. App. Nov. 15, 2002) (conditioning visitation on completion of batterer's counseling and a statement from a psychiatrist assuring that he was no longer a danger to his ex-spouse and children); *Berger v. Berger*, 795 So. 2d 113, 115 (Fla. Dist. Ct. App. 2001) (providing that the court would "consider expanding the shared parental responsibility" if the abusive father completed a batterer's program).

66. See, e.g., MASS. GEN. LAWS ch. 208, § 31A (2003) (providing that a court must take into account the safety of both the child and the victim if visitation is awarded to the abuser, and that it may do so by ordering the completion of a batterer's program, among other things).

67. 679 N.Y.S.2d 434 (N.Y. App. Div. 1998).

68. In New York, there is no rebuttable presumption against awarding custody to an abuser, but interspousal violence is listed as a fact to be considered in determining the best interests of the child. See N.Y. DOM. REL. LAW § 240(1)(a) (McKinney 2003).

69. *Millard*, 679 N.Y.S.2d at 435.

70. *Id.*

sections shed light on this question by exploring what batterer's interventions are and how effective they are in reducing or eliminating interspousal violence.

### III. WHAT ARE BATTERER'S INTERVENTIONS?<sup>71</sup>

This section explores what batterer's interventions are, including what issues are covered in programs, how the sessions are conducted, what it takes to successfully complete a program, and how programs are regulated by state standards. Programs vary greatly, depending on the style of the group leaders, the theory behind the program content, the location, the amount of funding available, and many other variables. Because of the recent promulgation of state standards for batterer's programs in most jurisdictions, however, certified programs are becoming somewhat more consistent in their approaches to treating batterers.<sup>72</sup>

#### A. What is the Content and How are They Conducted?

Batterer's programs range between six and thirty-two weeks in duration.<sup>73</sup> Most programs described in batterer's intervention literature employ some variation of either a cognitive-behavioral or social learning approach.<sup>74</sup> These approaches involve components such as anger management training, communication skills, modeling, and relaxation.<sup>75</sup> Other models include unstructured group therapy and a profeminist power and control model.<sup>76</sup> Unstructured group therapy takes a psychotherapeutic approach to batterer's treatment;<sup>77</sup> the sessions are loosely-structured and are based on open discussions between the men in the group. They focus on themes such as trust building, forgiveness, and developing positive attitudes.<sup>78</sup> The profeminist power and control approach incorporates some cognitive-behavioral techniques, like cognitive restructuring, but focuses primarily on education.<sup>79</sup> Profeminist power and control groups concentrate on feminist themes and demand that men in the group take responsibility for their actions.<sup>80</sup>

Batterer's programs also vary in how they are staffed and in who attends. The profeminist power and control model requires groups to have two leaders,

71. Although couples counseling is sometimes considered as an option for treating male batterers, the batterer's interventions discussed herein all involve all-male group therapy. This treatment seems most appropriate in this context because we are dealing with batterer's intervention and child custody here. Since custody disputes happen when a relationship is in the process of being dissolved through divorce, it is unlikely that a batterer's former victim would be interested in pursuing couples counseling if the relationship.

72. See Part IIIC, *infra*.

73. Tolman & Edleson, *supra* note 11, at 264.

74. *Id.*

75. Barry D. Rosenfield, *Court-Ordered Treatment of Spouse Abuse*, 12 CLINICAL PSYCHOL. REV. 205, 208 (1992).

76. Eric S. Mankowski et al., *Collateral Damage: An Analysis of the Achievements and Unintended Consequences of Batterer Intervention Programs and Discourse*, 17 J. FAM. VIOLENCE 167, 168 (2002).

77. *Id.* at 172.

78. *Id.* at 169.

79. *Id.* at 173.

80. *Id.* at 171.

one male and one female.<sup>81</sup> Other groups vary in the number and gender of the group facilitators.<sup>82</sup> State standards reflect a trend toward requiring group leaders to have some kind of specialized training in domestic violence issues to lead a batterer's group.<sup>83</sup> Participants in such programs may voluntarily enroll or may be ordered by the court to complete batterer's counseling.<sup>84</sup>

#### B. What does it Take to "Successfully Complete" a Batterer's Program?

The requirements for successful completion of batterer's treatment vary. Most states simply require attendance to earn a certificate of completion.<sup>85</sup> Other states, however, require the batterer to be violence-free for a certain period of time or to "'take[] responsibility for [his] abuse.'"<sup>86</sup> Since programs often rely heavily on self-reporting and victim's reports to determine the violence-free status of abusers, the violence-free bar may not be much higher than the attendance requirement.<sup>87</sup> Program participants may also be terminated from the program for certain behaviors; the prohibited conduct may include continued abuse, failure to attend or participate in the sessions, or not paying program fees.<sup>88</sup> All in all, not much is required from batterers; if they show up, pay their way, and manage to stay violence-free (or at least appear to be violence-free) for a certain (typically short) period of time, they will "graduate" from the program.

#### C. Regulation of Batterer's Groups

Most states have promulgated standards that batterer's programs either are required or encouraged to follow.<sup>89</sup> The strictness and specificity of the standards vary widely. Staff qualifications are fairly consistent from state to state; staff must be violence-free, should (or at least ideally should) have a professional degree or license, and must have training and experience in the domestic violence field.<sup>90</sup> Most states limit the confidentiality of the groups by requiring that threats of violence be reported to the appropriate authorities.<sup>91</sup> Standards also provide that batterers entering counseling should sign a written contract agreeing to attend the program and to end the violence, among other requirements.<sup>92</sup> Some standards even specify required or recommended content, including information about different types of abuse, the effects of abuse on

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81. *Id.* at 170.

82. *Id.*

83. See Juliet B. Austin & Juergan Dankwort, *Standards for Batterer Programs: A Review and Analysis*, 14 J. INTERPERSONAL VIOLENCE, 152, 153 (1999).

84. See Edward W. Gondolf, *A Comparison of Four Batterer Intervention Systems: Do Court Referral, Program Length, and Services Matter?*, 14 J. INTERPERSONAL VIOLENCE 41, 41-42, (1999) (comparing effectiveness of court-referral intervention programs in four cities).

85. Austin & Dankwort, *supra* note 83, at 165.

86. *Id.*

87. See Part IV, *infra*.

88. Austin & Dankwort, *supra* note 83, at 165.

89. See *id.* at 154.

90. *Id.* at 160.

91. *Id.* at 161.

92. *Id.* at 162. Other requirements include, being on time, waiving confidentiality when a partner's safety is at stake, and not abusing alcohol or drugs. *Id.*

women and children, taking responsibility for abusive behavior, and the harmful attitudes and beliefs that perpetuate abuse.<sup>93</sup>

Unfortunately, these standards are rarely derived from empirical evidence measuring their value.<sup>94</sup> In addition, they are not often enforced, and when they are, their effectiveness is not often assessed.<sup>95</sup> Thus, although state standards might look good on paper, they may be of little use in reality. As will be seen in the next section, the effectiveness of current batterer's programs is questionable; accordingly, these standards should be rethought or, at a minimum, enforced.

#### IV. THE EFFECTIVENESS OF BATTERER'S PROGRAMS: OUTCOME STUDIES AND THEIR DOWNFALLS

Relatively few studies have tested the effectiveness of batterer's programs, particularly in the last ten years.<sup>96</sup> In addition, the existing studies often have several uncontrolled variables that could affect their accuracy. This section first looks at the general findings of studies done in the late 1980s and early 1990s. Next, it examines some of the criticisms and downfalls of these studies. Finally, it takes a closer look at a few studies conducted more recently.

##### A. General Findings

In a review of the research on batterer's interventions, Richard Tolman and Jeffrey Edleson found that fifty-three to eighty-five percent of victims reported successful outcomes for their violent partners who had completed batterer's programs.<sup>97</sup> The follow-up period for these studies ranged from four to twenty-six months and, as may be expected, the longer the follow-up period, the lower the success rate.<sup>98</sup> Few studies compared one treatment method to another; however, those that did found higher success rates for structured group treatment as opposed to less-structured, self-help treatment.<sup>99</sup> Tolman and Edleson also highlighted the contradictory findings of the studies; some studies found that in comparison with untreated men, treated men displayed lower rates of re-assault, while other studies arrived at the opposite conclusion—that treated men were *more* likely to reassault than untreated men.<sup>100</sup>

A literature review by Barry Rosenfield casts doubt on the effectiveness of batterer's treatment.<sup>101</sup> Rosenfield not only looked at studies examining the ef-

93. *Id.* at 163.

94. *Id.* at 167.

95. *See id.*

96. In a comprehensive 1992 literature review, Rosenfield identified twenty-five studies assessing the effectiveness of batterer's programs, most of which were conducted in the late 1980's. *See* Rosenfield, *supra* note 75. A WebSPIRS (a social science database) search looking for post-1992 studies revealed only a small handful of studies conducted between 1992 and the present. In addition, Tolman and Edleson found very few new studies in 1995 that had not been covered by Rosenfield. *See* Tolman & Edleson, *supra* note 11, at 269.

97. Tolman & Edleson, *supra* note 11, at 268.

98. *Id.*

99. *Id.* at 270.

100. *See id.* at 268-270.

101. *See generally* Rosenfield, *supra* note 75.

fectiveness of batterer's interventions, but also reviewed studies examining the efficacy of various police responses to interspousal violence calls in reducing violence in the absence of an intervention program.<sup>102</sup> He found that about a third of men who had abused their spouses or girlfriends stopped abusing their victims without any intervention whatsoever.<sup>103</sup> Studies examining the effects of police interventions reported a reassault rate of less than thirty percent for all groups (that is, batterers who were arrested, batterers who were exposed to mediation techniques, and batterers who were forced to separate for a "cooling off" period). Further, arrested individuals reassaulted at a rate of less than twenty percent at a six-month follow-up.<sup>104</sup> In contrast, studies of men who had completed batterer's programs revealed reassault rates averaging thirty-six percent.<sup>105</sup> Furthermore, in studies that compared treatment completers with treatment dropouts, Rosenfield found that only one study found a significant decrease in reassault rates for those who completed treatment as compared to those who did not.<sup>106</sup> While it is true that this comparison did not account for the differences between the samples in the different types of studies, this data still casts doubt on the effectiveness of treatment programs in curing batterers of their abusive behavior.

## B. Criticisms and Shortcomings

Like any study involving human subjects facing real-world problems, studies of batterer's interventions have their share of defects. Among these problems are the questionable accuracy and representativeness of reassault data, the lack of random assignment and appropriate comparison populations, group make-up, and a wide variety of definitions for program success.

### 1. Reassault Data

Studies differ in their source of information for reassault data. Some use police reports, others use self reports, and still others (perhaps the majority) use victim reports.<sup>107</sup> As can be expected, reassault rates vary widely depending on the source of information used. Studies exclusively relying on police reports show much lower reassault rates than studies using other sources of information.<sup>108</sup> Since police are probably not often called to intervene in interspousal violence incidents, this discrepancy is easily explained.

A study by Alex Heckert and Edward Gondolf examined the difference between victim- and self-reports in the context of a batterer's program.<sup>109</sup> The

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102. *Id.* All of the studies discussed in this section relied on victims' reports of reassault. The importance of this factor will be discussed later in Part IVB, *infra*.

103. *Id.* at 212. Note, however, that the sample included men who had only assaulted their partners once, and did not differentiate these men from men who had engaged in a pattern of abuse.

104. *Id.* at 214.

105. *Id.* at 215. However, the results for these studies had reassault rates ranging from twelve to one hundred percent.

106. *Id.*

107. *See id.* at 216-17.

108. *See id.*

109. D. Alex Heckert & Edward W. Gondolf, *Assessing Self-Reports by Batterer Program Participants and Their Partners*, 15 J. FAM. VIOLENCE 181, 181 (2000).

study drew data from four batterer's programs in various parts of the country.<sup>110</sup> Most of the participants were court-ordered into the treatment program. Each program used a cognitive-behavioral model, and program lengths ranged from three to nine months.<sup>111</sup> The follow-up period was twelve months and began at the same time as the program started. Follow-up reports were obtained from both batterers and victims at three-month intervals.<sup>112</sup>

First, the study compared the reports obtained upon intake of victims and batterers to each other and to narrative reports written by police called to the scene of an incident of interspousal violence.<sup>113</sup> Surprisingly, women were significantly more likely to deny the violence at this point than were men.<sup>114</sup> However, men were significantly more likely to minimize the severity of the violence than were women.<sup>115</sup> At follow-up, the denial effect was reversed. Men were much more likely to deny a violent incident than were women at follow-up.<sup>116</sup>

These findings suggest that studies relying on men's self-reports of interspousal violence might severely underestimate the rate of reassault. Unfortunately, there were no police reports with which to compare the follow-up data; therefore, the extent of the underestimation is unclear since the numbers give no insight into how often both partners were denying reassault. Studies also typically experience high dropout rates at follow-up.<sup>117</sup> Subjects who respond may be quite different than subjects who do not. Logically, subjects who refuse to respond may do so because they are experiencing reassault at rates higher than those who do respond. Follow-up lengths also vary; since longer follow-up periods are associated with higher rates of reassault, positive results seen in studies with short follow-up periods are suspect.

## 2. Lack of Random Assignment and Appropriate Comparison Populations

Random assignment is rarely seen in batterer's treatment studies. Certainly assigning one batterer to a treatment program and assigning the next to a no-treatment control group may raise ethical concerns. Nonetheless, lack of random assignment still reduces the validity of studies. Rosenfeld reported that only three studies used random assignment to treatment conditions, but that steps were taken to assure the safety of victims of batterers in the waiting list condition, thus making the waiting list group less like a traditional control group and more like a minimal intervention group.<sup>118</sup>

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110. *Id.* at 183-84. The locations of the programs were Denver, Dallas, Pittsburgh and Houston.

111. *Id.* at 184.

112. *Id.* at 185. If batterers were no longer with their original victims at follow-up and had begun a new relationship, data from the new significant other was used, if possible.

113. *See id.* at 185-87.

114. *Id.* at 189. Women denied the violence twenty-nine percent of the time, whereas men only denied it nineteen percent of the time. In addition, both individuals denied the violence in six percent of the couples. Sixty percent of the couples agreed that violence had occurred. *Id.*

115. *Id.*

116. *Id.* at 190-91. Almost eighty percent of the men whose significant others reported violence denied that any violent incident had occurred during the follow-up period. *Id.*

117. Rosenfeld, *supra* note 75, at 210.

118. *Id.* at 209.

Also, since many studies deal only with one treatment program, studies are not often able to use adequate comparison groups. Often, treatment dropouts or rejects are compared to treatment completers, despite obvious differences between the groups.<sup>119</sup> Unfortunately, few studies statistically control for these differences.<sup>120</sup>

### 3. Group Make-up

Studies differ in the profile of participants, as well. Some studies include only court-ordered subjects, while others include a mix of voluntary and court-ordered participants.<sup>121</sup> Subjects may also vary widely with respect to the extent of their history of abuse.<sup>122</sup> More distressing, programs may reject candidates who appear particularly difficult to deal with because of substance abuse problems or mental health issues, thereby further limiting the applicability of effectiveness findings to the general population of batterers.<sup>123</sup>

### 4. Definitions of Program Success

Studies also differ in the definition of program success. Some studies consider a program successful if reassault rates are reduced after batterers complete the program, whereas others only find success when violence has ceased completely during the follow-up period.<sup>124</sup> In addition, emotional abuse is an important, but perhaps overlooked, topic.<sup>125</sup> Edward Gondolf, Alex Heckert, and Chad Kimmel specifically looked at nonphysical abuse in their 2002 study.<sup>126</sup> During the follow-up period, over half of batterers exhibited controlling behavior, over three-fourths verbally abused their partner, and almost half threatened their partner.<sup>127</sup> These high rates of emotional abuse indicate that more studies should look at this variable and at its effect on victims. Given the history between a victim and an abuser, emotional abuse, particularly the threat of violence, may be almost as harmful as physical abuse.<sup>128</sup>

## C. Outcome Studies

This section looks at three very different recent studies of batterer's intervention programs. Gondolf's 1999 study<sup>129</sup> is noteworthy because of its relatively large sample size and comparison of programs of varying lengths. Frank-

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119. *Id.*

120. *Id.*

121. *Id.* at 211.

122. *See id.*

123. *Id.*

124. Tolman & Edleson, *supra* note 11, at 265.

125. *See id.* at 266.

126. *See generally* Edward W. Gondolf et al., *Nonphysical Abuse Among Batterer Program Participants*, 17 J. FAM. VIOLENCE 293 (2002). This study uses the same samples as the Heckert & Gondolf study discussed above, *supra* note 109.

127. *Id.* at 302. It is unclear how many abusers did *not* emotionally abuse their partners at all during the follow-up period, although Gondolf, Heckert, and Kimmel reported that thirty-four percent of the sample used *all three* types of emotional abuse.

128. *Id.* at 294.

129. *See generally* Gondolf, *supra* note 84.

lyn Dunford's 2000 study compares a variety of different interventions.<sup>130</sup> Finally, Julia Babcock and Ramalina Steiner's 1999 study addresses Rosenfeld's suggestion that there is little difference in reassault rates between batterers who are arrested and batterers who complete a treatment program.<sup>131</sup>

### 1. Gondolf's 1999 Study

Gondolf's study drew data from four batterer intervention sites employing a cognitive-behavioral approach: one in Pittsburgh, one in Denver, one in Dallas, and one in Houston.<sup>132</sup> The Pittsburgh program was three months long and provided referrals to substance abuse programs when appropriate; its participants came from pretrial referrals.<sup>133</sup> These men were subject to consistent monitoring by the court system, unlike participants in other programs.<sup>134</sup> The Dallas program lasted for three months and offered individual counseling and women's groups in addition to the men's group. Most men in the Dallas program had been convicted of interspousal violence and were referred to the program by the court.<sup>135</sup> The Denver program was nine months long, featured substance abuse treatment in addition to batterer's treatment, provided individual counseling, including psychotherapy for mentally ill men, and also had services available for victims.<sup>136</sup> Finally, the Houston program lasted six months, drew postconviction men, offered victim support groups, and made substance abuse referrals.<sup>137</sup>

Most of the 840 participants in the study (eighty-two percent) were court-referred.<sup>138</sup> Participants at each site were similar in their history of abuse (both as aggressors and child witnesses), prior arrests, alcoholism, and relationship status.<sup>139</sup> Reassault rates were based on interviews with the participant's partners: either the partner with whom the batterer associated at intake or a new partner if the batterer had ended the intake relationship.<sup>140</sup> Female partners were interviewed for sixty-five percent of the subjects for at least nine of the fifteen follow-up months.<sup>141</sup> Not surprisingly, the women participating in the follow-up were more likely to be associated with a batterer who completed the program.<sup>142</sup>

Reassault rates did not significantly differ from site to site, with the exception of the Denver program, which had significantly lower rates for severe reas-

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130. Franklyn W. Dunford, *The San Diego Navy Experiment: An Assessment of Interventions for Men Who Assault Their Wives*, 68 J. CONSULTING & CLINICAL PSYCHOL. 468 (2000).

131. Julia C. Babcock & Ramalina Steiner, *The Relationship Between Treatment, Incarceration, and Recidivism of Battering: A Program Evaluation of Seattle's Coordinated Community Response to Domestic Violence*, 13 J. FAM. PSYCHOL. 46 (1999).

132. Gondolf, *supra* note 84, at 44.

133. *Id.*

134. *See id.* at 45.

135. *Id.*

136. *Id.* at 44-45.

137. *Id.* at 45.

138. *Id.* at 46.

139. *Id.* at 50.

140. *Id.* at 47.

141. *See id.* at 48.

142. *Id.* Batterers who completed at least three months worth of treatment were deemed to be program completers, even if they were a participant in the six- or nine-month programs.

saults.<sup>143</sup> This result suggests that longer programs may not be cost efficient, since similar results can be achieved with a shorter program. When looking only at treatment completers, the longer programs had significantly lower reassault rates than the Pittsburgh program, but, as Gondolf points out, the Pittsburgh program's close court monitoring of subjects may keep higher-risk men from dropping out.<sup>144</sup> Overall, the general reassault rate for all subjects was thirty-two percent, and the reassault rate for program completers was twenty-eight percent.<sup>145</sup> However, these results must be interpreted with caution, since there was no control condition to compare with the men who enrolled in the programs. Additionally, the fifteen-month follow-up may not have been long enough to give an accurate picture of reassault rates—the follow-up only extended for a year after the shortest program and for only six months after the longest program.<sup>146</sup>

## 2. Dunford's 2000 Study

Dunford's study participants were married men on active duty in the Navy who had physically abused their wives and were referred to the program by their stations, a Navy Family Service Center, or a Navy medical facility.<sup>147</sup> In order to become a part of the study, potential subjects could not have significant substance abuse issues, mental impairments, or be going through divorce proceedings. Study participants were randomly assigned to one of four conditions. The first condition used a cognitive-behavioral approach for a men's group that met weekly for the first six months and monthly for another six months.<sup>148</sup> The second was a conjoint group that featured couples group counseling and met with the same frequency as the men's group. This group also used a cognitive-behavioral approach.<sup>149</sup> The third condition involved "rigorous monitoring;" under this condition, men received monthly individual counseling, their wives were contacted monthly and asked about any new incidents of abuse, and local court records were searched to see if any new incidents were being investigated by police. After each counseling session, a progress report was sent to both the batterer and his commanding officer.<sup>150</sup> Finally, the control group members received no formal treatment; however, it was not a true control group, since the victims were counseled in safety planning.<sup>151</sup>

Reassault data were obtained from both victims and batterers at intake and then at six month intervals for the next year and a half—once mid-treatment, once immediately after treatment terminated, and once six months after treatment terminated.<sup>152</sup> Seventy-five percent of subjects participated in all of the follow-up interviews; those who dropped out had, as a group, a higher degree of

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143. *Id.* at 52.

144. *Id.* at 53.

145. *Id.* at 53-54.

146. *See id.* at 44, 47.

147. Dunford, *supra* note 130, at 469.

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.* at 470, 472.

prior abusiveness than those who submitted to the interviews.<sup>153</sup> No significant demographic differences were found between participants across the four treatment conditions.<sup>154</sup> The overall experiment dropout rate was twenty-nine percent; some dropouts voluntarily quit, while others were either discharged from the Navy, transferred elsewhere, or reassaulted and were assigned to a different treatment condition.<sup>155</sup>

Overall, participants reassaulted at similar rates across all four conditions; about thirty percent of victims reported that they had been pushed or hit at the one-year follow-up.<sup>156</sup> Women in the rigorous monitoring condition reported more violence than women in any of the other conditions, but the differences were not significant.<sup>157</sup> The frequency of assault during each of the six-month periods after the study began was lower than the frequency of assault during the six-month period before treatment began, regardless of the condition to which the batterer was assigned.<sup>158</sup> Also interesting is the finding that very few women participated in the conjoint therapy sessions and that the presence or absence of victims did not seem to have an effect on the effectiveness of the treatment;<sup>159</sup> however, had there been greater attendance, perhaps an impact would have been seen.

This study suggests that batterer's treatment is no more effective than simply equipping victims with a safety plan. However, the results must be interpreted with caution. First, all of the participants were in the Navy and referred to the program by the Navy. It could be that all of the men were motivated not to reassault by a fear of adverse career consequences. Also, since many men with other serious problems, such as substance abuse and mental illness, were excluded, the study may not be applicable to the general population of batterers. Finally, all of the men in the study were still married, so the study's applicability to batterers trying to gain custody of their children in a divorce proceeding is somewhat limited. Still, the study suggests that simply allowing time to pass may cause as many batterers to cease their abusive behavior as attending a batterer's program.

### 3. Babcock and Steiner's 1999 Study

Participants in Babcock and Steiner's study were all ordered by a court to attend batterer's treatment.<sup>160</sup> Subjects were placed into three different categories: program completers, program dropouts, and untreated but incarcerated individuals.<sup>161</sup> Subjects were not randomly assigned to the three conditions; upon adjudication, some were ordered into a treatment program, while others were ordered to seek individual therapy, substance abuse treatment, or no treatment

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153. *Id.*

154. *Id.*

155. *Id.* at 471.

156. *Id.* at 473.

157. *Id.*

158. *Id.*

159. *Id.* at 471.

160. Babcock & Steiner, *supra* note 131, at 49.

161. *Id.* Completion was defined as attendance at twenty-four or more sessions. *Id.* at 50.

at all.<sup>162</sup> Those in the program completers condition had significantly less prior criminal involvement than did program noncompleters, and program noncompleters in turn had significantly less prior criminal involvement than incarcerated batterers.<sup>163</sup> In addition, treatment completers were significantly more likely to be first time interspousal violence offenders, have more education, be employed, make a higher monthly salary, and not be a member of a minority group.<sup>164</sup> However, there were no significant differences between the three groups in probation officer ratings of anger, cooperativeness, and taking responsibility for violence.<sup>165</sup>

Batterers who participated in treatment programs obtained treatment at one of eleven sites, all governed by Washington state standards.<sup>166</sup> The programs were all twelve months long, with six months of weekly sessions followed by six months of monthly sessions, and used a combination of cognitive-behavioral and profeminist techniques.<sup>167</sup> Measures of reassault were based on police records for two years after the initial accident.<sup>168</sup>

Not surprisingly, program completers were rearrested significantly less often than program noncompleters and incarcerated individuals.<sup>169</sup> When demographic and prior record differences were controlled for, the difference was still significant, but not as dramatically so.<sup>170</sup> Treatment completion accounted for only five percent of the variance in recidivism.<sup>171</sup>

There are some notable limitations of this study. First, relying solely on arrest as a measure of reassault likely leads to an underestimation of reassault. Second, the lack of random assignment also skewed the results—the incarcerated batterers had much lengthier prior arrest records and may not have been ordered into treatment because a judge saw them as likely to be treatment resistant. An interesting follow up to this study would look at how many of these incarcerated individuals had been court-ordered into treatment in the past, since they clearly had histories of interspousal violence offenses—looking at this information might give an indication of the longer term effects of treatment. This study is still valuable, however, in that it partly refutes Rosenfeld's assertion that there is no difference in reassault rates between men who are simply arrested and men who complete treatment.

## V. CONCLUSIONS AND RECOMMENDATIONS

Little weight should be given to completion of a batterer's program in custody decisions without requiring additional proof of rehabilitation from the bat-

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162. *Id.* at 49.

163. *Id.* at 51.

164. *Id.*

165. *Id.* at 51-52.

166. *Id.* at 50.

167. *Id.*

168. *Id.* at 49.

169. *Id.* at 52.

170. *Id.* at 52-53.

171. *Id.* at 55.

terer. The studies above highlight the uncertainty of treatment effectiveness.<sup>172</sup> As both victims and children are at risk when exposed to interspousal violence, courts must put the safety and well-being of the victims and children above the parental interests of the batterers. Thus, if batterer's intervention completion is the only evidence that a batterer has been reformed, it would be foolish to give undue weight to this factor, given that studies show that completion is no guarantee that the batterer is actually "cured."

When viewing evidence of treatment completion, then, courts should exercise extreme caution and take a close look at the batterer's reassault rate after treatment and the amount of time that has passed since treatment completion. Courts that order treatment as a contingency for greater visitation and custody rights should require more than just treatment completion, perhaps a waiting period after treatment completion to assess reassault or a probationary period of only supervised visitation.

The Louisiana approach of requiring batterer's intervention, substance abuse treatment, and a best interests showing before batterers can even get supervised visitation (and much more—that the best interests of the child "require" visitation—in order to get joint or sole custody)<sup>173</sup> gives treatment completion appropriate weight. Such an approach would hopefully weed out those men who only fought for custody or visitation in order to retain control over their wives and families—in other words, men who do not sincerely want to visit their children may be less likely to actually complete treatment. Hopefully, as greater efforts are made to educate judges and lawmakers about the dynamics of interspousal violence and its effect on children, the natural result of such education will lead to greater skepticism in viewing evidence of batterer's intervention completion.

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172. Quite a few studies examining the effectiveness of batterer's interventions involve subjects who were ordered by a court to complete a batterer's program after conviction for an interspousal violence charge. See Rosenfeld, *supra* note 96, at 216-17. Most seem to have been still making an effort to remain in their original relationship, based on victim reports of violence used for outcome assessments. See *id.* More research should be done with subjects undergoing treatment because of an attempt to gain custody and/or with subjects who are going through a divorce before any firm conclusions can be drawn about the role of batterer's interventions in custody decisions. The motivation of gaining visitation or custody rights may be enough to yield more positive treatment outcomes. *But see* D. Alex Heckert & Edward W. Gondolf, *The Effect of Perceptions of Sanctions on Batterer Program Outcomes*, 37 J. RES. IN CRIME & DELINQ. 369 (2000) (finding that men who thought arrest or jail was likely as a sanction for reassault or failure to complete a treatment program were just as apt to drop out of treatment or reassault as men who viewed the danger of such outcomes as remote). Perhaps the father-child bond is strong enough to make a difference, however. Until such research is completed, however, the potential danger to children of placing them with an interspousal abuser must outweigh evidence of treatment completion alone.

173. LA. REV. STAT. ANN. § 9:364 (West 2003). The ALI's primary caretaker approach might also ease the victimization of battered women through custody disputes, as noted above. See Part I, *supra*.