

STAFF REPORT

HEARING IN HARRISBURG, PENNSYLVANIA

THE LEGAL SYSTEM AND WOMEN VICTIMS
OF DOMESTIC VIOLENCE

U.S. COMMISSION ON CIVIL RIGHTS
June, 1980

U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;
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I. Scope of the Study

A. Introduction

....I wish to establish,, the essentiality of the concept of personhood for women if their physical mutilation and abuse are to be curbed, if not eliminated totally, by the application of a new series of public policy measures. Reforms for battered women will be temporary, cosmetic maneuvers unless they involve the articulation and implementation of full personhood rights for all women at every level of development; and these measures in turn imply a democratic society whose definition transcends freedom of action and expression for the most powerful (and in the American past these freedoms have been most fully exploited by dominant and ruthless men) to include protection of the human rights to growth and development of groups traditionally viewed and treated as weak, powerless, vulnerable, and incapable of self-determination. Long-term support systems, if they are not to be underpinnings of decay, must involve a clear and committed view of the true equality between the sexes, not only on the part of the majority of American's citizens but by its official agencies of government, its legal and judicial system, and, to the extent that is consistent with other cherished freedoms of expression and association, on the part of informal media of communication and private influence-wielding professional associations.... 1/

Violence within the family unit is neither a new phenomenon nor is it confined to any particular economic, social or educational strata of society. Throughout the history of this society and the histories of those that coexist with it or preceeded it, family members have lashed out at each other; parent against child, sibling versus sibling, and, the focus of this study, spouse against spouse. Although no accurate data exist on the scope of the problem, it is estimated that more than one million women are physically abused in their homes each year. 2/ Governor Dick Thornburgh of Pennsylvania issued an official proclamation during Family Violence Prevention Week, April 20 -26, 1980, stating:

1/ U.S. Commission on Civil Rights, Battered Women: Issues of Public Policy, Transcript of Consultation, January 1978, pp. 409-10 (prepared presentation of Lisa A. Richette) (hereafter cited as Consultation Transcript).

2/ Consultation Transcript, p. 153 (statement of Murray Straus).

Physical violence occurs between family members more often than it occurs between any other individuals or in any other setting, with the exception of wars and riots, according to information released by the National Institute of Mental Health. Last year, 49,222 women and children in the Commonwealth of Pennsylvania were the reported victims of family violence. It is suspected that there are also thousands of unreported cases making this a social problem of gigantic proportions. 3/

Although spouse-battering is indeed a "social problem," it is also a legal problem. Assault is a criminal offense in which the police, prosecutors, judges and every other element of the criminal justice system get involved. In Pennsylvania, a civil remedy is available, as well, under the Protection From Abuse Act which provides protection orders, enforceable by criminal contempt sanctions. The social and legal distinctions often are blurred, however, when a woman without resources is forced to flee her home to escape abuse. If she is to obtain the appropriate legal remedy, be it civil or criminal in nature, a woman must often rely on public assistance programs to support herself and her children. The lack of accurate data, however, makes difficult the study of the interrelationship of these issues, and services provided vary dramatically among the different states. Again, quoting from Governor Thornburgh's proclamation:

There are approximately 50 domestic violence programs in the Keystone State which provide direct services to victims and information to the community. Direct services include 24-hour hotlines to provide telephone counseling, information and emergency aid, emergency shelter for women and their dependent children, victim advocacy, referrals to legal and community resources, and public information services. It is estimated that one out of every 115 people in the Commonwealth will be served by a domestic violence program. 4/

It is the interaction between the myriad of social services programs and the civil and criminal justice systems to determine what factors affect the ability of a battered woman to avail herself of remedies to protect her that is the focus of this study.

3/ Proclamation, Family Violence Prevention Week, Governor's Office, Commonwealth of Pennsylvania (April 14, 1980) (hereafter cited as Proclamation).

4/ Proclamation.

B. The Battered Women Project of the U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights has undertaken a major project to study the response of the legal system to the distinct needs of women who are physically abused by their husbands or mates.

The Commission's involvement in the analysis of domestic violence began with the Colorado Advisory Committee's report, The Silent Victims: Denver's Battered Women, published in 1977. The Connecticut Advisory Committee issued a report, Battered Women in Hartford, Connecticut, in April 1979. State advisory committees in New Jersey and New Hampshire are conducting studies, as well.

In January 1978, the Commission held a consultation, in which experts in law enforcement, social services, community services and civil and criminal law presented their views and recommendations. The transcript of that consultation ^{5/} has had an extraordinarily wide distribution, an indication in itself of the growing interest nationwide in problems of domestic violence.

To further its analysis of the issues of policy raised at the consultation, the Commission decided to conduct hearings in two cities to elicit testimony and data regarding the handling of incidents of domestic violence by the civil and criminal justice systems. The first hearing took place in Phoenix, Arizona, on February 12 and 13, 1980. Arizona was selected because it was representative of the majority of states in that it had a traditional legal system with no civil or criminal statutes specifically designed to aid battered women. The second hearing will take place in Harrisburg, Pennsylvania, and will afford an opportunity for contrast since Pennsylvania has enacted a civil statute, enforceable by criminal contempt proceedings, especially designed to assist the victims of domestic violence.

Following the hearings, the Commission intends to prepare and issue a report that will evaluate the treatment of women victims of domestic violence by the justice systems, both criminal and civil, and by the various social service agencies (shelters, welfare agencies and legal

^{5/} See note 1, supra.

services programs) to the extent that they affect a victim's access to and interaction with the legal system. The analysis will address the problems battered women may face in seeking and obtaining help from the legal system, the processes by which incidents of domestic violence are handled by the legal system, and alternatives for improving the effectiveness of the legal system in this area. It is hoped that the Commission's final report will be a useful resource for advocates, public officials, and legislators.

C. The Pennsylvania Hearing

The Commission's hearing in Harrisburg, Pennsylvania, offers the opportunity to study the legal system in a moderately sized city with a diverse population and in surrounding primarily rural counties. The operation of Pennsylvania's Protection from Abuse Act ⁶/_{and other} criminal and civil laws and procedures will be explored. In addition, because of differences in the use of the Act between Dauphin County and adjacent Cumberland County, the criminal justice systems of their respective county seats, Harrisburg and Carlisle, will be examined in detail. Finally, the Law Enforcement Assistance Administration funded an innovative program in the District Attorney's Office in Philadelphia, the operation of which will be explained and discussed.

This report is written to provide background information on Harrisburg, Dauphin and Cumberland Counties, their history and governmental structures, Pennsylvania law and procedure, and the institutions whose policies and practices may have a bearing on domestic violence cases.

 / Infra., Chapter II.

II. Laws Relating to Domestic Violence

A. The Pennsylvania Protection From Abuse Act

History

Prior to 1976, the Pennsylvania legal system addressed the problem of domestic violence only in its criminal courts. If the police did not arrest the abuser following a violent incident, the victim's only recourse was to file a private criminal complaint. A young attorney at Community Legal Services in Philadelphia, frustrated at the court's refusal to grant injunctive relief to domestic abuse victims, drafted a statute to create a civil remedy to protect victims of domestic violence from further abuse. ^{1/} With some modification, the statute passed almost unanimously in both Houses of the Pennsylvania Legislature and was signed into law by the Governor on October 2, 1976. ^{2/}

ii: Nature of the Act

The act is titled and cited as the "Protection from Abuse Act." ^{3/} It is also referred to by its Session Law number, 218, and its initials, PFA. Orders obtained under the act are called "protective orders," "protection orders," "218's" and "PFA's," the common usage varying in different areas of the state.

The provisions of the act protect family or household members who currently reside together, and those who formerly resided together if both retain legal access to the residence. ^{4/} "Family or household members" means persons lawfully married and living together, persons living together as spouses (to include persons of the same sex), and persons related by blood (brothers, sisters, parents, children) or by marriage. ^{5/} The phrase also includes persons who formerly lived together and both remain responsible for rent or mortgage, or where the property is in the abuser's name only and there is a duty to support the victim. ^{6/}

^{1/} See Interview with Laurence Mass, Joseph and Mass, April 14, 1980.

^{2/} Pennsylvania History of Senate Bills, Resolutions and Executive Communications, 1975 - 76, p. A-163.

^{3/} 35 PA. STAT. ANN. §10181 (Purdon 1978).

^{4/} 35 PA. STAT. ANN. §10182 (Purdon 1978).

^{5/} Id.

^{6/} Id.

The definition of "abuse" for the purposes of the Act is as follows:

(i) attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon

(ii) placing by physical menace another in fear of imminent serious bodily injury.

(iii) sexually abusing minor children as defined pursuant to the act of November 26, 1975 (11 P.S. §§2201 et seq.), known as the "Child Protective Services Law." 7/

The Act neither protects against mental abuse nor recognizes marital rape.

The Court of Common Pleas has jurisdiction over all proceedings under the act. 8/ A plaintiff's right to relief under the act is not affected by her or his leaving the residence to avoid further abuse. 9/

Relief Available Under the Act

The court is granted broad relief power under the act. Relief can be ordered after a full hearing or upon presentation of a consent agreement by both parties. 10/ Any order or approved consent agreement entered under the act is for a fixed duration of up to one year, with the court retaining power to amend its order or agreement at any time upon a subsequent petition by either party. 11/ Title to real property is not affected by any order or agreement under the act. 12/

Under §10186, the Court is empowered to grant the following relief under the Act:

7/ Id.

8/ 35 PA. STAT. ANN §10183 (Purdon 1978).

9/ Id. This section is important for women who fear that leaving their home to escape further abuse will affect their chances for protection, support and/or custody. See generally Pennsylvania Coalition Against Domestic Violence, Advocacy Skills Manual.

10/ 35 PA. STAT. ANN §10186(a) (Purdon 1978).

11/ 35 PA. STAT. ANN §10186(b) (Purdon 1978).

12/ 35 PA. STAT. ANN §10186(c) (Purdon 1978).

(1) Order the defendant to refrain from abusing the plaintiff or minor children; ^{13/}

(2) Grant possession of the residence to the plaintiff to the exclusion of the defendant by evicting the defendant and/or restoring possession to the plaintiff when the residence is owned or leased jointly by the parties, or is owned or leased by the entireties, or is owned or leased solely by the plaintiff; ^{14/}

(3) Grant possession of the residence to the plaintiff to the exclusion of the defendant or by consent agreement allow the defendant to provide suitable alternate housing when the defendant is the sole owner or lessee and the defendant has a duty to support plaintiff or minor children living in the residence. ^{15/}

(4) Award temporary custody of and/or establish temporary visitation rights as to minor children; ^{16/}

(5) Direct the defendant to pay financial support, if after a hearing the judge determines the defendant has a duty to support the plaintiff and/or minor children. ^{17/}

Pursuant to an agreement between the parties, the judge can order counseling or referral to drug and alcohol programs. Another remedy available through agreement is the relinquishment of legally or illegally held guns to the storage facilities of the sheriff's office for the duration of the protection order.

^{13/} 35 PA. STAT. ANN. §10186(a)(1) (Purdon 1978).

^{14/} 35 PA. STAT. ANN. §10186(a)(2) (Purdon 1978).

^{15/} 35 PA. STAT. ANN. §10186(a)(3) (Purdon 1978).

section permitting temporary ex parte evictions provoked the most controversy when the bill was discussed in the Pennsylvania legislature. See interview with Nancy Rourke, Attorney, Central Pennsylvania Legal Services, Harrisburg, Pennsylvania, April 2, 1980.

^{16/} 35 PA. STAT. ANN §10186(a)(4) (Purdon 1978). The determination of custody is only for the duration of the protective order.

^{17/} 35 PA. STAT. ANN. §10186(a)(5) (Purdon 1978). According to this subsection,

Such a support order is temporary and any beneficiary of the must petition for support under the Civil Procedural Support Act 6b within two weeks of the date of the issuance of the protection order. If such a petition is not filed that portion of the protection order requiring the defendant to pay support is void. When there is a subsequent ruling on a petition for support under the Civil Procedural Support Act of the portion of the protection order requiring the defendant to pay support becomes void.

Emergency relief in the form of a temporary order for protection or eviction can be obtained under the act on weekends. §10188 provides that district justices (or municipal court judges in Philadelphia) have jurisdiction to grant emergency protection orders from the close of business at the end of the week until the resumption of business at the beginning of the week. Such orders expire at the resumption of business of the Court of Common Pleas at the beginning of the week or within 72 hours, whichever occurs sooner.^{18/}

Procedures

The process of obtaining a protection order begins with the filing of a petition with the court which alleges abuse by the defendant. A person may petition on his or her own behalf, and any parent or household member may file for relief on behalf of minor children.^{19/} The act specifies that petitioning for a protection order is not a bar to seeking other civil or criminal remedies.^{20/}

When a petition is filed, the court must schedule a hearing within ten days.^{21/} In the interim, the court may enter an ex parte temporary protection order to protect the plaintiff or minor children from abuse.^{22/} The plaintiff must show that there is immediate and present danger of abuse as good cause for a temporary order to be issued.^{23/}

^{18/} 35 PA. STAT. ANN. §10188 (Purdon 1978).

^{19/} 35 PA. STAT. ANN. §10184(a) (Purdon 1978),

^{20/} 35 PA. STAT. ANN. §10189 (Purdon 1978).

^{21/} 35 PA. STAT. ANN. §10185(a) (Purdon 1978). §10184(b) allows the plaintiff to proceed without paying the filing fee until the plaintiff's indigence is determined at the hearing:

If the plaintiff files an affidavit stating that he or she does not have funds available to pay the costs of filing and service, the petition shall be filed and service shall be made without payment of costs and leave of court to proceed in forma pauperis shall not be required. When the petition is filed without payment of costs, the court shall determine at the hearing on the petition if the plaintiff is indigent. If the court finds that the plaintiff is not indigent the court may order the plaintiff to pay the court costs.

^{22/} 35 PA. STAT. ANN. §10185(b) (Purdon 1978).

^{23/} Id. The constitutionality of an ex parte temporary eviction order was upheld by the Pennsylvania Court of Common Pleas, Allegheny County, in Boyle v. Boyle (M475, 9/10/79).

The defendant must be served with a copy of the petition.^{24/}
The defendant has a right to be represented by counsel at the hearing.^{25/}
Though not required by the law, the plaintiff in almost all cases is
represented by counsel at the hearing.^{26/}

At the hearing, the plaintiff must prove the allegation of abuse by
the preponderance of the evidence.^{27/} At all stages in the proceeding, the
Rules of Civil Procedure apply.^{28/} If a hearing is continued, a temporary
order can be issued or extended as the court deems necessary.^{29/}

If the Court of Common Pleas has recessed for the weekend, the plaintiff
may seek emergency relief by filing a petition with the district justice.
The district justice's order is valid only for the weekend,^{30/} and a separate
petition must be filed in the Court of Common Pleas at the beginning of
the week to extend temporary and request permanent protection.

A copy of any order entered under the act is issued to the plaintiff,
the defendant, and the police department with jurisdiction to enforce the
act.^{31/} In some cases, copies of the act are sent to several township
police departments to ensure enforcement of the order throughout the
county. Plaintiff's attorney often assumes responsibility for notifying
the various authorities.

24/ A sworn affidavit on proof of service must be filed with the Court.
The affidavit usually states who was served; where the papers were
served, time, date and place, and how service was effected. The affidavit
must be notarized and signed by the person making service.

25/ 35 PA. STAT. ANN. §10185(a) (Purdon 1978).

26/ See Interview with Judge John Dowling, Dauphin County Court of Common
Pleas, April 8, 1980.

27/ 35 PA. STAT. ANN. §10185(a) (Purdon 1978).

28/ 35 PA. STAT. ANN. §10189 (Purdon 1978). The only exception to this
is that Rules of Criminal Procedure apply when the defendant is charged
with violating the protection order. See section on sanctions under the
act below.

29/ 35 PA. STAT. ANN. §10185(c) (Purdon 1978).

30/ 35 PA. STAT. ANN. §10188 (Purdon 1978).

31/ 35 PA. STAT. ANN. §10187 (Purdon 1978).

32/ See Interview with Barbara Hart, Attorney, Central Pennsylvania Legal
Services, Reading, Pennsylvania, May 22, 1980.

Sanction for Violating a Protection Order

§10190. Contempt.

(a) Upon violation of a protection order or a court approved consent agreement the court may hold the defendant in indirect criminal contempt and punish him in accordance with law.

(b) Notwithstanding any provision of the law to the contrary any sentence for this contempt may include imprisonment up to six months or a fine not to exceed \$1,000 or both and the defendant shall not have a right to a jury trial on such a charge.

(c) An arrest for violation of an order issued pursuant to this act may be without warrant upon probable cause whether or not the violation is committed in the presence of the police officer. The police officer may verify, if necessary, the existence of a protection order by telephone or radio communication with the appropriate police department.

(d) Subsequent to an arrest the defendant shall be taken without unnecessary delay before the court that issued the order. When that court is unavailable the defendant shall be arraigned before a district justice, or in cities of the first class the municipal court, in accordance with the Rules of Criminal procedure. This section shall not be construed to in any way limit any of the other powers for emergency relief provided in this act. 33/

This enforcement provision is pivotal to the effectiveness of the act. Once issued, the protection order or approved consent agreement serves as a warrant in the event that the order is violated. Upon probable cause, whether or not the violation occurred in the officer's presence, the defendant may be arrested and charged with indirect criminal contempt. According to the act, the victim need not show a copy of the protection order to the arresting officer; instead, the existence of the order may be verified by telephone or radio with police department records.

Once an arrest occurs, the defendant must be brought without unnecessary delay before the judge who issued the protection order. 34/ If that judge is unavailable, the defendant is arraigned before a

33/ 35 PA STAT. Ann. §10190 (Purdon 1978).

34/ There is no case or rule interpreting the phrase "unnecessary delay" as it applies to the Protection from Abuse Act. As a result, practices vary from county to county.

district justice (or Municipal Court judge in Philadelphia) according to the Rules of Criminal Procedure.

Violating a protection order is considered indirect contempt of court because the violation is committed outside the presence of the judge. It is criminal rather than civil contempt and the defendant has the same rights which attach in criminal cases of a similar degree.^{35/} The penalty allowed for contempt under the Protection from Abuse Act is more severe than that imposed under the general criminal contempt statute.^{36/}

^{35/} The court in Cipolla v. Cipolla (Pittsburgh District, Superior Court of Pennsylvania, No. 459, 1978) held that the double jeopardy clause attaches to the contempt trial. In dicta, the court reviewed other rights enjoyed by the defendant, such as admission to bail and right to be notified of the accusation and prepare a defense.

^{36/} See 42 PA. CONS. STAT. ANN. §4135 (Purdon 1978); This section provides for punishment of criminal contempt by a fine not exceeding \$100 or by imprisonment not exceeding 15 days in the jail of the county where the court is sitting.

B. Criminal Law and Procedure

In Pennsylvania, charges might be brought under any of the following statutory offenses for incidents involving domestic violence. A preliminary review of a sampling of police records in Harrisburg, however, indicated that simple assault and harassment are the most common categories of charges brought in domestic violence cases.

Simple assault

The offense of simple assault is defined in the Pennsylvania criminal code as follows:

- A. A person is guilty of assault if he:
 1. attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another;
 2. negligently causes bodily injury to another with a deadly weapon; or
 3. attempts by physical menace to put another in fear of imminent serious bodily injury. ^{37/}

If committed in a fight entered into by mutual consent, simple assault is classified as a misdemeanor of the second degree. Otherwise, it is a third degree misdemeanor. ^{38/} The sanction for simple assault can be a fine or incarceration, or both. A second degree misdemeanor conviction can carry a fine up to \$5,000, ^{39/} or a prison sentence of not more than two years. ^{40/} A third degree misdemeanor is punishable by a fine of up to \$2,500 ^{41/} or a prison term not to exceed one year. ^{42/}

Aggravated assault

Under Pennsylvania law, a person is guilty of aggravated assault if he:

1. attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life;

^{37/} PA. STAT. ANN. tit. 18, §2701(a) (Purdon 1973). (All citations are to title 18 of the Pennsylvania Statutes Annotated unless otherwise indicated).

^{28/} Id. §2701(b).

^{39/} Id. §1101(4) (Supp. 1978).

^{40/} Id. §1104(2) (1973).

^{41/} Id. §1101(5) (Supp. 1978).

^{42/} Id. §1104(3) (1973).

2. attempts to cause or intentionally, knowingly or recklessly causes serious bodily injury to a police officer making or attempting to make a lawful arrest;
3. attempts to cause or intentionally or knowingly causes bodily injury to a police officer making or attempting to make a lawful arrest; or
4. attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon. 43/

If it falls within the first two definitions above, an aggravated assault is a second degree felony 44/ and conviction under either section can carry a fine of up to \$25,000 45/ and/or a prison term of not more than 10 years. 46/ An aggravated assault that falls under the third or fourth definition is a misdemeanor of the first degree, 47/ punishable by a fine of up to \$10,000 48/ and/or a prison sentence of up to five years. 49/

The Pennsylvania code defines "bodily injury" as impairment of physical condition or substantial pain. 50/ "Serious bodily injury" is defined as:

Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. 51/

43/ Id. §2702(a).

44/ Id. §2702(b).

45/ Id. §1101(1) (Supp. 1978).

46/ Id. §1103(2) (1973).

47/ Id. §2702(b) (1973).

48/ Id. §1101(3) (Supp. 1978).

49/ Id. §1104(1) (1973).

50/ Id. §2301.

51/ Id.

Recklessly endangering another person

The offense of recklessly endangering another person occurs when a person recklessly engages in conduct which places, or may place another in danger of death or serious bodily injury. ^{52/} This offense is a second degree misdemeanor ^{53/} which can carry a fine of up to \$5,000 ^{54/} and/or a sentence of up to two years in prison. ^{55/}

Harassment

Harassment, an offense commonly charged in cases of domestic violence, ^{56/} is defined as:

A person commits a summary offense when, with intent to harass, annoy or alarm another person:

1. he strikes, shoves, kicks or otherwise subjects him to physical contact or attempts or threatens to do the same; or
2. he follows a person in or about a public place; or
3. he engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose. ^{57/}

A person convicted of the summary offense of harassment can be fined up to \$300 ^{58/} or sentenced to up to 90 days in jail. ^{59/}

^{52/} Id. §2705.

^{53/} Id.

^{54/} Id. §1101(4) (Supp. 1978).

^{55/} Id. §1104(2) (1973).

^{56/} Interview with Captain Richard Gibney, Patrol and Traffic Division, Harrisburg Police Department, April 8, 1980.

^{57/} PA. STAT. ANN. tit. 18, §2709 (Purdon 1973).

^{58/} Id. §1101(6). (Supp. 1978).

^{59/} Id. §1105 (1973).

Disorderly conduct

The offense of disorderly conduct is defined in the Pennsylvania code as follows:

A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

1. Engages in fighting or threatening, or in violent or tumultuous behavior;
2. Makes unreasonable noise;
3. Uses obscene language, or makes an obscene gesture; or
4. Creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor. 60/

Normally disorderly conduct is a summary offense, 61/ conviction of which subjects the defendant to a fine up to \$300 62/ and/or 90 days in jail. 63/ If the intent is to cause substantial harm or serious inconvenience and the actor persists in his behavior after being warned to stop, the offense is a misdemeanor of the third degree 64/ which could result in a fine up to \$2,500 65/ or a prison term not to exceed one year. 66/

Criminal trespass

A person is guilty of criminal trespass when,

/knowing/ he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

1. actual communication to the actor; or
2. posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
3. fencing or other enclosure manifestly designed to exclude intruders. 67/

60/ Id. §5503(a).

61/ Id. §5503(b).

62/ Id. §1101(6) (Supp. 1978).

63/ Id. §1105 (1973).

64/ Id. §5503(b).

65/ Id. §1101(5) (Supp. 1978).

66/ Id. §1104(3) (1973).

67/ Id. §3503(b)(1).

If a person defies an order to leave personally communicated to him by the owner of the premises or other authorized person, such an offense is a third degree misdemeanor, ^{68/} which carries a penalty of up to one year in prison, ^{69/} or a fine of up to \$2,500. ^{70/} Otherwise, criminal trespass is a summary offense ^{71/} which carries a possible \$300 fine ^{72/} and/or 90 days in jail. ^{73/}

In Pennsylvania a domestic violence case may be classified as a summary case ^{74/} or a court case. ^{75/} The classification determines the procedure for instituting proceedings and resolving the case. The criminal procedure in cities of the first class, such as Philadelphia vary from the general procedures outlined here. ^{76/}

Summary Cases

In the jurisdictions on which this report focuses, domestic violence cases most often enter the criminal justice system on the summary offense charge of harassment. ^{77/} In such cases criminal proceedings are instituted either by a uniformed police officer issuing a citation to the defendant, ^{78/}

^{68/} Id. §3503(b)(2).

^{69/} Id. §1104(3).

^{70/} Id. §1101(5) (Supp. 1978).

^{71/} Id. §3503(b)(2) (1973).

^{72/} Id. §1101(b) (Supp. 1978).

^{73/} Id. §1105 (1973).

^{74/} The Pennsylvania Rules of Criminal Procedure, Rule 3 defines a summary case as a case in which the only offense charged is a summary offense. Summary offenses include such offenses as traffic violations, shoplifting and disorderly conduct. (PA. R. Crim. P., Rule 3(P) (Supp. 1979)).

^{75/} PA. R. Crim. P. Rule 3(f) defines a court case as a case in which one or more of the offenses charged is a misdemeanor, felony or murder of the first or second degree.

^{76/} See PA. R. Crim. P., Chapter 6000: Rules of Criminal Procedure for the Municipal Court of Philadelphia.

^{77/} Interview with Captain Richard Gibney, Patrol and Traffic Division, Harrisburg Police Department, April 8, 1980. See: PA. STAT. ANN. tit. 18, §2709 (Purdon), or part 1 of this section for a definition of harassment.

^{78/} PA. R. Crim. P. Rule 51(A)(3)(a) (Supp. 1979).

filing a citation (by a police officer) with a judge or district justice,^{79/} who then issues a summons;^{80/} by a police officer making a warrantless arrest;^{81/} or by the victim filing a private citizen's complaint.^{82/}

By establishing the citation and complaint as the exclusive means of instituting proceedings in summary cases, the need for the government to file an information or for a grand jury indictment has been eliminated.^{83/}

Citation Procedure

A citation in a summary case may be issued by a police officer upon his personal observation of the commission of an offense, or the officer's determination after investigation at the scene that there is probable cause to believe the defenant has committed a summary offense.^{84/}

If a citation is issued directly to the defendant by a police officer, the defendant is given a copy^{85/} and the original is filed with the district justice for that jurisdiction^{86/} within five days. The copy given to the defendant explains that the original has been filed with the district justice and that the defendant msut enter a plea within 10 days.^{87/} The

^{79/} PA. R. Crim. P. Rule 3(j) defines "issuing authority" as any public official having the power and authority of an alderman, justice of the peace, magistrate or district justice. The district justices are the only issuing authorities discussed in this section.

^{80/} PA. R. Crim. P. Rule 51(A)(3)(b) (Supp. 1979). Comments to this rule explain that a citation is used, in place of a complaint, when the affiant is a police officer because of the minor nature of such cases and the belief that such citations will be obeyed.

^{81/} PA. R. Crim. P. Rule 5(A)(3)(C) (Supp. 1979). Comments to this rule indicate that arrests in summary cases are disfavored except in extraordinary circumstances.

^{82/} PA. R. Crim. P. Rule 51(A)(4) (Supp. 1979). If the affiant is not a police officer, a private citizen's complaint can be filed with a district justice. If the district justice feels there is reason to issue process, a summons is issued.

^{83/} Comments to PA. R. Crim. P. Rule 51 (Supp. 1979). Rules 3 and 225 of the PA. R. Crim. P. explain that informations are only used in those Pennsylvania counties that have abolished the indicting and grand jury, and then only in non-summary offense cases.

^{84/} Comments to PA. R. Crim. P. Rule 51 (citation procedure).

^{85/} PA. R. Crim. R. Rule 52(2) (Supp. 1979).

^{86/} Id. Rule 54(b).

^{87/} Id. Rule 52(2)(b).

defendant may plead not guilty by:

1. Appearing before the named district justice, entering his plea and posting the bail for his appearance at trial as the district justice requires, or
2. Notifying the district justice in writing of his plea and forwarding the fines and costs specified in the citation. If no amount is specified, \$50 must be sent as security for his appearance at trial. 88/

He may plead guilty by:

1. Paying the fines specified in the citation, or
2. Appearing before the district justice when the fines are not specified. 89/

If the defendant does not respond within 10 days, the district justice must notify the police. This notice must be given within three days. Within twenty days after such notice, the police officer must appear before the district justice and attest to the facts in the citation. If the summary offense is one other than a parking violation, a warrant of arrest for the defendant will be issued. If the offense is a violation of an ordinance or a parking offense, a summons will be issued. 90/

If the defendant pleads not guilty to a citation the district justice must:

1. Note it on the docket and fix a time for trial;
2. Notify the police officer and the defendant of the time and date;
3. If the plea is entered in person, set bail and specify a time and date for trial which should be within 10 days of the defendant's appearance; 91/

88/ Id. 52(2)(b)(i).

89/ Id. 52(2)(b)(ii).

90/ Id. 54(d).

91/ If the plea is entered by mail, the defendant will be notified by certified mail and the trial date will be set within twenty days of the mailing.

4. advise the defendant that if he fails to appear trial will proceed as if he had consented to a trial in his absence. 92/

If the defendant pleads guilty, either in person or by mail, and includes the fines and costs specified in the citation, the district justice will enter this on the docket and issue a receipt for payment of fines. 93/

Procedure after issuance of summons

If a summons is issued in a summary case, it must be served upon the defendant by certified mail. 94/ The defendant must respond within ten days, indicating his plea. If the district justice determines there is a likelihood of imprisonment, no fines or costs will be specified in the summons, 95/ and the defendant must appear personally before the issuing authority. 96/

The Rules of Criminal Procedure allow a defendant to enter a plea after issuance of a summons, as follows:

1. A defendant may plead not guilty by:

- (i) appearing personally before the district justice who issued the summons. Upon such appearance by the defendant, the district justice set/s/ bail and schedules the date and hour for trial, which will be within ten (10) days after his appearance; or

- (ii) notifying the district justice who issued the summons of his plea by mail within ten (10) days of his receipt of the summons and forwarding an amount equal to the fine and costs specified in the summons or, if not specified, the sum of fifty dollars (\$50) as security for his appearance at trial. The district justice upon receipt of the defendant's plea, will set a date for trial and notify the defendant by certified mail, return receipt requested, of the date and hour set for his trial. The date will not be less than twenty (20) days from mailing the notice of trial. 97/

92/ PA. R. Crim. P. Rule 55 (Supp. 1979).

93/ Id. Rule 56.

94/ Id. Rule 57(a).

95/ Id.

96/ Id. Rule 57 (comment).

97/ Id. Rule 57(b)(1).

2. A defendant may plead guilty by:
 - (i) forwarding to the named issuing authority an amount equal to the fine and costs when specified in the summons;
 - (ii) appearing before the issuing authority who issued the summons when the fine and costs are not specified in the summons. 98/

Procedure after issuance of arrest warrant

Arrest warrants are only issued in summary cases when:

1. A citation or summons has been served upon and disobeyed by the defendant; or
2. a citation or summons has been returned undelivered; or
3. a summary offense (other than a parking offense) under an Act of Assembly has been charged, and the defendant is unknown or a nonresident or not known to be a resident, and the issuing authority has reasonable grounds to believe that the defendant will not obey a summons. 99/

If a defendant is arrested under a warrant, Pennsylvania law requires that he be taken without unnecessary delay before the district justice whose name appears on the warrant. ^{100/} If the commonwealth is ready to proceed a trial will be held immediately. ^{101/} If the commonwealth is not ready to proceed, or if the defendant so requests, the defendant must be given the opportunity to post bail for his appearance at a trial to be held 10 days after the initial appearance. ^{102/} Trial may also be delayed if the court needs the defendant's criminal record for purposes of grading the offense. In this event the defendant will also be given the opportunity to post bail for trial to be held within 10 days. ^{103/}

98/ Id. Rule 57(b)(2).

99/ Id. Rule 51B.

100/ PA. R. Crim. P. Rule 60(a) as amended in Pa. Ct. Rls. Last Min. 1979 Pamph.

101/ Id. Rule 60(b).

102/ Id.

103/ Id. Rule 60(c).

Procedure after warrantless arrest

In a summary case where an arrest is made without a warrant the defendant is taken at once to the proper district justice where a citation is filed against him. ^{104/} Unless the defendant requests a delay or the defendant's criminal record is not needed to grade the offense charged, a trial is held immediately. ^{105/} In either event the defendant is given the opportunity to post bail for his appearance at trial which is to be held within 10 days after the initial appearance. ^{106/}

Procedure after private citizen's complaints

If a private citizen wishes to file a criminal complaint for a summary offense, she/he must go before the district justice with jurisdiction over the magisterial district in which the offense occurred. If the district justice believes that there is a prima facie case, a summons will be issued and the normal procedure for summons, as described above, will apply. ^{107/}

Trial and appeal

In a summary case where the defendant has not entered a pre-trial plea of guilty, arraignment occurs immediately prior to trial, unless waived by the defendant. ^{108/} If the defendant enters a plea of guilty, sentence is imposed by the district justice. If the defendant enters a plea of not guilty, the district justice tries the case without a jury. ^{109/} In all summary cases, whether the arrest is by warrant or not, the defendant is advised of his right to counsel and upon request is given the opportunity

^{104/} Id. Rule 62(a).

^{105/} Id. Rule 62(b)(2).

^{106/} Id.

^{107/} PA. R. Crim. P. Rule 51(4) (Supp. 1979).

^{108/} PA. R. Crim. P. Rule 63(a) as amended in Pa. Ct. Rls. Last Min. 1979 Pamph.

^{109/} Id. Rule 63(b).

to secure counsel. ^{110/} At the time of sentencing, the issuing authority must advise the defendant of his right to appeal. ^{111/} Upon conviction in any summary proceeding, appeal may be made to the court of common pleas of the judicial district in which the conviction occurred. ^{112/}

Court Cases

The various ways in which criminal proceedings can be instituted in court cases are specified in the Pennsylvania Rules of Criminal Procedure:

1. A written complaint; or
2. A warrantless arrest when the offense is a felony or misdemeanor and is committed in the presence of an arresting officer; or
3. A warrantless arrest upon probable cause when the offense is a felony; or
4. A warrantless arrest upon probable cause when the offense is a misdemeanor not committed in the presence of the arresting officer, when such a warrantless arrest is specifically authorized by statute. ^{113/}

If a complaint is filed with a district justice charging an offense that is a court case, the district justice will normally issue a summons if:

1. No prison term can be imposed for the offense;
2. The complaint charges larceny or fraudulent conversion of goods or money valued at more than \$500; or
3. The complaint charges assault and battery or another misdemeanor committed on a law enforcement officer; or
4. The offense charged is punishable by a sentence of not more than three years. ^{114/}

^{110/} Id. Rule 63(c).

^{111/} Id. Rule 63(f).

^{112/} Id. Rule 67,

^{113/} PA. R. Crim. P. Rule 101 (Supp. 1979).

^{114/} Id. Rule 102(a).

If a summons is issued in a court case the defendant must appear before the issuing district justice for a preliminary hearing. The hearing date will be stated on the summons and is usually within 20 days of its mailing. ^{115/} If the defendant fails to appear the district justice will issue a warrant for the defendant's arrest. ^{116/}

Procedure after issuance of arrest warrant

In a court case instituted by complaint a warrant of arrest is only issued in the following circumstances:

1. When the district justice has reasonable grounds for believing that the defendant will not respond to a summons;
2. A summons has been issued and returned undelivered;
3. A summons has been served and disobeyed by the defendant;
4. The identity of the defendant is unknown; or
5. The offense charged is punishable by a sentence of more than three years. ^{117/}

For an arrest warrant to issue the district justice must have probable cause, supported by one or more affidavits sworn to before the district justice, to believe the offense took place and was perpetrated by the person being charged. ^{118/}

Following arrest on an arrest warrant, the defendant must be taken without unnecessary delay for preliminary arraignment before the district justice whose name appears on the warrant. ^{119/} In Pennsylvania, arraignment must occur within six hours. ^{120/}

^{115/} Id. Rule 110.

^{116/} Id. Rule 113.

^{117/} Id. Rule 102(b).

^{118/} Id. Rule 119(a) as amended in Pa. Ct. Rls. Last Min. 1979 Pamph.

^{119/} Id. Rule 122 (Supp. 1979).

^{120/} Id. Rule 122 (Supp. 1979). See also: Commonwealth v. Davenport, 370 A.2d 301, 471 Pa. 278 (1977).

Procedure upon warrantless arrest

If a warrantless arrest occurs in the court case, the defendant must be taken before the proper district justice where a complaint will be filed and an immediate preliminary arraignment will take place. ^{121/}

Preliminary arraignment

At preliminary arraignment, the defendant is given a copy of the complaint and informed of:

1. The right to counsel, assigned or of choice;
2. The right to a preliminary hearing; and
3. The amount of bail, if the offense is bailable, and how to obtain it. ^{122/}

No questions can be asked the defendant regarding the offenses charged at the preliminary arraignment. ^{123/} Unless preliminary hearing is waived by the defendant, the district justice will set a date for the preliminary hearing which should take place within 10 days after preliminary arraignment, ^{124/} advise the defendant of the date, ^{125/} and, if it is a bailable offense, give the defendant reasonable opportunity to post bail. ^{126/}

Waiver of the preliminary hearing constitutes consent to be bound over for trial, and must be in writing and signed by the defendant and counsel for the defendant. ^{127/}

^{121/} Id. Rule 130 (Supp. 1979).

^{122/} Id. Rule 140(a) (1979) as amended in Pa. Ct. Rls. Last Min. 1979 Pamph.

^{123/} Id.

^{124/} Id. Rule 140(d)(1). This rule states that a defendant can only waive a preliminary hearing when he is represented by counsel.

^{125/} Id. Rule 140(d)(2) as amended in the Last Minute Amendment to Pennsylvania Court Rules (1979).

^{126/} Id. Rule 140(d).

^{127/} Id. Rule 140A(1), (3).

Preliminary hearing

At the preliminary hearing the attorney for the commonwealth may appear and either assume charge of the prosecution or make recommendations to the district justice as to whether to discharge or bind the defendant over to the court. ^{128/} If no attorney for the commonwealth appears, the plaintiff may request the district justice to question witnesses who testify. ^{129/}

If a prima facie case of guilt is not established at the preliminary hearing, and no reason for continuance is raised, the district justice will discharge the defendant. ^{130/} If a prima facie case of guilt is established, the district justice will hold the defendant for trial. ^{131/} If the offense is bailable the district justice will fix the amount of bail and release the defendant upon payment. ^{132/}

After the defendant is bound over for trial, the attorney for the commonwealth, in those counties retaining the indicting grand jury, ^{133/} will submit a bill of indictment to the Court of Common Pleas. ^{134/} If the offense occurred in a county that abolished the indicting grand jury, the attorney for the commonwealth submits an information. ^{135/}

Disposition of Court Cases

Pennsylvania law requires that, except under extraordinary circumstances, trial commence within 180 days after the complaint is filed. ^{136/} In a court case a defendant may dispose of the case by entering a plea of guilty before a district justice. ^{137/} This can be done only in those cases

^{128/} Id. Rule 141(a)(1), (2) (Supp. 1979).

^{129/} Id. Rule 141(b).

^{130/} Id. Rule 141(d) as amended in Pa. Ct. Rls. Last Min. 1979 Pamph.

^{131/} Id. Rule 143(a) (Supp. 1979).

^{132/} Id. Rule 143(b).

^{133/} 42 Pa. C. S. (1979 Supp.) §8931(b) grants the courts of common pleas authority to determine whether a change should be brought by grand jury indictment or by an information being filed.

^{134/} PA. R. Crim. P. Rule 101 (comment) (Supp. 1979).

^{135/} Id.

^{136/} Id. Rule 1100(2).

^{137/} Id. Rule 149(a).

over which the district justice is authorized by statute to exercise jurisdiction.^{138/} The district justice may refuse to accept a plea of guilty; such a plea may be accepted only after the district justice has made a determination that the plea is made voluntarily by the defendant.^{139/}

If the district justice lacks jurisdiction to accept a plea, or if a plea is not entered by the defendant, the case is bound over to the Court of Common Pleas. From that point on the Court of Common Pleas will have exclusive jurisdiction over the case and any pleas that may be entered.^{140/} Once the case is bound over to the court the defendant may dispose of the case at any time before trial by pleading guilty or no contest.^{141/} Before such a plea can be accepted a determination must be made by the court that the plea is voluntarily made.^{142/}

If the case is not disposed of by dismissal of the charges or through a plea of guilty or no contest, the defendant is entitled to a trial by jury.^{143/}

Sentencing

Upon a finding of guilt, by plea or verdict following a trial, the court must impose a sentence.^{144/} Before sentencing, the Court, in its discretion, may order a pre-sentence investigation or a psychiatric or diagnostic examination of the defendant to aid in determining the sentence.^{145/}

^{138/} Id. Rule 149 (comment).

^{139/} Id. Rule 149(b).

^{140/} Id. Rule 149 (comment).

^{141/} Id. Rule 319(a).

^{142/} Id. Rule 319(b).

^{143/} PA. Const. Art. 1, §9.

^{144/} PA. R. Crim. P. Rule 1401 (Supp. 1979).

^{145/} Id. Rule 1403(A)(B).

C. Civil Law

Generally speaking, Pennsylvania law provides that any person who is assaulted by another may bring suit in a state court to recover damages. ^{146/} A civil suit may be brought in addition to a criminal prosecution based upon the same incident, and may be heard by a district justice or the Court of Common Pleas. ^{147/} The plaintiff may ask the court to award compensatory damages to defray the cost of medical care and other expenses incurred as a result of the assault, as well as punitive damages to penalize the defendant for his wrongful conduct. ^{148/}

Pennsylvania, however, is among the minority of states that still denies the right to recover damages for assaults committed by the victim's spouse. ^{149/} A Pennsylvania statute dating back to 1856 provides:

Hereafter a married woman may sue and be sued civilly, in all respects, and in any form of action, and with the same effect and results and consequences, as an unmarried person; but she may not sue her husband, except in a proceeding for a divorce, or in a proceeding to protect and recover her separate property; nor may he sue her....^{150/}

^{146/} The Pennsylvania State Constitution provides that "every man for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law." Pa. Const. art. I, §11.

^{147/} The Court of Common Pleas has jurisdiction over all civil cases. 42 Pa. Cons. Stat. Ann. §931(a) (Purdon 1979). District Justices may hear civil cases involving claims not exceeding \$2000. 42 Pa. Cons. Stat. Ann. §1515(a)(3) (Purdon 1979).

^{148/} Pennsylvania courts have followed the rule which provides that "Punitive damages are awarded only for outrageous conduct, that is, for acts done with a bad motive or with a reckless indifference to the interests of others." Rest. 2d of Torts §908, comment b., Chambers v. Montgomery, 411 Pa. 339, 192 A.2d 355 (Pa. 1963). Thus punitive damages may be sought in cases involving serious assault and battery.

^{149/} Note, The Battered Wife: The Legal System Attempts to Help, 48 U. Cin. L. Rev. 419, 425 (1979).

^{150/} Pa. Stat. Ann. tit. 48, §111 (Purdon 1973).

This law has been interpreted by the courts of Pennsylvania to preclude a woman from bringing suit against her husband for injuries he inflicts on her, whether by his negligence ^{151/} or as a result of an intentional assault. ^{152/} The result is the same whether the injury was inflicted during or before the marriage, ^{153/} and at least one court has held that the statute bars lawsuits based upon injuries inflicted during marriage even after the wife has obtained a divorce on grounds of cruelty. ^{154/} The law has been upheld as valid under the Pennsylvania equal rights amendment. ^{155/}

Interspousal tort immunity is a common law doctrine which originated during the time when a married woman's legal existence was held to be merged into that of her husband. The wife had no right to sue, be sued, or even own property. ^{156/} After married women were given the right to own property and to protect their own legal interests in most matters, the doctrine of interspousal immunity was retained because it was felt that "family unity, harmony and integrity" would be endangered if spouses were permitted to sue one another. ^{157/} Of course, it has frequently been argued that a law which precludes recovery for injuries caused by violent attacks, even after divorce, cannot serve to promote family unity. ^{158/}

Over half of the states have now abrogated tort immunity between husband and wife, either by judicial decision or legislative repeal. ^{159/} The Pennsylvania Supreme Court has indicated its dissatisfaction with the doctrine, but held by a narrow majority of 4 to 3 that the statute must be enforced unless and until the legislature repeals it. ^{160/}

^{151/} DiGirolamo v. Apanavage, 312 A.2d 382 (Pa. 1973).

^{152/} Smith v. Smith, 14 Pa. D. & C. 466 (1930).

^{153/} DiGirolamo v. Apanavage, supra n. 151,

^{154/} Smith v. Smith, supra n.

^{155/} Smith v. Smith, 240 Pa. Super. Ct. 97, 361 A.2d 756 (1976).

^{156/} W. Prosser, Handbook on the Law of Torts §122 (4th ed. 1971).

^{157/} Smith v. Smith, 361 A.2d at 757.

^{158/} DiGirolamo v. Apanavage, 312 A.2d at 389-90 (dissenting opinion). See also, Bogen v. Bogen, 219 N.C. 51, 12 S.E. 2d 649 (N.C. 1941).

^{159/} Note, Spouse Abuse: A Novel Remedy for a Historic Problem, 47 Dick. L. Rev. 146, 152 n.28 (1979).

^{160/} DiGirolamo v. Apanavage, 312 A.2d at 385.

D. Pennsylvania's Divorce Law

Pennsylvania's first divorce code was enacted in 1785.^{161/} Pursuant to this law one could obtain a divorce from the bonds of matrimony or from bed and board^{162/} based upon the grounds of impotency, bigamy, adultery, desertion for a period of at least four years, or marriage based upon false rumor of death.^{163/} In addition, a bed and board divorce could also be obtained by the wife for abandonment and for cruel and barbarous treatment or indignities to the person.^{164/}

This statute required the absence of collusion in order to obtain a divorce. Once divorced, the parties were free to remarry except where the ground for divorce was adultery. In such instances the guilty party could not, during the lifetime of the former spouse, marry the person with whom the adultery was committed. In cases where the facts were not sufficient to permit a divorce decree under the act of 1785, legislative divorce by special act was the only remedy.^{165/}

Pennsylvania's divorce law was re-codified by the act of 1815.^{166/} This law reduced the desertion period to two years and incorporated incest as a ground for divorce pursuant to an act of 1804.^{167/} The act of 1815 also conferred jurisdiction over divorce suits upon the Courts of Common Pleas, with appeal to the Supreme Court.^{168/}

^{161/} 2 Smiths Laws 343.

^{162/} A "bed and board divorce" in effect constitutes a legal separation, since it does not sever the marital relationship so as to permit remarriage by the parties.

^{163/} Id. 343-44.

^{164/} Id. 346.

^{165/} PENN. STAT. ANN. tit. 23 Background (Purdon 1955).

^{166/} 1815, March 13, P.L. 150; 6 Sm. L. 286.

^{167/} 1804, April 2, P.L. 453; 4 Sm. L. 182.

^{168/} 1815, March 13, P.L. 150; 6 Sm. L. 289.

In 1854, fraud, force or coercion, conviction of a felony with sentence exceeding two years, and cruel and barbarous treatment of a husband by his wife rendering his condition intolerable or life burdensome were added grounds for divorce.^{169/}

Pennsylvania's present divorce law was enacted in 1929.^{170/} The Divorce Law of 1929 codified the existing law in Pennsylvania but provided very little substantive change from the act of 1815. It is officially known and cited as "The Divorce Law."^{171/}

The divorce law places original jurisdiction in divorce and annulment cases in the Courts of Common Pleas.^{172/} The plaintiff is required to be a bona fide resident of Pennsylvania for at least one year prior to the filing of his or her complaint in divorce.^{173/} Residency for this purpose required both domiciliary intent and actual residence.^{174/} Venue in both divorce and annulment is in the county where either the petitioner or respondent resides.^{175/}

The divorce law of 1929 provides for divorce based upon impotency, bigamy, adultery, desertion, cruelty, indignities such as to render the injured party's condition intolerable and life burdensome, fraud, force or coercion, and conviction of certain crimes where the sentence is incarceration in excess of two years.^{176/} The divorce law further provides for a divorce

^{169/} 1854, May 8, P.L. 644.

^{170/} 1929, May 2, P.L. 1237; PA. STAT. ANN. tit. 23 §1 et. seq. (Purdon).

^{171/} 1929, May 2, P.L. 1237; §65; PA. STAT. ANN. tit. 23 §65 (Purdon).

^{172/} 1929, May 2, P.O. 1237; §15; 1935, June 10, P.L. 294, §1, PA. STAT. ANN. tit. 23 §15 (Purdon).

^{173/} 1929, May 2, P.L. 1237, §16; PA. STAT. ANN. tit. 23 §16 (Purdon).

^{174/} Chidester v. Chidester, 163 Pa. Super. 553; 60 A.2d 574 (1948).

^{175/} 1929, May 2, P.L. 1237, §15; PA. STAT. ANN. tit. 23 §15 (Purdon).

^{176/} Id. at §10 (1)(a-h).

where the spouses are within the prohibited degrees of consanguinity or affinity as established by law.^{177/} A divorce may also be obtained where an innocent spouse who has been absent for at least two years learns upon his or her return that the other spouse has remarried in the belief that the former spouse was dead.^{178/}

A divorce can be granted only where statutory authority provides grounds. Thus, a divorce cannot be granted for domestic infelicity,^{179/} intemperance,^{180/} inconvenience or mistreatment as a result of ill health, domestic differences, trivial altercations, incompatibility of temper, petty irritations, frequent refusal of intercourse,^{181/} or failure to perform household duties.^{182/}

A wife may obtain a divorce from bed and board (separation) based upon malicious abandonment, having been maliciously ejected from the home, cruel and barbarous treatment, indignities and adultery.^{183/} A marriage may be annulled if, at the time of the marriage, one of the parties had a lawful spouse living, or if for any other lawful reason the supposed or alleged marriage was absolutely void.^{184/} Here, the plaintiff need not be an innocent or injured party.^{185/} It should be noted, however, that an annulment under the divorce law can only be granted when the marriage is void ab initio and not when it is merely voidable.^{186/}

^{177/} 1929, May 2, P.L. 1237 §10 (2); PA. STAT. ANN. tit. 23 §10 (2) (Purdon).

^{178/} 1929, May 2, P.L. 1237 §10 (3); PA. STAT. ANN. tit. 23 §10 (3) (Purdon).

^{179/} Matovcik v. Matovcik, 173 Pa. Super. 267; 98 A. 2d. 238 (1953).

^{180/} Cowher v. Cowher, 172 Pa. Super. 98; 91 A.2d 304 (1952).

^{181/} Stewart v. Stewart, 171 Pa. Super. 218, 90 A.2d 402 (1952).

^{182/} Kranch v. Kranch, 170 Pa. Super. 169; 84 A.2d 230 (1951).

^{183/} 1929, May 2, P.L. 1237 §11 (a)-(e); PA. STAT. ANN. tit. 23 §11 (a)-(e) (Purdon).

^{184/} 1929, May 2, P.L. 1237 §12; PA. STAT. ANN. tit. 23 §12 (Purdon).

^{185/} Maurer v. Maurer, 163 Pa. Super. 264; 60 A.2d 440 (1948).

^{186/} Faulkner v. Faulkner, 31 Del. 99 (1942).

In divorce actions, the general principle is that the burden of proof is upon the party seeking the divorce.^{187/} That burden must be met by a fair preponderance of the credible evidence.

The divorce law provides that, upon petition, the court may allow a wife reasonable alimony pendente lite, reasonable counsel fees, and expenses.^{188/} The divorce law of 1929 makes no provision for permanent alimony in divorces except in favor of an insane wife.^{189/} The divorce law does, however, provide for permanent alimony in divorce from bed and board, which may continue until either a reconciliation occurs or until the husband offers to receive and cohabit again with his wife and "to use her as a good husband ought to do."^{190/} The payment of alimony in either of the above cited circumstances is limited to one-third of the husband's annual income. The amount allotted for alimony is in addition to the husband's obligation to support his children.^{191/}

On April 2, 1980 Pennsylvania's Governor Thornburgh signed into law a completely revised divorce code which will take effect on July 1, 1980. This new law, known as the "Divorce Code,"^{192/} repeals the Act of 1929^{193/} but the areas of substantive change are not numerous.

The Divorce Code continues to allow divorce based upon the prior-existing statutory grounds of desertion, adultery, cruel and barbarous treatment, bigamy, conviction of a crime and imprisonment for two years, and offering such indignities to the innocent and injured spouse as to

^{187/} 1929, May 2, P.L. 1237, §46; 1933, May 25, P.L. 1020, §1; PA. STAT. ANN, tit. 23 §46 (Purdon).

^{188/} 1929, May 2, P.L. 1237, §45; PA. STAT. ANN. tit. 23 §45 (Purdon).

^{189/} Id. §47.

^{190/} 1929, May 2, P.L. 1237, §45, 47, PA. STAT. ANN. tit. 23 §45, 47 (Purdon).

^{191/} Marra v. Marra, 170 Pa. Super. 588, 88 A.2d 112 (1952).

^{192/} 1980, April 2, P.L. _____, No. 26, §101.

^{193/} Id. §801.

render his or her condition intolerable and life burdensome.^{194/} It also provides additional grounds for divorce.

Divorce can be granted where there is insanity and confinement to a mental institution for at least three years immediately before the filing of the complaint and where there is no reasonable prospect of discharge for the next three years.^{195/} The Divorce Code will also provide for divorce based upon a complaint alleging that the marriage is irretrievably broken and 90 days have elapsed from the date of filing the complaint, provided, however, that each of the parties consents to the divorce.^{196/} Finally, a divorce can be granted where a party has filed a complaint and an affidavit alleging that the parties have lived separate and apart for a period of at least three years and that the marriage is irretrievably broken.^{197/}

The Divorce Code also provides for mandatory counseling, upon request by either party, where the grounds for divorce are indignities^{198/} or where the parties state that the marriage is irretrievably broken by mutual consent.^{199/} The court may also require counseling prior to granting a divorce where the marriage involves at least one person under the age of sixteen.^{200/}

Another area in which the Divorce Code makes significant changes over the Divorce Law is in the area of alimony and support. The Divorce Code provides that alimony may be granted to either party if the party seeking alimony lacks sufficient property to provide for his or her reasonable needs and is unable to support himself or herself through appropriate employment.^{201/}

^{194/} Id. §201(a).

^{195/} Id. §201(b).

^{196/} Id. §201(c).

^{197/} Id. §201(d).

^{198/} Id. §202(a).

^{199/} Id. §202(b).

^{200/} Id. §202(c).

^{201/} Id. §501(a).

III. Overview of Three Jurisdictions

A. Harrisburg and Dauphin County

Harrisburg, the Capital of the Commonwealth of Pennsylvania, is nestled in the south central part of the State on the east bank of the Susquehanna River. The city is comprised of two areas: the more populous eastern portion which sits on a hill and the western portion situated beside the Susquehanna.^{1/} It occupies an area of 7.6 square miles and is considered a prime geographical area due to its close proximity to many major cities of the northeastern United States. The city of Harrisburg is also the seat of Dauphin County and contains approximately one-third of the county's population. Dauphin County covers 517.6 square miles and is topographically diversified, with mountains, forests, agricultural tracts, and streams and creeks.^{2/}

The city of Harrisburg was founded by John Harris, Jr. His father, John Harris, Sr., an Englishman from Yorkshire, was the first white settler to occupy this area long the Susquehanna River, which originally was inhabited by American Indians. After his arrival in the early 1700's, John Harris, Sr. established a trading post and ferry and the area became known as Harris' Ferry.^{3/}

This trading post community soon became an important crossing point for pioneers traveling westward, and in 1746 it was designated as the western end of an east-west highway linking the community to Philadelphia. The Harris' Ferry settlement grew considerably and expanded eastward, becoming part of Lancaster.^{4/}

^{1/} Harrisburg Redevelopment Authority, "Economic Development Strategy for the City of Harrisburg, Pennsylvania" (May 1980), p. 1 (hereafter cited as "Harrisburg Economic Development Strategy Report").

^{2/} Chamber of Commerce of the Greater Harrisburg Area, "The greater Harrisburg Area of Pennsylvania" (1974), pp. 2, 4-5 (hereafter cited as "Greater Harrisburg").

^{3/} Harrisburg City Clerk's Office, "A Brief History of Harrisburg and Dauphin County" (March 1977), p. 1 (hereafter cited as "Brief History").

^{4/} Id. pp. 1-2.

Due to the settlement's size, the community and the county were separated from Lancaster in 1785. After the separation, John Harris, Jr., the founder of the city, laid out what later became known as Harrisburg. Initially, names for the town and the county were chosen to honor the French government for its aid in the American Revolution. The town was to be named Louisburg, after Louis XVI, the King of France, and the county was to be named after the Dauphin, the heir to the French throne. However, in 1791 John Harris, Jr., refused to assign titles under the name of Louisburg, the name of the town was changed to Harrisburg. The incorporation of Harrisburg as a city occurred 69 years later. ^{5/}

Although situated more than 90 miles from the exact geographical center of the state, Harrisburg had achieved prominence as the crossroads of the state. Its location on the Susquehanna River and on important east-west routes made it an ideal choice for the site of the state government. Thus, in 1812, Harrisburg was selected as the location of the Pennsylvania state capital. ^{6/}

The City of Harrisburg has also played a role in our national political history. In 1839, the Harrisburg Zion Lutheran Church was the setting for the Whig Party National Convention which nominated William Henry Harrison as a candidate for President. ^{7/}

Its early prominence in Pennsylvania history has resulted in the growth of Harrisburg as a cultural and educational center in central Pennsylvania. Harrisburg, in addition to being the home of the William Penn Museum, the Archives Building, and the Pennsylvania State Library, has its own Symphony Orchestra and Performing Arts Company. And located within 50 miles of the city are 10 colleges, 5 community or junior colleges, and 3 graduate schools. ^{8/}

^{5/} Id., pp. 2, 4.

^{6/} Id., p. 3.

^{7/} Id., p. 2.

^{8/} "Greater Harrisburg", p. 2.

Population

After reaching a peak population of 89,544 in 1950, Harrisburg has experienced a substantial decrease in its population. Over 30,000 residents were lost in the 14-year period between 1958 and 1972. ^{9/} In 1978, the population of Harrisburg was 58,400. ^{10/}

Although the population of the City of Harrisburg has been declining, the population of the Harrisburg Metropolitan Area, which includes Harrisburg City and Dauphin, Cumberland, and Perry Counties, has been growing. Since 1960, the population of Metro Harrisburg has increased 17%, from 371,653 in 1960 to 435,700 in 1978. ^{11/}

According to the 1970 Census, the median age of the Metro Harrisburg population is 30.4 years, which is slightly younger than the median age of 30.9 for the City of Harrisburg, ^{12/} and over 2 years older than the national median age. ^{13/} Despite its higher median age, the 65 years and older population of Metro Harrisburg is less than the national average, with only 10.2% of its population in that age bracket. ^{14/} However, less than 44% of all metropolitan area residents are 24 years and under and less than two-thirds are under 45 years of age. ^{15/} Both of these age groups are below the national figures. ^{16/}

^{9/} "Harrisburg Economic Development Strategy Report," p.. 1-2.

^{10/} 1978 Pennsylvania Statistical Abstract, p. 26, as cited in Chamber of Commerce, "Key Business Indicators" (1979), p. 1.

^{11/} Sales & Marketing Management, The Survey of Buying Power Data Service 1978, p. 99.

^{12/} U.S. Department of Commerce, Bureau of the Census, Census of Population and Housing: 1970 Census Tracts, Final Report PHC(1)-86 Harrisburg, Pa. SMSA, p. P-1.

^{13/} The national median age for 1970 was 28.0. Statistical Abstract of the United States (1979), p. 28.

^{14/} In 1970, 11% of the national population was 65 years or older. Statistical Abstract of the United States (1979), p. 30.

^{15/} U.S. Department of Commerce, Bureau of the Census, Census of Population and Housing: 1970 Census Tracts, Final Report PHC(1)-86 Harrisburg, Pa. SMSA, p. P-1 (hereafter cited as 1970 Census).

^{16/} In 1970, 46% of the population was 24 years and under, and 69.6% were under 45 years of age. Statistical Abstract of the United States (1979), p. 29.

Recent estimates indicate that the Dauphin County population is almost 13.8 percent black. ^{17/} The most current statistics on the racial and ethnic characteristics of the Harrisburg population, however, are from the 1970 Census. ^{18/} Those statistics show that within the actual city limits, 68.7% of the inhabitants are white, 30.7% are black, and 0.6% are Asian-American, Hispanic, or of some other minority background. ^{19/} In terms of age distribution, the median age for blacks in Metro Harrisburg is 22 years as compared to 31 years for whites. ^{20/} In the actual city limits, the median age gap is wider, with 21.5 years the median age for blacks as compared to 39.6 for whites. ^{21/}

The per capita income for Harrisburg residents rose more than 56% from 1969 to 1975. In 1969, the per capita income was \$2,891; in 1975 it increased to \$4,512. ^{22/} Notwithstanding this increase, however, residents of the City of Harrisburg have a per capita income that is lower than the national average. ^{23/}

^{17/} 1979 Pennsylvania Statistical Abstract, p. 20.

^{18/} Interview with Dorothy Friedman, Senior Community Planner, City of Harrisburg, May 14, 1980.

^{19/} 1970 Census, p. P-1.

^{20/} Id., pp. P-1, P.29.

^{21/} Id.

^{22/} U.S. Department of Commerce, Population Estimates and Projections, p. , (197), as cited in "Harrisburg Economic Development Strategy Report," p. 3 and Table 3, Appendix II.

^{23/} Per capita income in the United States for 1975 was \$4,838. Statistical Abstract of the United States (1979), p. 453.

Economic Characteristics

The principal industries in the Harrisburg metropolitan area are government, professional and related services, wholesale and retail trade, and manufacturing ^{24/} of food, metals, textiles, leather and rubber goods. ^{25/} While some of these industries are growing, generally Harrisburg's economy is in an advanced state of decline. ^{26/} Since 1950 there has been a substantial decrease in Harrisburg residents, jobs and businesses. ^{27/} This out-migration produced a loss of 30,000 residents and 780 businesses between 1958 and 1972 alone. ^{28/} Between 1967 and 1972 Harrisburg lost 2,359 jobs. ^{29/}

During the past twenty years, the Harrisburg city economy has been shifting from that of an industrialized, manufacturing economy to a more professional, technical, and service-oriented economy. In 1970, 27.7% of the work force was employed in the service sector, a 9.2% increase since 1950. Similarly, the percentage of the labor force employed in technical and professional occupations has increased by 2.8% over the same period. ^{30/}

This shift in the economy is reflected in the city's two areas of economic strength. Both the public sector employment and the city's service industry are growing. The Commonwealth of Pennsylvania is one of the primary employers of the City's labor force and since the state government is not influenced by fluctuations of product demand and the business cycle, it provides an extremely stable source of employment. The City's service industry while subject to the fluctuations of product demand, has nonetheless achieved significant growth in recent years. Between 1967 and 1972 the number of establishments grew by 12.8 percent, receipts by 60.7%, and payrolls by 72.4 percent. ^{31/}

^{24/} Chamber of Commerce, "Key Business Indicators" (1979), p. 5.

^{25/} Harrisburg City Clerk's Office, "A Brief History of Harrisburg and Dauphin County" (March, 1977). p. 5.

^{26/} "Harrisburg Economic Development Strategy Report," pp. 1-2.

^{27/} Id.

^{28/} Id.

^{29/} Id.

^{30/} Id.

^{31/} Id.

As a result of this change in the Harrisburg economy, there has been a concomitant shift in the skills needs of the labor market. The largest demand has been for professional and clerical employees. This demand, for the most part, goes unmet due to the lack of skills and experience in the unemployed labor force. For those positions that do not require a high degree of skill or experience the wages, working conditions and benefits are generally poor. ^{32/}

Currently, there are approximately 2,500 unemployed persons in the city of Harrisburg. This represents about 7.4% of the City's 33,757 member labor force. Of this number, approximately 1,350 or 54 percent are white, 1,100 or 44 percent are black; and 50 or 2 percent are members of other minority groups. Eight hundred or 32 percent of those unemployed are women with 14 percent being white women and 18 percent black women. ^{33/}

Downtown Harrisburg is in the midst of extensive redevelopment known as the Harristown Plan. ^{34/} The objective of the Harristown Plan is the renovation of downtown Harrisburg, the County's largest central business district. ^{35/} The Harristown Development Corporation began the rejuvenation of downtown Harrisburg in 1974. ^{36/}

Implementation of the Harristown Plan will occur in three phases. ^{37/} Phase One which is nearly complete calls for construction of three major office/retail buildings, the restoration of an historic office building and the building of two multi-level parking structures. Phase Two, currently underway, consists of construction of several major structures including an office/retail building, a new City Hall and Public Safety Building, a 300

^{32/} Id.

^{33/} Id.

^{34/} Harrisburg Economic Development Strategy Report, May 1980, p. 10.

^{35/} Id.

^{36/} Id.

^{37/} Id.

or 400 room hotel/convention center and a redesignated Market Square Plaza. Phase Three will see the development of a 1250 unit residential core, a center for the performing arts, a new county office building, walkway extensions and additional building renovations. ^{38/} Total project cost is estimated at \$175,950.00. ^{39/}

Dauphin County Government

Harrisburg has a mayor-council form of government, with a mayor and seven council members who are elected for four-year terms. Mr. Paul E. Doutrich, Jr., currently serving the third year of his first term as mayor, oversees the day-to-day operations of the city government. He is the chief executive officer and has the responsibility of enforcing the ordinances of the city council. To assist him in carrying out the day-to-day operations, the mayor has the power to appoint a cabinet which includes the City Solicitor and the Directors of the Departments of Public Safety, Community Development, Administration, Public Works, Parks and Recreation, and Health. In addition, the mayor has authority to hire the bureau chiefs under each of the six departments, including the Fire Chief and the captains and the Chief of the Police Department.

The City Council is a legislative body that passes ordinances and resolutions and has responsibility for the approval of the annual city budget. Although the mayor may veto ordinances passed by the city council, that veto can be overridden by a two-thirds vote of the council. Its membership

^{38/} Harrisburg Economic Development Strategy Report, May 1980, p. 10.

^{39/} Id.

is divided into various committees that monitor the operation of the six departments of the city government. To assist them in their duties, the City Council has the authority to appoint a City Clerk who serves at their discretion.

Besides the mayor and the city councilmembers, there are two other elected city officials, the City Treasurer and the City Controller. Most other employees are protected by civil service safeguards or by the contracts of one of the four city employee unions.

In contrast to Harrisburg, Dauphin County has a commission form of government, with three elected Commissioners who serve four-year terms. In addition to the 6 Judges, 12 District Justices, 2 Jury Commissioners, and 40 tax collectors, there are 9 other elected officials who head autonomous departments within the county government, although their budgets come through the Board of County Commissioners. Those officials are the District Attorney, County Sheriff, Treasurer, Controller, Coroner, Clerk of Courts, Register of Wills, Recorder of Deeds, and Prothonotary.

To assist in the management of the county government, the Board of Commissioners has authority to appoint a chief clerk. There are also three county departments, the Departments of Administration, Health and Welfare, and Corrections, which report to the Commissioners. Other programs supported by the county which do not fall within one of the three departments include agricultural programs, regional planning and development, fire company training, hospitals, tourism, the library, Boys Clubs, Soil Conservation and the Homemaker Association.

In addition to Harrisburg, Dauphin County contains three first-class townships, 21 second-class townships, and 16 boroughs.

Police Department

Dauphin County is served by a number of police departments, including the Harrisburg Police Department, whose jurisdiction is coterminous with the Harrisburg city limits. The remainder of the county is served by police from the surrounding townships and by the state police. There are 153 sworn officers on the Harrisburg force, ^{40/} serving a population of 58,400 ^{41/} in an area of approximately 7.6 square miles. ^{42/}

The police force in Harrisburg is more than 96% male and about 79% white as shown in the table below: ^{43/}

Harrisburg Police Officers - Race and Gender

	Male	% Male	Female	% Female
White	119	77.8	2	1.3
Black	23	15.0	3	2.0
Hispanic	5	3.3	1	0.6
Other	0	0	0	0
TOTAL	147	96.1	6	3.9

The Harrisburg Police Department is highly centralized. While the chief is appointed by the mayor and serves at the mayor's pleasure, he reports to the director of public safety, who has authority over both the police department and the fire department. Aside from any specific guidelines established by the mayor or the city council, the director of public safety sets police policy. This policy is set forth in the department's Rules and Regulations manual and is also communicated regularly to patrol officers at the roll-call session that begins each of the three daily shifts. ^{44/}

^{40/} Interview with Lieutenant Carroll Wagner, Harrisburg Police Department, Harrisburg, Pennsylvania, April 2, 1980 (hereafter cited as Wagner Interview).

^{41/} "Brief History", p. 3.

^{42/} "Greater Harrisburg", p. 4.

^{43/} Telephone interview with Lieutenant Wagner, Staff and Technical Services, Harrisburg Police Department, Harrisburg, Pennsylvania, May 12, 1980. Categories are those used by the police department. Statistics shown are for sworn police officers and do not include civilians employed by the department.

^{44/} Interview with William A. Hewitt, Director, Department of Public Safety, Harrisburg, Pennsylvania, April 8, 1980 (hereafter cited as Hewitt Interview).

The department's written policy on the handling of domestic calls is as follows:

Family Disputes: When a request for police service is received which relates to a family dispute, the Police Dispatcher shall assign the call to a 2-officer unit or two 1-officer units. A 1-officer unit shall not be dispatched to the scene of a reported or suspected family dispute without additional assistance. 45/

Further policy in this area has been developed and communicated verbally to the officers of the Patrol and Traffic Division, who respond to the more than 7,500 domestic calls received annually by the Harrisburg Police Department. 46/

When a call is received, it is assigned a priority based on the type of call and the urgency of the situation as compared with other calls waiting to be answered. An incidence of domestic violence may or may not be given high priority, depending on the degree of violence involved and on whether or not the incident is still in progress at the time of the call. 47/

Officers responding to domestic calls in Harrisburg have several options with which to work in resolving the problems they encounter. The patrol officers are instructed to attempt first to separate the parties and try to calm them down. If, upon questioning, the victim discloses a history and pattern of abuse, the officers' instructions are to inform her of the availability of the Protection From Abuse Act and to refer her to legal services or her private attorney. The police also routinely refer women who are victims of domestic violence to Women-In-Crisis for shelter or counseling. 48/

If the mediation and referral approach is unsuccessful, or if the victim has been injured, the officers have the discretion to cite the assailant for harassment or to arrest him for simple or aggravated assault. While the department's policy is to use arrest only as a last resort, the officers will make an arrest if the victim's injury is serious or was caused by a weapon, or if the assault was committed in their presence. Otherwise,

45/ Rules and Regulations of the Harrisburg Police Department, Rule 36.024.

46/ Interview with Captain Richard Gibney and Sergeant Peter Brooks, Harrisburg Police Department, Patrol and Traffic Division, Harrisburg, Pennsylvania, April 8, 1980 (hereafter cited as Gibney Interview).

47/ Id.

48/ Id.

the officers most likely will issue a citation for harassment, which is a summary offense. If the assailant is present at the scene, he will be given a copy of the citation at that time; if he has left, it will be mailed to him. The citation acts as a summons requiring the assailant to appear before a district justice or face jail for contempt if he fails to do so. Arrest, on the other hand, depends on the victim's willingness to cooperate, which often is not forthcoming. If the victim does not wish to press charges, the officers have been instructed to see that she signs a waiver of prosecution. ^{49/}

When the court has issued a protection order under the Protection From Abuse Act, a copy is sent to the police department and filed there. Under the provisions of the Act, the order serves as a warrant, and departmental policy is to arrest where there is probable cause to believe the order has been violated, unless it appears that the woman has invited the man to return to the house in an attempt at reconciliation. In that case, the officers' instructions are to remove the man from the house and advise the woman to contact her attorney and file for a contempt citation through the court. ^{50/}

District Justices

There are twelve district justices in Dauphin County. The district justices, who replaced justices of the peace in 1970 as part of a judicial reform measure, are elected to six-year terms. ^{51/} To qualify for the position, an individual must be a citizen of Pennsylvania and must have lived in his or her magisterial district for at least a year before being elected or appointed. ^{52/} District justices are not required to be lawyers, but any justice who is not a member of the Pennsylvania bar must complete at least 40 hours of training and instruction in civil and criminal law and must pass an examination prior to assuming office. ^{53/} All district justices are required to complete at least 32 hours annually of continuing education programs. ^{54/}

^{49/} Id.

^{50/} Id.

^{51/} Interview with Paul Hardy, District Justice, Harrisburg, Pennsylvania, April 17, 1980 (hereafter cited as Hardy Interview).

^{52/} 42 PA. CONS. STAT. §3101 (Purdon 1978).

^{53/} Id. §§3112, 3113(b).

^{54/} Id. §3118.

The first-line court in Harrisburg's criminal justice system is formed by the district justices, who have jurisdiction over a wide range of matters often handled in municipal courts. Their jurisdiction over incidents of domestic violence is broad. For example, they function as committing magistrates in all criminal proceedings, presiding at arraignments, fixing and accepting bail, and issuing warrants, and they have jurisdiction over summary offenses, including harassment. ^{55/} The district justices are also empowered to grant or enforce protective orders under the Protection From Abuse Act on weekends, when the Court of Common Pleas is not in session. ^{56/} Because the justices rotate night and weekend duty, being on 24-hour call for one week out of every twelve, the jurisdiction of any individual justice under the Protection From Abuse Act is limited to about 15 days per year. The bulk of their experience with domestic violence, therefore, comes with handling harassment and assault cases. ^{57/}

When an assailant appears before a district justice at a preliminary hearing, the justice has the authority to bind him over to court if a prima facie case of assault is made. ^{58/} If the defendant is charged with harassment, the district justice may conduct a hearing to determine guilt or innocence. ^{59/} If the defendant pleads or is found guilty of harassment, the district justice is empowered to impose a fine of up to \$300 ^{60/} or a jail sentence of up to 90 days. ^{61/} Preliminary investigation by staff indicates that the sanction usually imposed for harassment is about \$25.00 plus costs, which are \$26.00 or \$32.50, depending on whether the police serve the subpoena. If the victim withdraws the charges, she is responsible for paying the court costs. ^{62/}

^{55/} Id. §1515(a)(1)-(7). District justices do not have jurisdiction over summary offenses that fall within the jurisdiction of an established and open traffic court. This exception, however, does not apply to Dauphin County, since it has no separate traffic court.

^{56/} 35 PA. STAT. ANN. §§10181-10190 (1978). See also, Rules of Civil Procedure for Justices of the Peace, Rules 1201-1211, Pa. Ct. Rls. (1979).

^{57/} Interview with William Woods, District Justice, Harrisburg, Pennsylvania, April 17, 1980 (hereafter cited as Woods Interview).

^{58/} PA. R. Crim. P., Rule 143(a) (1979). See also, the Criminal Procedure Section, *infra*, for a detailed explanation of this process.

^{59/} Id. Rule 63(a), as amended by Pa. Ct. Rls. Last Min. (1979 Pamph.).

^{60/} 18 PA. CONS. STAT. ANN. §1101 (Purdon 1978).

^{61/} Id. §1105 (Purdon 1973).

^{62/} Woods Interview.

District Attorney.

The district attorney is the chief law enforcement officer of Dauphin County and is an elected official, serving a four-year term. The office of the district attorney is staffed by nine full-time attorneys, seven detectives, three part-time law clerks, and nine to ten clerical workers. ^{63/}

The chief responsibilities of the district attorney are misdemeanor and felony prosecutions and coordination of the county's 15 law enforcement agencies. The bulk of the office's experience with cases of spousal abuse is in the prosecution of simple assaults. Occasionally, a harassment case is referred to the district attorney by a district justice who feels more serious charges are warranted by the circumstances. The office's domestic caseload has decreased since the passage of the Protection From Abuse Act, as more cases are referred for civil remedies. ^{64/}

The district attorney has no written guidelines for the handling of domestic abuse cases, which are processed as any other case from arraignment to trial. One factor to be reckoned with is the frequency of victims' dropping the charges. An estimated 50 percent of spousal abuse cases received by the district attorney in Dauphin County do not go to trial, although in many of these cases, the charge has been withdrawn in exchange for a guilty plea to a lesser charge, such as harassment. To lessen the likelihood of victims' dropping charges under coercion by the assailant, the district attorney's office generally does not accept requests for dismissal that are made by telephone or letter. The victim either must come into the office for an interview or be visited by a detective and explain her wishes. In some cases, particularly where the victim has been seriously injured, the district attorney asks the victim to appear in court on the trial date and inform the judge that she wishes to drop the charges. ^{65/}

^{63/} Interview with Richard Lewis, Dauphin County District Attorney, Harrisburg, Pennsylvania, April 9, 1980 (hereafter cited as Lewis Interview).

^{64/} Id.

^{65/} Id.

Court of Common Pleas

The Courts of Common Pleas are the trial courts of general jurisdiction in the Commonwealth of Pennsylvania. ^{66/} Their jurisdiction is original and exclusive over all actions and proceedings except where concurrent jurisdiction is vested in another court or in the district justices by statute or rule. ^{67/}

Currently, there are five judges sitting in the Court of Common Pleas of Dauphin County. ^{68/} The judges are elected to ten-year terms and are re-elected by votes of retention, rather than by contests with other candidates. ^{69/} The chief judge of the court, called the president judge, is the member longest in continuous service on the court. ^{70/}

Officers of the Court of Common Pleas include the clerk of the courts, ^{71/} who is responsible chiefly for the maintenance of court records of criminal proceedings, and the prothonotary, ^{72/} who has comparable responsibility for civil proceedings. Protective orders issued under the Protection From Abuse Act are kept on file by the prothonotary. ^{73/} A deputy court administrator

^{66/} Constitution of Pennsylvania, Article V, §5.

^{67/} 42 PA. CONS. STAT. §931 (Purdon 1978).

^{68/} Interview with Judge John C. Dowling, Court of Common Pleas of Dauphin County, Harrisburg, Pennsylvania, April 8, 1980 (hereafter cited as Dowling Interview).

^{69/} Id. See also, 42 PA. CONS. STAT. §3131(b) (Purdon 1978).

^{70/} Id. §325(a).

^{71/} Id. §§2751-2757.

^{72/} Id. §§2731-2738.

^{73/} Dowling Interview.

serves as liaison between the court and the district justices, ^{74/} who technically are under the supervision of the president judge. ^{75/}

In Dauphin County, the president judge heads the Orphans' Court, a division of the Court of Common Pleas. The other four judges rotate serving as motions judge for a month at a time. The motions judge hears all petitions for protective orders under the Protection From Abuse Act. If a protective order is violated, however, the case goes before the judge who issued it, whether or not he is presiding in motions court at that time. Each of the judges, including the president judge, spends one day each week hearing miscellaneous cases, including assaults and appeals from convictions of summary offenses, such as harassment. It is in this capacity that the judges are most likely to hear criminal cases of spousal abuse. ^{76/}

^{74/} Hardy Interview.

^{75/} Rules of Civil Procedure for Justices of the Peace, Rule 17, Pa. Ct. Rls. Last Min. (1979 Pamph.).

^{76/} Dowling Interview.

B. Carlisle and Cumberland County.

The Borough of Carlisle, occupying an area of 3.5 square miles, is located 17 miles southwest of Harrisburg. It is the seat of Cumberland County and its major population center. Cumberland County sits on the bank of the Susquehanna River, directly across from Dauphin County. The County, covering 550 square miles, is slightly larger than Dauphin County and is the fastest growing county in the Greater Harrisburg Area. ^{77/}

The Borough of Carlisle can trace its roots back to the settlement of the Cumberland County area by the Scotch-Irish in the early 1700s. Although its first inhabitants were American Indians, the area derived its name from the northern England county of the same name. The Cumberland County area, originally a part of Lancaster County, soon became a popular residence and was populous enough in 1750 for the Assembly of the Province of Pennsylvania to separate it from Lancaster and create the sixth county to be carved out of "Penn's Province." At that time, it covered a vast territory, including Pennsylvania west of the Susquehanna River and north of York County and Maryland. Because of the number of counties later carved out of the original Cumberland County, it became known as "Mother Cumberland." ^{78/}

After the creation of the county, the task of selecting a county seat was undertaken. The selection was not without controversy due to the desire of the older communities to capture the honor. However, the favored location, near an abundant supply of pure water, LeTort Spring, was eventually chosen in 1751 and became known as the town of Carlisle. ^{79/}

^{77/} "Greater Harrisburg", pp. 5-6.

^{78/} League of Women Voters of the Carlisle Area, Cumberland County: A Citizen's Manual (1976), p. 7; Cumberland County Bicentennial Commission, "Drums and the Flame -- A Historic Pageant" (1976), pp. 5-6.

^{79/} Cumberland County Bicentennial Commission, "Drums and the Flame -- A Historic Pageant" (1976), pp. 5-6.

Its selection as the location for the county seat ensured its role in the history of the county. Today Carlisle is the major population center of the west central region of the county. It is also the home of Dickinson College, one of the oldest and most respected colleges in the region. ^{80/}

Cumberland County had the largest rate of population growth in the Harrisburg Metropolitan Area between 1960 and 1970. During that decade, its population grew to 158,177, an increase of 26 percent. ^{81/} Recent population estimates indicate that Cumberland County has continued this trend in the last decade, growing another 8.7 percent to a total population of 172,000. ^{82/}

Although recent statistics on the minority composition of the County or of the Borough of Carlisle are not available, recent estimates indicate that relatively few residents of Cumberland County are members of minority groups. Of the estimated 172,000 county population, the nonwhite population is estimated to account for 1.45 percent or 2,500, of the county's residents. ^{83/}

Although a recent breakdown of the population by age is not available, estimates show that 71.7 percent of the Cumberland County population is 18 years or older while only 9.8 percent are age 65 or older. ^{84/} Another study found that the median age on the basis of sex is 29.2 years for Cumberland County males and 31.6 for Cumberland County females. ^{85/}

^{80/} "Greater Harrisburg, p. 5.

^{82/} Id.

^{83/} 1979 Pennsylvania Statistical Abstract.

^{84/} Id.

^{85/} Id.

^{86/} Sales & Marketing Management, The Survey of Buying Power Data Service 1979, p. 103.

Carlisle Police Department

The Carlisle Police Department's jurisdiction is coterminous with the Carlisle borough limits. The remainder of Cumberland County is served by police from the surrounding townships and by state police. ^{86/} There are 26 police officers on the Carlisle police force, including the chief, four sergeants, three corporals, and 16 patrol officers. Three of the officers are black, 23 are white, and all are male. ^{87/}

Departmental policy is established by the mayor, the borough council, and the chief. ^{88/} Although there are no written guidelines on patrol procedures, there is a police code of discipline, which describes the duties and behavior standards officers are expected to meet. ^{89/} All of the Carlisle police officers receive 400 hours of training at the police academy in Hershey. In addition, the department conducts in-service training programs on various topics. There has been no training specifically related to domestic violence. ^{90/}

Recordkeeping in the Carlisle Police Department consists of a central log in which all police calls are noted and incident reports filed alphabetically by suspect within crime categories. Incident reports on domestic violence cases are filed only if someone is badly injured. Since the majority of the domestic calls are not written up, police can only approximate the number they receive. They report fewer than one such call per day. ^{91/}

^{86/} Interview with Sergeant Robert Mixell and Corporal Michael Weir, Pennsylvania State Police, Carlisle, Pennsylvania, April 15, 1980 (hereafter cited as Mixell Interview).

^{87/} Interview with Chief Frank Giordano and Sergeant Calvin Baker, Carlisle Police Department, Carlisle, Pennsylvania, April 9, 1980 (hereafter cited as Giordano Interview).

^{88/} Id.

^{89/} Id.

^{90/} Id.

^{91/} Id.

When a domestic call is received by the Carlisle police, the officers' response depends on the degree of the victim's injury. An arrest will be made if the victim has been severely battered; if, however, the officer believes the call was "just a squabble" or an "every weekend occurrence," no arrest will be made. Instead, the officer will advise the victim to file a private citizen's complaint with the district justice. ^{92/}

In Carlisle, the police department does not receive copies of protective orders issued under the Protection From Abuse Act, unless the victims' attorneys deliver them. According to police, they have been instructed by a judge of the Court of Common Pleas of Cumberland County that an arrest upon violation of a protective order cannot be made unless an officer witnesses the violation. Instead, the officer should advise the victim to return to the issuing court to file a private citizen's complaint for contempt. ^{93/}

District Justices

There are eight district justices in Cumberland County. ^{94/} District justices are not required to be lawyers, ^{95/} and at least one justice in the county has not completed high school. ^{96/} The president judge of the Court

^{92/} Id.

^{93/} Id.

^{94/} Interview with Judge Harold Sheely, Court of Common Pleas of Cumberland County, Carlisle, Pennsylvania, April 15, 1980 (hereafter cited as Sheely Interview).

^{95/} 42 PA. CONS. STAT. §§3112, 3113(b) (Purdon 1978).

^{96/} Interview with Judge Dale Shughart, Court of Common Pleas of Cumberland County, Carlisle, Pennsylvania, May 7, 1980 (hereafter cited as Shughart Interview).

of Common Pleas has immediate administrative authority over the district justices, and the court administrator acts as a liaison between the justices and the president judge. ^{97/}

The jurisdiction of the Cumberland County district justices is the same as that of the justices in Dauphin County as codified by statute. ^{98/} District justices have broad jurisdiction over matters concerning domestic violence, ^{99/} but one district justice in Carlisle reported that the district justices of Cumberland County had been instructed by the president judge to use the criminal process rather than the Protection From Abuse Act since a situation serious enough to warrant a protection order almost always would support criminal charges, as well. ^{100/} On weekends, rather than institute an ex parte proceeding under the Protection From Abuse Act, the justices in Cumberland County, in serious cases, file assault charges and set bail high enough to keep the abuser in jail until a hearing can be held on the matter. ^{101/}

When a woman appears before a district justice in Carlisle to file a private criminal complaint, an affidavit is filled out, usually charging simple assault, and sent to the district attorney for approval. ^{102/} The district justices in Carlisle see an estimated 10 - 20 domestic violence cases in a year, few of which end in prosecution. ^{103/}

^{97/} Interview with District Justice Meade G. Lyons, Cumberland County, Carlisle, Pennsylvania, April 16, 1980 (hereafter cited as Lyons Interview).

^{98/} See District Justices, Harrisburg, this report, p.

^{99/} Id. at p.

^{100/} Lyons Interview.

^{101/} Id.

^{102/} Id.

^{103/} Id.

Cumberland County District Attorney

In Cumberland County the office of the district attorney is staffed by four attorneys, three clinical workers and one law clerk. The district attorney serves on a part-time basis as do two of the other attorneys. There is one full time assistant district attorney.^{104/}

The Cumberland County District Attorney's Office handles a relatively small number of domestic cases, which come from two sources: private criminal complaints and police complaints.^{105/} The district attorney's office receives approximately one private complaint involving domestic violence per week and fewer police complaints.^{106/}

A private criminal complaint is filed first with a district justice.^{107/} If the alleged offense is a misdemeanor or a felony, rather than a summary offense, charges are filed and the case is referred to the district attorney's office. If the district attorney's office is busy, a walk-in complainant is sent to the district justice to file a private citizen's complaint.^{108/}

If the district attorney's office receives a complaint from the district justice a letter is sent to the victim asking her to come in to the office. If there is no response within three weeks, a second letter is sent indicating that the complainant must respond within 10 days or the charges will be dropped.^{109/} About 80% of the complainants appear for interviews. At the interview, if it is determined that the facts meet the elements of the alleged crime, the district attorney explains the criminal process to

^{104/} Interview with Edgar B. Bayley, District Attorney, Cumberland County Court House, Carlisle, Pennsylvania, April 15, 1980 (hereafter cited as Bayley interview).

^{105/} Interview with Theodore Smith, Assistant District Attorney, Cumberland County Court House, Carlisle, Pennsylvania, May 10, 1980 (hereafter cited as Smith interview).

^{106/} Id.

^{107/} Bayley interview.

^{108/} Smith interview.

^{109/} Id.

the complainant. If she then wishes to press charges, the district attorney either approves the case, approves it on reduced charges or disapproves it. ^{110/} Approximately 75 percent of the cases are approved. Half of these are approved on the original charge, and the other half are approved on reduced charges. Cases are rarely approved if the parties are still living together. ^{111/}

If a case is referred back to the district justice, a preliminary hearing is set. At or before this hearing the parties can negotiate a reduced charge, drop charges or the case can be bound over for court. About one-quarter of all domestic cases are bound over in Cumberland County. ^{112/} The processing of a private citizen's complaint from the time of filing through trial takes an average of two months. ^{113/}

Police complaints generally involve more serious offense and usually are a result of on-the-scene arrests. ^{114/} Unless the officer requests the district attorney's presence, the arresting officer handles the prosecution at arraignment and preliminary hearing. However, if there is an interval between the time of the arrest and the issuance of the police complaint, the case is not likely to be brought to trial. The process in a police complaint from the arrest through trial involves about the same length of time as private citizen complaints.

Most of the domestic cases that reached the Cumberland County district attorney's office last year fell in the category of simple assault. ^{115/} About 10 percent of these cases went to trial, and 85-90 percent of the defendants pleaded guilty to simple assault. ^{116/}

^{110/} Id.

^{111/} Id.

^{112/} Id.

^{113/} Id.

^{114/} Id.

^{115/} Id.

^{116/} Bayley interview.

In Cumberland County district attorney's office charges may be dropped in domestic cases where the victim is not insistent upon prosecution.^{117/} If the assault is serious, however, charges may not be dropped, regardless of whether the victim wishes to drop them, and she will, if necessary, be subpoenaed as a hostile witness.^{118/}

In Cumberland County between 50 and 75 percent of the defendants convicted of serious assaults serve time.^{119/} In less serious assaults defendants normally are given probation. Almost routinely, an exclusion order, banning the offender from the complainant's home, is made a condition of the probation.^{120/}

Court of Common Pleas

There are three judges currently sitting in the Court of Common Pleas of Cumberland County.^{121/} Officers of this court include the clerks of the court and the prothonotary. Both are elected officials. There is also a part-time court administrator over the Court of the Minor Judiciary who acts as liaison between the court and the district justices.^{122/}

In Cumberland County the president judge heads the court. All three judges in this Court sit for all matters before the Court.^{123/} Protection orders under the Protection From Abuse Act can be filed at any time with

^{117/} Id.

^{118/} Id.

^{119/} Id.

^{120/} Id.

^{121/} Sheely interview.

^{122/} Telephone interview with Bernice Duke, Court Administrator, Court of Common Pleas, Carlisle, Pennsylvania, May 15, 1980.

^{123/} Sheely interview.

the Court. They are presented to the court administrator who assigns them to a judge. 124/ Any violation of protection orders are brought before the issuing judge. 125/

Last year in Cumberland County 19 ex parte petitions were filed and 11 were heard. This year 15 were filed and 10 were heard. 126/ Approximately 95% of the protection from abuse petitions filed in Cumberland County are filed by Legal Services attorneys. 127/

124/ Shughart Interview.

125/ Sheely Interview.

126/ Sheely Interview.

127/ Id.

C. Philadelphia

In Philadelphia, the largest city in Pennsylvania, the incidence of domestic violence is higher and the accompanying problems are more severe than in other areas of the state. Philadelphia Police Department records indicate that the police respond to approximately 700,000 domestic disturbance calls per year. It is not possible to identify how many arrests made are domestic in nature because statistics are not kept on the relationship between the accused and the victim. ^{128/} Over one-third of the private criminal complaints filed annually involve assaults occurring within the family or between paramours or former paramours. ^{129/}

Philadelphia faces the same problems confronted by other major metropolitan areas in the United States, including a housing shortage, an overcrowded court system, and an understaffed welfare department. These problems acutely affect and often hinder the battered woman who tries to leave the situation in which she has been abused. Several women's groups have been active for a long time in providing services to assist victims of domestic violence, such as hotlines, shelters and counseling. ^{130/} The need for shelter is so great, however, that service providers cannot meet the demand. Although there are several shelters for homeless women that accept victims of domestic violence, there is only one shelter program in Philadelphia especially designed for battered women and their children.

Women Against Abuse (WAA) was the first organization in Philadelphia created to address exclusively the particular problems and needs of domestic abuse victims. It opened an emergency shelter in 1977 which has been full since its second day in existence. ^{131/} Due to the housing

^{128/} Domestic Abuse Project of the Philadelphia District Attorney's Office funded by the Office of Criminal Justice Programs, Law Enforcement Assistance Administration (LEAA), grant no. 78 DF-AX-0196, p. 12 (October 1, 1979) (hereafter cited as Philadelphia LEAA Project).

^{129/} Interview with Jane Greenspan, Assistant District Attorney, Head, Domestic Abuse/Private Criminal Complaint Unit, Philadelphia, Pennsylvania, April 17, 1980 (hereafter cited as Greenspan Interview).

^{130/} A resource list distributed by the Public Information Office of the Philadelphia District Attorney's Office Domestic Abuse Project lists over 30 local groups, sponsored by women's groups, religious organizations, community groups and municipal departments.

^{131/} Currently the legal capacity of the shelter is 39, but it often houses between 40 and 45 residents. Interview with Peggy McGarry, Executive Director, Women Against Abuse, Philadelphia, Pennsylvania, April 17, 1980 (hereafter cited as McGarry Interview).

shortage in Philadelphia, a resident's average stay is 21 days, compared to a statewide average of 9-11 days. The shelter has a staff of 17 and is located in an old schoolhouse donated by the city. ^{132/}

Domestic Abuse Project of the Philadelphia District Attorney's Office

In 1978 the Philadelphia District Attorney, fulfilling one of his campaign promises, created a Domestic Abuse Unit. With assistance from three local women's organizations working on domestic violence issues, the Assistant District Attorney in charge of the new Unit developed a comprehensive project designed to make the legal system more accessible to victims of domestic violence. The project received a 3-year demonstration grant from the Law Enforcement Assistance Administration. It consists of an administrative component located in the District Attorney's office and three service components operated by the three women's groups under contract to the District Attorney. There is a legal clinic which provides direct services to battered women, a public information and education component and a training section. ^{133/}

The Administrative component is located in the District Attorney's Office and is headed by the director of the LEAA project. Its responsibilities include overall coordination of the project, technical and logistical support to the other components, coordination and staffing of the Domestic Abuse Advisory Board, dissemination of public information on domestic violence and project activities, data gathering and research, measurement of the project's impact, and advocacy of the institutionalization of project activities and other institutional changes. ^{134/}

^{132/} Id.

^{133/} Philadelphia LEAA Project, pp. 33-57.

^{134/} Id. at 33-36, 60.

The administrative component also works closely with the District Attorney's Domestic Abuse and Complaint Intake Unit, which processes an estimated 24,000 complaints a year, issued 6,402 summonses last year, with over 1,900 involving either husband-wife or boyfriend-girlfriend relationships. An Assistant District Attorney with the Unit is employed by the LEAA project and is responsible for the prosecution of misdemeanor domestic violence cases, which include private criminal complaints bound over for trial by the Trial Commissioner, police complaints, and cases referred from preliminary hearings. She also handles some contempt proceedings for violations of §218 (Protection From Abuse Act) orders where misdemeanor charges have been filed. Misdemeanor cases received by the Unit do not always result in a trial. Some cases may be disposed of through negotiated or open pleas. Other defendants may be granted an accelerated rehabilitative disposition (ARD), a pretrial probationary period of one year which, if successfully completed, will result in the expungement of the case. 135/

The administrative component is also developing an advocacy program to encourage felony prosecutions. 136/

Domestic Abuse Clinic

Women Against Abuse, the shelter for victims of domestic violence, is the contractor operating the legal assistance component of the LEAA project. The clinic has two sections, a civil legal clinic located in City Hall and a criminal unit, consisting of one paralegal who works in the District Attorney's Private Criminal Complaint Unit. 137/

135/ Interviews with Jane Greenspan, Assistant District Attorney Philadelphia District Attorney's Office, April 17, , 1980, and Bebe Holtzman, Assistant District Attorney, Philadelphia District Attorney's Office, April 17, 1980.

136/ Interview with Karen Takiff, Project Director, Domestic Abuse Unit, Philadelphia District Attorney's Office, April 15, 1980.

137/ Philadelphia LEAA Project, pp. 37-42.

The Domestic Abuse Clinic in Room 571, City Hall, has a paid staff of six and a number of volunteers.^{138/} The clinic works exclusively to obtain protective orders under the Protection From Abuse Act and to counsel victims of domestic violence about their options under the Act. Originally intended only to do the paperwork necessary to file petitions for protective orders, the two clinic lawyers also represent most of the petitioners in Family Court. Last year, the clinic prepared 69% of the petitions filed in the City of Philadelphia.

There are no income eligibility restrictions on the clinic's clientele. However, the demand for clinic services has been so great that an informal set of criteria has been developed for screening clients. Women with adequate financial resources are usually referred to private attorneys. A petition is not filed in every instance; the facts of each case and the nature of each client's situation are first carefully evaluated. The clinic does take other measures in some of the cases in which petitions are not filed, including sending warning letters to abusers.

The public information component generated much publicity for the clinic when it opened and further outreach efforts are not feasible at the clinic's current capacity. The Private Complaint Unit of the District Attorney's Office also refers cases to the clinic and its staff is literally swamped. In a typical month, clinic staff received 1321 phone calls, counseled 368 walk-in clients, filed 78 petitions for protective orders, and made 56 court appearances.^{139/}

Public Information and Education Component

This section of the Domestic Abuse Project is contracted to Women In Transition, (WIT) which is a non-profit counseling and resource program that has provided services to abused, divorced, separated and widowed women since 1973.^{140/}

^{138/} Interview with Gloria Gilman, Attorney/Director, Domestic Abuse Clinic, Philadelphia, Pennsylvania, April 16, 1980.

^{139/} Monthly Report, Domestic Abuse Clinic, March 1980.

^{140/} Women in Transition, Annual Report, October 1, 1978 - September 30, 1979. WIT's services include telephone hotline counseling, personal skills development and career skills development counseling and community education.

The function of this component is to heighten public awareness of the prevalence and severity of domestic violence and to publicize the services available to battered women. The goal includes disseminating information to victims and offering educational resources to service providers and educational institutions.

The heart of the public information program is the dissemination of printed materials directed to victims of domestic violence listing organizations to call for assistance. Over 100,000 referral cards have been distributed by the Police Department and hospital emergency rooms. These and other social agencies also distribute a longer brochure, entitled "You Can Stop The Abuse," and a resource list.^{141/} Plans have been made to produce these materials in a Spanish language version.^{142/} A legal information sheet for clients of the Domestic Abuse Clinic and a survival skills manual for women victims of domestic violence are also being developed.

A speaker's bureau organized by the component provided speakers for 34 engagements during the project's first year. Over 15 press releases were issued, ten radio interviews were given, and three appearances were made on television talk shows.^{143/} A videotape presentation will soon be broadcast by the local public television station.^{144/}

The public information and education component is currently organizing a day-long conference on domestic violence to provide information, and to stimulate city-wide integration of abuse services.^{145/} Participants will include women's groups, city officials and policy makers in the areas of health, education, housing, social services and criminal justice.^{146/}

^{141/} Public Information and Education component, First Year's Accomplishments, 10/15/78 - 12/31/79.

^{142/} Interview with Andrea Ignatoff, Public Information Director, Philadelphia LEAA Project, April 17, 1980.

^{143/} Public Information and Education component, First Year's Accomplishments, 10/15/78 - 12/31/79.

^{144/} Ignatoff Interview.

^{145/} Philadelphia LEAA Project, p. 44.

^{146/} Ignatoff Interview.

Training and Therapy Component

Women's Resource Network (WRN) is under contract to the District Attorney's Office to provide training and therapy services under the LEAA project. The primary goal of WRN is to make the mental health and criminal justice systems more responsive to victims of domestic violence, rather than to be a direct service provider to battered women. In fulfillment of that objective, WRN has provided training, consultation, and technical assistance to a number of local agencies and organizations. They have also written a police training manual on the domestic violence problem which has a national perspective.

The purposes and goals of this component of the LEAA project are to train medical, mental health, and social service agency staffs in the handling of domestic violence problems, to work toward the development and institutionalization of battered women programs within the existing health and welfare system, and to provide therapy for abusive men in order to modify their behavior patterns. A total of \$15,300 of the LEAA project budget has been targeted for fulfilling these objectives.^{147/}

Between 300 and 500 staff members of medical, mental health, and social service agencies have attended the four-hour intensive workshops on domestic abuse conducted by the director of the Women's Resource Network, and the training coordinator under the LEAA grant.^{148/} Workshop participants are given an overview of the problem training in counseling techniques, alternatives for battered women and abusive men, and information on community resources for providing practical assistance to battered women.^{149/} In addition, a "follow-up" packet of concrete skills sharing and resource development materials has been made available at half of the workshop sites.^{150/}

^{147/} Philadelphia LEAA Project, pp. 48-55, 66.

^{148/} Interview with Jennifer Baker Fleming, Director, Women's Resource Network, April 18, 1980 (hereafter cited as Fleming Interview).

^{149/} Philadelphia LEAA Project, pp. 49-50.

^{150/} Fleming Interview.

The therapy groups proposed under the LEAA grant are to provide therapy and counseling for men, identified by and referred from the Philadelphia court system as offenders in domestic abuse cases, to modify their behavior patterns.^{151/} Although there have been logistical and organizational problems in setting up these therapy groups, they are expected to be operational in the near future.

Police training is not part of the LEAA project. However, the Women's Resource Network has received grants from the ACTION regional technical assistance program and the Ford and Rockefeller Foundation to perform such training. That training program, consisting of policy evaluation and revision, development of training materials and films has made steady progress although the actual training has not yet begun due to bureaucratic and budgetary problems.^{152/}

^{151/} Philadelphia LEAA Project, p. 66.

^{152/} Fleming Interview.

D. Rural Areas of Pennsylvania

In the rural areas of Pennsylvania, women who are victims of domestic violence have problems beyond those faced by their urban counterparts. In addition to the inadequacies of the civil and criminal justice systems, women in rural areas often lack transportation, as well as access to shelters and support service. Isolation is a significant problem, which may slow or discourage law enforcement officers' response to domestic calls.^{153/}

For rural women, transportation is nearly always a problem. In Franklin-Fulton County, for example, there is no bus service and one taxi company with three cars serving the entire county. Living any distance from a larger town or city limits a battered woman's ability to leave her battering situation to get help.^{154/}

A related problem women in rural areas confront is the lack of accessible shelter facilities. Often a single shelter will serve several counties.^{155/} At times, a battered woman who may want to leave cannot do so because she is unable to travel the distance to a shelter.^{156/}

The state police have jurisdiction over most rural areas. Because of a lack of personnel^{157/} and the long distance the state police must travel to answer many rural calls, however, it may take as long as thirty minutes to respond to a call for assistance.^{158/} Because women in rural areas feel there cannot be quick assistance when they need it, they are reluctant to prosecute or to seek protection orders.^{159/}

^{153/} Interview with Melissa Fried, Director, Women's Center, Bloomsburg, Pennsylvania, April 17, 1980 (hereafter cited as Fried Interview).

^{154/} Interview with Barbara Channing, Volunteer Executive Director, Women In Need, Chambersburg, Pennsylvania, April 3, 1980.

^{155/} For example, in Bloomsburg, Pennsylvania, there is a very small shelter that in reality can shelter one family at a time. This shelter serves a population of 250,000 people in three counties.

^{156/} Interview with Robert Passeri, Director, Cumberland County Board of Assistance, Carlisle, Pennsylvania, April 16, 1980.

^{157/} Interview with Sgt. Robert Mixell and Corporal Michael Weir, Pennsylvania State Police, Carlisle, Pennsylvania, April 15, 1980.

^{158/} Fried Interview.

^{159/} Id.

to thirty minutes to respond to a call for assistance.^{160/} Because women in rural areas feel there cannot be quick assistance they are reluctant to prosecute or to seek protection orders.^{161/}

^{160/} Fried interview

^{161/} Id.

IV. Support Services

A. Pennsylvania Coalition Against Domestic Violence

The Pennsylvania Coalition Against Domestic Violence is a feminist-oriented, non-profit organization governed by a board of directors composed of delegates from member organizations. The Coalition was founded in 1976 to provide a support system for individual shelters and hotlines that were established to assist battered women and it provides a forum for sharing information, supporting common goals, and working together to provide and improve services to battered women. ^{1/}

The objectives of the Pennsylvania Coalition Against Domestic Violence are: ^{2/}

- (1) To eliminate domestic abuse of women and their dependent children in the Commonwealth of Pennsylvania.
- (2) To provide services to the victims of domestic violence; services to be provided by member organizations, shall include crisis telephone counseling, and/or temporary shelter for the victim and her dependent children, and/or peer and professional counseling, and/or assistance in locating and obtaining community resources, and/or employment skills training and work referral.
- (3) To expose the roots of domestic violence in the institutionalized subservience of women in this culture.
- (4) To provide quality services statewide and to expand service such that every victim of domestic violence in the Commonwealth may obtain immediate, comprehensive service locally.

For several years, the Department of Public Welfare received requests from individual shelters and the Pennsylvania Coalition Against Domestic Violence to provide funding for programs to aid victims of domestic violence

^{1/} Pennsylvania Coalition Against Domestic Violence Request For Proposal (applications) for funding of domestic violence programs, (undated), p. 3 (hereafter cited as Request for Proposal). (In Commission Files).

^{2/} Id.

under Title XX of the Social Security Act. The requests emphasized the need for adequate programs to serve the increasing number of such victims in Pennsylvania. ^{3/} These requests were made notwithstanding the fact that a few battered women's shelters were already receiving Title XX funding that varied in scope and amount from region to region. ^{4/} In a 1979 policy initiative, the Department of Public Welfare rewrote the state Title XX program to include the funding of shelters as an adult protective service ^{5/} and beginning July 1, 1980, it will fund a statewide network of domestic violence programs through Title XX. ^{6/} To facilitate the orderly disbursement of funds to shelters, the Department has negotiated a single contract with the Coalition Against Domestic Violence which will act as the program administrator and serve as a conduit for funding. ^{7/}

The Coalition, with a proposed 1980-81 Title XX budget of \$1,940,529, will fund thirty shelters for battered women. ^{8/} Each shelter will receive an amount ranging from \$5,796 to \$246,839. ^{9/} Since Title XX recipients are required to provide non-federal matching funds at a rate of 25 percent of every federal dollar allocated, each shelter's request for assistance depends on the amount of non-federal money that can be raised. ^{10/}

3/ Commonwealth of Pennsylvania, Proposed Annual Service Program Plan 80/81, Domestic Violence Funding (undated) (hereafter cited as Domestic Violence Funding). (In Commission Files).

4/ Interview with Susan Kelly-Dreiss Executive Director of Pennsylvania Coalition Against Domestic Violence, May 19, 1980 (hereafter cited as Kelly-Dreiss Interview).

5/ Interview with Helen B. O'Bannon, Secretary of the Department of Public Welfare, Harrisburg, Pennsylvania, May 19, 1980 (hereafter cited as O'Bannon Interview).

6/ Kelly-Dreiss Interview.

7/ Domestic Violence Funding.

8/ Kelly-Dreiss Interview.

9/ Id.

10/ Infra, p. 90.

Although administration of Title XX programs is left to the state, ^{11/} the Pennsylvania Department of Public Welfare has not yet developed standards for funding shelters. ^{12/} Therefore, the department currently is using criteria for membership in the Pennsylvania Coalition Against Domestic Violence as the standard for determining a shelter's eligibility for participation in the Title XX program. ^{13/}

^{11/} Kelly-Dreiss Interview.

^{12/} Knowlton Interview.

^{13/} Id.

B. Police Training

In 1978, the Pennsylvania Coalition Against Domestic Violence contracted with Robert Frederick, a retired Philadelphia police captain, to design a training program for teaching police officers how to respond more effectively to incidents of domestic violence. In May 1979, under an LEAA grant, the coalition began providing police training throughout the Commonwealth. Since that time, more than 400 police officers from 45 counties have been trained. Approximately 60 state troopers, as well as officers from 135 local police departments, have participated in the training. ^{14/}

Billed as a Domestic Violence/Crisis Intervention Seminar, the program runs for three days and covers techniques of crisis intervention and conflict management, the Protection From Abuse Act, and the development of referral resource networks. ^{15/} Originally, the bulk of the training was provided by Robert Frederick, whose contract with the coalition expires in May 1980. For the past six months, however, a member of the coalition's staff, Stover Clark, gradually has been assuming more of the training function. He will take full responsibility for the coalition's police training project in June 1980. Usually, additional instructors, such as legal services attorneys, district attorneys, and shelter staff, are drawn from the area in which a particular training session is held. ^{16/}

One Harrisburg police sergeant, who attended the coalition's training in October 1979, used the information provided by the seminar as the basis for a three-hour unit on domestic violence given as part of a special training project undertaken by the Patrol and Traffic Division of the Harrisburg Police Department between January 7 and March 29, 1980. ^{17/} While the department does have a training unit, it is too small to operate its own police academy. As a result, recruits are sent either to the State Police Academy in Hershey or to the Harrisburg Area Community College for 480 hours of training, which more than satisfies the requirements of the Municipal Police Officer Training

^{14/} Interview with Robert Frederick, Consultant, Harrisburg, Pennsylvania, April 18, 1980.

^{15/} Pennsylvania Coalition Against Domestic Violence, Bulletin announcing training session in Butler, Pennsylvania, May 19, 20, 21, 1980.

^{16/} Interview with Stover Clark, Police/Court Liaison, Pennsylvania Coalition Against Domestic Violence, Harrisburg, Pennsylvania, April 7, 1980.

^{17/} Gibney Interview.

Act. 18/ After completing the course work, each recruit is assigned to work with a field training officer, who is an experienced officer recommended by the platoon lieutenant. Additional in-service training is provided during roll-call, the 15-minute period at the beginning of each shift. 19/

18/ Interview with Lt. Carroll T. Wagner, Personnel and Training Officer, Harrisburg Police Department, Harrisburg, Pennsylvania, April 9, 1980.

19/ Id. See also, Gibney Interview.

C. Shelters

There are 38 shelters in Pennsylvania, three of which are within 50 miles of Harrisburg. Within the boundaries of the city limits, however, there is no facility to offer temporary shelter and protection to women and their children after they leave home to escape an abusive man. In some instances, the YWCA will provide shelter for women and their children who are unable to reach a battered women's shelter in one of the nearby communities.^{20/}

From 1976 until 1978 the Women In Crisis Shelter was housed in six rooms in the Harrisburg YWCA and could accommodate seven families under crowded conditions.^{21/} In response to the need for a larger space, the shelter moved from the YWCA to its present location some miles from Harrisburg.^{22/}

At present, the Women In Crisis Shelter, located in a large house in a rural area, can provide temporary shelter for women and their children who reside in Cumberland, Dauphin, Lebanon or Perry Counties.^{23/} Many of the women housed at the shelter are residents of Harrisburg in Dauphin County.^{24/} The philosophy of Women In Crisis is to be non-directive but to serve as facilitators to assist women in solving their own problems.^{25/} In accordance with this philosophy, the shelter provides voluntary counseling for women in active listening skills, goal planning, family living groups and life skills, and refers women seeking employment to Probe (a program designed to assist displaced homemakers) and OIC (Opportunities Industrialization Centers) for job training.^{26/}

Thirty-five miles south-east of Harrisburg in Chambersburg, Pennsylvania, the Women In Need Shelter provides shelter and physical protection for the abused women in Franklin and Fulton Counties.^{27/} The shelter is on the second

^{20/} Interview with Charles L. Allison, Caseworker & Supervisor, Dauphin County Office of the Department of Public Welfare, Harrisburg, Pennsylvania, April 14, 1980.

^{21/} Interview with Debra Baldwin, Executive Director, Women In Crisis Shelter, April 1, 1980.

^{22/} Id.

^{23/} Id.

^{24/} Id.

^{25/} Id.

^{26/} Id.

^{27/} Interview with Barbara Channing, Volunteer Executive Director of Women In Need Shelter, Chambersburg, Pennsylvania, April 3, 1980.

floor of a commercial building in the downtown business district of the city, with the capacity to house 20 women and children. ^{28/} The staff provides residential and outpatient counseling for abused women and helps them to obtain public assistance and job training for which they may be eligible. ^{29/}

In Lancaster, Pennsylvania, the Women Against Abuse Shelter, established in 1975, is housed in a large old building near the center of the city and has the capacity to accommodate 25 persons. ^{30/} The shelter's immediate concern is the physical protection of the abused women and it provides group and individual counseling several times a week. ^{31/} The facility, in addition, seeks to provide a supportive environment where women can begin to establish lives for themselves independent of their abusive spouses. ^{32/}

^{28/} Id.

^{29/} Id.

^{30/} Interview with Donna E. Glover, Director, Lancaster Women Against Abuse Shelter, Lancaster, Pennsylvania, April 8, 1980.

^{31/} Id.

^{32/} Id

D. Legal Services

After leaving an abusive spouse a battered woman may need legal advice and assistance to help protect herself and her children from further physical abuse. Frequently the woman is penniless with no means of financing any legal action against the batterer after leaving the home. In such cases, the battered woman is forced to seek free legal assistance.

In Harrisburg, Pennsylvania, Central Pennsylvania Legal Services provides such services to persons with civil legal problems qualified under the income guidelines of the program.^{33/} Central Pennsylvania Legal Services, which serves Dauphin and other nearby counties, is funded by the Legal Services Corporation and Title XX of the Social Security Act with a budget in 1979 of 1.6 million dollars.^{34/} The program has one office located in Harrisburg to serve the income eligible population of Dauphin County.^{35/}

Central Pennsylvania Legal Services is funded annually at \$7.39 per person eligible for assistance, which means theoretically that there are 125,000 persons in the counties served by the program who are eligible to be clients.^{36/} Legal Services estimates, however, that the number of persons qualified by income for assistance in the counties served is twice the amount indicated by the program funding.^{37/}

One central board of directors with 5 representatives from each county provides the overall management and policies for the program, including setting the agency-wide priorities or issues which the staff is to litigate, establishing guidelines for the operation of the offices, and overseeing the financial affairs of the program.^{38/} In addition, each office has a clients' council which meets regularly to review

^{33/} Interview with Greg Berta, Executive Director, Central Pennsylvania Legal Services, Lancaster, Pennsylvania, April 8, 1980 (hereafter cited as Berta Interview).

^{34/} Id.

^{35/} Interview with Stephen Krone, Managing Attorney of the Dauphin County Office, Central Pennsylvania Legal Service, Harrisburg, Pennsylvania, April 11, 1980 (hereafter cited as Krone Interview).

^{36/} Berta Interview.

^{37/} Id.

^{38/} Id.

community complaints against the agency and client grievances. ^{39/} The councils are very involved with program funding issues and problems, and assist the agency in raising funds for various activities. ^{40/}

Title XX regulations governing the program require that every person seeking assistance from Central Pennsylvania Legal Services whose income is 40 percent of the state median income should be assisted. ^{41/} A battered woman with no income who has just left home to escape an abusive male would qualify for assistance from legal services. ^{42/} An applicant's ownership of property would not be considered in determining her eligibility for assistance because the program's philosophy is "a person should not be forced to mortgage her home or to sell her assets to obtain legal assistance." ^{43/}

An application for assistance from Legal Services is made by calling the office to schedule an appointment or by just walking into the office off the street. ^{44/} An initial interview of the applicant is conducted by a secretary-receptionist to ascertain the nature of the problem and what action the office should take. ^{45/} During that interview a determination of a person's eligibility for assistance under the income guidelines of the program is also made. In Dauphin County every eligible person requesting assistance from Central Pennsylvania Legal Services must be assisted pursuant to Title XX regulations. ^{46/}

There is no attorney designated each day to assist persons with emergency problems requiring immediate legal action. The office, however, has a system whereby each attorney, depending on experience, is allotted time during the week to be available to assist persons in emergency situations. ^{47/}

^{39/} Id.

^{40/} Id.

^{41/} Central Pennsylvania Legal Services, Lancaster, Pennsylvania, 1979-80 Title XX Eligibility Levels (In Commission files).

^{42/} Id.

^{43/} Interview with Nancy E. Rourke, Attorney, Central Pennsylvania Legal Services, Harrisburg, Pennsylvania, April 3, 1980 (hereafter cited as Rourke Interview).

^{44/} Id.

^{45/} Krone Interview

^{46/} Id.

^{47/} Id.

An emergency case might be an instance where a person is scheduled for a hearing in a few days, has received or a complaint that needs to be answered immediately to protect a person's interest in a case.^{48/} A woman who is seeking a protective order under the Protection From Abuse Act is considered an emergency case and will be assisted the same day if possible.^{49/}

^{48/} Id.

^{49/} Rourke Interview.

E. Public Assistance

Frequently battered women are financially dependent upon the men who abuse them. After leaving the abuser the woman is forced to seek independent means of financial support and housing for herself and her children. Women in this position usually have little or no job training or skills and are often unemployed. Public assistance programs for subsistence and housing often are the only way for these women and their families to survive without returning to the home of the abuser.

In the State of Pennsylvania, the Department of Public Welfare is authorized to administer all public assistance programs. The Social Security Act, as amended, and Pennsylvania law ^{50/} authorize the operation of assistance programs by the Pennsylvania Department of Public Welfare to enable needy persons to maintain for themselves and their dependents a decent and healthy standard of living. Department of Public Welfare programs available to battered women include Aid to Families with Dependent Children, General Assistance, Emergency Assistance, Medical Assistance, Food Stamps, and Social Services.

1. Aid To Families With Dependent Children (AFDC)

The Aid To Families with Dependent Children program provides financial assistance for children who are needy due to a lack of support from parents. ^{51/} As a condition of eligibility for AFDC benefits, deprivation of support or care must exist in each case. A child will be considered deprived of parental support or care if his/her father or mother, or both, are ^{52/} dead, absent from the home, physically or mentally incapacitated, and/or unemployed.

^{50/} Act of July 13, 1957, Pub. L. No. 852.

^{51/} Commonwealth of Pennsylvania Department of Public Welfare, Public Assistance Eligibility Manual Procedure Release, 101.1(d) (undated). The Public Assistance Eligibility is a compilation of Pennsylvania regulations of public assistance benefits, including financial, medical and food stamps. (Hereafter cited as Public Assistance).

^{52/} Id. §153.43(a)(1)(2)(3)(4).

Assistance will be provided for otherwise eligible persons who are:

- (1) under the age of 18, 53/
- (2) aged 18 to 21 and regularly attending a school, college, university, or institution that provides vocational training. 54/
- (3) unborn children, when the circumstances of the parent(s) are such that the child, if born, would qualify as a dependent child. In such instances, the mother's pregnancy must be established by a physician. 55/

Assets of an AFDC recipient must be limited to ownership of a home, 56/ household furnishings, personal effects and items used to equip and maintain a household for the applicant, and family heirlooms, clothing and children's toys. 57/ The assets may include one automobile, equipment and material which are necessary for employment, rehabilitation or a self-care plan for the applicant, and life insurance with a cash value not to exceed \$1,000. 58/

An applicant for AFDC is required to assign her rights to child support to the Department and to cooperate with the Department in identifying and establishing paternity, and locating the absent parent. 59/ If the Department contacts the father, he has the right to know the name and address of the woman who provided his name. AFDC regulations, however, provide that a mother is not required to give the father's name if good cause can be established for noncompliance. 60/ The threat of further physical abuse from the spouse/mate may be good cause.

In 1957, an advisory committee was appointed by the Secretary of Public Assistance to develop a policy statement on the amount of financial assistance necessary to provide recipients with a decent standard of living. 61/

53/ Id. §145.43(1).

54/ Id. §145.43(2).

55/ Id. §145.43(3).

56/ Id. §179.23(a).

57/ Id. §181.43(a)(1)(ii)(i).

58/ Id. §181.43(A)(iv)(iii), b.

59/ Id. §187.23(a)(1), Id. §187.23(b)(i).

60/ Id. §187.23(a)(3), Id. §187.24(b)(1)(i).

61/ Commonwealth of Pennsylvania, Department of Public Welfare, Public Welfare In Pennsylvania, 1676-1966, p. 42, (1969).

This statement became the Public Assistance Standard used by the Department in establishing the amount of financial assistance program grants to recipients. Each year Pennsylvania updates AFDC benefits payment but in 1980 the Department of Public Welfare, due to inflation, is providing assistance at 66% of the standard estimated cost for a decent living in the State. ^{62/} Pennsylvania ranks 16th among the 50 states in the average payment per AFDC recipient ^{63/} with an AFDC family of 3 being awarded \$332 per month. ^{64/}

An application for any type of assistance can be made by submitting a signed application form prescribed by the Department and a signed form indicating an understanding of her rights and responsibilities under the law. ^{65/} Frequently, the facts necessary for a decision on an applicant's eligibility for assistance can be assembled at the initial interview and assistance authorized at that time. ^{66/} In any case, the maximum lapse of time between the date of application and authorization of the first assistance payment should be ten work-days from the date of initial application. ^{67/} If the application is pending beyond the prescribed time limit, the applicant will be informed in writing of the reason for delay and her right to a fair hearing before the state office if she believes the delay is unjustified. ^{68/} In instances where factual evidence indicates that an applicant for public assistance is in immediate need of financial assistance an emergency or county fund can be used to render timely assistance. ^{69/}

In addition, persons applying for public assistance are required to furnish a social security number for all family members for whom assistance is requested. ^{70/} This social security number will be used for purposes of identification in the administration of the child support program. If an

^{62/} Interview with Dennis Putze, Statistical Analysis, Income Maintenance Division, Department of Public Welfare, Harrisburg, Pennsylvania, May 7, 1980.

^{63/} Id.

^{64/} Id.

^{65/} Public Assistance, 175.23(a).

^{66/} Id. 125.1.

^{67/} Id. 125.24(d).

^{68/} Id.

^{69/} Id.

^{70/} Id. 229.24(2).

applicant and her family needs a social security number it is the responsibility of the Department's personnel to complete and submit an application to acquire the number. ^{71/}

The Department of Public Welfare regulations require that each AFDC application be documented as to the applicant's identity and age. Identity may be verified by a social security card, driver's license, selective service or voters registration card while age may be verified by birth certificate, baptismal records, etc. ^{72/} The Department cannot deny or delay assistance if the applicant does not have documents to verify her age; however, to continue to receive assistance the recipient is required to obtain documents that will verify her age within 30 days of the initial application. ^{73/}

The Work Incentive Program (WIN) is designed to furnish incentives, opportunities and necessary training to eligible AFDC recipients for employment in the regular economy, training/or educational services for work in the regular economy, and participation in Public service employment. ^{74/}

All applicants for AFDC are required, as a condition of eligibility for assistance, to register for WIN work or training. ^{75/} A person who is required to register for the WIN program and who refuses to do so without good cause is not eligible for AFDC assistance payments; however, assistance is authorized to be continued to other members of the family. ^{76/}

An AFDC recipient is exempt from WIN registration if: ^{77/}

1. She is under age 16;
2. She is attending school full time and age 16 but not yet 21;
3. She is temporarily ill or injured;
4. She is incapacitated;
5. She is 65 years of age or older;
6. She is needed in the home in a substantially continuous basis to take care of another family member with a medically verified condition.

^{71/} Id. 155.1.

^{72/} Id.

^{73/} Id. 125.1(b).

^{74/} Id.

^{75/} Id.

^{76/} Id. §167.41(b).

^{77/} Id. §167.43(b)(1)(2)(3)(4)(5)(6)(7)(8)(9).

General Assistance

General Assistance, a state program, provides financial assistance for persons of all ages in need who meet established program requirements. ^{78/}
A person's eligibility for General Assistance requires that she not be a recipient of State Blind Pension, Supplemental Security Income or be eligible for AFDC benefits because of definitive conditions. ^{79/}

An applicant for General Assistance is considered in need if her income and other available resources are less than the family size allowances established by Department of Public Welfare regulation. ^{80/} The difference between her resources and the amount of the allowance is the amount of the general assistance grant awarded to her. ^{81/}

Income of an applicant for General Assistance that is exempted in determining need is earnings of a child under 14 years of age, money received in the form of emergency and/or disaster assistance, loans, grants, and scholarships, Title VII benefits, and payments to volunteers under the Domestic Volunteer Program. Resources that do not affect eligibility for General Assistance are: ^{82/}

- (a) home ownership;
- (b) household furnishing, personal effects and equipment used in the applicants employment;
- (c) an automobile;
- (d) food stamps;
- (e) savings of a school child up to \$2,000; and
- (f) Life Insurance with a \$1,000 value or less.

All resources, income, and real and personal property, unless specifically exempted, must be considered in determining need and the amount of the General Assistance Grant. ^{83/}

^{78/} Id. §167.43(b)(1), (2), (3), (4), (5), (6).

^{79/} Id.

^{80/} Id. §171.21(a).

^{81/} Id. §183.63.

^{82/} Id. §181.63(a)(1), 179.23(a).

^{83/} Id. §181.63(a).

The General Assistance Program was designed by Pennsylvania to parallel administratively the provisions of the Aid To Families With Dependent Children's Program. ^{84/} Consequently, the General Assistance requirements for application, employment and disbursement of benefits are identical procedures as discussed under the Aid to Families with Dependent Children's Program.

Medical Assistance

The Medical Assistance Program provides medical care for eligible persons through a system of direct payments to practitioners and vendors. ^{85/}

A person is eligible for medical assistance if the money required to meet her living expenses exceeds her income and other available resources. ^{86/} In some instances the Department of Public Welfare will pay for medical services for persons who are taking care of their everyday living expenses themselves, but have insufficient income, resources, and/or support from relatives to pay for their major medical expenses. ^{87/}

Income that does not affect medical assistance eligibility is: ^{88/}

- (1) Occasional small amounts of money from any source;
- (2) money obtained by borrowing;
- (3) Earnings of a child under 14 years of age; earnings of an AFDC child 14 to 21 if the child is dependent and employed parttime;
- (4) Money received from providing day care or a foster home for children;
- (5) Loans and grants obtained and used under conditions that do not allow their use for current living expenses;

^{84/} Interview of Majorie Rynk, Assistant Director for Cash Assistance Programs, The Pennsylvania Department of Public Welfare, Harrisburg, Pennsylvania, April 10, 1980.

^{85/} Public Assistance, §101(f)(5).

^{86/} Id. §171.71

^{87/} Id. §181.81.

^{88/} Id. §183.83(a).

- (6) Money received under the National Older Volunteer American Program of the Older Americans Comprehensive Services, maintenance subsidies received under the Adoption Opportunities Act; and
- (7) One-third of any support payment made to a child who was found medically blind or disabled by SSI.

An applicant's eligibility for medical assistance is affected by all other recurring income, earned or non-earned.

Applicants, who own non-residential real property are ineligible for medical assistance benefits if the property has a marketable value; i.e., money value in excess of claims or liens against it. ^{89/} The medical assistance program has the same personal property exemptions as discussed previously for the AFDC program. All non-exempted property of an applicant, real and personal, that is immediately convertible into cash will be considered available to meet current living expenses. ^{90/} In instances where assets cannot be converted to cash, an application for medical assistance will be processed with no further consideration of the property. ^{91/}

A factor in the determination of an applicant's eligibility for medical assistance is the assessment of the amount of support received or that which should be received from a legally responsible relative, such as a non-applicant spouse or parents. ^{92/} The Department of Public Welfare will look at the legally responsible relatives financial condition including dependents living with him/her and current debts in assessing his/her ability to provide support for the applicant. ^{93/}

An application for medical assistance may be made in person, by letter, or by telephone. ^{94/} The application procedure for medical assistance requires the submission of a signed application prescribed by the Department and a signed form indicating that she understands her rights and responsibilities under the law. ^{95/} Applications are to be promptly acted upon and eligibility

^{89/} Id. §183.83(b).

^{90/} Id. §179.73.

^{91/} Id. §181.63(a)(3).

^{92/} Id. §187.81(a)(3).

^{93/} Id.

^{94/} Id. §125.84(a).

^{95/} Id. §125.84(d)(1)(2)(3)(4)(5)(6)(7).

is to be determined as quickly as possible, preferably within 30 days of the initial application. ^{96/} If a decision is not made on the application within 30 days, the applicant must be advised of the reasons for delay, the date she may expect a decision, and her right to a fair hearing if she believes the delay is unjustified. ^{97/}

Social Service Assistance

The Social Services Program provides services which include identifying problems that limit, disrupt, or deter an individual's satisfactory functioning in society, developing with the person a social service plan to reduce or eliminate the person's problems of functioning, and providing services needed. ^{98/}

The Department of Public Welfare provides direct services to clients, makes referrals to other agencies and programs for needed social service assistance, and provides the necessary follow-up on the referrals of each client. ^{99/} Social service is provided at the request of the client; however, in situations that appear to call for protective services; service is always provided. ^{100/}

Emergency Assistance

The Emergency Assistance program provides financial and medical assistance to needy individuals or families with or without children, including migrant workers who are unable to engage in their normal employment, to deal with a crisis situation causing a threat to the well being of the individual or family and to meet needs resulting from a sudden event requiring immediate assistance. ^{101/} Applicants with or without children age 21 residing in the home may qualify for emergency assistance to avoid

^{96/} Id. 127.84(a)(2).

^{97/} Id. 125.84(e)

^{98/} Id.

^{99/} Id. 121.3(c)(2).

^{100/} Id.

^{101/} Id.

destitution of the child/family or to provide living arrangements for the child/family in a home unless the applicant or child/family without good cause refused to accept employment. ^{102/}

Assistance under the program may be authorized in the following instances:

1. Families with children under age 21, who do not qualify for AFDC but have emergency needs may be authorized for the Family Cash Assistance Program. ^{103/}
2. Individuals or families without children who have immediate needs that cannot be met by their own income or resources or by any other source may be authorized for the Family Cash Program. ^{104/}
3. Families or individuals who meet the eligibility criteria for emergency assistance may be authorized total shelter costs, i.e., the money necessary to prevent eviction, foreclosure or to provide shelter.
4. Families or individuals eligible under the guidelines of medical assistance may be authorized for emergency medical assistance. ^{105/}

Applicants for emergency assistance with children who qualify for cash assistance, are automatically eligible for medical assistance for a period of 30 days. ^{106/} However, individuals applying for emergency medical assistance only are deemed eligible for emergency medical services if their resources are within the resource standards of the Department's Medical Assistance Program.

The Department of Public Welfare regulations do not prescribe special procedures for applying for Emergency Assistance or set a time limit by which an application must be decided upon. For any type of assistance, a person can apply by submission of signed written application and a signed document verifying her understanding of her rights and Department regulations.

^{102/} Id. 289.1.

^{103/} Id. 289.3(a)(4), (b)(3).

^{104/} Id. 289.4(a).

^{105/} Id. 289.4a(1).

^{106/} Id. 289.4(a)(2)(i)(ii).

Emergency Assistance may be authorized for one 30-day period in any consecutive 12 months.^{107/} The amount of Emergency Assistance issued will be limited to the minimum dollar amount which the local office verifies as required to meet the emergency needs of the applicant.^{108/} In determining the amount of an applicants Family Cash Assistance grant the Department will use the AFDC Program's needs and resource standards.^{109/} In addition, the maximum emergency payment a family/individual can receive for emergency shelter is \$100 for one month or \$300 for 3 months.^{110/} An abused woman with or without children may qualify for a cash assistance and/or shelter allowance not to exceed \$300 for 3 months arrearages.

Food Stamps

The Food Stamp Program is designed to promote the general welfare and to safeguard the health and well-being of the nation's population by raising the level of nutrition among low income households.^{111/} Resource limitation for all households is \$1,750, except households of two or more persons that include at least one member over 60 years of age and then the assests cannot exceed \$3,000.^{112/}

An applicant's entitlement to food stamp benefits is determined by filing an application at the county assistance office by mail, in person or by an authorized representative, an interview, and verification of income.^{113/} The income considered on the Food Stamp application, will be the anticipated income of the household over the period of certification.^{114/}

^{107/} Id. 289.4(a)(3).

^{108/} Id. 289.3(c).

^{109/} Id. 289.4(a)(ii).

^{110/} Id. 289.4(a)(2)(i).

^{111/} Id. 501.1.

^{112/} Id. 521.3(a)(1)(2).

^{113/} Id. 505.4(a).

^{114/} Id. 523.3(a).

The Department, in making a determination of an applicants qualification to receive Food Stamps, calculates the net income as the total of 80% of the earned income, plus unearned income minus any allowable deduction.^{115/}

In addition, to receive Food Stamps benefits, an individual must be a citizen of the United States or an alien admitted for permanent residence.^{116/}

The certification periods for food stamps shall conform to the calendar months beginning with the month of the initial application.^{117/} Households in which members receive a single public assistance grant will be assigned certification periods that coincide with their public assistance review date.^{118/}

Other households are assigned the longest certification periods possible based on the predictability of household circumstances, from three to 12 months.^{119/}

The amount of food stamps coupons allotted to each household is determined by the family income and number of persons in the household. For example, a household of three persons with an income of \$200-203 a month will receive a coupon allotment of \$101.^{120/}

The Department of Public Welfare will provide applicants with the written food stamp certification notices as soon as a determination is made, but no later than 30 days after the initial application was made.^{121/}

Destitute households are entitled to expedited issuance of food stamps from the Department.^{122/} Destitute households are households whose only source of income has been terminated or households whose only income for the month of application is from a new source of which not more than \$25 will be received by the 10th day after the date of application.^{123/} Households with a zero net income are also eligible for expedited services.^{124/}

^{115/} Id. 517.3(a)(1)(2).

^{116/} Id. 541.3(a)(1).

^{117/} Id. 541.3(a)(11).

^{118/} Id. 541.3(a)(f).

^{119/} Id. 541-A Appendix, A Certification.

^{120/} Id. 541.3(a)(12).

^{121/} Id. 541.3(a)(9).

^{122/} Id. 541.3(a) 9 (i)(A)(B).

^{123/} Id. 541.3a 9 (ii).

^{124/} Id. 505.4(c)(2).

When an applicant is authorized for expedited services the Department will either mail the ATP (food stamp authorization) within two work days of the date of application or make the ATP available for pickup by the third work day following the application. ^{125/}

A battered woman who has left home to escape her abusive spouse may qualify for expedited issuance of food stamps as a head of a destitute household with zero income.

^{125/} Id.

F. Title XX

Title XX, the Social Security Act of 1975, makes federal funds available to provide public social services, as defined by each state, to low-income individuals and families.^{126/} Services are to be provided to help recipients reach one or more of the five Federal goals to which the service is specifically related.^{127/} The goals are:^{128/}

1. Achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;
2. Achieving or maintaining self-sufficiency, including reduction or prevention of dependency;
3. Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families;
4. Preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care;
5. Securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

At least 50 percent of the funds allocated to the State must be utilized to provide services to public assistance recipients, including recipients of Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), and Title XX Medical Assistance benefits.^{129/}

Title XX has a \$2.5 billion limit on annual social service spending with the monies allocated to each state on the basis of its percentage of the total United State's population.^{130/} Since Pennsylvania's population has decreased in recent years, the state's percentage of the federal allotment has decreased proportionately, with inflation further reducing the buying power of Title XX dollars.^{131/}

^{126/} 42 U.S.C. §1397.

^{127/} 42 U.S.C. §1397a.

^{128/} Id.

^{129/} Id. §1397 (4)(A)(B)(C)(D)(E).

^{130/} 42 U.S.C. §1397(a)(2)(A).

^{131/} Department of Public Welfare, Pennsylvania Bulletin, Volume 10 - Number 11, p.1131, issued March 15, 1980. (hereafter cited as Bulletin).

To receive Title XX funds, states must provide non-federal matching monies at a rate of 25 percent of every dollar allocated by the Federal government. ^{132/} There are two exceptions to this requirement: ^{133/}

1. Because of the high priority set by Congress on Family Planning Service, the Federal reimbursement for this service is at a rate of 90% or .90 on every dollar thereby requiring a matching grant of only 10%.
2. In the event that additional federal funds are appropriated by Congress for use in providing Child Day Care Services, the State may not be required to provide matching funds for this program.

In addition, states may provide protective service for both adults and children and Family Planning Service without regard to the recipient's income. ^{134/} Victims of domestic violence who are in need of shelter and/or other Title XX services may be assisted pursuant to Title XX's prevention of abuse provision. In such instances a husband's income will not be considered for purposes of determining eligibility.

Governors in each state are authorized to designate a single public agency to administer the state Title XX Program. ^{135/} The Department of Public Welfare is the public agency responsible for the administration of Title XX funds in Pennsylvania. Services are provided to eligible applicants through a complex provider-service system that relies heavily upon purchase of services on behalf of clients from other agencies, public and private. ^{136/} In addition, the Department of Public Welfare provides social services directly to applicants through state-administered programs for public assistance, juvenile delinquency and the visually handicapped. ^{137/}

^{132/} 42 U.S.C. §1397(a)(a)(1).

^{133/} Bulletin, p. 1129.

^{134/} Id.

^{135/} Bulletin, p. 1130.

^{136/} Id.

^{137/} Id.

The Department administers Title XX contracts with public and private agencies in several ways.^{138/} The Department has regional offices in Philadelphia, Pittsburgh, Camp Hill and Scranton with direct control over the monitoring and disbursement of Title XX funds to agencies in their respective regions.^{139/} In addition to its regional offices, the Department of Public Welfare also utilizes county commissioners to assist in administering the Title XX program.^{140/} There are 67 counties in Pennsylvania, each with three commissioners. County commissioners disburse Title XX funds within each county to qualifying state agencies.^{141/} Finally, the Department of Public Welfare contracts directly with one hundred independent agencies for Title XX funds one of which is the Coalition Against Domestic Violence.^{142/}

Many of the programs currently funded by Title XX in Pennsylvania are programs which were already being funded by the Department under Titles IV and VI of the Social Security Act.^{143/} Since the inception of Title XX some additional programs such as emergency shelters have received Title XX funding while others whose services are no longer required by the client community have lost their contracts.^{144/}

Persons eligible to receive Title XX services include current public assistance recipients, individuals 60 years of age or older whose family income does not exceed \$1,223 for a family of four, and individuals and families whose gross monthly income does not exceed \$764 for a family of four.^{145/} These persons may receive any of the services available in the

^{138/} Interview with Sherry Knowlton, Policy Specialist in the Bureau of Program and Policy Development, Department of Public Welfare, April 12, 1980. (Hereafter cited as Knowlton Interview.)

^{139/} Id.

^{140/} Id.

^{141/} Id.

^{142/} Id.

^{143/} Bulletin, p. 1130.

^{144/} Knowlton Interview.

^{145/} Department of Public Welfare, Pennsylvania Bulletin, Volume 9 - Number 25, p. 1969, issued March 15, 1979.

state plan in accordance with their needs.^{146/} Services provided under Title XX in Pennsylvania include:^{147/}

Camping
Center Services for the Elderly
Chore
Counseling
Day Care Services for Adults and Children
Employment
Family Planning
Home Delivered Meals
Homemaker Service
Housing
Information and Referral
Legal
Life Skills Education
Residency and Part-Day Social Services for Adjudicated
Delinquents
Permanency Planning for Children
Placement Services for Adults
Protective Services for Adults and Children
Service Planning/Case Management
Socialization/Recreation
Transportation

Pennsylvania's Planning Process for the Title XX Program

Federal regulations mandate that each state prepare a new Title XX service plan every year to define services to be provided, determine which ones will be provided in each geographic area to what groups of people and estimate the maximum dollars available for each service and the number of clients to be served.^{148/}

In Pennsylvania, the planning process for a new service plan begins in September of the preceding year at an open hearing where interested people testify about Title XX programs currently funded or new programs that should be funded.^{149/} These hearings are well attended and the public sentiment voiced has a major impact on the programs funded by Title XX in the upcoming year.^{150/}

Following the September hearing, a proposed plan for Title XX services is issued in March and public hearings on the proposed plan are held at

^{146/} 42 U.S.C. §1397(c)(2)(14)(B), (C), (D), (E), (F).

^{147/} Bulletin, p. 1129.

^{148/} 42 U.S.C. §1397(b)(d)(2).

^{149/} Id. and Knowlton Interview.

^{150/} Id.

different sites across the State.^{151/} After issuance of the proposed plan, the public is given 45 days in which to comment on the plan and in June of that year the plan becomes final.^{152/}

Provisions of the proposed plan are subject to change due to public sentiment expressed during the 45 day period.^{153/} However, the pre-plan hearing in September reduces the amount of change made in the final plan because many of the ideas expressed at that hearing are incorporated in the proposed plan.^{154/}

Federal Administration

On the Federal level, the Title XX program is administered by the Administration of Public Services (APS), Office of Human Development Services, with the Department of Health, and Human Services.^{155/} Policy guidelines for Title XX are developed in this office.^{156/}

The Department of Health and Human Services' regional office in Philadelphia monitors the Pennsylvania Title XX Program.^{157/} Each year this office reviews the new State plan for Title XX to see whether it is in compliance with Federal regulations.^{158/} In addition, the office provides technical and policy assistance to the Department of Public Welfare in administering the state program.^{159/}

^{151/} Id.

^{152/} Id.

^{153/} Id.

^{154/} Id.

^{155/} Interview with Robert Ellis, Program Specialist - Region 3, Department of Health and Human Services, Philadelphia, Pennsylvania, May 5, 1980.

^{156/} 42 U.S.C. §1397.

^{157/} Ellis Interview.

^{158/} 42 U.S.C. §1397(e)(b).

^{159/} Id.