

BATTERED WOMEN:

A LEGAL HANDBOOK

FOR NEW JERSEY WOMEN

Where To Go And What To Do If Your Husband
Or Male Friend Beats You



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WOMEN'S LAW FORUM
SETON HALL UNIVERSITY
LAW CENTER

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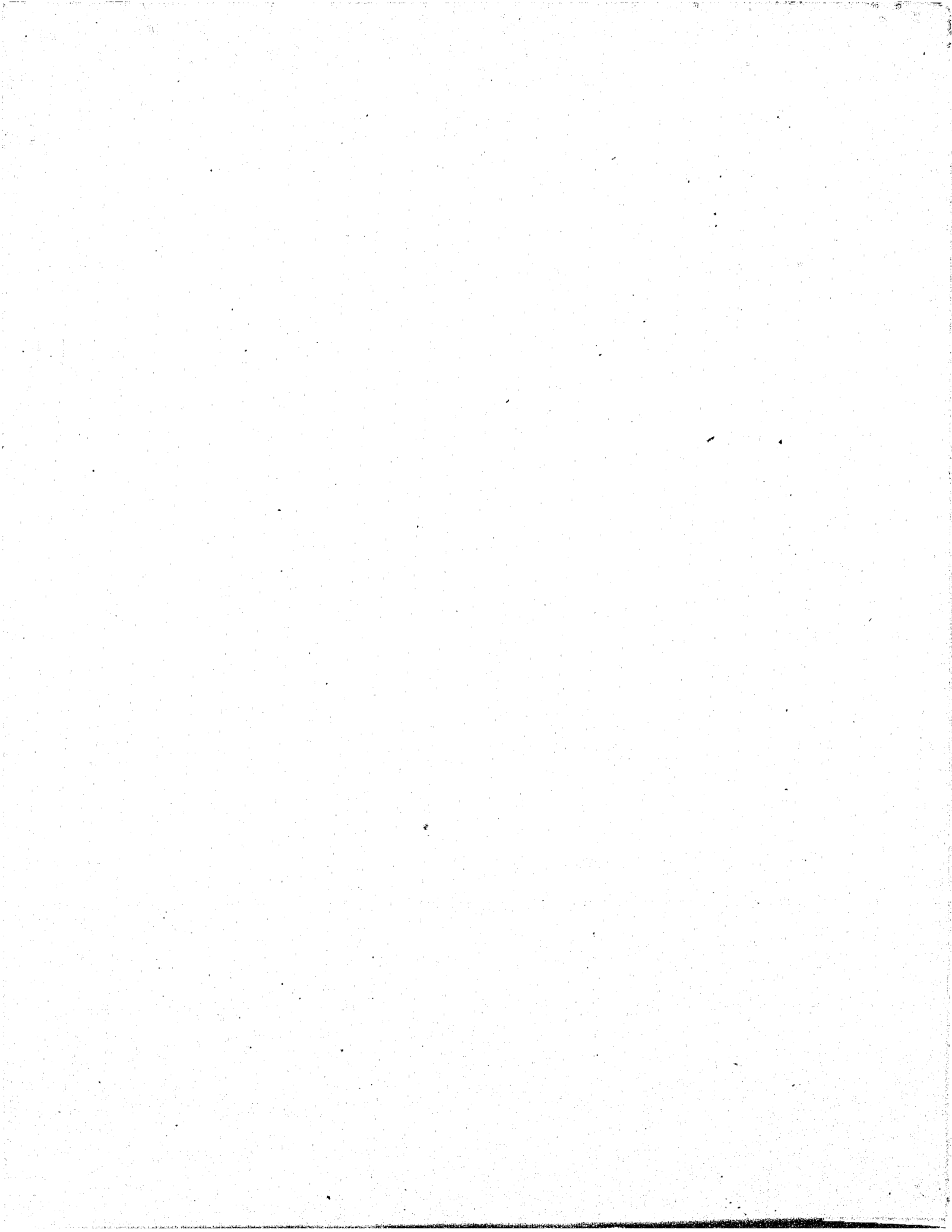
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1. INTRODUCTION

This legal handbook will help you help yourself. If you have been threatened or beaten by your husband or male friend, this handbook will aid you in deciding what to do and where to go for assistance in the State of New Jersey.

Women have a right not to be threatened or beaten by their husbands or male friends. Although it is against the law for your husband or male friend to hit you, the police, court officers and judges are reluctant to do anything about it. You have to decide to do something about it yourself. It will take time and effort. You have to decide if taking the man to court will be the best way to get him to stop beating you; sometimes it might be better just to move away and get a divorce. Othertimes, taking the man to court might be the only way he will leave you alone. In that case, you should not be discouraged by the slowness of the process or the reluctance of the courts to deal with the matter. Get support from a woman's organization or the shelter for battered women in your area.

2. UNDERSTANDING THE LEGAL SYSTEM

The legal system is divided into two major areas: criminal and civil.

a. Criminal Courts

Criminal Courts deal with the commission of offenses. They punish people who violate the laws. The victim of an offense has a right to file a criminal complaint against the offender. The victim will be the main witness of the offense committed, and will have to testify at a hearing. The offender, if found guilty, will be punished by jail or fine, or both.

b. Civil Courts

Civil Courts attempt to settle disputes between people. They deal with many different areas, such as: divorces, requests for child or wife support, requests for money owed, requests for damages, etc.. Civil Court does not handle offenses. As a general rule, you may use criminal or civil court in relation to the same illegal act. You will get different results. For example, if a woman is beaten by her husband or male friend, she can go to Municipal Court (a criminal court) and file a complaint. It might result in getting the man punished. On the other hand, if she starts a civil action against the man, she might get compensated in money for the injuries suffered.

3. CALLING THE POLICE

If you have been threatened or beaten by your husband or male friend, you have a right to have the police come and arrest the man. Call them during or immediately after the incident. The police will only arrest on the scene, if they see the offense being committed, or if you are willing to come with them and sign a complaint against the man. If the police refuse to arrest the man, you can do it yourself and request the police to assist you. This is called "civilian arrest".

In dealing with the police and the courts, you have to be convincing and show that the incident was not an ordinary family disagreement. For this purpose you should save evidence to support your story. Ask a friend, or somebody at the shelter for battered women nearest you, to take color pictures of the injuries. Save any pieces of clothing that have bloodstains on them or were ripped. If you are injured, get proper medical atten-

tion. Medical records are good evidence to present in court.

Demonstrate you are interested in bringing criminal charges against your husband or male friend, and insist upon it, if necessary. The police will be more helpful if they believe you are going to continue the case.

4. HOW YOU CAN USE THE MUNICIPAL (CRIMINAL) COURTS

a. Complaint

You have a right to file a criminal complaint against your husband or male friend if he:

- (1) places you in fear of physical injury;
- (2) threatens you;
- (3) attempts to injure you;
- (4) injures you.

A complaint is a written statement describing the offense committed by the man. It initiates the criminal process. You file the complaint in the Municipal Court of the municipality in which the incident takes place. The police station closest to you should be able to give you the address of the court.

The clerk of the court or a police officer will help you fill out the complaint, and will indicate which criminal statute has been violated. At this stage it is crucial that you tell everything your husband or male friend did to you, or your children. Show all the injuries and any marks you may have. This should diminish the chances of your husband or male friend being charged with a lesser offense than the one actually committed. You have to sign the complaint in the presence of the court clerk or judge, and swear to the truth of what it says. Read it carefully. Tell the clerk to correct any mistakes you see in it. Sign it when you are sure it is correct.

b. Offenses

The most common offenses committed by husbands or male friends against women in New Jersey are listed below. For each offense there is a specific law to protect you and to punish the offending husband or male friend.

(1) Assault Or Assault And Battery. This is a disorderly person statute that can be found in the New Jersey Statute Annotated, Title 2A:Chapter 170-Section 26, abbreviated as N.J.S.A. 2A: 170-26. This offense is non-indictable. It basically means that: the offense involves less serious injuries, it carries a lesser punishment, it will be heard by the Municipal Court without a jury, and it will not be presented to the grand jury. A finding of guilt under this statute carries a maximum penalty of \$500.00 fine and 6 months jail sentence, or both. Very often a finding of guilt for the first such offense, where no severe physical harm resulted, concludes with the imposition of a small fine, a suspended sentence and a warning that a repeat of the offense, while the offender is on probation, will lead to the imposition of the original jail sentence and an additional jail sentence for the repeated offense. A victim should take this into consideration when determining whether or not to file a complaint.

(2) Atrocious Assault And Battery. N.J.S.A. 2A:90-1. It is an indictable offense. This basically means that the resulting injuries are more serious, although not necessarily permanent injuries, such as maiming or wounding. The offense carries a heavier penalty. After a hearing in the Municipal Court, if the judge finds probable cause (sufficient evidence) to believe the man committed the offense, it will be transferred to the County Court. The

county prosecutor can present the case to a grand jury for indictment. If the man is indicted, he has a right to a trial by jury. The maximum penalty for this offense is 7 years imprisonment and \$2,000.00 fine, or both.

(3) Assault With Intent To Kill. N.J.S.A. 2A:90-2. An indictable offense. The maximum penalty for this offense is 12 years imprisonment and \$3,000.00 fine, or both.

(4) Assault With Dangerous Weapon. N.J.S.A. 2A:90-3. An indictable offense. Sentencing depends on a number of factors, including the offender's prior record. If the offender was armed with a weapon, or it was his second conviction, he may receive a higher penalty.

(c) Arrest Warrant

Once the complaint is signed, the clerk or the judge will determine whether to issue a warrant (order for the arrest of the offender), or to issue a summons (which tells the offender that he must come to court and on what day). The court may issue a summons instead of an arrest warrant if it appears that the offender will come to court on his own, the day of the hearing. If you think that the man is not going to appear in court on his own, you should say so, and ask the court clerk or the judge to issue a warrant for his arrest.

(d) Bail

If the offender is arrested, he has a right to apply for bail (a sum of money deposited in court to insure that the offender will appear in court on the stated date), or request release on his own recognizance. Before the judge sets bail, he or she will get a report from the bail program of the County Probation Department.* If you are in fear of being abused

* Program pending in some counties

by your husband or male friend as a reprisal for filing the complaint, contact the probation officer involved in the case at the County Probation Department. Tell the probation officer of your fear. The probation officer can include this in his or her report to the judge. The judge can order your husband or male friend to stay away from you, and not to come by the house. If the man does not obey these conditions ordered by the judge, you can call the police and get the man arrested until the day of the hearing.

If you do not contact the County Probation Department, the judge might release the offender without imposing any restrictions, as long as the offender pays the bail money or part of it.

(e) Special Program In Lieu of Complaint

Some counties in New Jersey have developed programs to deal with minor domestic disputes. These programs attempt to settle the dispute outside the court. A counselor serves as mediator between the parties. These programs are voluntary. Before agreeing to it, you should realize that: the counselor has no judicial authority, she or he is not a judge or magistrate, and the counselor can talk with you and your husband or male friend and suggest solutions, but that is all he or she can do.

No record is made of your meeting with the counselor. If the man repeats the offense, the courts will have no record of any prior offense settled outside of the court. For all purposes, including the determination of jail sentence, the offending husband or male friend will be treated as a first offender. Nobody can force you to accept a program like this as a substitute to filing a formal criminal complaint.

(f) Desertion

Your husband has a legal obligation to support you and the children, if you are in need and he has the money to do so. If your husband does not support you or the children, the law considers it an "economic desertion". N.J.S.A. 2A:100-1 covers this indictable offense. Although the law offers an effective solution to the deserted wife and children, it is rarely used. The maximum penalty for this offense is one year imprisonment or \$100.00 fine. In addition to this penalty, or in substitution to it, the judge can order the man to provide economic support for the wife and children. If you decide to make use of this law, follow the same procedure discussed above: filing a complaint in Municipal Court.

5. COURT HEARING (TRIAL)

You may request of the court clerk that the municipal prosecutor be present on the day of the court hearing. The request will not guarantee the presence of the prosecutor. Since the duties of the municipal prosecutor have not been uniformly defined statewide, the policy in each municipality varies. If you have a private attorney, that attorney may act as prosecutor.

Your husband or male friend must appear in court the day of the hearing. If he does not, the case will be adjourned and a new court date will be set. Ask the judge to issue a warrant for the man's arrest to insure his presence in court on the adjourned hearing date.

You also must come to court on the hearing date and any other adjourned dates. You are the complainant (the person who filed the Complaint) and the principal witness of the

incident. If you do not appear in court, usually the case against your husband or male friend will be dismissed.

Even if your husband or male friend appears in court, the case may still be adjourned to permit him to get an attorney. (For some matters, he has a right to a court appointed free attorney if he cannot afford a private attorney).

At the hearing (trial) of a non-indictable offense, the judge will determine what happened the day of the incident. He will decide whether the man is guilty of the charges filed against him in the complaint.

You will have to testify and swear under oath that everything you say in court is true. You will repeat the story you told the clerk when filing your complaint. Bring with you any witnesses, photographs and medical reports you may have. Everything depends on how well you present your story to the judge. Speak clearly, loudly and slowly. Do not shout or get violent. Do not be ashamed to explain everything that your husband or male friend did to you. Tell of your injuries and fear. Tell how the beating affected your children and if the man hurt them too. Answer any questions the judge or the municipal prosecutor may ask you. Be consistent and brief in your explanations.

If your husband or male friend testifies, do not interrupt him, no matter what he says. When he is done, tell the judge your side of the story. Do not talk to your husband or male friend, only to the judge.

If the judge is fully convinced that you are telling the truth, that the abuse occurred and that your husband or male friend was the person who abused you, he or she will find

your husband or male friend guilty of the offense charged. As mentioned before, if the man is a first offender, he will be released on probation. If you fear reprisals by the man for pressing charges against him, you should tell the judge. The judge may condition the release of your husband or male friend upon him not harrassing you, threatening you, or hitting you. If he does bother you again, you should immediately go to court and file a complaint or you can call the police. If you explain that the man is on probation, he will be immediately arrested.

The judge may also order your husband or male friend to go into a treatment program if the judge thinks he needs it.

6. PROBABLE CAUSE HEARING

If the injuries are very bad or your husband or male friend uses a weapon, or attempts to kill you, he will be charged with an indictable offense. The day of the hearing at the Municipal Court, the judge will listen to both of you and decide whether the man should be charged with an indictable offense (serious offense) or if the case should be dismissed. This is called a probable cause hearing. Your testimony will be the basis for charging your husband or male friend with a serious offense. Be clear, consistent and brief when telling your story. Rehearse with a friend before the hearing.

Your husband or male friend has a right to be represented by a lawyer if charged with committing an indictable offense. His lawyer will ask you questions at the hearing. Do not let the lawyer confuse you. If you do not remember something, say so. Do not contradict yourself. Tell the story as you

remember it, and stick to it. What you say at the hearing will be recorded. If you change your story at a later trial, this testimony will be used to contradict you.

If the judge determines to charge your husband or male friend with an indictable offense, the case will be sent to the county prosecutor. You must come to court every time the case is being heard. You will go before a grand jury to tell them what happened. The county prosecutor will guide you from this point on, but you must remain interested in the case.

7. HOW YOU CAN USE THE CIVIL COURTS

Civil Court actions tend to be technical and complicated and will require you to get an attorney. Some of the actions, like Divorce, are commonly used by battered women. Others, like Temporary Restraining Orders, have been hardly used to help battered women.

Sometimes filing a civil action to stop the threats or beatings, and to get money for the injuries suffered, might be more effective than filing a criminal complaint. You should consult an attorney. If you have no money, go to Legal Services. They can represent you in some of the actions described below.

(a) Divorce

Your only solution to abuse from your husband or male friend might be to move out and get a divorce. If you move out, take the children with you. Otherwise, your husband could claim in court that you have abandoned your children and use this to force you to accept less child support or alimony. Divorce actions are filed in the Chancery Division of the Superior Court. A divorce legally terminates the relationship between you and your husband. Also, it deals with child support

and custody, alimony, and the distribution of goods and property owned jointly by the parties.

Currently, in New Jersey, there are eight grounds for a divorce under N.J.S.A. 2A:34-2.

(1) Extreme Cruelty. This is the most common ground for divorce used by battered women. If your husband hits you or threatens you and it becomes unsafe to live with him, you may file for a divorce. There is a 3 month waiting period between the incident and filing for a divorce, but if you are in danger, it can be suspended by the court.

(2) Separation. This is referred to as "no fault" divorce. You may file for a divorce if you live separate and apart from your husband, in a different home, for at least 18 months. During those 18 months, you may not have sexual relations with your husband or live with him. There must be no hope of reconciliation.

(3) Desertion. If your husband leaves you and does not return for a consecutive period of 12 months you may file for a divorce. You may also file for a divorce 12 months after leaving your husband, if you left because it became unsafe to live with him,

(4) Voluntary Addiction or Habituation to Narcotics. If your husband has been an alcoholic or a drug addict for 12 consecutive months, since your marriage, you may file for a divorce.

(5) Adultery. If your husband at least once has sexual relations with another woman, you have grounds for a divorce. It is difficult to prove this in court.

(6) Deviant Sexual Conduct. There is no waiting period. The law offers no definition of what deviant sexual conduct is. It is

going to depend on the specific circumstances. You must not have consented to the conduct in order to have grounds for a divorce.

(7) Institutionalization for Mental Illness. If your husband has been committed to a mental institution for at least 24 months since your marriage, and has been found incompetent by the court, you may file for a divorce.

(8) Imprisonment. You have grounds for a divorce, if your husband has been in jail for at least 18 consecutive months since your marriage.

b. Separate Maintenance Action

If you do not want a Divorce, you can sue for Separate Maintenance under N.J.S.A. 2A:34-2. This action provides you and the children with financial support. You must show that your husband abandoned you without justification, and that he refuses to support you or the children. If you were forced to leave your husband for your own safety or the safety of the children, and he refuses to support you or the children, you may also sue for Separate Maintenance.

You can bring this action in either the Chancery Division of the Superior Court or the Juvenile and Domestic Relations Court. Remember that in Juvenile and Domestic Relations Court you may appear without an attorney("pro se").

c. "Pendente Lite"

An action for divorce or separate maintenance might take more than a few months to be decided. In the meantime, you have to survive financially and otherwise. This action known as "Pendente Lite" is designed to help you survive, until the Court makes a final decision. The action will be filed in the Chancery Division of the New Jersey Superior Court.

The judge can order your husband to provide temporary support for you and the children. Also, the judge can determine who will have temporary custody of the children and the visitation rights of the other spouse. If your husband has threatened to abuse or has abused you or the children, inform your attorney or the judge. The judge can give you custody of the children, and exclude your husband from the house, until the final decision as to the divorce or separate maintenance is made.

d. Temporary Restraining Order

Your attorney may request the Court to restrain your husband or male friend from threatening you, hitting you, or abusing the children. This might include ordering the man to stay away from the home. This is known as a Temporary Restraining Order (T.R.O.). It has to be filed in the Chancery Division of the Superior Court. The Courts have granted such a request when dealing with married people, upon the showing of an emergency situation that requires immediate protection of the persons or property from harm or threat of harm.

e. Damage Actions

You can bring an action for money damages in New Jersey State against your husband or male friend if he:

- (1) intentionally hits you or threatens to hit you;
- (2) harasses you or your children and causes you to be extremely upset and disturbed emotionally;
- (3) locks you up in a place where you cannot escape;
- (4) calls your employer and causes you to lose your job.

These actions are called Tort Actions. You will have to get an attorney to start the action. If you suffer very serious injuries, you might find an attorney to take the case. If your husband or male friend has no money, it might be impractical to bring this action. Call the Bar Association for information and referral.

f. Mental Illness Commitment

If you believe your husband's violence is a result of mental illness, it is possible to have him involuntarily admitted and hospitalized in any hospital in this State by bringing a court action for "civil commitment". In order to commit a person against his will to a mental institution, the Court has to determine that the person is a danger to himself (might commit suicide), or a danger to others (including you). If you cannot convince your husband to voluntarily commit himself, this is a difficult option. In case of an emergency call the police.

For further information concerning civil commitment and mental health services contact:

1. Public Advocate, Division of Mental Health Advocacy, 10 Commerce Court, 3rd floor, Newark, N. J. 648-3847.
2. Mental Health Association of your County.
3. New Jersey Association for Mental Health, 60 So. Fullerton Ave., Montclair, N. J. 744-2500.

8. HOW YOU CAN USE THE JUVENILE AND DOMESTIC RELATIONS COURT

- (1) This Court can give you temporary custody of your children;
- (2) Order your husband to give you support for yourself and the children;
- (3) Order your husband to stay away from you and the children;
- (4) Set a time and place for your husband to visit with the children;
- (5) Order child support if you are married but voluntarily separated from the father;
- (6) Order child support even if you are not married to the father.

The Juvenile and Domestic Relations Court cannot divorce you. Under most circumstances, if you are divorced or voluntarily separated from your husband, the Juvenile and Domestic Relations Court cannot order support for you, although the Court can order the father to give you support for the children.

You have a right to receive support for yourself and the children if:

- (1) your husband leaves you without justification;
- (2) you live together with your husband but he is not providing support for you or the children;
- (3) you are forced to leave your husband because of his offensive or abusive behavior towards you or the children.

In Juvenile and Domestic Relations Court you may appear "pro se" (without an attorney). The proceedings of this court are summary or speedy. The Court will base its decision for child custody, visitation and support on what is in the best interests of the child.

In order to start the action, you have to file a civil complaint in the Juvenile and Domestic Relations Court of your county. The clerk of the court will help you fill out a complaint and will then give you the date when you and your husband should return to court for a hearing (trial) before a judge. Tell the clerk what your husband did to you or the children, but be brief. The clerk is not a judge. You do not have to convince the clerk that you are right. Tell the clerk what you want the judge to do.

After you sign the complaint, the clerk will send a copy of the complaint and notice of the hearing date to your husband.

On the hearing date you and your husband must appear in court. If your husband does not appear, you may request the Court to issue a warrant for his arrest. Be ready to present your case. Tell the judge what you want and explain why you should get support, child custody or anything else you have a right to get.

9. GETTING FINANCIAL HELP

A major reason why women do not move out of the house after being abused is because they depend on their husband or male friend for financial support. Nobody expects you to live in fear of your life or the life of your children. The following are alternatives you may follow to get financial assistance from sources other than your husband or the father of the children.

a. Emergency Assistance

This is an emergency grant for women with immediate need, who have just left their homes as a result of being beaten or threatened by their husbands. You must apply within 7 days of leaving your home. If you have children, go to the County Welfare Board closest to you and apply for an emergency grant under Aid For Dependent Children (AFDC-C). Your husband will be considered an absent parent. If you are alone, go to the Municipal Welfare Department. In either case, the agency is obliged to take your application without delay and to grant immediate assistance if you are in immediate need. You can request money for food, clothing and housing, including security deposit and money for utilities, where necessary. If you are already receiving public assistance, you are still eligible to receive this emergency grant.

b. Welfare

If you have not applied for emergency assistance, you may still be eligible for a regular welfare grant. There is no time limit for this application. You have a right to apply for public welfare if you have no money or very little money. Contact your local Municipal or County Welfare Board for specific information regarding eligibility and the documentation necessary for your application. If you get no satisfaction from the welfare offices, you might need the assistance of a welfare advocate. Call your nearest Legal Aid Society or Legal Services Office. The local shelter for battered women may have a welfare advocate who can help.

If you receive welfare assistance, Welfare has a right to start an action for support in the Juvenile and Domestic Relations Court against your husband or the father of the children. If you started the action on your own, the Welfare attorney will represent you.

10. CHOOSING AN ATTORNEY

Lawyers are in practice to counsel you legally and represent you. They are not psychiatrists, marriage counselors, social workers or confessors. Not every lawyer is sensitive to the battered women's problems. Choose an attorney wisely. Call up a Shelter, Local Women's Group or County Legal Services Corporation when you are looking for an attorney. Look for an attorney who shows understanding and is experienced with cases such as yours. Do not be afraid to ask questions. If you do not like the lawyer's response, try somebody else. A good attorney will explain the options you have, and will let you decide the course you want to take.

11. LEGAL AID AND LEGAL SERVICES OFFICES

Atlantic County	609 348-4208
Bergen County	201 487-2166
Camden County	609 964-2010
Cape May County	609 465-3001
Essex County	201 485-3800
Newark	201 642-7391
"	201 624-5300
Hudson County	201 792-6363
Mercer County	609 695-6249

Middlesex County	201 249-7600
Monmouth County	201 747-7400
Morris County	201 285-6470
Ocean County	201 341-2727
Passaic County	201 525-4068
Somerset County	201 545-6243
Sussex County	201 383-7400
Union County	201 354-4340
Warren County	201 475-2010

12. BATTERED WOMEN CENTERS

The number of women's shelters throughout the state is rising every day. While many are still in the growing stages, workers at these centers are extremely helpful. They are a perfect middle party between your problem and the law. Many women who work in the shelters were themselves victims at one time and can understand what you are going through. Do not be embarrassed or ashamed to go for help.

Services vary from shelter to shelter depending on the grant money they have received. Most all do counselling, some provide shelter and possibly food and clothing.

The following is a list of the Centers in each county.

(free toll)
State Wide Women's Referral Service (800) 322-8092

Atlantic County
Abuse Center 609 646-6767

Bergen County
Women's Shelter (C.A.P.)Fort Lee 201 944-9600

Burlington County
Women's Shelter 609 871-4700
Catholic Charities 609 386-7331

Camden County
Volunteers of America 609 964-5100
Aid to Women in Crisis 609 428-0505

Essex County
National Organization for Women (N.O.W.)
Orange Office 201 674-1111
Newark Action N.O.W. Hotline 201 733-8000
National Council of Negro Women
Newark 201 248-3498

Hudson County
Bayonne Y.W.C.A. 201 339-7676
Jersey City Y.W.C.A. 201 333-5700

Mercer County
Womanspace - Trenton 609 394-9000

Middlesex County
Women Helping Women - Edison 201 572-5200
Women's Crisis Center-New Brunswick " 828-7273
Rutgers Mental Health Center 201 599-8400
N.O.W. - Middlesex County 201 828-3155

Monmouth County
Women's Resource and Survival
Center - Keyport (24 hour
hot line) 201 264-4111

Morris County
Morristown Hotline 201 267-4763
Monday-Friday, 7-10 P.M.
N.O.W. Far Hills Office 201 761-4479

Jersey Battered Women Services
Greystone Park 201 267-4763

Ocean County

Western Center - Jackson 201 928-0014
24 hour hotline 201 240-6100

Somerset County

Women's Resource Center 201 685-1122
Somerville 201 526-4100
Guideline hotline-Somerville

Sussex County

Barbara Cole 201 875-7561

Union County

Elizabeth Y.W.C.A. 201 355-1500
24 hour hotline 201 355-HELP

If you are close to New York City:

Abused Women's Aid in Crisis
Hotline from 10:00-4:00 P.M.
Monday through Friday and a
24 hour answering service 212 686-1676

END