

**STATEMENT OF  
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Before a Hearing of the  
Assembly Select Committee on Domestic Violence:

**HABEAS RELIEF FOR BATTERED WOMEN  
IMPRISONED PRIOR TO 1992**

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**I. Introduction**

Assemblywoman Cohn and members of the Assembly Select Committee on Domestic Violence, I would like to thank you for calling this important hearing on the implementation of California Penal Code §1473.5, the habeas law for battered inmates. It is an honor to appear before you on behalf of the California Habeas Project. I am the Audrey & Sydney Irmas Fellow at the California Women's Law Center. The Law Center is a policy and advocacy organization dedicated to advancing the civil rights of women and girls in the state of California. One of our core issue areas is violence against women, and the Habeas Project is one of two current projects in that issue area. My role there is to oversee the southern California portion of the Habeas Project.

Today I will present a brief overview of the genesis of the Habeas Project and what has been accomplished so far, particularly in southern California. I will also briefly comment on SB 784, which aims to amend the sunset clause of the habeas law and is authored by Sen. Betty Karnette. It is being sponsored by the California Women's Law Center.

## II. California Penal Code §1473.5

In 1992, California Evidence Code §1107 was enacted to allow expert testimony on battering in all criminal cases, when relevant. The wording of §1107 uses the phrase “Battered Women’s Syndrome” (“BWS”) but over the past decade this term has fallen into disfavor and advocates usually describe the phenomenon simply as “battering and its effects.” Using BWS terminology mistakenly implies that all battered persons are women, that they react to the abuse in exactly the same way by developing a particular syndrome, and that the victims are suffering from a mental illness. By focusing on the one who is undergoing the abuse, the term also deflects attention away from the batterer’s coercive behavior, which is the most important factor in a battering situation. The phrase “battering and its effects” is favored because it is gender neutral<sup>1</sup> and acknowledges that the psychological reaction to violence is not the only issue that should be addressed by expert testimony.

Although the enactment of §1107 in 1992 was a major accomplishment that the California Women’s Law Center actively supported, that effort did not assist women who had been convicted of crimes prior to that time. The most compelling group of inmates who had not benefited from this provision were those convicted of murder for killing their abusers and given term-to-life sentences. Today, accused defendants in the exact same situation are sometimes given a lesser conviction of manslaughter, which comes with a shorter sentence. It seemed particularly unfair that some women could serve a life sentence while others could serve far less time, even though they were convicted of the exact same type of crime.

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<sup>1</sup> The overwhelming majority of heterosexual battering situations involve males battering females. However, the reverse situation does also exist, as well as battering in non-heterosexual relationships. Additionally, though all 50 states legally recognize “Battered Women’s Syndrome” or a similar variation to some extent, many still do not officially recognize the analogous “Battered Child Syndrome” – including California. Battering and its effects is an

For this reason, efforts emerged to provide a remedy for these battered women who were convicted prior to 1992. After a couple of failed attempts during the 1990s, the California legislature passed SB 799 in 2001, which was signed by Governor Gray Davis and enacted as California Penal Code §1473.5. It went into effect in January 2002.

Penal Code §1473.5 establishes a new ground for habeas relief for battered inmates who were convicted of murder prior to 1992 for killing their abusers. There are numerous criteria that prisoners must meet before they are eligible to file for the petition. First, the conviction must be either 1<sup>st</sup> or 2<sup>nd</sup> degree murder under Penal Code §187; manslaughter does not qualify. Second, the deceased must have been the perpetrator of the abuse. This means that if the battered person killed someone other than the abuser, that situation would not qualify for §1473.5 relief. Third, the conviction or the commencement of trial must have occurred prior to 1992. However, a conviction by either trial or guilty plea is eligible for a §1473.5 habeas writ. Fourth, expert testimony on battering cannot have been considered during the prisoner's original proceedings. The reason for this requirement is that the purpose of the §1473.5 habeas writ is to provide the opportunity to present such expert testimony. Fifth, the prisoner must demonstrate "reasonable probability" that the outcome of the original case would have been different had the expert evidence been considered.

The statute also states that if the prisoner previously submitted a habeas petition on the basis of lacking battering testimony, it is grounds for denial of a new writ submitted pursuant to Penal Code §1473.5 if the previous petition was rejected on the merits. In the past, prisoners have tried submitting habeas petitions alleging ineffective assistance of counsel, arguing that their attorneys should have sought expert testimony on battering. If such a petition were denied

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efficient phrase that places appropriate emphasis on the repercussions of a violent person's behavior without having to exclude categories of victims.

as a result of the court determining specifically that the omission of battering evidence was not prejudicial to the outcome, then a §1473.5 petition could be denied. However, if the petition were simply denied without evaluation of the merits, this provision does not apply.

Finally, Penal Code §1473.5 contains a sunset clause, requiring all petitions to be filed by January 1, 2005. Since the law was enacted in 2002, this provision provided a three-year window in which claims could be filed.

### **III. The California Habeas Project**

The California Habeas Project works to assist battered prisoners who would be eligible to file a habeas petition under the new law. The project is a combined effort of the following groups: the California Women's Law Center; two legal clinics at the University of Southern California Law School, the Post-Conviction Justice Project and the Domestic Violence Clinic; Legal Services for Prisoners with Children; and Free Battered Women, formerly known as the California Coalition for Battered Women in Prison. The goals of the Habeas Project are to identify who qualifies to submit a habeas writ, match each candidate with a pro bono attorney,<sup>2</sup> provide training to volunteer attorneys, and monitor the progress of each petition.

The California Women's Law Center and the USC legal clinics focused on identifying eligible candidates from the women inmate population in southern California. These prisoners are housed at the California Institution for Women, or CIW. Free Battered Women has worked to address the population at two women's facilities serving the northern/central California region.

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<sup>2</sup> Initially, it was thought that if there were large numbers of inmates who met the requirements of the law, pro bono attorneys would be matched with those who had the strongest claims while the other inmates could file pro se, or by representing themselves. However, it has become clear that because the legal hurdles in crafting a successful petition are so high, it would be imprudent to leave a §1473.5 habeas petition to be handled by non-attorneys. The Habeas Project is committed to finding pro bono representation for as many eligible inmates as possible.

The Valley State Prison for Women and the Central California Women's Facility are both located in Chowchilla across the street from each other. The Chowchilla facilities are often referred to as VSPW and CCWF.

The USC clinics were primarily responsible for screening women at CIW to determine who met the criteria for filing a §1473.5 petition. They contacted an internal group at CIW called Convicted Women Against Abuse. They told the women to spread the word about the new law and its eligibility requirements, and asked women who wanted to be considered to write a letter to the Post-Conviction Justice Project to request to be interviewed. After all the interviews were conducted, a meeting was held to discuss all the cases and decide which inmates fit the requirements under §1473.5. Seventeen eligible inmates in southern California were initially identified as needing a match with pro bono counsel.<sup>3</sup> As new inquiries are received, Post-Conviction continues to send students out to CIW to conduct interviews on an ongoing basis.

Following the screenings, the California Women's Law Center organized an attorney training to instruct volunteers on how to file a habeas petition under §1473.5. Approximately 30 attorneys attended a training session in May 2002 that was hosted by the law firm Manatt, Phelps & Phillips. This training was crucial for the overall success of cases identified by the Habeas Project. Many attorneys came from large corporate law firms and though they were interested in assisting these battered women in prison, they did not necessarily have a wealth of experience in criminal law, post-conviction writs, or domestic violence issues. The training included supervising attorneys from the USC clinics who could explain the new law to the volunteers, as

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<sup>3</sup> There were a few more inmates who were already clients of Post-Conviction and were not assigned out to pro bono attorneys but instead continued to receive representation directly from USC. Some Post-Conviction clients who are being represented at their parole hearings may have a habeas petition filed on their behalf if parole is unsuccessful. These inmates are not included in the total count of 17 provided above, which refers only to the number of eligible CIW inmates identified by spring 2002.

well as an expert on battering and its effects. At the conclusion of the training session, the 17 cases requiring pro bono representation were each assigned to an attorney or group of attorneys.<sup>4</sup>

#### **IV. Progress and Challenges**

To date, only two women in the state have been released pursuant to Penal Code §1473.5. The first woman was Marva Joyce Wallace, who was represented directly by USC Post-Conviction instead of a volunteer attorney. She was released initially in November 2002, while the District Attorney's office took several months to decide whether it would seek to retry her. In January the D.A.'s office and her attorney at Post-Conviction reached a settlement that avoided a retrial. Ms. Wallace agreed to plea to a lesser conviction of manslaughter, and in return the District Attorney cooperated with reducing the sentence to eight years. Since she had already served 17 years in prison, she was fully released.

The second woman to be released was Susan Deering. She was the first woman released who was receiving representation from volunteer counsel. Shortly, the Committee will hear from Ms. Deering as well as Tara Borelli, the attorney who represented Ms. Deering on her habeas petition. Although they will provide further details on their experiences, briefly I will note that Ms. Deering was released in late December 2002 on a settlement agreement similar to Ms. Wallace's case.

At this point, these are the only petitions that have been filed in conjunction with the Habeas Project. Nearly a year has passed since the cases in southern California were assigned, which indicates that a great deal of time is needed to prepare a petition adequately and thoroughly. In addition, several cases have been shifted to new counsel due to a variety of

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<sup>4</sup> Additionally, one more inmate was identified as needing a match with a pro bono attorney in December 2002, several months after the initial group was assigned.

reasons. In some cases, it took several months to recruit attorneys to replace those who were unable to continue their pro bono representation. These delays mean that it could well be another year before all the southern California petitions are filed.

The northern California group has taken more time to get organized. The prisoner population at the Chowchilla facilities is over four times greater than at CIW in southern California, so they have a much larger undertaking. They began screening prisoners in late 2002 and held an attorney training in San Francisco this past January. Approximately 20 cases in northern California have been identified as qualifying for habeas relief under Penal Code §1473.5. In March, these cases were assigned to legal teams consisting of attorneys, paralegals and law students. Keep in mind that these assignments occurred almost a year after the southern California cases were assigned, and we can expect that it will be approximately one year before the northern petitions can be filed. With the current sunset clause of 2005, we are operating under a very tight schedule that does not leave room for delay.

Unfortunately, certain delays have arisen that must be addressed. Delays have been a primary challenge for us. As is often the case, one cause of these delays is a lack of funds. I will address the funding issue, and Olivia Wang, director for the Habeas Project in Northern California, will address the other causes of delay.

A major difference between the volunteers in northern and southern California is that most of the pro bono attorneys in the south are at large firms that can absorb the costs of this type of pro bono work. Up north, however, many are either public interest attorneys or solo practitioners, meaning they do not have the same amount of funding available from their law firms or employers. This situation has led to a stall in providing representation to the battered inmates.

Although there are no fees associated with filing a habeas petition, the biggest expense is hiring an expert on battering who can interview the inmate and provide the evaluation. Since the purpose of Penal Code §1473.5 is to provide an opportunity to rectify the absence of expert testimony, it is critical to include such testimony in order to prove that the outcome of the case would have been different. However, hiring an expert costs several thousand dollars. Most battering experts in California charge between \$100 and \$200 per hour; and they need between 20 to 50 hours to complete an evaluation. The expert must interview the inmate about the offense and history of battering, review the case file and other available records, and prepare a detailed written report. Some cases might be fairly straightforward, while others are more complex and require a great deal of time. The expert report, though costly, is an essential component of crafting a successful habeas petition under Penal Code §1473.5.

Unfortunately, many of the attorneys volunteering for the northern California group cannot pay for such large out-of-pocket expenses. They sincerely want to help these battered women, but need funding to do so. The Habeas Project has been working to identify opportunities for funding but these efforts take time to solicit donations, apply for foundation grants, and organize fundraising events, especially in light of budget cutbacks facing every organization throughout California. We may not have enough time to gather all the necessary resources to ensure that approximately 40 petitions statewide, particularly the half from northern California, will meet the January 1, 2005 filing deadline.

## **V. Recommendations**

For that reason, one of our recommendations today is that the Committee support SB 784, authored by Sen. Betty Karnette and sponsored by the California Women's Law Center. It amends Penal Code §1473.5 to extend the filing deadline by five years until 2010. This bill is a simple yet effective means of supporting the work of the Habeas Project, by allowing us to complete the task of implementing this law. We understand that in these times of fiscal difficulties it is not feasible to ask the state for money. Instead, SB 784 simply asks for more time, so that the Habeas Project can assist all eligible habeas candidates and search for alternative sources of funding. The bill was passed by the Senate in April and is currently before the Assembly.

Penal Code §1473.5 is the first habeas law of its kind in the entire nation; not a single other state has provided its battered inmates this unique opportunity to remedy a past injustice. California has long been a leader in combating the national epidemic of domestic violence through a variety of means, especially by enacting strong laws that support victims of battering. Other states will be watching California's efforts to implement this habeas law. The legislature should pass SB 784 as a way of demonstrating commitment to ensuring that previously enacted laws have a chance at succeeding. It is very possible that the model we have created as the Habeas Project could be replicated in other states throughout the country. We urge you to support SB 784 and ask your colleagues in the Assembly to do the same.

Again, I sincerely appreciate the opportunity to address the Committee today and shed light on these very important issues. Thank you very much.