

BATTERED AND CONVICTED

One State's Efforts to Provide Effective Relief

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In 1982, a California jury convicted Jeanette Crawford of first degree murder for killing her sleeping husband, a man who had severely abused his wife throughout their five-year relationship. As was common at the time, no evidence of the abuse was admitted at trial. In the early 1990s, however, Jeanette Crawford filed a clemency petition with the California governor, requesting release from prison based on her status as a battered woman who killed her abuser in an attempt to save her life. Seven years later, the governor denied Crawford's request, and instead commuted her sentence in a manner that still left the initial decision as to whether she would ever be released in the hands of the state parole board. The parole board then voted four times over the next several years to release Crawford, and three times the sitting governor exercised his power under the California Constitution to reverse the board's decision. In 2003, however, several weeks after Crawford filed a petition in court requesting release pursuant to California Penal Code § 1473.5, the state's newly enacted habeas

statute, the governor permitted the board's fourth grant of parole to stand and released Crawford.

This story is but one example of the challenges facing prisoners, primarily women, convicted of very serious crimes at a time before relevant mitigating evidence of abuse was generally admitted at trial. Efforts in several states to obtain release for these women prisoners have focused on clemency requests and legislation requiring state parole boards to consider mitigating information in release decisions. In California, a multiyear effort by activists and state legislators resulted in the creation of a new avenue for relief, a new habeas statute that enables state courts to consider whether the lack of mitigating evidence of battering prejudiced the outcome, and, if so, to reverse the conviction on the basis of such evidence. (*See California Stands Alone*, page 27.)

In 2001, California enacted section 1473.5, creating a habeas corpus claim for battered women convicted of murder before January 1992—the effective date of section 1107 of the California Evidence Code, which recognized the admissibility of expert testimony on “battered women's syndrome.” In 2004, the state legislature substantially amended section 1473.5 to substitute the gender-neutral phrase “intimate partner battering,” increased the types of applicable crimes to all violent felonies, and extend the period of time the statute covered to include crimes that occurred prior to August 29, 1996, the date the California Supreme Court held expert testimony on battering relevant to self-defense claims. (*See People v. Humphrey*, 13 Cal. 4th 1073 (1996).) Although section 1473.5 is a less than perfect solution to the problem of

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over-punishment of battered persons, this statute has been the means by which many incarcerated battered women in California have been released. Section 1473.5 also has been a more effective mechanism for addressing this injustice than previous California legislation enacted with the same purpose, in all likelihood because it is a habeas remedy executed by the judicial, rather than executive branch.

This article begins with a brief discussion of the development of the use of expert testimony on intimate partner violence and its effects in the last decade of the twentieth century, and the efforts of prisoners, attorneys, and legislators to address the problem prior to the enactment of section 1473.5. The article then discusses the enactment of this statute and two important amendments to it. The article ends with a description of the work of attorneys and other advocates to identify and provide relief for qualified women, and offers a few thoughts about perceived shortcomings of the legislation.

Recognizing the Importance of Expert Testimony

Beginning as early as 1980, attorneys in California and elsewhere began using expert testimony on battered women's syndrome to support their clients' defense claims, including self-defense. Between the early 1980s and mid-1990s, however, many women in California who were convicted of crimes directly resulting from a history of battering did *not* have the benefit of such expert testimony in their criminal trials, or pled guilty to very serious crimes without being aware of the possibility that this kind of testimony could support a criminal defense. Reasons for the failure to admit such evidence ranged from defense counsel's lack of awareness of the existence of this type of testimony or a belief that it would not be helpful, to court rulings that the testimony was not admissible because of lack of sufficient scientific validity. In 1991, California enacted California Evidence Code § 1107, which expressly recognized the admissibility of battered women's syndrome testimony in an appropriate case. Section 1107, "Expert Witness Testimony on Battered Women's Experiences" stated:

In a criminal action, expert testimony is admissible by either the prosecution or defense regarding battered women's syndrome, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a criminal defendant to prove the occurrence of a criminal charge.... *Expert opinion testimony on battered women's syndrome shall not be considered a new scientific technique whose reliability is unknown.* (West 1992) (emphasis supplied.)

In 2004, the legislature amended section 1107, replacing the phrase "battered women's syndrome" with "intimate partner battering and its effects" throughout the statute. (See Cal. Evid. Code § 1107 (West 2009).)

As attorneys increasingly used this type of expert testimony to assist in the defense of clients charged with a homicide offense, legal scholars and mental health experts began to critique aspects of the content of the testimony, and in particular, experts' use of the term "battered woman syndrome" and their characterizations of typical attributes of a battered woman. (See *Misconceptions Regarding Intimate Partner Violence*, page 29.) As a result, in 1996, the National Institute of Mental Health and the National Institute of Justice issued a report in which they recommended that the use of the term "battered woman syndrome" be discontinued because it fails to adequately convey the nature and breadth of scientific knowledge available about battering and its effects, suggests a single pattern of response to battering, and implies that battering is caused by the existence of a preexisting pathology or disease. (Notwithstanding NIJ's recommendation, because the phrase "battered woman syndrome" is still incorporated into many jurisdictions' statutes, attorneys and experts should be mindful of this reality and discuss the evolution of the language used to describe the effects of battering, when doing so will assist the understanding of judges and/or jurors in a given case.) (See US Dept. of Health and Human Services and US Dept. of Justice, *The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials: Report Responding to Section 40507 of the Violence Against Women Act (1996)*, available at <http://www.ncjrs.gov/app/publications/abstract.aspx?ID=160972>).

The evolution of the consensus as to the best terminology for describing the effects of battering is reflected in the amendments to section 1473.5 of the California Penal Code, discussed below.

Early Efforts to Address Battered Women Prisoners

Relief for California's women prisoners convicted of crimes resulting from abusive relationships began with the prisoners themselves, spread to lawyers and other advocates for battered women, and then to the California legislature, which passed three different statutes prior to enacting section 1473.5, each one intended to facilitate the release of battered women prisoners.

Clemency. In 2001, the same year Evidence Code § 1107 became law, 34 California women prisoners convicted of homicide filed a consolidated clemency petition with the governor, asking that he review each case and grant clemency based on each prisoner's status as a battered woman who killed her abuser in an effort to save her

life. In 2002, the California Coalition for Battered Women in Prison, a group of lawyers, law students, and other advocates for battered women, organized to provide these women with legal representation, researching and filing individual petitions on behalf of each woman. This clemency effort was part of a national clemency movement that began in 1991 when Ohio Governor Richard Celeste granted clemency to 28 battered women whom his staff determined had killed their abusers in self-defense. Governors in Maryland and Massachusetts followed suit, releasing 15 more battered women prisoners. (See Sarah M. Buel, *Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct*, 26 HARV. WOMEN'S L. J. 217, 317-29 (2003) (discussion of national clemency movement on behalf of battered women in the 1990s).)

Also in 1992, California passed legislation intended to make the review process for clemency petitions consistent with section 1107's provisions permitting the admission of battered women's syndrome evidence. The legislature amended section 4801 of the California Penal Code, a statute concerning grounds for clemency, to include "evidence of battered woman syndrome" to the types of causes potentially meriting a pardon or commutation. The legislative history for the 1992 amendment states: "Since California law expressly allows BWS to be introduced as evidence in trials, this bill provides that such evidence should also be considered as a factor in commutation or clemency petitions." (S. Comm. on Judiciary, Analysis of A.B. 3436, 1992-1993 Reg. Session (1992).)

Three years later, in 1995, the legislature again amended section 4801 apparently to further prompt executive action on battered women prisoners' clemency petitions. This amendment added a sentence to section 4801 that expressly defined battered woman syndrome: "[E]vidence of 'battered woman syndrome' may include evidence of the effects of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence where it appears the criminal behavior was the result of that victimization." The arguments in support of the bill stated:

The problem has been that "battered woman syndrome" (BWS) has been narrowly interpreted to include only the condition . . . of such a severe degree that the victim's common reaction is passivity and helplessness. . . . However, some women do try time and again to leave their abusers, but are stalked, tracked, threatened, beaten and dragged back. . . . These women do not fit into the narrow definition of BWS. On the other hand, while their attack on their abusers is essentially self-defense, their behavior does not correspond closely enough

CALIFORNIA STANDS ALONE

California is the only state with a habeas statute that explicitly provides a remedy for battered women convicted of murder. Three states allow for evidence of domestic violence and battering in parole consideration hearings:

- See Mo. Ann. Stat. § 217.692 (LexisNexis 2010) (providing that an offender serving a life sentence convicted prior to December 31, 1990, may be considered for parole if she can show corroborated evidence of a history of being a victim of continual domestic violence);
- S.C. Code Ann. § 16-25-90 (LexisNexis 2010) (providing that an offender may be considered for parole after serving one-fourth of her sentence if she offers credible evidence of criminal domestic violence by a household member at the time of the conviction);
- Ky. Rev. Stat. Ann. § 439.3402 (LexisNexis 2010) (providing that an offender convicted prior to July 14, 1992, may file a motion in the circuit court requesting earlier parole consideration on the basis that she was a victim of domestic violence or abuse).

In addition, some states have statutes stating that evidence of domestic violence may be considered as a mitigating factor in sentencing. (See, e.g., Alaska Stat. § 12.55.155(d)(16), Burns Ind. Code Ann. § 35-38-1-7.1(b)(11)).

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to the legal definition of self-defense for that claim to be presented in court. For example, one woman, initially sentenced to 25 years to life for conspiracy to commit murder, had moved five times in three years to escape her ex-husband who damaged her home, destroyed or stole her personal property, and beat and slashed her in front of her children. Nonetheless, the court would not allow the jury to hear evidence of abuse or see medical and police reports documenting her story. When these women appear before the [parole board], since they do not fit the very limited profile described as battered woman syndrome, their experience as battered women, which would be relevant to the Board, is not heard.

(Cal. S. Rules Comm., Analysis of Cal. A.B. 231, 1995-1996 Reg. Session (1995), at http://www.leginfo.ca.gov/pub/95-96/bill/asm/ab_0201-0250/ab_231_cfa_950908_170605_sen_floor.html).

Despite these legislative efforts to facilitate the governor's use of clemency as a means of releasing battered women from prison, few women have received any relief through the clemency process. In May 1993, Governor Pete Wilson decided six of the 34 petitions, denying four, releasing one woman, and reducing the sentence of another from 15 years to life to a term of 12 years to life. In his second term, Governor Wilson commuted the sentences of two more women, releasing one prisoner and reducing Jeanette Crawford's sentence from 25 to life to a term of 20 years to life. No governor has acted on the remaining 26 original petitions.

Parole. A few years after revising the clemency statute, the legislature passed Senate Bill 499 in 2000, in an apparent effort to encourage the parole board to recommend parole for battered women whose convictions were

and the Governor on the cases the board considered pursuant to this subdivision during the previous year, including the board's decision and the findings of its investigation of these cases.

Notably, the legislative history of SB 499 both references the clemency petitions still before the governor and the need for careful review of the sentences of battered women convicted before section 1107 became law:

In view of the extraordinary circumstances surrounding crimes committed by battered women against their batterers, and the inability of many of these women to present evidence of the abuse they endured as a defense at trial, these women deserve serious and heightened review of the sentences they are now serving. It may be that some of them are

As of 2002, only one out of 16 prisoners with substantiated claims of abuse had been released through parole.

the result of their victimization. In California, a person convicted of murder serves an indeterminate maximum term with a fixed minimum term. The prisoner is entitled to periodic parole hearings beginning a year before the end of the minimum sentence to determine whether he or she is no longer an "unreasonable risk of danger to society" and suitable for parole. (*See* Cal. Penal Code § 3041; *In re Lawrence*, 44 Cal. 4th 1181, 1202 (2008) (discussing suitability standard).) California is one of four states in which a decision to parole a prisoner with an indeterminate sentence is subject to review by the governor. (*See* Cal. Const., art. V, § 8(b).) The passage of SB 499 added a second paragraph to section 4801, specifically directing the parole board to take into account information or evidence presented to it concerning battered woman syndrome in making a decision as to whether the prisoner should be paroled:

(b) The Board of Prison Terms, in reviewing a prisoner's suitability for parole pursuant to Section 3041.5, shall consider any information or evidence that, at the time of the commission of the crime, the prisoner had suffered from battered woman syndrome, but was convicted of the offense prior to the enactment of Section 1107 of the Evidence Code The board shall state on the record the information or evidence that it considered pursuant to this subdivision, and the reasons for the parole decision. The board shall annually report to the Legislature

rightfully imprisoned; however, only when their histories are taken into account can the justice of their incarceration and the length of the sentences they are required to serve be fairly determined. A number of women in California prisons have already filed petitions with the Governor for pardon or commutation, or both, documenting their histories of abuse and the victimization by their partners whom they killed. Many other women, who have not yet been identified, are in prison for defending themselves or their children, or both, against their abusers. By requiring the [parole board] to fully consider evidence that the prisoner suffered from abuse inflicted by the victim of the crime and to make a finding on the record of the facts that it considered, and the reasons for the parole decision, this bill seeks to ensure that these women are given just consideration of the circumstances surrounding their offenses.

(Cal. S. Rules Comm., Analysis of Cal. S.B. 499, 1999-2000 Reg. Session (2000), *at* http://www.leginfo.ca.gov/pub/99-00/bill/sen/sb_0451-0500/sb_499_cfa_20000827_102727_sen_floor.html.)

Whether the passage of SB 499 has had a positive impact on parole release decisions for battered women prisoners is uncertain at best. In 1991, the parole board's investigative staff produced the first of over 150 reports of investigations of prisoners referred to it for investigation of the issue of whether the prisoner was suffering from

the effects of battering at the time of the criminal behavior. Before preparing each report, investigators generally interviewed as many people as possible involved with the case, including the trial judge and lawyers, potential witnesses to the abusive relationship, and the prisoner. In many cases, an expert on battered women's syndrome also reviewed tapes of the prisoner's interview and provided an opinion as to whether the person was suffering from the effects of battering when she committed the acts that resulted in her murder conviction. As of 2002, only one woman out of 16 with completed investigations substantiating relevant abuse had been released through the parole process. Based on the most recent data available to the author, as of June 15, 2009, of the 193 investigations referred to the investigative staff, 167 were completed and 14 were still pending. (The staff did not investigate 12 cases because the prisoner had died, chose not to participate, or did not meet the criteria for investigation.) Of the completed investigations, in 29 cases staff fully substantiated the prisoner's claims that she was suffering from the effects of battering at the time of her conviction; nine of those women were still in prison. The staff found 32 prisoners' claims partially substantiated; 20 of those people (including one male prisoner) were still in prison. (A finding of partial substantiation means that some but not all of the prisoner's allegations of abuse were substantiated by independent information; it does not necessarily mean that any of the claims made were found to be untrue.) In contrast, 24 of the 102 people with unsubstantiated claims were no longer incarcerated. (State of California Board of Parole Hearings, *Battered Woman Syndrome/Intimate Partner Battering Statistical Data*, revised June 15, 2009.) Based on the numbers alone, it would appear that having a substantiated or partially substantiated claim may help a prisoner to obtain an earlier release date, but it certainly is no guarantee. Additionally, because so many other factors are relevant to when a prisoner is paroled, perhaps most importantly length of time in prison, it is difficult to assess the reported results, which do not include the length of time served before release. All of those investigated, however, were convicted prior to August 1996.

Moreover, several of the women with substantiated claims, such as Jeanette Crawford, were released on parole only after the women filed section 1473.5 petitions. As in Crawford's case, several other women with substantiated investigation reports eventually released on parole had numerous previous parole grants reversed by the governor, and were only released once they had a section 1473.5 petition pending in court.

Ineffective Assistance of Counsel. In the early to mid-1990s, the University of Southern California's Post Conviction Justice Project filed several habeas petitions

MISCONCEPTIONS CONCERNING INTIMATE PARTNER VIOLENCE

The traditionally conceptualized victim of Battered Women's Syndrome (BWS) is a passive, middle-class, married, unemployed woman acting out of character to defend herself. This image not only ignores reality, it also ignores issues of race and class. African-American and other nonwhite women stereotypically labeled as domineering, aggressive, and hostile generally do not fit this essentialized conception of a victim of intimate partner violence. Moreover, this initial focus on a narrowly drawn definition of a battered woman made it difficult for women who did not fit this stereotyped image to claim BWS in circumstances in which the underlying abusive relationship existed. (See Linda L. Ammons, *Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome*, 5 WISCONSIN L. REV. 1003 (1995); Shelby A.D. Moore, *Battered Woman Syndrome: Selling the Shadow to Support the Substance*, 38 HOWARD L.J. 297 (1995); Michael Dowd, *Dispelling the Myths about the "Battered Woman's Defense": Towards a New Understanding*, 19 FORDHAM URBAN L.J. 567 (1992); Sharon Angella Allard, *Rethinking Battered Woman Syndrome: A Black Feminist Perspective*, 1 UCLA WOMEN'S L.J. 191 (1991).)

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on behalf of battered women convicted, in the mid- to late-1980s, of murdering their abusers. Each of these petitions claimed that the petitioner's right to effective assistance of counsel, under the Sixth Amendment to the US Constitution, was violated when petitioner's trial counsel failed to investigate the use of and present expert testimony on the effects of battering at trial. Each petitioner's claim was supported by a declaration of an expert witness on the effects of battering who had been testifying on behalf of battered women defendants in criminal trials in California since 1983. In each case, the court dismissed the petition on the basis that it was not ineffective assistance to fail to investigate or present such testimony in California courts during the time prior to passage of section 1107.

Enactment of Section 1473.5 and Subsequent Amendments

Until 2002, California recognized two statutory grounds for habeas corpus relief: (1) "[f]alse evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at any hearing or trial relating to his incarceration"; or (2) "[f]alse

physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by that person.” (Cal. Penal Code § 1473(b).) Neither of these provisions provides a substantive basis for challenging the convictions at issue.

In February 2001, State Senator Betty Karnette introduced Senate Bill 799, which proposed an additional ground for a writ of habeas corpus be added to the penal code as section 1473.5. (Prior to SB 799, other similar legislation was introduced several times without success.) The initial version of the statute read:

(a) A writ of habeas corpus also may be prosecuted on the basis that evidence relating to battered woman syndrome, within the meaning of Section 1107 of the Evidence Code, based on abuse committed on the perpetrator of a homicide by the victim of that homicide, was not introduced at the trial relating to that prisoner’s incarceration, and is of such substance that, had it been introduced, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction, that the result of the proceedings would have been different. Sections 1260 to 1262, inclusive, apply to the prosecution of a writ of habeas corpus pursuant to this section.

(S.B. 799, 109th Leg. (Cal. 2001), at http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_0751-0800/sb_799_bill_20010910_amended_asm.pdf).

The statute contained a January 2005 sunset date.

The bill set out four requirements for habeas relief: (1) the petitioner must have been convicted of murder (Cal. Penal Code § 187); (2) the judgment of conviction must have resulted from a plea entered, or a trial commenced, prior to the effective date of section 1107 (January 1, 1992); (3) expert evidence of battered women’s syndrome was not introduced at the petitioner’s trial (if there was a trial); and (4) (credible evidence before the court reviewing the petition that) had such evidence been produced, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction, that the result of the proceedings would have been different. The legislation permitted a court granting relief to reverse, modify, or affirm a judgment, reduce the degree of the offense or the punishment imposed, order a new trial, or order a reversal without a new trial.

The California District Attorneys Association formally opposed SB 799 as originally drafted on three grounds: (1) under existing law, a writ of habeas corpus is available for any person who is unlawfully restrained

or imprisoned; (2) the bill did not contain a limitation for those who have already filed a writ and were denied relief; and (3) the relief sought would be applicable to situations where a plea was entered. (Cal. S. Rules Comm., Analysis of Cal. S.B. 799, 2001-2002 Reg. Session (2001), at http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_0751-0800/sb_799_cfa_20010601_163615_sen_floor.html).

In response to this opposition, the senate amended the bill by adding language stating, “If a petitioner for habeas corpus under this section filed a petition for writ of habeas corpus prior to the effective date of this section, it is grounds for denial of the new petition if a court determined on the merits in the prior petition that the omission of evidence relating to battered women’s syndrome at trial was not prejudicial and did not entitle the petitioner to a writ of habeas corpus.” (S. 799, 109th Leg. (Cal. 2001), at http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_0751-0800/sb_799_bill_20011013_chaptered.pdf). With other minor revisions, SB 799 passed into law.

In 2003, Senator Karnette authored the first amendment to section 1473.5 to address several problems identified by advocates litigating habeas petitions pursuant to the new statute. First, advocates realized they could not accomplish the work by January 1, 2005, so SB 784 extended the date to 2010. They noted challenges in finding pro bono representation for prospective petitioners, gathering documentation of battering that occurred more than a decade earlier, and obtaining and paying for evaluations and reports by expert witnesses on the effects of battering. Legislative history for the bill noted that while the group of volunteer attorneys included persons from both large private firms and individual practices, only those attorneys working in large firms were able to absorb the necessary expense of hiring an expert, reported to cost thousands of dollars. Also discussed were the efforts of the collaborating organizations to find potential sources of funding for the retention of experts, through grants, “discount rates” from experts, or other avenues, to enable the preparation and filing of petitions to go forward. (Cal. S. Pub. Safety Comm., Analysis of S.B. 784, 2003-2004 Reg. Session (2003), at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0751-0800/sb_784_cfa_20030325_134802_sen_comm.html). Senate Bill 784 was enacted into law without opposition.

In 2004, State Senator John Burton introduced Senate Bill 1385. This legislation proposed three substantive changes to section 1473.5. Senate Bill 1385 deleted references to “battered women’s syndrome,” replacing the phrase with “intimate partner battering and its effects.” The bill also proposed amending section 1107 of the Evidence Code in the same manner, and expanding the class of persons eligible to bring habeas corpus writs to include those convicted of *any* criminal offense, not

just those convicted of a homicide. Finally, SB 1385 proposed expanding the class of persons eligible to bring a 1473.5 writ to include those who had a trial or entered a plea before August 29, 1996, the date of the California Supreme Court's decision in *Humphrey*. (13 Cal. 4th 1073.) In *Humphrey*, the court for the first time discussed the relevance and importance of expert testimony on the effects of battering to self-defense claims. (*Id.* at 1076, 1086.) More than 31 organizations supported passage of SB 1385, including the American Association of University Women, the ACLU, the California Public Defenders Organization, California Women Lawyers, and the Peace Officers Research Association of California. (Cal. S. Pub. Safety Comm., Analysis of S.B. 1385, 2003-2004 Reg. Session (2004), at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_1351-1400/sb_1385_cfa_20040326_145239_sen_comm.html).

The California District Attorneys Association opposed the 2004 amendments, arguing that passage of the legislation would “open the floodgates to habeas corpus petitions not previously cognizable” by “eliminat[ing] the previous 2010 sunset provision,” . . . “extend[ing] the category of habeas actions which may be brought to those that were tried before 1996” . . . and “expand[ing] the category of persons authorized to file such petitions. . . .” The association also argued that passage of the statute would “undermine[] the longstanding policy favoring finality of judgment under the law.” The senate then amended the bill to limit the availability of the writ to persons convicted of violent felonies. As amended, SB 1385 overwhelmingly passed both houses and was signed by Governor Schwarzenegger. (Cal. S. Pub. Safety Comm., Analysis of S.B. 1385, 2003-2004 Reg. Session (2004), at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_1351-1400/sb_1385_cfa_20040413_134222_sen_floor.html).

In 2008, another bill extended the sunset date yet again—to 2020.

Implementing Section 1473.5: A Collaborative and Ongoing Process

Once section 1473.5 became law, the next challenges for those advocating for relief for this group of prisoners were to identify each person who qualified for relief and secure legal representation for her. A coalition of community legal organizations, private law firms, and individual attorneys—called the California Habeas Project—came together for the effort. This coalition, which grew out of the California Coalition for Battered Women in Prison, includes the California Women's Law Center (CWLC), Legal Services for Prisoners with Children (LSPC), the Office of the Los Angeles County Public Defender, and the Post-Conviction Justice Project. The

Habeas Project first created and distributed a document that described the new law and those potentially eligible for relief. Volunteer attorneys drafted a questionnaire to provide to any prisoner who believed she might qualify for relief and sought legal representation. With the permission of the California Department of Corrections, Habeas Project members then spoke about the new law at open presentations for interested prisoners at the three women's prisons in California, and distributed the information sheet and questionnaire.

Members then interviewed each person who completed a questionnaire. Post-Conviction Project students and attorneys conducted most of the interviews at the California Institution for Women in southern California, and volunteer attorneys conducted the interviews at the two prisons in northern California. Habeas Project members met by conference call at least once a month for approximately the first two years, reviewing each interviewee's file to determine whether the case should be assigned to legal counsel for further investigation. The assignable files of women incarcerated at CIW were divided among the Post-Conviction Project, the public defender's office, and CWLC, which acted as a clearinghouse for the cases assigned to it, finding pro bono counsel who were, for the most part, attorneys in large corporate firms. LSPC staff served as a clearinghouse for locating counsel for the assignable files of women at CCWF and VSP, the two women's prisons in Northern California. Habeas Project attorneys provided periodic training sessions for new volunteer attorneys unfamiliar with habeas representation.

In January 2002, the Post-Conviction Project filed the first section 1473.5 petition in Los Angeles Superior Court. Petitioner Marva Joyce Wallace was convicted of first degree murder in 1984 for shooting and killing her abusive husband within minutes after a sexual abuse incident. Her petition was granted in 2002, after a hearing in which Wallace, an expert witness on battering and its effects, and several witnesses to the abuse testified. The court vacated Wallace's conviction and released her on her own recognizance, but gave the Los Angeles County district attorney the option to recharge her. After a period of negotiations with Wallace's counsel, the district attorney offered her the opportunity to plead to voluntary manslaughter with time served. She took the plea.

In 2003, the law firm of Latham & Watkins filed a section 1473.5 petition in Los Angeles Superior Court on behalf of Hudie Joyce Walker, a woman convicted of second degree murder in 1991 for killing her abusive husband. The Los Angeles Superior Court denied this petition in 2004 without a hearing, finding that the failure to introduce expert testimony on battering and its effects was not prejudicial to her case. (*See In re Walker*, 147 Cal. App. 4th 533, 544, 54 Cal. Rptr. 3d 411, 419 (2007).)

In 2006, counsel filed a second section 1473.5 petition in the California Court of Appeal. On the basis of the documents filed with the court and oral argument, the court of appeal granted Walker's petition, vacating her judgment of conviction and remanding her case to the superior court for a new trial. (*Id.* at 554, 427). Walker also subsequently pled guilty to voluntary manslaughter. The court of appeal decision held that although section 1473.5(c) "permits" a court to deny a petition on the basis that a previous court had found that the omission of expert testimony relating to battering and its effects was not prejudicial, this ground for denying a petition is discretionary. The court further found that in order to prevent the injustice identified by the legislature in enacting section 1473.5, it should exercise its discretion to consider the merits of a habeas corpus petition, such as Wallace's, brought for the first time under section 1473.5, notwithstanding a previous finding of no prejudice. (*Id.* at 550, 424.)

In 2005, private pro bono counsel filed a petition on behalf of Susan Greenberg, who was serving a sentence of 25 to life for the first degree murder of her intimate partner in 1987. A Placer County Superior Court judge granted her petition after an evidentiary hearing, and reduced her sentence to voluntary manslaughter, which resulted in her immediate release from prison.

In 2007, the Post-Conviction Project filed a section 1473.5 petition in Orange County Superior Court on behalf of Sandra Redmond, who was convicted of second degree murder in 1983 for shooting and killing her intimate partner during an incident in which he brutally raped her. A few months later, the district attorney's office and Redmond stipulated that her petition should be granted and her conviction reduced to voluntary manslaughter. The court signed the parties' proposed order and Redmond was immediately released from prison.

In each of these four cases, the women prisoners had appeared before the state parole board and were denied parole, some of them multiple times, despite the fact that they all had credible evidence in their prison records that the offense was the result of battering.

The variety of remedies ordered in these four petitions demonstrates the range of options available to courts that grant a section 1473.5 petition. The statute provided Susan Greenberg's and Sandra Redmond's judges the authority to reduce the level of a conviction from murder to manslaughter and order a final disposition of the case. It also provided Marva Wallace's and Joyce Walker's judges the authority to simply vacate those women's convictions and remand their cases for a new trial, preserving a role for the prosecutor in determining the final outcome.

Currently, at least 19 women have been released from prison through the efforts of the Habeas Project. (*See California Habeas Project, Frequently Asked Questions, available at <http://www.habeasproject.org/faq.htm>*).

Conclusion

As noted in the introduction, section 1473.5 is not a perfect solution to the injustice it seeks to remedy. One of the obstacles to obtaining relief for eligible persons is the lack of public financial assistance: Relief likely would have come to many women more quickly if the statute had included an appropriation of funding for the costs involved in litigating these petitions, and/or the creation of a statutory right to representation. An amendment to the statute providing for the appointment of counsel once petitioner has made a prima facie case would help to ensure that all those entitled to relief are afforded it. In California, there are significant volunteer resources to draw upon, and it appears that by 2020, pro bono counsel will have filed a habeas petition on behalf of all women eligible for relief. But for those who have not yet received legal assistance and already served too many years for conduct that should have received a much shorter sentence, the delay diminishes any justice received.

Another obstacle to obtaining relief for those eligible is the scarcity of good experts on battering and its effects. California is fortunate to have more than one such expert, but not many more. In southern California, one expert who works extremely hard, often for a reduced rate, handles almost all of the petitions filed.

Finally, although the court of appeal in *Walker* exercised its discretion to hear the merits of Walker's case, not all judges have been willing to do so. The Post-Conviction Justice Project represented a client, whose habeas petition contained extensive credible evidence that her victim had battered her, by filing a petition in both the superior court and the court of appeal. Both courts refused to hear the case on the merits, even though the prior prejudice ruling was made in the context of an ineffective assistance of counsel claim in which no evidence was presented. As the *Walker* court was careful to point out, this kind of refusal to hear the merits of a petition thwarts the stated goal of the legislature. This amendment, although perhaps necessary to secure passage of section 1473.5, diminished its effectiveness and has left some battered women who should be out of prison without a judicial remedy. But despite its shortcomings, section 1473.5 has been the get-out-of-jail card for many deserving women in California who otherwise might never have been released. ■