Identity Confidentiality for Women Fleeing Domestic Violence

Kristen M. Driskell
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I. INTRODUCTION: MOVING IN

Victims of domestic violence who are fleeing their abusers frequently seek to relocate and change their names, their addresses, and their very identities in order to start a new life, free from violence. Helping these women achieve a fresh start presents a new legal problem: How to resolve the conflict between maintaining publicly accessible records and guaranteeing victims' safety by keeping confidential the names, addresses, and other traditionally public records of victims who fear being tracked by their abusers. Legislative concerns about fraudulent use of confidentiality programs and custodial interference by women fleeing with their children in violation of a custody order further complicate an already complex situation and make it nearly impossible to achieve an easy solution.

The statistics on domestic violence present a stark picture of a social problem. The Centers for Disease Control ("CDC") recorded 5 million reported incidents of domestic violence each year, with 2 million resulting in injuries and 1,300 in death. One in three women was abused by an intimate partner at some time in her life. And domestic violence does not simply affect the victim — abusers, too, may feel the repercussions of their actions when their victims unexpectedly react to violence with violence. Several homicide cases have raised Battered Woman Syndrome as a

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1. Although men, too, can be victims of domestic violence, the problem overwhelmingly impacts women. Some feminist scholars argue persuasively that using gender-neutral terms veils the gender-related causes and implications of domestic violence. See Michele Bograd, Feminist Perspectives on Wife Abuse: An Introduction, in FEMINIST PERSPECTIVES ON WIFE ABUSE 11, 13 (Kersti Yllo & Michele Bograd eds., 1988). This Note will therefore refer to domestic violence as a crime against women, although the current and proposed remedies would be available to all victims.


3. Id.
defense or a mitigating circumstance when women kill their abusers. 4 The CDC estimates that the economic costs of domestic violence (including health costs, loss of productivity, and loss of earnings) are approximately $8.3 billion nationwide. 5 In addition, the U.S. Conference of Mayors, after surveying twenty-three major cities nationwide, reported that domestic violence is a leading cause of homelessness. 6

There are presently several legal remedies available to protect a woman from abuse. For example, a woman can request a protective order or a temporary restraining order ("TRO") from the courts, but these judicial orders may not hinder a determined abuser from threatening, injuring, or killing his intended victim. Moreover, civil suits against police officers for failing to enforce protective orders have generally been unsuccessful. 7 Mandatory arrest and no-drop policies have met with criticism from both law enforcement and feminist scholars as ineffective and as a possible contributing factor to an escalation of domestic violence. 8

Given the inefficacy of these measures, escape and establishment of a new identity may be the only way for some victims of domestic violence to break free from the cycle of abuse. But this solution has its shortcomings. As Mary Lou Leary, Executive Director of the National Center for Victims of Crime, reported to the Senate Committee on the Judiciary in 2006:

Women fleeing domestic violence or stalking may have to leave their job, their community, and their circle of friends to relocate to a safe place. To keep from being traced by a determined perpetrator, a woman might change her name and her Social Security number. Then she finds she no longer has any work or credit history. With a "clean slate" Social Security number, she's unable to get a job or even a volunteer position. She may have trouble registering her children at school. She often can't even get a library card. 9

4. For a classic case raising this defense, see Hawthorne v. State, 408 So. 2d 801, 805 (Fla. Dist. Ct. App. 1982).
7. See, e.g., Town of Castle Rock v. Gonzales, 545 U.S. 748, 760 (2005) (enforcement of TRO not mandatory; no civil right to enforcement of TRO absent a showing of some affirmative duty to act); Hanigan v. City of Kent, No. C06-176JLR, 2006 WL 3544603, at *7 (W.D. Wash. Dec. 8, 2006) (police officer not liable for failing to keep confidential victim's address following an incident of domestic violence).
Moreover, advancing internet technologies and the release of personal information by government agencies, courts, and corporations make it easier than ever for an abuser to find and continue to abuse his victim. The problem is further compounded if the woman relocates to a new state, where the laws protecting her confidentiality may differ from those of her home state and where she may have to re-register with — and risk exposure by — the new state’s agencies and courts.

Domestic violence shelters, family violence clinics, and lawyers have developed innovative ways to protect the confidential information of women fleeing domestic violence. For example, all federally funded domestic violence shelters are legally required to meet minimum standards of confidentiality, and many family violence clinics keep confidential the location of the clinic, itself, as well as the names and addresses of all its clients to prevent abusers from finding their victims. However, when a domestic violence shelter breaches that confidentiality, a victim may have no legal remedy. Additionally, a court may sometimes order a shelter or clinic to reveal the victim’s name and address to the other party (sometimes the abuser) in a court proceeding, and thus frustrate the purpose of such a confidentiality policy for a fleeing victim.

Many documents and forums provide public records that place a heavy burden on efforts to maintain confidentiality, including driver’s license information (including name, address, birth date, physical description, and any traffic violations in the last seven years), vehicle registration information, voter registration information, property, court cases, arrests, and change-of-address notifications. Although there are some restrictions on who can obtain such information (except in the case of property records and most court records), a savvy internet user or a charismatic individual...
can easily obtain such information from either the government agency itself or from corporations willing to sell such information for marketing or other purposes. State and federal courts publish court records on the internet where they are accessible through legal search engines and thereby provide the tools for abusers to track their victims to at least a general community, if not to an exact address.\(^\text{15}\) Fear of having identifying information published may deter domestic violence victims from filing necessary court cases or registering restraining orders or custody orders if they relocate to a new state.\(^\text{16}\) Even something as simple as buying property and filing the record in a state that publishes such records online\(^\text{17}\) poses risks to the woman who fears being tracked by her abuser, or may prove deadly for the woman who underestimates the ease of internet searches and the lengths to which her abuser would go to continue the abuse.

Statutory solutions require a careful balancing of the privacy needs of relocated victims of domestic violence and the desirability of free access to public records for political accountability. Many states have address confidentiality programs ("ACP") for survivors of domestic violence, but other states still leave the problem unaddressed. Few states address the more complicated problem of interstate relocation or how to register a protective order in a new state while maintaining one's confidentiality, since many states require notice of the registration to the person against whom the protective order is ordered — the abuser.

This Note will address this conflict in legal interests. Part II will explore current legal remedies for a woman seeking to protect her confidentiality, including name change statutes, Public Records exemptions, and ACPs. Part III will briefly examine the additional obstacles a woman fleeing with her children faces, especially when the abuser has custody rights to the children. Part IV will discuss some proposed remedies from the legal community and also make some recommendations for legal reform. The Note concludes that states need to consider a more uniform application of state law combined with an integrated approach to helping victims of domestic violence, particularly those in poverty, relocate to start a new life free from abuse.


\(^{16}\text{Id. at 2.}\)

\(^{17}\text{This example is suggested by SafetyNet. Id.}\)
II. MOVING THROUGH THE STATUTORY REGIME

A. NAME CHANGE

One way a woman can change her identity is to change her name upon relocation. All states allow her to do so, either by employing the common law method or by meeting the state’s statutory requirements for a name change.

Under the common law, a person can lawfully change her name at any time provided that it does not interfere with the rights of others and is not done for a fraudulent purpose.\(^{18}\) Consistent, non-fraudulent use of a chosen name satisfies this common law requirement. However, for a victim of domestic violence, the emergency situation of violence hardly allows enough time to establish consistent, non-fraudulent use. Thus, victims of domestic violence must either rely on statutory name changes in order to flee their abusers or risk accusations of fraud in voter registration, medical care, and employment. Additionally, a court-ordered name change is necessary to obtain appropriate governmental documentation reflecting the change and permitting the victim to begin a new life.\(^{19}\)

In general, name change statutes require notice of the proposed change, an assertion that the change is made in good faith and not to perpetrate a fraud, and that the change be consistent with public interests.\(^{20}\) In addition, both legal parents of a minor must receive notice of a minor’s petition to change his or her name.\(^{21}\) The name change is then published in local newspapers in accordance with the state’s public acts and open court records requirements.\(^{22}\) Obviously this last requirement of publication defeats the purpose of a woman trying to keep her new identity secret to escape her abuser.

Despite increasing awareness of domestic violence as a social problem, relatively few states include a confidentiality provision in their name change statutes.\(^{23}\) Those state statutes that do waive the publication

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20. See 65 C.J.S. Names § 22 (2007). A judge may deny a name change in the public interest where the name change is governed by an unworthy motive or fraud, or the chosen name is “bizarre, unduly lengthy, ridiculous, or offensive to common decency and good taste,” particularly where the name might “provoke violence, arouse passions, or inflame hatred.” Id. See, e.g., Lee v. Superior Court, 11 Cal. Rptr. 2d 763, 764 (Cal. Ct. App. 1992) (“misteri nigger” not permitted); In re Name Change Petition of Stanley Larue Bethea, 8 Pa. D. & C.4th 645, 646 (1991) (“World Saviour” not permitted). Denials of name change “in the public interest” should thus have little effect on a victim of domestic violence, even though, in seeking a name change, she is technically perpetrating a fraud on her abuser.
22. See, e.g., N.Y. Civ. RIGHTS LAW §§ 63-64 (Supp. 2008).
requirement and seal the name change record to maintain confidentiality usually require a showing of jeopardy in addition to the aforementioned requirements for a name change—a showing that can be difficult for some victims to make. For example, under North Carolina’s statute, a woman must have some documentation of domestic violence in the form of police reports, court records, or letters from a shelter or other domestic violence program. Other statutes are silent as to what burden of proof the victim must meet to satisfy the showing of jeopardy, although two New York cases have indicated that the victim must show a history of abusing by the abuser and a fear of continued abuse through personal knowledge, hearsay evidence of abuse, and any protective orders or criminal records based on such abuse. Both cases weighed the information generously in favor of the victim despite a lack of tangible evidence (documents, photographs, witness testimony, etc.) of abuse. Additionally, there is a trend in states with ACPS to amend their name change statutes to provide for confidential name changes for program participants. Many states use language similar to New York’s name change statute, indicating that the evidentiary showing of jeopardy is similarly minimal. However, in North Carolina, unless the petitioner is a participant in the ACP, she bears the rather onerous burden of showing a history of domestic violence by producing police, court, or agency records documenting the abuse, or presenting documentation of the receipt of funds from the Domestic Violence Center Fund. Such a burden may deter victims who lack official documentation from taking advantage of the amendment to the name change statute, even though the additional evidentiary requirement is ostensibly to prevent fraud.

Women fleeing out-of-state may face additional hurdles in attempting to change their names. Some states, especially those without a confidential name change statute, have a residency or domicile requirement, which prevents a new arrival from immediately changing her name upon

26. See infra Section II(C).
29. Victims of domestic violence are equally subject to such scrutiny as any other person seeking a name change, especially following United States v. Aspinall, which involved a woman who changed her name on the ground of domestic violence while actually seeking to commit credit card fraud and employment fraud. 389 F.3d 332 (2d. Cir. 2004). Cases like Aspinall discourage legislatures from relaxing the traditional name change requirements, even for victims of domestic violence.
relocation to her new home. Thus, such residency requirements, like the common law name change method, could prove detrimental to the woman fleeing the immediate and emergency impacts of domestic violence.

Little case law exists on name changes for victims of domestic violence, even in states with confidentiality provisions in their name change statutes. One explanation for the absence of case law is that women fleeing their abusers simply do not have the time or resources to bring the matters to the attention of courts. Another reason is that demanding a court order paradoxically risks revealing the name or whereabouts of the victim to an internet-savvy abuser. A third, more optimistic explanation is that informal "underground" relocation assistance available in every state and the formal ACPs enacted in some states may be reducing the need to rely on court orders. Finally, courts may simply be sealing all records of name changes related to domestic violence in an effort to protect the victim's identity from the abuser.

Whatever the reason, three court cases in the last three years address such confidential name changes. In In re L.V., a New York trial court first addressed an issue arising under New York Civil Rights Law sections 63 and 64-a, the state's statutory name change and confidential name change statutes. Section 64-a permits the party seeking to change his or her name to forgo the publication requirement under the name change statute if the court finds that publication "would jeopardize [the] applicant's personal safety," and permits the record of the name change "to be sealed, to be opened only by order of the court for good cause shown or at the request of the applicant." The applicant in this case demonstrated a history of domestic violence by the father of her minor child (on whose behalf she also sought a name change) by offering evidence of several criminal court orders of protection in multiple counties. In light of this showing, the court agreed that the applicant was a candidate for non-publication under section 64-a and granted her the exemption. In the course of its opinion, the court noted that despite the ten-year existence of the section 64-a exemption, no case had yet specified what circumstances justified such an exemption.

In the same year, a subsequent New York case, In re Doe, clarified the showing necessary for an exemption under section 64-a. There, an applicant requested exemption from publication, as well as a sealing of the court record of the name change, for both herself and her minor daughter.

32. Id. at 305 (citing N.Y. CIV. RIGHTS LAW § 64-a).
33. Id.
34. Id.
35. Id.
37. Id.
The applicant asserted having personal knowledge of child abuse, offered hearsay evidence of the father's criminal record based on his abuse of the applicant, and presented an order of protection issued on behalf of the applicant earlier that year. Although the court had no problem finding such a showing sufficient to grant the mother's exemption, it had to deal more carefully with the daughter, noting that normally the father has an interest in his child's name change and that any name change must be shown to be in the child's best interests, including the interest in maintaining a relationship with the father. The statute provided an exemption for notice to the other parent for a child's name change only if the second parent was deceased or could not be located. In this case, the father was both alive and locatable (which was arguably a part of the problem). However, the court found that the father's "gross misconduct and the most flagrant violations of his duties as a ... father" constituted constructive abandonment, and therefore, the father no longer retained his right to notice of the name change as a parent of the child. The court thus held that in the case of a child's name change, where there is a showing of physical danger to the parent or child, and that the other parent "effectively has abandoned his rights concerning his child," the court may dispense with notice of the name change, thus reconciling the child's name change statute with the confidential name change exemption under section 64-a.

More recently, a New Jersey appellate court reversed a trial court for refusing to relax publication requirements for a name change and refusing to seal the record of the name change, even after the applicant attached a lengthy certification to her application detailing the history of domestic violence and included police reports, medical reports, protective orders, restraining orders, and photographs of her injuries. In re E.F.G., the trial court relied on an older New Jersey case, Basile v. Basile, which held that a court could not enter a name change for a child while a domestic violence proceeding was pending. The Appellate Division, applying a balancing test that weighed factors against relaxing the publication standards with the injustice that would result from relaxation, found that the applicant clearly demonstrated "a well-founded concern for her personal safety" and that there was no evidence of fraud or other unlawful

38. Doe, 773 N.Y.S.2d at 216.
39. Id. at 217.
40. Id. at 217-18.
41. Id. at 218.
42. Id. at 219 (quoting Application of Fein, 274 N.Y.S.2d 547 (N.Y. Civ. Ct. 1966)).
43. Id. at 220.
44. See id. ("Only this interpretation gives meaning to both statutes.").
47. E.F.G., 942 A.2d at 169.
reason weighing against relaxation.\textsuperscript{48} Thus, relaxing the publication requirements was appropriate under the circumstances of abuse.\textsuperscript{49} The court applied a similar balancing test to determine whether to seal the record. Under that test, the plaintiff bore the burden of overcoming "the 'strong presumption of [public] access'" by demonstrating by a preponderance of the evidence that secrecy outweighs that presumption.\textsuperscript{50} The court found that the applicant clearly overcame the presumption, where "[s]he has not made a broad unsubstantiated allegation of potential harm, but rather has submitted to the court a tragic and upsetting history, documenting domestic violence which warrants protection."\textsuperscript{51} Thus, the court held that the trial court abused its discretion in refusing to seal the record of the applicant's name change.\textsuperscript{52}

Fortunately, all three of these cases reached the right outcome, but the dilemma the court faced in \textit{Doe} — whether to notify the child's father of the name change in light of allegations of abuse — demonstrates the challenge in obtaining a name change for a minor. Similarly, \textit{L.V.} demonstrates the general difficulty in obtaining such a name change, complete with an evidentiary burden of showing jeopardy, in the middle of a flight from the abuser. \textit{E.F.G.} exposes the dangers of the balancing test, under which two different, competent courts could reach entirely opposite results despite extensive documentation of abuse, while the woman continued to risk exposure to resolve the matter and move on with her life.

Simply put, the name change method is an imperfect solution. Even when she changes her name, the woman may feel compelled to disclose her previous identity. For example, she may want to permit background checks for employment, giving her abuser an opportunity to find her by comparing past and present background checks.\textsuperscript{53} As noted in \textit{L.V.}, the court record of the name change can be unsealed at the request of the applicant,\textsuperscript{54} as may be necessary for employment or other court cases. A name change will make it more difficult for the woman to receive spousal support, since she will either have to disclose her name or location to receive the check or, in an enforcement effort, litigate and risk disclosure. Because a name change (and corresponding new social security number) only changes part of her identity, the woman may still be located through her address, through family and friends with whom the woman is still in contact, and through third parties who maintain (and lack confidentiality policies on) records for the newly named woman. Lastly, if a woman moves to another state, it is

\textsuperscript{48} E.F.G., 942 A.2d at 170-71.
\textsuperscript{49} Id. at 171.
\textsuperscript{50} Id. at 172 (quoting Hammock v. Hoffmann-LaRoche, Inc., 662 A.2d 546, 559 (N.J. 1995)).
\textsuperscript{51} Id. at 172.
\textsuperscript{52} Id.
\textsuperscript{53} Goodmark, supra note 19, at 1002.
\textsuperscript{54} In re L.V., 768 N.Y.S.2d 304, 304 (N.Y. Civ. Ct. 2003).
not clear how she will register for voting, a driver's license, or even apply for medical care or employment, absent some record of her name change.

The inadequacy of name changes and the difficulty in procuring one has led some states to provide other statutory remedies for women who "go underground" to flee their abusers. These statutory remedies do not replace name changes but instead add layers of protection for the identity of a woman fleeing abuse.

B. EXEMPTIONS FROM PUBLIC RECORDS ACTS

Another early statutory method of protecting women's identity changes when they fled abusive relationships was to simply exempt such women from the state's Public Records Act. Public Records Acts, like the federal Freedom of Information Act, are considered "essential for a functioning democracy" because they keep the government accountable to the people and permit individuals "to understand and evaluate the inner workings" of the government. As one scholar puts it, "The greatest threat to privacy comes from government in secret." Thus, there is a strong public interest in favor of keeping public records of government actions, especially acts by politicians, agencies, and courts. These public records do include personal information such as that kept in court records, so disclosure is generally limited to discrete, statutorily designated circumstances.

In response to domestic violence victims' fears that the Public Records Acts were exposing their names and addresses to abusers, some legislatures, like Washington, explicitly exempted the addresses of victims of domestic violence from operation of the Acts if the victim could show a fear for her safety. However, these exemptions proved unworkable. An individual would have to ask for an exemption from each agency having a record of her address, and each agency would be responsible for redacting the address from the record before releasing the record to the requesting party. Thus, the multiplicity of state agencies and their differing policies on public disclosure limited the potential for Public Records Act exemptions. Private businesses also felt that the exemptions were overly cumbersome, arguing in part that their records would be less effective if addresses were not included. The victim also benefited only marginally

58. Id. at 112.
60. Id. at 527.
61. Id. at 527 n.24.
from these exceptions. Even if the woman diligently pursued confidentiality, a mere exemption from the Public Records Act could not help her register to vote with confidentiality unless the state provided an independent exemption for voter registration. An example is provided by D.C. v. Superintendent of Elections, a New Jersey case arising before the state adopted its current ACP. There, the victim attempted to register to vote in a new county after relocating to escape her abusive ex-husband and offered to disclose her actual address to the commissioner of voter registration to refute concerns of fraud if the commissioner agreed to keep that address confidential. However, the commissioner refused, noting that the voter registration laws, independent of the Public Records Act, require the county clerk to make available the names and addresses of voters to the public. The victim then beseeched the court to read the state’s Prevention of Domestic Violence Act of 1991 — which provided some level of confidentiality in court records for a victim of domestic violence broadly enough to extend to voter registration. The court discussed the policy behind allowing a victim of domestic violence to register to vote using a post office box address and agreed with the victim, finding that allowing an exemption for victims of domestic violence did not compromise the integrity of the system, since the victim’s real address would still be disclosed to the commissioner to prevent voter fraud.

This victim’s travails underscore the inefficiency of Public Records Act exemptions, which provide an incredibly burdensome process for a victim simply to exercise her right to vote. Moreover, the time the victim spends trying to keep her address confidential and the diligence necessary to make sure each agency and court is aware of the need for confidentiality make it more challenging and more dangerous to escape an abuser by going underground.

Despite these problems, Public Records Acts exemptions remain an important part of protecting the identity of domestic violence victims, though, through ACPs, the process for record keeping has become easier to manage.

C. ADDRESS CONFIDENTIALITY PROGRAMS

In 1991, in response to the problems administering the exemptions from the Public Records Acts and the limited nature of the protection that they offered, Washington pioneered the ACP to help victims of domestic
violence, stalking, or sexual assault keep their addresses confidential without the need to rely on the confidentiality policies of third parties or risk losing their ability to stay connected with the world altogether. Washington’s ACP provides a paradigm for providing a substitute address to victims of domestic violence, and it will be used here as a framework for discussing ACPs in different states.

1. How the Program Works

In all states with ACPs, the program generally operates as follows. A victim of domestic violence files an application for a “substitute” address with the appropriate governmental agency (the Office of the Secretary of State under Washington law). After the applicant is accepted and certified into the program, the state agent provides a substitute address for the applicant, which she may use for personal purposes, such as employment, health care, or electric bills. The victim’s mail is forwarded from that substitute address to her actual address, with the actual address being known only to (and kept confidential by) the Secretary of State.

The participant is also given an “authorization card,” which includes her name, an authorization code, her substitute mailing address, the expiration date of her enrollment in the program, and her signature.

A state agency must accept the address listed on the ACP authorization card for an ACP participant dealing with that agency. Federal agencies, however, are not bound by the state law and only accept authorization cards for official purposes on a voluntary basis. This shortcoming implicates the need for federalization of such programs or the promulgation of a Uniform Act adopted by the federal government. Private actors are also not required to accept the address on the authorization card, but there is hardly any reason not to given the small inconvenience and the important policy interest served. However, greater awareness of these programs could help encourage private cooperation with ACPs.

The ACP also provides an exemption to program participants for purposes of voter registration. A participant must disclose her actual address to register to vote (in order to determine district designations and other jurisdictional matters) but is enrolled as a protected voter. As a protected voter, her substitute address is listed as a matter of public record.

70. For the discussion on application and acceptance, see infra section II(C)(2).
71. Even, supra note 59, at 531.
72. Id. at 535.
73. Id.
74. Id.
75. Id. at 535-36.
76. Id., at 537.
and voting records, while the actual address is kept confidential. A protected voter then votes the same way as a voter who is in the service — by absentee ballot.

Lastly, ACP participants are generally exempted from the state’s Public Records Acts by statute, thus incorporating the earlier attempts to help victims with more streamlined and efficient methods of protecting their confidentiality.

2. Application and Approval

Virtually anyone can apply to a state’s ACP, but approval of the application is subject to the requirements listed by state statute. At minimum in all states, an application must include a signed, sworn statement that the applicant is a victim of domestic violence and fears for her safety, a statement designating the Secretary of State as the agent for receiving and distributing mail to the confidential address, the actual mailing address and phone numbers of the applicant, and all new addresses (residential, school, work, etc.) that the applicant wishes to be kept confidential. In Washington, Florida, Massachusetts, New Hampshire, and Vermont, certification of these applications does not require actual proof of domestic violence nor does it require that the victim’s fear be reasonable. The Secretary of State need not make any credibility determination so long as the application is complete. In fact, once completed, the ACP statutes mandate acceptance, using the phrase “shall approve” for any properly filed and completed application. Once accepted, the applicant is certified for participation in the program for four years, subject to extension by renewal.

Some states have additional application requirements, restricting the number and types of victims who can successfully enter the program. For example, Indiana and Rhode Island have adopted ACPs that limit applicants to those persons who have an actual protective order against their abusers. Indiana defines “domestic violence” broadly to include any act of violence whether or not it has been reported to a law enforcement

77. Even, supra note 59, at 538.
78. Id.
79. Id. at 532-33 (citing WASH. REV. CODE § 40.24.030(1)(a) (1991 & Supp. 1996)).
80. Id. at 532.
82. MASS. GEN. LAWS ch. 9A § 2 (2001).
84. VT. STAT. ANN. tit. 15 § 1151 (2000).
85. See, e.g., FLA. STAT. § 741.403(1); WASH. REV. CODE § 40.24.030(1) (1991 & Supp. 1996); MASS. GEN. LAWS ch. 9A § 2(2).
86. Even, supra note 59, at 533.
However, when applying to Indiana’s ACP, the applicant must include a copy of a valid protective order issued on behalf of the applicant or the minor applicant in addition to other, more standard requirements (sworn statement, designation, addresses, signature) to receive approval and entry into the program. Rhode Island similarly limits participation by adopting a very narrow definition of the term “victim of domestic violence,” including only individuals with restraining orders or no-contact orders. However, such orders may be issued either by Rhode Island or by a court in any other state. The Rhode Island ACP does not specify whether the restraining order must be valid or if it can be an expired order.

By requiring an actual protective order, valid or otherwise, as a prerequisite for entry into the ACP, both Rhode Island and Indiana limit the scope of their programs to reported and documented acts of domestic violence. Since the CDC estimates that only twenty-five percent of incidents of domestic violence are reported at all, let alone followed through on, such a requirement may severely curtail the usefulness of the ACPs to victims of domestic violence fleeing their abusers in these states.

Other states have adopted a middle ground, requesting some evidence of domestic violence or requiring only that domestic violence have been reported, regardless of whether the victim followed through with pressing charges or obtaining a restraining order. For example, California’s ACP requires some evidence of domestic violence in the application to the ACP, although there is no requirement that the Secretary of State make credibility determinations on the evidence presented. California’s statute also requires that the applicant receive assistance in the application process from a “community-based victim’s assistance program,” to provide counseling and an orientation to the program. To enforce this, California requires that the person who assisted the applicant also sign the application. One can see this latter requirement as an additional check on verifying that the applicant is an actual victim of domestic violence, since, presumably, assistants in a community-based victim’s assistance program could make their own credibility determinations as to whether or not to help any given victim apply. It also presents another obstacle for a victim of domestic violence, who may not know where to find such victim’s assistance.
programs in her community. In another variation on the middle ground, New Jersey simply limits its definition of "domestic violence" to acts that have been reported to a law enforcement agency or court. However, the statute does not require that these reports result in a final restraining order or criminal prosecution.

Each state's ACP statute reflects a particular policy decision and varying concerns of the state legislature. Statutes like Washington's, permitting a broad range of applicants to enter the program regardless of actual proof of domestic violence, reflect a legislative concern for victims of domestic violence, a desire to facilitate their efforts to start a new life free from abuse, and a corresponding, though perhaps misplaced, trust that only victims will use the program. By contrast, statutes like Indiana's reflect a greater concern with non-victims' abuse of the system, as reflected by the more stringent requirements for approval. Legislatures in California and New Jersey also demonstrate some fear of abuse in their evidentiary requirements, although these states do not go as far as Indiana and Rhode Island by requiring actual protective orders. While fraudulent use of the program and its resources certainly presents a legitimate concern, heightened requirements for application could make the ACP less appealing to victims of domestic violence who have either no evidence of violence or did not report or seek a protective order when the abuse occurred. Additionally, the differences in state statutes may make it more difficult for a woman relocating interstate to take advantage of the programs, since she may be unfamiliar with the ACP in another jurisdiction, or her state of choice may have no ACP at all.

3. Exceptions

The ACPs generally include exceptions under which the state agent must disclose the confidential address of the participant. Statutes make general exceptions for requests for an address by a law enforcement agency, court-mandated disclosure, and cancellation of certification, which leaves the address open to disclosure under the state's Public Records

98. N.J. STAT. ANN. § 47:4-3.
100. See, e.g., United States v. Aspinall, 389 F.3d 332, 338, 350 (2d Cir. 2004), discussed at greater length, supra note 29.
Act. 102 These exceptions reflect the existence of a competing state interest that necessarily trumps the individual’s interest in confidentiality.

Because some victims of domestic violence are often still involved in dissolution or custody litigation, the court-mandated disclosure exception could severely limit the possibility of participating in the ACP. However, if the litigation occurs in another state (because the victim has relocated to a new state), the enforcement of the foreign decree may be disputed under the Full Faith and Credit Clause, giving the participant an opportunity to defend against disclosure. 103 The statute thus relies on the justice system to protect the ACP from abuse by requiring the litigant to give convincing reasons for disclosure.

Some states, however, have not explicitly codified the circumstances under which the Secretary of State may disclose addresses of participants absent cancellation or termination of certification. In these states, courts may be free to disregard the ACP entirely, because being neither an "agency" within the definition of the statute nor precluded from reopening the issue of whether there was actual domestic violence, they may order disclosure of the participant’s address absent a showing of a reasonable apprehension of fear of future violence or a past incident of domestic violence. 104 In Sacharow v. Sacharow, for example, a program participant in New Jersey’s ACP sought to prevent disclosure of her residential address to the father of her minor child. 105 The court held, however, that the ACP participant had the initial burden of proving prior domestic abuse by the other party as well as a "realistic fear" that abuse will recur. 106 Absent such a showing, the court could disclose her address to the other party.

Sacharow’s refusal to protect the victim’s confidentiality absent a “realistic fear” of recurring abuse likely applies even in states where the statute does limit the exceptions. The court in Sacharow did not rely on the existence of an exception to permit possible disclosure, since the ACP did not require actual litigation of domestic violence or a reasonable threat of continued violence. 107 Instead, the court based its decision on the definition of “agencies,” which are bound by the ACP, and on collateral estoppel. Those statutes that make exceptions for court orders appear not to bind the courts at all and, thus, expose the victim’s address to the possibility of disclosure should she be required to go to court. However, Sacharow’s collateral estoppel argument is significantly weaker in states

102. Even, supra note 59, at 540. The last exception will be discussed at greater length infra section II(C)(4).
103. Id. at 544-45.
105. Id. at 715.
106. Id. at 722. Note, however, that Sacharow took place in the context of a child custody order. Thus, the court’s holding on the burden of proof may be limited to child custody cases where the child’s best interest is also at issue.
107. Id. at 718-19.
like Indiana and Rhode Island, which require an actual court-issued protective order before admission into the program. Although these orders are often obtained *ex parte* and therefore are not issue preclusive, participants in these programs will likely already have all the evidence they need to convince a court not to disclose their address.

Court-ordered disclosures are the biggest loophole in the ACP, but even such disclosures remain subject to the rules of the court and judicial review, giving a victim of domestic violence substantial opportunity to make a showing of previous domestic violence and fear of future abuse. The court-ordered disclosure can still be problematic, though, for a victim of domestic violence who lacks the means to make that evidentiary showing.

4. Termination and Cancellation

Participation can be terminated for any of the following reasons: The participant relocated without informing the Secretary of State of the change of address; forwarded mail is returned to the Secretary of State as undeliverable; the participant provided false information on the application or used the ACP to commit fraud or other crimes; the participant changed her name to further protect her abuser from discovering her identity (in states without an integrated confidential name change statute); or the participant failed to renew her application four years after certification.  

Of these, only the termination for changing one’s name appears problematic to the victim seeking to relocate. Of course, the statute does not prevent a person seeking to change her name from reapplying to the program after the name change, and the Secretary of State has an important interest in having the correct identification of the victim in the records. Nonetheless, reapplication after a name change adds an extra procedural hurdle to acquiring a new identity while running from an abuser. This is one place where a sympathetic legislature can easily take action: by revising the statute to explicitly provide for situations in which the participant seeks to change her name, as through a notification procedure similar to the change-of-address procedure provided by the program.

Program termination can also occur if the state’s ACP statute is repealed. For example, California’s ACP includes a sunset provision, requiring renewal of the statute by the year 2013. So far, California has continued to meet its deadlines for renewal (the last renewal

109. *Id.* at 534.
110. *See,* e.g., N.J. STAT. ANN. § 45:4-5(2) (West 2008) (participant must give seven days advance notice of change in residential address).
occurred in 2008), so it is not clear what effect, if any, this sunset provision will have on participants in the program.

5. Criticisms

Although ACPs are a significant statutory improvement to aid women fleeing abuse, they still suffer from shortcomings that leave some women unable to rely on the program’s protections. These shortcomings include the lack of uniformity between state laws, the exceptions for disclosure, particularly court-mandated disclosure, and the ACP’s effects on third parties, like employers and federal agencies.

ACPs do not include residency requirements, which means that a woman relocating from out-of-state may take advantage of the program upon arrival. However, in states requiring some showing of a report of domestic violence or a current restraining order, interstate relocation may prove more difficult. Rhode Island’s statute, for example, addresses such problems of interstate relocation by expressly permitting a victim to use an out-of-state restraining or no-contact order to establish her status as a victim of domestic violence. By contrast, Indiana’s requirement that the applicant have a “valid” restraining order may require the victim to re-register her restraining order in the new state, an action that could provide her abuser with knowledge of her whereabouts and thereby discourage her from doing so. Here, federal law provides some assistance with interstate relocation. The Violence Against Women Act (“VAWA”) requires states to give “Full Faith and Credit” to foreign protective orders. However, some states have not implemented the legislation necessary to do so. Moreover, if courts are not obligated or even encouraged to keep the victim’s name and address confidential before she registers her out-of-state protective order, it is not at all clear what purpose the ACP serves if she must expose her location to access the program in the first place.

114. Pub. L. No. 103-322. Enacted in 1994, VAWA: strengthened evidentiary protections for sexual assault victims, increased sentences for repeat offenders who commit crimes against women, created a national hotline, [ ] developed several grant programs to provide states with more resources to fight domestic violence, ... created a civil remedy for gender-motivated violence, ... created new federal domestic violence crimes, ... [and required] all jurisdictions to grant full faith and credit to the protection orders of other jurisdictions ....


Some cases have addressed the efficacy of ACPs, generally in the context of disclosure. As discussed above, the court in Sacharow ordered the mother, who was a participant in New Jersey's ACP, to disclose her residential address to the father after the court ordered joint custody of their minor child, unless she could show that there was a previous act of domestic violence and that she had a "realistic fear" of future abuse.\textsuperscript{116} If she fails to do so, the court may feel free to disclose her address to the other party. However, if she meets this burden, then disclosure is presumptively against the child's best interests, and the burden shifts to the other party to show that disclosure is in the child's best interests.\textsuperscript{117} The court found that enrollment in the ACP did not bind the court to a determination that confidentiality is necessary.\textsuperscript{118} It reached this conclusion after noting that enrollment in an ACP does not require an evidentiary hearing or substantial showing of domestic violence but only a sworn statement and some evidence that domestic violence occurred and that the mother fears (reasonably or otherwise) future violence.\textsuperscript{119} Thus, according to the court, the ACP certification has no binding precedential value, signifying that the court must embark on its own balancing of the need for confidentiality and the best interests of the child.\textsuperscript{120} As discussed earlier, Sacharow may be limited to the child custody context. Different state statutes may reach different conclusions based on the effect their ACPs have on the court, depending on whether the ACP permits the court to order disclosure, requires a greater showing of previous domestic violence in the initial application to the ACP to preclude the issue later in court, or neglects to address the issue at all.

In another case, a New York court discussed how the state's confidentiality policies impact the confidentiality policies (or lack thereof) of private parties. In Reynolds v. Fraser, a woman contested her termination for not being at home while on sick leave.\textsuperscript{121} The employer had refused to sign a confidentiality agreement and was therefore not permitted to know his employee's whereabouts while she was on sick leave (she was at a domestic violence shelter that refused to disclose her location).\textsuperscript{122} The New York court found that the interest in protecting the woman's confidential location outweighed the employer's interest in making sure employees were actually sick on sick leave.\textsuperscript{123} The woman, as a victim of domestic violence, could not be terminated based on that status.

\begin{itemize}
  \item \textsuperscript{116} Sacharow v. Sacharow, 826 A.2d 710, 722 (N.J. 2003).
  \item \textsuperscript{117} Id. at 722.
  \item \textsuperscript{118} Id. at 718-19.
  \item \textsuperscript{119} Id.
  \item \textsuperscript{120} Id. at 722.
  \item \textsuperscript{121} 781 N.Y.S.2d 885, 887 (N.Y. Super. Ct. 2004).
  \item \textsuperscript{122} Id.
  \item \textsuperscript{123} Id. at 891.
\end{itemize}
Because enrollment in an ACP also implicates a woman’s status as a victim of domestic violence, it is likely that courts will hold employers liable for actions that affect a victim peculiarly on that status. Thus, for example, an employer may not refuse to hire a victim solely because she refuses to give the employer her actual address, absent a confidentiality agreement with the employer. Though this is a promising development, it would obviously be far more direct for state legislatures simply to require confidentiality policies of employers, which would allow victims to request that the employer maintain as confidential the victim’s name, address, and other identification information. Increasing third-party knowledge of ACPs and the dangers of domestic violence may also encourage employers and other third parties to keep the woman’s identity confidential.

Finally, as mentioned earlier, federal agencies are not required to accept a state’s ACP provisions. For women who depend on federal support, like social security or welfare, to survive, participating in an ACP is a remote possibility. Federal legislation or a Uniform Law could go a long way to remedy this problem.

ACPs are comprehensive programs designed to aid victims of domestic violence who seek confidentiality in fleeing their abusers. However, as noted above, ACPs have limited applicability for victims in those states that have a high evidentiary requirement to show domestic violence before admission into the program. The efficacy of ACPs may be further limited by the court’s ability to order disclosure and the application of the law only to state agencies and not private parties or federal agencies. ACPs are a helpful legislative tool for women fleeing abuse, but they are still imperfectly implemented in the states that have them.

III. MOVING WITH CHILDREN

A. ADDITIONAL PROBLEMS WOMEN WITH CHILDREN FACE

Sometimes, a woman fleeing her abuser will have children who either themselves face abuse or who are in danger of becoming victims of domestic violence once their mother leaves her abuser. Most state statutes currently do not address how to handle child custody, visitation, or support orders in these situations, and no state provides for a timely and efficient method of escape. A woman who flees with her children may face charges of kidnapping, custodial interference, or contempt for violating custody orders. 124 She may also risk disclosure of her confidential name and location if the other parent should allege child abuse, if her abuser seeks modification of child custody or visitation, or in an initial determination of

what is in the best interests of the child if a court has not adjudicated dissolution or child custody.\textsuperscript{125} Merely enrolling the child in school, getting the child medical care, or applying for state or federal benefits can risk disclosure of the child’s, and the victim’s, address.\textsuperscript{126}

The state’s interest in keeping children in contact with both parents is arguably weakened when one parent is an abuser. Nonetheless, courts are reluctant to entirely eliminate visitation even when there is a showing of domestic violence, instead choosing to place restrictions on visitation (for example, supervised visitation).\textsuperscript{127} A confidential move would effectively terminate the parental rights of the non-custodial parent altogether. Parents who wish to relocate face modification proceedings if the non-custodial parent objects. Some modification proceedings require the relocating parent to show whether the move is in the best interests of the child before granting that parent custody or modifying the parenting plan.\textsuperscript{128} Others require an initial showing that there is a substantial change in circumstances (the relocation itself does not necessarily meet this requirement) before embarking on a best interests analysis.\textsuperscript{129} In any case, court analyses of the child’s best interests often focus on the location of the proposed move,\textsuperscript{130} and as such, a mother who wishes to flee her abuser must disclose that location\textsuperscript{131} or risk losing primary custody. How, then, can the state’s interest in maintaining family unity be reconciled with the state’s interest in protecting victims of abuse and helping them to start new

\begin{itemize}
\item \textsuperscript{125} See Lauren E. Parsonage, \textit{Caught Between a Rock and a Hard Place: Harmonizing Victim Confidentiality Rights with Children’s Best Interests}, 70 Mo. L. Rev. 863, 867-68 (2005).
\item \textsuperscript{126} See Goodmark, \textit{supra} note 19, at 1005.
\item \textsuperscript{128} See D. KELLY WEISBERG & SUSAN FRELICH APPLETON, MODERN FAMILY LAW 828 (2006).
\item \textsuperscript{129} See, e.g., \textit{In re} Marriage of LaMusga, 12 Cal. Rptr. 3d 356, 360-61 (Cal. 2004) (a showing that relocation would be detrimental to the child’s relationship with the noncustodial parent satisfies this first prong).
\item \textsuperscript{130} See, e.g., \textit{In re} Marriage of Daniels, No. E036723, 2005 WL 2033283, at *1 (Cal. Ct. App. Aug. 24, 2005) (considering whether move from California to Minnesota would harm the child’s health, where the child had allergies and asthma).
\item \textsuperscript{131} See, e.g., \textit{Fla. Stat.} § 61.13001(3)(d) (Supp. 2008). Note that Florida Statute section 61.13001(4) does not mandate disclosure if the custodial parent has an exemption to the state’s Public Records Act, which would apply to a person enrolled in the state’s ACP. This is an imperfect solution, however, since the ACP would exempt the custodial parent’s current address but not necessarily the location of the proposed relocation. Additionally, after the parent relocates, she will have to notify the Secretary of State seven days before the proposed relocation or face termination from the program, which will leave her current address exposed. See Patricia A. McKenzie, Note, \textit{Nowhere to Run: Custody, Relocation, and Domestic Violence in Florida}, 31 Novo L. Rev. 355, 369 (2007) (addressing this problem in Florida).
\end{itemize}
lives? Or does one interest simply trump the other? State statutes do not yet provide a satisfying resolution of this conflict of policy interests.

When the father of the victim’s child retains visitation rights, how does his interest in knowing where his child is (and thus, the mother’s address) balance against the mother’s interest in maintaining confidentiality? Sacharow addressed this issue to some extent in the context of that state’s ACP.\footnote{Sacharow v. Sacharow, 826 A.2d 710 (N.J. 2003). \textit{See also supra} notes 116-20 and accompanying text.} As the court noted, New Jersey’s ACP does not bind the courts to a determination that the participant actually suffered domestic abuse.\footnote{\textit{Sachrow}, 826 A.2d at 718-19.} The ACP, moreover, does not determine whether disclosure or maintaining confidentiality is in the best interests of the child.\footnote{\textit{See N.J. STAT. ANN. § 47:4-4 (West 2008).}} The court resolved the conflict by shifting the allocation of the burden of proof.\footnote{\textit{Sacharow}, 826 A.2d at 722.} The mother has the initial burden of proof to show previous domestic violence by the other party and a “realistic fear” of continued abuse should he know her address.\footnote{ld.} Once she meets this burden, confidentiality is presumptively in the child’s best interests, and the burden shifts to the other party to show otherwise.\footnote{ld.} While this seems a fair resolution of the problem of confidentiality in child custody contexts, it is clear that requiring the courts to fashion some legal standard for weighing the child’s best interests in these situations leaves much to the discretion of the court and the facts of any particular case. A possible statutory resolution might use the ACP to create some automatic presumption that disclosure of the mother’s address is not in the child’s best interests, requiring the father then to prove otherwise. However, the fact that ACPs are not currently structured to give rise to legal presumptions appears to reflect the concern that vindictive mothers may simply use ACPs to keep the father from ever seeing his child, whether or not she has been abused or fears future abuse.

B. \textbf{CUSTODIAL INTERFERENCE}

Relocating across state lines with children implicates many civil and criminal laws, particularly custodial interference statutes, which provide criminal penalties for parents who interfere with custody orders by essentially “kidnapping” their own children. Catherine F. Klein, Leslye E. Orloff, and Hema Sarangapani discuss at great length the civil and criminal implications for women with children fleeing from abuse across state lines.\footnote{\textit{See Klein, supra} note 124.} Because this Note focuses on confidential relocation, it will only briefly summarize these issues here.
Non-custodial mothers who flee with their children may face special problems, such as accusations of criminal custodial interference. In some states, application of custodial interference statutes requires an existing child custody order. Thus, children not subject to such an order may be removed without penalty, unless the other parent challenges the victim’s right to custody. Other states apply their custodial interference statutes regardless of whether there is an existing custody order. In these states, “an individual fleeing domestic violence may be subject to criminal conviction” unless she has some defense. Some jurisdictions provide such a defense where the mother believed that relocation was the only way to protect her child from exposure to domestic violence but only if the mother herself is a victim or has a reasonable fear of becoming a victim of domestic violence. Fleeing with children therefore presents greater risk of incurring criminal penalties than fleeing without them. Obviously, seeking a court determination that relocation is in the best interests of the children and an additional court order to maintain confidentiality of the mother’s address is the ideal solution in such a situation. However, as mentioned earlier, the emergency situation presented by abuse tends to make this kind of planning ahead difficult. In addition, the abuser’s bargaining power in child custody disputes may be greater than the victim’s, preventing her from seeking modification of child custody to relocate in secrecy.

C. JURISDICTIONAL ISSUES

Interstate relocation with children presents jurisdictional issues when the victim of domestic violence seeks a custody or support order from the court in her new state or when the abuser goes to court in the original state. In states that have enacted the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), the victim of domestic violence has an advantage. Under section 204, a court may exercise “emergency jurisdiction” where there is a showing of abuse. The victim of domestic violence thus may take advantage of the courts in her jurisdiction to bring custody and support actions, rather than returning to her original state.

One case further explores jurisdictional issues in the context of domestic violence and child custody disputes. In In re Marriage of Stoneman, the Supreme Court of Montana found that a trial court should have declined jurisdiction where, among other things, the protection of the parties was an issue. In that case, the mother and her children had relocated to Washington to escape the abusive father. The custody

139. Klein, supra note 124, at 118.
140. Id. at 119.
141. See, e.g., FLA. STAT. § 787.03(4)(b) (2007).
142. Klein, supra note 124, at 113.
143. 64 P.3d 997 (Mont. 2003).
144. Id. at 998-99.
145. Id. at 998.
arrangement allowed the father supervised visitation at a location in Washington.146 When the father challenged the custody arrangement in Montana, the mother requested that the court decline jurisdiction as an inconvenient forum.147 The Supreme Court of Montana reversed the trial court’s dismissal of the request, and found that protecting the mother and children from abuse justified, in part, a finding of an inconvenient forum, and that the trial court’s failure to take into account this requirement under Montana’s adoption of the UCCJEA was improper.148 The UCCJEA, as the Court noted, places domestic violence at the top of the list of factors that a court should consider in determining an inconvenient forum.149

This case suggests that combining the UCCJEA provisions for inconvenient forum with state ACPs and other confidentiality measures may help victims fleeing interstate to apply the confidentiality rules of a favorable forum to their custody cases. The UCCJEA provisions would eradicate the need for a victim to rely on a foreign court giving Full Faith and Credit to the confidentiality determinations of the victim’s new home state, which the court may be disinclined to do absent making independent factual determinations on the extent and risk of continuing abuse. Decreasing the scope of discretion that courts have to order disclosure may also provide the victim greater assurance that her new address and identity will be protected, thus encouraging a victim to take advantage of the proffered statutory assistance and stop the abuse.

D. AVAILABLE REMEDIES

All of the remedies discussed above also apply to children when the mother is a victim of domestic violence and applies on behalf of the child. However, when children are involved, the applicant for a name change or to the ACP must also show that confidentiality is in the child’s best interest.150 A showing of domestic violence usually satisfies this evidentiary burden, although some states may require more. Thus, in states with ACPs that normally do not require any evidence of domestic violence (for example, Florida, Washington, and Massachusetts), the applicant must actually make such a showing if she is filing on behalf of a minor child.151 However, the domestic violence need only be committed against the mother, as exposure to domestic violence is usually sufficient grounds for the child to enter the ACP.

Once a child is enrolled in an ACP, courts appear much more likely to protect that child’s location from discovery by third parties. For example,

146. Stoneman, 64 P.3d at 999.
147. Id.
148. Id. at 1000. See also MONT. CODE ANN. § 40-7-108(1) (2006).
149. Stoneman, 64 P.3d at 1002.
150. 65 C.J.S. Names § 23 (2007).
151. See, e.g., FLA. STAT. § 787.03(4) (2007).
In In re Grand Jury Subpoena Duces Tecum, a court protected a foster child's location from discovery, finding that the child's right to confidentiality was absolute and not subject to any "interpretations" of the Act's exemptions that were suggested by the parties. As with victims, the most challenging part of using the ACP is getting into the program in the first instance. Once within the program, children especially are protected by the confidentiality provisions.

IV. MOVING FOR CHANGE

This Note has pointed out several issues arising from existing confidentiality programs, particularly ACPs, that need significant reform before they can be effectively and safely utilized by victims of domestic violence who are fleeing their abusers. This last section will discuss some of the shapes that reform can take.

One student commentator has suggested implementing a "Family Relocation Program," modeled after the Federal Witness Protection Program, thus shifting the responsibility of finding and maintaining housing and other living necessities from the victim to the government. In this program, a judge would hold a hearing to determine whether the victim is eligible for protection, by looking at such factors as resolution of all familial legal issues (e.g., dissolution, custody, and support), the potential for future acts of violence, and whether the hearing comported with due process by providing adequate notice to the abuser. While such a program would not protect against the abuse of every kind of batterer, it would provide a victim of domestic violence with a new name, social security number, birth certificate, housing, transportation, and, of course, confidentiality. A victim could remain in the program until the abuser "was no longer a threat," possibly lasting into eternity. Meanwhile, the woman could rely on the government to protect her from her abuser, keep her identity confidential, and move on with her life.

One advantage of such a program is to shift the economic burden of flight from the victim of domestic violence to the government that had so far failed to protect her. Another is that it encourages uniformity of application by creating federal standards for protecting the confidential information of relocating victims of domestic violence; a uniformity that is sadly lacking in current attempts to help fleeing victims.

154. Id. at 151.
155. Id. at 151.
156. Id. at 154.
157. Id. at 153. However, Haberman suggests that because the program only protects against a single abuser, indefinite protection is likely unnecessary, unlike the protection needed for witnesses of mob family crimes. Id.
However, there are several problems with this rather innovative idea. First, the government may not be able or willing to spend the amount of money necessary to assist the potentially large class of victims of domestic violence who are fleeing their abusers and who seek confidential locations. Second, attempts to move the inertia of government in the direction of welfare and domestic violence reform have met with little success absent a perceived national crisis. Overcoming legislative inertia may generally prove to be the most significant barrier to reform in this area of the law. Other significant issues are that the Family Relocation Program does not have debt collection mechanisms in place to collect child or spousal support for the participant, it does not protect the victim’s family or relatives from the abuser’s attacks or retaliation, it requires the victim to be at the end of her domestic relations process (even though victims just as often may be at the beginning of that process when they are running from the emergency presented by domestic abuse), and it has insufficient procedures for reevaluating the need for continued placement in the program. Thus, while creative and perhaps helpful on an individual level, a Family Relocation Program may simply be too unwieldy and expensive to help alleviate the widespread problem of domestic violence and its victims.

Federalization of this area of the law would provide a much-needed uniformity for women fleeing out-of-state from domestic violence. As noted, only thirty-one states currently have ACPs, fewer have name change statutes, and almost none provide governmental assistance for relocation. Moreover, no state has explicit provisions for dealing with out-of-state protective orders, even though such protective orders are sometimes necessary to apply to an ACP.

Because federalization may meet with state resistance and constitutional commerce clause concerns, another approach with similar effect is to promote a uniform law, as developed by the National Conference of Commissioners on Uniform State Laws. As a starting point for such a uniform law, combining the UCCJEA and ACPs for victims with children fleeing domestic violence would help assist in the child custody and support process while maintaining confidentiality. A uniform law must also provide the same procedures and evidentiary requirements in each state, preferably striking a balance between the rigorous and deterring procedures of Rhode Island and Indiana and the overly trusting procedures

158. Haberman, supra note 153, at 155.
159. Id. at 156.
160. Id. at 156-57 (noting that the problems with debt collection also run the other way, when creditors attempt to collect debts from the protected participant).
161. Id. at 157.
162. See, e.g., United States v. Morrison, 529 U.S. 598 (2000) (holding that part of VAWA was constitutionally invalid as going too far beyond Congress’ legitimate commerce clause powers).
of Washington. Further, the uniform law could begin to integrate procedures on name changes and Public Records Acts exemptions to create a more comprehensive program to protect the confidential identity of a woman fleeing domestic violence. The uniform law should clearly delineate the procedures by which a state will give Full Faith and Credit to the ACP determinations of another state, both for purposes of admitting the woman into the new state’s ACP and for enforcing prior court orders for protection, custody, or support without revealing the woman’s whereabouts and identity. Although a uniform law is neither an immediate nor a perfect solution, its development could help encourage those states without ACPs to consider implementing one while bringing awareness to a problem that is too often brushed aside, or published in a court document or newspaper for the abuser to discover.

While the ACP presents a much more streamlined approach than former attempts to aid fleeing victims, it is a beginning, not an end. Funding domestic violence centers that can provide assistance to victims, like what is anticipated by California’s ACP, would help prevent fraudulent applications by allowing the advocates at such centers to do a preliminary credibility analysis, would increase the efficiency of the application process, and would provide much needed support, both emotionally and legally, to the fleeing victim. Encouraging courts to permit presumptions of abuse for participants in ACPs where the ACP demands some heightened proof of domestic violence (as in Rhode Island or Indiana, and perhaps even as in California and New Jersey) could help victims who need to continue interaction through the court system keep their names and addresses confidential without having to satisfy the evidentiary burden of proving domestic violence and continuing fear. After all, the purpose of ACPs is to eliminate this fear, such that mandating disclosure without the requisite “realistic fear” of future violence verily defeats the goal of the ACP. Including statutory guidelines that phase out the “realistic fear” of future violence requirement over the period the woman participates in the ACP may help resolve this somewhat illogical gap between the statutory and common law.

Finally, the legal community can provide a great service by simply educating other members, clients, and the public generally about the harm caused by domestic violence, to both individuals and society, and the available remedies for helping victims escape the cycle of abuse and begin life again. Pamphlets, articles, editorials, and word-of-mouth can help increase awareness of this problem and the ways each person can help effect a solution, both by respecting the victim’s confidentiality and generating support for more widespread reform.

V. CONCLUSION: MOVING OUT

Victims of domestic violence who seek to flee their abusers by relocating and changing their identities can find some support in state statutes that allow them to maintain confidentiality. ACPs enacted in thirty-one states have proved a valuable resource for victims of domestic violence. Confidential name change statutes provide an additional tool for fleeing an abuser, although they are in effect in far fewer states. Public Records exemptions continue to promote respect for the confidential needs of the victim. Nonetheless, this area of the law needs significant legal reform. In balancing the important and legitimate governmental interests in public records and limiting fraudulent uses of confidential programs with the important and legitimate desire of a victim of domestic violence to escape abuse, a state reforming its confidentiality laws and policies should keep in mind the very real effects of domestic violence on an individual — effects that include physical bruising, emotional scarring, and even death.

Uniformity of the laws in this area, as well as actual application of such laws in every state, would greatly increase the opportunity for a victim of domestic violence to start a new life. Utilizing existing structures like domestic violence shelters and clinics to promote and implement existing ACPs and name change statutes would help streamline the relocation process for the victim of domestic violence. Lastly, it is important to promote a respect for victims, now survivors, of domestic violence, and encourage them through education and outreach to take advantage of every opportunity available to start a new life.