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## BATTERED SPOUSE SYNDROME: A COMPARATIVE REGIONAL LOOK AT DOMESTIC ABUSE AND SELF-DEFENSE IN CRIMINAL COURTS

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*“Family is supposed to be our safe haven. Very often, it’s the place where we find the deepest heartache.”<sup>2</sup>*

### I. INTRODUCTION

Domestic violence is defined as “the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a systematic pattern of power and control perpetrated by one intimate partner against another.”<sup>3</sup> According to the Centers for Disease Control, in the United States 35.6% of women and 28.5% of men “have experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime.”<sup>4</sup> This author’s home state of

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<sup>1</sup> Katie Fair, J.D., 2018, Lincoln Memorial University Duncan School of Law.

<sup>2</sup> AZ QUOTES, <http://www.azquotes.com/quote/837081>, (last visited Apr. 25, 2018).

<sup>3</sup> NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, *Domestic Violence in Tennessee* (2015), <https://www.speakcdn.com/assets/2497/tennessee.pdf>.

<sup>4</sup> Centers for Disease Control and Prevention, *National Intimate Partner and Sexual Violence Survey: 2010 Summary Report* (2011),

Tennessee is higher than the national average, with 40% of women and 32.5% of men experiencing physical violence, rape, and/or stalking by an intimate partner in his or her lifetime.<sup>5</sup>

Battered Spouse Syndrome (“the Syndrome”), which has also been known as battered women’s syndrome or domestic abuse syndrome, was originally a psychological term to describe a subcategory of post-traumatic stress disorder where the domestic violence victim “is so traumatized by [the] partner’s abuse that [the victim] may believe [he or she] is in danger even when [he or she is] safe.”<sup>6</sup> This definition has progressed and has now entered into the legal realm, where Battered Spouse Syndrome is usually seen as an extension to the homicide defense of self-defense, because the batterer’s death typically occurs when there is no imminent danger, such as when the batterer is asleep.<sup>7</sup>

This note will first discuss the general principles of domestic violence and Battered Spouse Syndrome, such as the cycle of abuse and concepts like learned helplessness and hypervigilance. Next, the note will compare and contrast several methods that states in the Southeast and Pacific West have used to allow evidence of Battered Spouse Syndrome and the evidence’s effect on the states’ rule of law. Finally, the note will detail why Battered Spouse Syndrome should be used in the criminal justice system and will discuss why the federal or state legislatures, or a combination of the two, should pass laws to protect battered spouses.

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[https://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

<sup>5</sup> NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, *supra* note 3.

<sup>6</sup> Beth W. Orenstein, *Understanding Battered Women Syndrome*, EVERYDAY HEALTH (Nov. 25, 2014), <https://www.everydayhealth.com/news/understanding-battered-womens-syndrome/>.

<sup>7</sup> Nancy Wright, *Voice for the Voiceless: The Case for Adopting the Domestic Abuse Syndrome for Self Defense Purposes for All Victims of Domestic Violence Who Kill Their Abusers*, 4 CRIM. L. BRIEF 76, 80 (2009).

## II. BATTERED SPOUSE SYNDROME

### A. THE BEGINNINGS OF BATTERED SPOUSE SYNDROME

The term Battered Spouse Syndrome has evolved out of the use of the term Battered Women's Syndrome, as women were traditionally seen as the ones being battered. The theory of coverture, under traditional common law in England, considered the husband and wife to be one single legal entity, and the wife was considered to be personal property of her husband.<sup>8</sup> Under that theory, it was impossible for the husband to be punished if he mistreated his wife, and a man beating his wife was a generally-accepted practice.<sup>9</sup> Even the often-quoted "Rule of Thumb" stems from accepted domestic violence and "allowed a man to beat his wife as long as the implement he used was 'no thicker than his thumb'."<sup>10</sup> Before the 1970s, a battered woman who killed her abusive husband would rely on an insanity plea as an excuse for the homicide.<sup>11</sup> Under this legal excuse, the woman "claimed that, because of her mental condition at the time of the murder, she was not guilty, either because she did not know what she was doing or because she did not know that she did anything wrong."<sup>12</sup> This all started to shift in 1979, when Dr. Lenore Walker published her text, *The Battered Woman*.<sup>13</sup>

### B. UNDERSTANDING BATTERED WOMEN'S AND SPOUSE SYNDROME

#### 1. DEFINING THE SYNDROME

In order to understand why these laws should be passed, one must first understand what Battered Spouse Syndrome is and how it affects the psychology of the victims. In Dr. Walker's text, she states:

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<sup>8</sup> *Id.* at 78.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 80.

<sup>12</sup> *Id.*

<sup>13</sup> 1-9 Scientific Evidence § 9.03 (2017).

A battered woman is a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her rights. Battered women include any wives or women in any form of intimate relationships with men. Furthermore, in order to be classified as a battered woman, the couple must go through the battering cycle at least twice. Any woman may find herself in an abusive relationship with a man once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman.<sup>14</sup>

The Syndrome is currently considered a type of post-traumatic stress disorder and is based on “the effects [that] a sustained pattern of physical and psychological abuse can have on a person in an intimate relationship with the abuser.”<sup>15</sup> The abuse contributing to the Syndrome can take many forms, including “humiliation, name calling, isolation from family and friends, denial of power, threats, physical abuse, sexual abuse, and deprivation of food, sleep, heat, shelter, or money.”<sup>16</sup> While these abuses would be difficult to take from even a stranger, in this case it is coming from someone to whom the victim committed his or herself and promised to love as long as they both shall live.

## 2. THE CYCLES OF ABUSE

When one hears about a domestic abuse situation, many times it will be said that the abuse lasted for months or years, and, chances are, the abuser did not batter his victim constantly. In Dr. Walker’s text, she identified a pattern of abuse, repeating in cycles, that consisted of three stages: the tension-building

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<sup>14</sup> *Id.*

<sup>15</sup> Erin M. Masson, Annotation, *Admissibility of expert or opinion evidence of battered women syndrome on issue of self-defense*, 58 A.L.R.5th 749 (2017).

<sup>16</sup> *Id.*

phase, the acute battering phase, and the contrite phase.<sup>17</sup> To make the cycle more relatable, the reader is asked to look at each phase as if it is tornado season in Kansas and a massive twister is headed the reader's direction.

The first part of the cycle, the tension-building phase, is typically the longest.<sup>18</sup> During this phase, the abuser may start with minor physical or verbal episodes while the spouse attempts to keep the peace and avoid the escalation of violence.<sup>19</sup> "Eventually, exhausted from the constant stress, she usually withdraws from the batterer, fearing she will inadvertently set off an explosion. He begins to move oppressively toward her as he observes her withdrawal."<sup>20</sup> To analogize, this would be like hearing the rumblings of a storm in the distance slowly growing louder as the storm approaches.

This leads to the second stage: the acute battering incident. This "incident" phase is the shortest of the three phases and typically lasts between two and twenty-four hours.<sup>21</sup> All of the anger and tension that have been building explodes into vicious and savage abuse, which "eventually . . . spirals out of control into . . . rampage, injury, brutality and sometimes death." During this phase, the victim's goal is not escape, but survival.<sup>22</sup> This phase typically "ends abruptly when the batterer stops, usually bringing with its cessation a sharp physiological reduction in tension."<sup>23</sup> To continue the analogy, this is the part where the tornado is directly overhead, and everyone is hoping just to make it through the next few minutes alive.

The final stage of the abuse, before possibly restarting the cycle, is the contrite phase. During this phase, the abuser is typically remorseful and apologetic, often promising his victim that he is going to change or that he will seek professional help.<sup>24</sup> In many cases, the abuser will even give his victim gifts

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<sup>17</sup> 1-9 Scientific Evidence § 9.03 (2017).

<sup>18</sup> Susan D. Appel, Note, *Beyond Self-Defense: The Use of Battered Women Syndrome in Duress Defenses*, 1994 U. ILL. L. REV. 955, 959-60 (1994).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 960.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* (internal quotation marks removed).

<sup>24</sup> *Id.* at 960-61.

as a way to make amends.<sup>25</sup> This phase brings an emotional attachment to the abuser that helps to explain why the victims do not leave the violent relationship.<sup>26</sup> Although this phase last several months, the cycle often starts over, and, many times, this stage will become shorter and less apologetic while the tension-building phase will become dominant.<sup>27</sup> This after-the-storm phase starts with everyone climbing out of the storm shelters and making it back out into the eerily quiet world to rebuild the community. The people know another storm could come at any time and wipe out everyone and everything, but due to their connections to the area each decides to stick it out and hope the next storm will not be his or her last.

### 3. THE PSYCHOLOGICAL EFFECTS OF DOMESTIC ABUSE

There is a misconception that many “battered [persons] are masochistic, that they stay with their mates because they like beatings, that the violence fulfills a deep-seated need within each partner, or that they are free to leave such relationships if that is what they really want.”<sup>28</sup> However, many battered spouses try to stop the abuse or leave but feel like they cannot leave or make things better no matter how hard they try. These spouses have learned a certain helplessness that keeps them from leaving, while also becoming hypervigilant to any signs of an imminent battering.

Dr. Walker modeled the theory of learned helplessness after an animal world theory proposed by Martin Seligman.<sup>29</sup> Seligman discovered that when a caged dog was unable to escape from electrical shocks, the dog would eventually quit attempting to escape even if given the opportunity.<sup>30</sup> In the case of a battered spouse, the victim believes that the abuser “is more powerful than [the abuser] actually is” and the victim fears

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<sup>25</sup> *Id.*

<sup>26</sup> Wright, *supra* note 7, at 8.

<sup>27</sup> Appel, *supra* note 18, at 961.

<sup>28</sup> Alafair S. Burke, *Rational Actors, Self-Defense, and Duress: Making Sense, not Syndromes, out of the Battered Woman*, 81 N.C.L. REV. 211, 223 (2002).

<sup>29</sup> *Id.* at 223-24.

<sup>30</sup> *Id.*

retaliation if he or she attempts to get help.<sup>31</sup> Many victims also experience “separation abuse,” in that he or she fears that the abuser will retaliate against the victim’s children, other family members, friends, or coworkers.<sup>32</sup> The victim may also be abused more severely if caught trying to get help or leave.<sup>33</sup> The fear can be paralyzing for the victim, because “it is the fear of knowing someone is searching for you and will beat you when [the abuser] finds you.”<sup>34</sup> Although the victim here is not physically confined, he or she is confined based on a fear of harm or death, of self or others, upon leaving the situation.

Victims stay in the relationship for many reasons, such as “economic dependence, social isolation, guilt over a failing marriage, concern for children, lack of self-confidence, inadequate police response, and a fear . . . of reprisals by the batterer.”<sup>35</sup> To make it easier to survive in the relationship, the victim may develop a passivity or a hypervigilance to help him or her ride out the cycles. When the victim is unable to predict what effect his or her actions will have on the abuser, the victim becomes passive because the victim believes that he or she has no control or escape.<sup>36</sup> Conversely, the victim may start to “[recognize] the signs of her batterer’s anger and [begin] to ‘manipulate the environment in order to minimize the opportunity for the batterer to find a reason to be angry’.”<sup>37</sup> The victim may also become hypervigilant, which means that the victim “become[s] an expert at recognizing the warning signs of an impending assault from [his or her] partner.”<sup>38</sup>

#### 4. APPLICATION OF THE SYNDROME IN SELF-DEFENSE HOMICIDE CASES

Although there are other possible uses for the Syndrome in criminal and civil courts, this paper’s focus is on its use as a form of self-defense in homicide cases. Generally, if a homicide

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<sup>31</sup> 6 Criminal Law of South Carolina VI-B-5 (6th 2013).

<sup>32</sup> Wright, *supra* note 7.

<sup>33</sup> Masson, *supra* note 15.

<sup>34</sup> Appel, *supra* note 18, at 963.

<sup>35</sup> Masson, *supra* note 15.

<sup>36</sup> Appel, *supra* note 18, at 961-62.

<sup>37</sup> *Id.* at 963-64.

<sup>38</sup> Wright, *supra* note 7, at 81.

is committed in self-defense it is considered justifiable.<sup>39</sup> A legal justification “declares the allegedly criminal act legal,” requiring an objective assessment of the act.<sup>40</sup> Conversely, a legal excuse “admits the act’s criminality, but declares the criminal actor not to be worthy of the blame,” which requires subjective assessment of the actor’s state of mind.<sup>41</sup> While the Syndrome is able to be utilized as a justification, the Syndrome is not an actual defense to homicide.<sup>42</sup>

Evidence of Battered Spouse Syndrome can allow juries to understand two elements of the victim’s self-defense claim: “(1) the defendant’s subjective fear of serious injury or death and (2) the reasonableness of that belief.”<sup>43</sup> An expert can testify that “because a [victim] is attuned to [his or her] abuser’s pattern of attacks, [the victim] learns to recognize subtle gestures or threats that distinguish the severity of attacks and that lead [the victim to believe a particular attack will seriously threaten [his or her] survival.”<sup>44</sup> Although a sleeping or resting abuser may not appear to be a threat to the lay person, testimony can show that the victim who uses that opportunity to kill the abuser “may have reasonably believed that [he or she] was in imminent danger.”<sup>45</sup> The jury does not look at the situation objectively to determine if danger was actually imminent, but the jury must determine “whether, given circumstances as the [victim] perceived them, the [victim’s] belief was reasonable that danger was imminent.”<sup>46</sup> While the subjective belief of imminent danger does not give the victim a priori immunity, it does allow an initial presumption that the victim acted reasonably.<sup>47</sup> The prosecution can then rebut the presumption by showing that the degree of force used was unreasonable.<sup>48</sup>

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<sup>39</sup> *Id.* at 80.

<sup>40</sup> *Id.* (emphasis removed).

<sup>41</sup> *Id.* (emphasis removed).

<sup>42</sup> 40 AM. JUR. 2D *Homicide* § 144 (2017).

<sup>43</sup> 1-9 Scientific Evidence § 9.03 (2017).

<sup>44</sup> *Developments in the Law – Legal Responses to Domestic Violence: V. Battered Women Who Kill Their Abusers*, 106 HARV. L. REV. 1574, 1582 (1993).

<sup>45</sup> *Id.*

<sup>46</sup> 40 AM. JUR. 2D *Homicide* § 144 (2017).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*



Evidence of Battered Spouse Syndrome is typically brought in through expert testimony. While one state's court of last resort initially decided that the Syndrome was inappropriate for expert testimony because the court believed it to be "within the understanding of the jury."<sup>49</sup> However, many courts have found that "a battering relationship embodies psychological and societal feature that are not well understood by lay observers."<sup>50</sup> There are many myths and misconceptions circulating in the general population about domestic abuse and Battered Spouse Syndrome, and average jurors are typically "misinformed on some aspects of [spousal] abuse and that some jurors are likely to be more misinformed than others."<sup>51</sup>

Courts across the country require different levels of "physical or corroborative factual evidence of a history of abuse" before allowing the expert testimony to be heard and admitted as evidence. Some courts require proof that the victim went through two complete cycles of abuse, as described previously, before admitting evidence of the Syndrome. Other courts admit evidence if there is only one cycle, but there must be proof of each of the three phases. There is one court in the United States that admits expert testimony that the victim "suffer[s] from post-traumatic stress disorder and exhibit[s] traits 'consistent with' the battered-[spouse] syndrome."<sup>52</sup>

### III. REGIONAL ANALYSIS OF LEGAL METHODS ALLOWING THE ADMISSION OF BATTERED SPOUSE SYNDROME EVIDENCE

This section will present a regional analysis of the various legal methods that six states in two regions use to introduce evidence of Battered Spouse Syndrome. Due to contrasting political views, geographical differences, and social variations, the author has chosen to compare and contrast Tennessee, South Carolina, and Georgia from the Southeast and California, Oregon, and Washington from the Pacific West.

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<sup>49</sup> 1-9 Scientific Evidence § 9.03 (2017).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Cynthia Lynn Barnes, *Admissibility of expert testimony concerning domestic violence syndromes to assist jury in evaluating victim's testimony or behavior*, 57 A.L.R.5th 315 (2017).

Each section will discuss the statutory and case law in the specified states and examine the effects of the various methods on the cases within each jurisdiction.

## A. SOUTHEAST: TENNESSEE, SOUTH CAROLINA, GEORGIA

### 1. TENNESSEE

Tennessee's rate of domestic violence is higher than the national average, with 40% of women and 32.5% of men experiencing physical violence, rape, and/or stalking by an intimate partner in his or her lifetime.<sup>53</sup> Tennessee does not have a codified statute for Battered Spouse Syndrome, but it does have case law regarding battered spouses in self-defense homicide cases as far back as 1988.<sup>54</sup>

In *Tennessee v. Horton*, the Criminal Court of Appeals states that the application of "imperfect self-defense" is usually only "seen in homicides involving battered spouses and certain stress disorders."<sup>55</sup> In 1989, the Tennessee Criminal Court of Appeals stated that the defendant did not present adequate corroborating evidence that she was a battered spouse that thought killing the victim was necessary to remain safe.<sup>56</sup> The court explained that the battered spouse claim "would have to be supported by evidence of a course of dealing over a period of time prior to the offense, however brief that period might be."<sup>57</sup> Approximately six years later, the Tennessee Criminal Court of Appeals further enumerated that the defendant in such a case would have to "show that at the time of the killing he or she was acting upon a well-founded fear of death or great bodily harm to himself or herself, and that the actions taken were necessary in self-defense."<sup>58</sup> The mere existence of Battered Spouse Syndrome does not absolve the victim of any

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<sup>53</sup> NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, *supra* note 3.

<sup>54</sup> *State v. Horton*, No. 18, 1988 Tenn. Crim. App. LEXIS 105, at \*10 (Feb. 10, 1988).

<sup>55</sup> *Id.*

<sup>56</sup> *State v. Fredd*, 1989 Tenn. Crim. App. LEXIS 71, at \*6 (Feb. 7, 1989).

<sup>57</sup> *Id.*

<sup>58</sup> *State v. Gurley*, 919 S.W.2d 635, 638 (Tenn. Crim. App. 1995); *see also Blaylock v. State*, No. E1999-00570-CCA-R3-PC, 2000 Tenn. Crim. App. LEXIS 354, at \*10 (May 4, 2000).

wrongdoing nor does it mean the defendant will be automatically acquitted.<sup>59</sup> Because the defense is a factual one, the jury can accept or reject the defense after hearing the facts, psychological opinions, and applicable law.<sup>60</sup>

Tennessee allows evidence of Battered Spouse Syndrome to enter under the statutes for general self-defense, while not enumerating the Syndrome specifically under those statutes, and allows the use of expert testimony in regard to the matter. Expert testimony allows the jury to understand the Syndrome and “determine whether the defendant had reasonable grounds for an honest belief that [he or she] was in imminent danger.”<sup>61</sup> These testimonies show that the victim of domestic abuse is not really free to leave at any time.<sup>62</sup>

## 2. SOUTH CAROLINA

For the past seventeen years South Carolina has ranked in the top ten states for femicide, taking the highest rate in 2011 and the second highest rate in 2012 for women murdered by men in the United States.<sup>63</sup> The use of Battered Spouse Syndrome was a question of first impression in South Carolina in 1986.<sup>64</sup> As of 1995, South Carolina has a statutory law that protects these victims that kill their abusers.<sup>65</sup>

South Carolina’s court of last resort held in 1986 that Battered Spouse Syndrome is a proper subject for expert testimony, given that the expert’s testimony “is relevant to the issue of self-defense and highly probative of the defendant’s state of mind at the time of the incident.”<sup>66</sup> In that case, the court

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<sup>59</sup> State v. Coleman, No. 02C01-9503-CC-00083, 1996 Tenn. Crim. App. LEXIS 49, at \*8-9 (Jan. 31, 1996) (citing State v. Smith, No. 01C01-9211-CC-00362, 1995 Tenn. Crim. App. LEXIS 166 (Mar. 2, 1995)).

<sup>60</sup> *Id.*

<sup>61</sup> State v. Hagerty, No. E2001-01254-CCA-R10-CD, 2002 Tenn. Crim. App. LEXIS 364, at \*21-22 (Apr. 23, 2002).

<sup>62</sup> *Id.*

<sup>63</sup> NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, *Domestic Violence in South Carolina* (2015), [https://www.speakcdn.com/assets/2497/south\\_carolina.pdf](https://www.speakcdn.com/assets/2497/south_carolina.pdf).

<sup>64</sup> State v. Hill, 339 S.E.2d 121, 122 (S.C. 1986).

<sup>65</sup> S.C. CODE ANN. § 17-23-170 (1995).

<sup>66</sup> *Id.*

approved the definition of the syndrome as “a series of common characteristics that appear in women who were abused physically and psychologically over an extended period of time by the dominant male figure in their lives.”<sup>67</sup> Such characteristics include “fear, hyper-suggestibility, isolation, guilt, and emotional dependency, which culminates in a woman’s belief that she should not and cannot escape her batterer.”<sup>68</sup>

South Carolina is one of the few states that has codified the use of Battered Spouse Syndrome in relation to self-defense, defense of another, defense of necessity, or duress.<sup>69</sup> According to the statute, although a defendant must file pretrial written notice about his or her intent to offer evidence of Battered Spouse Syndrome, the defendant is statutorily permitted to introduce lay testimony to establish foundation for the evidence and expert testimony on the Syndrome itself.<sup>70</sup>

### 3. GEORGIA

Many Georgia citizens have little to no access to domestic violence services, with 27 counties with no access and 26 counties with limited access.<sup>71</sup> Georgia, like Tennessee, has not codified Battered Spouse Syndrome, but it has ample case law determining the uses of the Syndrome in the criminal courts.

In 1981, Georgia’s court of last resort held that expert testimony for Battered Spouse Syndrome is admissible because determining “why a person suffering from battered [spouse] syndrome would not leave [his or her] mate, would not inform police or friends, and would fear increased aggression against [his or herself] would be such conclusions that jurors could not ordinarily draw for themselves.”<sup>72</sup> However, Battered Spouse Syndrome is not a separate defense but can be part of a claim of

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<sup>67</sup> *Id.*

<sup>68</sup> *Robinson v. State*, 417 S.E.2d 88, 90 (S.C. 1992).

<sup>69</sup> S.C. CODE ANN. § 17-23-170 (1995).

<sup>70</sup> *Id.*

<sup>71</sup> NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, *Domestic Violence in Georgia* (2015),

<https://www.speakcdn.com/assets/2497/georgia.pdf>.

<sup>72</sup> *Smith v. State*, 277 S.E.2d 678, 683 (Ga. 1981).

self-defense.<sup>73</sup> Georgia's case law provides that psychological abuse "unaccompanied by other acts or verbal statements giving rise to a reasonable fear of imminent physical harm, cannot alone justify the admission of expert evidence on the battered person syndrome."<sup>74</sup>

In 1997, the state's court of last resort enumerated a sample instruction for "battered person syndrome," which states:

I charge you that the evidence that the defendant suffers from battered person syndrome was admitted for your consideration in connection with the defendant's claim of self-defense and that such evidence relates to the issue of the reasonableness of the defendant's belief that the use of force was immediately necessary, even though no use of force against the defendant may have been, in fact, imminent. The standard is whether the circumstances were such as would excite the fears of a reasonable person possessing the same or similar psychological and physical characteristics as the defendant, and faced with the same circumstances surrounding the defendant at the time the defendant used force.<sup>75</sup>

In deciding to allow such instructions, the court must consider factors such as "a close personal relationship between the defendant and victim; a pattern of physical, sexual, or psychological abuse; and a reasonable apprehension of harm."<sup>76</sup>

## B. PACIFIC WEST

### 1. CALIFORNIA

California is just under the national average, with 32.9% of women and 27.3% of men experiencing physical violence,

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<sup>73</sup> Pickle v. State, 635 S.E.2d 198, 201 (Ga. 2006).

<sup>74</sup> Nguyen v. State, 520 S.E.2d 907, 908 (Ga. 1999).

<sup>75</sup> *Id.*

<sup>76</sup> Mobley v. State, 505 S.E.2d 722, 723-24 (Ga. 1998).

sexual violence, and/or stalking by intimate partners.<sup>77</sup> Furthermore, 11.8% of all California homicides are domestic violence homicides.<sup>78</sup> Similar to South Carolina, California has codified the admissibility of evidence of Battered Spouse Syndrome.

California's Evidence Code states that "[i]n a criminal action, expert testimony is admissible by either the prosecution or the defense regarding intimate partner battering and its effects, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behaviors of victims of domestic violence. . ." <sup>79</sup> Because this is a rule of evidence only, a jury must decide the question of "whether a reasonable *person*, not a reasonable battered woman, would believe in the need to kill to prevent imminent harm."<sup>80</sup>

In *California v. Humphrey*, the court concluded that expert testimony was relevant both to the reasonableness and the credibility of the defendant.<sup>81</sup> California courts have also held that Battered Spouse Syndrome is only applicable to victims that are "abused physically and psychologically *over an extended period of time*" thus "a single violent incident, without evidence of other physical or psychological abuse is not sufficient to establish that a [victim] suffers from [battered spouse syndrome]."<sup>82</sup>

## 2. OREGON

Almost one third of women in Oregon have reported experiences with domestic violence, stalking, sexual assault, or

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<sup>77</sup> NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, *Domestic Violence in California* (2015),

<https://www.speakcdn.com/assets/2497/california.pdf>.

<sup>78</sup> *Id.*

<sup>79</sup> CAL. EVID. CODE § 1107 (Deering 1991).

<sup>80</sup> *State v. Humphrey*, 921 P.2d 1, 9 (Cal. 1996).

<sup>81</sup> *State v. Brown*, 94 P.3d 574, 580 (Cal. 2004) (citing *State v. Humphrey*, 921 P.2d 1 (Cal. 1996)).

<sup>82</sup> *Id.* at 574, 581 (citing *State v. Romero*, 883 P.2d 388 (Cal. 1994) and *State v. Humphrey*, 921 P.2d 1 (Cal. 1996)) (internal quotation marks omitted).

physical assault.<sup>83</sup> In 2014, Oregon domestic violence services could not meet over 12,000 requests for shelter.<sup>84</sup> Although Oregon has not codified the use of the Syndrome, its case law on the Syndrome dates back to an early mention in 1985.<sup>85</sup>

In *Oregon v. Moore*, the Oregon Court of Appeals stated that the trial court “did not reject the defendant’s defense based on the battered spouse syndrome but ruled that the evidence . . . was too remote in relationship to the shooting to be probative of the defense.”<sup>86</sup> The court then related that statement back to the Oregon Evidentiary Code, which mirrors the Federal Rules of Evidence Rule 403.<sup>87</sup>

In 2000, the Oregon Court of Appeals discussed the use of Battered Spouse Syndrome in more depth in the ruling of *Oregon v. Ogden*.<sup>88</sup> The court adopted the *Oregon v. Stevens* definition of the Syndrome stating that the syndrome is “[a] psychological diagnosis that refers to a collection or pattern of characteristics coupled by abuse which may be physical, psychological, sexual, or social, or all of those kinds of abuse, occurring over a period of time, usually repeatedly.”<sup>89</sup> In this case, the prosecution offered the expert testimony about the Syndrome to aid in the jury’s understanding of people’s behavior in battering relationships in general.<sup>90</sup> However, the general information offered by the prosecution was not sufficient to explain to the jury why the victim here chose to stay in the abusive relationship.<sup>91</sup> Ultimately, the court held that although the jury is typically allowed to either accept or reject the expert’s diagnosis, “the diagnosis . . . is a predicate to the admissibility of evidence about [the Syndrome] and behavior attributable to [it].”<sup>92</sup>

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<sup>83</sup> NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, *Domestic Violence in Oregon* (2015),

<https://www.speakcdn.com/assets/2497/oregon.pdf>.

<sup>84</sup> *Id.*

<sup>85</sup> *State v. Moore*, 695 P.2d 985 (Or. Ct. App. 1985).

<sup>86</sup> *Id.* at 987.

<sup>87</sup> *Id.*

<sup>88</sup> *State v. Ogden*, 6 P.3d 1110 (Or. Ct. App. 2000).

<sup>89</sup> *Id.* at 1114 (citing *State v. Stevens*, 938 P.2d 780 (Or. Ct. App. 1997)) (emphasis removed).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

### 3. WASHINGTON

On one single day in 2014, domestic violence services in Washington served over 1,900 victims, while more than 500 were denied service due to a lack of resources.<sup>93</sup> In a similar method to Oregon, Washington allows Battered Spouse Syndrome through its evidentiary rules on expert testimony.

In 1984, Washington's court of last resort held that expert testimony was admissible regarding the Syndrome "where the psychologist is qualified to testify about the [Syndrome], and the defendant establishes [his or her] identity as a battered [spouse]" because that evidence "may have a substantial bearing on the [victim's] perceptions and behavior at the time of the killing and is central to [his or her] claim of self-defense."<sup>94</sup> The Washington Supreme Court previously held, in *Washington v. Wanrow*, that "the jury must consider all the facts and circumstances known to the [person] at the time of the killing in evaluating [the person's] claim of self-defense."<sup>95</sup> In order for the jury to fully understand how the victim perceived the facts and circumstances, the defense has to have the ability to explain the situation so the jury may overcome the "stereotyped impressions about [victim's] who remain in abusive relationships."<sup>96</sup> Therefore, the court held that expert testimony is allowed in the situation to "[explain] why a person suffering from the [Syndrome] would not leave [the victim's] mate, would not inform police or friends, and would fear increased aggression against [his or her]self," because that phenomenon is not typically "within the competence of an ordinary lay person."<sup>97</sup>

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<sup>93</sup> NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, *Domestic Violence in Washington* (2015), <https://www.speakcdn.com/assets/2497/washington.pdf>.

<sup>94</sup> *State v. Allery*, 682 P.2d 312, 316 (Wash. 1984) (citations omitted).

<sup>95</sup> *Id.* (explaining the holding in *State v. Wanrow*, 559 P.2d 548 (Wash. 1977)).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*



#### IV. BEST USE OF BATTERED SPOUSE SYNDROME AND THE TRANSITIONING OF STATES TO A NEW SYSTEM

Julie, a 19-year-old woman, fell head over heels with Alex, a 25-year-old man. He was a successful web designer, and she was a recent high school graduate working as a waitress in a diner. It was a whirlwind romance, and he would dote on her with flowers and jewelry. Despite her family's objections, they were married less than a year later. After the honeymoon, she discovered a new anger in him when dinner was burned, the house was not spotless, or his suits were not ironed properly. Even though she started walking on eggshells trying not to upset him, she could not escape his rage for long. One night, six months into their marriage, he came home late from work with a strong odor of alcohol following him around. That night was the first time he struck her. Two years later, she has learned to hide the bruises under long sleeves, and she can anticipate that after the neighbors have called the police from the noise, yet again, she'll be too sore to move for a week. He has told her that if she goes to the police he will kill her, and if she leaves him, he will kill her younger sister. One week, she notices his anger building again, and he passes out with a bottle of whiskey on the nightstand. Afraid of what will happen when he wakes up, she takes his side arm from under the mattress and shoots him while he lays in bed, passed out drunk. She breathes a sigh of relief knowing he can never hurt her again.

The name "Julie" in the hypothetical situation above could be a "Michael," or "Julie and Alex" could be a "Michelle and Janet" or a "William and Edward". Domestic abuse happens in both heterosexual and homosexual relationships, and a female could be the abuser just as easily as could a male. While there are many resources for victims of abuse, such as shelters and orders of protection, the abuser can make the victim feel like he or she cannot escape or does not deserve better. While an order of protection looks official and important, an abuser with a gun can blow through that piece of paper faster than the police can arrive. If the victim feels that he or she is being cut off by the abuser at every turn, the victim may feel like the only way to make it out of the situation alive is if the abuser is dead. The victim is essentially being held hostage in his or her own home under threat of torture or death.

Does someone who has spent the last part of his or her life being tortured deserve to spend years in prison and live the rest of his or her life with a criminal record just because the victim decided to get his or herself out of a seemingly hopeless situation?

As seen in the regional comparison above, many states have found a way to include the use of Battered Spouse Syndrome in their criminal courts. However, each state has utilized different methods to admit the Syndrome into evidence. Many states' legislatures have chosen not to codify the use of the Syndrome, but, instead, those states have admitted the syndrome through evidence rules regarding expert witnesses. Even the states whose legislatures have codified the Syndrome's use have done so in different ways, as evidenced by the earlier examples of South Carolina and California. Because cases can be overturned or precedents narrowed or broadened through the courts, this issue needs to be taken care of through a legislature with statutory changes.

The federal and state legislatures are able to create statutory law to be followed at the federal and state level, respectively, as statutory law takes precedence over case law. Although the courts have the ability to interpret the statutes in the cases they hear, the court cannot rule contrary to the statute unless it is a case of constitutionality. By having the law codified at the federal level, it would ensure a more standard level of protection throughout the country, although various circuits may slightly differ in interpretation. This could be done by following a similar structure to the Violence Against Women Act.<sup>98</sup> At the state level, each state can add extra protections or, in the absence of a federal law, can create its own protections. This can be done through the state's evidence code or under its self-defense statute(s). Therefore, the best way to ensure that the protection for battered spouses continues in the future is through the passing of a law by the federal or states' legislatures.

## V. CONCLUSION

Domestic abuse has been a part of the human culture since the English coverture laws, as discussed previously. As

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<sup>98</sup> See 113 P.L. 4.

times have changed, the power dynamics in relationships have changed and the morals of society have advanced to the point where domestic abuse is seen as the horrendous thing it is. No person should feel threatened or be tortured by his or her spouse. Some might be under the misconception that just because it is a spouse that is essentially torturing and imprisoning his or her spouse, homicide as a means of escape is going too far. However, if a person was imprisoned and tortured by a stranger, and the victim was told that if he or she attempted to escape or notify the police a loved one would die, would a reasonable person not believe that the homicide of the stranger in that case would be pure self-defense? In both of these scenarios, the victim chooses the only way out in which he or she can be certain of safety from the torturer. Although courts have moved in the right direction to protect these victims, the court system can change over time in how it believes the law should be upheld, including completely overruling previous decisions. Unless it is a case of constitutionality, it is much more difficult for a court to come to a holding contrary to statutory law. Therefore, state legislatures should codify Battered Spouse statutes to ensure the compliance of the state's judicial system to achieve the desired protection for victims of domestic abuse.