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SPOUSAL SUPPORT AND DOMESTIC VIOLENCE: WHAT HAPPENS WHEN THE DEPENDENT SPOUSE IS THE ABUSER?

BY MARIA STAMATELATOS[†]

I. INTRODUCTION

Imagine you are a financially independent woman, making upwards of \$100,000 per year. You work hard to provide for your family and love your job. At home, however, things are less than perfect between you and your spouse. In the beginning, he was caring and supportive, but now he is verbally and physically abusive towards you, and constantly threatens to kill you and your family. One night, he demands sex from you, so you go to fetch some fresh underwear from your closet, and while you are there, you turn on a tape recorder you have hidden in a drawer.¹ The tape recorder captures his attack, and in the recording you can be heard crying “I don’t want to be raped” and “you’re hurting my neck.”² You decide to press charges, and after a trial, a jury convicts your husband of forcible oral copulation.³ He is sentenced to six years in prison, and you think the nightmare you have been living in is finally over, but then the Family Court proceedings begin.

In Family Court, the judge orders you to pay your now ex-husband \$1,000 a month in spousal support once he is released from prison.⁴ And to add insult to injury, the judge also orders you to pay your *convicted rapist* \$47,000 to cover his legal fees.⁵ You

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¹ Linda Massarella, *A\$ault in her Wounds*, N.Y. POST (Dec. 4, 2011), <http://nypost.com/2011/12/04/aaault-in-her-wounds/>.

² Juju Chang & Alyssa Litoff, *Sexual Assault Victim Ordered to Pay Alimony to Attacker Fights to Change California Law*, ABC NEWS (Apr. 5, 2012), <http://abcnews.go.com/US/sexual-assault-victim-ordered-pay-alimony-attacker-fights/story?id=16075409>.

³ *People v. Harris*, No. D059126, 2012 WL 1651015, at *1 (Cal. Ct. App. May 11, 2012).

⁴ Massarella, *supra* note 1.

⁵ Chang & Litoff, *supra* note 2 (emphasis added).

are incensed at this decision and feel you have not been adequately protected by the legal system. Ordering you to pay your rapist money continues to tether you to him and leaves you vulnerable to continuing abuse.⁶

This is not an imaginary story. This is the true story of Crystal Harris, the first (legal experts believe) case in the United States where a victim has been ordered to pay spousal support to her *convicted* attacker.⁷ Ms. Harris was ordered to pay her attacker because California law, at the time, stated that an individual was only barred from receiving spousal support if that individual had been convicted of attempting to murder their spouse.⁸ Because Ms. Harris's husband had only *raped* her, and had not attempted to kill her, the law did not apply to him.⁹

Although Crystal Harris is not the kind of person many would consider to be a typical domestic violence victim because she is not financially dependent on her spouse, she still deserves to be protected by the law, especially since a greater number of abusive husbands are seeking spousal support from their wives.¹⁰ After her Family Court proceeding, the California legislature realized it needed to reform its laws addressing spousal support and domestic violence.¹¹ Ms. Harris' case was the catalyst behind the enactment of California Family Code Section 4324.5, which bars spouses convicted of committing a violent sexual felony against their spouse from being awarded spousal support from the injured party.¹²

⁶ *See id.* This leaves you, as a victim, vulnerable to continuing abuse because you will be forced to remain in contact with your abuser on some level, even if that just entails sending a monthly check. *See id.*

⁷ Massarella, *supra* note 1 (emphasis added).

⁸ CAL. FAM. CODE ANN. § 4324 (1995).

⁹ *See generally id.* (noting that the law does not apply to convicted rapists).

¹⁰ *See generally* Andrea Vollans, *Court-Related Abuse and Harassment: Leaving an Abuser Can Be Harder Than Staying*, YMCA VANCOUVER (2010), <http://ywcavan.org/sites/default/files/resources/downloads/Litigation%20Abuse%20FINAL.pdf> (discussing various ways that abusers can use litigation as a form of ongoing control and harassment).

¹¹ *Hearing on A.B. 1522 Before the S. Judiciary Comm.*, 2012 Leg., 2011-2012 Sess. (Cal. 2012) (statement of Sen. Noreen Evans, Chair, S. Judiciary Comm.).

¹² CAL. FAM. CODE ANN. § 4324.5 (2012); Chang & Litoff, *supra* note 2. Violent sexual felonies include rape and forced oral copulation. *Id.*

However, this reform has yet to be adopted throughout the country.¹³ Therefore, the Crystal Harris injustice could easily be repeated. In New York, the laws regarding spousal support and domestic violence have not yet been reformed as they have in California.¹⁴ Furthermore, “New York family law judges follow equity law, [meaning] they have the power to do what they think is right . . . [giving them] more discretion . . .”¹⁵ Currently, the New York statute addressing spousal maintenance vaguely lists acts of domestic violence as one of the factors that the court *can* consider when awarding spousal support.¹⁶ Thus, there is a need for a bright line rule like California’s, regarding spousal support and domestic violence in New York and other states. Such reform is needed because the current laws allow for decisions where women like Crystal Harris are forced to pay their abusers spousal (and possibly child) support and therefore continue to maintain economic ties with them.¹⁷

This Note will discuss domestic violence and focus on a group of victims that are largely under-represented in social work and psychological literature: the financially independent battered victim and the financially needy batterer.¹⁸ The financially independent battered victim is the woman or man in the relationship, who has her or his own income separate from their partner’s, that is being abused.¹⁹ Further, the financially needy

¹³ See generally Noura Bayoumi, *Battered Wife Must Pay Abuser Alimony – That’s Still the Law*, CBS 6 (5:23PM February 16, 2016), <https://wtvr.com/2015/02/16/battered-wife-must-pay-abuser-alimony-thats-still-the-law/> (illustrating that the proposed Bill is meant to protect spouses from having to pay alimony when their spouse was convicted of rape or violent felony). These bills are still being defeated in state legislatures. *Id.*

¹⁴ NY. CLS DOM. REL. § 236 (1980).

¹⁵ Massarella, *supra* note 1.

¹⁶ See CAL. FAM. CODE § 4325 (West 2001); see also N.Y. DOM. REL. LAW § 236(B)(h)(1)(m) (McKinney 2016) (emphasis added). Although the legislation in New York governing spousal support has been rewritten so that a mathematical formula is used to calculate the amount of support awarded, the judge still retains the ultimate discretion regarding the award of maintenance. There is no law specifically stating that spousal support will not be awarded in certain circumstances.

¹⁷ See Massarella, *supra* note 1; see also Bayoumi, *supra* note 13.

¹⁸ See SUSAN WEITZMAN, *NOT TO PEOPLE LIKE US: HIDDEN ABUSE IN UPSCALE MARRIAGES* 8 (2001).

¹⁹ See *Economic Empowerment Strategies for Women*, BATTERED WOMEN’S SUPPORT SERV., <https://www.bwss.org/resources/economic-empowerment-strategies-for-women/understanding-financial-abuse-safety-planning/> (last visited Nov. 10, 2018).

batterer is the individual in the relationship who is financially dependent on the victim.²⁰

This Note will unpack the non-economic reasons why financially independent battered victims stay in abusive relationships and how the principal purpose of spousal support, to “reduce the financial impact of divorce on a supported spouse,” is distorted when victims are forced to continue to support their abuser after they have decided to abandon the toxic relationship.²¹ The principle purpose of spousal support is to provide some funds for a needy spouse that otherwise would have to go on welfare and depend on the government.²²

Therefore, this Note proposes that New York and other states enact legislation similar to that of the California Family Code, which enacted statutes that prevent someone from obtaining spousal support if they attempted to murder their spouse, committed a violent sexual felony against their spouse, or were convicted of a domestic violence offense against their spouse.²³ The reformed legislation would prohibit judges from awarding spousal support to individuals convicted of attempting to murder their spouse, and would require courts to look carefully at the facts surrounding each case where a spouse has been indicted or convicted of a violent sexual felony against their partner. Moreover, this legislation would allow judges to retain discretion in awarding spousal support in cases where an individual has been convicted of a lesser domestic violence crime or offense against their spouse. Such reforms will fine tune current court proceedings regarding the award of spousal maintenance in New York and other states.²⁴ These reforms will eliminate the current

²⁰ See *id.*; see also Sherri Gordon, *How to Identify Financial Abuse in a Relationship*, VERYWELLMIND (Oct. 27, 2018), <https://www.verywellmind.com/financial-abuse-4155224>.

²¹ Michelle Murray, *Alimony as an Equalizing Force in Divorce*, 22 J. CONTEMP. LEGAL ISSUES 3, 8 (2000).

²² See N.Y. GEN. OBLIG. LAW § 5-311 (McKinney 2018) (prohibiting spouses from agreeing “to relieve either of his or her liability to support the other in such a manner that he or she will become incapable of self-support and therefore is likely to become a public charge”).

²³ See CAL. FAM. CODE § 4324 (West 2011); § 4324.5 (West 2013) (amended 2018); 4325 (West 2002) (amended 2018). This Note focuses on New York State legislation, but the proposal could apply to other states that have not reformed their laws. However, a discussion of other states is beyond the scope of this Note.

²⁴ See Joel Stashenko, *Overhaul of Spousal Maintenance Takes Effect This Month*, N.Y. L. J. (Oct. 1, 2015) (explaining that the recently adopted New York law that governs spousal

social and moral injustice of forcing victims to continue to finance their abusers.²⁵

Part II of this Note briefly defines domestic violence, discusses how domestic violence is different when the victim is financially independent, and explores why financially independent battered victims do not leave abusive relationships.²⁶ Part II will also share a brief history of spousal support and its purpose and give an overview of current New York legislation regarding the award of spousal support. In Part III, this Note will analyze the California legislation on spousal support and domestic violence, examine why these laws were enacted, analyze cases that interpret these laws, and discuss how the California legislation has largely been successful.²⁷ Part III will also discuss theoretical problems that may arise with the passage of such legislation. Part IV will propose that New York and other states enact legislation similar to that of California's. Part V will conclude this Note.

II. BACKGROUND

A. *What is Domestic Violence?*

Domestic violence is generally defined as “a pattern of abusive behavior in [a] relationship that is used by one partner to gain or maintain power and control over another intimate partner.”²⁸ Acts of domestic violence can include physical and sexual assault, emotional abuse, and psychological violence.²⁹ Although the frequency and severity of the violence may vary, there is a consistent effort made by the batterer to control and maintain power over the victim.³⁰

Additionally, abusive relationships are generally characterized by a distinct cycle of violence, a theory posited by Dr. Lenore E.

maintenance uses a mathematical formula to determine how much spousal support should be awarded).

²⁵ See *In re Marriage of Cauley*, 138 Cal.App.4th 1100, 1107, 1109 n.5 (2006).

²⁶ See *infra* notes 28 and 42; see generally *infra* note 71.

²⁷ See generally *Cauley*, 138 Cal. App. 4th at 1102, 1106-07, 1109 n.5.

²⁸ Susan L. Pollet, *Economic Abuse: The Unseen Side of Domestic Violence*, N.Y. STATE BAR ASS'N J. 40, 40 (Feb. 2011).

²⁹ See *What is Domestic Violence*, NAT'L COALITION AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/learn-more> (last visited Oct. 30, 2018) (defining “domestic violence”).

³⁰ See *id.*

Walker.³¹ The first period in the cycle is described as one of ‘tension building’ where the victim can sense that their partner is becoming edgy and may be more likely react negatively to everyday frustrations.³² During this period, the victim’s partner may lash out verbally and then quickly apologize and become docile.³³ At this stage the victim tries to be alert to all their partner’s moods and may put their needs before their own to avoid confrontation or violence.³⁴ The physical abuse occurs during the second period in the cycle.³⁵ The amount of violence during this period varies, but most women report that they were abused on a frequent basis (from once a month to daily).³⁶ The violence at this stage could manifest itself through physical, emotional, or sexual abuse.³⁷ During this period most victims attempt to justify the abuse they endure and accept blame for the incident.³⁸ The final phase in the cycle may be known as the “honeymoon period”, and is characterized by a period of forgiving, loving behavior from the abuser.³⁹ This behavior usually inspires hope in the victim that the situation will change, so they remain in the relationship and the cycle repeats itself.⁴⁰ It should be noted that the general definition of domestic violence and the cycle of domestic violence do not describe any particular financial circumstances of the abuser and the victim.⁴¹

In relationships where the victim is financially independent, the relationship normally does not conform with this cycle.⁴² Instead,

³¹ See Lenore E. Walker, *Who Are the Battered Women?*, 2 FRONTIERS: J. WOMEN STUD. 52, 53 (Spring 1977). Dr. Walker has been cited as the original authority on the cycle of violence.

³² See *id.*

³³ See *id.*

³⁴ See *id.*

³⁵ See *id.*

³⁶ See *id.*, at 53-4.

³⁷ *The Cycle of Violence*, JENESSE CTR., INC.: DOMESTIC VIOLENCE INTERVENTION AND PREVENTION PROGRAM, <https://jenesse.org/domesticviolence/cycleViolence.html> (last visited Nov. 15, 2018) (explaining the various stages of the cycle of violence that characterizes most abusive relationships).

³⁸ Walker, *supra* note 31, at 54.

³⁹ *Id.*; *The Cycle of Violence*, *supra* note 37.

⁴⁰ See Walker, *supra* note 31, at 53; *The Cycle of Violence*, *supra* note 37.

⁴¹ See *What is Domestic Violence?*, THE NAT’L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/is-this-abuse/abuse-defined/> (last visited Nov. 15, 2018); *The Cycle of Violence*, *supra* note 37.

⁴² WEITZMAN, *supra* note 18, at 15.

financially independent victims do not experience a honeymoon period and are subjected to a constant stream of abuse.⁴³ Every victim's experience does not mirror that of Dr. Walker's theory because each situation is unique.⁴⁴ For example, financially independent victims may experience long periods of peace between the periods or a constant stream of violence.⁴⁵ There are various alternative descriptions that capture the domestic violence experience for many financially independent victims.

*B. Domestic Violence and the Financially Independent: Why Financially Independent Victims Don't Leave.*⁴⁶

Domestic violence affects individuals in every community, regardless of "age, socio-economic status, gender, race, or nationality."⁴⁷ However, when people think of domestic violence, they often have a specific image in mind: a woman from a low-income household with no financial independence, who is forbidden from working by her abuser, who has many young children, and is completely dependent on her spouse.⁴⁸ Although many domestic violence victims fit this description, there are other kinds of victims.⁴⁹ Dr. Susan Weitzman discovered a whole community of financially independent victims that also suffer from domestic violence, which she discusses in her book, "*Not to People*

⁴³ Eliza Shapiro, *Domestic Violence Among the Wealthy Hides Behind 'Veil of Silence,'* DAILY BEAST (Feb. 28, 2013, 4:45 AM), <https://www.thedailybeast.com/domestic-violence-among-the-wealthy-hides-behind-veil-of-silence>.

⁴⁴ WEITZMAN, *supra* note 18, at 90, 95-96. Ingrid discusses how her one-time incident of being assaulted by her husband changed her and made her walk on eggshells, while Allison's abuse by her husband happened multiple times, just a month or weeks apart.

⁴⁵ WEITZMAN, *supra* note 18, at 94.

⁴⁶ For the purposes of this Note, "financially independent" will mean men or women who are educated (meaning having a minimum education of a bachelor's degree), who have an independent income apart from their spouse, who do not receive public assistance, and who have the financial means to leave their partner but many times continue to remain in abusive relationships.

⁴⁷ *What Is Domestic Violence*, *supra* note 29.

⁴⁸ Nancy Salamone, *Domestic Violence and Financial Dependency*, FORBES (Sept. 2, 2010, 12:00 PM), <https://www.forbes.com/2010/09/02/women-money-domestic-violence-forbes-woman-net-worth-personal-finance.html#5adf1ce91047>; *see also* WAITRESS (Fox Searchlight Pictures 2007). The 2007 movie "Waitress" comes to mind when envisioning the stereotypical domestic violence victim, as the main character in this movie, Jenna, is pregnant, poor, and married to an abusive and controlling man.

⁴⁹ WEITZMAN, *supra* note 18, at 6.

Like Us” *Hidden Abuse in Upscale Marriages*.⁵⁰ Dr. Weitzman has coined the phrase “upscale violence” to describe the married women whom she has treated that were being physically or emotionally abused and also met at least three of the following criteria: (1) a combined household income of more than \$100,000.00 per year; (2) a marital residence in an affluent neighborhood; (3) a self-perception of being part of the upper-middle or middle class; and (4) a minimum education of a bachelor’s degree.⁵¹ Dr. Weitzman learned about this community while practicing at the University of Chicago’s Department of Psychiatry, and after finding a gap in the literature regarding the domestic abuse of financially independent victims, she decided to research this population herself.⁵² Dr. Weitzman gathered a research sample and interviewed and extensively analyzed fourteen candidates, ranging in age from twenty-four to sixty-two years old.⁵³ Dr. Weitzman published her authoritative book based on the results of her research and her experiences working as a psychiatrist.⁵⁴

Her research is a significant contribution because financially independent victims rarely file police reports and are usually not reflected in domestic violence statistics or studies.⁵⁵ These victims choose to hide behind a “veil of silence” rather than reporting the abuse since they believe they are the only ones being abused.⁵⁶ Much of the violence that occurs in wealthy families is severely underreported.⁵⁷ Many instances of domestic violence in wealthy

⁵⁰ *Id.*, at 12. It should be noted that this Note references Dr. Weitzman’s work due to the overlap between financially independent victims and the wealthy victims that Dr. Weitzman treated, as well as the shared experiences of the two populations. However, the financially independent victims that this Note discusses is not the same group that Dr. Weitzman researched and treated.

⁵¹ *Id.* at 19. Many of these women also had their masters and graduate degrees as well. This definition is different from the one provided in footnote 35, which was meant to be broader and include even more victims. However, Dr. Weitzman’s definition was still helpful as her book and research provided valuable insights for the purpose of this Note.

⁵² *Id.* at 12.

⁵³ *Id.* at 13.

⁵⁴ *Id.*

⁵⁵ *See id.* (stating that many of the victims “had never shared their stories with anyone before and found satisfaction in finally putting words to their experiences”).

⁵⁶ Shapiro, *supra* note 43.

⁵⁷ Jeane MacIntosh, *Battered — and Wealthy — Wives — Silent Victims Who Think They’re Alone*, N.Y. POST (Nov. 6, 2000), <http://nypost.com/2000/11/06/battered-and-wealthy-wives-silent-victims-who-think-theyre-alone/> (explaining that domestic violence in wealthy families rarely leads to police intervention because victims rarely call the police).

families are not reported because the victims have the financial resources to maintain their anonymity.⁵⁸ They can afford a weekend away if their spouse gets violent and do not need to go to shelters, and they have private physicians to treat them and do not need to go to the public hospital.⁵⁹ Because these victims are not accessing social services for domestic violence prevention, they deal with the abuse privately and are therefore not usually reflected in domestic violence statistics and reports that are based upon arrests or emergency room visits.⁶⁰

This underreporting also occurs for a second important reason. Society has been conditioned to think that domestic violence only occurs in lower-income households.⁶¹ Because financially independent victims do not identify with the stereotypical “battered woman,” they do not consider what they are experiencing to be domestic violence, and so they do not believe they are being abused.⁶²

Moreover, many financially independent victims do not consider themselves to be battered wives.⁶³ Furthermore, because many financially independent victims have elevated social status, they often do not feel comfortable seeking professional help for the abuse they endure.⁶⁴ These gaps in self-perception also contribute to the underreporting of domestic violence by financially

⁵⁸ WEITZMAN, *supra* note 18, at 29–30.

⁵⁹ *See id.*; *see generally* NANCY DURBOROW ET. AL, FAMILY VIOLENCE PREVENTION FUND, COMPENDIUM OF STATE STATUTES AND POLICIES ON DOMESTIC VIOLENCE AND HEALTH CARE 2 (2010). Most states have enacted mandatory reporting laws, but this usually applies to public hospitals. It is rare that a financially independent victim will tell her private physician how she was injured, which adds to the underreporting of abuse.

⁶⁰ *See generally*, Claire M. Renzetti & Vivian M. Larkin, *Economic Stress and Domestic Violence*, VAWNET 15 (Sept. 2009), <http://vawnet.org/material/economic-stress-and-domestic-violence> (reasoning that there is an inverse relationship between financial status and domestic violence because women with greater financial resources are able to hide their victimization better).

⁶¹ MacIntosh, *supra* note 57.

⁶² *See* WEITZMAN, *supra* note 18, at 17–18.

⁶³ Leslie Morgan Steiner, *Why Domestic Violence Victims Don't Leave*, TED TALK (Nov. 2012), www.ted.com/talks/leslie_morgan_steiner_why_domestic_violence_victims_don_t_leave. This TED Talk is about a woman telling her story of how she was abused by her first husband and explaining why other women may not leave their abusive relationships. The relevant portion states that she “never once thought of [her]self as a battered wife. Instead [she] was a very strong woman in love with a deeply troubled man,” and she did not even realize that what she was going through was considered to be abuse.

⁶⁴ *See Domestic Violence in the Suburbs*, SUDBURY-WAYLAND-LINCOLN DOMESTIC VIOLENCE ROUNDTABLE, <http://www.domesticviolenceroundtable.org/domestic-violence-suburbs.html> (last visited Nov. 13, 2018).

independent victims.⁶⁵ Many financially independent victims are well-educated, which can attribute to these gaps in self-perception because the victims may feel ashamed that they are being abused because they are educated, and therefore should know better than to be pulled into abusive relationships.⁶⁶ Financially independent victims may also feel that there is a stigma associated with being a victim of domestic violence and do not want to be seen as broken, helpless victims.⁶⁷

There are additional factors that contribute to the silence of financially independent victims. One such factor is isolation. Since many financially independent victims live on larger properties, they are physically isolated from their neighbors, so there is no one around to hear or witness the abuse.⁶⁸ Moreover, many victims are treated with condescension and skepticism when they seek help.⁶⁹ And when victims reveal that they are abused and are not believed, they are less likely to report future abuse since they think that the police will not believe them.⁷⁰

Additionally, there are many reasons why victims of upscale violence stay in abusive relationships, even though they have the economic means to leave.⁷¹ Many women that Dr. Weitzman analyzed told her they felt they had to stay in their marriages because they followed the adage “[y]ou’ve made your bed, now you have to lie in it.”⁷² Other patients told Dr. Weitzman that they made a commitment when they got married, and felt they had to stay because they vowed to spend the rest of their lives with these men.⁷³ Some women hoped to change their husbands and thought

⁶⁵ WEITZMAN, *supra* note 18, at 27-30.

⁶⁶ *Id.* at 17. Dr. Weitzman states that one of her patients explained why she didn’t seek professional help for abused women because this simply didn’t happen in her family. She said “Nobody treated a woman like that...It just doesn’t happen to college-educated, middle-class people. You don’t call your [parents] and tell them that your husband just *hit* you.” (emphasis in original).

⁶⁷ *Id.* at 26-27.

⁶⁸ *Domestic Violence in the Suburbs*, *supra* note 64.

⁶⁹ See WEITZMAN, *supra* note 18, at 27-30 (explaining that many financially independent victims are dismissed by the public, their friends, lawyers, doctors, and mental health professionals when they reveal that they have been abused).

⁷⁰ *Id.* at 34.

⁷¹ “*Why Don’t They Just Leave?*”, NAT’L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/is-this-abuse/why-do-people-stay-in-abusive-relationships/> (last visited Nov. 15, 2018).

⁷² WEITZMAN, *supra* note 18, at 79-80.

⁷³ *Id.* at 80.

they could possibly make them realize that it was unacceptable to act out violently against them.⁷⁴ Many women also blamed themselves and thought they should have known better, so they stayed because they felt ashamed and isolated.⁷⁵ In addition, many abusers abuse the discovery process in any divorce proceeding or similar litigation by seeking highly personal, and sometimes embarrassing, information about their victims.⁷⁶ Therefore, victims may stay because they fear having their personal affairs and past history of abuse brought into the public view by their abusers.⁷⁷ It can also be difficult for many victims to leave their abusers because it may be an arduous process to end the relationship.⁷⁸ Finally, many women might rationalize staying in abusive relationships because they love their abuser.⁷⁹

The financially independent victims that this Note unpacks share many of the characteristics of Dr. Weitzman's population.⁸⁰ The financially independent victim is educated and does not consider herself to be a victim of domestic violence.⁸¹ However, in contrast to Dr. Weitzman's population, the financially independent victim does not belong to a certain income bracket; they simply have an income that is independent from that of their spouse.⁸² Moreover, many financially independent victims are the

⁷⁴ *Id.*

⁷⁵ MacIntosh, *supra* note 57.

⁷⁶ David Ward, *In Her Words: Recognizing and Preventing Abusive Litigation Against Domestic Violence Survivors*, 14 SEATTLE J. SOC. JUSTICE 429, 441 (2015) (discussing how abusers manipulate the legal system as a way of continuing to maintain power and control over their victims).

⁷⁷ Beverly Engel, *Why Don't Victims of Sexual Harassment Come Forward Sooner?*, PSYCHOL. TODAY (Nov. 16, 2017), <https://www.psychologytoday.com/us/blog/the-compassion-chronicles/201711/why-dont-victims-sexual-harassment-come-forward-sooner>.

⁷⁸ See *Contested Divorce Timeline*, N.Y. STATE UNIFIED COURT SYSTEM, https://www.nycourts.gov/divorce/divorce_timeline.shtml (last updated Feb. 19, 2013). This timeline depicts the long process to get a divorce in New York and the many steps that are needed to get one. This process includes filing of a Request for Judicial Intervention, exchanging a statement of net worth, conducting a preliminary conference, attending a compliance conference, exchanging discovery, and then having a trial to argue for spousal support, custody, and whatever other issues require litigation to be decided.

⁷⁹ *Why do People Stay in Abusive Relationships*, THE NAT'L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/is-this-abuse/why-do-people-stay-in-abusive-relationships/> (last visited November 15, 2018).

⁸⁰ WEITZMAN, *supra* note 18, at 19.

⁸¹ *Id.*

⁸² See *Economic Empowerment Strategies for Women*, BATTERED WOMEN'S SUPPORT SERV., <https://www.bwss.org/resources/economic-empowerment-strategies-for-women/understanding-financial-abuse-safety-planning/> (last visited Nov. 17, 2018).

ones being brought into court by their abusers to pay spousal support because they are the primary breadwinner of the household, just like Crystal Harris.⁸³

C. *The History and Purpose of Spousal Support*

Spousal support was developed in England as a part of divorce law in the Ecclesiastical courts.⁸⁴ The purpose of this practice was for husbands to support their wives after their marriages ended.⁸⁵ The husband was obligated to support his wife based on the legal unity of husband and wife and on the system of coverture, where the husband “controlled the marital property [which included] both his and his wife’s separate property.”⁸⁶ Moreover, in legal contemplation, “the marital tie upon which the husband’s legal duty to maintain [his wife] was not severed by the divorce decree.”⁸⁷ The marital tie was not severed upon divorce because it was believed not to be the wife’s fault that her husband was unfaithful or abusive, and thus he should still be required to provide for her financially.⁸⁸

When the practice of awarding spousal support began, courts only awarded spousal support in the following circumstances: (1) if the wife was faultless and needed support, (2) the husband was unfaithful or cruel, or (3) if the husband had greatly profited from the marriage by acquiring his wife’s property.⁸⁹ The initial three circumstances in which spousal support was awarded required necessity on the wife’s part as well as innocence to qualify for an award of spousal support. If a wife was found to be an adulteress,

⁸³ Chang & Litoff, *supra* note 2. See also Jessica Littles *Why Are So Many Women Being Forced to Pay Their Abusers*, *NYLON* (AUG. 11, 2017), <https://nylon.com/articles/mel-b-divorce-women-paying-abusers>.

⁸⁴ Chester G. Vernier & John B. Hurlbut, *The Historical Background of Alimony Law and Its Present Statutory Structure*, 6 *L. & CONTEMP. PROBLEMS* 197, 197 (1939). See *Ecclesiastical*, *RANDOM HOUSE DICTIONARY*, <http://www.dictionary.com/browse/ecclesiastical?s=t> (last visited Oct. 5, 2016).

⁸⁵ Danielle Morone, *A Short History of Alimony in England and the United States*, 20 *J. CONTEMP. LEGAL ISSUES* 3, 4 (2005).

⁸⁶ *See id.*

⁸⁷ Vernier & Hurlbut, *supra* note 84, at 198.

⁸⁸ *See id.*

⁸⁹ Morone, *supra* note 85, at 4. Spousal support today is still dominated by the objective that one of the spouses needs spousal support after the dissolution of marriage.

but also needy, she would not be granted spousal support.⁹⁰ It did not matter that the guilty wife might “starve as quickly as an innocent one,” but the husband’s duty to support continued only so long as the wife continued to cohabit with her husband or lived apart from him.⁹¹ Once a “guilty” wife left her husband, he was no longer required to support her financially.⁹² However, an order for permanent spousal support in the Ecclesiastical court required more than a simple judicial measurement of the husband’s legal duty as husband to support his wife.⁹³ Spousal support was often awarded as a way of punishing the husband for his moral delinquencies.⁹⁴

Today, the “essential purpose of [spousal support continues to be] the ‘maintenance and support’ of the [dependent] spouse . . . [Spousal support] is intended to fill the needs of the future, not to compensate for deeds of the past.”⁹⁵ Support can be awarded for varying situations that demonstrate need, such as one party never having worked, or one party having no medical insurance.⁹⁶ Support has been considered by some authorities to mean a “level close to the marital standard of living.”⁹⁷ However, spousal “maintenance is not an absolute right, and the party requesting [spousal support] has the burden to prove to the court that they are in need of help to provide for their *reasonable needs*.”⁹⁸ The court retains discretion when deciding whether to award spousal support because different courts consider various factors when coming to a conclusion.⁹⁹

⁹⁰ *Id.* at 199. Meaning that if a woman remarried after getting divorced, her ex-husband would no longer have to continue paying her spousal support.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Vernier & Hurlbut, *supra* note 84, at 199.

⁹⁴ *Id.* Moral delinquency could include a husband divorcing his wife because he was unfaithful and wanted to marry another woman.

⁹⁵ John C. Sheldon, *The Sleepwalker’s Tour of Divorce Law*, 48 ME. L. REV. 7, 21 (1996) (citing Skelton v. Skelton, 490 A.2d 1204, 1207 (Me. 1985)).

⁹⁶ *See id.* at 6 (stating that factors the court considers may include the length of the marriage, time separated while still married, age of the parties at the time of divorce, income of parties, future financial prospects for both parties, and the health of the parties).

⁹⁷ Susanne Golob, *The Role of the “Self-Support Goal” in Awarding and Modifying Alimony*, 22 CONTEMP. LEGAL ISSUES 348, 365 (2011).

⁹⁸ Joseph E. Cordell, *Why Don’t More Men Ask For Alimony?*, THE HUFFINGTON POST (June 26, 2013), http://www.huffingtonpost.com/joseph-e-cordell/why-dont-more-men-ask-for_b_3503742.html (emphasis added).

⁹⁹ *Mani v. Mani*, 183 N.J. 70 (2005).

Traditionally, only women were awarded spousal support, but today more men are aggressively pursuing spousal support.¹⁰⁰ Previously, men appeared to be embarrassed to ask for spousal support, but now more men are asserting their rights and demanding spousal support.¹⁰¹ For instance, according to the 2010 Census records, out of the 400,000 people receiving spousal support in the United States, 1,200 of those people are men.¹⁰²

D. Overview of New York Spousal Support Law.

The New York statute was recently amended to include a formula for post-divorce spousal maintenance for the first time.¹⁰³ The courts now decide who will be awarded spousal support by using a mathematical formula, while in the past the decision was completely within the judge's discretion.¹⁰⁴ Although the purpose

¹⁰⁰ Alice Gomstyn, *Role Reversal: Ex-Wives Angry Over Paying Alimony*, ABC NEWS (Sept. 20, 2009), <http://abcnews.go.com/Business/role-reversal-wives-angry-paying-alimony/story?id=8662940>. See also *Orr v. Orr*, 99 S. Ct. 1102, 1105-6 (1979). The Supreme Court in the *Orr* case held that Alabama statutes only allowing spousal support awards for men and not women, violated the Equal Protection Clause of the 14th Amendment of the United States Constitution.

¹⁰¹ See generally *id.*

¹⁰² See Geoff Williams, *More men get alimony from their ex-wives*, REUTERS (Dec. 24, 2013), <http://www.reuters.com/article/us-divorce-alimony-men-idUSBRE9BN0AW20131224>. Although this is just a small percentage, this demonstrates that more men are asserting their rights and filing for spousal support.

¹⁰³ Stashenko, *supra* note 24.

¹⁰⁴ See *New York State Maintenance & Child Support Calculator*, ROSENTHAL LAW & MEDIATION, <http://www.joyrosenthal.com/new-york-maintenance-child-support-calculator/> (last visited Nov. 5, 2016). In New York, spousal support is currently calculated by calculating the income of both spouses (comprised of first gross income, which includes (1) employee income from salaries or wages; (2) net business or self-employment income; and all other income), gross income does not include the following: (4) investment income, less related expenses; (5) workers' compensation; (6) disability benefits; (7) unemployment insurance; (8) Social Security benefits; (9) veterans benefits; (10) pensions and retirement benefits; (11) fellowships and stipends; (12) annuity payments; (13) self-employment depreciation deduction; and (14) self-employment entertainment and travel allowances. The court will then deduct the following: (1) Social Security and Medicare taxes; (2) New York City or Yonkers income taxes paid; (3) alimony/maintenance and child support paid to a spouse or on behalf of a child not subject to the present divorce; (4) unreimbursed employee business expenses; (5) public assistance; (6) supplemental security income. After inputting all these values for both parties, the computer will generate an amount of spousal support to be paid.

See also Stashenko, *supra* note 24 (stating that this law was proposed in order to help victims of domestic violence, because the legislature reasoned it was unlikely that the courts would deviate from applying the formula when awarding spousal support, and thus victims of domestic violence "[would] not [] be viewed by the perpetrator of domestic violence as having imposed the requirement on them").

of implementing this formula was to make the process of awarding spousal maintenance more streamlined, current law is still lacking.¹⁰⁵ It disregards the unique circumstances surrounding family law cases by focusing only on a couple's finances, and does not sufficiently account for cases like Crystal Harris', where the victim may make more than the abuser and be ordered to pay the abuser spousal support upon dissolution of marriage.

The award of spousal support in New York is currently governed by New York Domestic Relations Law Section 236B.¹⁰⁶ The pertinent part of the statute for purposes of this Note states that:

“the court shall order the guideline amount of maintenance up to the income cap in accordance with paragraph C of this subdivision, unless the court finds that the guideline amount of temporary maintenance is unjust or inappropriate, which finding shall be based upon consideration of any one or more of the following factors, and adjusts the guideline amount of temporary maintenance accordingly based upon such consideration [of] . . . (g) acts by one party against the other that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section 459(a) of the social services law [and] . . . (m) any other factor which the court shall expressly find to be just and proper.”¹⁰⁷

Regarding acts of domestic violence, NY Domestic Relations Law 236B(h)(1)(g) considers “act[s] which would constitute a violation of the penal law.”¹⁰⁸ These acts include strangulation or criminal obstruction of breathing, sexual abuse, forcible touching, and

¹⁰⁵ *Id.*

¹⁰⁶ N.Y. DOM. REL. LAW § 236(B)(h)(1)(g),(m)(West. 2011).

¹⁰⁷ *Id.* (emphasis added). The court considers the same factors when determining the award of temporary and permanent spousal maintenance.

¹⁰⁸ N.Y. SOC. SERV. LAW § 459-a (1) (West. 2011), defining acts listed as:

“acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted assault, attempted murder, criminal obstruction of breathing or blood circulation, or strangulation; and (i) such acts have resulted in actual physical or emotional injury or have created a substantial risk of physical or emotional harm to such person or such person's child; and (ii) such act or acts are or are alleged to have been committed by a family or household member.”

sexual misconduct.¹⁰⁹ There are numerous other factors that the court considers when awarding temporary and permanent maintenance.¹¹⁰ The statute also discusses the distribution of equitable marital property, but that is beyond the scope of this Note.¹¹¹

How would current New York formulas have decided the Crystal Harris case? Since Crystal Harris made \$120,000.00 per year while her husband stayed home to care for their children, she was the primary breadwinner.¹¹² Because New York uses a mathematical formula to calculate the award of spousal support, the court will plug in the two incomes, and because Crystal makes much more than her husband, she will be ordered to pay him spousal support.¹¹³ Even though Crystal Harris's husband was convicted of rape, it is still more than likely that the court will choose to adhere to the objective formula.¹¹⁴ It is likely that the courts would adhere to the objective formula in an effort to maintain the principle purpose of awarding spousal support, to ensure that the dependent spouse will be provided for financially.¹¹⁵ Therefore, Crystal Harris would be ordered to pay her *convicted rapist* spousal support under current New York law.

¹⁰⁹ *See id.*

¹¹⁰ N.Y. DOM. REL. LAW § 236(B)(h)(1). The court also considers: (a) the age and health of the parties; (b) the present or future earning capacity of the parties . . . (c) the need of one party to incur education or training expenses; (d) the termination of a spousal support award . . . (e) the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without fair consideration; (f) existence and duration of a pre-marital joint household or a pre-divorce separate household . . . (h) availability and cost of medical insurance for the parties; (i) the care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity; (j) tax consequences to each party; (k) the standard of living of the parties established during the marriage; and (l) the reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage.

¹¹¹ *See Kellerman v. Kellerman*, 187 A.D.2d 906, 907 (N.Y. 1992). This case analyzes the distribution of marital property between parties.

¹¹² *See Massarella*, *supra* note 1, at 2. Moreover, at the time, Sean Harris was making around \$400.00 per month as a used car salesman.

¹¹³ *New York State Maintenance & Child Support Calculator*, *supra* note 104.

¹¹⁴ *See New York Spousal Support Laws*, BADANES LAW FIRM (Feb. 3, 2016), <http://www.dbnylaw.com/new-spousal-maintenance-laws-in-new-york/> (stating that this formula is a "guideline" and the Court can deviate from the formula if it finds the amount to be "unjust or inappropriate). However, it is likely that it would take an exceptional judge to look beyond the formula and consider the unique circumstances of each case brought before them.

¹¹⁵ *Id.*

Considering Crystal Harris under current New York law, the legislation is clearly lacking. Because even though the judge has discretion as to whether to award spousal support, it is not likely that a judge will refuse to award spousal support, except in extreme cases.¹¹⁶ Because the formula is so objective and just requires the judge to plug some numbers into a formula, a judge would have to be feeling very generous on a particular day to overrule it. Thus, it is likely that a judge will simply adhere to the mathematical formula, and will award spousal support to the needy spouse.

III. ANALYSIS

A. *Overview and Analysis of California Spousal Support Laws Regarding Domestic Violence*

This Note will now give an overview of the various statutes that the California legislature has enacted pertaining to spousal maintenance and domestic violence.

a. A Prohibition of Spousal Support Award for an Attempted Murder Conviction: California Family Code § 4324¹¹⁷

Unlike New York, California has enacted various statutes that directly address domestic violence and spousal support. One such statute is California Family Code Section 4234, enacted in 1995, which states “when a spouse is convicted of attempting to murder the other spouse . . . the injured spouse shall be entitled to a prohibition of any temporary or permanent award for spousal support or medical, life, or other insurance benefits or payments from the injured spouse to the other spouse.”¹¹⁸ This statute was enacted following a case where a man attempted to murder his wife by ether asphyxiation.¹¹⁹ He failed in his attempt and was

¹¹⁶ See generally, *Alice M. v. Terrance T.*, 2015 NY Slip Op. 51913(U) [50 Misc. 3d 1204(A)]. In this case, the judge refused to order the wife to pay her former husband spousal support because the court found that the husband engaged in extreme acts of physical and sexual violence against the wife, and since the husband was in prison and his living expenses were paid for by the State of New York, awarding spousal support to him would be contrary to NY Domestic Relations Law § 236B and to public policy (*16).

¹¹⁷ CAL. FAM. CODE § 4324.

¹¹⁸ CAL. FAM. CODE § 4324 (West 2011).

¹¹⁹ Cal. A.B. 16 Sen., 6/20/1995 (West.).

convicted of first degree attempted murder, but during later proceedings for dissolution of marriage, the court ordered the victim to pay her husband spousal support until the divorce was finalized.¹²⁰ Supporters of the legislation argued “there is something that [is fundamentally unjust] in allowing a person who attempts to murder a spouse, to be able to later benefit from the fact that they were unsuccessful in that attempt.”¹²¹ This statute creates a hard rule, and if an individual has been convicted of attempting to murder a spouse, that individual will not be granted spousal support.

Because 4324 creates such a hard rule, there is essentially no case law regarding this statute, since California has prohibited the award of support to a dependent spouse who has attempted to murder the supporting spouse.¹²² A New Jersey case, *Mani v. Mani*, that referenced Cal. Fam. § 4324, reasoned that some conduct is so outrageous that it violates the social contract created by marriage, and society cannot abide continuing the economic bonds between the parties in such cases.¹²³ Therefore, in the few cases where a dependent spouse attempted to murder the supporting spouse, this extremely egregious conduct is considered in the initial determination of whether spousal support should be awarded at all.¹²⁴

b. Acts of Domestic Violence and a Rebuttable Presumption Regarding the Award of Support: California Family Code § 4325¹²⁵

Then in 2002, California Family Code Section 4325 was enacted.¹²⁶ This is a broad statute that considers convictions for all acts of domestic violence perpetrated by one spouse against the other entered by the court within five years of filing dissolution of marriage proceedings, or anytime after the dissolution has been filed and creates “a rebuttable presumption affecting the burden

¹²⁰ *See id.*

¹²¹ *See id.*

¹²² *Mani v. Mani*, 183 N.J. 70, 92 (2005). This is a New Jersey case that considered California Family Code § 4324 when making their decision.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ CAL. FAM. CODE § 4325.

¹²⁶ *Id.*

of proof that any award of temporary or permanent spousal support to the abusive spouse . . . should not be made.”¹²⁷ Moreover, in order to rebut this presumption, the court may consider evidence of the convicted spouse’s history as a domestic violence victim or *any other factors* that the court deems equitable.¹²⁸ Arguments in support of this statute were that granting spousal support to a convicted abuser constitutes “unjust enrichment,” and causes the victim to remain tied to their abuser.¹²⁹ Another reason that the legislature considered was that even though more women are entering the professional world and earning higher incomes, “convicted abusers should not be entitled to the hard-earned money of the women they have abused upon divorce.”¹³⁰

The lead case interpreting Section 4325 is *In re Marriage of Cauley*, the case that declared “victims of domestic violence [should] not be required to finance their own abuse.”¹³¹ In *Cauley*, the husband filed a petition for dissolution of marriage, and later requested a temporary restraining order because he claimed his wife had threatened his life and physically attacked him several times.¹³² However, the family court judge still ordered him to pay his wife \$5,200.00 per month in spousal support.¹³³ Afterwards, his wife flew from California to his Florida home, and proceeded to destroy his property, including spraying herbicide in his yard,

¹²⁷ CAL. FAM. CODE § 4325(a) (West 2002); CAL. FAM. CODE § 6203 (West 2016), defining “abuse” as any of the following: (1) to intentionally or recklessly cause or attempt to cause bodily injury; (2) sexual assault; or (3) to place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

¹²⁸ CAL. FAM. CODE § 4325(b) (West 2002) (emphasis added). The statute refers to Section 6211 of the California Family Code for a definition of “domestic violence,” which is defined as abuse perpetrated against any of the following persons: (a) a spouse or former spouse; (b) a cohabitant or former cohabitant; (c) a person with whom the respondent is having or has had a dating or engagement relationship; (d) a person with whom the respondent has had a child; (e) a child or a party to a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected; or (f) any other person related by consanguinity or affinity within the second degree). CAL. FAM. CODE § 6211 (West 1993). *See also* CAL. FAM. CODE § 6203 (West 1993) (defining “abuse” as: (1) to intentionally or recklessly cause or attempt to cause bodily injury; (2) sexual assault; or (3) to place a person in reasonable apprehension of imminent serious bodily injury to that person or to another).

¹²⁹ CA B. An., S.B. 1221 Sen., 4/24/2001 (Westlaw).

¹³⁰ *See id.* The legislature refers to women that have been abused, but this could easily apply to male victims of domestic violence as well.

¹³¹ *In re Marriage of Cauley*, 138 Cal.App.4th 1100, 1107 (2006).

¹³² *Cauley*, 138 Cal. App. 4th at 1103.

¹³³ *Id.*

removing personal items, killing his fish, and spraying him and his girlfriend with herbicide.¹³⁴ After being caught, she was charged with and pled guilty to the felony of aggravated stalking.¹³⁵

The court held that “public policy against enforcement of non-modifiable spousal support clearly outweighs any interest in its enforcement,” and Section 4325 therefore clearly applies to a modification of a spousal support order.¹³⁶ The court reasoned that ordering spousal support in domestic violence cases may force victims to remain “entangled in the abuser’s web of violence and intimidation.”¹³⁷ Additionally, the court reasoned that refusing to enforce the support order would further the policy against domestic violence because the wife would be blocked from further financial resources to harass her estranged husband.¹³⁸ Furthermore, although there is a strong public policy in favor of “enforcing the spousal support provisions of the parties’ settlement agreement and [the wife] would [have to] forfeit a substantial amount of spousal support [without] enforcement, the parties could not have reasonably expected that [the husband] would finance his own abuse . . .”¹³⁹ Moreover, Section 4325 expressly states that a spouse convicted of a domestic violence offense against the other spouse should not be awarded spousal support, and that presumption was triggered in this case.¹⁴⁰ Finally, the court rationalized that awarding appellant spousal support after her conviction would constitute “unjust enrichment.”¹⁴¹

The purpose of Section 4325 is to “limit judicial discretion to award spousal support to a convicted abuser.”¹⁴² A court can ignore the presumption if it considers “documented evidence” of the abusive spouse’s history as a victim of domestic violence

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Cauley*, 138 Cal.App.4th at 1106, 1108.

¹³⁷ *Id.* at 1106.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 1107.

¹⁴¹ *Id.* at 1106. (citing Rest.2d Contracts, §178(1), unjust enrichment states that [a] promise or other term of an agreement is unenforceable on grounds of public policy if legislation provides that it is unenforceable or the interest in its enforcement is clearly outweighed in the circumstances by a public policy against the enforcement of such terms).

¹⁴² Stasia Rudiman, *Domestic Violence as an Alimony Contingency: Recent Developments in California Law*, 22 J. CONTEMP. LEGAL ISSUES 492, 494 (2015).

perpetrated by the other spouse or “any other factors that the court deems just and equitable.” No cases have enumerated what those other factors may be, and so judges have discretion as to what evidence they would like to hear.¹⁴³ However, there are currently no cases in which the abuser has overcome this presumption, which suggests it is difficult to overcome, making it a harder rule.¹⁴⁴

c. Theoretical Problems Relating to Enforcing a Rebuttal Presumption Following Acts of Domestic Violence

The legislature was concerned that problems might arise in the application of § 4325. One concern was that “the presumptive bar to alimony for abusers may unintentionally distort both domestic violence and marital dissolution proceedings.”¹⁴⁵ For example, § 4325 may incentivize victims of domestic violence to press charges against and seek criminal convictions for their abusers.¹⁴⁶ Moreover, the legislature was concerned that more people would file charges against their spouses which would take up time and resources of courts and prosecutors by forcing them to address and investigate “marginal charges filed for strategic purposes.”¹⁴⁷ Or because there is a five year conviction period that § 4325 considers, spouses convicted of domestic violence crimes may delay filing for divorce so that they can be awarded spousal support.¹⁴⁸ Additionally, abusers may be tempted to “wrongly accuse [their] spouse of criminal abuse in hopes of securing an alimony award.”¹⁴⁹ Furthermore, spouses who have been accused of domestic violence may feel pressured to plea to a conviction and negotiate alimony awards out of court even if they did not commit the crimes they are accused of because they may fear the result if

¹⁴³ *Id.* at 495-6; CAL. FAM. CODE § 4325(b).

¹⁴⁴ See Sarah Burkett, *Finding Fault and Making Reparations: Domestic Violence Conviction as a Limitation on Spousal Support Award*, 22 J. CONTEMP. LEGAL ISSUES 492, 496 (2011).

¹⁴⁵ Rudiman, *supra* note 142, at 494.

¹⁴⁶ See *id.*

¹⁴⁷ See generally *id.*

¹⁴⁸ See *id.* If abusers delay filing for divorce, they may also refuse to allow their victims to leave the household, which could put the victim in a dangerous situation if she was forced to remain with her abuser.

¹⁴⁹ *Id.* at 495.

the case was tried by a jury.¹⁵⁰ Spouses may decide to take a plea deal because it is likely they will not be awarded spousal support if they have a conviction for a domestic violence offense on their record.¹⁵¹ Therefore, although there are still concerns that someone who is not really an abuser may be denied spousal support, this situation has not yet arisen and therefore these concerns are merely theoretical.¹⁵²

d. Violent Sexual Felonies and Spousal Support: California Family Code § 4324.5¹⁵³

Finally, in 2013, the California legislature expanded § 4324 to include violent sexual felonies by enacting Family Code § 4324.5.¹⁵⁴ Section 4324 did not include violent sexual felonies, only attempted murder.¹⁵⁵ This statute was enacted so family courts would be required to consider the spouse's "criminal conviction for a violent sexual felony [when] ordering spousal support."¹⁵⁶ This legislation was an effort to prevent the re-victimization of injured spouses who would be otherwise ordered to financially provide for their batterers.¹⁵⁷ Section 4324.5 creates a mandatory consideration, so a judge *must* consider a spouse's conviction for a violent sexual felony.¹⁵⁸ This is less stringent than § 4325 because § 4324.5 prohibits the award of spousal support outright rather than requiring the judge to consider such decisions and then leaving the final decision to the judge's discretion. This scenario is better explained by an example: imagine you were raped by your spouse and then filed criminal charges against him. The case goes to trial and he is convicted of rape. If you later went to file for

¹⁵⁰ *Id.*

¹⁵¹ *See id.*

¹⁵² Rudiman, *supra* note 142, at 496.

¹⁵³ CAL. FAM. CODE § 4324.5.

¹⁵⁴ CAL. FAM. CODE § 4324.5 (West 2013). The statute states: In any proceeding for dissolution of marriage where there is a criminal conviction for a violent sexual felony perpetrated by one spouse against the other spouse and the petition for dissolution is filed before five years following the conviction and any time served in custody, on probation, or on parole, an award of spousal support to the convicted spouse from the injured spouse is prohibited.

¹⁵⁵ CAL. FAM. CODE § 4324.

¹⁵⁶ 2012 Cal. Legis. Serv. Ch. 718 (A.B. 1522, West.)

¹⁵⁷ Kailey Hackbarth, *Chapter 718: Financial Protection for Victims of Sexually Violent Felonies by a Spouse*, 44 MCGEORGE L. REV. 655, 658 (2013).

¹⁵⁸ CAL. FAM. CODE § 4324.5.

divorce and your spouse made a motion for spousal support, the court would be required to look at his record and consider the circumstances surrounding that conviction prior to deciding whether to award him spousal support.

IV. PROPOSAL

New York should enact legislation similar to §§ 4324, 4324.5, and 4325 of California's Family Code.¹⁵⁹ As previously discussed, current New York state legislation governing the award of spousal support is very formulaic with formulas that do not reflect fault, and it is highly unlikely that judges will deviate from the mathematical computation when awarding spousal support.¹⁶⁰ Moreover, even if a judge were to deviate from the formula, there is still a need for such legislation in New York because judges retain too much discretion when deviating in cases where there have been acts of or convictions for domestic violence crimes or offenses.

Because current New York legislation is still lacking, this Note proposes that New York retain current legislation governing the award of spousal support (the mathematical formula), but implement the following changes: (1) require the presiding judge to review the specific facts of the case when there is a conviction for a sexually violent felony or attempted murder against their spouse; and (2) if there is such a conviction, the person convicted of such crimes would be prohibited from receiving spousal support if those crimes were committed against their spouse, and in cases where there have been such convictions, spousal support shall not be awarded; and (3) for all other sexually violent misdemeanor convictions such legislation will create a rebuttable presumption and give the judge discretion to decide if spousal support shall be awarded.¹⁶¹ Additionally, in cases where there is an indictment

¹⁵⁹ CAL. FAM. CODE § 4324; CAL. FAM. CODE § 4324.5; CAL. FAM. CODE § 4325.

¹⁶⁰ Stashenko, *supra* note 24. (N.B. While researching for this Note, there were no cases discovered that disputed the new formula that New York state has implemented, but this could be attributed to the fact that the statute was only added in October of 2015, so it is still fairly new).

¹⁶¹ These convictions would include the following crimes: rape in the third degree, rape in the first degree, and attempted murder in the second degree. *See* N.Y. PENAL LAW § 130.25(1)(stating that a person is guilty of rape in the third degree when he or she engages in sexual intercourse with another person who is incapable of consent by reason other than being less than seventeen years old), N.Y. PENAL LAW § 130.35(1)(stating that a person is

and the civil case has proceeded prior to the criminal case, the indictment will be considered and the judge will decide whether to award temporary spousal support. However, after there is a conviction in the criminal case, all temporary spousal support orders will be immediately terminated. Only convictions or indictments will be considered because otherwise it is possible that the courts will be overburdened with cases containing allegations of sexual abuse. Additionally, it is extremely important for there to be some proof because a sexual abuse allegation can be damaging to one's career and reputation, which is why only convictions and indictments should be considered.

Although there are some similarities between California's approach to spousal support laws and domestic violence, this proposal differs in its approach in one key way. The proposed New York legislation will not impose a time period for the convictions. Rather than imposing a cutoff of five years for a domestic violence conviction, any conviction should create a rebuttable presumption for an award of spousal support. This would serve to alleviate many of the theoretical problems that may arise with a time limit, such as abusers delaying filing until the period passes.

Under this Note's proposal, this is how the Crystal Harris case would have been decided: once Crystal Harris came before a judge, although a numerical value for spousal support would have already been calculated, the judge would have noted that there was an indictment pending trial against Sean Harris. This would raise a red flag for the judge to review the file in its entirety and all charges pending against Mr. Harris. Once the judge took note of the charges Sean Harris was facing, he or she would have immediately disregarded the amount that the spousal support calculator generated and would have had to refuse to grant Sean Harris spousal support. Thus, the right result would have been

guilty of rape in the first degree when he or she engages in sexual intercourse with another person by forcible compulsion) and N.Y. PENAL LAW §125.25(1)(stating that a person is guilty of murder in the second degree when with intent to cause the death of another person, he causes the death of such person); See N.Y. PENAL LAW §130.20 (sexual misconduct), N.Y. PENAL LAW § 130.30 (rape in the second degree), N.Y. PENAL LAW § 130.35 (rape in the first degree), N.Y. PENAL LAW § 130.40 (criminal sexual act in the third degree), N.Y. PENAL LAW § 130.45 (criminal sexual act in the second degree), N.Y. PENAL LAW § 130.50 (criminal sexual act in the first degree), N.Y. PENAL LAW § 130.53 (persistent sexual abuse), N.Y. PENAL LAW § 130.65 (sexual abuse in the first degree), N.Y. PENAL LAW § 130.70 (aggravated sexual abuse in the first degree), and N.Y. PENAL LAW § 130.90 (facilitating a sex offense with a controlled substance).

reached, and Crystal Harris would be able to completely sever all ties from her rapist and would not be forced to finance her own abuse any longer. Moreover, this approach is in line with the original purpose of the award of spousal support. Even though Sean Harris was the needy spouse, because he was not faultless, he would not have been awarded spousal support.

V. CONCLUSION

Crystal Harris' story will not soon be forgotten because it is one that 'shocks the conscience'. Moreover, with the number of 'house husbands' on the rise, and female's salaries rapidly rising, it is likely that more cases like Crystal Harris' will arise in the future. Although this may be the first case where a victim has been ordered to pay her abuser spousal support, one case is one too many. California clearly thought that this was a great injustice and implemented new legislation to stop more cases of "unjust enrichment." Additionally, it should be noted that due to the enactment of California Family Law Code Section 4324.5, Crystal Harris was not required to pay her ex-husband spousal support or pay for his attorney's fees.¹⁶² Moreover, it is important that victims like Crystal Harris are acknowledged as such so that they can pierce the veil of silence and begin receiving the assistance that they need to leave abusive relationships.

It is imperative that victims of domestic violence cut all ties with their abusers when they get divorced, and this includes financial ties. Because when a victim is ordered to pay their abuser spousal support after the marriage has ended, this goes against human morals and it seems particularly unjust to require victims to finance their own abuse. Sending a monthly check is too much of a reminder of the abuser that these victims endured during their marriages. It is the purpose of the government to protect its denizens, and this includes helping those that have left abusive relationships sever any and all ties with abusers, especially in

¹⁶² See Dana Littlefield, *Ex-wife wins custody dispute with imprisoned dad*, SAN DIEGO UNION TRIB. (Aug. 14, 2013), <http://www.sandiegouniontribune.com/news/crime-courts-fire/sdut-crystal-harris-custody-dispute-imprisoned-dad-2013aug14-story.html>. Crystal Harris objected to the judgment ordering her to pay her ex-husband's legal fees, and then in January 2013 when the new legislation was passed preventing abusive ex-spouses from getting supporting payments and other financial compensation after a divorce, the judgment was dismissed.

situations where their spouse forcibly raped or tried to murder them. Moreover, because domestic violence abusers are committing crimes, it seems morally unjust to force victims to pay their abuser for abusing them, which is what happens when they are ordered to pay them spousal support. This is why New York, and other states that have not yet reformed their laws require legislation like California's.