



CALIFORNIA HABEAS PROJECT

October 2011

Thank you very much for your interest in starting a project in your state to assist incarcerated survivors of domestic violence.

The California Habeas Project is – hopefully – the first of many efforts to address a nationwide problem: domestic violence survivors unjustly serving prison sentences for acts related to their history of being abused. Our project is one strategy for addressing this serious and widespread issue – a strategy that, in our state, has helped a number of battered women secure early release from prison.

As a pioneering endeavor, the California Habeas Project is committed to supporting the efforts of others across the country to assist incarcerated battered women. We hope that by sharing information, we can help you figure out what strategy or strategies might work best in your state. Please consider us a support and resource as you move forward.

Each state has its own history, politics, key organizations and players, resources, legislative process, etc. For instance, in California efforts to secure the release of battered women through a clemency project preceded the creation of our Habeas Project. In some states, clemency projects on behalf of incarcerated battered women have not yet been pursued, while in others clemency has been a successful avenue for early release. Given these realities, please be aware that the methods we have used to implement our project may or may not work for you.

The California Habeas Project is primarily volunteer-run. Like many of you, we have few resources. Because of these limitations, we ask that you please do some preliminary data gathering in your own state (if you haven't already done so) and learn more about our project before you contact us with specific questions.

What follows are: 1) preliminary questions to think about; 2) information we suggest that you gather about your state; and 3) materials we think would be helpful for you to read. You may have already asked these questions or collected this information, but we thought it would be most helpful to start at the beginning just in case.

Identify your goal and any barriers you might encounter

What do you want to do? Do you want to help battered women receive early release from prison? What barriers make it difficult for survivors of abuse in your state to get parole or clemency or other post-conviction relief?

PARTICIPATING ORGANIZATIONS:

California Women's Law Center
Los Angeles, CA
www.cwlc.org

Legal Services for Prisoners with Children
San Francisco, CA
www.prisonerswithchildren.org

Los Angeles County Public Defender's Office
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Post Conviction Justice Project
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Identify a target group

Whom would you like to assist? All incarcerated battered women? Only those who killed their batterers? Only those who committed a crime as a direct result of abuse experienced at the hands of their batterer? Men who were battered or who killed friends' or family members' abusive partners? Transgendered survivors? How will you decide whom to include (or exclude)? Given that you have limited resources, how might you limit the pool of potentially eligible clients?

Consider the scope of the problem in your state

How big a problem is this in your state? How many people in your target group(s) are serving time in your state correctional facilities? A few hundred? A couple thousand? How many of them are unable to get early release? You can gather this data from public records, the Department of Corrections, support groups for incarcerated survivors, or other agencies that track such information.

Research previous or current attempts for assistance in your state

What has already been done in your state to assist incarcerated survivors seeking early release from prison? Contact your state domestic violence coalition, prisoner legal service agencies, and other relevant individuals or groups to learn about efforts to free survivors and why those efforts have or have not succeeded. Think about building coalitions with these groups as you speak with them. Feel free to call the National Clearinghouse for the Defense of Battered Women to ask for contacts in your state. The National Clearinghouse can be reached at (800) 903-0111, ext. 3.

Get to know your state's history of using expert testimony on battering and its effects

Why do you believe your target group deserves special consideration? Because they have been abused? Because they were not able to introduce expert evidence about intimate partner battering and its effects to support their defense or defense claim? If you plan to assist battered women who were unable to introduce expert testimony at trial – as we did in California – you need to know what has been going on in your state regarding the admission or preclusion of such testimony. Have battered women in your state been able to introduce lay and/or expert testimony about battering and its effects to support their legal defense? Has this been allowed only in self-defense cases? How about in non-self-defenses cases? Why or why not? Are there any specific (and possibly incorrect) court decisions that make it difficult for battered women to introduce expert testimony?



Research the relevant Evidence and Penal Codes in your state

We recommend that you research the Evidence and Penal Codes in your state as they relate to “battered woman’s syndrome,” “domestic violence evidence,” and “battering and its effects.” (Please note: Different states use different language. We use the phrase “intimate partner battering and its effects” in lieu of “battered woman’s syndrome” or other terms we think are problematic.) Look closely at how these laws define “battering and its effects” and note any limits as to how battering evidence may be used in court. For example, some states’ Evidence Codes address the admissibility of “battered woman’s syndrome” expert testimony in a self-defense claim where the survivor is charged with killing her partner. Have the courts interpreted this level of specificity in the statute to mean that expert testimony cannot be introduced in non-self-defense cases? In California, we worked very hard to ensure that testimony about intimate partner battering and its effects be allowed in a wide range of cases. Our statute allows for lay witness and expert testimony on battering and its effects in *all criminal cases*, where relevant. (See Cal. Evid. Code §1107.) Might this be an option in your state? Why or why not?

Consider the role of legislation

Do you need legislative changes to achieve your goal? Or do processes already exist that you want to try first? If you need to introduce new legislation, what would its content be? What type of coalition might you need to build to pass legislation? Who might be your allies? Please keep in mind that oftentimes you can find help from unlikely sources. Are there relationships with legislators that you might be able to call or build upon? Who might oppose you and why? And critically, what is the political climate in your state? When might be the best time to move forward?

One example of proposed legislation is the Domestic Violence Survivors Justice Act currently pending in New York (A.7874-A/S.5436), which would allow judges to sentence survivors convicted of crimes directly related to their experiences of abuse to shorter sentences or even community-based programs, and would allow survivors who are currently incarcerated to apply to the courts for resentencing. You can find out more at <http://dvsurvivorsjusticeact.org/>.

Assess the resources that you have and will need

Realistically, what resources can you dedicate to this effort? Can your project be conducted by the committed (but already busy) people who might be interested in working on it? Can you call upon criminal defense or habeas corpus expertise? How many criminal defense and/or habeas attorneys might be available to participate? How many experts in your state could conduct evaluations for “eligible” prisoners (assuming you use

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lack of expert testimony as the criterion or one of the criteria)? What financial resources do you have? Would you hire a coordinator? For whom would s/he work? To whom would s/he report? How long could you sustain this effort?

Conclusion

We know this is a lot to think about. We hope we have not scared you away from moving forward to assist domestic violence survivors who are serving unjustly long prison sentences. We urge you to do this information gathering and thinking to help you identify the best strategy, or set of strategies, to support incarcerated battered women in your state.

We have learned from our experience in California that this is difficult – but extremely rewarding – work. So many battered women need and deserve assistance. We sincerely hope you will find a way to help imprisoned battered women that is appropriate to your own state’s realities and dynamics. And we hope that the information and questions provided here will help you develop a sound plan.

After gathering information about your state and thinking through what you want to do, please feel free to e-mail Marisa González (marisa@prisonerswithchildren.org), Habeas Project Coordinator. She will do her best to assist you. We also suggest reaching out to the National Clearinghouse for the Defense of Battered Women, which is working with and aware of the efforts of anti-domestic violence coalitions in multiple states around the country. Again, the Clearinghouse can be reached at (800) 903-0111, ext. 3. And finally, you can go to the Habeas Project’s website, <http://www.prisonerswithchildren.org/projects/habeas-project/>, to learn more about the California Habeas Project.

Thank you again for your interest in helping launch a project to assist incarcerated survivors. We look forward to doing all we can to help you win freedom for those unjustly imprisoned.

Best wishes to you,

The California Habeas Project



We’d like to thank the National Clearinghouse for the Defense of Battered Women for their assistance with the development of this letter.

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