

Abuse compromised

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1996-01-14 04:00:00 PDT CALIFORNIA -- San Francisco's Municipal Court judges are being bitterly criticized for sending domestic violence offenders for counseling, then dismissing their cases in a way that leaves no criminal record.

The judges use a quirk in state law that allows courts to treat misdemeanor domestic violence as a civil, not a criminal matter.

A recent study shows San Francisco judges use this method to settle domestic abuse cases vastly more often than any other major county in the state.

Under a legal device known as civil compromise, batterers have their cases dismissed if the victim assents and if they complete at least eight hours of counseling. The judge can order an apology - and restitution.

Abusers whose cases are "compromised" are not subject to probation and enter no guilty plea. Upon completion of counseling, their slate is clean of conviction, and carries only a record of arrest.

The survey, by the Family Violence Project, a member of the San Francisco Domestic Violence Consortium, shows that judges here disposed of 147 cases through civil compromise over a 21-month span. No other counties surveyed used civil compromise in more than one case.

As advocates for battered women scramble to change the law, judges in other jurisdictions, and domestic abuse counselors, angrily criticize the actions of San

San Francisco courts, saying the punishment is inadequate to the point of being useless.

They contend that in San Francisco, women are being pressured to accept civil compromises, and batterers are not being held criminally accountable.

"For years we fought hard against the police attitude not to treat this as a crime. Now, they don't have that attitude," says Kenneth Theisen of the San Francisco Neighborhood Legal Assistance Foundation. "But suddenly judges aren't treating it as a crime. They are saying it is a civil matter. In some ways, I feel we're back 15 or 20 years ago with law enforcement, only now it's judges, not cops. The judges are using civil compromise too liberally."

The judges say they are simply following the law and exercising their mandated discretion. They say that as a result of the compromises, abusers undergo at least some counseling.

Judges fight back

The judges are fighting a proposed city resolution by San Francisco Supervisor Barbara Kaufman urging them not to grant civil compromises. They say the resolution sets a dangerous precedent infringing on the autonomy of the bench.

"The law would still be on the books, and we would be obligated to follow it," says Judge Ellen Chaitin.

"This resolution urges the court not to follow the law. They should lobby Sacramento to get the law repealed. That has bite to it; that would be something meaningful. All this does is make judges look like bad guys for following the law."

Ironically, a state program called diversion, in which abusers undergo at least 32 hours of monitored and supervised counseling, was eliminated this year, in part, for being too lenient and ineffective.

But still on the books is the civil compromise provision, widely regarded as even

more lenient than diversion because it allows abusers to complete as little as eight hours of counseling, then have their cases dismissed.

Prosecutors and public defenders in other counties say that while civil compromise is a legal option, they use it largely for such matters as neighborhood disputes, property damage or petty theft, not for domestic violence.

"Say a boyfriend keys (deliberately scratches) a car, that's the kind of thing I would try to civilly compromise," says Rudolph Rousseau, head deputy public defender for misdemeanors in Los Angeles. "Physical abuse, assaultive behavior, that's the kind of thing judges here wouldn't grant a civil compromise on.

"It's the most serious kind of misdemeanor. You're not talking about property crimes, but crimes with an injury or the potential for a victim. Each jurisdiction has its customs and practices, and most courts here would be reluctant to approve those kinds of resolutions."

San Francisco Public Defender Jeff Brown says that "it's our legal duty" to request civil compromise on some cases. "Since that statute exists . . . we ask for it," Brown says. "We're talking about a small number of cases, where the circumstances were not aggravated and where the possibilities of family reunification are manifest."

Criticism from other judges

While judges are traditionally reticent to publicly criticize their brethren, some Bay Area judges are so adamant about compromise that they agreed to discuss their philosophical opposition.

Some believe that inadvertently San Francisco, despite a general reputation for sensitive treatment toward victims of domestic abuse, is fostering a "legal climate" that undermines the criminal nature of the violence.

"Never. In my opinion, it should never be used," says Judge Ralph Brogdon, a municipal judge in Santa Clara County. "It's an avoidance of the problem. It's a sad state of affairs that it is used in San Francisco. In my opinion, one is too many. With civil compromise, it's like saying, 'It's OK to beat someone up the first time.' You are giving the person the chance to do it again."

Heidi's story

Heidi, a 27-year-old San Francisco secretary, agreed to a civil compromise last August after her drunken boyfriend hit her, slapped her and locked her in the bedroom of her apartment.

"I was angry when the lawyer told me a civil compromise was as if nothing had happened," she says. "But I didn't want him to go to jail, I just wanted it done with and for him to get help."

She agreed to the compromise because her boyfriend apologized and promised to go to Alcoholics Anonymous along with eight hours of court-imposed counseling.

But the boyfriend soon fell off the wagon. On Dec. 30, he attacked Heidi with a broken wine bottle, slashing her right wrist. He then fled the country.

"If I knew then what I know now, I wouldn't have done a civil compromise," Heidi says, ruefully staring at the stitched wound on her arm. "It is insulting to me, to what I went through. The sad part was, it was my choice, but I didn't really understand what it meant. If someone I didn't know beat the crap out of me, I would have said, 'You're going to jail.' But women are so vulnerable when someone they love beats them, you aren't thinking as a normal person, you swing through so many emotions. I don't understand how they can say it is not a crime when clearly, if you beat someone up, it is a crime."

"The woman may feel pressure"

San Francisco municipal judges say that nowadays they require more than the minimum eight hours of counseling.

"Generally, I order 36, 40, 50 or 60 hours," says Judge Herbert Donaldson. "Counseling is supervised, and there is a 3-month progress report. . . . More cases would be dismissed if (civil compromise) were eliminated. You'll have people acquitted, and then they'll get no counseling. There is a certain utility to the law."

But Men Overcoming Violence, one of The City's most reputable counseling programs, refuses to accept civil compromise referrals.

"One of the conditions of civil compromise is the victim has to tell the court whether or not she is satisfied with the compromise," says John Beem, executive director.

"It can be hard for the victim to express herself freely; the woman may feel pressure to make things go lightly or there will be retaliation."

"Concerned about San Francisco"

Civil compromise "is not part of our protocol," says Nancy O'Malley of the Alameda County district attorney's office. "It's not something we encourage. I've never seen the public defender's office push for it."

Citing cases of batterers being rearrested after their cases were civilly compromised, critics say the settlements fail to halt a pattern of violence.

"We're concerned about San Francisco," says Alana Bowman, a special assistant in the Los Angeles city attorney's office. "We would oppose it in every case."

Judge Charlotte Woolard, who issued the most civil compromises - 34 - according to the Family Violence Project survey, says there were instances when she refused to grant a civil compromise.

"We take these cases very seriously and did what we felt (was) right under the law," says Woolard, who left the municipal bench last November for Superior

Court.

"That's why we're judges, to make decisions."

Judge Donaldson, who granted 17 in 21 months, says: "That is less than one a month. The courts are not using this to get rid of cases. . . . If both parties want to make a fresh start, if there was no felonious intent, should they not be entitled to a fresh start?"

"A legal culture thing'

"That sounds good on paper, but in so many cases this isn't the first time of an offense," says Santa Clara County Municipal Judge Eugene Hyman. "It is rare for the woman to call (authorities) on the first offense."

He, like others, says that because compromise is in the law, they have to consider it as an option. However, he says, judges make the ultimate call.

"It's a legal culture thing," Hyman says. "As far as I can tell, San Francisco County really does things differently. They were doing civil compromises even before diversion was eliminated.

"If they believe that what they are doing is justice, they ought to stick to their guns. But my gut sense is that there is too much going on up there."

The compromise puts an unfair burden on the victim to help decide the fate of her abuser, says Alameda County Municipal Judge Peggy Hora .

"I don't have a blanket policy against it, because that would be foolish," she says. "(But) when the victim helps determine the outcome of cases, it is playing into the hands of the batterer. You don't put it on the woman."

Assemblyman John Burton, D-San Francisco, introduced a bill earlier this month that would eliminate such use of civil compromise.

She refused to compromise

A 33-year-old woman who learned first hand about civil compromise last year believes it needs reform. She refused a compromise in San Francisco because she felt it would let her abusive ex-boyfriend off the hook.

"I was told the defendant would write me a letter of apology," says the woman, who asked not to be identified.

"It would be so utterly meaningless to me.

"I was also told that I was supposed to take into account that my abuser would be on the job market, and a conviction on his record might prevent him from getting a top job offer. With civil compromise he would have a clean record. That appalled me.

"It frustrated me that his job prospects were more important than my safety. I wondered who the courts were trying to protect."

When she refused the offer of civil compromise, the case was dismissed, which added to her anger.

"I'm concerned that domestic violence in San Francisco is not being taken seriously in the courts," she says.

"My case was taken seriously by the police and the district attorney's office, but not by the judges."