

Executive Clemency for  
Battered Women in Texas:  
Why the Process Failed

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*I thought, this man really loved me because he was really trying. I found out several years later that all he was doing was trying to get me wrapped around his finger, which is exactly what he did.*

*Then the drinking started again and the violence started again. But he knew I'd leave, so now he started in with guns and knives.*

*I have been sexually threatened and I have been raped. And I didn't leave.*

*Why didn't I leave? I was scared. I had two stepchildren who lived with me, and who I couldn't take with me. He wouldn't give me custody and I couldn't leave them with him.*

*I didn't leave because of the things he told me he'd do to my parents. He told me he'd cut me up into little pieces and hide me in the woods in East Texas. And if he was caught? Big deal, he'd go back to the mental institution and be out in a little while. I didn't leave because he would tell me how he would kill me and then the kids before he killed himself.*

*Once he had me backed up against the kitchen door with a shotgun. My son walked in, and saw us in the kitchen with a gun, got my stepson [who], got his gun and came back and the two of them walked in. Only when my husband heard my stepson's gun click did he back off.*

*And he said I'm sorry, I love you so much, it will never happen again. I promise I'll change. And he said if things aren't better by January 1, I'll let you leave.*

*Well, things didn't get better; they got worse.*

*On January 19, 1985 I told him I was leaving and he told me no, you're not going anywhere except in a pine box.*

*Johnny had a habit of keeping a loaded shotgun behind the bedroom door. He used this gun to scare me and my daughter. I picked up the gun and I shot him.*

*In August 1985 I entered the Texas Department of Corrections on a 15 year sentence [for voluntary manslaughter.] And it was okay. Because when I went to prison I could lay my head down at night. I didn't have to worry about some damn man coming in and waking me up and raping me and hurting me.<sup>1</sup>*

Ms. Wardlow was released on parole after serving five years in prison. She now has a job as a caseworker at Northwest Assistance Ministries in Houston, counseling other battered women and volunteering several times a year to help train police officers about domestic violence. She is involved in a healthy, non-violent relationship with another man.

In 1991, the Texas Legislature passed Senate Concurrent Resolution 26, (hereinafter SCR 26) directing the Board of Pardons and Paroles to examine the cases of people who had killed abusive family members, and to make recommendations to the Governor regarding clemency. (See Appendix. A for full text of resolution). As of March, 1996 no one has received any form of executive clemency under the resolution. Ms. Wardlow applied for executive clemency in 1993; the Board of Pardons and Paroles unanimously recommended that Ms. Wardlow receive a full pardon.<sup>2</sup> Her clemency application was denied by Governor George Bush in January, 1996 – three

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<sup>1</sup> Rebecca Wardlow, Address at Police Academy Training, Houston Police Department. Houston, Texas.(Dec. 7, 1995).

<sup>2</sup> Press Release from the Texas Council on Family Violence, "How Many Years Does it Take to Review a Clemency Request?" (Dec. 15, 1995). (on file with author).

years after she applied.<sup>3</sup> This paper will examine the reasons behind the failure of SCR 26 to secure clemency for battered women in Texas prisons.<sup>4</sup>

**SCR 26 Failed in its goal to secure clemency for battered women who killed abusive partners.**

As of October, 1994, 460 Texas inmates and parolees were eligible to apply for executive clemency, requesting either a full pardon or a reduction in sentence, under SCR 26, the legislative resolution that began Texas' clemency review for battered women. But as of March, 1996, not one applicant had received any kind of clemency under SCR 26. There are several reasons SCR 26 failed to reach its goal of obtaining executive clemency for battered women who had killed abusive partners. First, the various parties involved in implementing SCR 26— the Board of Pardons and Paroles, the Texas Council on Family Violence, and Governor Ann Richards — held vastly different understandings about the meaning and purpose of the resolution and different understandings of their roles in the process. Second, the resolution failed because of procedural and structural problems with the Board of Pardons and Paroles organization, training, and procedures. Finally, the

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<sup>3</sup> Telephone Interview with Shelia Cheaney, Executive Director of the Women's Advocacy Project (Jan. 27, 1996).

<sup>4</sup> The clemency petition process in Texas began with the passage of Senate Concurrent Resolution 26, which applies to victims of domestic violence "who kill abusers in self-defense or in defense of other family members." The resolution thus applies to male or female victims of family violence, as well as children victims of family violence and intimate violence in homosexual relationships. This paper will focus on female victims of male batterers. Some men applied for clemency under SCR 26, primarily men who had killed abusive fathers or stepfathers. The resolution also allowed minors to apply for clemency but in Texas the Governor lacks the power to grant clemency to minors. Only the original trial judge who presided over the conviction may grant clemency to a minor. I did not discover any family violence victims who applied for clemency after killing same-sex partners.

battered women's advocacy group, The Texas Council on Family Violence, made political misjudgments and was naive about the fundamentally political nature of clemency decisions. Ultimately, those who suffered most are the battered women in prison and on parole, who witnessed and experienced the system failing them at every turn, on every level. Because SCR 26 failed to help any battered women receive executive clemency, Texas advocates for battered women who kill should redirect their energies to help battered women immediately after a killing, and to support battered women in prison.

**SCR 26 failed because the various parties involved held vastly different understandings about their roles in the process, and because the various parties involved held different ideas about the meaning and purpose of the resolution.**

The most fundamental reason that SCR 26 failed was because there was not consensus among all relevant parties about the purpose of the resolution. The battered women's advocacy organization, the Texas Council on Family Violence, (hereinafter TCFV) felt that the purpose of the legislation was to correct injustices that had occurred in the criminal justice system. However, the Board of Pardons and Paroles and members of Texas Governor Ann Richard's staff did not agree that there were wrongs to be righted.

Advocates for battered women believed SCR 26 was necessary to correct fundamental injustices that had occurred to dozens of battered women sitting in Texas prisons. The primary sponsor of the clemency legislation was the Texas Council on Family Violence, a statewide advocacy organization. The TCFV worked with Juan Hinjosa, a state legislator and criminal defense

attorney who had defended a battered woman who had killed, to draft the legislation.<sup>5</sup> As Mr. Hinjosa recalls, advocates for battered women "wanted the Board of Pardons and Paroles to go back and look at all the cases where women or a family member were not allowed to present their case before a jury." The reason such a close examination was necessary was that at the same time Texas passed SCR 26, it passed a law changing its evidence code to allow evidence of battering to be admitted at the trial of battered women who killed spouses. Thus, all the battered women who were convicted before the evidence code change were convicted without getting to present the evidence of the abuse they suffered. Therefore, a close examination of cases under SCR 26 was necessary to ensure justice.

However, many members of the Board of Pardons and Paroles did not agree that battered women in prison had been treated unfairly. For example, Hub Bechtol, a member of the SCR 26 committee of the Board, did not think SCR 26 was necessary. The resolution only passed, he felt, because,

somebody threw up a false flag saying that courts had ignored domestic violence at trials, but it turned out that it wasn't much. In retrospect, I see that there was not a need for SCR 26. Someone was trying to prove that courts did not allow domestic

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<sup>5</sup> Mr. Hinjosa, the author of SCR 26, is a criminal defense attorney who has seen firsthand the difficulties that battered women who kill face. He defended Celia Sanchez, "who killed her husband outside a bar in San Juan, Texas, after he had beaten her up once or twice a week. She finally had enough. I defended her and I found out that the self-defense statutes were inadequate to cover this type of situation. Self-defense statutes were drafted with a man in mind - in that if you used a weapon you couldn't claim self-defense. The statutes did not consider a six foot two inch man who weighed two hundred twenty-five pounds beating a five foot two inch, one hundred twelve pound woman. How could she defend herself? Certainly not right then and there. And yet [to claim self-defense] the statute required an almost immediate response."

violence as a defense. And we didn't think that was the case. [Most of the time,] the courts and sentences were right on.<sup>6</sup>

Furthermore, Mr. Bechtol is one of the few people who does not view SCR 26 as a failure:

I think SCR 26 proved that Texas courts had done an excellent job in responding to domestic violence, because there's just not any body in prison that shouldn't be there as a result of domestic violence. SCR 26 was worthwhile only in that it laid to rest the concerns of people who felt that women are mistreated. No petitioners deserved to be let out of prison.<sup>7</sup>

Additionally, even though the resolution was written in a gender-neutral way, Mr. Bechtol was suspicious because there were many more women than men applying; of the four hundred sixty eligible applicants, only thirty-two were men. Mr. Bechtol stated, "I think, if anything, women get a break in court as compared to men."<sup>8</sup> Therefore, he felt women did not need or deserve the "extra chance" SCR 26 might give them.

The Chair of the Board of Pardons and Paroles also did not feel that SCR 26 was necessary. Like Mr. Bechtol, Chair Jack Kyle felt that female inmates did not deserve an extra chance because "Texas judges have been more lenient where females were involved."<sup>9</sup> In addition to doubting the need to review battered women's cases, Kyle questioned whether the clemency power should even be vested in the Governor:

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<sup>6</sup> Interview with Hub Bechtol, former member of the Texas Board of Pardons and Paroles, former member of SCR 26 Committee, in Austin, Tx. (Nov. 13, 1995).

<sup>7</sup> *Id.*

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

<sup>9</sup> Telephone interview with Jack Kyle, former Chair of the Texas Board of Pardons and Paroles, (Dec. 4, 1995).



When you adopt something along the lines of SCR 26 what's the purpose? Is it to correct judicial error, override judicial decision, or is it to overcome inadequate legal representation? I'm a staunch believer that the guilt or innocence of a person should be determined by the judicial system, not by the executive branch. You have to keep those two separate. The Board of Pardons and Paroles is part of executive branch, so they shouldn't have any part of judicial system. There are plenty of judges and plenty of people who will listen to judges, if there was any error. In this case the error was something that happened to this person that didn't come out in court. Well that's a problem of inadequate representation, a criminal justice problem not a problem that should go through the courts. If there's a weakness in judicial process, correct the problem in the judicial system. You have to keep in mind that in the SCR 26 process you are coming very close to mixing the executive branch with the judicial branch, and if you mix it, where are you going to stop?<sup>10</sup>

While Board members like Mr. Kyle and Mr. Bechtol were openly hostile to the purposes of SCR 26, other Board members doubted the necessity of SCR 26 reviews to achieve justice because they never understood the reasons behind SCR 26. Whereas the legislative author, Juan Hinjosa, and the primary sponsor, the Texas Council on Family Violence, of SCR 26 felt strongly that the motive behind SCR 26 was to achieve justice, that motive was not understood by Board Member Terri Schnorrenberg, who said, "It would have been interesting to see what was the intent of SCR 26. I don't know what the intent was. I think mercy."<sup>11</sup> While advocates and legislators

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<sup>10</sup> Id.

<sup>11</sup> Interview with Terri Schnorrenberg, member of Texas Board of Pardons and Paroles, member of SCR 26 Committee, in Gatesville, Tx. (Nov. 16, 1995).

passed SCR 26 precisely because they felt battered persons had been treated unfairly, the Board was hesitant to be critical of the criminal justice system. Even Governor Richard's appointees said, "we don't see ourselves as here to evaluate courts or courts actions, or to be an advocacy organization. We want to be as objective as possible."<sup>12</sup> Another Board member stated, "we're not white knights saying judges were wrong. We try hard not to disagree with the judicial system or the judiciary. Its not like they were wrong."<sup>13</sup> However, the legislature passed SCR 26 precisely because they felt the judicial system was wrong in imprisoning at least some of the battered women who had killed abusive spouses. Since the Board of Pardons and Paroles did not share the same goal as the sponsors of SCR 26, the resolution therefore failed in its attempt to release battered women from prison.

Juan Hinjosa, author of the bill, is frustrated when confronted with the Board members' resistance to the resolution because he feels that the Board members' failure to recommend women for release demonstrates that they were "ignorant and did not understand the resolution."<sup>14</sup> Even though over four hundred fifty inmates were eligible for clemency under SCR 26, the Board recommended only one inmate for a full pardon and recommended four other inmates receive time cuts. Mr. Hinjosa saw the failure to recommend women for clemency as further evidence of the Board's misunderstanding, because "that was the whole purpose of the legislation. The were supposed to look at these again"<sup>15</sup> Apparently that message was not

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<sup>12</sup> Interview with Dr. Mae Jackson, member of the Texas Board of Pardons and Paroles, Chair of SCR 26 Committee, in Gatesville, Tx. (Nov. 3, 1995).

<sup>13</sup> Schnorrenberg interview, supra note 11.

<sup>14</sup> Telephone interview with Juan Hinjosa, Texas State Representative (Dec. 11, 1995).

<sup>15</sup> Id.

received by the Board as clearly as Mr. Hinjosa and his allies would have hoped.

Like the confusion the Board of Pardons and Paroles felt about the underlying purpose behind SCR 26, the office of the Governor was not sure about the intent of SCR 26. Dave Talbot, Governor Richard's former General Counsel, questioned whether SCR 26 "applied if the battered women's syndrome as a factor was properly developed and considered by the trier of fact."<sup>16</sup> He was also "unclear if the purpose was mercy or justice."<sup>17</sup> Furthermore, even though Governor Richards was instrumental in the passage of the resolution, Mr. Talbot was not convinced of the fundamental need for SCR 26. When asked if there really was a problem of battered women in prison who did not deserve to be there, he said "I don't know. I never saw a case that convinced me."<sup>18</sup>

In addition to disagreement and confusion regarding the underlying purpose of SCR 26, there was disagreement about the role the Texas Council on Family Violence would play. Mr. Hinjosa and the TCFV wrote the TCFV into the resolution, giving family violence advocates what they thought would be a consultant role to the Board of Pardons and Paroles' clemency deliberations.<sup>19</sup> They expected that if the resolution passed, the TCFV would assist the Board in reading and evaluating the files.

This consultant role never materialized, because the Board kept a tight rein on information and used confidentiality concerns to exclude the TCFV. Even though Debby Tucker, the Executive Director of the TCFV, attended

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<sup>16</sup>Interview with Dave Talbot, former General Counsel to Governor Ann Richards, in Austin, Tx. (Nov. 13, 1995).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Interview with Debby Tucker, Executive Director of the Texas Council on Family Violence in Austin, Tx. (Dec. 15, 1995).

Board meetings, neither she nor any other advocates were allowed to look at petitioners' files. The Board viewed the role of the TCFV as limited to assisting the Board in information gathering. When the Board had identified an SCR 26 applicant who was lacking information in her file, they expected that the TCFV would help the applicant gather information and present that information to the Board. The TCFV helped a number of applicants in this way. But TCFV members felt like they were working on the outside, and they were frustrated that they did not have the input in decision-making the resolution entitled them to.

Therefore, one of the primary reasons SCR 26 failed is because of the lack of one coherent vision and purpose for SCR 26.

**SCR 26 failed is because of procedural and structural problems with the Board of Pardons and Paroles' organization, training, and implementation procedures.**

The second fundamental reason that SCR 26 failed to secure the release of any battered women from prison is because the Board of Pardons and Paroles was not structurally or organizationally equipped to handle a project of the magnitude of SCR 26. The Board lacked the background, training, staff support, and organizational skills to handle the hundreds of SCR 26 cases it was presented with. Failings and missteps can be seen at every step of the process.

To begin with, the Board of Pardons and Paroles was not set up to handle a large-scale clemency review because its resources were already stretched thin in fulfilling the duties of reviewing prisoners for parole release. SCR 26 was added to the Board's primary duties of screening and

evaluating prisoners for parole. According to materials distributed by the Governor's Office, the duties of the Board are: "to determine which prisoners are to be released or paroled, to determine conditions of parole and mandatory supervision, [and] to determine which prisoners may be released from supervision."<sup>20</sup> Note that the mandate of the Board of Pardons and Paroles is silent not only about SCR 26, but on the entire issue of executive clemency, even though it is the Board's function and practice to review and recommend clemency and pardon applications to the Governor.

The resolution directed a state agency to perform additional duties without providing for additional staff or funding to perform those duties. The Board of Pardons and Paroles was already overworked, reviewing hundreds of parole cases a week. As Parole Analyst Joseph Ober-Hauser stated, "The Board votes on thousands of cases of parole a month. We get what we pay for. We just don't have time."<sup>21</sup> The Board members were concerned about the addition to their workload.<sup>22</sup> Their fears were justified; over four hundred women applied, most of them coming in the two years after it passed: "We had tons of stuff coming in. It took forever to get things going after that initial onslaught."<sup>23</sup>

At this point, a brief explanation of the structure of the Board of Pardons and Paroles may prove helpful. The eighteen member Board is appointed by the Governor. Offices are located throughout the state, primarily near state prisons.<sup>24</sup> Appointees received an annual salary of \$62,500 in

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<sup>20</sup> Memorandum from the Texas Governor's Office of Appointments (Jul. 1, 1994).

<sup>21</sup> Interview with Joseph Ober-Hauser, Texas Department of Corrections Parole Analyst (former staff assistant to the Board of Pardons and Paroles regarding SCR 26) in Austin, Tx. (Nov. 9, 1995)

<sup>22</sup> Bechtol Interview, supra note 6.

<sup>23</sup> Schnorrenberg interview, supra note 11..

<sup>24</sup> Memorandum from Governor's Office, supra note 20.

1995.<sup>25</sup> The Board operates on the basis of a committee structure – the committees are appointed by the chair and recommend actions to the entire Board. Because the Board has five regional offices and because the size of Texas makes frequent face-to-face meetings difficult, “the Board generally will operate in panels of three and will meet at least once a quarter.”<sup>26</sup>

Another structural reason SCR 26 failed is that Board members were not required to have a professional background in family violence issues. There are no mandated qualifications to be on the Board; some members have backgrounds in criminal justice, but none have professional backgrounds in family violence.

Furthermore, Board members do not receive any training in how to handle SCR 26 cases, or, for that matter, how to handle the hundreds of other parole cases that greet them their first day on the job. Board Member Terri Schnorrenberg felt the need for training when she was first appointed; when she walked into in her office “there were boxes up to the ceiling and I was supposed to vote and I didn’t have a clue.”<sup>27</sup> According to the Governor’s office of appointments, training has been “previously informal but more formal training [is] being developed.”

The lack of training regarding family violence issues seriously undermined the Board’s ability to examine fairly the cases before them. Many Board members operated on stereotypes and false assumptions about battered women, thinking they were acting impartially. Because of the Board’s lack of training and education on domestic violence issues, it was difficult for advocates and battered women to communicate with Board

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

<sup>26</sup> *Id.*

<sup>27</sup> Schnorrenberg interview, *supra* note 11

members. As Sherry Nance, a battered woman in prison, complained, "the Parole Board doesn't understand the dynamics of family violence and they are not willing to learn. The consensus on the Board is that family violence should stay in families and no one should interfere."<sup>28</sup>

Ms. Nance felt like she was hurt because her outspoken, aggressive manner did not comport with traditional stereotypes about battered women. "The parole Board asked me questions about me seeming to be aggressive. They asked if I was abusive to him because I'm not a mealy-mouthed little female."<sup>29</sup> If the Board had been educated about family violence, members would have learned that any woman may be battered, even confident, assertive and articulate women like Ms. Nance.

Some of the members of the Board of Pardons and Paroles could not help but ask the question battered women's advocates get so tired of answering: why didn't she just leave?<sup>30</sup> Some Board members never accepted assertions that battered women can be trapped in relationships. In the words of Board Chair Jack Kyle, "when someone says, 'I just can't leave,' I say, 'sure you can.'" <sup>31</sup> Because of this fundamental disagreement about the underlying problem of domestic violence, it was hard to find common ground for analyzing the actions that came subsequent to a woman's "not leaving." As Chair Kyle asked, "how many choices did she have other than the commission of the crime and what were they? Well one, she could have

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<sup>28</sup> Interview with Sherry Nance, Inmate at Gatesville Penitentiary, Gatesville, Tx. (Nov. 11, 1995).

<sup>29</sup> *Id.*

<sup>30</sup> There are as many different answers to that question as there are battered women. For a good general discussion of domestic violence and the reasons women stay in abusive relationships, see Ann Jones, Next Time She'll Be Dead: Battering and How to Stop It (1994). Advocates for battered women point out that asking why she didn't leave is a subtle form of victim-blaming, and express frustration that no one ever asks, 'why does he hit?'

<sup>31</sup> Kyle interview, supra note 9.

left."<sup>32</sup> When always comparing a woman's decision to the "ideal" of leaving the abusive relationship, her choices will invariably seem unwise. Had Mr. Kyle been educated about domestic violence, he would have learned that leaving the relationship is not always the best option for battered women. In fact, leaving the relationship is often more dangerous for battered women than is staying; more women are killed when they leave relationships than when they remain.<sup>33</sup>

In addition to structural and personnel shortcomings, the Board of Pardons and Paroles could not design and stick with a uniform process for reviewing and evaluating clemency petitions. The unpredictable nature of the clemency review was unfair and unnecessarily frustrating for the battered women involved.

The Board of Pardons and Paroles devised a reasonable set of procedures for screening clemency cases, but they were inconsistent in applying those procedures, changing the procedures frequently and without notice to the TCFV or battered women in prison. In 1991, the Board began to comply with SCR 26; they identified and contacted about 140 potential SCR 26 applicants.<sup>34</sup>

At the same time, the Board developed implementation procedures for SCR 26. The procedures specified in detail who was eligible to apply for SCR 26: inmates who had committed capital murder, murder, voluntary manslaughter or involuntary manslaughter against a family member, former

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<sup>32</sup> *Id.*

<sup>33</sup> See Ann Jones, Next Time She'll Be Dead (1994).

<sup>34</sup> Telephone Interview with Esther Laughlin, former Parole Analyst and former staff assistant to the Board of Pardons and Paroles for SCR 26 (Nov. 2, 1995)



family member, household member, former household member, partner or significant other, or former partner.

SCR 26 inmates received a letter requesting them to submit documentation "to substantiate family violence committed against him/her by the deceased."<sup>35</sup> Family violence was defined in the SCR 26 procedures as a) physical harm, bodily injury or assault; or b) a threat that reasonably places other person in fear of imminent physical harm, bodily injury or assault (not to include reasonable discipline of a child by person having duty).

Documentation considered appropriate, according to the SCR 26 procedures included: family violence records, District Attorney records, County Attorney records, Domestic Violence Unit records, Justice of the Peace records, battered women's shelter records, medical reports, Children Protective Service reports, Police reports, arrests, family violence witnesses (personal written statements from inmate, or sworn affidavits from family, friends or other witnesses.)

After receiving all the documentation, the Parole Analyst, a staff assistant to the Board, was supposed to analyze the file "to determine if sufficient additional information exists to satisfy Parole Board requirements". Please see the appendix for a complete list of SCR 26 procedures and a list of what constitutes "sufficient information."

Then, if there was sufficient information, the Analyst would request feedback from trial officials and the deceased victim's relatives. The officials and relatives had thirty days to forward any information or opinion they had about the inmate's clemency request. If there was insufficient information, the Parole Board notified the Texas Council on Family violence who helped gather supporting documentation.

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<sup>35</sup>Letter from Jack D Kyle, Chairman Board of Pardons and Paroles, Texas Department of Criminal Justice.(undated form letter).

After receiving "sufficient information," the Board was not consistent in how it conducted inmate interviews. Some petitioners were never interviewed because, on the basis of their petition, the Board decided they did not qualify for clemency under SCR 26. The petitioners selected for interviews were at first interviewed by all five members of the Board's SCR 26 committee: "at first the committee as a whole interviewed women, then we decided that was laborious and unnecessary so three members would interview the inmate."<sup>36</sup> The switch from five to three members was made without consulting or even notifying the TCFV, or the battered women in prison. Then, the Board again arbitrarily switched to having only one member of the SCR 26 committee interview inmates. Finally, the Board relinquished all interviewing duties, instead having the staff Parole Analyst who assisted the Board conduct the interviews.

This switching of formats was frustrating for the TCFV and for the battered women themselves, who placed great importance on the interview. This was their one chance to speak face to face with people who had the power to change their fate. Alone to plead their case, they were nervous. "I talked to five Board members. I was intimidated, scared to death." The process was overwhelming: "It's hard to answer questions fired at you like that. It's a fog."<sup>37</sup> However, the women were also eager to tell their story, in full, to someone in authority who would listen.

The women placed more importance on the interview than did the Board members. Board member Hub Bechtol questioned the utility of the

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<sup>36</sup> Bechtol interview, *supra* note 6.

<sup>37</sup> Interview with Geraldine Swaim, Inmate at Gatesville Penitentiary, Gatesville, Tx. (Nov. 27, 1995).

interviews, saying, "only in some cases did the interviews help. You could make up your mind from the file ninety percent of the time."<sup>38</sup>

Furthermore, changing procedures mid-stream made receiving information about what to expect even more difficult than usual for the inmates. Inmates often found it hard to receive reliable information from the outside world, and so relied heavily on word of mouth and other inmate experiences to gather information. In this situation, with the interview format frequently changing, personal experience was no longer a reliable indicator of what other inmates could expect.

The interview process was not the only weak link in the SCR 26 process: the few cases that did receive favorable recommendations were sent to the Governors office in a disorganized manner. Governor Richards received only a big box, and a list of which Board members had voted in favor of clemency (in order to be sent to the Governor' office, a case had to receive more than ten of eighteen votes. After reviewing about twenty cases, the Board recommended three to Governor Richards).<sup>39</sup> Some files were sent over with only one of two sides copied.<sup>40</sup> Additionally, there was "no executive summary, no list of pros and cons, no explanation of what you can and can't substantiate."<sup>41</sup> The Board was apparently aware of the problems, because at a meeting in 1993, Dr. Mae Jackson, Chair of the SCR 26 committee, reported that

she intends to change the procedure to insure that the information being sent in approved cases is more organized in

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<sup>38</sup> Bechtol interview, *supra* note 6.

<sup>39</sup> Telephone interview with former Texas Governor Ann Richards (Dec. 15, 1996).

<sup>40</sup> Tucker interview, *supra* note 19.

<sup>41</sup> *Id.*

the future. She will also write a summary report that will be placed on the front of the report on those cases that are recommended to the Governor.<sup>42</sup>

Such changes never materialized.

Another problem with the implementation of SCR 26 was the Board's rigid insistence on documentation. The resolution in fact called for evidence of documentation of the abuse, but, in these battered women's cases as in other cases of battered women, documentation was often difficult to obtain, so Board members should have been flexible in what they accepted as evidence of abuse. Particularly compelling or detailed allegations of abuse by the battered women and their families should have been believed, even in the absence of a paper trail.

Sandy Brumfield, leader of a support group for battered women in prison felt that some of the women applying for clemency didn't grasp the importance of having concrete documentation, since their experiences alone were so vivid to them. Ms. Brumfield explains that

the women did not understand they should write facts. They were writing more emotion. They didn't understand the principle that they had to provide evidence, medical records. For some, that documentation was impossible -- either the records did not exist or there was no money for copies. And of course, most battered women do not have paper trails.<sup>43</sup>

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<sup>42</sup> Minutes from Board of Pardons and Paroles meeting (June 1993) (on file with author)

<sup>43</sup> Interview with Sandy Brumfield, counselor for Women Against Violent Endings group, Gatesville, Tx. (Oct. 31, 1995).

As Ms. Brumfield notes, battered women learn a great many skills in order to survive a battering relationship. They learn how to diffuse dangerous situations; they learn how to protect themselves and their children in the face of explosive and unpredictable violence. But in the midst of figuring out how to stay alive, they do not often stop to think about documenting their injuries, nor do they establish a paper trail to demonstrate the extent of their abuse.

The Board's insistence on documentation was difficult for many women. One woman's frustration spoke for many when she asked, "What about those of us that don't have documentation? He didn't let me go to the hospital."<sup>44</sup> Many other women agreed. Geraldine Calhoun explained the problems she had convincing anyone that she really had been battered:

But I didn't have no documentation. I never told no body I was being abused. I called the police many times but always said I fell down. My husband would beat me up more if I said anything. My family never knew about it. Nobody wants to write documentation. People don't want to get involved. If you don't have no documentation you don't have nothing. It's hard to get documentation in here. You're lost like lost sheep. You don't know where to write, who to write."<sup>45</sup>

Ms. Calhoun's statement articulates several of the difficulties faced by battered women in prison; difficulties echoed by Mary Specht:

They kept harping on proof, documentation of the abuse. They told me, "I need documentation." How do you do that? Ninety

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<sup>44</sup> Interview with Geraldine Calhoun, inmate at Gatesville Penitentiary, Gatesville, Tx. (Nov. 16, 1995).

<sup>45</sup> Interview with Marie Martinez, Amarillo Penitentiary, Amarillo, Tx. (Dec. 18, 1995).

percent of us don't have it. Those that do, its often been destroyed or lost. They were very skeptical and they kept asking for documentation. I couldn't give them it. What documentation there was my family would not send me.<sup>46</sup>

Because of the difficulties in finding documentation of family violence, the Board should have been more flexible, and should have placed greater weight on the statements of the battered women themselves. Ironically, even though the Board was skeptical of the claims made by the battered women applying for clemency, many observers felt they believed the claims made by family members of the batterer all too readily.

The Board placed greater weight on the input from the relatives of the deceased and from the trial officials than it did on the battered women's input. The resolution itself required the Board to contact and solicit input from the relatives of deceased and the trial officials, but did not direct how much weight to give their opinions. Women and advocates both talked about the difficulty of finding relatives or trial officials who would say anything helpful. As Parole Analyst Mr. Ober-Hauser notes, "part of the problem with SCR 26 is that the [resolution] says you have to go back to the victim's [deceased's] family, who says the [deceased] victim was kind and sweet and she killed him for the insurance. The police and District Attorney are not gong to say they were wrong and you don't ever get to the point of truth."<sup>47</sup>

Sherry Nance talked about the difficulty of overcoming the claims from her batterer's family:

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<sup>46</sup> Interview with Mary Specht inmate at Amarillo Penitentiary, Amarillo, Tx. (Dec. 18, 1995)

<sup>47</sup> Ober-Hauser Interview, supra note 21.

The review included his family. What do you think they are going to say? They are trying to cover up second and third generation child molestation. All the letters from his family said he's not a batterer, there was no child abuse, she's a bad woman.<sup>48</sup>

Geraldine Swaim thinks

that what our families have to say should be taken into consideration and carry more weight than what our husband's families have to say. It should be remembered that in most cases these people simply want revenge. After all, the abusiveness of our husbands had its root somewhere and I can testify that in my case, my husband learned his behavior when he was very young.<sup>49</sup>

Therefore, because SCR 26 required a consultation of the deceased's relatives, because the Board relied heavily on the input of the relatives, and because the Board was not institutionally or procedurally equipped to handle a project of the magnitude of SCR 26, the resolution failed.

**The third reason SCR 26 failed because the Texas Council on Family Violence did not understand the fundamentally political nature of clemency decisions; their naiveté led to a number of political miscalculations that prevented SCR 26 from being an effective tool for clemency.**

While the TCFV viewed the clemency issue as one of fairness and justice, clemency is instead a fundamentally political act. The TCFV failed to

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<sup>48</sup> Nance interview, *supra* note 28.

<sup>49</sup> Swaim interview, *supra* note 37.

appreciate the politics infused in every step of the clemency process; this failure decreased their effectiveness and is one of the reasons SCR 26 failed in its goal to release any battered women from prison.

The TCFV's naiveté is ironic, because the organization is probably the most politically savvy of any battered women's advocacy organization in the country, and because the TCFV began the clemency process in a politically astute way. In fact, in 1989, when Texas advocates for battered women began thinking about the clemency process for battered women who had killed, Texas learned from the experiences of advocates in other states. Ohio and Maryland, the first two states to begin clemency movements, had very supportive governors.<sup>50</sup> As this was not the case with former Texas Republican Governor Bill Clements, the TCFV needed a way to pressure the Governor. Their response was to pass a legislative resolution, demonstrating to the Governor that he had the full backing of both houses for a full-scale clemency review. Governor Clements was evidently not persuaded, as he took the unusual step of vetoing the resolution. He then lost the next election. With a more supportive Governor in Democrat Ann Richards, the TCFV got the resolution passed again.<sup>51</sup>

While the TCFV was politically astute in drafting a legislative resolution and getting it passed, it neglected to lobby the group that would ultimately have the most influence over the SCR 26 process – the Board of

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<sup>50</sup> Barbara Karkabi, When Battered Women Kill, Is it Murder or Self-Defense? Hous. Chron, Sep. 8, 1991 at E1. See also Pamela Ward, Law May Aid Killers Who Were Abused, Austin American-Statesman, Jan. 16, 1991 at A 11. In December 1990, Ohio's Governor, after reviewing 100 cases of women convicted of assaulting or killing men who had battered them, granted clemency to 26 women. In February, 1990, the Maryland governor, after review of a dozen cases, commuted the sentences of eight women.

<sup>51</sup> Tucker interview, supra note 19.



Pardons and Paroles. Representatives from the Board of Pardons and Paroles had been entirely absent from the legislative process.<sup>52</sup>

In hindsight, it appears that the TCFV's focus on passing the legislation rather than laying the groundwork for its implementation contributed to the end result of no women being released. The advocates worked hard to get the resolution passed, felt victorious when it did, and incorrectly assumed they would soon be working in partnership with the Board of Pardons and Paroles. Then, as discussed above, because of different ideas about the nature of SCR 26 and the nature of the TCFV's role in relation to the Board, battered women's advocates were denied influence.

The TCFV made a second political miscalculation and overestimated the depth of Governor Richards' commitment to clemency for battered women. Because she was an enthusiastic supporter of the resolution, the TCFV did not continue to work to educate Governor Richards about battered women, and specifically about battered women who kill. Because of this oversight, Governor Richards expected uncomplicated cases with clear-cut victims, and therefore refused clemency to the three women who were recommended to her by the Board. She also declined to act on two cases that received favorable Board recommendations. One of these, Rebecca Wardlow, was denied by current Texas Governor George Bush. The second case remains on Governor Bush's desk.

The TCFV expected that they had the full support of Governor Richards because she initially supported SCR 26. She wrote a letter of support that was very helpful in getting the bill passed.<sup>53</sup> In fact, "it was Ann Richard's baby," said Ms. Schnorrenberg, one of her appointees to the Board of

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<sup>52</sup> Every member of the Board I talked to said they were not contacted, advised or even aware that legislation was going through which might affect them.

<sup>53</sup> Tucker interview, supra note 19..

Pardons and Paroles.<sup>54</sup> In a widely-quoted speech at a press conference, Governor Richards called the resolution "a great step forward because there are people who have done everything that they know how to do and they continue to be battered, and they continue to be abused, and they finally decide to retaliate."<sup>55</sup> Even the Governor admits there was momentum: "There was a lot of pressure for there to be affirmative action on one of these cases, to validate or reaffirm the seriousness with which we took this issue."<sup>56</sup>

Because of her public support, advocates and observers were surprised when Governor Richards did not release any of the women recommended for clemency. As Republican Board appointee Stennet Posey said, "she had helped get the resolution through, and her appointees made it clear it was a priority for Ann Richards. With the benefit of hindsight we know now this was not the case."<sup>57</sup> Using Texas colloquialisms to explain her behavior, he said, "she ran it up the flagpole and the right folks did not salute. She invited us to go fishing and when we caught one she cut the bait."<sup>58</sup>

Governor Richards' own explanation as to why she did not grant any petitions is more pragmatic. She says that she supported the idea of clemency for battered women in theory, but when it came down to the specifics of the cases of the women before her, she did not find them compelling enough to warrant executive reprieve.

I think that if you take the issue on the sheer face of it, that women who have been incarcerated as a result of retaliation as a

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<sup>54</sup> Schnorrenberg interview, *supra* note 11.

<sup>55</sup> Maria Puente, *Texas Considers Clemency*, USA Today, Jan. 16, 1991 at A1.

<sup>56</sup> Richards interview, *supra* note 39.

<sup>57</sup> Interview with Stennet Posey, former member of Texas Board of Pardons and Paroles, former member of SCR 26 committee, in Austin, Tx. (Nov. 13, 1995).

<sup>58</sup> *Id.*

consequence of someone who has caused them physical or mental abuse, it is important that the cause of the violence be considered in a clemency petition. I will have to tell you though that you cannot look at the issue as though it were the only issue involved in each case. There were no cases where that as an issue stood alone.<sup>59</sup>

That Governor Richards was looking for a simple, uncomplicated case where the only significant issue was that the woman was beaten and then killed her husband demonstrates that the TCFV failed to adequately educate her about the real complications in the lives of battered women, and in the lives of battered women who kill. Governor Richards had an idea in her head about what a battered woman who kills looks like, and that idea did not comport with the reality of battered women. Governor Richards expected a case where a man was

beating his wife insensible, he passes out, goes to sleep, she comes in with knife and kills him. Those are not the circumstances that I was presented with. There was nothing close to that clear-cut kind of cause and effect.<sup>60</sup>

The fact that Governor Richards was looking for a clear-cut cause and effect demonstrates both her naiveté about domestic violence, and the extent to which the TCFV overestimated the strength of her commitment. Had the TCFV taken more time to assess the level of Governor Richards's understanding about the complicated nature of domestic violence, they might have been able to explain to her that there is no such thing as a clean, uncomplicated case. Or, at the very least, they would not have been surprised

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<sup>59</sup>Richards interview, *supra* note 39.

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

and disappointed when she did not grant any battered women's clemency petitions.

The TCFV must bear some of the responsibility for Governor Richard's unrealistic expectations because in public and media presentations, domestic violence advocates presented what happened battered women who kill as an uncomplicated example of a system gone haywire. But in so doing, advocates unwittingly promulgated the myth of the "perfect" battered woman – an ideal no real battered woman could match. For example, in a savvy effort to make catchy media sound bites, Houston psychologist Toby Meyers has said many times that, before killing their abusers, "many of these women had never even been to the principal's office."<sup>61</sup> Battered women who kill are presented as good women driven to extreme behavior.

And while these characterizations were largely true, they did not present the entire picture. Furthermore, when there then was a battered woman who had "been sent to the principal's office," or had used drugs, or has hit her children, she was therefore excluded from the category of "deserving battered woman." Since no battered woman, or for that matter, no person, could withstand the kind of scrutiny a trial commands without revealing some failing or wart, the mythical battered woman prevented real battered women from being defined as such. The women themselves are aware of and resistant to such labels, and all the assumptions they attach. As Brenda, who spoke at a conference for battered women's advocates stated, "though at my trial the abuse was not introduced, it was plain cut murder. I

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<sup>61</sup> Raquel Roberts, In Search of Clemency, Houston Post, Sep. 19, 1993 at A 30.. Dr. Meyers said the exact same thing at an Address to the Texas Council on Family Violence in Dallas, Tx. on Oct. 11, 1995 and when I interviewed her in Houston, Tx. on December 8, 1995.

don't want you to think I am the perfect little person because I am not."<sup>62</sup> I should note that Brenda, who wishes her last name to remain confidential, made those comments while still an inmate, in the presence of two guards from the prison, and that inmates who are seen as taking responsibility for their actions fare much better within the system than do those who maintain they behaved in a rational and justifiable manner. Nonetheless, she warned advocates against the tendency to glorify her and her actions.

Ironically, even though advocates have helped create this mythical perfect battered women, advocates were aware that her presence prevented their very real, imperfect battered women from receiving clemency. As attorney Amy Wright, who worked with one woman to help her prepare her clemency petition noted,

It's always been my impression that it's going to take a perfect case. And there was something in every single case that kept it from being the right kind of battered woman.<sup>63</sup>

Other advocates agreed. As attorney Marcia Brinkley noted, "in order for someone to get out, it would take a really good story: documentation of abuse, she was physically attacked and killed him right then in self defense, she had young children and was innocent-looking." Ms. Brinkley felt this stereotype hurt the woman she helped apply for clemency, because "my client was a big, cheap looking woman. She looks strong and hard. They figured she overpowered him. Maybe if she had looked more weak, [she would have fared better.]"<sup>64</sup> Therefore, because of the benefit of presenting all battered

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<sup>62</sup> Brenda, Address to Texas Council on Family Violence at the Annual Conference in Dallas, Tx. (Oct. 11, 1995).

<sup>63</sup> Interview with Amy Wright, Attorney, in Austin, Tx. (Oct. 6, 1995).

<sup>64</sup> Interview with Marcia Brinkley, Attorney, in Austin, Tx. (Oct. 17, 1996).

women in a sympathetic light, individual battered women suffered and did not receive clemency

A final reason SCR 26 failed was because the TCFV underestimated the strength of Texas' law-and-order macho culture, and underestimated the prevalence of racism, sexism, and class issues. Texas' law-and-order culture was hostile both to the idea of being "soft on crime" and was not sympathetic to battered women. As Board member Stennet Posey explained: "The idea of punishment and vengeance is strong here. Maybe you should be able to kill someone and walk away. But that's just not done in Texas."<sup>65</sup> Intermixed with the general desire to be tough on crime was the specific fear of releasing convicted felons who would then commit more crimes. Around the same time that SCR 26 cases were coming before the Board, a convicted murderer, Kenneth McDuff, abducted a woman while on parole. The case received a tremendous amount of media coverage, most of it critical of the Board of Pardons and Paroles. As Board member Dr. Mae Jackson admitted, "we have all been burned by the Kenneth McDuff situation. None of us wants to see that kind of situation repeated."<sup>66</sup> Parole Analyst Mr. Ober-Hauser also noted the strong impact of the McDuff Case:

They are so scared they are going to let out the wrong person they are super cautious. The politics, when you have a parolee who kills on parole [are powerful]. It's easier to justify keeping a person in prison than it is to take a risk and let them out.<sup>67</sup>

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<sup>65</sup> Posey interview, *supra* note 58.

<sup>66</sup> Dr. Mae Jackson, Opening Statement to Senate Criminal Justice Committee Hearing. (Mar. 6, 1992)

<sup>67</sup> Ober-Hauser interview, *supra* note 21.

Warden Adams further noted, the Board members "are afraid to let inmates out. They think if we release [battered women] we are saying its okay to kill your spouse."<sup>68</sup> However, the Warden noted that releasing battered women after serving part of their sentence would in fact bring the sentences more in line with sentences for men who kill wives. The Warden said, "most males who kill their spouses get six to twelve years. A woman who kills her spouse gets a twenty-five to forty-five year sentence."<sup>69</sup>

Furthermore, Texas advocates also had to contend with racism, sexism, and class discrimination. As Board member Terri Schnorrenberg explains, many Texans believe if "you're the wife, you're supposed to [defer to your husband.] So [what if] he beat you up a little bit."<sup>70</sup> As Stennet Posey explains, other Texans share the "idea that its all right to slap your wife a little, have a drink and laugh about it, but if she gets mad and blows him away then by God, she'll pay the price."<sup>71</sup> Additionally, "a black woman killing her husband might get a longer sentence than a white woman."<sup>72</sup> Finally, most of the women in prison for killing husbands could not afford to pay attorneys, and were represented by lawyers with little or no experience in either murder or domestic violence. Many women were advised to plead guilty, or, if they went to trial, their lawyers did not mention the abuse they suffered. The political naiveté and miscalculations of the TCFV therefore contributed to the failure of SCR 26.

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<sup>68</sup> Interview with Wilhemena Adams, Warden, Amarillo Penitentiary, Amarillo, Tx. (Dec. 18, 1996).

<sup>69</sup> *Id.*

<sup>70</sup> Schnorrenberg interview, *supra* note 11.

<sup>71</sup> Posey interview, *supra* note 58.

<sup>72</sup> Schnorrenberg interview, *supra* note 11.

Battered women in prison and on parole experienced the system failing them at every step of the way; their stories demonstrate the complicated effects of SCR 26.

When researching this paper, the most powerful experiences I had were the interviews with battered women in prison. Their experiences with SCR 26 were a microcosm of their experiences as battered women. The resolution both forced and allowed the women a chance to reflect on their experiences and choices, both inside and out of prison. I lack the skill as a writer and storyteller to adequately convey the complexity of effects that SCR 26 had on the battered women who applied for clemency. The best I can do to try to explain is to let the women's words and stories speak for themselves. Therefore, in this section I have included two long stories about battered women who have killed, and included several quotations from various women, relating to their experiences at different stages of the SCR 26 process.

Mary Specht pled guilty to murdering her husband and received a thirty year sentence.<sup>73</sup> Reading press reports gives the impression of a premeditated event because Mr. Specht plead guilty in the "sniper slaying of her husband."<sup>74</sup> Even her advocates admit that "the most damning thing about this case was that she laid out for him and "ambushed him."<sup>75</sup> Mrs. Specht hid in the woods behind their house, waited for Mr. Specht to drive by, then shot him with a deer rifle. When her injured husband drove up to

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<sup>73</sup> Travis E. Poling, Woman Pleads Guilty in Killing, Austin American-Statesman, July 11, 1989.

<sup>74</sup>Tina Barnegurg, Woman, 42, Pleads Guilty in Slaying, San Antonio Express News July 11, 1989.

<sup>75</sup> Letter from Toby Meyers to Esther Laughlin, Texas Board of Pardons and Paroles (Oct. 7, 1991) (on file with author).



the house, she drove him to the hospital after dropping the gun in a well on her way back to the house.<sup>76</sup>

However, as psychologist Dr. Toby Meyers noted in her letter of support for Mrs. Specht's clemency petition, in order to fully understand Mrs. Specht's actions, one must put them in the proper context. Mrs. Specht was "used by this family as a beast of burden. The work which she performed was superhuman and her treatment by her husband and his family was subhuman."<sup>77</sup> Her Texas Department of Corrections file indicates that the rationale of the offense she gave when arrested was "because of twenty years of abuse." She told the police in her confession,

I didn't want to do it, I didn't. After I opened my eyes, he was laying on the ground. I took the gun and I ran. Everybody thought he was always so level-headed and nobody seemed to know the real him. I've been beat before, I've been bruised."<sup>78</sup>

Now, Mary Specht is one of the most trusted inmates at the Texas Penitentiary in Amarillo. She works as a secretary to prison officials, alone and unsupervised most of the day. A big source of pride for Mary is her job in prison, and her status as a trusted inmate. "I run the office. I'm the only one there. I'm a secretary just like I was in the free world. I take care of everything. I've been working for the magistrate for three years." The warden trusts her so much that she brings Ms. Specht along on speaking engagements about domestic violence, where Ms. Specht talks to shelter workers, judges, lawyers and police officers.

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<sup>76</sup> Barnegurg, *supra* note 75.

<sup>77</sup> Letter from Toby Meyers to Esther Laughlin, *supra* note 76.

<sup>78</sup> Texas Department of Corrections Social and Criminal History of Mary Specht.

Recalling the years of abuse she endured, Ms. Specht remembers that, in her home, she was always looking for an escape route. "I could go through the house blindfolded. I knew where all the exits were. The furniture was always in the same place so I could leave at any time."<sup>79</sup> Sometimes, she found that "sleeping under the bed was safer."<sup>80</sup>

Ms. Specht has a somewhat philosophical view of her time in prison. She feels like it has helped her, but wonders if thirty years is excessive:

Prison has been good for me. I've always been a real close mouthed person. Before I would not have talked to you. I've taken a lot of computer and college courses. I've learned to try and help others in prison. I'm gonna do the best job I can no matter what.<sup>81</sup>

Ms. Specht has been denied parole and any form of clemency relief because the Board of Pardons and Paroles believes she poses a threat to society, a contention she refutes on behalf of many of the battered women in prison:

We were never a threat to society, just to one individual. We were trying to get rid of our threat, an individual who had hurt us so long and so deeply, who was a threat to us and to our kids. I finally rebelled and said no more, that this person has hurt us for the final time. Especially if you think it's him or you, because you don't want to die.

Geraldine Swaim

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<sup>79</sup> Interview with Mary Specht, inmate at Amarillo Penitentiary, Amarillo, Tx. (Dec. 18, 1995).

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

<sup>81</sup> *Id.*

Even advocates admit that Geraldine Swaim's story is difficult to explain. According to local press, she had a \$300,000 life insurance policy and no documentation of abuse. She also signed a contract with an acquaintance of her son's, agreeing to pay him \$25,000 to kill her husband. At her trial, the prosecution presented photos from a Neiman Marcus catalog to show what she intended to do with the proceeds of her husband's death.<sup>82</sup>

Ms. Swaim was convicted of capital murder and received a sentence of 60 years, narrowly escaping a death sentence. Her clemency petition was denied by the Board of Pardons and Paroles. She will need to serve at least twenty years before being eligible for parole. In 1995 she had served ten of those years. Ms. Swaim tells the story of the events that led to her imprisonment.

*In the beginning I thought he wanted me with him all the time because he loved me. I was the center of everything. I had his son, and 3 kids by my previous marriage. Everything we did was child oriented. But then they started getting older and anything that anybody did wasn't right. His ex-wife called me and told me that he [had beaten her and taken her son away.] I was polite to her on the phone, but to myself I said he won't treat me that way because I'm different from her.*

*When he would come in he would check the house for dust and cobwebs, that everything was where it was supposed to be, that the pots and pans were straight, that the towels were straight, that the top of the refrigerator was clean.*

*[If everything was not in order] he would shove my face up against the wall. He was always careful that any bruises he made didn't show. He would*

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<sup>82</sup> File, Texas Council on Family Violence.

slap, you know, open handed. It's not hard but it's constant. It would get harder and harder. I never fought back. He was just too strong.

He told me wherever you go, whether it's your mother's, . . . I'm gonna go there and find you. And you're gonna watch them die and then I'm gonna kill you. And I believed him.

One morning I came in from work as a nurse, I had worked the eleven to seven shift, and I came in to wake up my son. He came in behind me and started pounding on Tony and said you're going to work right now. And he grabbed me by the hair, and there was no reason for him to do this, I mean I hadn't done anything. I'd been too busy.

And he grabbed me by the hair and he shoved me down the hall into the bathroom, in front of the mirror, we had this big mirror behind the sink. He raped me several times in front of the mirror. And he said this is what I've always wanted to do and he held a gun to my head and he said it doesn't make any difference whether you let me or whether you don't. He said if you fight me I'm gonna blow your head off and it will all go down the sink, because I was leaning over the basin with the mirror on the wall

And when he was through he just put his clothes on and went to work like nothing had happened and my son came in and he had a young man that he knew with him and [the friend] told me he said you don't have to live like this I can take care of it and I said do it. I wanted peace.

[The friend] drew up a murder contract that had my signature and my son's signature. I asked him for it back and he said he had thrown it away. I said we can't do this we just can't do it. It was wrong. We can't.

He had asked me for money and I said I'll give you the money just leave him [my husband] alone. I knew that was the wrong thing to do. I didn't know what else to do but I knew that wasn't the answer.

*When it really hit me [that my husband was dead], I thought, he's not going to touch me any more. And he's not going to touch the kids, they don't have to worry about protecting themselves anymore.*

*I got on the stand and admitted what I had done, I told the jury exactly what I did. They didn't ever consider why, it was just whether it happened.*

Ms. Swaim was denied clemency but continues to work on another clemency petition, as well as continuing to explore her other legal options.

Many of the battered women in prison articulated sentiments that captured the feelings of the other women. In the interests of conveying those sentiments, I have included in this next section a selection of excerpts from my interviews.

*"We were flat out told that when the petition was sent we could get a chance to speak with them, to tell them our side of the story. I sent [my SCR 26 petition] in. I never heard anything until I was denied."<sup>83</sup>*

*"Listening is important. [The Board of Pardons and Paroles] still don't listen to you. Those of us in here they are not listening to us."<sup>84</sup>*

*"I never got to tell my side of the story. the Board of Pardons and paroles kept interrupting. They wanted to throw me everything they got from my in-laws."<sup>85</sup>*

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<sup>83</sup> Calhoun interview, *supra* note 45.

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

<sup>85</sup> Nance interview, *supra* note 28.

*"Mr. Ober-Hauser interviewed me. I'm not sure what his purpose was, what the Parole Board was gonna do. He was supposed to ask me about my case but there were not a lot of questions about the crime and the abuse that lead up to it. There was not a lot of detail. It was a very short interview."*<sup>86</sup>

*The TCFV could have spent more time preparing for SCR 26. They should have spent more time with women and gotten to know them, face to face, not on paper. More time should have been spent. It was almost impersonal. They're not here with us when we were crying and going through the pain all over again. They're not behind these doors with us.*<sup>87</sup>

*"But its harder to re-live [the abuse, when writing about it for the SCR 26 petition]. Every time he burned you with a cigarette, every time he abused you, every time he raped you. Because you want to push it aside. But you've got to work from your problems. You've got to face it and break the denial. The nightmares do stop. You don't wake up screaming no more. You thank God for the day and you go on with your life. When you write it all down you start re-living it and you help your own self and you come to realize it wasn't your fault and you did what you did to protect yourself. It was either you or him and you learn to deal with it. Every time, a little pain goes away.*

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*"It was terrible to go through. You think you have some hope. [Applying and being rejected for clemency] didn't only hurt me, it hurt my*

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86 Calhoun interview, supra note 45.

87 Calhoun interview, supra note 45.

88 Martinez interview, supra note 46.

children. I wish I had let him kill me. Death would have been better. I hate it here every day." 89

"I guess in the back of my head I had hoped they would find me not [guilty] and I guess part of me felt like I needed to be punished."90

"We all know that we committed a crime. I don't think any one of us would say that we didn't. There is a absolutely no way to "justify" taking a life. We can tell why what happened happened, but we certainly cannot justify it."91

"For battered women who kill, let us do a number of years in prison – up to five years. then let us do community service for years where we go and help shelters. We need to go to shelters so when the women come in [to the shelter] they don't turn around and go back [to their abusive husband]. They don't have to keep us in here. It's not making us productive. It's making us bitter. It serves no purpose. The longer we stay in here the harder it is to acclimate to the free world again."92

"We do need to do some time. Give us so many years in prison. But give us a chance to be productive again. We are not a threat to society."93

"I don't think any of us are really looking for a pardon, we just want mercy, we just want to go home to our families, because none of us have said

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89 Interview with Shirley McMillian, inmate at Gatesville Penitentiary, Gatesville, Tx. (Nov. 30, 1995).

90 Roberts, supra note 62.

91 Letter from Geraldine Swaim to Kim Walsh (Nov. 5, 1995) (on file with author).

92 Specht interview, supra note 47.

93 Id.

*we didn't do what we did, we all know we did something wrong, we all know that nobody has to die, that there's another way."*<sup>94</sup>

*In Gatesville, when I first got to group I didn't want to admit that I'd been battered. It took me a year to finally admit that I'd been abused. When I filled out those papers [for SCR 26] I was scared because I didn't want to re-live it. I was in my cell, filling out my papers and crying. I didn't tell the other women [I had been battered] because I was scared they would laugh.*<sup>95</sup>

*In my clemency petition I included many of the incidents of abuse. I admit that I didn't really include all the "gory" details. If I told everything it would just seem too fantastic to be believed. When I wrote my story for the clemency Board I asked my mother not to read it because I didn't want her any more upset than she already is. There were many things that happened that I didn't want her to know about.* <sup>96</sup>

*There are a lot of things no one has heard still. I haven't gotten to tell my side of the story -- not even at trial. I didn't mention what happened to the kids. I didn't want anyone to know.* <sup>97</sup>

*"I thought SCR 26 was going to let me go home with my family. They actually pumped up my family and myself that we'd probably get released. My children and I were very excited. It was a big letdown to find none of us getting past the parole Board."*<sup>98</sup>

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<sup>94</sup> Swaim interview, supra note 37.

<sup>95</sup> Martinez interview, supra note 46.

<sup>96</sup> Letter from Geraldine Swaim, supra note 93.

<sup>97</sup> McMillian interview, supra note 91.

<sup>98</sup> Calhoun interview, supra note 45.



*"I finally got to stop having nightmares, stopped feeling guilty, then [the SCR 26 petition] brought it all up again. I still can't read my petition. I started having dreams and nightmares all over again for nothing. We have been used terribly by the system. We and our families have poured our hearts out to give information in hopes that we would be granted some relief from our sentences, only to be beaten and abused again by the system. I can assure you that I have been most forthcoming with all the information the parole Board asked for and it did no good whatsoever. I have been terribly hurt and disappointed."*<sup>99</sup>

*"It was my belief that the SCR 26 would take into consideration what actually happened to us to cause us to take our life. We and our families believed that if we told the truth and let those who were in charge know what really happened, we would be given some relief in our sentences."*<sup>100</sup>

*"Not only were the women in prison terribly hurt, but our families were devastated by the experience. I am very disappointed in the SCR 26 process and feel that it has been a political dog and pony show from the beginning."*<sup>101</sup>

*I have made my life an open book. I am not perfect. I have a lot of faults. But what happened to me should not have happened to me.*<sup>102</sup>

*We feel like we have been forgotten and there a lot of people here who should not be here.*<sup>103</sup>

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<sup>99</sup> Letter from Geraldine Swaim, *supra* note 93..

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> Nance interview, *supra* note 28.

<sup>103</sup> *Id.*

I am disappointed in the aid we have received from the Texas Council. I realize that there is only so much that they can do but it seems that many people have gained position and prestige from all the "work" that has been done for battered women here in Texas while those of us who are in prison are forgotten.<sup>104</sup>

"We are used a lot of times for sensationalism."<sup>105</sup>

"I could not find a[nother] way to protect my son."<sup>106</sup>

"My only relief is that my kids don't have to live in fear every day. That for me is worth more than anything."<sup>107</sup>

"None of us are alike. You can't put us into a mold. I am an individual."<sup>108</sup>

"[People] don't look beyond the charge. They don't see us as a person."<sup>109</sup>

"The parole Board doesn't look at individual cases. They see that we are in here for murder and we're bunched as a lump."<sup>110</sup>

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104 Letter from Geraldine Swaim, supra note 93.

105 Nance interview, supra note 28.

106 Nance interview, supra note 28.

107 Calhoun interview, supra note 45.

108 Nance interview, supra note 28.

109 Inside Story Video

110 Calhoun interview, supra note 45.

*"So much time is spent on paperwork they forget we are human. To them we are in inmate, a convict, a number. But we are human. We have the same feelings as people out there. The public needs to know that not everybody in prison is the same. We didn't go out and decide to kill someone. We killed to save our lives and the public needs to know that."<sup>111</sup>*

*"I've got a piece of paper that says I am a threat to society."<sup>112</sup>*

*"[When I am released from prison,] I'm going to work with battered women. I'm going to do everything I can to keep someone else from ending up in here. If there had been more help for me when I was out there this would not have happened. When I came in [to prison] the battered woman issue was not talked about. We want to let other women know that we do care. To tell people that we care, that there is hope. You don't have to take the violent way out."<sup>113</sup>*

**Since executive clemency has not helped battered women in prison, Texas advocates for battered women who kill should focus their energies on helping battered women who kill immediately after the killing takes place, and should help battered women in prison by establishing support groups and by assisting battered women in their efforts to gain parole.**

Clemency appeals for battered women who kill have not been effective in Texas. In order to prevent battered women who kill from receiving unjust sentences, advocates need to concentrate their energies before the trial, rather than after conviction. Immediately after a woman kills her partner, advocates or the woman's lawyer should contact the family of the deceased and take written statements. As Dr. Meyers explains,

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<sup>111</sup> *Id.*

<sup>112</sup> Swaim interview, *supra* note 37.

<sup>113</sup> Calhoun interview, *supra* note 45.

Right after she has killed him, go to his mother. Often the wife will have escaped to the mother's house or asked for help in how to deal with him. Immediately after the killing, the family will often say that they expected it to end in the death of one of them. Or they will describe the abuse they witnessed. But after a lot of time has passed something changes and their loyalty to their relative strengthens. They cease to view the battered woman as the victim of the violent son and view her as the woman who took their son away from them.<sup>114</sup>

Advocates concerned about the fate of battered women who kill could also assist and fund attorneys for battered women, to make sure they get the zealous level of advocacy they deserve.

For battered women currently in prison, though, advocates in Texas should try to get support groups for battered women in every prison in the state. The groups have been extremely helpful for battered women who have killed, and would also be helpful for other battered women in prison. Every woman I talked to who had gone to a support group for abused women in prison mentioned how helpful the groups were. At first, many women were reluctant to attend the group, because they did not want to self-identify as battered women. Other women felt that now that their husbands were dead, their problems were gone. While true they were no longer beaten, the years of abuse and the killing that resulted from it left many scars and issues needing attention.

After I got to prison and entered the battered women's group there, I first thought that's not me, I'm not battered any more. My husband is dead and everything is okay. It took me nine

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<sup>114</sup> Interview with Toby Meyers, EdD, in Houston, Tx. (Dec. 8, 1995).

months in that group to realize that I had a problem, that I allowed another human being to abuse me. Through the group I have built my self esteem.<sup>115</sup>

Maria Martinez explained one of the reasons such a group is vital:

Being a battered woman in prison is not easy. Every single day you have to think about the man you loved and cared for who you killed because he was abusive. You're scared because you don't know how you're gonna react if someone else hits you. Will you be able to walk away? I'm scared to love. I'm scared I'll be hit again.<sup>116</sup>

Ms. Martinez was recently transferred to a prison where there is no support group for battered women available. She misses the group:

I need a battered woman's group. I need to be advised. I'm scared to go out there. I'm scared to get abused again. I think I'm gonna get in another abusive relationship. I've got a boyfriend who writes letters but who knows what he's like. I don't trust nobody.<sup>117</sup>

Other women echo the fear of entering another abusive relationship, but feel that the time they have spent in the group, and the personal changes they have made, will prevent that from happening. As one woman explained,

If it had not been for coming here and being in with the WAVE [Women Against Violent Endings] group, I'd have probably gotten another man like that. I would have picked someone

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<sup>115</sup> Brenda , Address to Texas Council on Family Violence, supra note 63.

<sup>116</sup> Martinez interview, supra note 46.

<sup>117</sup> Id.

who didn't treat me right. Now I won't. I don't care about having a man in my life. I just want to be with my family. I've learned what's important in here. I would not have been able to see that before." 118

Another woman agrees, "I've had intensive counseling. I know what to look for so I don't ever repeat this same mistake. If I can get into a battering relationship, anybody can. I had lots of self-esteem, I had been a registered nurse for many years."119

The support group has helped the women deal with their experiences and with being in prison. Many women mentioned how the group has lead to self-discovery. "I'm not the same person I was before," is something many battered women told me. They also talked about how the support group helped them take responsibility, without self blame, for their actions:

Everyone wants to blame it on something. Well, I had a wonderful childhood. I didn't drink, I didn't smoke, I didn't take anything stronger than Tylenol. I have no reason for why I picked that man. I just did. Bad judgment. I was the original Suzy homemaker with the Donna Reed syndrome.<sup>120</sup>

The support group is a haven of normalcy in the unreal daily life of prison. All of the women I talked to who were in the support group felt strongly about it:

Its something we can't do without -- we have to fight to keep it.  
When we meet together as a group no one hears what we say

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118 Swaim interview, supra note 37.

119 Nance interview, supra note 28.

120 Id.

except the people in the group. You have to be able to contribute, to trust. Who else can you confide in and trust?"<sup>121</sup>

Battered women in prison felt strongly about the groups because the support group allowed for a kind of personal growth and rehabilitation, that the women in the group felt was impossible or very difficult otherwise. They felt that the women who had experienced this growth would be better able to handle the pressures of the outside world and would be able to avoid entering into another abusive relationship and would be able to avoid using violence themselves. Because of the power of such groups, advocates for battered women should try to establish groups in prisons throughout the state. Since state funding sources are tight, using the advocacy and fundraising strength of the TCFV to support therapists for battered women in prison would be a good use of resources.

In addition to helping battered women in prison by helping them to organize support groups, advocates for battered women should use their resources to assist battered women in prison when their cases come up for parole review. Texas inmates are eligible for parole after serving one-quarter to one-third of their sentence time, depending on when they were sentenced. Many battered women are denied parole, despite the fact that members of the Board of Pardons and Paroles believe that parole is better than clemency as a mechanism for releasing battered women who have killed. As Board member Stennet Posey explains, "parole is not dependent on the Governor; parole has more flexibility."<sup>122</sup>

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<sup>121</sup> Swaim interview, *supra* note 37.

<sup>122</sup> Posey interview, *supra* note 58.

Advocates for battered women could help the women in prison to prepare for their parole reviews, by helping them find places to live and work after their release. Parole decisions are often made as a result of the inmates offense and as a result of inmates behavior in prison. Even though battered women who kill have committed the most serious of offenses, they are often the best behaved inmates. Advocates could help battered women use their clean records to bolster their case for parole.

Advocates helping battered women would not have a difficult time persuading the Board that battered women are well-behaved inmates. As Warden Adams said,

Most of the battered women who have killed, they go by the rules. They are still passive. They are not gonna get in any trouble. These are the best inmates. Their problem was their spouse. I trust them. They don't think like the typical inmate that is here for drugs or prostitution. The other inmates call them goody two shoes. The other inmates know the difference.<sup>123</sup>

The women in prison are proud of the status and respect they have achieved in prison. Most of the women I interviewed had achieved "trusty" status, the highest possible status, which made them leaders among other inmates and afforded them greater privileges as well.<sup>124</sup>

Why do battered women make such ideal inmates? The answer may lie in the similarities between prison and abusive relationships. "Its been

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<sup>123</sup> Adams interview, supra note 69.

<sup>124</sup> Swaim interview, supra note 37.



hard for me here, but I was in prison during my marriage too," said Lydia Bihl.<sup>125</sup> Ms Specht said the same thing:

To a certain extent I feel different from the other inmates. Women in battering situations hold all the best jobs. We've been in situations. We can take the authority figure. We can deal. They are authority, we don't give problems, we know how to follow rules. We know how to survive in here. Were just here to do our time, follow the rules and get out. They [other inmates] look down on us because we follow the rules. I follow the rules and I don't get into trouble. [Because of our abusive relationships,] we've been conditioned to live in those kind of circumstances. You can make prison work for you. You can make it what you want. It's up to you.<sup>126</sup>

Finally, and most obviously, if advocates and concerned individuals were able to reduce or eliminate domestic violence, then battered women would not be driven to kill their abusers. In fact, since 1979, when battered women's shelters first became available, the number of women who have killed husbands has declined, and has since leveled off.<sup>127</sup> Currently about 860 American women kill male partners each year; about 1,500 men kill female partners each year.<sup>128</sup> Neither battered women nor their advocates want women to kill their partners; women just want to be safe. Since leaving is often the most dangerous time for a battered woman, without sufficient safe escape routes, killings will continue, and battered women will continue to serve prison time.

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<sup>125</sup> Karkabi, *supra* note 51 at 7G.

<sup>126</sup> Specht interview, *supra* note 47.

<sup>127</sup> Karkabi, *supra* note 51.

<sup>128</sup> Angela Browne, *When Battered Women Kill* (1987).

Unfortunately, Texas' five year experiment with executive clemency as a means of releasing battered women from prison has failed. The legislative resolution that began Texas' clemency review failed because the various parties involved did not agree on the fundamental purpose of the resolution, because the Board of Pardons and Paroles was not equipped to adequately and fairly review the clemency appeals, and because the Texas Council on Family Violence underestimated the fundamentally political nature of executive clemency. These failures and missteps caused battered women in prison much frustration. Because clemency has not proven to have helped battered women in prison, Texas advocates should redirect their energies to help battered women who kill in other ways.

APPENDIX A

SENATE CONCURRENT RESOLUTION 26

PASSED APRIL 11, 1991

WHEREAS, Recognition of domestic violence as a serious and widespread problem has grown in recent years; and

WHEREAS, Statistics regarding family violence are sobering; in the United States, a woman is beaten every 18 seconds; conservative estimates indicate that, in Texas alone, more than 650,000 women are subject to abuse by their husbands on a regular basis; moreover, in 60% of homes where a woman is beaten, so too are the children abused; moreover, of boys ages 11 to 20 who have committed homicide, 63% have killed a man who was abusing their mother; and

WHEREAS, Unfortunately, our criminal justice system has been slow to respond to the victims of domestic violence; testimony at a U.S. Congressional hearing and other research on the subject indicate that most battered women who kill their abusers have previously attempted, without success, to protect themselves or their children in other ways from battery, and later are held to an unreasonable standard of justification when they try to assert their right to self-defense in court; and

WHEREAS, Because of such standards of justification, victims who kill abusers in self-defense or in defense of other family members may nonetheless be convicted of or plead guilty to murder or manslaughter, even if the homicide occurred after years of severe, well-documented abuse; and

WHEREAS, The Texas Department of Criminal Justice, the Texas Juvenile Probation Commission, and the Texas Youth Commission have, or have had, jurisdiction over a number of women and children, who have been doubly victimized first by their abusers and later by a criminal justice system that failed to recognize the legitimacy of their defense; and

WHEREAS, These victims are not common criminals who killed for profit or vengeance; rather, they are people like ourselves, our mothers, our sisters, our children, who were driven by an unthinkable set of circumstances to perform this last desperate act of self-preservation; and

WHEREAS, In view of the extraordinary circumstances surrounding their crimes, these victims deserve an impartial review of their sentences; so that their histories as victims of domestic violence are taken into account; now, therefore, be it

RESOLVED, That the 72nd Legislature of the State of Texas hereby encourage local law enforcement agencies to explore ways to improve responses to family

violence, including arresting batterers, enforcement of protective orders, referral to family violence shelters for victim counseling, assistance to local groups providing treatment for batterers, and advocacy with other professionals in the criminal justice system to ensure that victims of family violence receive the full support of their communities and are not left to believe they must act alone to defend themselves from further abuse, so as to prevent these tragically violent endings; and, be it further

RESOLVED, That the 72nd Legislature of the State of Texas hereby request the governor of Texas to use the authority granted her under Section 16, Article 42.18, Code of Criminal Procedure to direct the Board of Pardons and Paroles, in consultation with the Texas Council on Family Violence, Inc., to investigate the cases of all persons who pled to or were convicted of murder or manslaughter when the offense was directly related to victimization by domestic violence; and, be it further

RESOLVED, That the Board of Pardons and Paroles shall contact and seek the input and recommendation of the trial officials involved in each case reviewed hereunder, including the presiding judge, the attorney representing the state, and the investigating law enforcement agency; and, be it further

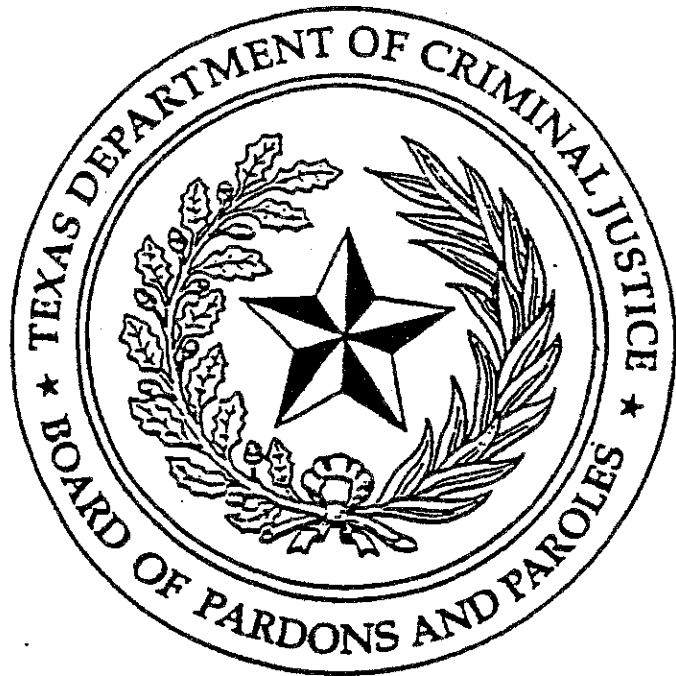
RESOLVED, That the Board of Pardons and Paroles shall notify a "close relative of a deceased victim," as that term is defined in Article 56.01, Code of Criminal Procedure, in each case reviewed hereunder and provide an opportunity for said relative to offer pertinent information to be considered by the Board in making its recommendations; and, be it further

RESOLVED, That the Board of Pardons and Paroles be directed to report to the governor regarding the findings of such investigations and any recommendations for pardons or clemency related to these cases; and, be it further

RESOLVED, That the 72nd Legislature of the State of Texas hereby request the governor of Texas to direct the Texas Youth Commission and the Texas Juvenile Probation Commission, in consultation with the Texas Council on Family Violence, Inc., to identify any children adjudicated for murder or manslaughter when the offense was directly related to victimization of themselves or any family member by domestic violence and, be it further

RESOLVED, That the Texas Youth Commission and the Texas Juvenile Probation Commission be directed to report to the governor and legislature regarding any such children identified and to make recommendations regarding review of their adjudications; and, be it further

RESOLVED, That an official copy of this resolution be forwarded to the governor of Texas as an expression of serious concern for this issue from the Texas Senate and House of Representatives.



**SENATE CONCURRENT RESOLUTION**

**26**

**IMPLEMENTATION PROCEDURES  
TEXAS BOARD OF PARDONS AND PAROLES**

**Adopted  
August 29, 1991**

PHASE 1  
(6 - 9 Months)

ESTABLISH BOARD CRITERIA FOR CASES TO BE PRESENTED FOR ACTION BY THE FULL BOARD. COMPLETED

IDENTIFY CASES ACCORDING TO INITIAL CRITERIA, CURRENT FEMALE INMATES, WITH OFFENSE OF CAPITAL MURDER, MURDER, VOLUNTARY MANSLAUGHTER, OR INVOLUNTARY MANSLAUGHTER. (THREE HUNDRED FOUR HAVE BEEN INITIALLY LISTED) COMPLETED

PULL CASES AND REVIEW BY COMMITTEE MEMBER AND STAFF FOR POSSIBLE INCLUSION IN THE FINAL PROCESS (EIGHTY-EIGHT HAVE BEEN IDENTIFIED FOR INITIAL REVIEW) IN PROCESS

PREPARATION OF INCLUDED CASES BY IDENTIFYING NEEDED ADDITIONAL INFORMATION AND REQUESTING THAT INFORMATION FROM THE INMATE, TRIAL OFFICIALS, AND OTHER SOURCES. IN PROCESS

STAFF TO PREPARE COMPUTER PROGRAM TO IDENTIFY NEWLY ARRIVED FEMALE INMATES FOR POSSIBLE INCLUSION IN THE PROGRAM. IN PROCESS

CONDUCT INTERVIEW PROCESS AND BOARD VOTE.

SUBMIT CASES WITH BOARD RECOMMENDATIONS TO THE GOVERNOR.

PHASE 2  
(30 Days)

IDENTIFY FEMALE PAROLEES AND RELEASEES USING THE PROCEDURE AS IN PHASE 1. AWAITING COMPUTER DOWNLOAD RFS

COMPLETE PROCESS.

PHASE 3  
(12 Months)

IDENTIFY AND SCREEN CURRENT MALE INMATES USING THE SAME PROCEDURES AS IN PHASE 1. PROGRAM BEING RUN

COMPLETE PROCESS.

STAFF TO INSTITUTE COMPUTER PROGRAM TO IDENTIFY NEWLY ARRIVED MALE INMATES FOR POSSIBLE INCLUSION IN THE PROGRAM. IN PROCESS

PHASE 4  
(12 - 24 Months)

MALE PAROLEES AND RELEASEES FOR POSSIBLE  
INCLUSION IN THE PROGRAM.

COMPLETE PROCESS.

AWA  
COM  
DOW  
RFS

## Implementation of SCR 26

- I. Parole Selection Analyst screens file to determine if the inmate/release meets initial screening criteria for Family Violence Resolution (SCR 26).

### **Initial Screening Criteria:**

#### **A. Inmate/Releasee committed one of these offenses:**

1. Capital Murder
2. Murder
3. Voluntary Manslaughter
4. Involuntary Manslaughter

#### **B. Against:**

1. Family Member
2. Former Family Member
3. Household Member
4. Former Household Member
5. Partner or Significant Other (same sex included)
6. Former Partner

- II. If Inmate/Releasee meets initial screening criteria, Board of Pardons and Paroles forwards Notice to the Inmate (NTI) requesting Inmate/Releasee to submit documentation to substantiate family violence committed against her/him by the deceased.

#### **A. Definitions**

##### **1. Family Violence**

- a. Physical harm, bodily injury, or assault; or
- b. Threat that reasonable places the person(s) in fear of imminent physical harm, bodily injury or assault (not to include reasonable discipline of a child by person having duty).

##### **2. Child Abuse**

- a. Physical injury resulting in substantial harm to child; or
- b. Threat of substantial harm from physical injury to child;  
or



- c. The following acts inflicted on, shown to, or intentionally practiced while child present and child's presence intended to arouse or gratify sexual desires of any person:
  - Sexual contact, assault, intercourse or penetration with foreign object;
  - Incest; and/or
  - Sodomy
- d. Compelling or encouraging a child to engage in sexual conduct.

**B. Documentation**

The following family violence information has been approved by the Board of Pardons and Paroles SCR 26 Implementation Committee as appropriate to review cases under this resolution.

**1. Family violence records\***

- a. District Attorney
- b. County Attorney
- c. Domestic violence units
- d. Justice of the Peace
- e. Battered women's shelters
- f. Medical reports
- g. Children's Protective Services
- h. Police reports - calls, arrests, charges filed

**2. Family violence witnesses**

- a. Personal written statement from inmate/releasee
- b. Sworn affidavits from family, friends, other witnesses

\*Note: The Texas Council on Family Violence will assist the Inmate/Releasee in obtaining family violence history information as requested and as their resources allow.

**III. After the Inmate/Releasee submits documentation of family violence, the Analyst initiates an analysis of the file to determine if sufficient additional information exists to satisfy Parole Board requirements.**

A. The following additional information has been approved by the Board of Pardons and Paroles SCR 26 Implementation Committee as appropriate to review cases under this resolution.

1. Family history of inmate/releasee and deceased
  - a. Prior relationships
  - b. Number of marriages
  - c. Childhood background
  - d. Family court history
  - e. Any other related information
  
2. Criminal history of inmate/releasee and deceased
  - a. FBI criminal history
  - b. DPS criminal history
  - c. Information obtained by local state and federal law enforcement agencies
  - d. PSI

B. The following information is required concerning the Inmate/Releasee:

1. Institutional information
  - a. Current in-depth summary composed of social, criminal, and institutional history
  - b. Commitment documentation
  
2. Psychological information
  - a. Psychological evaluation
  - b. Psychiatric evaluation

**IV. If there is sufficient information to satisfy the Board's requirements, the Analyst will forward the Request for Input and Recommendation form to the trial officials (ITO) and the Notice to the Relative of the Deceased Victim (NRV) (30 day time frame).**

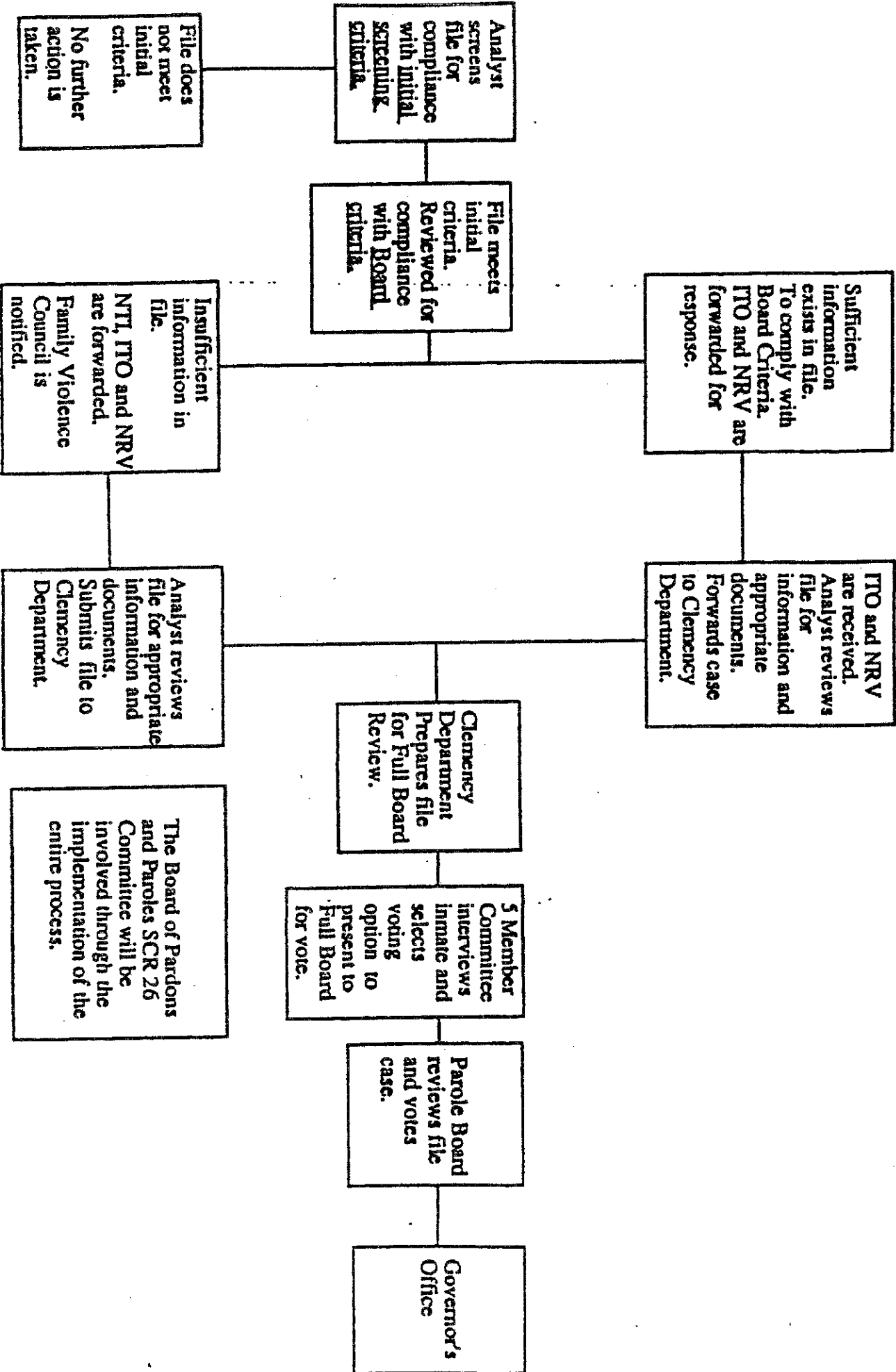
*Steps III and IV may be carried out simultaneously. However, in no case will an ITO or NRV be sent out until sufficient information exists in the file to substantiate family violence (Step II) and thereby establish inmate/parolee eligibility for SCR 26 review.*

**V. Upon receipt of replies to ITO and NRV, the Analyst will review the file for content and appropriate documents, and forward file to the Clemency Department.**

- VI. A five member rotating Board committee will interview the Inmate/Releasee and [based on criteria yet to be established] select a voting option to present to the Full Board.
- VII. The Board of Pardons and Paroles has the following options available when voting an SCR 26 case:
- A. Although not specified in law, the Board could vote to release the inmate to active supervision if she/he is time eligible
  - B. Commutation of Sentence
    - 1. To time served
    - 2. Specified Date
  - C. Full Pardon and restoration of civil rights of citizenship
  - D. Full Pardon and restoration based upon innocence

#### **PROCESS SUMMARY**

<b>STEP I</b>	<b>Initial Screening</b>
<b>STEPS II AND III</b>	<b>Information Gathering</b>
<b>STEP IV</b>	<b>Input from Trial Officials and Relatives of Deceased</b>
<b>STEPS V-VII</b>	<b>Board Review and Recommendation</b>



**CRITERIA FOR INITIAL SCREENING  
FAMILY VIOLENCE RESOLUTION - SCR 26**

**1. OFFENSE**

- a. Capital Murder
- b. Murder
- c. Voluntary Manslaughter
- d. Involuntary Manslaughter

**2. DOMESTIC VIOLENCE**

**a. Persons**

- i. Family member
- ii. Household member

**b. Acts**

- i. Physical harm, bodily injury, or assault; or
- ii. Threat that reasonably places the person(s) in fear of imminent physical harm, bodily injury or assault (not include reasonable discipline of the child by person having duty).

**c. Abuse**

- i. Physical injury resulting in substantial harm to child; or
- ii. Threat of substantial harm from physical injury to child; or
- iii. The following acts inflicted on, shown to or intentionally practiced while child present and child's presence intended to arouse or gratify sexual desires of any person:

- Sexual contact
- Sexual intercourse
- Sexual conduct
- Sexual penetration with a foreign object
- Incest
- Sexual assault
- Sodomy; or

- iv. Compelling or encouraging a child to engage in sexual conduct.