

SPOUSAL ABUSE DISQUALIFICATION STATUTE: IT'S TIME TO PROTECT OTHER VICTIMS

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I. INTRODUCTION

Domestic violence is not a new phenomenon in the United States.¹ Historically, spousal abuse has plagued households for decades—until the 1970s when domestic violence was finally considered a crime.² Although current criminal laws are in place to protect victims of domestic violence during their life, there are no statutes to protect victims after death.³ Under the current property law system, victims do not have a viable means of protecting their property; therefore, domestic abusers are still able to inherit and gain from their victims.⁴

Various statutes exist to protect the elderly and children from violence and financial exploitation; however, these statutes do not reach victims of domestic abuse.⁵ Additionally, the majority of states have slayer statutes that would bar inheritance, but those only account for instances in which the victim dies from the hands of their abusers and do not provide any protection for victims who die another way.⁶ Although Texas has statutes that bar inheritance for mistreatment of elderly individuals, disabled persons, or children, there is not a disqualification statute that would disinherit spousal abusers.⁷

This comment will first explore the history and prevalence of domestic and financial abuse.⁸ Next, it will explore the statutes that are in place to address this form of abuse and who is protected.⁹ The comment will then

1. See Jennifer O'Neill, *Domestic Violence Statistics: The Horrific Reality*, GOOD HOUSEKEEPING (Feb. 24, 2016), <https://www.goodhousekeeping.com/life/relationships/a37005/statistics-about-domestic-violence/> [https://perma.cc/48QK-33ML].

2. See *id.*

3. See Carla Spivack, *Let's Get Serious: Spousal Abuse Should Bar Inheritance*, 90 OREGON L. REV. 247, 255 (2011).

4. See *id.*

5. See TEX. PENAL CODE ANN. § 32.53.

6. See Gerry Beyer, *Slayer Statutes from State to State*, WILLS, TRUSTS & EST. PROF. BLOG (May 19, 2014), https://lawprofessors.typepad.com/trusts_estates_prof/ [https://perma.cc/TBM4-EBJX].

7. See TEX. PENAL CODE ANN. § 32.53.

8. See discussion *infra* Part II.

9. See discussion *infra* Part III.

compare Texas statutes to those of other states.¹⁰ Finally, this comment will propose a spousal abuse disqualification statute and a model that Texas can follow to implement further protections for victims.¹¹

II. THE HISTORY OF SPOUSAL AND FINANCIAL ABUSE

Domestic violence is a worldwide epidemic, as 35% of all women and 25% of all men have reported experiencing some form of violence by an intimate partner.¹² The violence is comprised of coercive behavior to establish and sustain control over another individual and can occur through physical violence, psychological and emotional abuse, rape, and financial control.¹³ Violence does not discriminate and can occur within all households, causing various health and economic costs for the victim.¹⁴ Violence can occur within a household regardless of one's profession, sexual orientation, income status, or urban or rural environment.¹⁵ Many victims experience a combination of physical violence and financial exploitation which hinders the victim's ability to leave the relationship.¹⁶

A. Prevalence of Spousal Violence

Every year, more than 12 million American people experience rape or violence by an intimate partner.¹⁷ Every minute, twenty people will experience violence within their close relationships.¹⁸ The Domestic Violence Intervention Program reported that violence amongst intimate partners is "the single greatest cause of injury to women."¹⁹ Domestic violence can occur in multiple ways: physical abuse, sexual abuse, emotional

10. See discussion *infra* Part IV.

11. See discussion *infra* Part V.

12. See *National Statistics*, NCADV, <https://ncadv.org/statistics> (last visited Oct. 17, 2019) [<https://perma.cc/H3N6-LYNM>] [hereinafter *National Statistics*]; see also *Violence Against Women*, WHO (Nov. 29, 2017), <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> [<https://perma.cc/LT3N-3376>] [hereinafter *Violence Against Women*]

13. See Lynn Burnett & Barry Brenner, *Domestic Violence*, MEDSCAPE (July 30, 2018), <https://emedicine.medscape.com/article/805546-overview#a4> [<https://perma.cc/HNP6-C33X>].

14. See *Violence Against Women*, *supra* note 12.

15. See Roxanne Dryden-Edwards, *Domestic Violence*, MEDICINET, https://www.medicinenet.com/domestic_violence/article.htm (last visited Oct. 18, 2019) [<https://perma.cc/4ETT-RMCS>]; see also O'Neill, *supra* note 1.

16. See Alanna Vagianos, *30 Shocking Domestic Violence Statistics That Remind Us It's an Epidemic*, HUFFPOST (Dec. 6, 2017), https://www.huffpost.com/entry/domestic-violence-statistics_n_5959776?guccounter=1 [<https://perma.cc/F5Z9-CF9C>].

17. See O'Neill, *supra* note 1.

18. See *id.*

19. See *id.*

abuse, isolation, and economic abuse.²⁰ Abuse within a relationship can cause a victim various physical and mental health problems, such as heart and stomach problems, memory loss, post-traumatic stress disorder, anxiety, and depression.²¹ In addition to immediate physical injuries that result from an assault, victims are more likely to commit suicide due to the lasting trauma and psychosomatic symptoms.²² The Family Violence Prevention Fund found 29% of women that attempted suicide in the United States were victims of domestic violence.²³

In addition, most abusers will isolate their victims to maintain control, reduce the likelihood of intervention from others, and create a deeper dependency the victim has with the abuser.²⁴ Isolation is the initial step to convince the victim that the abuser is the only person that matters.²⁵ However, abusive relationships do not always start out as violent—the abuser will try to win over the victim by “love-bombing” and showering the victim in grand gestures.²⁶ The abuser will isolate the victim subtly by making small remarks or criticisms which prompts the victim to adjust her behavior to keep the peace and make the abuser happy.²⁷ Because the victim does not have anyone to turn to and sees nothing wrong, isolation can result in the escalation of abuse.²⁸ Victims can also withdraw from other relationships because of feelings of embarrassment by their partner’s behavior, fears that other people will notice bruising, or nervousness that other relationships will anger the abuser.²⁹

Another effect of longer-term domestic violence is the development of battered woman syndrome.³⁰ This syndrome is a subcategory of post-traumatic stress disorder and is a psychological condition which develops

20. See *Types of Domestic Violence*, ACESDV, <https://www.acesdv.org/domestic-violence-graphics/types-of-abuse/> (last visited Oct. 22, 2019) [<https://perma.cc/32ZN-DYCZ>].

21. See *Effects of Violence Against Women*, WOMEN’S HEALTH, <https://www.womenshealth.gov/relationships-and-safety/effects-violence-against-women> (last visited Oct. 18, 2019) [<https://perma.cc/6RNR-Z6QQ>] [hereinafter *Effects of Violence Against Women*].

22. See *Health Effects of Domestic Violence*, SVAW, <http://hrlibrary.umn.edu/svaw/domestic/link/health/effects.htm> (last visited Oct. 18, 2019) [<https://perma.cc/266H-N7WJ>].

23. *Id.*

24. See Kellie Jo Holly, *Isolation and Domestic Abuse: How Abusers Isolate Victims*, HEALTHY PLACE (Nov. 6, 2011), <https://www.healthypace.com/comment/78668> [<https://perma.cc/C4BM-H8EV>].

25. See *id.*

26. Ana Gotter, *Battered Woman Syndrome*, HEALTHLINE (July 5, 2017), <https://www.healthline.com/health/battered-woman-syndrome> [<https://perma.cc/SB57-3UHY>].

27. See Cesiah Guerra, *Isolation and Domestic Violence*, BREAK THE SILENCE (Mar. 29, 2018), <https://breakthesilencedv.org/isolation-and-domestic-violence/> [<https://perma.cc/WYQ7-HB7B>].

28. See *id.*

29. See Melinda Smith & Jeanne Segal, *Domestic Violence and Abuse*, HELP GUIDE, <https://www.helpguide.org/articles/abuse/domestic-violence-and-abuse.htm> (June 2019) [<https://perma.cc/X5EX-4ZRA>].

30. See Gotter, *supra* note 26.

feelings of helplessness and prevents the victim from speaking out.³¹ After ongoing abuse, victims start to believe they deserve the violence and that it will never end.³² Often, “the victim becomes so depressed, defeated and passive that [they] believe [they are] incapable of leaving [the] abuser.”³³ This psychological condition furthers the cycle of violence and strengthens the abuser’s control.³⁴ In the United States, “only about half of domestic violence incidents are reported to police”³⁵; however, “domestic violence calls constitute approximately half of all violent crime calls to police departments.”³⁶ In the unlikely case that the violence gets reported to the police, most battered victims will recant their stories because they are sad for their abusers or are fearful of repercussions if the abuser were released from custody.³⁷

B. Prevalence of Financial Abuse

Domestic violence victims are more likely to experience financial abuse, which hinders the victim’s ability to leave an unhealthy relationship.³⁸ According to the Centers for Financial Security, “99% of domestic violence cases also involved financial abuse.”³⁹ In Texas, 33% of victims that call the domestic violence hotline report some form of economic abuse.⁴⁰ Financial abuse can isolate the victim and create a monetary dependency on their abuser, making it more difficult for the victim to leave.⁴¹ For example, economic exploitation occurs when a partner controls access to money, increases or creates lines of credit while refusing to pay the bill, forcing a partner to quit their job, or hiding and taking money.⁴² Additionally, this form of abuse can prohibit a victim from maintaining a job as “21–60% of victims of intimate partner violence lose their jobs due to reasons stemming from the

31. *See id.*

32. *See id.*

33. *See Battered Woman Syndrome*, FIND L., <https://family.findlaw.com/domestic-violence/battered-women-s-syndrome.html> (last visited Oct. 19, 2019) [<https://perma.cc/UF29-A9F5>] [hereinafter *Battered Woman Syndrome*].

34. *See id.*

35. *Domestic Violence Resources*, FEMINIST MAJORITY FOUND., <http://69.20.36.11/other/dv/dvfact.html> (last visited Nov. 7, 2019) [<https://perma.cc/PC5X-RY7F>].

36. *Id.*

37. *See Battered Woman Syndrome*, *supra* note 33.

38. *See Vagianos*, *supra* note 16.

39. *See Sherri Gordon, How to Identify Financial Abuse in a Relationship*, VERY WELL MIND (May 6, 2020) <https://www.verywellmind.com/financial-abuse-4155224> [<https://perma.cc/ZM8T-GFTY>].

40. *See Brandon Formby, Texas Senate Bill Aims to Help Victims of Economic Abuse*, TEX. TRIBUNE (Jan. 14, 2019, 8:41 PM), <https://www.texastribune.org/2019/01/14/texas-bill-domestic-abuser-victims-financial-debt/> [<https://perma.cc/3LSR-83WE>].

41. *See Gordon*, *supra* note 39.

42. *See id.*

abuse.”⁴³ Half of all women that have endured abuse either resigned or were pressured to leave their profession within the first year following the assault.⁴⁴

Financial abuse can come in many different forms, such as coerced debt or complete control over the victim’s finances.⁴⁵ The abuser can control the victim’s ability to obtain, use, or sustain any form of independent financial resources.⁴⁶ Control over finances is a powerful method to trap a victim in an abusive relationship as victims are often concerned about their ability to financially provide for themselves or their children if the relationship were to end.⁴⁷ Financial and emotional abuse often leave the victim feeling defeated and leave them vulnerable to other forms of abuse.⁴⁸ For example, an abuser can prevent the victim from leaving the relationship through coerced debt.⁴⁹ Coerced debt occurs when the victim opens lines of credit in their name because there is a pervasive threat of violence.⁵⁰ The abuser will increase the amount of debt under the victim’s name to create a deeper dependency and an inability for the victim to leave.⁵¹ Without any access to money or other resources, the victim is then unable to find affordable housing or provide basic needs such as food or clothing.⁵² Because financial abuse prevents victims from maintaining a life away from abusers, many victims stay or return to their abuser because they cannot maintain financial stability.⁵³

Additionally, financial abuse can occur without the victim knowing it is happening.⁵⁴ For example, Sherry, from Corpus Christi, Texas, found the courage to leave her husband after ten years of economic and physical violence.⁵⁵ Sherry’s husband controlled her income by taking her paychecks and allocating an allowance for her to provide the basic essentials for the household.⁵⁶ He dictated the clothing that she wore, governed what food she was allowed to buy for the family, and forced her to provide evidence of how

43. *National Statistics*, *supra* note 12.

44. *See Effects of Violence Against Women*, *supra* note 21.

45. *See Gordon*, *supra* note 39.

46. *See id.*

47. *See id.*

48. *See id.*

49. *See Formby*, *supra* note 40.

50. *See id.*

51. *See id.*

52. *See Gordon*, *supra* note 39.

53. *See id.*

54. *See generally* Brandon Formby, *Domestic Abusers Can Trap Their Victims with Financial Debt. This Texas Bill Seeks to Provide a Way Out*, TEX. TRIBUNE (Jan. 14, 2019, 12:00 PM), <https://www.texas-tribune.org/2019/01/14/texas-bill-domestic-abuser-victims-financial-debt/> (explaining that one woman did not know that her husband accumulated debt under her name until she left the relationship) [<https://perma.cc/2EN6-V9GR>].

55. *See id.*

56. *See id.*

her allowance was spent.⁵⁷ Although Sherry's husband completely controlled her income, she was under the impression that he had been managing their finances and ensuring that each bill was being paid.⁵⁸ Once Sherry left the marriage, she realized that her husband had opened almost twenty credit cards in her name and accumulated thousands in debt.⁵⁹ Because the Texas legal system considers a married couple as equal financial decision makers, Sherry received very little leniency and understanding from credit card companies.⁶⁰ Fortunately, Sherry escaped an abusive relationship, but she is still picking up the pieces from the financial turmoil her ex-husband created.⁶¹

C. Victims Stay in Abusive Relationships

People who have not experienced or been exposed to domestic violence will typically wonder, "why don't they just leave?"⁶² However, relationships that have escalated to violence have various layers of psychological control and manipulation that confuse victims into thinking that they should not leave.⁶³ If the victim grew up in an environment in which violence was common in relationships, the victim could believe that domestic abuse is normal and may not know what a healthy relationship is or looks like.⁶⁴ Also, after a duration of physical and emotional abuse, the victim will start to believe the cruelties the abuser says and will blame themselves for the abuse.⁶⁵ There could also be layers of fear if someone is in a LGBTQ+ relationship and has not come out to their loved ones.⁶⁶ These individuals may fear being outed by their partner if they try to leave the relationship.⁶⁷ Economic abuse could also create financial dependency on the abuser.⁶⁸ Without access to resources or a place to go, the victim may feel like it is impossible to leave.⁶⁹ Financial abuse can make the victim feel hopeless and they will resolve themselves to deal with the abuse to ensure their family has a home and basic essentials.⁷⁰

57. *See id.*

58. *See id.*

59. *See id.*

60. *See id.*

61. *See id.*

62. "Why Don't They Just Leave?", THE HOTLINE, <https://www.thehotline.org/is-this-abuse/why-do-people-stay-in-abusive-relationships> (last visited Oct. 22, 2019) [<https://perma.cc/5C4C-MVYF>].

63. *See id.*

64. *See id.*

65. *See id.*

66. *See id.*

67. *See id.*

68. *See id.*

69. *See id.*

70. *See id.*

Additionally, leaving an abusive relationship can be the most dangerous time for a victim.⁷¹ Domestic abuse is vested in power and control; therefore, if the victim attempted to leave, they would be taking control and power away from the abuser, which can provoke retaliation.⁷² Because abusers go to extremes to avert their victim from leaving the relationship, victims could be fearful of the repercussions that they will endure if they decided to leave.⁷³ Victims know their partners intimately and fully understand the extent their abuser will go to prevent them from leaving the relationship.⁷⁴ When provoked with separation, the abuser can threaten violence, murder, harm to the children or pets, and threats of ruining the victim financially.⁷⁵ Due to a financial dependency, the victim may doubt their ability to provide for the children or be fearful of the abuser taking the children away.⁷⁶

Male victims are also likely to remain in an abusive relationship due to shame, gender stereotypes, and feelings of commitment toward their partners.⁷⁷ The stereotype of domestic violence involves men being the perpetrator and females as the victim.⁷⁸ However, one in three men in the United States have experienced violence by an intimate partner.⁷⁹ Unlike women, whom are informed on the likelihood of being victimized, men are not taught that they could also fall victim to domestic abuse; thus, men might not realize that abuse is taking place.⁸⁰ Men are also less likely to report the violence due to fears that they will not be believed, they will be perceived as less masculine, or will be shamed for being abused.⁸¹ ManKind Initiative, a domestic abuse helpline, reported that on average men will stay in an abusive relationship for three years prior to seeking assistance.⁸²

71. *See id.*

72. *See id.*

73. *See id.*

74. *See Why Do Victims Stay?*, NCADV, <https://ncadv.org/why-do-victims-stay> (last visited Oct. 22, 2019) [<https://perma.cc/W2G5-GXUW>] [hereinafter *Why Do Victims Stay?*].

75. *See id.*

76. *See* Wendy L. Patrick, *Why Domestic Violence Victims Don't "Just Leave,"* PSYCHOLOGY TODAY (Apr. 7, 2018), <https://www.psychologytoday.com/us/blog/why-bad-looks-good/201804/why-domestic-violence-victims-dont-just-leave> [<https://perma.cc/3HL6-6XLY>].

77. *See* Tamara Mathias, *Male Victims of Domestic Violence Struggle to Disclose Abuse*, REUTERS (July 17, 2019, 1:54 PM), <https://www.reuters.com/article/us-health-domestic-violence-men/male-victims-of-domestic-violence-struggle-to-disclose-abuse-idUSKCN1UC2EF> [<https://perma.cc/QW94-TKPE>].

78. *See* Robin L. Barton, *When Men Are the Victims of Domestic Violence*, THE CRIME REPORT (June 27, 2018), <https://thecrimereport.org/2018/06/27/when-men-are-the-victims-of-domestic-violence> [<https://perma.cc/H6GS-P4N5>].

79. *See id.*

80. *See* Mathias, *supra* note 77.

81. *See id.*

82. *See id.*

Furthermore, societal barriers often prevent victims from leaving abusive relationships.⁸³ For example, religious leaders or clergy counselors reinforce abuse by encouraging the couple to save their relationship for religious purposes.⁸⁴ Victims of domestic violence often find comfort in faith and confide in religious leaders; however, the encouragement to save the marriage or advice to pray for strength to endure the relationship may result in the perpetuation of the violence.⁸⁵ Additionally, victims will not feel supported or protected by law enforcement agencies to report the violence.⁸⁶ Police can discourage a victim from filing charges by downplaying the abuse, not believing the victim, or not being sympathetic to the circumstances.⁸⁷ Even if the abuser was arrested, there is little protection to ensure the victim's safety once the abuser is released from custody.⁸⁸ Although restraining orders can be issued, protections are not in place to keep the abuser from returning and continuing the abuse or escalating the violence.⁸⁹

Additional roadblocks arise for the victim when they are in a violent relationship with a police officer.⁹⁰ Studies have found that at least 40% of police families experience domestic abuse and these families are two to four times more likely to experience domestic violence than other families.⁹¹ Victims of police officers are more vulnerable due to the nature of the abuser's job, fear of reporting to the police, and lack of response from the abuser's colleagues.⁹²

In addition, immigration status can also make it more difficult for a domestic violence victim to escape.⁹³ Victims that do not have legal citizenship are more likely to stay in an abusive relationships because of their fear of immigration laws, language barriers that make it difficult to report, and isolation as they are in a new country.⁹⁴ Most victims do not believe the legal system offers any form of protection for immigrants.⁹⁵ The abusers will often use their citizenship status as a way to control the victim through fear.⁹⁶

83. See *Why Do Victims Stay?*, *supra* note 74.

84. See *Domestic Violence and Religion*, OHIO DOMESTIC VIOLENCE NETWORK, <http://www.odvn-f5300-m.net/resource/religion.html> (last visited Oct. 22, 2019) [<https://perma.cc/UC5H-BZ5J>].

85. See *id.*

86. See *Why Do Victims Stay?*, *supra* note 74.

87. See *id.*

88. See *id.*

89. See *id.*

90. See *Officer-Involved Domestic Violence*, STOPVAW, https://www.stopvaw.org/officer-involved_domestic_violence (last visited Oct. 22, 2019) [<https://perma.cc/W8ED-VCUM>].

91. See *id.*

92. See *id.*

93. See *The Facts on Immigrant Women and Domestic Violence*, FUTURES WITHOUT VIOLENCE, https://www.futureswithoutviolence.org/userfiles/file/Children_and_Families/Immigrant.pdf (last visited Nov. 7, 2019) [<https://perma.cc/6D9L-862M>].

94. See *id.*

95. See *id.*

96. See *id.*

For example, an undocumented woman in Texas sought a protective order against her abusive husband and, following the court proceedings, the victim was arrested due to her immigrant status.⁹⁷ Although a judge granted the protective order, two United States Immigration and Custom Enforcement officers were in the courtroom waiting to arrest and deport the victim.⁹⁸ Legal aid groups sparked outrage after the victim's arrest, alleging that it will only discourage immigrant domestic violence victims from ever coming forward.⁹⁹

Moreover, abusers can also use the court system as a way to deter victims from reporting or as a way to prolong the abuse.¹⁰⁰ Abusers will use "abusive litigation" tactics as a way to keep victims engaged in the legal system and force the victim to regularly face the abuser in court.¹⁰¹ Abusive litigation can occur when the abuser contests protective orders, files frivolous lawsuits, or prolongs divorce and child custody proceedings so that they can stay in contact with the victim.¹⁰² For example, a stalking victim in New York sought a protective order against her abuser and, after he contested the order, both parties had to return to court seven times.¹⁰³ During the hearings, the abuser would scream or cause a scene, which resulted in further delays in the court proceedings.¹⁰⁴ Each time the victim and abuser would return to the courthouse, the abuser would stare at the victim or bang his head against the wall to get her attention.¹⁰⁵ Abusers use the court system as an avenue to further their harassment and send a message to the victim that even the courthouse is not a safe place.¹⁰⁶

Victims often fear for their safety or the safety of others if they attempt to leave a violent relationship.¹⁰⁷ On average, a victim will attempt to leave a violent relationship seven times before finally escaping.¹⁰⁸ Studies have found that men who have killed their wives were threatened with separation,

97. See Tom Dart, *Undocumented Texas Woman Arrested While Seeking Domestic Violence Help*, THE GUARDIAN (Feb. 16, 2017), <https://www.theguardian.com/us-news/2017/feb/16/texas-undocumented-woman-arrested-el-paso-domestic-violence> [https://perma.cc/6K65-SHBC].

98. See *id.*

99. See *id.*

100. See Jessica Klein, *How Domestic Abusers Weaponize the Courts*, THE ATLANTIC (July 18, 2019), <https://www.theatlantic.com/family/archive/2019/07/how-abusers-use-courts-against-their-victims/593086> [https://perma.cc/B2VV-2A6P].

101. See *id.*

102. See *id.*

103. See *id.*

104. See *id.*

105. See *id.*

106. See Lindsay Dodgson, *The Manipulative Tactics Psychological Abusers Use in Court to Keep Control Over their Victims*, INSIDER (July 29, 2018, 4:05 AM), <https://www.insider.com/psychological-abusers-use-the-courts-to-control-their-victims-2018-7> [perma.cc/4FQH-242D].

107. See *Why Do Victims Stay?*, *supra* note 74.

108. *Statistics*, STAND! FOR FAMILIES FREE OF VIOLENCE, <http://www.standffov.org/statistics> (last visited Oct. 22, 2019) [perma.cc/S4TK-YAJ7] [hereinafter STAND!].

which precipitated the events that led to the murder.¹⁰⁹ In the United States alone, more than three women are murdered per day as a result of domestic violence.¹¹⁰ The most dangerous time for a victim is when they have actually escaped the relationship as “more than 70% of domestic violence murders happen after the victim has gotten out.”¹¹¹ Leaving an abusive relationship could also put the victim’s close relatives in a dangerous position.¹¹² A study on domestic violence found that 20% of homicide victims were not the abuse victims themselves, but close relatives like family members or friends.¹¹³ Therefore, it is difficult for a victim to leave a violent relationship when there is psychological and financial control, societal barriers, and the fear of murder.¹¹⁴

Furthermore, if a victim is not provided assistance from police officers or the legal system, the victim may resort to other forms of self-defense.¹¹⁵ Although only 4% of men have been murdered by their female partner, 40–80% of women who have been convicted of murder acted as a result of domestic abuse.¹¹⁶ The majority of women who have come into contact with the legal system have been victims of domestic violence.¹¹⁷ However, for a victim to claim that they acted out of self-defense, the action must be in response to an immediate threat.¹¹⁸ The threshold for self-defense can be difficult for a victim suffering from battered woman syndrome to meet because the psychological syndrome can prevent the victim from reacting immediately.¹¹⁹ The syndrome will cause the victim to perceive the danger of their partner to extend beyond one battering incident because the syndrome creates a prolonged fear.¹²⁰ Thus, someone suffering from battered woman

109. See *Why Do Victims Stay?*, *supra* note 74.

110. See *STAND!*, *supra* note 108.

111. See *id.*

112. See *Why Do Victims Stay?*, *supra* note 74.

113. See Sharon G. Smith, Katherine A. Fowler & Phyllis H. Niolon, *Intimate Partner Homicide and Corollary Victims in 16 States: National Violent Death Reporting System, 2003–2009*, 104 AM. J. OF PUB. HEALTH 461, 464 AJPH (Feb. 2014), <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2013.301582> [<https://perma.cc/8R9U-YY7U>].

114. See *Why Do Victims Stay?*, *supra* note 74.

115. See *Who Is Doing What to Whom? Determining the Core Aggressor in Relationships Where Domestic Violence Exists*, NCADV, https://www.speakcdn.com/assets/2497/who_is_doing_what_to_whom.pdf (last visited Nov. 15, 2019) [<https://perma.cc/X4SW-DUXG>].

116. *Women who Kill their Abusers: How Do Criminal Justice Systems Respond? New Research*, PENAL REFORM (June 2, 2016), https://www.penalreform.org/news/women-kill-abusers-criminal-justice-systems-respond-new/#_ftn3 [perma.cc/3ANS-3WB4]; see also Carol Jacobsen, *When Justice Is Battered*, AGAINST THE CURRENT, <https://againstthecurrent.org/atc130/p729/> (last visited Dec. 12, 2020) [<https://perma.cc/2JPS-SDCK>].

117. See *Women who Kill their Abusers: How Do Criminal Justice Systems Respond?*, *supra* note 116; Jacobsen, *supra* note 116.

118. See Alafair S. Burke, *Rational Actors, Self-Defense, and Duress: Making Sense, Not Syndromes, Out of the Battered Woman*, 81 N.C.L. REV. 211, 230–31 (2002).

119. See *id.*

120. See *id.*

syndrome may kill during a passive moment out of fear that they will be murdered during the next inevitable assault.¹²¹ As a result, women who kill their abusive partners can get longer prison sentences and little consideration to the abuse that provoked the murder.¹²²

III. DISINHERITING IN TEXAS

Texas is a community property state: all property that is acquired during marriage is presumed to be community property and upon the death of a spouse, the surviving spouse has a right to their half of the community property.¹²³ Community property makes it difficult to disinherit a spouse because half of all earnings acquired during the marriage are legal property of the surviving spouse.¹²⁴ However, there are various disqualification statutes, such as slayer statutes, duress, and undue influence statutes that disinherit an individual for harmful conduct.¹²⁵ In addition, Texas has a statute that protects certain individuals from financial exploitation but does not guard those who are victims of domestic violence.¹²⁶

A. Texas Is a Community Property State

Under a community property system, it is difficult to disinherit a spouse because half of the property acquired or earned during the marriage belongs to them.¹²⁷ The community property system regards both spouses as one union and both equally entitled to any profits or assets acquired during the marriage.¹²⁸ This system protects the rights of both spouses and recognizes that both parties contribute during the marriage in various ways.¹²⁹ Even if one spouse does not work and is a stay-at-home parent, the law considers the contributions of both spouses as financially equal.¹³⁰ Unless both spouses agree to the disinheritance or if the couple were to sign a contract, one spouse

121. See *id.*

122. See Victoria Law, *When Abuse Victims Commit Crimes*, THE ATLANTIC (May 21, 2019), <https://www.theatlantic.com/politics/archive/2019/05/new-york-domestic-violence-sentencing/589507/> [perma.cc/65TM-F7XT].

123. See *Texas Community Property and Real Estate*, DEED CLAIM, <https://www.deedclaim.com/texas/community-property/> (last visited Sept. 26, 2019) [perma.cc/ARU7-WWPX].

124. See Kristen Johnson, *Disinheriting a Spouse*, LEGAL MATCH (May 8, 2018), <https://www.legalmatch.com/law-library/article/disinheriting-a-spouse.html> [perma.cc/GJX5-GQDR].

125. See TEX. EST. CODE ANN. §§ 201.058, 256.152.

126. See TEX. PENAL CODE ANN. § 32.53.

127. See Johnson, *supra* note 124.

128. See Will Kenton, *Community Property*, INVESTOPEDIA (Aug. 24, 2018), <https://www.investopedia.com/terms/c/communityproperty.asp> [https://perma.cc/7WCZ-TS4L].

129. See *id.*

130. See *id.*

cannot disinherit the other.¹³¹ Disinheritance contracts can occur through prenuptial or postnuptial agreements and will waive a spouse's right to their share of property as noted in the agreement.¹³²

Additionally, if a spouse were to die intestate—without a will—in a community property state, the surviving spouse is automatically entitled to their share of the deceased spouse's estate.¹³³ However, if the deceased spouse died without a will then the surviving spouse will take all of the community property.¹³⁴ Texas Probate Code determines how the estate will be distributed if someone dies intestate.¹³⁵ For example, if all of the children were born within the marriage or if there were no children, then all of the community property will be granted to the surviving spouse.¹³⁶ Texas also grants separate property to the surviving spouse if the decedent died intestate and did not have children, surviving parents, or surviving siblings.¹³⁷ Thus, in a community property state, the surviving spouse has an established right to receive from the deceased spouse.¹³⁸

Under a community property system, a spouse can distribute their half of the community property in a will to whomever they chose and the surviving spouse would be entitled to the remaining 50%.¹³⁹ However, 55% of Americans do not have a will or estate plan in place due to the perception of cost, necessity, and unawareness to the potential consequences of dying intestate, such as higher costs and longer duration for asset distribution.¹⁴⁰ In summation, in a community property state the surviving spouse can receive

131. See Johnson, *supra* note 124.

132. See *Disinheriting a Spouse in Texas*, HUNT L. FIRM (Feb. 7, 2019), <https://www.familylawyerkaty.com/blog/2019/february/disinheriting-a-spouse-in-texas/> [<https://perma.cc/G6YZ-RYVH>].

133. See *id.*

134. See Ellis Roanhorse, *The Rights of Children of a Deceased Person*, LEGAL ZOOM, <https://info.legalzoom.com/rights-children-deceased-person-21423.html> (last visited Oct. 20, 2019) [<https://perma.cc/DP7W-35C7>].

135. See Jason Brower, *Dying Without a Will in Texas: What Happens?*, FORD & BERGNER LLP (Feb. 2006), <https://fordbergner.com/dying-without-a-will-in-texas-what-happens/> [<https://perma.cc/DLG6-A2DN>].

136. See Chris Thompson, *Inheritance Laws in Texas*, SMART ASSET (Feb. 24, 2020), <https://smartasset.com/estate-planning/texas-inheritance-laws> [<https://perma.cc/8FPS-B4VB>].

137. See *id.*

138. See Kenton, *supra* note 128.

139. See *Married and Creating a Will*, WILLING LEARN, <https://willing.com/learn/your-spouse-will-and-you.html> (last updated July 2018) [<https://perma.cc/S4SC-ZHL6>].

140. See Heleigh Bostwick, *Don't Have a Will? 10 Common But Misguided Excuses*, LEGAL ZOOM, <https://www.legalzoom.com/articles/dont-have-a-will-10-common-but-misguided-excuses> (last updated Sept. 20, 2020) [<https://perma.cc/FR6L-K33Q>]; see also *Why Some People Don't Have Wills*, AP NEWS (Oct. 17, 2018), <https://apnews.com/cfbba0a391a42b483351e7089484716>; Scott Van Voorhis, *Nearly Half of Older Americans Don't Have Wills or Estate Plans*, THE STREET (Feb. 7, 2019, 9:05 AM), <https://www.thestreet.com/personal-finance/nearly-half-of-older-americans-don-t-have-wills-or-estate-plans-14858171> [<https://perma.cc/Y5BY-QPGY>].

all of the decedent's property if the decedent did not have children, surviving parents, or surviving siblings.¹⁴¹

B. Texas Is a No-fault Probate State

Texas is a "no-fault" probate state, meaning the court does not consider marital misconduct while determining estate distributions in probate.¹⁴² Fault is also not considered in divorce proceedings and a judge can grant a divorce without any regard to marital misconduct; therefore, a no-fault probate standard is in accordance with other legal provisions.¹⁴³ Although Texas will prevent a murderer from inheriting from their victim, other conduct such as bigamy or adultery will not bar a spouse from inheritance.¹⁴⁴

C. Disqualification Statutes in Texas

Texas has a variety of statutes that would disqualify someone from inheriting from the decedent.¹⁴⁵ Texas, along with the majority of states, has a slayer statute that prohibits a murderer from unjustly enriching from their victim.¹⁴⁶ The statute says that "a murderer cannot retain a property interest in his/her victim's estate. . .[and] allows courts to presume the murderer disclaims his/her property interest. . ."¹⁴⁷ The slayer statute is limited to cases in which the victim died at the hands of the killer.¹⁴⁸ In addition, Texas has an undue influence and duress statute that prohibits an individual from forcing the decedent from making estate distribution decisions based on threats.¹⁴⁹ A spouse can also be disinherited if the marriage is void.¹⁵⁰ If a marriage is contested for the lack of mental capacity, the court has discretion to void the marriage—which will disqualify an individual from inheritance.¹⁵¹ Moreover, Texas provides additional protection for children by disinheriting a parent if the court finds that there was maltreatment to the

141. See Bostwick, *supra* note 140; *Why Some People Don't Have Wills*, *supra* note 140; *Married and Creating a Will*, *supra* note 139.

142. See Linda Kelly Hill, *No-Fault Death: Wedding Inheritance Rights to Family Values*, 94 KY. L. J. 319, 343 n.107 (2005).

143. See TEX. FAM. CODE ANN. § 6.001; Guest and Gray Law Firm, *What's the Deal with Fault Divorce in Texas?* GUEST & GRAY: DALL. DIVORCE LAW. BLOG (Mar. 9, 2017), <https://www.dallasdivorcelawyerblog.com/whats-deal-fault-divorce-texas/> [<https://perma.cc/5KAJ-3K6G>].

144. See TEX. EST. CODE ANN. § 201.058(b); Hill, *supra* note 142 at 343 n.107.

145. See Beyer, *supra* note 6.

146. See *id.*

147. See *Slayer Rule Law and Legal Definition*, US LEGAL, <https://definitions.uslegal.com/s/slayer-rule/> (last visited Nov. 7, 2019) [<https://perma.cc/4VJ5-W8WP>].

148. See Jennifer Piel, *Expanding Slayer Statutes to Elder Abuse*, 43 J. AM. ACAD. PSYCHIATRY & L. 369, 370 (Sept. 2015).

149. See TEX. EST. CODE ANN. § 256.152.

150. See *id.* § 123.101.

151. See *id.*

decedent child.¹⁵² Texas also has a statute to guard against financial exploitation, but the statute is limited to only certain individuals.¹⁵³

1. Slayer Statutes Prohibit Inheritance

Texas has a slayer statute that would prevent a killer from inheriting the life insurance from a victim if the killer was the direct cause of the victim's death.¹⁵⁴ The majority of states have implemented a variation of a slayer statute, but the criteria varies depending upon the jurisdiction.¹⁵⁵ The slayer laws are vested in the common law rule that no one should benefit from their wrongdoing and the testator's intent should be effectuated.¹⁵⁶ The application of the statute is limited to murder that is committed intentionally and excludes accidental killing.¹⁵⁷ The slayer statute typically arises when a child murders their parent or if a spouse kills their spouse.¹⁵⁸ However, the Texas slayer statute applies only to life insurance proceeds and does not apply to an intestate heir or will beneficiary.¹⁵⁹ Section 201.058(b) of the Texas Estates Code establishes that "if a beneficiary of a life insurance policy or contract is convicted and sentenced as a principal or accomplice in willfully bringing about the death of the insured, the proceeds of the insurance policy or contract shall be paid in the manner provided by the Insurance Code."¹⁶⁰ The underlying goal of the statute is to transfer property in accordance to the decedent's intent and to prevent the killer from unjustly benefitting from their actions.¹⁶¹ This statute also acts as a deterrent as it discourages murder for the purpose of inheritance.¹⁶² The evidentiary standard required for the slayer statute in civil court is lower than what is required for a criminal conviction.¹⁶³ In civil court, the slayer statute will apply if the wrongful killing is proved by a preponderance of the evidence.¹⁶⁴ A criminal court can acquit an individual for murder for the prosecution's failure to prove guilt

152. *See id.* § 201.062.

153. *See* TEX. PENAL CODE ANN. § 32.53.

154. *See* TEX. EST. CODE ANN. § 201.058(b).

155. *See* Beyer, *supra* note 6.

156. *See* Piel, *supra* note 148, at 369–70.

157. *See id.*

158. *See* Cori Robinson, *Halloween Is the Perfect Time to Discuss Slayer Statutes*, ABOVE THE L. (Oct. 16, 2018, 4:47 PM), <https://abovethelaw.com/2018/10/halloween-is-the-perfect-time-to-discuss-slayer-statutes/>. [<https://perma.cc/ZSP6-D8TG>].

159. *See* Gerry W. Beyer, TEXAS WILLS AND ESTATES: CASES AND MATERIALS (7th ed. 2015).

160. TEX. EST. CODE ANN. § 201.058(b).

161. *See* Piel, *supra* note 148, at 369–70.

162. *See* Barron, Rosenberg, Mayoras & Mayoras, *The Michigan Slayer Statute: A Killer Cannot Profit for His or Her Wrong*, BARRON, ROSENBERG, MAYORAS & MAYORAS (Mar. 1, 2017), <https://www.brmmlaw.com/blog/2017/march/the-michigan-slayer-statute-a-killer-cannot-profit/> [<https://perma.cc/6B86-UM6Q>].

163. *See* Robinson, *supra* note 158.

164. *See id.*

beyond a reasonable doubt; but a civil court can still disinherit the individual while the estate is being distributed.¹⁶⁵ The court will impose a constructive trust, making the murderer a trustee for the individuals who are then entitled to the property.¹⁶⁶

2. Duress and Undue Influence as a Bar to Inheritance

A valid will requires that the testator have legal and testamentary capacity when executing the will.¹⁶⁷ A testator meets legal capacity if the testator is at least eighteen years old, married, or a member of the armed forces.¹⁶⁸ Testamentary capacity requires that the testator be of “sound mind” and understand the act of executing a will.¹⁶⁹ An individual could contest a will if the testator was not of sound mind when the will was executed because of duress or undue influence.¹⁷⁰ The statutes seek to prohibit an individual from pressuring the decedent to execute a will.¹⁷¹ If a relative suspects duress or undue influence, they can challenge the will by contesting it in probate court.¹⁷² Although similar, duress and undue influence require different forms of evidence.¹⁷³

Duress is a form of compulsion that deprives the testator of the freedom to make distributions in their will.¹⁷⁴ This form of coercion makes the testator fear the consequences if they do not abide by their influencer’s requests.¹⁷⁵ Threats of physical violence, threats of economic force, or actual violence that coerces a testator may establish duress.¹⁷⁶ Only a beneficiary of an interested party’s will that was financially hindered by the wrongdoer’s actions can contest the will on duress grounds.¹⁷⁷

165. *See id.*

166. *See* Beyer, *supra* note 6.

167. *See* TEX. EST. CODE ANN. § 251.001.

168. *See id.*

169. *See id.*

170. *See Three Reasons a Texas Will Can Be Challenged*, G MCCULLOUGH LAW: WILLS & TR. BLOG, <https://www.gmcculloughlaw.com/blog/2016/12/three-reasons-a-texas-will-can-be-challenged.shtml> (last visited Jan. 15, 2020) [<https://perma.cc/Q3XT-NP5J>].

171. *See* TEX. EST. CODE ANN. § 256.152.

172. *See* Mary Randolph, *How “Undue Influence” Can Invalidate a Will*, ALL L., <https://www.alllaw.com/articles/nolo/wills-trusts/undue-influence-invalidate.html> (last visited Sept. 7, 2020) [<https://perma.cc/3UYG-8BWX>].

173. *See* Peter Kelly, *Objections to Probate: Undue Influence and Duress*, EST. AND ELDER L. (Jan. 2, 2012), <https://www.lexisnexis.com/legalnewsroom/estate-elder/b/estate-elder-blog/posts/objections-to-probate-undue-influence-and-duress> [<https://perma.cc/GA5M-WHXV>].

174. *See* FAMILY LAW AND PROBATE LAW, Chapter 15, <http://www.delmarlearning.com/companions/content/0314127232/downloads/15-jordan.pdf> (last visited Nov. 5, 2019) [<https://perma.cc/5YQG-VGGW>].

175. *See id.*

176. *See* Kelly, *supra* note 173.

177. *See Duress or Coercion: Everything You Need to Know*, KLENK L., <https://www.klenklaw.com/practices/will-contests-and-will-challenges/duress-or-coercion/> (last visited Nov. 5, 2019) [<https://perma.cc/5YQG-VGGW>].

Additionally, undue influence exploits a special relationship between the testator and the influencer that removes the testator's freedom of thought.¹⁷⁸ This form of compulsion is the exertion of influence that overcomes the testator's free will and independence.¹⁷⁹ The special relationship between the testator and the influencer creates the opportunity for the influencer to contribute in the will's drafting.¹⁸⁰ A special relationship exists if the wrongdoer is the fiduciary or is in a position of trust with the testator.¹⁸¹ An individual can contest a will for undue influence by showing someone exercised influence upon the decedent, which overpowered the testator's mind at the time of the will execution, and the execution of the will would not have occurred but for the influence.¹⁸² All three elements must be met to establish undue influence.¹⁸³

3. *Voiding a Marriage Can Disqualify Inheritance*

Furthermore, a court can disinherit a spouse if the court determines the marriage void.¹⁸⁴ Texas law allows a court to void a marriage if the court determines that one spouse entered the marriage without mental capacity.¹⁸⁵ Suppose a proceeding to void a marriage due to capacity is pending at the time of one spouse's death; in that case, the court can declare the marriage void despite the death of the decedent.¹⁸⁶ The court will determine if one spouse lacked the requisite mental capacity to consent to marriage and thus did not understand the marriage's nature because of mental disease or defect.¹⁸⁷ If a proceeding is not pending at the time of death, the court can hold a marriage as void: (1) if the decedent entered into the marriage three years prior to death; (2) if an interested party files to void a marriage on the basis of mental capacity within one year of the decedent's death; (3) if the court rules that the decedent did lack mental capacity; and (4) if the court does not find that mental capacity was regained following the date of

cc/LE3H-ADQT].

178. See FAMILY LAW AND PROBATE LAW, Chapter 15, *supra* note 174.

179. See Kelly, *supra* note 173.

180. See Ki Akhbari, *What Is Undue Influence?*, LEGAL MATCH, <https://www.legalmatch.com/law-library/article/effect-of-undue-influence-on-the-validity-of-a-will.html> (last modified Apr. 13, 2018) [<https://perma.cc/JC74-LKN5>].

181. See *id.*

182. See *Grounds for Contesting a Texas Will*, TEX. INHERITANCE, <https://www.texasinheritance.com/contesting-a-will-because-of-undue-influence/> (last visited Sept. 7, 2020) [<https://perma.cc/A4DN-VKJT>].

183. See *id.*

184. See TEX. EST. CODE ANN. § 123.101(a).

185. See *id.*

186. See GERRY W. BEYER, § 7:19. *Voidable marriages* (9 Tex. Prac. Series, 4th ed. 2018).

187. See TEX. EST. CODE ANN. § 123.103.

marriage.¹⁸⁸ If the marriage were declared void, then it acts as though the marriage never occurred.¹⁸⁹ Therefore, the surviving person will not be considered the decedent's surviving spouse for estate distribution purposes and cannot claim homestead rights.¹⁹⁰

4. *Parents Disinherited If Maltreatment to Children*

Texas has a statute that disinherits a parent if the court determines maltreatment to the deceased child existed.¹⁹¹ This statute expressly protects children after death and prohibits the parent gaining from the child's death.¹⁹² The probate court can disinherit a parent of a child under eighteen years old if there is clear and convincing evidence that the parent abandoned the child or failed to support the child three years prior to death.¹⁹³ If the court requires a parent's disinheritance, the court considers the parent to have predeceased the child.¹⁹⁴ However, this statute only protects minors, as once the child reaches eighteen years old they are legally entitled to write a will.¹⁹⁵

5. *Texas Statute That Prohibits Financial Exploitation*

Additionally, Texas law protects the financial exploitation of children, elderly, or disabled individuals.¹⁹⁶ The statute prohibits an individual from knowingly or recklessly exploiting the resources of a child, elderly individual, or disabled individual for their own gain or benefit.¹⁹⁷ A child protected by this statute is a person fourteen years old or younger.¹⁹⁸ The statute defines an elderly person as a person sixty-five years old or older.¹⁹⁹ A disabled individual is a person who suffers from a mental disease or defect that is unable to protect themselves from harm.²⁰⁰ The offense can result in a third-degree felony, a 10 year prison sentence, and a fine up to \$10,000.²⁰¹

188. See Beyer, *supra* note 6.

189. See *Void Marriages: Answers to Common Questions*, TEX. L. HELP, <https://texaslawhelp.org/article/void-marriages-answers-common-questions> (last visited Oct. 18, 2019) [<https://perma.cc/RU3F-BG8C>].

190. See TEX. EST. CODE ANN. § 123.104.

191. See *id.* § 201.062.

192. See *id.*

193. See *id.* § 201.062(a)(1).

194. See *id.* § 201.062(b).

195. See *id.*

196. See TEX. PENAL CODE ANN. § 32.53.

197. See *id.*

198. See *id.*

199. See *id.*

200. See *id.*

201. See Paul Saputo, *Exploitation of Child, Elderly Individual, or Disabled Individual*, SAPUTO L. (July 8, 2017), <https://saputo.law/criminal-law/texas/exploitation-of-child-elderly-individual-or-disabled-individual/> [<https://perma.cc/WN3M-EFGE>].

IV. DISINHERITING IN OTHER STATES

In contrast to Texas and its community property system, other states utilize an elective share statute that would also prevent a surviving spouse from being disinherited.²⁰² Under an elective share system, a disinherited spouse can elect to take from the probate estate; however, the amount available to that spouse varies upon the state and jurisdiction.²⁰³ Additionally, other states are marital fault states and consider marital misconduct as a method to bar a surviving spouse's inheritance rights.²⁰⁴ All states have a slayer statute that will disinherit for misconduct, but some states go further and consider bigamy, abandonment, and adultery in determining the surviving spouse's inheritance rights.²⁰⁵ In contrast to Texas, various states have expanded their slayer statutes to protect more victims.²⁰⁶ Although these various statutes also explicitly protect certain individuals, they neglect to protect victims of spousal abuse.²⁰⁷ In addition, some state statutes require a criminal conviction to disinherit or disqualify an individual because of abuse.²⁰⁸ Many laws bar the inheritance of child or elder abusers but those laws do not extend their protection to spousal abuse victims.²⁰⁹

A. Elective Share States

In contrast to Texas, other non-community property states utilize an elective share statute to administer an estate.²¹⁰ Similar to a community property system, the elective share law prevents a spouse from being disinherited.²¹¹ As long as the couple is still legally married, a deceased

202. See Julie Garber, *Can You Disinherit Your Spouse?*, THE BALANCE (July 12, 2019), <https://www.thebalance.com/can-you-disinherit-your-spouse-3505158> [<https://perma.cc/YM39-VR4E>].

203. See *id.*

204. See Allison Bridges, *Marital Fault as a Basis for Terminating Inheritance Rights: Protecting the Institution of Marriage and Those Who Abide by Their Vows – Til' Death Do Them Part*, 45 REAL PROP. TR. AND EST. E. L. J. 559, 562 (2010).

205. See *id.* at 568–69.

206. See Piel, *supra* note 148.

207. See *id.*; Robin L. Preble, *Family Violence and Family Property: A Proposal for Reform*, 13 LAW & INEQUALITY: A J. OF THEORY & PRAC. 401, 429 (1995).

208. See Piel, *supra* note 148; Preble, *supra* note 207, at 429; Travis Hunt, *Disincentivizing Elder Abuse Through Disinheritance: Revamping California Probate Code § 259 and Using It as a Model*, 2014 BYU L. REV. 445, 446 (2014).

209. See Spivack, *supra* note 3, at 250.

210. See Elizabeth L. Pack, *Can My Spouse's Estate Plan Cut Me Out? Understanding the Elective Selective Share*, GREENSFELDER (July 20, 2017, 9:25 AM), <https://www.greensfelder.com/pp/blogpost-344.pdf?68043> [<https://perma.cc/6KUE-CH4D>].

211. See *Elective Share*, CORNELL L. SCHOOL, https://www.law.cornell.edu/wex/elective_share (last visited Nov. 5, 2019) [<https://perma.cc/8SLW-SWXV>].

spouse cannot completely disinherit the surviving spouse.²¹² Even if a spouse has been left out of a will or received less than what a surviving spouse would receive from the default probate laws, under an elective share system the surviving spouse can still elect to take a portion of the estate.²¹³ Typically, the disinherited spouse can take between one-third to one-half of the estate depending on the state.²¹⁴ Some states will adjust the elective share based on the duration of the marriage and how many children were born within the marriage.²¹⁵

In addition, the type of elective share system will vary depending on the state and jurisdiction.²¹⁶ For example, ten states in the United States have implemented the Uniform Probate Code's (UPC) definition of augmented estate.²¹⁷ Under the UPC, the surviving spouse can "take a portion of the deceased spouse's probate estate" and the non-probate assets; in contrast, nine other elective share states only adopted a portion of the UPC definition of augmented estate.²¹⁸ In those states, the disinherited spouse can take from the probate estate and only a portion of the non-probate assets.²¹⁹

In accordance with a community property system, a premarital agreement signed by both parties is the only way to completely disinherit a spouse in an elective share system.²²⁰ Before getting legally married, both parties can sign the agreement that would disinherit one another and prevent the elective share from applying.²²¹ However, the couple can also sign a postnuptial contract after they are legally married that would disinherit a surviving spouse and prevent the elective share from applying.²²² Therefore, in an elective share state a premarital or postnuptial contract is necessary to disinherit a spouse; otherwise, the surviving spouse would be entitled to a forced share.²²³

212. See *Elective Share Law: Can My Wife Disinherit Me in Her Estate Plan?*, GORDON FISCHER L. FIRM (July 14, 2018), <https://www.gordonfischerlawfirm.com/elective-share-law-spouse-disinherit/> [<https://perma.cc/BG5Q-NN8K>].

213. See Pack, *supra* note 210.

214. See *id.*

215. See *Elective Share – Definition*, THE BUS. PROFESSOR, (Nov. 30, 2018), <https://thebusinessprofessor.com/knowledge-base/elective-share-explained> [<https://perma.cc/GZJ2-33FY>].

216. See Garber, *supra* note 202.

217. See *id.*

218. *Id.*

219. See *id.*

220. See Pack, *supra* note 210.

221. See Jana R. McCreary, *Florida's Elective Share: Why a DIY Approach Usually Does Not Work When Disinheriting Your Spouse*, MCCREARY L. OFFICE (Feb. 23, 2018), <https://mccrearylawoffice.com/524/florida-elective-share-disinherit-spouse/> [<https://perma.cc/E7UJ-L6MJ>].

222. See *id.*

223. See *id.*

B. Marital Fault States

Under common law, no degree of marital misconduct was considered in determining the surviving spouse's right to the decedent's estate; therefore, the surviving spouse was protected against disinheritance.²²⁴ However, states have enacted various statutes that bypass the common law protection and will bar a surviving spouse from inheritance if marital misconduct is proven.²²⁵ Nevertheless, every state has a slayer statute that would enjoin a killer from inheriting from a decedent's estate, but some states also consider emotional misconduct such as bigamy, abandonment, or adultery.²²⁶ Because forfeiture of inheritance is based on state law, each state has differing statutes and if a statute does not directly address certain conduct, then the surviving spouse can still inherit.²²⁷

1. Slayer Statutes

All states have a slayer statute that would prohibit an individual from inheriting from a person if they were the direct cause of the individual's death.²²⁸ The criteria for the statutes can vary depending on the state or jurisdiction, but the statutes are established on the same principle that killers should not unjustly benefit from their victims.²²⁹ Although, some states have expanded their statutes to disinherit those that abuse, neglect, or abandon the decedent.²³⁰ States such as Washington and Arizona only require evidence of financial exploitation, but others like California and Michigan require both physical and financial exploitation.²³¹ Other states have various requirements, like a criminal conviction, for the slayer statute to invoke and legally disinherit the abuser.²³²

a. Expansion of Slayer Statute Protects More Victims

States have expanded their slayer statutes to include other forms of abuse as a basis for disinheritance.²³³ However, some of the statutes explicitly

224. See Bridges, *supra* note 204.

225. See *id.*

226. See *id.* at 564, 567–69.

227. See *id.* at 562.

228. See Piel, *supra* note 148.

229. See *id.*

230. See *id.*

231. See Jeffrey A. Baskies & Justin M. Savioli, *Is it Time to Expand Florida's Slayer Statute?*, ACTIONLINE (Summer 2016) <https://floridaprobate.lexblogplatform.com/wp-content/uploads/sites/206/2015/12/ActionLine-Summer-2016.pdf> [<https://perma.cc/9GBT-JXFE>].

232. See Hunt, *supra* note 208, at 446.

233. See *id.*

state what individuals would be protected by the statute.²³⁴ For example, the Washington legislature amended its slayer statute to protect against financial exploitation of vulnerable adults.²³⁵ The statute would disinherit an abuser found exploiting elderly individuals.²³⁶ This statute does not require a criminal conviction to trigger the statute, but clear and convincing evidence that the conduct constituted financial exploitation is sufficient to disinherit an abuser.²³⁷ The evidence must establish that the decedent was a vulnerable adult at the time of the exploitation, and the abuser's action was willful to cause injury.²³⁸ The statute would treat the abuser as predeceasing the victim and the estate would pass through other forms of distribution.²³⁹ However, this statute limits whom is covered by expressly indicating that only vulnerable adults are protected.²⁴⁰ The statute defines vulnerable adults as anyone sixty-years-old or older, with the physical or mental inability to care for oneself, with a developmental disability, or if they were found incapacitated.²⁴¹ The underlying purpose of this statute is to ensure that an abuser will not profit or gain from their wrongful actions.²⁴² However, the expansion of the statute does not extend far enough to protect domestic abuse victims if they do not qualify as a vulnerable adult.²⁴³

Other states like California have expanded their slayer statute to encompass other forms of abuse.²⁴⁴ The California statute disinherits someone for "physical abuse, neglect, or financial abuse of the decedent."²⁴⁵ The revision of the statute casts a broader net to other forms of abuse that the decedent can endure.²⁴⁶ Similarly to Washington, California also does not require a criminal conviction for the statute to activate.²⁴⁷ Disinheritance can be triggered in California if the abuser is convicted under the state's penal code or if the abuse is proven by clear and convincing evidence in civil court.²⁴⁸ However, California's statute also limits who is protected by the statute by indicating that the victim is "an elder or dependent adult."²⁴⁹ Through methods such as this, states have expanded their slayer statutes to

234. *See id.*

235. *See* WASH. REV. CODE § 11.84.150(2) (2009).

236. *See id.*

237. *See id.*

238. *See id.* § 11.84.160(1)(b) (2009).

239. *See* Barb Cashman, *Elder Abuse and Slayer Statute*, DENVER ELDER L. (Mar. 9, 2016), <https://denverelderlaw.org/tag/elder-abuse-and-slayer-statute/> [https://perma.cc/NC55-WTPB].

240. *See* WASH. REV. CODE ANN. § 74.34.025 (1999).

241. *See id.* § 74.34.020(22) (2019).

242. *See id.* § 11.84.900 (2010).

243. *See* Spivack, *supra* note 3, at 250.

244. *See* Cashman, *supra* note 239.

245. CAL. PROB. CODE § 259(a)(1) (West 2012).

246. *See* Cashman, *supra* note 239.

247. *See id.*

248. *See id.*

249. CAL. PROB. CODE § 259(a)(1) (West 2012).

provide additional protection to various forms of abuse but do not protect other victims that are not elderly or considered as a vulnerable adult.²⁵⁰

b. States That Require a Criminal Conviction for Slayer Statute

Other states have also expanded their slayer statutes to provide greater protection for other forms of abuse while simultaneously requiring a criminal conviction for the statute to be invoked.²⁵¹ In Arizona, Michigan, and Oregon, the criminal conviction must be related to the abuse of the decedent before the statute could apply.²⁵² For example, Arizona expanded its slayer statute to disqualify someone for financially exploiting a vulnerable adult.²⁵³ The statute does not include other forms of abuse such as psychological, sexual, or emotional abuse as grounds for the statute to apply.²⁵⁴ Further, the Arizona statute requires the abuser to be in a position of trust and confidence for the statute to apply to those individuals.²⁵⁵ Under Arizona law, someone in a position of trust is anyone that has assumed the duty of care of the vulnerable adult, if there is a fiduciary duty, or a confidential relationship.²⁵⁶ Therefore, Arizona's slayer statute has been expanded to protect victims of other forms of abuse, like financial exploitation, but does not extend far enough to protect domestic violence victims that do not qualify as a vulnerable adult.²⁵⁷

Similarly, Michigan requires a criminal conviction and has also expanded their slayer statute to include abuse, neglect, and exploitation.²⁵⁸ The statute requires a conviction of criminal accountability for the abuse to establish that the convicted individual was the decedent's killer.²⁵⁹ The Michigan statute is invoked if the killing of the decedent is intentional.²⁶⁰ However, Michigan has an alternative civil determination that could disinherit the abuser.²⁶¹ If there is not a criminal conviction, the civil court can be petitioned to determine whether the abuser feloniously and intentionally killed the decedent.²⁶² As a result, Michigan provides a criminal

250. See Spivack, *supra* note 3.

251. See Cashman, *supra* note 239.

252. See *id.*

253. See ARIZ. REV. STAT. ANN. § 46-456 (2013).

254. See Cashman, *supra* note 239.

255. See *id.*

256. See ARIZ. REV. STAT. ANN. § 46-456 (2013).

257. See generally ARIZ. REV. STAT. ANN. § 14-2803 (2012).

258. See MICH. COMP. LAWS ANN. § 700.2803(1) (West 2016).

259. See *id.*

260. See Barron & Rosenberg, Mayoras & Mayoras, *The Michigan Slayer Statute: A Killer Cannot Profit from His or Her Wrong*, BARON, ROSENBERG, MAYORAS & MAYORAS (Mar. 1, 2017), <https://www.brmmlaw.com/blog/2017/march/the-michigan-slayer-statute-a-killer-cannot-profit/> [<https://perma.cc/75YX-WQAX>].

261. See *id.*

262. See *id.*

and a civil route to disinherit an abuser if it is proved by a preponderance of evidence that the abuser intentionally killed the testator for their benefit.²⁶³

Additionally, the Oregon slayer statute identifies various requirements for the statute to apply.²⁶⁴ For example, the statute has an additional requirement of a criminal conviction for abuse within five years of the victim's death for the slayer statute to invoke.²⁶⁵ The slayer statute itself does not identify the victims that are protected, but it does identify the two criminal statutes that the abuser must be found guilty of before the slayer statute invokes.²⁶⁶ However, the two criminal statutes expressly indicate that a claim can be brought under both if there is financial or physical abuse of a vulnerable person.²⁶⁷ Therefore, the slayer statute only applies to vulnerable adults, such as an elderly person, a person with a disability, or someone that is incapacitated.²⁶⁸ In addition, the underlying theory of the time requirement is that the victim had five years to make modifications to their will before their death.²⁶⁹ If the victim does not change their will or make modifications, there is a presumption that the deceased has forgiven the abuser.²⁷⁰

2. Bigamy

The Uniform Probate Code and various states such as Alaska, Colorado, and Utah have adopted statutes that would disinherit someone that committed bigamy.²⁷¹ An application for a marriage license requires that all previous marriages are legally dissolved or annulled; therefore, an individual commits bigamy if they married someone while still legally married to another person.²⁷² States that have enacted bigamy disinheritance statutes would preclude inheritance if the surviving spouse remarried after an invalid divorce or without legally divorcing the decedent.²⁷³ However, states such as Maryland and North Carolina require the surviving spouse to have actual knowledge of the bigamous conduct for the statute to apply.²⁷⁴

263. *See id.*

264. *See Piel, supra* note 148.

265. *See id.*

266. *See* OR. REV. STAT. § 112.457 (2017).

267. *See id.* §§ 124.105 (2017), 124.110 (2017).

268. *See id.* § 124.100(e) (2017).

269. *See Piel, supra* note 148.

270. *See id.*

271. *See* UNIF. PROBATE CODE § 2-802(b)(2); ALASKA STAT. § 13.12.802 (2008); COLO. REV. STAT. § 15-11-802 (2009); UTAH CODE ANN. § 75-2-802 (2004).

272. *See* Jose Rivera, *What Is Bigamy?*, LEGAL MATCH, <https://www.legalmatch.com/law-library/article/marriage-requirements-bigamy.html> (last modified Aug. 13, 2019) [<https://perma.cc/4NNY-SFL5>].

273. *See* Bridges, *supra* note 204.

274. *See* MD. CODE ANN. ESTATE & TRUST § 1-202(d) (2015); N.C. GEN. STAT. ANN. § 31A-1(a)(5).

During a probate proceeding, bigamy can arise in two ways: (1) the surviving spouse and decedent are not legally married because one of them remarried without being divorced from a prior marriage, or (2) the surviving spouse and decedent had a legal marriage, but the surviving spouse remarried prior to the decedent's death.²⁷⁵ Disqualification for bigamy is a way to condemn fault, but in accordance to the Uniform Probate Code, inheritance can still be denied even if the surviving spouse acted in good faith and relied upon an invalid divorce decree.²⁷⁶

In contrast to the Uniform Probate Code, Maryland and North Carolina will disinherit a spouse that knowingly commits bigamy.²⁷⁷ For example, the Maryland code states that “[n]o person who has been convicted of bigamy while married to the decedent” is considered a surviving spouse.²⁷⁸ Because Maryland considers bigamy as a “crime against marriage,” a conviction for bigamy will result in a felony and the marriage declared legally void.²⁷⁹ Similarly in North Carolina, a marriage is declared void if “a spouse . . . knowingly contracts a bigamous marriage.”²⁸⁰ Once the marriage is declared void, the surviving spouses loses all rights to the decedent's estate.²⁸¹

3. Abandonment

Certain states will bar inheritance if a spouse has abandoned the decedent or if the surviving spouse refused to financially assist the decedent in their daily needs.²⁸² There are at least fifteen states that will disinherit a spouse for abandonment either through state law or case precedent.²⁸³ For example, the New York Supreme Court held that if a spouse has abandoned the deceased spouse, then the surviving spouse may be disinherited if they left the marital estate indefinitely without explanation or the deceased

275. See Hill, *supra* note 142.

276. See *id.*

277. See Bridges, *supra* note 204.

278. See MD. CODE ANN. ESTATE & TRUST § 1-202(d) (2015).

279. See THE PEOPLE'S L. LIBRARY OF MARYLAND, <https://www.peoples-law.org/crimes-against-marriage> (last updated Mar. 20, 2019, 10:21 AM) [<https://perma.cc/JG7Y-64VZ>] [hereinafter *Crimes Against Marriage*]; LaSheena M. Williams, *Sister Wifed?*, L. OFFICE OF LASHEENA M. WILLIAMS (Sept. 15, 2018), <https://www.lmwlegal.com/2018/09/15/maryland-spouse-committed-bigamy/> [<https://perma.cc/8PKA-BH5R>].

280. See N.C. GEN. STAT. ANN. § 31A-1(a)(5).

281. See Amy Castillo, *Absolute Divorce in North Carolina*, DIVORCE NET, https://www.divorcenet.com/states/north_carolina/ncfaq_08 (last visited Nov. 12, 2019) [<https://perma.cc/RKP7-YAT7>].

282. See “Abandonment” By One Spouse Can Lead to Disinheritance, RANDISI L., <https://www.randisilaw.com/articles/abandonment-by-one-spouse-can-lead-to-disinheritance/> (last visited Nov. 4, 2019) [<https://perma.cc/Y4CE-EAT2>]; Thomas Sciacca, *What Rights Does a Surviving Spouse Have Under an Estate*, L. OFFICES OF THOMAS SCIACCA, PLLC, <http://sciaccalaw.com/what-rights-does-a-surviving-spouse-have-under-an-estate/> (last visited Nov. 13, 2019) [<https://perma.cc/YRN3-6SF4>].

283. See Linda Kelly Hill, *No-Fault Death: Wedding Inheritance Rights to Family Values*, 94 Ken. L. J. 319, 327 n.35 (2005).

spouse's agreement.²⁸⁴ For a spouse to be disinherited, various conditions must be met, such as the abandonment continued until the decedent died and the abandonment was unwarranted.²⁸⁵ But if the surviving spouse resumed their duties and returned home before the decedent spouse's death, most states do not consider prior abandonment as a bar to inheritance.²⁸⁶ This legal concept is only invoked if the deceased spouse died intestate and there was not a legal divorce.²⁸⁷

Additionally, states will consider abandonment as marital misconduct for inheritance purposes even though it is a "no-fault divorce" state.²⁸⁸ For example, North Carolina does not consider marital misconduct in divorce proceedings and there is not an "at fault" finding in a divorce; however, abandonment is considered for alimony determinations.²⁸⁹ In contrast to North Carolina's divorce proceedings, abandonment is considered for inheritance rights.²⁹⁰ But if the surviving spouse were to have a legally recognized excuse for their departure such as drug abuse, violence, or adultery then the conduct is not declared abandonment.²⁹¹ The justification for the spouse's departure is analyzed on a case by case basis and determined based on the particular circumstances of each couple.²⁹²

Further, proving abandonment to disinherit a surviving spouse is not an easy hurdle.²⁹³ The burden to prove spousal abandonment is on the party objecting the elective share, but courts often weigh in favor of the surviving spouse.²⁹⁴ Evidence must be presented to establish the surviving spouse's permanent departure from the marital home, but merely proving that the couple lived separately is not enough to establish abandonment.²⁹⁵ The Uniform Probate Code explains in the comment section that the underlying

284. See "Abandonment" By One Spouse Can Lead to Disinheritance, *supra* note 282.

285. See Jules M. Haas, *New York Spouses Can Lose Their Inheritance Rights Due to Abandonment*, N.Y. PROB. L. BLOG (Aug. 10, 2016), <https://www.newyorkprobatelawyerblog.com/new-york-spouses-can-lose-inheritance-rights-due-abandonment/> [<https://perma.cc/JU6T-3U6Z>].

286. See Anne-Marie Rhodes, *Consequences of Heirs' Misconduct: Moving from Rules to Discretion*, 33 OHIO N. U. L. REV. 975 (2007).

287. See *id.*

288. See Mark S. King, *Til Death do us Abandoned? – The Effects of Abandoning your Marriage in North Carolina*, THE HYMPHRIES L. FIRM (Jan. 28, 2016), <https://humphriesfirm.law/til-death-do-us-abandoned-the-effects-of-abandoning-your-marriage-in-north-carolina/> [<https://perma.cc/CS7U-VQKB>].

289. See *id.*

290. See *id.*

291. See *Is It Considered Abandonment If I Leave My Spouse?*, GHMA L., <https://ghma.law/is-it-considered-abandonment-if-i-leave-my-spouse/> (last visited Nov. 13, 2019) [<https://perma.cc/8PMX-2NBD>].

292. See *id.*

293. See Rachel Brody Bandyck, *Civil Litigation: Proving Spousal Abandonment to Defeat Right of Election*, DAILY RECORD (Nov. 18, 2011), <https://nydailyrecord.com/2011/11/18/civil-litigation-proving-spousal-abandonment-to-defeat-right-of-election/> [<https://perma.cc/5G44-W48J>].

294. See *id.*

295. See *id.*

rationale for the disinheritance of an abandoning spouse is estoppel against the surviving spouse.²⁹⁶

4. Adultery

The earliest form of marital misconduct as a bar to inheritance arose from the Statute of Westminster II, enacted in 1285, which barred a woman from claiming her right to dower if she abandoned the marital relationship and lived in an adulterous relationship with someone else.²⁹⁷ This common law statutory disqualification statute was adopted by various jurisdictions around the United States but has diminished over time.²⁹⁸ Although a few states still disinherit a spouse that commits adultery, the bar to inheritance is not absolute.²⁹⁹ For example, Kentucky bars inheritance to a cheating spouse as “the offending party forfeits all right and interest in and to the property and estate. . . .”³⁰⁰ However, the Kentucky statute will still permit inheritance if the couple reconciled and lived together prior to the decedent’s death.³⁰¹ The Kentucky Supreme Court has also interpreted the statute to require more than one instance of adultery to disinherit a surviving spouse.³⁰²

In addition, other states such as Ohio and North Carolina also consider adultery as a bar to inheritance but will permit the spouse from taking under the estate if the decedent condoned the misconduct.³⁰³ North Carolina courts will disinherit a surviving spouse on the finding that the “spouse engage[d] in repeated acts of adultery within a reasonable period of time preceding the death of his or her spouse.”³⁰⁴ However, the North Carolina adultery disqualification statute is limited, as mere kissing or spending time with another person is not enough to establish that the spouse was “living in adultery.”³⁰⁵

296. UNIF. PROB. CODE § 2-802(b)(2).

297. See STATUTE OF WESTMINSTER II, 13 EDW. I, c. 34 (1285) (Eng.).

298. See Ian Hull, *Disinheritance – What Bad Behavior Can Cost You*, HULL & HULL (Mar. 12, 2012), <https://hullandhull.com/2012/03/disinheritance-what-bad-behaviour-can-cost-you/> [<https://perma.cc/YWM9-PGPV>].

299. See Allison Bridges, *supra* note 204.

300. KY. REV. STAT. ANN. § 392.090(2).

301. See *id.*

302. Griffin v. Rice, 381 S.W.3d 198, 199 (Ky. 2012).

303. See OHIO REV. CODE ANN. § 2103.05 (LexisNexis 2007); N.C. GEN. STAT. § 31A-1(a)(2) (2009).

304. See N.C. GEN. STAT. § 31A-1(a)(2) (2009); Mary G. Leary, Sally J.T. Necheles & Karl Oakes, § 24 *Disqualification to serve – Living in adultery*, 15 N.C. Index 4th Executors and Admin. § 24 (West 2019).

305. *In re Est. of Montgomery*, 528 S.E.2d 618, 568 (2000); Leary, et al., *supra* note 303.

V. IMPLEMENTATION OF A SPOUSAL ABUSE DISQUALIFICATION STATUTE

Due to the gap within Texas's probate legislation, domestic abusers are still capable of benefiting from their victim as long as the victim is not a child or an elderly individual.³⁰⁶ Because domestic violence and financial exploitation is prevalent around the country and in Texas, it is imperative that legislation is passed to provide further protection for those suffering.³⁰⁷ Other states consider marital misconduct in probate distribution; therefore, Texas can imitate methods from other states to disinherit individuals that are found to physically, emotionally, or financially abuse their spouses.³⁰⁸

A. *The Present Necessity of a Disqualification Statute for Abusers*

Victims stay in abusive marriages out of fear, psychological control, pressure of societal customs, or financial restraint due to economic exploitation; therefore, a statute should be in place that would disinherit an abusive spouse to prevent their unjust enrichment.³⁰⁹ Texas has numerous cases of domestic violence as 75% of young individuals aged sixteen to twenty-four years old have either experienced domestic abuse or personally know a victim.³¹⁰

1. *Psychological Control Traps Victims in Abusive Relationships*

Many victims are unable to leave abusive relationships due to fear of punishment, death, or harm to the victim's family or friends.³¹¹ After long-term abuse, the victim can be psychologically conditioned to perceive the abuse as a temporary and a well-deserved punishment.³¹² The abuser will isolate the battered spouse to prevent the abused from accessing support or resources.³¹³ Isolation can occur by turning the victim's family and friends against them or threatening the victim's loved ones to scare the victim into

306. See generally TEX. PENAL CODE ANN. § 32.53; TEX. EST. CODE ANN. § 201.062 (establishing a disqualification for individuals that financially or physically exploit children or the elderly).

307. See generally O'Neill, *supra* note 1 (illustrating the prevalence of abuse within the United States).

308. See generally Allison Bridges, *supra* note 204 (explaining which states consider marital misconduct for probate distribution).

309. See "Why Don't They Just Leave?", *supra* note 62.

310. What is Domestic Violence?, NCADV, <https://www.speakcdn.com/assets/2497/texas.pdf> (last visited Nov. 15, 2019) [<https://perma.cc/MF49-JLRW>].

311. See *Why Do Victims Stay?*, *supra* note 74.

312. See Zawn Villines, *Battered woman syndrome and intimate partner violence*, MEDICAL NEWS TODAY, <https://www.medicalnewstoday.com/articles/320747.php#symptoms> (last visited Jan. 17, 2020).

313. See *Am I Being Abused?*, DOMESTIC VIOLENCE INTERVENTION PROGRAM, <https://dvpiowa.org/resources/am-i-being-abused/> (last visited Jan. 17, 2020) [<https://perma.cc/UXD9-Y3D6>].

compliance.³¹⁴ Leaving an abusive relationship can be the most dangerous time for a victim and their family or friends.³¹⁵ Because abusers go to extremes to prevent their victims from leaving the relationship, victims could be fearful of the repercussions they or their loved ones might endure if they decided to leave; because of this, victims will often choose to stay in an abusive marriage.³¹⁶

Abuse within a relationship can cause various health and mental health problems for a victim, such as heart and stomach problems, memory loss, post-traumatic stress disorder, anxiety, and depression.³¹⁷ Another effect of longer-term domestic violence is the development of battered woman syndrome.³¹⁸ After ongoing abuse, victims start to believe they deserve the violence and it will never end.³¹⁹ The victim will become so depressed and defeated that they believe they are incapable of leaving or surviving without the abuser.³²⁰ The psychological syndrome causes some victims to avoid reporting the abuse to the police or family and friends.³²¹ Because the victim is conditioned to believe that the abuser is all-knowing and powerful, the battered spouse can be too depressed or traumatized to find the strength to leave.³²²

Victims find little recourse or support from law enforcement agencies, leaving the victim vulnerable to further abuse or retaliation.³²³ Because reporting domestic violence is a risk the victim takes, a victim confronted with disbelief or indifference by law enforcement agencies may deter the victim from telling their story.³²⁴ Even if the abuser were arrested, there is little protection to ensure the victim's safety once the abuser is released from custody.³²⁵ Additionally, victims are guilted into staying in a violent relationship; and because they do not feel protected by law enforcement agencies, battered spouses will sustain the abuse and stay in the relationship.³²⁶

Further, even if the victim found the strength to leave the relationship, the abuser can maintain power or control by taking advantage of the legal

314. *See id.*

315. *See "Why Don't They Just Leave?", supra note 62.*

316. *See id.*

317. *See Effects of Violence Against Women, supra note 21.*

318. *See Gotter, supra note 26.*

319. *See id.*

320. *See Battered Woman Syndrome, supra note 33.*

321. *See id.*

322. *See id.*

323. *See Why Do Victims Stay?, supra note 74.*

324. *See Valeriya Safronova & Rebecca Halleck, These Rape Victims Had to Sue to Get the Police to Investigate*, N.Y. TIMES (May 23, 2019), <https://www.nytimes.com/2019/05/23/us/rape-victims-kits-police-departments.html> [<https://perma.cc/GH8A-N38H>]

325. *See Why Do Victims Stay?, supra note 74.*

326. *See id.*

system.³²⁷ Abusers will use “abusive litigation” tactics as a way to keep victims engaged in the legal system and force victims to regularly face the abuser in court.³²⁸ Utilizing this method of abuse, the abuser sends a message to the victim that even the courthouse is not a safe place.³²⁹ Victims are deterred from leaving the relationship or from finding legal recourse; therefore, victims will stay in the abusive relationship.³³⁰

2. Societal Customs Pressure Victims to Stay in the Relationship

Societal barriers are in place that could make the victim feel shameful for leaving or giving up on the relationship.³³¹ Domestic violence victims can feel obligated to remain in abusive marriages due to cultural or religious customs.³³² For example, due to stereotypes of domestic violence, male victims are less likely to report the abuse because being abused by a female could be perceived as “less manly.”³³³ As a result, male victims can feel embarrassed about the abuse, and typically do not seek help until it becomes a crisis.³³⁴ Due to the lack of information regarding available services, male victims can be too depressed or traumatized to leave the relationship.³³⁵

Additionally, victims often find comfort in faith and confide in religious leaders.³³⁶ However, the encouragement to work harder to save the marriage or advice to pray for strength to endure the relationship will result in the perpetuation of the violence.³³⁷ In addition to reinforcement from religious leaders, abusers can manipulate the victim’s religious belief to gain greater control over the victim.³³⁸ The abuser will utilize religious texts or values to assert male privilege as a justification for the violence.³³⁹ If the abuser also holds a religious leadership position or is respected within a religious community, the victim can feel pressure to remain silent and stay in the relationship.³⁴⁰

327. See Klein, *supra* note 100.

328. See *id.*

329. See Dodgson, *supra* note 106.

330. See *id.*

331. See *Why Do Victims Stay?*, *supra* note 74.

332. See *id.*

333. See Barton, *supra* note 78.

334. See Mathias, *supra* note 77.

335. See *id.*

336. See *id.*

337. See *Domestic Violence and Religion*, *supra* note 84.

338. See Nat’l Network to End Domestic Violence, *Domestic Violence and Faith*, NAT’L NETWORK TO END DOMESTIC VIOLENCE (Oct. 26, 2018), https://nnedv.org/latest_update/domestic-violence-faith/ [https://perma.cc/TU92-QT37].

339. See *id.*

340. See *id.*

Societal customs can pressure LGBTQ+ victims to remain silent about the abuse and stay in the violent relationship.³⁴¹ The domestic abuse awareness movement largely focuses on heterosexual relationships, but LGBTQ+ members are victims of intimate partner violence at equal or higher rates than others.³⁴² Victims can feel hesitant about reporting the violence to police or hospitals as discrimination surrounding their identities can cause a negative reaction.³⁴³ Members of the LGBTQ+ community may be denied assistance or not taken seriously as other victims as a result of homophobia or transphobia.³⁴⁴ As society slowly changes its perception about same sex relationships, LGBTQ+ victims may fear that the disclosure of the abuse could make the entire community look bad and further the negative stereotypes of same sex relationships.³⁴⁵ Prior experiences of abuse or bullying due to sexual orientation can also make LGBTQ+ victims less likely to divulge the abuse or leave the relationship.³⁴⁶

3. Financial Abuse Prevents a Victim from Leaving the Violence

Additionally, leaving an abusive relationship can also be challenging when the abuser has complete control over finances.³⁴⁷ In Texas, 33% of victims that call the domestic violence hotline reported some form of economic abuse.³⁴⁸ This form of abuse will isolate the victim and create a financial dependency on their abuser, making it more difficult for the victim to ever leave.³⁴⁹ Half of all women that endured abuse either resigned or were pressured to leave their profession within the first year following the assault.³⁵⁰ After beating the victim down psychologically, physically, or financially, the victim will feel hopeless and will resolve themselves to dealing with the abuse.³⁵¹ Because victims remain in abusive marriages due to the inability to financially provide for themselves or their children, a

341. See *Obstacles for LGBTQ Youth to Get Help*, LOVE IS RESPECT, <https://www.loveisrespect.org/is-this-abuse/abusive-lgbtq-relationships/> (last visited Jan. 17, 2020) [<https://perma.cc/57CP-RH3K>].

342. See *Domestic Violence and the LGBTQ Community*, NCADV (June 6, 2018), <https://ncadv.org/blog/posts/domestic-violence-and-the-lgbtq-community> [<https://perma.cc/Z55T-RYVY>].

343. See *Sexual Assault and the LGBTQ Community*, HUMAN RIGHTS CAMPAIGN, <https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community> (last visited Jan. 17, 2020) [<https://perma.cc/XM8W-TMN6>].

344. See *Domestic Violence and the LGBTQ Community*, *supra* note 342.

345. See *Obstacles for LGBTQ Youth to Get Help*, *supra* note 341.

346. See *Domestic Violence and the LGBTQ Community*, *supra* note 342.

347. See Formby, *supra* note 40.

348. See *id.*

349. See Gordon, *supra* note 39.

350. See *Effects of Violence Against Women*, *supra* note 21.

351. See *Why Don't They Just Leave?*, *supra* note 62.

statute should be in place to prevent the abuser from exploiting the victim after death.³⁵²

4. *The Difficulties of Disinheriting a Spouse in a Community Property State*

In a community property system, it is difficult to disinherit a spouse because the underlying purpose of the system is to protect the rights of each spouse.³⁵³ The community property system regards both spouses as one union, and each spouse is equally entitled to any profit or assets acquired during the marriage.³⁵⁴ Texas is a community property state, meaning the only way to disinherit a spouse in Texas is by a mutual agreement, either through a premarital agreement or postnuptial agreement.³⁵⁵ If the decedent spouse died intestate, then the surviving spouse has a right to claim all of the community property.³⁵⁶ If the decedent spouse left a will, then he or she can distribute their 50% share to whomever they choose, but the surviving spouse is still entitled to their 50% share.³⁵⁷ Drafting a will would allow the decedent to distribute their share freely, however, less than half of Americans actually have an estate plan or a will in place.³⁵⁸ The majority of Americans will die intestate and in Texas, and thus the deceased spouse's property will pass to the abuser.³⁵⁹

B. *The Current Texas Probate Law Does Not Protect Domestic Violence Victims*

The Texas probate law and disqualification statutes are limited in application and do not extend far enough to protect battered spouses.³⁶⁰ Texas is a no-fault probate state, meaning abusers are still eligible to receive the deceased spouse's assets.³⁶¹ Based on common law principles, no degree of marital misconduct is considered in determining the surviving spouse's right to the decedent's estate; therefore, the surviving spouse is protected against disinheritance.³⁶² However, the historic rationale for providing absolute

352. *See id.*

353. *See* Kenton, *supra* note 128.

354. *See id.*

355. *See* Johnson, *supra* note 124.

356. *See* Roanhorse, *supra* note 134.

357. *See id.*

358. *See* 2019 Survey Finds that Most People Believe Having a Will Is Important, but Less Than Half Have One, CARING, <https://www.caring.com/caregivers/estate-planning/wills-survey/2019-survey/> (last visited Nov. 15, 2019) [<https://perma.cc/HPV9-SPMX>].

359. *See id.*

360. *See* Hill, *supra* note 142.

361. *See id.*

362. *See* Bridges, *supra* note 204.

protection from spousal disinheritance is not applicable to modern society.³⁶³ A spouse can be disqualified from receiving from the estate if the surviving spouse caused the deceased spouse's death.³⁶⁴ The disqualification statutes that prohibit inheritance are restricted in circumstance and application.³⁶⁵

1. *The Limitations of the Slayer Statute*

Texas, along with the majority of states, have a slayer statute that prohibits a murderer from unjustly enriching from their victim.³⁶⁶ The application of the statute is limited to murder that is committed intentionally and excludes accidental killing.³⁶⁷ This statute also acts as a deterrent as it discourages murder for the purpose of inheritance.³⁶⁸ The Texas slayer statute applies only to life insurance proceeds by preventing the beneficiary from murdering the insured.³⁶⁹ However, this statute is immaterial to spousal abuse and does not provide recourse for battered spouses that endure the marriage.³⁷⁰

2. *Duress and Undue Influence*

To execute a valid will, the testator must have legal capacity and testamentary capacity at the time of the will execution.³⁷¹ Testamentary capacity can be challenged on duress and undue influence grounds because the testator must be of sound mind to create a valid will.³⁷² Duress is a form of compulsion that deprives the testator of the freedom to make distributions in their will.³⁷³ This form of coercion makes the testator fear the consequences of not abiding by their influencer's requests.³⁷⁴ However, proving duress can be challenging because the victim may have drafted the will with the intention to provide for the abuser.³⁷⁵ After a duration of abuse, the victim can perceive themselves—rather than the abuser—as the problem,

363. *See id.*

364. *See* Beyer, *supra* note 6.

365. *See generally id.* (explaining how slayer statutes vary from state to state).

366. *See id.*

367. *See* Piel, *supra* note 148.

368. *See* Barron, et. al, *supra* note 162.

369. *See* TEX. EST. CODE ANN. § 201.058(b).

370. *See generally* Peter K. Kelly, *The Slayer Rule and Indirect Benefits from the Wrong*, LEXISNEXIS: EST. & ELDER L. (July 3, 2012), <https://www.lexisnexis.com/legalnewsroom/estate-elder/b/estate-elder-blog/posts/the-slayer-rule-and-indirect-benefits-from-the-wrong> (explaining what circumstances the statute can be applied) [<https://perma.cc/P55M-UWVW>].

371. *See* TEX. EST. CODE ANN. § 251.001.

372. *See id.*; FAMILY LAW AND PROBATE LAW, Chapter 15, *supra* note 174.

373. *See* FAMILY LAW AND PROBATE LAW, Chapter 15, *supra* note 174.

374. *See id.*

375. *See generally* “Why Don’t They Just Leave?”, *supra* note 62 (illustrating the psychological effects of a long-term abusive relationship).

leading the battered spouse to draft the will with the purpose of providing for the abuser in hopes of receiving positive feedback.³⁷⁶

Additionally, undue influence is the exploitation of a special relationship between the testator and the influencer that removes the testator's freedom of thought.³⁷⁷ This form of compulsion is the exertion of influence that overcomes the testator's freewill and independence.³⁷⁸ Similarly to duress, proving undue influence can be difficult, as mere influence over the testator is not improper behavior that would disinherit a beneficiary.³⁷⁹ A person can demand or beg the testator to draft a will in their favor, but the contestor can prevail if they establish that the requests were so excessive that it compromised the testator's freewill.³⁸⁰ However, establishing that the testator's freewill was overborne can be challenging as many victims develop psychological disorders that compromise their volition.³⁸¹ An effect of a long-term abusive relationship is the development of battered woman syndrome.³⁸² This syndrome is a subcategory of post-traumatic stress disorder and is a psychological condition that develops feelings of helplessness, preventing victims from speaking out.³⁸³ After ongoing abuse, victims start to believe that they deserve the violence and it will never end.³⁸⁴ The victim will become so depressed and defeated that they believe they are incapable of leaving or surviving without the abuser.³⁸⁵ Therefore, establishing that the victim's freedom of thought was compromised can be challenging as the psychological disorder can cause the victim to perceive the abuser in a different light.³⁸⁶

To contest a will on duress or undue influence grounds, the contestor must be either someone who would have received from the will or an interested party that was financially hindered by the wrongdoer's action.³⁸⁷ Another problem can arise when trying to find an interested party who is brave enough to contest the will against the abuser.³⁸⁸ A form of domestic violence includes isolating the victim from friends or family; therefore,

376. *See id.*

377. *See* FAMILY LAW AND PROBATE LAW, Chapter 15, *supra* note 174.

378. *See* Kelly, *supra* note 173.

379. *See* Doebling & Doebling Attorneys at Law, *Defining undue influence in Texas probate law*, DOEHLING L (Dec. 16, 2019), <https://www.doeblinglaw.com/blog/2019/12/defining-undue-influence-in-texas-probate-law/> [<https://perma.cc/Q68D-LYFV>].

380. *See id.*

381. *See generally* Gotter, *supra* note 26 (explaining the implications of battered woman syndrome and how it effects the victim's volition).

382. *See id.*

383. *See id.*

384. *See id.*

385. *See Battered Woman Syndrome*, *supra* note 33.

386. *See generally id.* (explaining that the syndrome can cause various psychological effects).

387. *See Duress or Coercion: Everything You Need to Know*, *supra* note 177.

388. *See generally Why Do Victims Stay?*, *supra* note 74 (explaining that the abuser can threaten the victim's loved ones to prevent the victim from leaving the relationship).

finding an interested party could be difficult if the victim had ended other relationships.³⁸⁹ In addition, the application of the duress and undue influence disqualification statutes are limited to those that draft a will, leaving many of victims protected as a majority of Americans do not execute a will.³⁹⁰

3. *Voiding a Marriage*

In addition, Texas has a statute that would void a marriage and disinherit a surviving spouse if the court determines that one spouse entered the marriage without mental capacity because of a mental disease or defect.³⁹¹ To enter a marriage with the requisite mental capacity requires that both individuals are of sound mind and understand the nature of marriage and its responsibilities.³⁹² However, not all forms of mental illness will render someone incapable of legally getting married.³⁹³ The court can hold a marriage as void: (1) if the decedent entered into the marriage three years prior to death; (2) if an interested party files to void a marriage on the basis of mental capacity within one year of the decedent's death; (3) if the court rules that the decedent did lack mental capacity; and (4) if the court does not find that mental capacity was regained following the date of marriage.³⁹⁴ If the marriage were declared void, it acts as though the marriage never occurred and the surviving spouse will not be considered during estate distribution.³⁹⁵ Although this statute protects some victims from entering into a marriage, other victims that had the requisite capacity to get married do not receive the same safeguard.³⁹⁶ Because domestic violence escalates over time, the victim could enter the marriage the requisite capacity prior to developing battered woman syndrome, leaving the victim without recourse.³⁹⁷

389. See Holly, *supra* note 24.

390. See TEX. EST. CODE ANN. § 251.001; 2019 Survey Finds that Most People Believe Having a Will Is Important, but Less Than Half Have One, Caring, *supra* note 356.

391. See TEX. EST. CODE ANN. § 123.103.

392. See *Marriage Requirements Basics: Consent, Age, and Capacity*, FIND LAW, <https://family.findlaw.com/marriage/marriage-requirements-basics-consent-age-and-capacity.html> (last visited Jan. 16, 2020) [<https://perma.cc/FKW9-L3JQ>].

393. See *id.*

394. See Beyer, *supra* note 6.

395. See *Void Marriages: Answers to Common Questions*, *supra* note 189.

396. See generally Beyer, *supra* note 6 (illustrating the instances when a marriage will be legally declared void due to a lack of capacity).

397. See generally *Domestic Violence*, AAMFT, https://www.aamft.org/Consumer_Updates/Domestic_Violence.aspx (last visited Jan. 19, 2020) (explaining the escalation of domestic violence) [<https://perma.cc/X5C5-7KXF>].

4. Expansion of Existing Disqualification Statutes

Other forms of violence, such as child abuse or financial exploitation of children, elderly, or disabled persons are safeguarded against by Texas statutes and will result in disinheritance.³⁹⁸ A parent can be disinherited if the court determines maltreatment to the deceased child.³⁹⁹ This statute expressly protects children after their death and prohibits the parent from becoming unjustly enriched by the child's death.⁴⁰⁰ The statute is limited to a parental relationship to a child that is under the age of eighteen.⁴⁰¹ Additionally, Texas prohibits an individual from knowingly or recklessly exploiting the resources of a child, elderly individual, or disabled individual for the use of their own personal gain or benefit.⁴⁰² Although these statutes prohibit certain forms of abuse, those that qualify under the statutes are limited and are not applicable to every victim.⁴⁰³ However, these statutes illustrate the public discourse for physical abuse and financial exploitation of vulnerable individuals.⁴⁰⁴ The statute should expand the classification of individuals that are protected by these disqualification statutes to ensure that all victims can at least receive recourse at death.⁴⁰⁵

C. Marital Fault Consideration

Under common law, no degree of marital misconduct was considered in determining the surviving spouse's right to the decedent's estate; therefore, the surviving spouse was protected against disinheritance.⁴⁰⁶ However, the historic rationale for providing absolute protection from spousal disinheritance is not applicable to modern society.⁴⁰⁷ Early laws that prohibited a spouse from being disinherited were based on the perspective that women were incapable of financially supporting themselves without assistance from her spouse and thus, needed additional safeguards.⁴⁰⁸ As a result, in modern marriages and in modern society, women have entered the workforce in increased numbers and the historic rationale is no longer

398. See TEX. EST. CODE ANN. § 201.062; TEX. PENAL CODE ANN. § 32.53.

399. See TEX. EST. CODE ANN. § 201.062.

400. See *id.*

401. See *id.*

402. See TEX. PENAL CODE ANN. § 32.53.

403. See generally Saputo, *supra* note 201 (explaining the individuals that qualify for protection under the statute).

404. See *id.*

405. See generally *id.* (last updated Jan. 1, 2020) (explaining the individuals that qualify for protection under the statute).

406. See Bridges, *supra* note 204.

407. See *id.*

408. See generally Thomas Oldham, *Should the Surviving Spouse's Forced Share be Retained?*, 38 CASE W. RES. L. REV. 223, 225–262 (1987).

applicable.⁴⁰⁹ States have enacted various statutes that bypass the common law protection and will bar a surviving spouse from inheritance if marital misconduct is proven.⁴¹⁰ Forfeiture of inheritance is vested in state statutes, so if a statute does not specifically identify conduct that can result in disqualification, the surviving spouse can still take from the estate.⁴¹¹ In addition to the expansion of slayer statutes, some states will disinherit a spouse for bigamy, abandonment, and adultery.⁴¹² Because other states utilize marital misconduct to disinherit a spouse and prevent unjust enrichment, it is imperative that Texas invoke a statute that addresses the ultimate marital misconduct: spousal violence.⁴¹³

I. Slayer Statute

The slayer statute prevents murderers from inheriting and unjustly enriching from the victim's death.⁴¹⁴ Unlike the Texas slayer statute that disinherits the murderer from life insurance proceeds, California has expanded its slayer statute to include other forms of abuse.⁴¹⁵ The California statute disinherits someone for "physical abuse, neglect, or financial abuse of the decedent."⁴¹⁶ The revision of the statute casts a broader net to other forms of abuse that the decedent can endure.⁴¹⁷ Disinheritance can be triggered in California if the abuser is convicted under the state's penal code or if the abuse is proven by clear and convincing evidence in civil court.⁴¹⁸ In accordance to California, the Texas legislature should consider other forms of abuse like physical abuse, sexual abuse, and financial exploitation to penalize abusers similarly to murderers.⁴¹⁹

In addition, the Texas Slayer Statute does not require a criminal conviction to disinherit the murderer.⁴²⁰ If a civil court finds by a preponderance of the evidence that the accused has caused the decedent's death, the murderer will then forfeit their inheritance rights.⁴²¹ Because the slayer statute does not require a criminal conviction and a finding of beyond

409. See Bridges, *supra* note 204.

410. See *id.*

411. See *id.*

412. See *id.*

413. See generally *id.* (explaining the reasoning for disqualification statutes for marital misconduct).

414. See Beyer, *supra* note 6.

415. See *id.*

416. See CAL. PROB. CODE § 259(a)(1) (2012).

417. See Cashman, *supra* note 239.

418. See *id.*

419. See *id.*

420. See *What to Know About the "Slayer Statute" A/K/A The "Killer Laws"*, SPENCER & JOHNSON, <https://www.dallasprobate.com/blog/what-to-know-about-the-slayer-statute-aka-the-killer-laws/> (last visited Feb. 4, 2020) [<https://perma.cc/5BKM-294K>].

421. See *id.*

a reasonable doubt, a spousal abuse disqualification statute should be modeled similarly.⁴²² The slayer statute has been accepted across the nation to prevent the unjust enrichment of murderers; therefore, disinheriting an abusive spouse is in accordance with the nation's antipathy toward abusers.⁴²³ In accordance to the slayer statute, a spousal disinheritance statute should be implemented in a civil court with the same preponderance of the evidence standard to ensure abusers do not unjustly enrich from trapping a victim in a marriage until death.⁴²⁴

2. Bigamy, Abandonment, and Adultery Considerations

In addition, states also consider other forms of marital misconduct, such as bigamy, as grounds for disinheritance.⁴²⁵ States that have enacted bigamy disinheritance statutes would preclude inheritance if the surviving spouse remarried after an invalid divorce or without legally divorcing the decedent.⁴²⁶ Once the marriage is declared legally void, the surviving spouse does not have standing to take from the estate.⁴²⁷ Since bigamy is a crime against marriage, then the acts of physical abuse, sexual abuse, and financial exploitation should also be declared as a crime against marriage.⁴²⁸ Domestic violence is a common occurrence within marriages, as every minute twenty people will experience violence within their close relationships.⁴²⁹ Because domestic violence is a worldwide epidemic, abuse should be held to the same regard as bigamy.⁴³⁰

Although Texas is a no-fault state, history of domestic violence should be considered in estate distribution.⁴³¹ The consideration of fault for purposes of probate in a no-fault state is not abnormal, as other no-fault states around the country consider fault for estate distribution.⁴³² For example, North Carolina is a no-fault state, meaning the court does not consider marital misconduct in divorce proceedings.⁴³³ In contrast to North Carolina's divorce proceedings, abandonment is considered during estate distribution with willful abandonment resulting in a loss of inheritance rights.⁴³⁴ Although

422. See generally *id.* (explaining the evidentiary standard for the slayer statute and the requirements for disinheritance).

423. See *id.*

424. Author's original opinion.

425. See Bridges, *supra* note 204.

426. See *id.*

427. See *id.*

428. See *Crimes Against Marriage*, *supra* note 279.

429. See O'Neill, *supra* note 1; *National Statistics*, *supra* note 12.

430. See O'Neill, *supra* note 1; *National Statistics*, *supra* note 12.

431. See Hill, *supra* note 142.

432. See King, *supra* note 288.

433. See *id.*

434. See *id.*

North Carolina is a no-fault state, marital misconduct is still considered during probate; therefore, a no-fault state considering abuse during estate distribution would not be uncommon to established practices in other states.⁴³⁵

Additionally, marital misconduct considered during estate distribution is not a new occurrence.⁴³⁶ The earliest form of marital misconduct as a bar to inheritance arose from the Statute of Westminster II, enacted in 1285, which barred a woman from claiming her right to dower if she abandoned the marital relationship and lived in an adulterous relationship with someone else.⁴³⁷ Common law moved away from considering marital misconduct in estate distribution to ensure that the surviving spouse was protected from disinheritance.⁴³⁸ Over time, states have enacted various statutes that bypass the common law protection and will bar a surviving spouse from inheritance if marital misconduct is proven.⁴³⁹

D. Model for the Spousal Abuse Disqualification Statute

The current Texas probate law does not protect battered spouses nor deter abusive spouses.⁴⁴⁰ Although the slayer statute acts as a deterrent to prevent beneficiaries from murdering the decedent for purposes of inheritance, the slayer statute is insufficient to deter spousal abuse.⁴⁴¹ The Texas slayer statute does not require a final criminal conviction to disinherit the murderer.⁴⁴² Instead, the person seeking the disinheritance has to prove by “a preponderance of the evidence that the beneficiary willfully brought about the death” by circumstantial evidence.⁴⁴³ A new spousal abuse disqualification statute can be modeled after the existing evidentiary standard of the slayer statute.⁴⁴⁴ The spousal abuse disqualification statute should be modeled similarly to the slayer statute and should not require a criminal conviction for abuse, as many victims during life do not report the

435. *See id.*

436. *See* STATUTE OF WESTMINSTER II, 13 EDW. I, c. 34 (1285) (Eng.).

437. *See id.*

438. *See* Bridges, *supra* note 204.

439. *See id.*

440. Author's original opinion.

441. *See What to Know About the “Slayer Statute” A/K/A The “Killer Laws,”* SPENCER & JOHNSON, <https://www.dallasprobate.com/blog/what-to-know-about-the-slayer-statute-aka-the-killer-laws/> (last updated Jan. 17, 2020) [<https://perma.cc/5BKM-294K>].

442. *See* J. Michael Young, *Slayer Statute Prevents a Killer from Obtaining Benefits*, TEXAS LIFE INSURANCE LAWYERS (May 12, 2015), <https://www.texaslifeinsurancelawyers.com/texas-life-insurance-law-blog/2015/5/12/slayer-statute-prevents-a-killer-from-obtaining-benefits> [<https://perma.cc/9MFD-EQTJ>].

443. *Id.*

444. Author's original opinion.

violence.⁴⁴⁵ However, if the contestor can use circumstantial evidence to prove by a preponderance of the evidence that abuse occurred, then, similarly to the slayer statute, the court should impose a constructive trust for the abuser to hold as a constructive trustee for the individuals that are rightfully entitled to the property.⁴⁴⁶ Utilizing a preponderance of the evidence standard will result in fairness and justice to the accused abuser.⁴⁴⁷

VI. CONCLUSION

The Texas Legislature should enact a spousal abuse disinheritance statute because the current probate law does not protect battered spouses nor deter abusive behavior.⁴⁴⁸ Domestic violence is indiscriminate and can occur regardless of socioeconomic status, race, sexuality, or gender.⁴⁴⁹ The limited grounds for disinheritance in Texas are inadequate because they do not account for other forms of spousal misconduct that the state discourages in other areas of the law.⁴⁵⁰

The disqualification statute for spousal abuse is necessary due to the prevalence of domestic violence and the high likelihood that victims will stay in the marriage.⁴⁵¹ Victims stay in battered marriages due to fear, financial inability, shame, or psychological control that the abuser has over the victim.⁴⁵² Under the current Texas probate laws, battered spouses have very little recourse in the justice system.⁴⁵³ In accordance to the underlying policy theory of the slayer statute, an abusive spouse should not unjustly enrich from trapping a victim in a marriage until death.⁴⁵⁴ As a killer can be disinherited in civil court by a preponderance of the evidence, an abusive spouse's share to the decedent's estate should also be eligible to be challenged in civil court.⁴⁵⁵ If the decedent's family can establish by a preponderance of the evidence that financial, physical, or psychological abuse has taken place, the abuser should be disinherited.⁴⁵⁶

Statutes are currently in place that will disinherit a parent for maltreatment to children and anyone that financially exploits children, the

445. See *What to Know About the "Slayer Statute" A/K/A The "Killer Laws,"* *supra* note 441.

446. See generally Gerry W. Beyer, *TEXAS WILLS AND ESTATES: CASES AND MATERIALS* (7th ed. 2015) (explaining the use of constructive trusts to prevent the unjust enrichment of the murderer).

447. Author's original opinion.

448. See discussion *supra* Section V.A.

449. See discussion *supra* Section V.A.

450. See discussion *supra* Section V.A.

451. See discussion *supra* Sections II.A, II.B.

452. See discussion *supra* Sections II.A, II.B.

453. See discussion *supra* Section III.C.

454. See discussion *supra* Section III.C.1.

455. See discussion *supra* Section III.C.1.

456. See discussion *supra* Section III.C.1.

elderly, or vulnerable individuals.⁴⁵⁷ However, if a victim is not within the requisite age range for the statute to apply, the victim is left without a remedy.⁴⁵⁸ The current probate laws illustrate public discourse for maltreatment, abuse, and financial exploitation, and as such, the Texas legislature should implement a spousal abuse disqualification statute because all victims deserve protection.⁴⁵⁹

457. See discussion *supra* Section III.C.

458. See discussion *supra* Section III.C.

459. See discussion *supra* Section III.C.