



Public Advocate for the City of New York

January 27, 2006

Dear Reader:

Thirteen years ago, Ronnie Eldridge, then City Councilwoman and Chair of the Council Subcommittee on Women, and Ruth Messinger, then Manhattan Borough President, released a report about domestic violence in New York City called "Behind Closed Doors: The City's Response to Family Violence." The report provided an in-depth look at the impact of domestic violence on victims and their children, documented what services were and were not available for them, and made a series of recommendations for legislative, programmatic, and policy changes to improve the City's response.

This new report by the Office of the Public Advocate reconsiders the issue of domestic violence in New York City thirteen years after "Behind Closed Doors." Produced with the help of dozens of advocates and service providers throughout the city over two years, it evaluates the progress many agencies have made in recent years. The report identifies what still needs to be done, and discusses challenges for the DV service and advocacy community.

While there is still a long way to go until all City and State agencies have optimized their responses to DV, there has been much progress. The following are some of the major improvements that have been made since 1993:

- This past summer saw the opening of the nation's first Family Justice Center in Brooklyn where survivors can meet with a prosecutor, access services, and begin counseling, all with one appointment.
- The number of emergency shelter beds in New York City has increased by over 100%.
- Four of the five boroughs now have Integrated Domestic Violence courtrooms where survivors' various court cases can be heard by the same judge.

- New York State has had a law on Mandatory Arrest on the books since 1994.
- District Attorneys in New York City have established specialized prosecution bureaus and victim advocacy programs in their offices.
- In 2001, the City Council passed a law to protect the workplace rights of victims of domestic violence.
- In 2004, the City settled the class-action case *Nicholson v. Scoppetta*. This case relieves survivors of the fear that their children will be removed from them if they report domestic violence.

Progress hasn't been universal, however, and many of the problems highlighted in the original report remain today:

- There is still a severe shortage of supervised visitation services in the city, and funding for the organizations that do offer supervised visitation is constantly in jeopardy.
- Many survivors receive inadequate and, in some cases, no legal representation to help them navigate the court systems.
- Obtaining safe, affordable housing continues to be a challenge for survivors, one that has been made even more difficult by cuts to the federally funded Section 8 program. There are also serious flaws in the new Housing Stability Plus (HSP) program.

"Opening the Door" also sheds light on the unique problems associated with domestic violence in same-sex relationships, City schools, and foster homes. Each chapter includes recommendations for better serving and protecting survivors and their families. Among the key recommendations are the following:

- The State Legislature should enact legislation allowing persons who are in violent dating relationships to petition for orders of protection in Family Court
- The City should improve the Housing Stability Plus program so that it will provide adequate housing assistance for survivors and their children, including those survivors who are not on public assistance.
- The Department of Education should modify its school transfer policy to require and simplify the transfer of batterers from schools attended by their victims.

- The Administration for Children's Services should work with relevant agencies to gain access to the Domestic Violence Registry for purposes of screening potential adoptive and foster homes for domestic violence.
- The State Legislature should expand the number of Family Court judges in New York City.
- The City should increase funding for supervised visitation programs.
- The Human Resources Administration should be more liberal in awarding full, as opposed to partial, child support and employment waivers to those survivors who request and need them.
- The State Legislature should mandate uniform standards for maintenance awards in matrimonial cases.

Like "Behind Closed Doors" before it, this report is a step towards better awareness of the problems facing New York City's DV survivors. In my second term, I will be working alongside survivors, advocates, and my fellow elected officials to address those problems and carry on the progress that has been made. The door to a better future has been opened. Our responsibility is to remove the door entirely and permanently.



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If you are a victim of domestic violence and need assistance call the New
York City Domestic Violence Hotline: **1-800-621-HOPE** (4673)
English/Español

Table of Contents

<u>Acknowledgements</u>	6
<u>Introduction</u>	8
<u>Safety Shortage: The Unmet Shelter and Housing Needs of New York City's Domestic Violence Survivors</u>	13
Executive Summary.....	14
Chapter.....	17
<u>Acting Like Adults: Teenagers and Dating Violence</u>	33
Executive Summary.....	34
Chapter.....	37
<u>Caring for the Children: Improving the City's Relationship with Children Exposed to Domestic Violence</u>	51
Executive Summary.....	52
Chapter.....	54
<u>Criminal (and Civil) Confusion: Survivors and New York's Complicated Court Systems</u>	69
Executive Summary.....	70
Chapter.....	72
<u>Arresting Domestic Violence: New York's Criminal Justice System Aids and Hurts Survivors</u>	92
Executive Summary.....	93
Chapter.....	96
<u>Fleeing Abuse, Fighting Poverty: New York Law and Policy Challenges Domestic Violence Survivors Seeking Economic Stability</u>	125
Executive Summary.....	126
Chapter.....	128
<u>Addendums</u>	150

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Introduction

Thirteen years ago, Ronnie Eldridge, then City Councilwoman and Chair of the Council Subcommittee on Women, and Ruth Messinger, then Manhattan Borough President, released a report about domestic violence in New York City called “Behind Closed Doors: The City’s Response to Family Violence.”¹ The report provided an in-depth look at domestic violence in New York City. It considered the impact it was having on victims and their children, what services were and were not available for them, and made a series of recommendations for legislative, programmatic, and policy changes to improve the City’s response to families experiencing domestic violence.

It found that City and State agencies lacked a coordinated response to the problem of domestic violence. Many of the City and State agencies that had developed programs to help battered women and their children either offered assistance that was ineffective, or put them at further risk of abuse. According to an introductory letter from Eldridge and Messinger, the title, “Behind Closed Doors” was chosen, “not only because that is where family violence occurs, but also because closed doors too often characterize the current response of City and State agencies to this problem.”

Today’s report, “Opening the Door,” considers where we are now. Its title is meant to indicate that progress has been made since “Behind Closed Doors” was released. While there is still a long way to go until all City and State agencies have optimized their responses to domestic violence, there has been much improvement. The report evaluates the progress that many agencies have made in recent years, as a result of both legislative mandates and a general consensus that the crisis could not be ignored any longer. It also looks at what still needs to be done by those agencies, in addition to what are upcoming issues for the domestic violence service and advocacy community, such as whether or not New York State should maintain its law on mandatory arrest and whether the state should allow for no-fault divorce in New York.

¹*Behind Closed Doors* is available at http://www.connectnyc.org/cnyc_pdf/Behind_Closed_Doors.pdf.

While there are still gaps that need to be addressed so that the entire system can best come to the aid of survivors and their children, since 1993: the number of emergency shelter beds has increased by over 100 percent; four of the five boroughs now have Integrated Domestic Violence courtrooms where survivors' court cases can be heard by the same judge; New York State has had a law on Mandatory Arrest on the books since 1994; District Attorneys in New York City have established specialized prosecution bureaus and victim advocacy programs in their offices. In 2001 the City Council passed a law to protect the workplace rights of victims of domestic violence. In December 2004 the city settled the class-action case *Nicholson v. Scoppetta*, relieving survivors of the fear of having their children removed if they report domestic violence. And this past summer saw the opening of the nation's first Family Justice Center in Brooklyn - a place where survivors can meet with a prosecutor, access services, and begin counseling, all with one appointment. Over a thousand survivors received assistance from the Family Justice Center in its first six months.

One of the biggest catalysts for progress happened not locally, but on a national level. In 1994, Congress passed the Violence Against Women Act (VAWA), which, among other things, funded thousands of anti-violence programs across the country, including here in New York City. It was reauthorized and expanded in 2000, and again this past December. The passage of the legislation enabled many programs to continue to provide and even to expand the services that they give to survivors of domestic violence, and helped to draw at least some attention to the serious epidemic of domestic violence in this country.

Progress hasn't been universal, and many of the problems highlighted in the old report remain today. For example, there is still a tremendous shortage of supervised visitation services in the city. Funding for the organizations that do offer supervised visitation is constantly in jeopardy. Many survivors receive inadequate and, in some cases, no legal representation, to help them navigate the court systems. Obtaining safe, affordable housing continues to be a problem as well, and by some accounts it is an even worse problem than before. In 2004, because of cuts to the federally funded Section 8 program, the city initiated its Housing Stability Plus (HSP) program that threatens the stability of all poor New Yorkers, including survivors, by reducing the amount of support they receive over a five-year period.

As it is often difficult to identify the funding needed to create new programs or expand existing ones, an effort was made to minimize the number of recommendations that specifically call for increased funding. However, it was not always possible to avoid such recommendations because of the clear and dire need in certain situations. All interested parties reading the report - including government officials, advocates, and citizens - will need to work together to ensure that there is adequate funding for necessary programs serving survivors of domestic violence.

This report consists of six chapters, each of which considers a different area in which survivors need to access services. Each chapter begins with an executive summary, including a summary of that chapter's findings and recommendations. Chapter One, "Safety Shortage," examines the housing crisis faced by victims of domestic violence. This is perhaps the area in which the City's provision of services needs the most improvement. It looks critically at the City's year-old HSP program. It also evaluates the lack of emergency and transitional shelter space for victims who are trying to escape violence. The chapter also reports on the dangers of survivors entering the "general population" shelter system, and the difficulty of accessing housing through the New York City Housing Authority (NYCHA) and affordable housing generally.

Chapter Two, "Acting Like Adults," reports on the growing numbers of teenagers engaging in dating violence. It looks critically at the lack of services available to this at-risk population, and the failure of the Department of Education to appropriately handle situations of dating violence in the schools. Finally, Chapter Four calls on the state to pass legislation that would broaden the definition of family offenses so that young people (and all of those in intimate relationships who have not been married to their partners and do not have a child in common with their partners) can qualify to file a petition for an order of protection in Family Court.

The third chapter, "Caring for the Children," looks at the impact domestic violence has on children, and the varied role of the Administration for Children's Services (ACS) in protecting children from domestic violence. This chapter examines the impact of a class-action lawsuit that forced the agency to revise its institutional policy, as well as the successes and failures of the resulting reforms.

Chapter Four, "Criminal (and Civil) Confusion," analyzes domestic violence survivors' experiences with the civil court system in New York City. Engaging in the court system is a critical step for survivors trying to break free from their batterers, and to establish their independence. They need the courts to obtain orders of protection, financial support, custody and divorces. The convoluted network of courts can lead to survivors having multiple court cases in multiple courts. The complex and time-consuming nature of this process can discourage many survivors from seeing their cases through.

The next chapter, Chapter Five, "Arresting Domestic Violence," examines the practices of the New York City Police Department (NYPD) and the criminal justice system. The NYPD is usually the first, and sometimes the only, city agency that victims turn to for help. How police officers handle encounters with victims of domestic violence can impact whether or not those victims will be open to contacting the police again, whether they are willing to further engage the criminal justice system, and whether they will seek further assistance from other city agencies or community organizations.

The sixth and final chapter, “Fleeing Abuse, Fighting Poverty,” contemplates how a survivor’s financial situation and prospects can contribute to her ability to successfully leave her batterer. The chapter contains three main sections. The first looks at the city’s welfare system, and the programs it has developed to aid survivors, and where those programs are coming up short. The second analyzes the state’s divorce laws, how they leave survivors vulnerable, and ultimately recommends changes that should be implemented. The last section looks at domestic violence in the workplace.

Throughout each chapter, the report considers the unique plight of immigrants and same-sex survivors. The problems faced by all survivors of domestic violence are greatly compounded for survivors who are members of these vulnerable populations. They may have additional concerns about accessing certain services. Immigrants may be worried about identifying themselves as being without legal status, or may have difficulties relating to language or cultural barriers. Lesbian, gay, bisexual and transgender (LGBT) survivors may fear accessing services because they do not want to “out” themselves either because they do not want specific people in their lives to know their sexual orientation or because they are fearful of the potential for prejudice from people within the “system” once they are “outed.” They may also have problems accessing services because they might not qualify for the assistance that is available.

Survivor stories are also incorporated throughout each chapter. These stories were shared with the Public Advocate’s office either by advocates or by survivors themselves. In all instances, names, and if necessary, certain facts, were altered to protect the identity of the survivors. The stories were included to help readers understand the true impact that certain policies and practices have on actual survivors. In some instances, stories were combined to help make the point that much clearer.

The terms domestic violence, dating violence, relationship abuse, and intimate partner violence or abuse are all used in this report, but all connote the same thing. They all refer to violence that happens within romantic relationships. However, the terms are not meant to suggest that both parties in the relationship are violent towards each other. The violence is typically one-sided. It can be perpetrated by both men and women in heterosexual, homosexual, and transgender relationships. Because the vast majority of relationship violence is perpetrated by men against women, this report will refer to survivors using female pronouns and batterers using male pronouns. In some instances, this report specifically refers to women or girls, and that is because the program or research being discussed is limited in scope to battered women or girls.

In order to write this report, the Public Advocate’s office worked with dozens of advocates and service providers throughout the city. For each chapter of the report, the PA’s office convened a unique committee of domestic

violence experts to help determine what is occurring on the ground level. An additional committee looked at immigrant issues, and another focused on the LGBT population. These experts included lawyers, advocates and social workers, and as well as survivors. Where appropriate, the PA's office spoke or met with government representatives. In two instances, the office undertook phone surveys to gather data where it was unavailable. These surveys looked at the availability of supervised visitation programs and the number of free civil legal services attorneys available to represent survivors.

Over the past twelve months, some of the chapters have been released so that their findings and recommendations could be considered individually by the City, the State, advocacy communities and media outlets. Those chapters are now being re-released here. In some instances, small alterations to language may have been made to that original chapter to keep the overall report consistent in terms of language and timeframe – for example “this year” may have been altered to “last year”, and “this report” has been altered to read, “this chapter.” Additionally, a subsection has been added to the chapter on housing addressing the lack of domestic violence shelters for young people and the LGBT population.

The problems raised in “Opening the Door” must be considered by all concerned individuals in the City, including elected leaders, appointed officials, advocates and service providers, and citizens. All of us are responsible for making sure the door stays open so that New York’s city and state agencies continue to improve their responses to domestic violence.

SAFETY SHORTAGE



THE UNMET SHELTER AND HOUSING NEEDS OF NEW YORK CITY'S DOMESTIC VIOLENCE SURVIVORS

Executive Summary

Each year in New York City thousands of survivors of domestic violence make the decision to leave an abusive partner. In search of safety for themselves and their children, they call the City and ask to be placed in an emergency shelter. Last year, a third of these survivors were told that despite the danger they faced, there was simply no room for them in the City's domestic violence shelters. At the end of 2004, the City implemented a new re-housing policy, and in the months after, the number of survivors seeking shelter decreased. Unfortunately, this did not mean the number of violent incidents decreased. Advocates report that one of the most negative results of the housing policy shift is that survivors might have stayed in dangerous homes longer.¹ With few realistic housing options in place, survivors fear they will have to return to an even angrier abuser soon after they leave.

Those who are placed in an emergency domestic violence shelter find that getting into the system is not enough – they soon have to find a safe way out. Without access to a safe place to live, survivors who reach their time limit in domestic violence shelters may feel they have no choice but to return to their abusive home.

City officials recognize that for low-income individuals and families in New York City, finding safe, affordable housing without government financial assistance is difficult, if not impossible. Yet rather than expand access to housing, a life-saving resource for domestic violence survivors, the City has recently made the housing assistance provided to survivors more difficult to access, resulting in a far less safe environment.

This chapter explores the systems in place to respond to the shelter and housing needs of the City's domestic violence survivors and highlights a number of areas in which change is desperately needed. The Public Advocate would like to draw the Bloomberg Administration's attention most immediately to the serious flaws in the housing subsidy, Housing Stability Plus.

Summary of Findings

- The Housing Stability Plus (HSP) subsidy will not provide stable housing for many domestic violence shelter residents. Domestic violence shelter providers estimate that between 20 and 30 percent of survivors in shelter will not even be eligible to apply, simply because they are not public assistance recipients. For example,

¹ Phone conversation between Allegra Perhaes, Safe Horizon, and Laurel Tumarkin, Office of the New York City Public Advocate, March 28, 2005.

those who are employed or disabled and receiving disability benefits, will likely be ineligible for HSP.

- Those survivors who are eligible for HSP must have resided in a domestic violence shelter for 42 days before they apply. Because they may stay in an emergency shelter for only 90 to 135 days, survivors who receive the subsidy have only between 48 and 93 days to secure permanent safe housing. Given the difficulty of this task, this is too short a period of time.
- The New York City Housing Authority's (NYCHA's) policies, combined with the Department of Homeless Service's (DHS's) recent policy changes, make it difficult for domestic violence survivors to obtain public housing apartments.
- In addition to the lack of available affordable housing, survivors of domestic violence encounter other barriers related to their history of abuse in their search for housing.
- The City's *New Housing Marketplace* plan, as well as its supportive housing loan program, do not take the housing needs of domestic violence survivors into account.
- Despite the growth in the system, the City's domestic violence emergency and transitional shelters still cannot accommodate all of those in danger; last year, a third of the eligible callers to the City's domestic violence hotline were told there was no room for them in an emergency domestic violence shelter.
- The homeless shelter system operated by DHS was never meant to serve survivors of domestic violence and their children, and in general, cannot serve them appropriately.
- Survivors who reach their time limit in domestic violence shelter and have nowhere to turn but the homeless shelter system must apply at the EAU or PATH intake offices, despite the fact that it may be dangerous for them to travel to those locations. This requirement places an unnecessary burden on survivors and their children, who have already demonstrated their need for assistance.

Summary of Recommendations

- Improve the HSP program so that it will provide adequate housing assistance for survivors and their children. The HSP program should be available to survivors not receiving public assistance. Additionally, the annual 20% reduction in the value of the subsidy and the five-year time limit on receipt of the subsidy should be removed.

- Provide domestic violence survivors greater access to NYCHA housing by restoring the “homeless” priority process. The onerous domestic violence documentation required to receive the “DV” priority for NYCHA housing should be carefully reconsidered.
- Increase the supply of permanent affordable housing available to domestic violence survivors.
- Allow emergency domestic violence shelter residents and their children more time in shelter so that they will not be discharged without having a safe place to go.
- Increase the number of domestic violence Tier II units available to survivors.
- Allow survivors who reach their time limit in domestic violence shelter to transfer to a DHS transitional shelter without requiring that they apply at the EAU or PATH intake offices.



Chapter One

Safety Shortage

Introduction

(This chapter prepared by Laurel Tumarkin, Esq., Policy Research Associate)

Across the country, domestic violence survivors and their children are forced to flee from their homes in search of safety. Domestic violence survivors who leave their batterers often have no safe, affordable home to move to, and as a result, domestic violence has become a leading cause of homelessness nationwide.¹ New York City is no exception: more than 12,300 survivors called the City's Domestic Violence Hotline in 2004 seeking placement in a domestic violence shelter.² Having a safe place to run to is critical, as domestic violence can be fatal. Between 1995 and 2003, almost one third of female homicides in New York City were committed by intimate partners.³ Survivors stay in abusive homes for a variety of reasons, including the fear that if they leave the batterer, they and their children will have no place to go.

Rather than recognizing that housing is a life-saving resource for domestic violence survivors and expanding access to it, the City has made the housing assistance provided to survivors more difficult to access, resulting in a far less safe environment. New York City must ensure that those experiencing domestic violence have the resources that they need to escape from danger

¹ United States Conference of Mayors, *Hunger and Homelessness Survey, A Status Report on Hunger and Homelessness in America's Cities, A 27-City Report*, December 2004, available at <http://www.usmayors.org/uscm/hungersurvey/2004/onlinereport/HungerAndHomelessnessReport2004.pdf>.

² Safe Horizon, *The Domestic Violence and Crime Victims Hotline, Calendar 04 Key Indicators*, 2004.

³ Based on information from the following: Dewan, Shaila K., "As Murders Fall, New Tactics Are Tried Against Remainder," *The New York Times*, December 31, 2004; New York City Department of Health and Mental Hygiene, Bureau of Vital Statistics, *Summary of Vital Statistics 2003*, available at <http://www.nyc.gov/html/doh/pdf/vs/2003sum.pdf>; and New York City Department of Health and Mental Hygiene, *Femicide in New York City: 1995-2002*, 2004.

and create the long-term stability that will allow them to remain free from abuse.

Limited Space in the City's Domestic Violence Emergency Shelters Creates a Safety Lottery

Survivors in New York City who are being abused and need a safe place to go can call the City's Domestic Violence Hotline to find out whether they are eligible for placement in a domestic violence shelter. Callers are screened to determine whether they are experiencing domestic violence, are currently in danger, and are in need of placement in a confidential domestic violence shelter.

All callers who are found eligible are not, however, placed in a domestic violence shelter. The New York City Human Resources Administration (HRA) oversees the specialized shelter system for domestic violence survivors, which includes 37 emergency shelters,⁴ housing approximately 1,900 beds.⁵ Despite the fact that there are now more than twice as many beds than there were a decade ago,⁶ almost a third of the eligible callers to the Hotline in 2004 were told that there was no room for them and their families in a domestic violence shelter.⁷ Because of the design of some shelter programs, or due to physical constraints related to the buildings in which the shelters operate, some households have a particularly difficult time obtaining a domestic violence shelter placement. For example, large families, survivors who are seeking shelter alone, families with a disabled member, and lesbian, gay, bisexual and transgender survivors all have difficulty being placed. Some call repeatedly before being placed, resulting in almost 37,000 calls to the Hotline requesting shelter last year.⁸

Because the demand for beds far exceeds the supply, every day survivors at risk are forced to choose among potentially dangerous alternatives. Some may feel they have no choice but to remain in the abusive home. Others may be able to stay temporarily in the home of a friend or family member, though this can be dangerous if the location of the home is known to the batterer. Still others may accept the referral that they receive from the Hotline to the City's other shelter system, which is administered by the New York City Department of Homeless Services (DHS), and generally does not meet the needs of domestic violence survivors, as explained below.

⁴ New York City Coalition of Domestic Violence Residential Providers.

⁵ The Mayor's Office of the City of New York, *The Mayor's Management Report, Fiscal 2005 Preliminary*, February 2005, pg. 27.

⁶ In 1993, there were thirteen programs providing shelter and/or safe dwellings for domestic violence survivors and their children; these programs could accommodate 864 individuals. Task Force on Family Violence, *Behind Closed Doors: The City's Response to Family Violence*, 1993.

⁷ Safe Horizon, *The Domestic Violence and Crime Victims Hotline, Calendar 04 Key Indicators*, 2004.

⁸ *Ibid.* About 12,300 individuals called the hotline seeking shelter last year, but many placed multiple calls, resulting in the 37,000 calls received.

Shelter Mismatch: Fleeing Survivors Must Resort to a Shelter System Not Safe Enough for Them

To enter into the DHS “general population” shelter system, survivors without children must go to one of the four assessment centers located throughout the City. Survivors who are pregnant or have children go to the Emergency Assistance Unit (EAU), or to a new facility, the Prevention Assistance and Temporary Housing Office (PATH), if they are applying for shelter for the first time. At both of the family intake facilities, which are located in the South Bronx, applicants are interviewed to determine whether they are eligible for admission into a DHS shelter.

During the interview process, applicants are also screened to determine whether they are survivors of domestic abuse. Survivors who are in danger and identify themselves as being homeless due to domestic violence should be referred to the No Violence Again (NOVA) office, a unit within the EAU which is staffed by HRA employees. NOVA staff will once again assess the shelter applicant, and if she is found eligible,⁹ and space is available, the family will be placed in an emergency domestic violence shelter. If the NOVA office is not able to place the family in a domestic violence shelter, the family will be referred to a homeless shelter. As a result, a large number of survivors utilize the homeless shelter system.

Janet is on public assistance and has a young daughter. She and her daughter resided in an emergency domestic violence shelter after she fled her batterer. Using threats of violence, he used to force her to prostitute herself. When she couldn't take the abuse and humiliation anymore she called the police and finally left him. She and her daughter felt safe at the shelter, but then her time ran out. They were forced to go to the PATH office which terrified her, as it was located in a neighborhood in which her batterer and many of his friends often spent time.

While the homeless shelter system has proven to be a critical resource for survivors and their children, it was not designed to serve this population. There is a strong link between domestic violence and stalking,¹⁰ and the most dangerous time for a domestic violence victim is when she leaves and shortly after she has left her abuser.¹¹ Therefore, simply going to the EAU or PATH office can put a survivor at risk. The location of these intake centers is known, meaning batterers may easily go to them looking for their former partners. For those whose batterers live or work in the Bronx, it can be

⁹ In order to be found eligible, NOVA requires that the survivor be in *imminent* danger. A survivor who, for example, stayed in the home of a friend for a period of time before seeking shelter could be deemed ineligible.

¹⁰ United States Department of Justice, Office of Justice Programs, Violence Against Women Grants Office, *Stalking and Domestic Violence, The Third Annual Report to Congress Under the Violence Against Women Act*, 1998, available at <http://www.ojp.usdoj.gov/vawo/grants/stalk98/chapter1.htm>.

¹¹ New York State Office for the Prevention of Domestic Violence, *Victim-Blaming vs. Offender Accountability – That Nagging Question: Why Doesn't She Leave?*, OPDV Bulletin, Spring 2002, available at http://www.opdv.state.ny.us/public_awareness/bulletins/spring2002/blaming.html.

unsafe for a survivor to even travel to that borough. Further, the process of determining eligibility for placement in a homeless shelter includes an investigation into whether the family has somewhere else that they could go. This involves telephone calls to recent places of residence to find out whether it would be possible for the family to return. If such calls are made, the batterer may become aware of the survivor's location and seek her out.

DHS homeless shelters also are not equipped to handle the particular needs of domestic violence survivors. Like the DHS intake centers, the locations of DHS shelters are not confidential, creating a serious risk that survivors will be found by their batterers.

Homeless shelters do provide survivors with a place to stay, as well as some supportive services, but they do not meet the service needs of many survivors and their children. Domestic violence has a psychological impact and survivors often suffer from depression and Post-Traumatic Stress Disorder.¹² Survivors are also at greater risk for harmful behaviors such as substance abuse, alcoholism, and attempting suicide.¹³ Research has shown that children who witness violence in the home are also likely to develop emotional or behavioral problems.¹⁴ The mental health service requirements of families fleeing from abusive homes may be great, and thus domestic violence shelters typically provide an array of services including individual and group counseling for survivors and their children. These services, which are critical for survivors who have experienced domestic violence and for children who have seen their parent suffer abuse, generally are not provided in the homeless shelter system.

Service Interruption: City's Domestic Violence Emergency Shelters Provide a Safe Space for Just a Short Time

Survivors who are fortunate enough to be placed in an emergency domestic violence shelter, either by calling the Hotline or through a referral at the EAU or the PATH office, are provided shelter for only a brief period. A New York State regulation limits a survivor's stay in an emergency domestic violence shelter to 90 days, with the possibility of a 45-day extension.¹⁵ During that time, survivors may be beginning the recovery process, dealing with legal matters related to the abuse, and trying to find new employment, health care providers, and other service providers whose locations are unknown to the abuser. Survivors are also expected to secure housing during that period. Emergency domestic violence shelters are meant to provide a temporary safe haven for domestic violence survivors and their children, and are not intended by the City to serve as long-term shelter placements. The result,

¹² National Center for Post-Traumatic Stress Disorder, *Domestic Violence*, available at www.ncptsd.org/facts/specific/fs_domestic_violence.html.

¹³ National Center for Injury Prevention and Control, *Intimate Partner Violence: Fact Sheet*, available at <http://www.cdc.gov/ncipc/factsheets/ipvfacts.htm>.

¹⁴ See 12.

¹⁵ 18 N.Y.C.R.R. §408.6 (b) and (d).

however, is that survivors and their children are regularly discharged from emergency shelters without having a safe place to go.

Mei called the domestic violence hotline after she had a realization that there was a real chance that her boyfriend's constant mental and physical abuse would escalate to the point of killing her. She and her three-year-old daughter escaped to an emergency domestic violence shelter where they felt safe for the first time in over a year. Jane has been looking for a permanent apartment, but has had no luck. Her 45-day extension is running out, and she is not sure where she and her daughter will go. She thinks her only choices may be to go back to her boyfriend or to go live with her grandmother in another state.

City Serves Only a Small Number of Survivors in Appropriate Transitional Shelter

Survivors who have reached their time limit in emergency domestic violence shelters and have not secured permanent housing may be eligible for placement in one of the transitional domestic violence shelters that HRA operates, which are known as “Tier II” shelters. Tier II facilities provide a safe, confidential place to stay, as well as supportive services, though the services are not as intensive as those offered at emergency shelters. However, there are currently only six domestic violence Tier II shelters,¹⁶ with 206 units. Like the emergency shelters, the demand for placement in Tier II shelters far exceeds the supply of slots available. The majority of survivors who leave the emergency shelter system are not placed in a Tier II, and must apply for shelter through the DHS system or consider alternatives that are even less safe. Some survivors who cannot find permanent housing for themselves and their children will return to their abusive home.¹⁷

New City Housing Plan Fails Domestic Violence Survivors

Securing safe, affordable housing is critical to the long-term safety and stability of domestic violence survivors and their children. Because of the time-limited nature of domestic violence shelter in New York City, shelter residents must find housing quickly or face choosing among potentially hazardous options, as noted above.

New York City is in the midst of an affordable housing crisis, and finding suitable, affordable housing is difficult for all low- and moderate-income New Yorkers. For domestic violence survivors, who face additional challenges in their housing search, it is even more difficult. Survivors in abusive relationships are often prevented from working by their partners, and it is common for batterers to control the family finances. This can create barriers

¹⁶ The number of domestic violence Tier II shelters has grown from three to six over the past twelve years. Task Force on Family Violence, *Behind Closed Doors: The City's Response to Family Violence*, 1993.

¹⁷ Amy Correia and Jen Rubin, *Housing and Battered Women*, Violence Against Women Online Resources, available at <http://www.vaw.umn.edu/documents/housing/housing.txt>.

for survivors seeking housing, as they may discover that they have poor credit¹⁸ and that landlords generally prefer to rent to individuals with an employment history.¹⁹ Survivors must avoid seeking housing in the areas of the City where it is likely that their batterer might find them, further limiting their options. Finally, survivors searching for housing face discrimination from landlords who fear that batterers will find survivors in their new homes and create problems on the premises. One study found that more than two-thirds of domestic violence service providers identified “discriminatory practices by landlords” as a barrier survivors face in their effort to obtain housing.²⁰

In the first five months of 2004, only 17% of survivors leaving emergency shelter in New York City had obtained permanent housing.²¹ Recent changes in City policy are making it even more difficult for survivors in shelter to obtain a safe, affordable place to live.

The federal Housing Voucher program, commonly known as “Section 8,” had long been the most common path to permanent housing for domestic violence survivors in New York City, but in October 2004, the Bloomberg Administration announced²² that all of the City’s Section 8 vouchers were in use and that new Section 8 vouchers which become available will not be given to residents of the homeless and domestic violence shelter systems. Further, the City stated that the public housing units that in the past had been made available to shelter residents would now be “redirected” to other households.²³ The City thus discontinued its longstanding policy of prioritizing shelter residents in its distribution of federal housing resources.

In October 2004, the City also announced that it would seek approval from New York State for a new rental assistance subsidy program, called Housing Stability Plus (HSP). The HSP program proposal was approved by the State in early December, and a month later, HRA²⁴ began to accept applications for HSP. From October to December, without access to Section 8 vouchers and having lost expedited access to public housing apartments, 88 households were discharged from emergency domestic violence shelter

¹⁸ *Ibid.*

¹⁹ New Destiny Housing Corporation, *On the Verge of Homelessness: The Impact of DPE Discharges on Domestic Violence Survivors*, updated February 5, 2004.

²⁰ New York City Council Report of the Governmental Affairs Division, Committee on Women’s Issues, and Committee on General Welfare, April 28, 2004, citing Amy Correia, *Housing and Battered Women: A Case Study of Domestic Violence Programs in Iowa* (1999), available at <http://www.vaw.umn.edu/FinalDocuments/housing.asp>. An additional discriminatory barrier that LGBT survivors face is homophobia.

²¹ The New York City Coalition of Domestic Violence Residential Providers, *Coalition Survey Results*, May 2004.

²² New York City Department of Homeless Services, Press Releases, *City Officials Announce Sweeping Changes in Rental Assistance Delivery to Better Serve New Yorkers Both In and Outside Shelter*, October 19, 2004, available at <http://www.nyc.gov/html/dhs/html/press/pr101904.shtml>.

²³ *Ibid.*

²⁴ HSP subsidies are available to residents of both the DHS and HRA shelter systems.

without having obtained permanent housing,²⁵ often with no safe place to turn.

CITY LEFT “STABILITY” OUT OF HOUSING STABILITY PLUS

While the City has touted HSP as “a critical new resource” central to its plan to end chronic homelessness,²⁶ many domestic violence shelter residents will not be able to use HSP to obtain and maintain stable housing. In order to be eligible for HSP, the applicant must be a current shelter resident with an active public assistance case. Moreover, the HSP subsidy is available to recipients for a maximum of five years, and each year the value of the subsidy declines by 20%, regardless of the household’s income and whether they have the ability to pay more in rent. For example, a family of three could receive up to \$925 per month²⁷ in the first year they participate in the program, but by the fifth year they would receive a maximum of \$505 monthly. In the sixth year, the survivor and her family would receive no rental supplement at all. Making matters worse, though the cost of the family’s housing is likely to rise each year when they renew their lease, the City only intends to adjust the subsidy rates every two years.

A few months ago, 27-year-old Esperanza took her three young children and walked out on her abusive boyfriend. She went to stay at a domestic violence shelter. She also left her job, because she was worried that if she went to work he would follow her back to the shelter and discover where she was living. Esperanza qualified for the HSP program and has been desperately looking for housing. Over the past month, she has looked at 70 apartments, but none have met the needs of her family. Either they couldn't accommodate three children, were unsafe because of housing violations, or were in neighborhoods in which she did not feel safe. Esperanza is worried that because she left her job, even if she is able to find a decent apartment that accepts the HSP subsidy, she will eventually end up in the homeless shelter system because she won't be able to pay the rent after the first year.

As the value of their HSP subsidy declines, recipients must find a way to pay their increasing share of the rent. Although most survivors will be able to obtain employment and increase their earnings over time, it is not reasonable to expect that they will be able to do so quickly enough to cover the cost of their rent as the subsidy dwindles. Low- wage workers typically

²⁵ The New York City Coalition of Domestic Violence Residential Providers.

²⁶ New York City Department of Homeless Services, Press Release, *State Approves New York City’s Plan on Rental Assistance, Shelter Supplement Program Will Aid Efforts to End Chronic Homelessness*, available at <http://www.nyc.gov/html/dhs/html/press/pr121004.shtml>.

²⁷ This amount includes both the HSP rent supplement and the shelter allowance portion of the family’s welfare grant. A family of three participating in HSP will receive a maximum of \$925 in housing assistance in their first year of participation, which includes a \$525 rent supplement and a \$400 public assistance shelter allowance. Each year, the rent supplement will be reduced by 20%, while the size of the shelter allowance remains constant.

see their earnings grow by as little as 4% each year.²⁸ Furthermore, the program rules create a “Catch-22”: those whose earnings do increase will likely become ineligible for public assistance, thus they will lose their HSP subsidy.

To receive the HSP subsidy, the survivor must keep her welfare case open, making the subsidy inherently unreliable. HSP recipients who are “sanctioned” by HRA, meaning that a share of their welfare grant has been taken away for a period of time²⁹ either because they have not complied with welfare requirements or due to bureaucratic error, will not receive their HSP subsidy for that period. Sanctions are a common occurrence: in February 2005, more than 14% of welfare households were under sanction.³⁰ Households are often sanctioned due to no fault of their own; in 2003, one in five welfare recipients who challenged their sanction through the State’s fair hearing process won,³¹ despite the fact that very few are represented by attorneys or other advocates at their hearings.³²

HSP recipients who are sanctioned, and are therefore without a portion of their welfare grant and their entire HSP subsidy, will be at serious risk of losing their housing. HSP recipients who are unable to pay their portion of the rent as the subsidy is reduced, or who lose the subsidy entirely because they obtain a job that pays little but nonetheless disqualifies them for welfare, will also likely face eviction and homelessness. Finally, it should be noted that if HSP program participants cannot cover their increasing share of their housing costs, resulting in rent arrears and eviction, the survivors’ rental histories will be compromised and it will be even more difficult for them to secure new housing.

²⁸ Tricia Gladden and Christopher Taber, “Wage Growth Among Low-Skilled Workers,” JCPR Policy Briefs, Vol. 3, No. 3 (published by the Northwestern University/University of Chicago Joint Center for Poverty Research).

²⁹ For families with dependent children, the first sanction will be in place until the recipient shows that s/he is willing to comply with the public assistance rules; the second sanction lasts three months, or longer if the recipient has not shown willingness to comply with the rules; and the third sanction lasts six months, or longer if the recipient has not shown willingness to comply with the rules.

³⁰ Human Resources Administration, *PA – February 13, 2005 – Weekly Report*, available at <http://www.nyc.gov/html/hra/pdf/citywide.pdf>.

³¹ New York City Human Resources Administration, Office of Program Reporting, Analysis & Accountability, *Jobstat Report, Version 4.5*, January 24, 2005, available at <http://www.nyc.gov/html/hra/pdf/bayridge.pdf>.

³² Less than 4% of those who request fair hearings for problems related to welfare, Food Stamps or Medicaid are represented by an attorney or other public benefits advocate. Community Service Society of New York, *Welfare and Public Benefits*, available at <http://www.cssny.org/research/welfare.html>.

MANY SURVIVORS BARRED FROM HOUSING STABILITY PLUS

Many survivors are simply not eligible to apply for the HSP program because they are not public assistance recipients. The City has stated that 15% of homeless shelter residents do not receive public assistance,³³ making them automatically ineligible for HSP. Domestic violence shelter providers estimate that between 20 and 30% of residents in domestic violence shelters are not eligible for the program because they do not receive public assistance.³⁴

Elderly and disabled survivors who are reliant upon government assistance other than welfare, such as Social Security Allowance, Social Security Disability Insurance, and Supplemental Security Income, are not eligible for HSP. Nor are survivors who are undocumented immigrants and not eligible to receive welfare due to their immigration status.

Toni works and earns around thirty thousand dollars a year. She has four children, all of whom are in school. She and her children moved into a shelter after she left her batterer, the father of the youngest child. Her employer was sympathetic to her situation, and helped her work out arrangements to safely keep her job. Because of her income, Toni does not qualify for any housing assistance program. Her shelter advocated for her, and she was able to get into a Tier II shelter after receiving an extra two week extension. Toni and her children were just days away from being forced to head to the EAU when the Tier II placement came through.

Survivors who are employed and whose earnings disqualify them for public assistance are also not eligible for HSP subsidies, regardless of whether their income is sufficient to pay the rent for an apartment. This policy punishes domestic violence shelter residents who are able to find and keep a job despite very difficult circumstances. Some survivors may find that in order to have access to housing they will have to forgo seeking employment or give up the job they have. This natural consequence of the City's policy is not in line with its stated goal of promoting independence and self-sufficiency.³⁵

Those survivors who are eligible for HSP must have resided in a domestic violence shelter for 42 days before they apply. Once the survivor and her family leave shelter, her HSP voucher is no longer valid. Because domestic violence survivors may stay in emergency shelter only for between 90 and 135 days, survivors are left with between 48 and 93 days to secure permanent housing, an unreasonably short period of time given the difficulty of the task.

³³ Leslie Kaufman, "State Revamps Plan to Give Assistance to Homeless," *The New York Times*, December 11, 2004.

³⁴ New York City Coalition of Domestic Violence Residential Providers.

³⁵ See 26.

PUBLIC HOUSING DIFFICULT FOR SURVIVORS TO ACCESS

Survivors of domestic violence may try to obtain an affordable home by applying to the New York City Housing Authority (NYCHA) for a public housing apartment. NYCHA has historically set aside apartments each year for families residing in DHS and HRA shelters. Until recently, survivors in shelter could submit their applications for public housing to DHS, which then forwarded the applications to NYCHA. Such applicants were given a priority status known as the “zero” or “homeless” priority and received expedited processing of their application for housing. However, as part of the sweeping policy changes announced in October 2004, the City eliminated the zero category and thus took away that route to NYCHA housing.

Domestic violence survivors, whether they are in shelter or not, can also apply to NYCHA for an apartment and receive the “one” or “DV” priority, which entitles them to expedited processing of their application as well. Yet for many survivors, NYCHA’s documentation requirements are so onerous that achieving “DV” priority status is not possible. While the United States Department of Housing and Urban Development (HUD) encourages housing authorities to accept “a broad range of evidence as proof of domestic violence,”³⁶ NYCHA has set a standard that is difficult to meet. Those seeking to qualify for the “DV” priority must submit the following documentation along with their application: a *current* order of protection; two police incident reports which were filed within the last twelve months, although one report is acceptable if it describes a separate incident from the one that was the basis of the order of protection; and a letter from a social services agency, medical center, court, public/private shelter, or counseling facility attesting to the applicant’s status as a victim of domestic violence.³⁷

NYCHA’s documentation requirements are seriously flawed. First, the fact that survivors must provide documentation of *multiple* incidents of abuse means survivors must endure repeated beatings, even if they know after the first violent incident that they are in danger and need assistance finding safety. Second, it can be very difficult, or impossible, for some survivors who are in or have recently left violent relationships to obtain an order of protection or recent police incident reports. If the batterer is incarcerated, there may be no recent incidents of abuse, though the survivor will be in danger as soon as the batterer is released. In some cases it is dangerous to get an order of protection or involve the police, as doing so will anger the

³⁶ United States Department of Housing and Urban Development, *Public Housing Occupancy Guidebook*, June 2003, available at <http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebooknew.pdf>.

³⁷ New York City Housing Authority, *Priority Codes*, available at <http://www.nyc.gov/html/nycha/html/prioritycode.html>; New Destiny Housing Corporation, *Qualifying for a Priority*, available at http://www.newdestinyhousing.org/housinglink/housinglink_NYCHA_apartments.shtml#qualifying. Note that NYCHA recently began granting domestic violence priority to applicants with documentation of only one incident when the incident involved one of a number of felony offenses.

batterer and put the survivor at further risk. Survivors who are undocumented immigrants may fear deportation if they contact the police, and those whose abusers work in law enforcement may fear retribution or that their request for help will be ignored by the police. Other survivors may mistrust the criminal justice system for other reasons and may have made the decision not to involve the police at the time the abuse was occurring. Even if the survivor wishes to obtain an order of protection, if the batterer cannot be located and served with the petition for an order of protection, a judge may refuse to grant the order. NYCHA's documentation requirements seem to ignore the realities of survivors' lives.

Domestic violence survivors, many of whom cannot fulfill the requirements of the "DV" priority, and who are now without access to the "homeless" priority, can also apply for public housing through priority code "three," which is available to those who are homeless and in shelter but have not been referred by the City to NYCHA for housing placement. However, advocates fear that the wait for an apartment through the "three" priority will be so long that survivors, who may only remain in emergency domestic violence shelter for a limited time, will be forced out before they can secure a safe place to live.

The City's elimination of the "homeless" priority, combined with the documentation requirements that must be met in order to be given the "DV" priority, mean that public housing will be out of reach for many domestic violence survivors. Those who also are ineligible for the HSP program will be left without a viable housing option.

City's Lack of Affordable Housing is Hazardous for Survivors

The importance of priority status in NYCHA applications, and the competition for those housing units, only highlights the desperate need for more affordable housing in New York City. All New Yorkers need decent housing that they can afford, but for domestic violence survivors, the lack of a safe and secure home can be a matter of life and death.

The Bloomberg Administration has acknowledged the affordable housing crisis the City faces and created a plan, called *The New Housing Marketplace*, to try to address it.³⁸

This plan, crafted by the Department of Housing Preservation and Development (HPD), seeks to build and preserve 65,000 housing units over five years, an important step in the right direction.³⁹ Yet experts estimate the City's immediate housing need to be between 225,000 and 500,000

³⁸ New York City Department of Housing Preservation and Development, *The New Housing Marketplace*, available at <http://www.nyc.gov/html/hpd/pdf/new-marketplace.pdf>.

³⁹ *Ibid.*

units.⁴⁰ Almost 8,600 families and more than 8,600 single adults sleep in the City's homeless shelter system each night,⁴¹ and close to 850 households reside in the domestic violence shelter system.⁴² One study found that at least 150,000 households live doubled-up with family and friends.⁴³ Housing is considered affordable when a household pays no more than 30 percent of their income in rent, yet more than 500,000 rental households in New York City pay at least 50 percent of their household income in rent.⁴⁴

With the affordable housing market so tight, the City's needy populations are forced to compete with one another for the units that become available. The City's housing plan recognizes the needs of homeless families, homeless single adults, and youth aging out of foster care, yet fails to explicitly address the needs of domestic violence survivors. Domestic violence shelter residents are not eligible to apply for the units developed under the plan which are set aside for the "homeless"; those units will only be available to those exiting the DHS shelter system.⁴⁵ Further, the City's plan does not include the development of any units specifically for survivors leaving domestic violence shelters.

Maria had five children with her batterer during the course of her twenty year marriage to him. He beat her up a countless number of times over those twenty years. Early on, she knew that she wanted to leave him, but didn't know how. She couldn't find an affordable apartment that would be large enough to accommodate her and all of her children. Leaving without the children was not an option she could consider, and so she stayed and suffered for years.

HPD's Supportive Housing Loan Program also neglects domestic violence survivors and their families. The program provides financing to non-profit organizations seeking to develop supportive housing for specific needy populations, such as individuals with mental illness or persons with AIDS.⁴⁶

⁴⁰ Housing First!, *Testimony to the Budget Hearing of the City Council Committee on Housing and Buildings*, March 9, 2004, available at

http://www.housingfirst.net/n2004_03_09_hf_budgettestimony.html.

⁴¹ New York City Department of Homeless Services, *Daily Census*, March 17, 2005, available at <http://www.nyc.gov/html/dhs/html/home/home.shtml>.

⁴² This number is an estimate based on the following: There are 1,915 beds in the domestic violence emergency shelter system, and an average household in the system is composed of a mother and two children, thus the emergency system can accommodate approximately 640 families. There are 206 units in the domestic violence Tier II shelters. In sum, the domestic violence shelter system can accommodate at least 850 families.

⁴³ Housing First!, *Building for the Future: New York's Affordable Housing Challenge*, available at <http://www.housingfirst.net/policypaper3.html>.

⁴⁴ Housing First!, *Platform Statement*, available at <http://www.housingfirst.net/platform.html>

⁴⁵ Domestic violence advocates meeting with Rafael Cestero, Deputy Commissioner for Development, New York City Department of Homeless Services, February 18, 2005.

⁴⁶ New York City Department of Housing Preservation and Development, *Supportive Housing Loan Program Guidelines*, available at <http://www.nyc.gov/html/hpd/html/for-developers/supportive-housing.html>.

The City has not deemed survivors of domestic violence a population eligible for program funding.

Some Populations not Adequately Served by Shelter System

YOUNG PEOPLE ARE CAUGHT BETWEEN TWO SYSTEMS THAT COME UP SHORT

A young survivor of domestic violence fleeing her abuser has two choices when she goes into the shelter system. She can choose to go to a domestic violence shelter, or she can enter a youth shelter. Neither place is fully able to meet the unique needs of the young person.

As discussed in greater detail in Chapter Two, Acting Like Adults, young people experiencing domestic violence face challenges unique to their age group. While domestic violence shelters can, in theory, meet the needs of the young survivor, in practice there may be shortcomings. The programming at shelters is generally aimed at adult survivors. For example, in shelter support groups, the young survivor may not be able to relate to the experiences of the older survivors in the group. Her safety planning may vary from that of older survivors, as she is more likely to be unable to access family court, and is less likely to call the police if there is a problem.

Youth shelters, are also unable to completely meet the needs of young survivors. Youth shelters, which are not specifically designed to work with domestic violence survivors, are also unable to completely meet the needs of young survivors. Most obviously, the addresses of these shelters are known. This places the young people at risk of further abuse because it is possible for their batterers to easily locate them.

LGBT SURVIVORS HAVE DIFFICULTY ACCESSING DOMESTIC VIOLENCE SHELTERS

Because many domestic violence shelters have gender restrictions, many transgender survivors and gay survivors of domestic violence are unable to access domestic violence shelters. These victims are forced to enter the general population homeless shelter system. As discussed above, the system is less safe for survivors and fails to provide appropriate services to domestic violence survivors.

Those LGBT survivors who are able to access the shelters face additional hurdles. They may have to work with shelter staff who make assumptions about who their batterers are, and assume that they are heterosexual. They may be fearful of experiencing prejudice if they disclose their sexual identities to shelter staff or other shelter residents.

Findings

Despite the growth in the system, the City still cannot accommodate all of the individuals and families in danger and in need of domestic violence shelter. Last year, a third of the eligible callers to the City's domestic violence hotline were told that there was no room for them in a domestic

violence shelter. There are currently only 206 domestic violence Tier II units, and every month survivors and their children leave emergency shelter with no safe place to go.

The homeless shelter system operated by DHS was never meant to serve survivors of domestic violence and their children, and in general, cannot serve them appropriately. The location of the EAU, PATH, and the DHS shelters are not confidential and survivors could be found at these facilities by their batterers. Most DHS shelters are not equipped to meet the counseling and other service needs of survivors and their children.

Domestic violence survivors encounter a number of barriers in their search for affordable permanent housing. The City's affordable housing crisis, combined with challenges related to their history of abuse, make it very difficult for survivors to obtain a safe and secure home.

The HSP subsidy will not provide stable housing for many domestic violence shelter residents, including survivors who are employed and disabled survivors not receiving welfare. Between 20 and 30 percent of domestic violence survivors will not even be eligible to apply, simply because they are not public assistance recipients. HSP cannot be relied upon as a steady source of income to cover the cost of rent over a period of years, and it punishes survivors who are able to obtain and keep a job that makes them ineligible for welfare by discontinuing their housing subsidy.

NYCHA's policies, combined with DHS's recent policy changes, make it difficult for domestic violence survivors to obtain public housing apartments. The City's elimination of the "homeless" priority, along with the documentation requirements that must be met in order to be given the "DV" priority, make public housing inaccessible for many survivors.

The City's New Housing Marketplace plan, as well as its supportive housing loan program, do not take the housing needs of domestic violence survivors into account. While the City recognizes the housing needs of other special populations, domestic violence survivors are left out.

Recommendations

Allow emergency domestic violence shelter residents and their children more time in shelter so that they will not be discharged without having a safe place to go. When necessary, domestic violence survivors and their children should be permitted to stay in emergency shelter for up to 180 days. This would require a change to a New York State regulation, which currently allows a maximum stay of 135 days.

Increase the number of domestic violence Tier II units available to survivors. Transitional shelter is a critical resource for survivors who have not secured

permanent housing for themselves and their children when they reach their time limit in emergency shelter. Access to this resource must be expanded to meet the needs of survivors.

Allow survivors who reach their time limit in domestic violence shelter to transfer to a DHS transitional shelter without requiring that they apply at the EAU or PATH intake offices. Survivors who reach their time limit in domestic violence shelter and have an on-going need for assistance should be permitted to apply for placement in a DHS shelter from the domestic violence shelter in which they reside. Survivors should have a seamless transition from one shelter system to the other and not be put at risk in order to prove their continuing need for shelter.

Improve the HSP program so that it will provide adequate housing assistance for survivors and their children:

- Allow shelter residents with sources of income other than public assistance, such as employment or SSI, who cannot cover their housing costs to apply for HSP;
- Remove the subsidy's arbitrary five-year time limit and the dramatic 20 percent annual reduction in value, allowing for a more flexible approach that will meet the needs of recipients;
- Remove the subsidy's "full family sanction" component, which cuts off the housing subsidy and thereby punishes the entire household when one family member is determined to have failed to comply with public assistance requirements;
- Allow shelter residents to apply for the subsidy after 21 days in shelter,⁴⁷ rather than requiring that they wait 42 days;
- Allow shelter residents who have been approved for an HSP subsidy but have not secured an apartment when they reach their time limit and have to leave the domestic violence shelter system to continue to seek an apartment in which to use the subsidy for an additional 90 days.

Provide domestic violence survivors greater access to NYCHA housing by restoring the "homeless" priority process and by adopting a more flexible approach to the domestic violence documentation required for survivors to receive the "DV" priority for NYCHA apartments. As recommended by the United States Department of Housing and Urban Development, domestic violence victims should have priority for housing without having to provide multiple recent police reports and current court orders proving abuse. Other documentation, such as medical records related to abuse, orders of

⁴⁷ In recognition of the fact that domestic violence survivors may stay in emergency shelter for only a short period of time and need to begin to search for housing early in their shelter stay, HRA began a pilot project in February 2004 which allowed residents of ten domestic violence shelters to apply for federal housing assistance after waiting only 21 days from the time they entered the shelter, rather than the 42 days which was generally required. The pilot project was discontinued as a result of the City's recent housing policy changes.

protection or police reports regardless of the date of the incident, or affidavits from counselors, social workers, or people who have witnessed the abuse, should be sufficient evidence.

Increase the supply of permanent affordable housing for domestic violence survivors. More affordable housing units must be built and preserved; in the meantime, domestic violence survivors should have fair access to those units which become available. The City should:

- Allow residents of domestic violence shelters to apply for the homeless housing developed under the *New Housing Marketplace* plan.
- Set aside an allotment of units to be developed as part of the *New Housing Marketplace* plan for domestic violence survivors.
- Include domestic violence survivors as one of the special needs populations to be served by the Supportive Housing Loan Program.



Acting Like Adults

Teenagers and Dating Violence

Executive Summary

Across the country, more and more people are becoming aware of the scourge of domestic violence. Police, politicians, and the press are beginning to acknowledge that domestic violence is a problem that affects millions of people in the United States. Unfortunately, there is still not sufficient awareness of the high numbers of young people who are engaged in violent dating relationships. Many young people, both victims and perpetrators, lack services and support.

This chapter explores the extent to which teen dating violence is a problem in New York City and examines the City's role in educating young people about the risks of dating violence and the steps it has taken, and still needs to take, to keep them safe. It also looks at what assistance and relief may be available to young survivors in New York City.

Summary of Findings

- Ninety-seven percent of teenagers who are in violent relationships do not disclose the abuse to adults. If they speak to anyone, they are most likely to speak to their friends and peers.
- Because of Department of Education (DOE) policy, survivors of relationship abuse often remain in the same schools as their batterers. There are only limited circumstances under which students can be transferred out of schools in the event of a violent incident. The only recourse consistently available to a victim is to request a safety transfer, which she may or may not be granted, and which penalizes her for the abuse she has suffered.
- Suspending batterers from school does not offer victims any real, permanent protection. Suspended batterers return to school after the suspension is over, sometimes just six days later, exposing their victims to a risk that is potentially even greater than before.
- The DOE neither has a uniform policy nor designated personnel to handle teen relationship abuse. The DOE does not have a coordinator specifically designated to address the problems of relationship abuse among youth. The lack of a uniform policy has led to a piecemeal approach in schools that makes the method for handling relationship abuse inconsistent and unpredictable from school to school.
- Teachers and other school staff do not receive training on how to identify and prevent dating violence among their students.

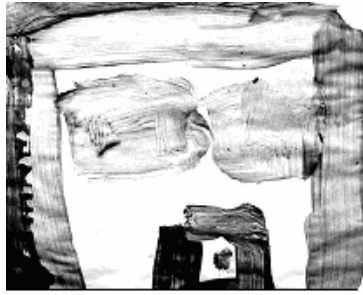
- While the DOE has some programs to teach students about relationship abuse, those programs are only in a limited number of schools. The DOE has a new health curriculum, which reportedly contains a segment on relationship abuse, but it remains to be seen how extensive and appropriate this curriculum will be.
- The DOE does not track how many students have reported being in a violent relationship or have sought help from their schools during the school day as a result of their violent relationships. Without this critical information, it is impossible to know the extent of the problem in the schools, to figure out the best ways of addressing it, and to know what resources should be dedicated to it.
- Young people who do not have a child in common with their batterer are unable to obtain civil orders of protection from the Family Courts. In order for this to change, the State Legislature would have to amend the law. In 2004, the City Council passed a resolution calling on the State Legislature to allow persons in violent dating relationships to petition the family courts for an order of protection. Related bills have passed the State Assembly a number of times, but they have repeatedly stalled in the State Senate.

Summary of Recommendations

- The DOE should post the City's Domestic Violence Hotline and Youthline phone numbers in all appropriate locations in junior high, middle, and high schools. Locations should include places students are most likely to read the postings, such as bathrooms and locker rooms. Postings should also include an informational checklist of warning signs of abusive behavior.
- The DOE should modify its school transfer policy to require and simplify the transfer of batterers from schools they attend with their victims. It is unacceptable that a victim's only way to feel safe in school is to ask for a safety transfer herself. The DOE transfer policy should not violate the batterer's due process rights, but it should allow for a transfer when violent acts occur either on- or off-campus. At a bare minimum, an order of protection should trigger a hearing for an involuntary transfer of the batterer.
- The DOE should implement a uniform policy in schools for handling teen relationship abuse. A uniform school policy should include a variety of elements, including safety planning with the victim, class and lunch period schedule changes, suspensions or transfers, dissemination of information to teachers and security personnel, counseling for the victim and perpetrator, locker assignment

changes, letters to the perpetrator's parents or guardians, and staggered school departure times for the victim and batterer.

- The State Department of Education should include a workshop on teen relationship violence in teacher certification requirements. The workshop should include information on identifying relationship abuse and information on resources and services available to students experiencing relationship abuse.
- To the extent possible, the DOE should expand its RAPP program, or otherwise ensure that domestic violence advocates, are able to come into each and every junior high, middle, and high school to speak with the students about relationship abuse.
- The DOE should designate a coordinator to combat student dating violence. The position would include responsibility for tracking incidents of teen dating violence, tracking enforcement of orders of protection in schools, and implementing a uniform citywide response to student dating violence.
- The State Legislature should enact legislation allowing persons who are in violent dating relationships to petition for orders of protection in Family Court.



Chapter Two

Acting Like Adults

Introduction

Dating violence affects an alarming number of young people in the United States. In 2001, the Harvard School of Public Health estimated in a report that one in five teenage girls is physically or sexually assaulted by a dating partner.¹ In another study, forty percent of girls between the ages of fourteen and seventeen reported knowing someone their own age who had been hit or beaten by a boyfriend.² The incidence of violence in high school dating relationships has been variously measured at nine percent to forty-one percent.³ Young people in same-sex relationships are equally at risk of experiencing dating violence as their peers.⁴

Teenage relationship abuse is a growing problem in New York City. Approximately ten percent of domestic violence victims treated at New York City public hospitals are under the age of twenty.⁵ In 2004, the New York City Domestic Violence Hotline received 18,282 calls from teenagers, an

¹ Rose Palazzolo, *A Date with Violence – Study Says One in Five Girls is Abused by Boyfriend*, Health, ABC News.com, August 2001, available at <http://www.rense.com/general12/onefive.htm>. While this chapter primarily focuses on the issue of young people and relationship abuse, the Public Advocate recognizes that many of the problems facing young people in relationship abuse situations are similar, and in many cases the same as, those being confronted by survivors who experience sexual abuse and forced sex within a dating relationship, and those who are sexually assaulted by someone they are not dating.

² The National Center for Victims of Crime, *Teen Dating Violence Fact Sheet*, available at <http://www.ncvc.org/ncvc/AGP.Net/Components/documentViewer/Download.aspx?DocumentID=38057>, citing to “Children Now,” Kaiser Permanente poll, December 1995.

³ Carole A. Sousa, *Teen Dating Violence: The Hidden Epidemic*, 37 *Fam. & Council. Cts. Rev.* 356, 358, July 1999.

⁴ National Domestic Violence Hotline, *Teens, Young Adults and Dating Violence*, available at <http://www.ndvh.org/teens.html>.

⁵ Lynda Crawford, *A Report on Violent Teen Dating Relationships*, *Gotham Gazette*, September 2003, available at <http://www.gothamgazette.com/article/children/20030903/2/511>.

increase of over thirty-six percent from the number of calls from teenagers received the year before.⁶

This chapter will examine the failure of City schools to protect teenagers in abusive dating relationships. In addition, it will address young people's lack of access to other critical resources, such as the family court system. Some of the information was previously released by the Public Advocate in the February 2004 report, "Before It's Too Late: Adolescent Relationship Abuse in New York City."⁷

The Impact of Dating Violence on Teenagers

Studies have uncovered a broad array of associated health and education risks specific to adolescents who have been in or are currently in, abusive relationships. Female adolescents who experience physical dating violence suffer a higher incidence of substance abuse, eating disorders, and high-risk sexual behavior.⁸ They are also eight to nine times more likely to attempt suicide.⁹ High school girls who have been abused are four to six times more likely to become pregnant than their non-abused peers.¹⁰ This statistic is made even more disconcerting by the fact that a recent study by the Centers for Disease Control found that new or expectant mothers under the age of twenty are at higher risk for homicide than any other age group.¹¹

Many teenagers do not tell any adults or authority figures, including parents, about the violence that they are experiencing. Research indicates that over ninety-seven percent of teenagers do not report violent incidents to authority figures.¹² In one study of teenage victims, sixty-one percent of adolescents confided in a friend about abuse, and thirty percent did not tell anyone.¹³

There are several reasons why young people may be secretive about their relationships. They might not understand that they are victims or that they

⁶ Mayor's Office to Combat Domestic Violence, *Domestic Violence Fact Sheet February 2005*, available at http://www.nyc.gov/html/ocdv/downloads/pdf/factsheet_feb2005.pdf.

⁷ *Before It's Too Late* is available at http://www.pubadvocate.nyc.gov/policy/before_its_to_late.html.

⁸ Jay G. Silverman, PhD; Anita Raj, PhD; Lorelei A. Mucci, MPH; Jeanne E. Hathaway, MD, MPH *Dating Violence Against Adolescent Girls and Associated Substance Use, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality*, *Journal of American Medical Association*, 572-579, August 1, 2001, abstract available at <http://jama.ama-assn.org/cgi/content/abstract/286/5/572?lookupType=volpage&vol=286&fp=572&view=short>.

⁹ See 7.

¹⁰ *Ibid.*

¹¹ Donna St. George, *CDC Explores Pregnancy-Homicide Link*, *Washington Post*, February 23, 2005 available at <http://www.washingtonpost.com/wp-dyn/articles/A45626-2005Feb22.html>.

¹² See 2; Rhode Island Coalition Against Domestic Violence, *Public Awareness Campaign Speaks to Teens about Dating Violence*, available at <http://www.ricadv.org/datingviolence.html>.

¹³ The National Center for Victims of Crime, *If you are a Victim of Teen Dating Violence*, available at <http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentAction=ViewProperties&DocumentID=32370&UrlToReturn=http%3a%2f%2fwww.ncvc.org%2fncvc%2fmain.aspx%3fdbName%3dSiteSearch>; *Old enough to date? Learn warning signs of abuse*, *Tucson Citizen*, January 27, 2005.

have not done anything wrong, they might fear retaliation from their batterers, or they might feel embarrassed or ashamed about their situations. Like adult relationships, teenage relationships are complicated and, despite the abuse, victims might love their batterers; teenagers might be scared that disclosing abuse to adults will mean that they will not be allowed to continue dating their boyfriends or girlfriends. Teenagers in violent same-sex relationships may be even less likely to confide in anyone about the abuse that they are experiencing if disclosing the abuse will mean disclosing their sexual identity. Finally, teenagers may hesitate to speak to their parents or guardians about abuse because they are scared that they will lose some of their recently-obtained independence.

Dangerous Schools: The DOE Does Not Protect Teen Victims of Relationship Abuse

An adult who is in an abusive relationship has several steps she can try to take to protect herself from her batterer when she leaves him. She can relocate, she can change jobs, and she usually can seek a protective order from the Family Court. In contrast, teenagers are far less mobile and have far fewer options.

It is likely that a young survivor of relationship abuse may attend the same school or live in the same community as her batterer or his friends, and schools demand a degree of contact between students that other environments do not. The teenage survivor may have to attend classes with her batterer, pass him in the halls, and ride the same bus home with him. Even if she breaks up with him, she still may have to interact with him or his friends on a daily basis. A teen involved with an adult batterer is relatively restricted in her mobility based on her family's residence and the school she attends.

When Rosanna was a sophomore at a Queens high school, she had a seventeen-year-old boyfriend. They dated for over a year. He was very controlling and hit her when he was angry at her. They attended different high schools, but met at the bus stop after school to travel home together; they were virtually neighbors. He did not allow her to participate in activities at school and required that she meet him at the bus stop daily. If she ever needed to change her plans, she had to call him for permission. She remained silent about the situation for months, scared of what he would do if she told someone and scared of the potential reaction of an authority figure. She didn't know whom she could trust and who could help. Eventually the isolation became worse than the fear, and she reached out to her high school guidance counselor.

The Department of Education (DOE) fails to provide adequate safety solutions for a teenage victim of dating violence attending City schools. There are only three available paths that allow a victim to permanently avoid attending the same school as her batterer – either the victim is granted a safety transfer, the batterer agrees to a voluntary transfer, or the school issues an involuntary transfer of the batterer. All are inadequate solutions.

The first option re-victimizes the abused student by making her the one to change schools, a voluntary transfer of the batterer is unlikely to happen, and an involuntary transfer of the batterer is nearly impossible for the school to obtain.

SCHOOLS LACK POLICY ON DATING VIOLENCE

Part of the confusion regarding what recourse an abused student may have stems from the fact that the DOE does not have a specific, uniform policy for addressing relationship violence in the schools. The DOE attempts to address relationship abuse through the regulations against unacceptable behaviors set forth in the Discipline Code;¹⁴ however, the specific behaviors set forth do not actually reflect the complex emotional and physical reality of relationship abuse.

Even in the most serious of cases, lack of policy prevents schools from adequately complying with court orders¹⁵ protecting students. When it comes to enforcing orders of protection that require the attacker to stay away from the victim, schools do not have a uniform practice to follow, and instead handle the situations on a case-by-case basis.¹⁶ When possible, schools may try to adjust students' schedules to make sure they are not sharing the same class;¹⁷ however, some schools lack the space to keep the students apart, and others do not have the flexibility of scheduling to ensure that they are not in the same classrooms. In addition, if the abuser has graduated or does not attend the school, no policy exists to notify school security personnel who could contact authorities if the abuser tried to enter school grounds.

SCHOOL SAFETY TRANSFERS ARE INAPPROPRIATE AND UNAVAILABLE

Provision 120.5 of the Regulations of the Commissioner of Education allows for student transfers in the event that a student is unsafe at the school that s/he attends;¹⁸ however, the circumstances for which a safety transfer can be requested are limited. The transfer is only available for students who are victims of violent criminal offenses that occurred on school grounds.

“Violent criminal offenses” include the infliction of “serious physical injury” as defined in the penal law, sexual offenses that involve forcible compulsion, and other offenses that are defined in the penal law and involve the use, or

¹⁴ Michele Cahill, Senior Executive, Office of Youth Development and School Community Services and Rose Albanese-De-Pinto, Senior Counselor, Office of School Intervention and Development, letter to Lisa Poris, May 9, 2005.

¹⁵ Orders of protection, and young people's lack of eligibility for them, is discussed later in this chapter. Additional discussion on order of protection can be found in Chapter Five, *Arresting Domestic Violence: New York's Criminal Justice System Aids and Hurts Survivors*, and Chapter Four, *Criminal (and Civil) Confusion: Survivor's and New York's Complicated Court Systems*.

¹⁶ See 14.

¹⁷ *Ibid*

¹⁸ Provision 120.5 is available at <http://www.emsc.nysed.gov/sss/SDFSCA/Provisions-Part120.5.htm>.

threatened use, of deadly weapons.¹⁹ Thus, a teenager in a violent relationship can only request a transfer if she has been severely attacked physically, or a deadly weapon was involved, *and* the incident happened on school property.

An incident that occurs off school grounds -- even one that results in an order of protection -- may not lead to a safety transfer for a victim. Moreover, a student subjected to an on-campus physical attack is not guaranteed a safety transfer because the student must be able to present a great deal of evidence to demonstrate the danger she is in. According to InsideSchools.org, an organization dedicated to improving public education in New York City, presenting a police report of the assault may not be sufficient.²⁰ In any case, safety transfers are an inadequate solution because they penalize the victims of abuse; to protect themselves, the victims must leave their supportive environments for new schools, while the perpetrators of the abuse may not be held accountable at all for their actions.

To illuminate how ineffective this regulation is for a young person in a violent relationship, consider the case of a hypothetical fifteen-year-old girl who comes to school on Monday morning with a black eye and bruises on her arm because her boyfriend, who is in her homeroom, attacked her over the weekend. This young woman would not be able to request a safety transfer to a different school: A black eye and bruises do not constitute a “serious physical injury” because under the regulation this term is defined by the penal law. The penal law defines a “serious physical injury” as one in which the injury “creates a substantial risk of death, or which causes death or serious protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.”²¹ Her batterer did not attack her with any “deadly weapons,” which the penal law defines as “any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged.”²² And finally, the attack did not happen on school grounds. Her boyfriend could attack her every weekend for months, and the girl would have to face him every Monday morning, because she does not qualify for a safety transfer.²³

STUDENT SUSPENSIONS ARE INSUFFICIENT SOLUTIONS

In an alternative scenario, if that same fifteen-year-old girl sustained the black eye on the school’s campus, she still would not be able to request a safety transfer as her injury still would not constitute a serious physical injury

¹⁹ *Ibid.*

²⁰ Insideschools.org, *Survival Tips, Transfers: For health and safety reasons*, available at http://www.insideschools.org/st/ST_transfer2.php.

²¹ NY CLS Penal § 10.00 (10)

²² NY CLS Penal § 10.00 (12)

²³ An exception could be made if she attended a Title 1 school in need of improvement, in which case she could request a transfer under No Child Left Behind Act.

under the penal law. She might be able to report the incident, however, and hope that her batterer receives an off-campus suspension for a year.²⁴ Students can be suspended from school for various infractions, and specifically if their presence in school presents a danger to other students.²⁵

Currently, the DOE makes it necessary to establish a record of suspensions before a dangerous student is assigned a mandatory, or involuntary transfer. In January 2004, Chancellor Klein announced a new policy of seeking mandatory transfers for students who have two or more suspensions within a twenty-four month period.²⁶ Therefore, if the 15-year-old girl in the hypothetical situation described above was attacked twice on school grounds by her boyfriend, and he was suspended twice for those attacks, he should be transferred to a different school according to DOE policy.

Even after a student is suspended twice, however, the DOE usually fails to transfer a dangerous student from a school permanently or in a timely manner. A report released by the Public Advocate's office in January 2005 found that the DOE was failing to provide mandatory transfers for students with multiple disciplinary infractions.²⁷ In that report, the Public Advocate's office found that eleven out of twelve high school administrators attested to the fact that regional offices fail to provide mandatory transfers for students with multiple disciplinary infractions.

Because it is so doubtful the batterer will be transferred, even if he receives an out-of-school suspension after attacking his girlfriend, in all likelihood he will be back in school once the suspension is over. In fact, the victim is likely to be in even more danger when he returns, as the batterer may blame her for getting him suspended. It is also possible that his friends will continue to harass her during his absence.

NEW YORK TEACHERS ARE NOT TRAINED TO IDENTIFY OR ADDRESS TEEN DATING VIOLENCE

A factor contributing to the danger a student may face in school is that teachers and other school staff are not trained to identify the signs of relationship abuse in their students.²⁸ Teachers are required to attend a two-hour child abuse identification workshop in order to be certified to teach.

²⁴ There are two kinds of suspensions: principal suspensions and superintendent suspensions.

Principal suspensions can last up to 5 days. Superintendent suspensions, which are ordered in situations with very serious charges, can last from 6 days up to one year. In the case of an assault, students receive superintendent suspensions which are always off-campus suspensions.

²⁵ Advocates for Children, *High School Superintendent's Suspension Guide for Parents of NYC Public High Schools*, available at <http://www.advocatesforchildren.org/pubs/hssusp.html>.

²⁶ Public Advocate of the City of New York, *New York City Department of Education's Zero-Tolerance Policy for Chronically Disruptive Students*, released January 13, 2005, available at: <http://www.pubadvocate.nyc.gov/reports/schoolsafety.shtml>. The policy applies to both principal and superintendent suspensions.

²⁷ See 25.

²⁸ See 14.

In addition, all teachers hired after February 2, 2001, must attend a two-hour workshop on school violence prevention and intervention;²⁹ however, neither of these workshops includes curriculum on identifying relationship abuse in students and counseling students who are in violent relationships, nor is there a mandated workshop on dating violence.³⁰ This means that, even if a student comes to a teacher to report a case of relationship abuse or the teacher is able to identify the problem, he or she may not know where to send students or what help is available.

CITY STUDENTS DO NOT LEARN ABOUT TEEN DATING VIOLENCE PREVENTION

Young people lack information about resources that may be available to youth in violent relationships.³¹ The City has a responsibility to educate all students about dating violence and has begun to take minimal steps towards accomplishing this task.

The DOE has recently developed a new health curriculum that includes sections on domestic violence and teen relationship abuse.³² It has only begun to train school staff in the new curriculum,³³ however, and it remains to be seen how extensive and effective it will be.

In 1999, the Mayor's Office to Combat Domestic Violence (MOCDV) and the City's Human Resources Administration (HRA) partly compensated for the gap in the health curriculum by partnering with domestic violence organizations to create a model teen relationship abuse education program in public high schools. The Adopt-A-School/Relationship Abuse Prevention Program (RAPP) is a comprehensive, school-based teen relationship abuse prevention program that promotes healthy relationships, intervenes in the cycle of teen intimate partner violence, and prevents destructive patterns of teenage dating abuse from extending into adult relationships.

When it first started, RAPP was only present in five schools. The program later expanded to twenty schools. In September 2005, the DOE introduced RAPP into ten more schools, including a few junior high schools, to bring the total number of participating schools to thirty.³⁴ There are 314 high schools in the City, however, which means fewer than one in ten will participate in

²⁹ NY CLS Education Law § 3004

³⁰ See 14.

³¹ Stephanie Nilva and Alison Yager, Break the Cycle New York, *Young Victims of Intimate Partner Violence: A Progressive Approach to Civic and Social Systems*, unpublished, April 2005.

³² See 14.

³³ *Ibid.*

³⁴ Mayor's Office to Combat Domestic Violence, *About OCDV: New Initiatives*, <http://www.nyc.gov/html/ocdv/html/about/initiatives.shtml>. Some students do receive training from independent domestic violence organizations that make arrangements with schools to come in and do trainings on this issue; however, these programs are not part of a City-implemented program to comprehensively address this problem.

the program even with the most recent expansion, and an even smaller percentage of junior high and middle schools will be participating.³⁵

Some high schools that are not in the RAPP program have other outside non-profit agencies conduct presentations on violence and healthy relationships for students and staff. All of these programs are critical not just to reaching out to teenage victims but also to educating perpetrators and potential perpetrators.

Todd, a junior at a high school in Manhattan, sat through a presentation given to his class by an outside non-profit organization about healthy relationships. The program made him think. After it was over, he approached the presenter. "I think I may be abusive to my girlfriend," he said. "She's kind of abusive to me, too, but I think I do it more." The guest presenter provided him with information about local agencies that offer healthy relationships groups for youth, as well as batterers' intervention programs for young people.

While these programs are a good start, they do not go far enough. It is important to reach out to children at an even earlier age. Children who are exposed to violence are likely to act out aggressively, often in the form of bullying at school. Later, the bully's aggressiveness can develop into sexual harassment or dating violence.³⁶ Young people should be targeted for education on domestic violence and healthy relationships before they even get to high school. None of the 241 junior high and middle schools in the City currently participate in the RAPP program, though six are scheduled to be included when the program expands in the Fall.³⁷

The City established another outreach initiative in the Fall of 2004, when it began an education campaign to encourage young people in violent dating relationships to call City hotlines to seek assistance.³⁸ The Department of Youth and Community Development (DYCD) and the DOE have distributed materials to four hundred public junior high and high schools, City hospitals, and after-school programs as a part of that campaign.³⁹

³⁵ The number of total high schools is from "The New York City Department of Education's Directory of Public High Schools." The number of schools participating in the RAPP program can be found at <http://www.nyc.gov/html/ocdv/html/issues/teenagers.shtml>.

³⁶ Government of Alberta, Alberta Roundtable on Family Violence and Bullying, *Achieving a Violence Free Alberta is Everyone's Business*, p. 24 available at <http://www.fathersforlife.org/doc/FVroundtableworkbook.pdf>.

³⁷ The number of junior high schools can be tabulated on <http://www.nycenet.edu/OurSchools/default.htm>.

³⁸ Mayor's Office to Combat Domestic Violence, *Special Issues: Teenagers*, available at <http://www.nyc.gov/html/ocdv/html/issues/teenagers.shtml>.

³⁹ *Ibid.* A pilot project called The Adolescent Dating Violence Project, a collaboration between the MOCDV and the DYCD, is also beginning to address the problem of educating young people on dating violence. Through the program, five peer leaders provide education on teen dating violence, family domestic violence and healthy relationships to runaway homeless youth and other at-risk youth in New York City. Additionally, staff from DYCD's runaway homeless youth programs and

No DOE Specialist for Student Dating Violence

It is unknown how many teenagers in New York City attend the same public schools as their batterers because the Department of Education does not track this information.⁴⁰ The DOE also does not have a record of the number of civil or criminal orders of protections the schools have tried to enforce, the number of violent acts between batterers and their victims that have occurred on school premises, or the number of survivors who have requested transfers either for themselves or for their batterers to avoid future violence.⁴¹ Based on national data, phone calls placed to the City's Domestic Violence Hotline, and anecdotal reports from students, teachers, and school administrators, advocates are aware that relationship violence among teens is a widespread problem.⁴²

The DOE does not have an individual dedicated specifically to addressing problems related to teen relationship abuse in the schools. It appears that two offices, the Citywide Coordinator for "Child Abuse and Domestic Violence" and the Administrator for the "Substance Abuse and Violence Prevention Program," may be partially responsible for oversight of this issue;⁴³ however, it is impossible for them to effectively handle such important, vastly different, and prevalent issues. If the DOE assigned staff specifically to oversee the problems of abuse of students by their dating partners in schools, then it would be possible to track incidents, help implement a uniform policy, and coordinate trainings for teachers, staff, and students.

Inaccessible Courts: Teenagers Lack Access to Court System

Thirty-four states and the District of Columbia permit victims of dating violence to petition for civil protective orders;⁴⁴ New York State is not one of them. Civil orders of protection are a critical first step in helping women regain control of their lives after ending an abusive relationship. In order to obtain a civil order of protection in New York, the petitioner and respondent must be "members of the same family or household."⁴⁵ Same family status is defined to include people who either are, or used to be, married to each other, people related by blood, and people who have a child in common,

Safe Horizon received two days of training on how to identify and assist youth affected by violence. The program recently received funding for three more years. E-mail communication between Christina Alexander, Director of Prevention Programs and Research, Mayor's Office to Combat Domestic Violence, and Lisa Poris, Office of the New York City Public Advocate, December 29, 2005.

⁴⁰ See 14.

⁴¹ *Ibid.*

⁴² Stephanie Nilva, Executive Director, Break the Cycle New York, phone conversation with Lisa Poris, January 25, 2005.

⁴³ Office of Youth Development and School-Community Services, available at <http://www.nycenet.edu/Administration/Offices/youthdev/default.htm>.

⁴⁴ Break the Cycle, *Recognition of Minor Victims in State Civil Domestic Violence Laws*, February 2005.

⁴⁵ NY CLS Family Court Act § 812 (1)

regardless of whether or not they have ever been married or have ever lived together.⁴⁶

New York is one of fourteen states whose laws remain silent as to whether one's age should be a factor in determining access to civil orders of protection. Ten states explicitly permit minors to obtain orders of protection without parent or guardian involvement, though nine of those states do place some restrictions on that access.

Because of the restrictions of New York's law, the only young people who are likely to qualify to petition in Family Court for an order of protection are those who have a child in common with their abusers. Young people in violent same-sex relationships would never qualify for a civil order of protection in New York State.

Individuals in dating relationships in New York State are confined to the criminal justice system to seek protective orders, and the restriction leaves many of them vulnerable. Many young people, particularly immigrants and those in same-sex relationships, do not trust police and do not see the criminal courts as a source of help.⁴⁷ A victim of any age could reasonably feel reluctant to initiate criminal proceedings that might lead to a partner's imprisonment; initiating such actions could endanger the victim further by inciting retaliation.

Those survivors of abuse who are willing to turn to the criminal courts for help face a system in which they are not parties to the criminal proceedings and, therefore, have no control over the process. They also face a higher burden of proof in criminal court than they would in family court, making it more difficult to access protection.

New York's lack of a civil option for an order of protection for adolescents heightens the danger that young people in violent relationships are facing. In a study of women who were petitioners for protective orders conducted by the National Center for State Courts for the United States Department of Justice, researchers found that the simple act of petitioning for a civil protection order was associated with an improved sense of well-being in study participants. Eighty percent of the participants reported feeling safer six months after they had petitioned for the protective order, and ninety percent reported feeling better about themselves.⁴⁸ A recent study in Maryland has confirmed that women who received a civil protective order are subjected to less intimate-partner violence three months later.⁴⁹

⁴⁶ *Ibid.*

⁴⁷ *See* 31.

⁴⁸ National Institute of Justice Research Preview, *Civil Protection Orders: Victims' Views on Effectiveness*, January 1998, available at <http://www.ncjrs.org/pdffiles/fs000191.pdf>.

⁴⁹ Joe Surkiewicz, *Of Service – House of Ruth Study Shows Protective Orders Protect Battered Women*, *The Daily Record*, April 29, 2005.

The exclusion of young people in dating relationships from New York's statutory law relating to protective orders minimizes the gravity of their situation. It affirms the opinions of many parents and authority figures that teenagers' relationships are not as serious as adult relationships, and therefore they can easily be ended if the relationship becomes abusive. In fact, studies have indicated that parents may actually contribute to teen dating violence by denying or minimizing the problem.⁵⁰ The reason that only a small percentage of young people reveal their abusive relationships to adult or authority figures may be that they recognize that adults do not take their relationships seriously.

Elizabeth is an eighteen-year-old young woman working on getting her GED. Her local District Attorney's office brought charges against her ex-boyfriend after she filed a police report against him. On various occasions, he had dragged her along the sidewalk, thrown a telephone receiver at her, and hit her so hard on the head that she needed stitches. When the DA's office began its investigation, Elizabeth cooperated with the Assistant District Attorney on her case. As the case went on she began to experience mounting anxiety and depression, and expressed this to the ADA. When the ADA told her that she would have to testify before a grand jury, Elizabeth decided she could no longer go along with the process. The criminal prosecution made her nervous, and she worried about retaliation from her ex-boyfriend and his family. The thought of telling her story to a jury of strangers made her extremely uncomfortable. Despite the advice she received from the ADA that without the criminal prosecution she would not be able to obtain an order of protection because she would not qualify for one in Family Court, Elizabeth refused to testify. She knew that she was sacrificing the security of the order of protection in order to disentangle herself from "the system."

Some of the states that allow young people to petition for a civil protective order require mandatory adult involvement in the process. In those states, either the parent or a guardian ad litem⁵¹ must petition for the protective order on behalf of the minor, or must sign the minor's petition for the order.⁵² While it is laudable that these states have a means for a minor to obtain a civil protective order, the requirement that an adult be involved in the process may act as a deterrent for minors who do not wish to have a parent involved. Young people have many reasons for not informing their families about the violence in their relationship. If a teenager must make an admission to a parent or guardian about the nature of their relationship in

⁵⁰ Christine Carlson, *Invisible Victims: Holding the Educational System Accountable for Dating Violence at School*, Harvard Women's Law Journal, 2003, at 359.

⁵¹ A guardian ad litem is a person appointed by the court to represent a minor's interests during a court proceeding.

⁵² The National Center for Victims of Crime, *Minor's Access to Protective Orders*, available at <http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentAction=ViewProperties&DocumentID=32674&UrlToReturn=http%3a%2f%2fwww.ncvc.org%2fncvc%2fmain.aspx%3fdbName%3dSiteSearch>.

order to obtain an order of protection, many young people who would benefit from a protective order might choose to forego the protection.

In 2004, the City Council passed Resolution 0589-2004, of which the Public Advocate was a co-sponsor, calling on the State Legislature to allow persons in violent dating relationships to petition the family courts for an order of protection. The resolution would allow both adults and young people in dating relationships to petition for a civil order of protection. While the State has considered this issue in the past, and the State Assembly has passed similar bills, it has yet to pass in the State Senate.⁵³ Until the State changes the Family Court Act to permit petitions from victims of violent dating relationships, many young people will only be able to receive an order of protection in the context of the criminal justice system.

Findings

Over ninety-seven percent of teenagers do not report dating violence to adult authority figures. If teenagers report abuse to anyone, they are more likely to speak about it to their friends and peers than anyone else. Thirty percent of young people in dating relationships do not tell anyone about the abuse.

The DOE does not hold student batterers accountable for attacks that may take place either on the school campus or off the campus. There are only limited circumstances under which students can be transferred out of schools in the event of a violent incident. Batterers often continue to attend the same schools as their victims, even after attacks take place on the school campus. The only recourse consistently available to a victim is to a request a safety transfer, which she may or may not be granted and which penalizes her for the abuse she has suffered. If she is granted the transfer, she will be the one forced to go to another school.

School suspensions of batterers do not actually protect student abuse victims. If the assault did not happen on school campus, administrators often are unable to suspend the violent students at all. Suspended batterers return to school after the suspension is over, sometimes just six days later, exposing their victims to a risk that is potentially even greater than before. Because of the faulty school transfer policy, administrators are unlikely to transfer student batterers even if there have been multiple suspensions.

The DOE neither has a uniform policy nor designated personnel to handle teen relationship abuse. The DOE does not have a coordinator specifically designated to address the problems of relationship abuse among youth. The lack of a uniform policy has led to a piecemeal approach in schools that makes the method for handling relationship abuse inconsistent and

⁵³ New York State Assembly, *Bill Summary* A05052, available at <http://assembly.state.ny.us/leg/?bn=A05052>.

unpredictable from school to school. The arbitrary nature of school responses to relationship abuse can place youth at risk of further abuse.

The DOE does not train teachers and staff to look for signs of abusive relationships among students. Although public school teachers are required to attend workshops on identifying child abuse and on school violence intervention generally, they do not receive training on how to identify dating violence among their students.

The DOE does not ensure that all students receive information on relationship abuse. Commendable programs such as the RAPP program are only available in a limited number of schools. The DOE has a new health curriculum which reportedly contains a segment on relationship abuse, but it remains to be seen how extensive and appropriate it will be.

The DOE has no record of how many students have reported being in a violent relationship or have sought help from their schools during the school day as a result of their violent relationships. The DOE does not have an administrator assigned to track this information or to help coordinate a response to the problem in the schools. Without this critical information, it is impossible to know the extent of the problem, to figure out the best ways of addressing it, and to know what resources should be dedicated to it.

Young people who do not have a child in common with their batterer are unable to obtain civil orders of protection from the Family Courts. In order for this to change, the State Legislature would have to amend the law. In 2004, the City Council passed a resolution calling on the State Legislature to allow persons in violent dating relationships to petition the family courts for an order of protection. Related bills have passed the State Assembly a number of times but have repeatedly stalled in the State Senate.

Recommendations

The DOE should post the City's Domestic Violence Hotline and Youthline phone numbers in all appropriate locations in junior high, middle, and high schools. Locations should include places students are most likely to read them, such as in bathrooms and locker rooms. Because teenagers are more likely to confide in a friend than anyone else, and because they lack information about resources, it is important that postings include information on how to help a peer or friend in an abusive relationship. Postings should include an informational checklist of warning signs of abusive behavior. They should also include information about how to safely contact school counselors, hotlines, and advocacy organizations to talk about problems.

The DOE should modify its school transfer policy to require and simplify the transfer of batterers from schools they attend with their victims. It is

unacceptable that a victim's only way to feel safe in school is to ask for a safety transfer herself. The DOE transfer policy should not violate the batterer's due process rights, but it should allow for a transfer when violent acts occur either on- or off- campus. At a bare minimum, an order of protection should trigger a hearing for an involuntary transfer of the batterer.

The DOE should implement a uniform policy in schools for handling teen relationship abuse. A uniform school policy should include a variety of elements, including safety planning with the victim, class and lunch period schedule changes, suspensions or transfers, dissemination of information to teachers and security personnel, counseling for the victim and perpetrator, locker assignment changes, letters to the perpetrator's parents or guardians, and staggered school departure times for the victim and batterer. For cases in which only the victim attends the school, the policy should include a procedure for instructing safety personnel not to allow the perpetrator onto the school campus.

The State Department of Education should include a workshop on teen relationship violence in teacher certification requirements. The workshop should include information on identifying relationship abuse and information on resources and services available to students experiencing relationship abuse.

To the extent possible, the DOE should expand its RAPP program, or otherwise ensure that domestic violence advocates, are able to come into each and every junior high, middle, and high school to speak with the students about relationship abuse.

The DOE should designate a coordinator to combat student dating violence. The position would include responsibility for tracking incidents of teen dating violence, tracking enforcement of orders of protection in schools, and implementing a uniform citywide response to student dating violence.

The State Legislature should enact legislation allowing persons who are in violent dating relationships to petition for orders of protection in Family Court. Until the Legislature changes the Family Court Act to permit such petitions, a young person is able to receive an order of protection only in the context of the criminal justice system, unless she has a child in common with her batterer. For many reasons young people may be wary about seeking assistance from the criminal justice system, and amending the law is critical to their safety.

Caring for the Children



Improving the City's Relationship
with Children Exposed to Domestic
Violence

Executive Summary

Children are uniquely affected by the presence of domestic violence in the home. Even if they are not on the receiving end of a physical or verbal attack, they may experience lifelong consequences as a result of the exposure. While increased attention is being paid to the impact of domestic violence on child witnesses to domestic violence, more needs to be done to prevent the exposure in the first place and to provide services to those who have already been exposed.

This chapter explores the extent to which New York City has begun to take steps to aid this vulnerable population and identifies areas where improvements still need to be made. The Administration for Children's Services (ACS) has developed many new initiatives to improve its work with this population, but several of these have not been fully implemented and there are other areas that still need to be addressed. As a whole, the City needs to focus more attention on providing mental health and counseling services to those children who have witnessed domestic violence so that they can recover as fully as possible.

Summary of Findings

- ACS does not screen to determine whether anyone in prospective adoptive and foster homes has a history of perpetrating domestic violence.
- Batterers and their families and friends can continue to perpetrate abuse by calling the state child abuse hotline and making false allegations.
- As the result of a court case against the agency, ACS has dramatically decreased the number of removals of children from mothers who are victims of domestic violence and has implemented a series of initiatives to improve its handling of child welfare cases involving domestic violence.
- ACS is ineffectively and infrequently using Clinical Consultation Teams on domestic violence cases.
- ACS has failed to ensure adequate training for many important frontline workers and has not mandated that supervisors and directors of preventive services agencies receive training in domestic violence dynamics from domestic violence specialists.

Summary of Recommendations

- ACS must screen all potential adoptive and foster homes in the Domestic Violence Registry to ensure that the homes are violence free.
- ACS should make a public service announcement promoting the importance of calling the child abuse hotline if abuse or neglect is suspected but should also warn that deliberately making a false report is a crime.
- ACS must ensure that all workers are adhering to the domestic violence policy reforms the agency has implemented over the past few years and are integrating its Guiding Principles on domestic violence into the daily activities of its frontline caseworkers.
- ACS must mandate caseworkers to utilize Clinical Consultation Teams in every case involving domestic violence.
- ACS must mandate that all caseworkers at foster care contract agencies receive specialized training on domestic violence issues.
- ACS must mandate that all supervisors and directors at preventive services agencies receive training on the dynamics of domestic violence from domestic violence experts.



Chapter Three

Caring for the Children

Introduction

Adults are not the only victims of domestic violence. Child witnesses of domestic violence can face lifelong consequences if they do not receive the appropriate interventions and services.

This chapter discusses the failures of the City to protect children who are exposed to or at risk of domestic violence in their homes and in foster care. While the Administration for Children's Services (ACS) has been forced by the courts in recent years to take significant steps to improve its approach to cases involving domestic violence, the agency has not yet fully implemented many of its progressive initiatives. ACS has also failed to ensure that foster children will not be exposed to domestic violence in their foster homes, and the City as a whole has not provided child witnesses to domestic violence the services that they need to recover as completely as possible.

The Impact of Domestic Violence on Children

Researchers estimate that between 10 and 20 percent of children nationwide are at risk of exposure to domestic violence.¹ Competent research about the effects on children of exposure to domestic violence is in its infancy.² Children's experiences vary depending on the level of violence, the degree of the exposure, other stressors to which the child may be exposed (e.g., community violence, media violence, school violence), the resulting harm such exposure produces for the child, the coping skills unique to the individual child, and the presence of other protective factors such as a child's relationship with his or her parents.³

¹ National Clearinghouse on Child Abuse and Neglect Information, National Adoption Information Clearinghouse, *Children and Domestic Violence: A Bulletin for Professionals*, August 2003, available at <http://nccanch.acf.hhs.gov/pubs/factsheets/domesticviolence.pdf>.

² Jeffrey Edleson, Ph.D., *Should Childhood Exposure to Adult Domestic Violence Be Defined as Child Maltreatment Under the Law*, available at: <http://www.mincava.umn.edu/link/documents/shouldch/shouldch.shtml>.

³ See 2.

While some children who are exposed to domestic violence in the home show no greater problems in adulthood than those who are not exposed, many other children can suffer lifelong consequences. Some problems associated with childhood exposure to domestic violence include higher levels of aggression, poor social relationships, lower cognitive functioning, belief in rigid gender stereotypes and increased tolerance for and use of violence in adult relationships.⁴ Studies further indicate that children who are exposed to domestic violence in their homes are at an increased risk of experiencing neglect or abuse themselves.⁵

Experts caution that child welfare interventions in cases in which a child has been exposed to domestic violence must be sensitive, non-punitive, and collaborative in order to promote safety, well-being, and stability for not only the child, but the adult victim as well.⁶ It is also imperative for all agents of the child welfare system to be aware of the potential for racial bias when making removal determinations as studies have shown that children of color are overrepresented in the child welfare system.

Safety Hazard: ACS Places Children in Dangerous Foster Homes

Removing children from their parents' care does not necessarily ensure their safety.⁷ The incidences of abuse and death among children in foster care in New York City are twice that of children in the general population.⁸ According to ACS, over 400 children were reported abused or neglected in foster care in fiscal year 2004 in New York City.⁹ There is no way of knowing how many of these incidents could have been avoided by better screening of foster homes and no way of actually knowing how many more incidents of abuse in foster homes go unreported. ACS removes children from homes that it finds to be unsafe but does not ensure that the new homes actually are safer.

Adults wishing to become adoptive or foster parents are subjected to a screening process to determine whether or not their homes would be appropriate placements for foster children. Foster care agencies are responsible for investigating prospective adoptive or foster parents. Investigators ensure that the prospective foster parent is over the age of 21, in good health, has an independent source of income, and a home large enough to accommodate a child. Additionally, the applicant is required to provide character references and is interviewed regarding his or her

⁴ See 1.

⁵ *Ibid.*

⁶ See generally National Council of Juvenile and Family Court Judges, *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice*, 1999. Executive Summary available at: <http://www.vaw.umn.edu/documents/executvi/executvi.html>.

⁷ Linda Ostreicher, *Child Welfare and Domestic Violence*, Gotham Gazette, April 01, 2002, available at <http://www.gothamgazette.com/article/Social%20Services/20020401/15/656>.

⁸ *Nicholson v. Williams*, 203 F. Supp. 2d 153, 199 (E.D.N.Y. 2002).

⁹ Administration for Children's Services, *ACS Update Dec 2004*, available at http://www.nyc.gov/html/acs/pdf/monthly_update.pdf.

motivations for becoming a foster parent. Finally, all members of the household over the age of 18 are screened to make sure that they have not been the subject of an indicated report with the State Central Registry of Child Abuse and Maltreatment. They also have to undergo a criminal history check with the New York State Division of Criminal Justice Services.¹⁰

At no point in the screening process, however, is there an investigation to determine whether homes are free from domestic violence. This oversight is particularly striking given that a check for protective orders involving members of in a given household would be relatively easy. Since October

Andre recently aged out of foster care. In one of his last homes, his foster brother, who was about twenty at the time, was dating a girl of the same age. Many times, in the presence of Andre, the foster brother and the girlfriend would argue, and he would hit her in the face, leaving marks. Andre complained many times to his foster mother, but she refused to intervene. He also complained to his caseworker, but months went by before she took any action. The violence brought back memories of the abuse that Andre had experienced before he entered foster care.

1995, New York State has maintained a statewide database of orders of protection and warrants issued in domestic violence cases. Known as the Domestic Violence Registry, the database

includes orders issued in both criminal and civil matters and can be accessed by law enforcement and court personnel.¹¹

The criminal background check undertaken by foster care agencies is not sufficient to discover incidents of domestic violence. While criminal convictions for domestic violence do appear in a criminal background check, plea bargains and dismissals do not, even if the case resulted in a final order of protection against the defendant.¹² Furthermore, a criminal background check cannot determine whether any person in a prospective household has been the subject of a family offense proceeding in civil court. Both civil and criminal orders of protection do appear in the Domestic Violence Registry, however.

¹⁰ New York State Office of Children and Family Services, *Requirements to Become a Foster Parent*, available at <http://www.ocfs.state.ny.us/main/fostercare/requirements.asp>.

¹¹ Division of Technology, Family Protection Registry Center, "Records Retention and Disposition Schedule," August 1998, available at http://www.courts.state.ny.us/admin/recordsmanagement/OCA/OCA_FamilyProtectionRegistryCenter.pdf.

¹² Approximately one out of five criminally prosecuted domestic violence incidents result in plea bargains, called ACDs, or adjournments in contemplation of dismissal, in which the batterers are given probation and do not have to make guilty pleas, and almost half of the cases overall are dismissed. New York City Criminal Justice Agency, *Combating Domestic Violence in New York City: A Study of DV Cases in the Criminal Courts*, April 2003, available at <http://www.nycja.org/research/reports/ressum43.pdf>. More information about ACDs can be found in Chapter Five, *Arresting Domestic Violence: New York's Criminal Justice System Aids and Hurts Survivors*.

While in some cases it may be appropriate for children to stay in the custody of parents engaging in domestic violence, it is never appropriate for these children, or any foster children, to be exposed to domestic violence in their foster homes.

It is important for foster care agencies to screen for domestic violence in potential adoptive or foster homes because there is such a large overlap between adult domestic violence and child abuse and neglect. Research indicates that there are both adult and child victims in 30 to 60 percent of families affected by domestic violence.¹³ That means that if children are placed into a foster home with domestic violence, they will be at risk for further abuse.

The current foster home certification process also does not include interviews with minor members of the household. Young people experience violent dating relationships, but may be unlikely to have sought or been the subject of an order of protection, because of the limitations of the court system. Without interviewing all of the members of the household, there may be no other way to learn about this potential danger to foster children and no way to provide the appropriate services to ensure that the home will be safe for any foster children placed there.

New York State Enables Batterers to Continue Abuse by Alleging Abuse

Domestic violence is not limited to physical abuse. It can take a number of other forms including mental, emotional, and financial abuse. Batterers also sometimes manipulate the system to carry out their abuse. Sometimes they harass their victims through the court systems by filing unnecessary lawsuits or motions within lawsuits, and sometimes they use the child welfare system.

According to survivors of domestic violence, batterers and their family and friends frequently harass victims by calling the child abuse hotline and making false accusations against their victims.¹⁴ Phone calls to the child abuse hotline, which is run by the State Office of Children and Family Services (OCFS), can be made anonymously so, while the victim may suspect her batterer is her accuser, she is unable to prove it. As long as there is sufficient information to make a report, all calls to the hotline will be referred to ACS to be investigated, no matter how many previous calls have been made and determined to be unfounded.

The investigation process can be harrowing for victims and their children. They are interviewed by the investigating caseworker, and children often

¹³ National Clearinghouse on Child Abuse and Neglect Information, National Adoption Information Clearinghouse, *Children and Domestic Violence: A Bulletin for Professionals*, August 2003, available at <http://nccanch.acf.hhs.gov/pubs/factsheets/domesticviolence.pdf>.

¹⁴ Voices of Women Organizing Project, Battered Women's Resource Center, *Battered Women's Experiences with the NYC Administration for Children's Services*, handout.

must be physically examined for bruises, as well. Children can even be pulled out of their classes at school to be interviewed and examined each time a report is made. It is a misdemeanor offense under the Penal law for a caller to knowingly make a false report, but because of the difficulty of proving the identity of the caller, such cases are seldom prosecuted.¹⁵

For years Anita's boyfriend had subjected her to various forms of abuse. After one particularly bad beating she called the police. His arrest resulted in a conviction, and he was incarcerated for a few months. Anita felt relieved that he would be out of her life for a while. A few weeks after he was sentenced, she was awakened in the middle of the night by pounding at her door. Police officers were standing there with an ACS caseworker. A call had been made against her saying that she had tried to kill her children. Anita never even spanked her children. The officers searched her home, and the caseworker woke up her children and interviewed them. Both Anita and her children were terrified. Later, Anita learned that her boyfriend had managed to place a call to the child abuse hotline from prison and make the false allegation against her.

The abuse that survivors experience as a result of their batterers making false allegations of child neglect against them does not end with the investigation. ACS currently uses the name of the mother of the child(ren) to identify child protective cases, whether or not the agency believes the mother is directly involved in the alleged abuse or neglect. As a result her name may appear on the state child abuse registry, the consequences of which may be harsh if she currently works, or would like to work, in a field that involves contact with children, such as child care or teaching. This past March, the City Council passed legislation that would require ACS to stop tracking cases in this manner, but it remains to be seen how ACS will implement these changes.¹⁶

Following Orders: Lawsuit Forces ACS to Change its Ways

THE NICHOLSON CASE AND THE NEED FOR A NEW WAY OF THINKING

The mission of ACS is to ensure the safety and well-being of every child in New York City.¹⁷ As part of this mission, ACS sometimes finds it necessary to remove children from their parents if their homes are considered to be unsafe due to parental abuse or neglect. During the 1990's,¹⁸ ACS began a practice of removing children from battered women because the women had "engaged in" domestic violence or because they "failed to protect" the

¹⁵ NY Penal Law Sec. 240.50.

¹⁶ New York City Council, *Prop. Int. No. 266-A*, March 9, 2005, available at <http://webdocs.nycouncil.info/attachments/65261.htm>.

¹⁷ Administration for Children's Services, *ACS Mission*, available at <http://www.nyc.gov/html/acs/html/whatwedo/introduction.html>.

¹⁸ The practice began in the mid-1990's, and ultimately took hold in 1998 after a state appellate court ruled on a case called *Lonell J.* ACS interpreted the decision to mean that they could remove children without demonstrating any actual harm to the children and without a court order for the removal. See 8 at 215.

children from witnessing domestic violence.¹⁹ Since that time, ACS has taken significant steps in improving its approach to child welfare cases involving domestic violence.

Nicholson v. Scoppetta,²⁰ a recently settled federal class-action lawsuit brought on behalf of women who were battered and who had their children removed by ACS through no fault of their own, challenged this practice of removal.²¹ The named plaintiff was Sharwline Nicholson, a single working mother of two who was charged with neglect on the grounds that she failed to protect her children from domestic violence. Her story reveals the injustice of that policy:

One afternoon while her infant daughter was asleep in another room and her son was at school, Ms. Nicholson was severely beaten by the father of her daughter.²² The assault began after Ms. Nicholson attempted to end the relationship. After the batterer left the apartment, Ms. Nicholson immediately called 911 seeking law enforcement and medical assistance. Before leaving with the paramedics, Ms. Nicholson arranged for her children to stay with a neighbor, who had frequently cared for the children. While Ms. Nicholson lay in the hospital with broken bones and bruises, ACS removed both of her children from the care of her neighbor, and informed Ms. Nicholson that in order to see them she would have to appear in court the following week.

The old policy failed to take into account the negative effect a traumatic separation from a parent can have on a child. Caseworkers did not weigh the known harm of removing a child from a parent against the potential harm a child may suffer by staying with the parent. Caseworkers did not try to mitigate the harm of removal by examining each case individually, nor did they offer appropriate services to domestic violence victims so that the removal of the child would become unnecessary. Caseworkers regularly removed the children without first getting a court order.²³

Nicholson brought about many of the changes in ACS's policy that advocates hope will continue to improve the agency's traditionally punitive treatment of women reporting domestic violence. It should be noted that while some of

¹⁹ See 8 at 209-210.

²⁰ This case began when Sharwline Nicholson, the named plaintiff in the class action, filed a suit in April 2000 on behalf of herself and her children. This case later was consolidated by the courts with cases of other women that had filed similar actions. In January 2001, the plaintiffs made a motion for class certification.

²¹ *In re Nicholson, Et Al.* 181 F. Supp. 2d 182, 183.

²² Ms. Nicholson's experiences with ACS and the courts is fully recounted in *Nicholson v. Williams*, 203 F. Supp. 2d 153, 168-173.

²³ See 8 at 211-212, 228.

these initiatives had been talked about before *Nicholson* was filed, the case may have acted as a catalyst for progress to actually take place.²⁴

In December of 2004, after three years of litigation, the *Nicholson* plaintiffs were able to settle their case with ACS. The settlement became possible after the New York Court of Appeals issued a decision on a part of the case that had been referred to them by the Federal Appeals Court.²⁵ The New York Court of Appeals ruled that the law does not permit a domestic violence survivor to be charged with neglecting her child(ren) based solely on the fact that the child(ren) was (were) exposed to domestic violence.²⁶ In other words, the court found that exposing a child to domestic violence could not be considered neglectful, and instead some actual or threatened harm must be proved to remove a child.²⁷ In explaining why exposing a child to domestic violence is not presumptively neglectful, the court noted, “not every child exposed to domestic violence is at risk of impairment,”²⁸ and therefore government intervention in the family is not always justified.

As part of the December 2004 settlement agreement, the City stated that it intended to comply with the Court of Appeals ruling.²⁹

MERE WORDS?: ACS ARTICULATES PRAISEWORTHY POLICY CHANGES FOR DV CASES

In part, the settlement was possible because ACS had already begun to take steps to modify its antiquated approach to domestic violence cases prior to December 2004. ACS had been forced to act when early in the case, Judge Jack Weinstein, the federal district judge who heard the case, issued a preliminary injunction that prevented ACS from removing children from battered women solely because they were victims of domestic violence.³⁰ As

²⁴ See 7.

²⁵ After the federal district court made its initial decision to issue a preliminary injunction preventing ACS from removing children from battered women without a court order, ACS appealed that decision to the United States Court of Appeals for the Second Circuit. Recognizing that some of the issues involved in the case were issues of state law, the Second Circuit asked that the New York Court of Appeals answer three certified questions about New York state law:

1. Does the definition of a ‘neglected child’ under N.Y. Family Ct. Act § 1012(f), (h) include instances in which the sole allegation of neglect is that the parent or other person legally responsible for the child’s care allows the child to witness abuse against the caretaker?
2. Can the injury or possible injury, if any, that results to a child who has witnessed domestic abuse against a parent or other caretaker constitute ‘danger’ or ‘risk’ to the child’s ‘life or health,’ as those terms are defined in the N.Y. Family Ct. Act §§1022, 1024, 1026-1028?
3. Does the fact that the child witnessed such abuse suffice to demonstrate that ‘removal is necessary,’ N.Y. Family Ct. Act §§ 1022, 1024, 1027, or that ‘removal was in the child’s best interest,’ N.Y. Family Ct. Act §§ 1028, 1052(b)(i)(A), or must the child protective agency offer additional, particularized evidence to justify such removal?

²⁶ *Nicholson v. Scoppetta*, 3 N.Y.3d 357.

²⁷ *Id* at 368.

²⁸ *Id* at 375.

²⁹ *Nicholson v. Scoppetta*, “Stipulation and Order of Settlement,” December 16, 2004.

³⁰ See 21.

a result of that injunction and earlier work done by advocates in cooperation with ACS before the suit was even filed, ACS began to make changes to comply with the conditions the court had set forth and continued to implement them throughout the litigation.

In 2001, ACS began distribution of, “Domestic Violence Guiding Principles,” which address how the agency should approach cases involving caretakers who experience domestic violence.³¹ There are four major themes to the Guiding Principles: children should live in homes free of domestic violence; families suffering from domestic violence should receive proactive services that are uniquely designed to meet the needs of the particular family; batterers must be held accountable for their actions; and all people and systems involved with a child’s well-being must work together to ensure a positive outcome for children and their families.³²

According to the principles, when ACS detects domestic violence in a home, the preferred approach is for caseworkers to conduct an assessment of the family and offer preventive services so as to avoid removing the children if at all possible. Examples of preventive services may include assistance in setting up mental health counseling, information about filing for an order of protection, and help relocating to a safe location.

Following the development of the Guiding Principles, with the help of a large number of outside stakeholders, ACS issued a strategic plan on domestic violence in 2003. The Strategic Plan has many different components, including integrating domestic violence into caseworker training, continuing to address domestic violence through preventive services, and developing a community-based response to domestic violence.³³

ACS’s Strategic Plan for handling domestic violence cases initially through the offering of preventive services goes hand-in-hand with its overall plans to reduce the number of cases in which children are removed from their parents by offering home support to families before removal becomes necessary. Indeed, ACS now serves more children and families through preventive services than through foster care.³⁴

ACS HAS NOT INTEGRATED POLICY REFORMS INTO PRACTICE

One element of the Strategic Plan is the implementation of Clinical Consultation Teams (CCTs). These teams are comprised of a coordinator,

³¹ Administration for Children’s Services, *Quality Child Welfare Practice with Families Affected by Domestic Violence: A Strategic Plan*, p. 2, available at

http://www.nyc.gov/html/acs/pdf/domestic_violence_plan.pdf.

³² Administration for Children’s Services, *ACS Domestic Violence Principles*, available at http://www.nyc.gov/html/acs/html/whatwedo/domestic_violence.html.

³³ See 31.

³⁴ Administration for Children’s Services, *Protecting Children and Strengthening Families: A Plan to Realign New York City’s Child Welfare System*, February 2005, available at http://www.nyc.gov/html/acs/pdf/protecting_children.pdf.

domestic violence specialist, mental health specialist, and substance abuse specialist, and are available to provide guidance to caseworkers in complex cases, in particular those involving domestic violence. ACS contracted with four nonprofit human service organizations to create twelve CCTs based in ACS field offices throughout the city.³⁵

ACS has not mandated its caseworkers to consult with the teams on all relevant cases, nor are there any guidelines requiring that a caseworker follow the recommendations of the CCTs. Consequently, advocates remain concerned about the efficacy of the teams.

Advocates' concerns are shared by the Nicholson Review Committee which,³⁶ in its final report to Judge Weinstein before the case was settled, remarked specifically about the effectiveness of the CCTs. The Committee noted that ACS's goals continued to be held up by systemic obstacles to compliance with the preliminary injunction, and that, "Among these, most marked were the role of the Clinical Consultation Teams."³⁷

Advocates also express frustration that the CCTs cannot reach out to caseworkers, even to check in on a case for which they had previously given advice. Case consultations are initiated by ACS staff, and the CCTs do not have the authority to make any child welfare decisions³⁸ If the caseworker chooses not to follow up with the CCT, or chooses not to seek advice from the CCT in the first place, there is no recourse the CCT, or the family under investigation, can take. Some caseworkers continue to resist the involvement of the CCTs.³⁹

ACS reports that CCTs gave 8000 case consultations in 2003,⁴⁰ an increase over the 5500 that were given in 2002; however, the majority of the consultations were for mental health and substance abuse cases, not domestic violence cases.⁴¹ Although advocates support the CCTs, there is no way to assess the quality, nature, or duration of a contact or consultation between a CCT and caseworker, and there is concern that the overall number may be inflated, preventing a clear understanding of the program's true impact on domestic violence cases.

³⁵ Child Welfare Watch Report, *First On the Scene: Reformers are Looking to Frontline Workers to Fix the System*, Fall 2003, available at http://www.citylimits.org/images_pdfs/pdfs/CWW%20Fall%202003.pdf.

³⁶ The Nicholson Review Committee was set up as one of the requirements of the preliminary injunction to assist in the enforcement of the preliminary injunction. The Committee provided periodic updates to the court, and listened to complaints of ACS violations.

³⁷ Nicholson Review Committee, Final Report, December 17, 2004.

³⁸ Administration for Children's Services, *Q&A Clinical Consultation Program*, August 2002.

³⁹ See 35.

⁴⁰ Administration for Children's Services, *2003 Year End Review: Protecting Children, Strengthening Families, Supporting Communities*.

⁴¹ See 35.

Plans are underway for CCTs to begin work with preventive service caseworkers as well. No new experts were hired as part of the expansion of responsibilities, and while the expertise of current CCT personnel is welcome and needed on preventive cases, some worry that they are spread too thin.⁴²

As mentioned above, ACS's Strategic Plan includes the integration of domestic violence into caseworker training and addressing domestic violence through preventative services. In its final report, the Nicholson

Laura is a domestic violence advocate. One of her client's had been in an extremely violent relationship, and her boyfriend ultimately even hit one of her children. The children were removed by ACS and placed in foster care. Listening to her client's reports, Laura felt that the caseworker did not understand her client's needs as a victim of domestic violence, or even the dynamics of domestic violence in general. Laura tried reaching out to the domestic violence specialist on the Clinical Consultation Team in the related field office to ask for help with the case. The specialist agreed that she could be of help but indicated that she was unable to take any action unless the caseworker initiated contact.

Review Committee noted its concern regarding the accountability of caseworkers and the integration of these principles into frontline practice.⁴³ Preventive service agencies participate in a program, which uses an outside organization specializing in domestic violence to train preventive service caseworkers on issues specific to domestic violence cases; however, foster caseworkers at contract agencies do not attend these trainings. Advocates are also concerned about the accountability of caseworkers. Clients are inhibited from filing complaints against caseworkers because they are concerned

about retribution if the caseworker is not replaced.

ACS has expressed interest in providing similar domestic violence training for the caseworkers in its foster care contract agencies as that provided to caseworkers at preventive service agencies. ACS has not made such training mandatory, however, and consequently most agencies have chosen not to participate.⁴⁴ As of December 2004, over 93 percent of foster children are placed with foster care contract agencies,⁴⁵ which means that nearly 20,000 foster children have caseworkers who have not received specialized domestic violence training.

Advocates assert that the lack of specialized training is symptomatic of a larger problem. They are concerned that foster care caseworkers are not

⁴² *Ibid.*

⁴³ *See* 37.

⁴⁴ Alisa del Tufo, Co - Executive Director, CONNECT, a community-focused domestic violence intervention organization, speaking to Public Advocate's Committee on Domestic Violence, Children, and Youth, on February 22, 2005.

⁴⁵ *See* 9.

internalizing the guiding principles and legal issues articulated by the Nicholson case, and that some caseworkers do not completely understand the importance of keeping a survivor's actual location, and not just her place of residence, confidential at all times.⁴⁶ While most caseworkers appear to be aware that the lesson of *Nicholson* is that they cannot remove children from the home solely or primarily because of domestic violence, they appear less familiar with the reasoning behind this prohibition and the alternate interventions that increase safety and stability.⁴⁷

Despite their participation in the training program, preventive service agencies still have a long way to go to be able to fully address and respond to domestic violence cases. Supervisors and directors at these agencies are not currently required to receive training on the dynamics of domestic violence from agencies that specialize in domestic violence. As a result, they may not understand the subtleties of relationships with domestic violence and the need for unique analysis of each situation before giving advice and may be unprepared to provide adequate supervision of caseworkers. They are required to fulfill annual training requirements, and ACS requires that yearly training plans be submitted to them to ensure that training is completed, but training from domestic violence experts is not mandated.⁴⁸

City Lacks Programs for Child Witnesses

For years, young witnesses of domestic violence have been unable to receive critical mental health services in New York City.⁴⁹ As discussed above, child witnesses to domestic violence are at risk of suffering long term consequences as a result of their experiences. Children are resilient, but in order to recover as much as possible, it is critical for them to receive mental health services after their traumatic experiences.

Unfortunately, there is a tremendous shortage of mental health programs in the City specifically targeted to children who have witnessed domestic violence. The programs that do exist are not necessarily a part of domestic violence programs that currently serve battered women. Advocates report that the primary cause of this problem has been funding policies on the state level. One particularly restrictive policy dates back to 1994, when New York State began to prohibit the development of new out-patient mental health programs if the new programs required additional Medicaid funding. The result of this prohibition is that providers cannot create new programs or

⁴⁶ Conversation with Public Advocate's Committee on Domestic Violence, Children, and Youth, February 22, 2005

⁴⁷ Conversation with Jill Zuccardy, Director, Child Protection Project, Sanctuary for Families Center for Battered Women's Legal Services, based on advocates' reports, May 4, 2005.

⁴⁸ Administration for Children's Services, *Preventive Services Quality Assurance Standards & Indicators and FRP Addendum*, April 1998.

⁴⁹ The Council of the City of New York Office of Communications, *Domestic Violence Groups Receive \$1 Million to Help Kids*, October 28, 2004, available at http://www.nycouncil.info/pdf_files/newswire/10-28-04children_violence.pdf.

expand old ones unless they can secure non-Medicaid funding through independent sources.⁵⁰

In recognition of the serious lack of programs for child witnesses, the New York City Council gave one million dollars to four organizations in fall of 2004 to help fund programs that provide these important mental health and counseling services.⁵¹ The funding provided by the Council is a good start, but more will be needed if the programs are to succeed.

The Department of Education (DOE) also fails to provide appropriate services for child witnesses to domestic violence. Many DOE personnel do not receive training on recognizing trauma among students or on how to initiate school-based interventions that can aid the children.⁵² This oversight is troubling because school-based interventions have been shown to contribute positively to a child's resiliency and recovery from the trauma of witnessing domestic violence.⁵³

Findings

ACS does not screen to determine whether anyone in prospective adoptive and foster homes has a history of perpetrating domestic violence. ACS does not require its contract agencies to screen foster parents or other members of the foster home to determine whether an order of protection has ever been entered against them and does not require them to screen other children in the household to determine if they are experiencing violent dating relationships. Thus, children may be removed from their home due to exposure to domestic violence, only to be placed in another home where domestic violence exists, or where there is a perpetrator of domestic violence. Over 400 children were reported abused or neglected in foster care last year, and some of these incidents may have been prevented by screening prospective foster parents using the Domestic Violence Registry.

Batterers and their families and friends can continue to perpetrate abuse by calling the state child abuse hotline and making false allegations. They are

⁵⁰ Committee on Mental Health, Mental Retardation, Alcoholism, Drug Abuse, and Disability Services, Council of the City of New York, *Briefing Paper of the Human Services Division, Oversight, "Caps, COPS, and the Lack of Funding for Mental Health Services for Children Ages 0-5,"* March 1, 2004, available at <http://webdocs.nycouncil.info/attachments/60324.htm?CFID=262779&CFTOKEN=79665141>.

⁵¹ See 49.

⁵² Advocates for Children of New York, *Children in Crisis: Advocates for Children's Domestic Violence Education Advocacy Project*, May 2004, available at http://www.advocatesforchildren.org/pubs/DV_Report.doc.

⁵³ Joy D. Osofsky, *The Impact of Violence on Children*, Domestic Violence and Children, Winter 1999, available at http://www.futureofchildren.org/usr_doc/vol9no3Art3.pdf.

rarely held accountable for these actions, and many callers may believe that they cannot be held accountable.

As the result of a court case against the agency, ACS has dramatically decreased the number of removals of children from mothers who are victims of domestic violence. In 2002, the *Nicholson* litigation halted the ACS practice of removing children from their battered mothers solely or primarily because the children were exposed to violence against their mothers. Although the injunction prohibiting such removals expired in December 2004, ACS has not re-instituted the practice, appears to recognize that re-instituting such a practice would violate state law, and appears to have internalized the prohibition on such a practice.

ACS has implemented a series of initiatives to improve its handling of child welfare cases involving domestic violence. Many of these ACS initiatives resulted from, or were expedited because of, the *Nicholson* litigation. They provide a good starting point for continued improvement in ACS practices. These initiatives are reflected in ACS's Strategic Plan and Guiding Principles on Domestic Violence, but have been imperfectly and incompletely implemented up to this point.

ACS is ineffectively and infrequently using Clinical Consultation Teams on domestic violence cases. In 2002, ACS created Clinical Consultation Teams. Each team includes a domestic violence specialist, whose role is to provide guidance to caseworkers in child welfare cases involving domestic violence; however, consultation with a specialist is voluntary and must be initiated by the caseworker. Absent the caseworker's request, specialists are unable to continue involvement in a case, meet with the domestic violence victim, or ensure that their recommendations are followed. The current consultation system leaves too much decision-making authority with the front-line caseworkers and far too little authority with the specialists with particular expertise in domestic violence.

ACS has failed to ensure adequate training for many important workers.

- **ACS has failed to provide adequate training to front-line foster care caseworkers on best practices or safety planning in child welfare cases involving domestic violence.** Front-line foster care caseworkers continue to threaten domestic violence victims with removal of their children if the victims do not take a series of pre-determined steps – for example, ordering them to separate from their batterers, go into shelter, or obtain an order of protection – without a case-specific assessment of whether these steps are appropriate and whether they will cause further danger or other detriment to the children. Over 90 percent of children in foster care are placed with foster care contract

agencies, yet ACS has not mandated that caseworkers at these agencies undergo specialized domestic violence training.

- **ACS has not mandated that supervisors and directors of preventive services agencies receive training in domestic violence dynamics from domestic violence specialists.** Over the past few years, ACS has increasingly focused on engaging families in preventive services rather than removing children; however, while ACS requires supervisors and directors to fulfill annual training requirements, these requirements do not include training by experts in the dynamics of domestic violence.

Recommendations

ACS must screen all potential adoptive and foster homes to ensure that the homes are violence free. As part of the application process for becoming certified as a foster home, all household members must be screened in the New York State domestic violence registry to determine whether any household member currently, or has been in the past, the subject of an order of protection. If there is a recent record of violence, the home should not be certified (with the exception of kinship placements, in which case the home can be certified as long as the family can demonstrate there is no longer any violence in the home). If ACS does find domestic violence in the home, ACS should not certify the home. Because of the presence of domestic violence, however, ACS must take steps to ensure that the denial of certification does not endanger anyone in the household. Where appropriate, ACS should offer services and referrals to help make the home safe to be certified in the future.

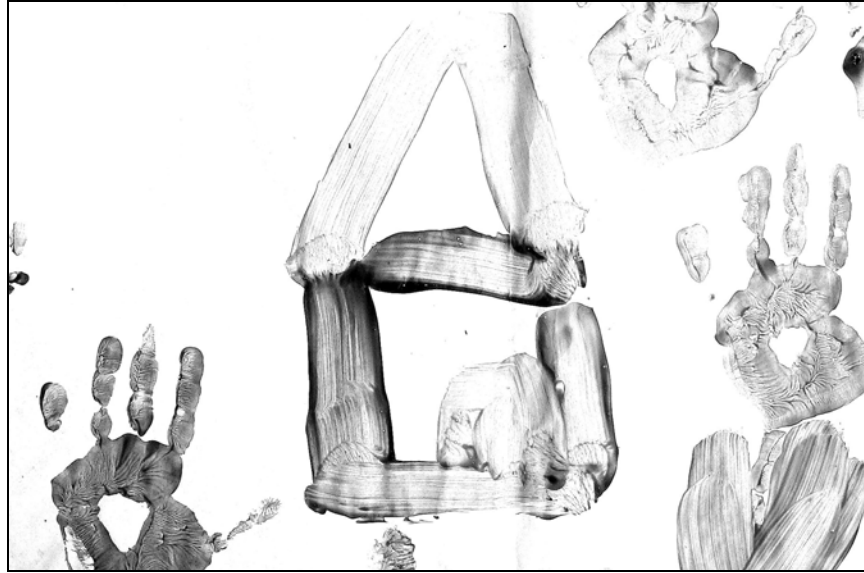
ACS should make a public service announcement promoting the importance of calling the child abuse hotline if abuse or neglect is suspected but should warn that deliberately making a false report is a crime. Such an announcement could help discourage false reports by alerting the public that persons making false reports can be held accountable.

ACS must ensure that all workers are adhering to the domestic violence policy reforms the agency has implemented over the past couple of years.

- **ACS must make sure that its Guiding Principles are being integrated into the daily activities of its frontline caseworkers.** ACS must fully implement its strategic plan. While the policy reforms and *Nicholson* settlement are important first steps for ACS, implementation and practice by frontline staff has been inadequate and compliance with the new protocols on all levels must be enforced.

- **ACS must mandate that caseworkers use Clinical Consultation Teams in every case involving domestic violence.** Currently, the use of the Clinical Consultation Teams is optional for caseworkers, and the CCTs are only used in a small minority of the possible cases. Consultation with clinical specialists on every case in which there is a family history of domestic violence must be mandated. The fact that it is not currently mandated undermines the very rationale behind this program, which is that caseworkers are not able to identify and address many of the underlying problems associated with domestic violence without expert assistance. In addition, CCTs should be able to reach out and provide follow-up on appropriate cases.
- **ACS must mandate that all caseworkers at foster care contract agencies receive specialized training on domestic violence issues.**
- **ACS must mandate that all supervisors and directors at preventive services agencies receive training on the dynamics of domestic violence from domestic violence experts.** The training should be mandated as part of the annual trainings that they must undergo. Annual training audits should include a check to ensure that at least one of the trainings attended by the supervisors and directors meets this standard.

Criminal (and Civil) Confusion



Survivors and New York's Complicated Court Systems

Executive Summary

After a survivor of domestic violence separates from her batterer, she may need to seek relief from the court or may be forced to go to court by her batterer. For many survivors, the court process can be baffling, emotionally draining, humiliating and time-consuming.

In New York City, there are several different courts that a survivor may have to navigate. These courts include the Family Court, the Supreme Court, and the Criminal Court. At any one time, a survivor can have simultaneous cases in any combination of these three court systems, depending on her particular circumstances. It is also possible that her cases can be combined and heard in an innovative Integrated Domestic Violence Court (IDV).

The court process can be confusing and overwhelming for a survivor. She may not understand why there are multiple cases going on in multiple courts, and she may not be fully aware of her legal rights if she is unable to find a free or low cost lawyer or has a court-appointed lawyer who does not return her calls. In addition, she may not be able to communicate well if English is not her first language and no interpreters are available. Finally, going to court can be a financial strain if she has hired an attorney or has to miss valuable days of work to appear for her various cases.

A combination of overburdened courts, and shortages of free lawyers, court interpreters, and supervised visitation programs contributes to survivors facing multiple delays and obstacles in accessing justice.

Summary of Findings

- The State Legislature has failed to provide for an adequate number of Family Court judges in New York City and throughout New York State. There are only 47 Family Court judges in New York City, and only a fraction of them hear family offense petitions. The judge-to-case ratio results in survivors' cases taking an unreasonably long time to get resolved, making it difficult for survivors to move on with their lives.
- Survivors who need court interpreters have delayed cases and may have interpreters that are unable to appropriately translate their testimony. Interpreters are frequently unlicensed, untrained, unevaluated, and unaccountable for their actions.
- Lack of funding and budget cuts have resulted in a limited number of supervised visitation programs in New York City. There are not enough sites to accommodate all of the families who need supervised visitation.

- Domestic violence victims have limited access to legal assistance because there are not nearly enough domestic violence attorneys available in New York City to provide representation for the overwhelming number of victims. In 2002, over 27,000 Family Offense petitions were filed in New York City. Currently, there are approximately 314 lawyers available to be appointed by the court in order of protection proceedings citywide, and fewer than 80 attorneys providing free legal services to domestic violence survivors from non-profit organizations.
- The innovations of the IDV courts have helped ease some of the difficulties survivors have historically had to overcome in the court system. The IDV courts have helped to simplify the system and to connect survivors with much needed services.

Summary of Recommendations

- The State Legislature should expand the number of Family Court judges in New York City. The system is too overburdened to adequately meet the needs of those requiring assistance.
- The State should ensure that all foreign language speakers with cases in court are given certified interpreters who are sensitive to issues surrounding domestic violence and are fluent in their native language and in English.
- The City should increase funding for supervised visitation programs.
- The City should contract with more legal services organizations to accept 18b funds so that they can hire more attorneys to represent survivors of domestic violence.



Chapter Four

Criminal (and Civil) Confusion

Introduction

After a survivor of domestic violence separates from her batterer, she may need to seek relief from the court or may be forced to go to court by her batterer. For many survivors, the court process can be baffling, emotionally draining, humiliating and time-consuming.

In New York City, there are several different courts that a survivor may have to navigate. These courts include the Family Court, the Supreme Court, and the Criminal Court. At any one time, a survivor can have simultaneous cases in any combination of these three court systems, depending on her particular circumstances. It is also possible that her cases can be combined and heard in an innovative Integrated Domestic Violence Court (IDV).¹

Survivors who are married to their batterers and who want divorces must file in the Supreme Court. Decisions about custody, visitation, property, financial support,² and orders of protection can be made part of the divorce proceeding. Criminal Court cases are initiated by a district attorney after a batterer is arrested for his violent acts or for violating an order of protection.³ In Family Court, a survivor who is or has been married to her batterer, or has a child in common with her batterer, may file petitions for an order of protection, custody and visitation, and for child or spousal support.⁴ Additionally, a survivor may be forced to defend herself in a child welfare proceeding in Family Court.

¹ IDV courts are discussed in depth in the last section of this chapter.

² Further discussion of divorce and related financial issues can be found in Chapter Six, *Fleeing Abuse and Fighting Poverty: New York Law and Policy Challenges Domestic Violence Survivors Seeking Economic Stability*.

³ More information on the criminal court system, including what happens when a survivor is arrested, can be found in Chapter Five, *Arresting Domestic Violence: New York's Criminal Justice System Aids and Hurts Survivors*.

⁴ As discussed later in the chapter, only a survivor who is married to her batterer can file for spousal support.

The court process can be confusing and overwhelming for a survivor. She may not understand why there are multiple cases going on in multiple courts, and she may not be fully aware of her legal rights if she is unable to find a free or low cost lawyer or has a court-appointed lawyer who does not return her calls – scenarios that are all too common. In addition, she may not be able to communicate well if English is not her first language and no interpreters are available. Finally, going to court can be a financial strain if she has hired an attorney or has to miss valuable days of work to appear for her various cases.

Although courts fall under state purview, it is imperative to address the court system in this report because the courts play such a critical role in survivors' journeys. The system impacts tens of thousands of city residents each year. The convoluted system should trouble lawmakers and taxpayers around the state as well. It creates the potential for inconsistent court orders, facilitates manipulation of the system, and wastes resources.

New York City's Courts Are Overburdened

Family Court judges in New York City have tremendous caseloads. Over 24,000 family offense petitions, also known as petitions for orders of protection, were filed in New York City in 2003.⁵ In total, more than 220,000 different petitions, including Family Offense petitions, on average are filed in the City Family Courts each year.⁶ However, there are just 47 Family Court judges in New York City, a number that has remained the same since 1991, when the State Legislature increased the total number from 45.⁷ Family Court judges throughout the state are similarly overburdened, and Judge Judith S. Kaye, the Chief Judge of the State of New York, called upon the legislature to create additional Family Court judgeships throughout the state in her 2005 State of the Judiciary Address, released in February of last year.⁸

Judges' caseloads in the city are not as high as they might otherwise be because not all cases need to go before a judge. There are other officials in the courts who can hear certain kinds of cases. For example, child support cases are presided over by an official called a support magistrate, and a child custody case can be presided over by a court attorney-referee. However, family offense petitions and custody cases in which the family also has a family offense case, can only be heard by a judge.

⁵ New York State Unified Court System, *Twenty-Sixth Annual Report of the Chief Administrator of the Courts for Calendar Year 2002*, available at <http://www.courts.state.ny.us/reports/annual/pdfs/2003annualreport.pdf>.

⁶ *Ibid.*

⁷ N. Y. Judiciary Court Act – Family Court § 121.

⁸ New York State Unified Court System, Judge Judith S. Kaye, *The State of the Judiciary 2005*, February 7, 2005, available at <http://www.courts.state.ny.us/admin/stateofjudiciary/soj2005.pdf>.

Of the 47 New York City Family Court judges, only 18 actually hear and determine the family offense petitions filed each year in family court.⁹ Other judges are assigned to other kinds of cases, such as juvenile delinquency and child welfare cases. Judge Joseph Lauria, the Administrative Judge for the New York City Family Courts, reports that the total average number of family offense petitions heard annually per judge ranges from approximately 685 for Staten Island judges to nearly 1900 for Bronx judges.¹⁰

Depending on the complexity of the cases, any one of these cases can take months, if not years, to complete. One reason for delay is the crowded calendars of the judges. Because of the large volume of cases that come before them each day, it is difficult for judges to schedule cases, and often petitioners must wait several months to obtain dates for a trial, and then trial dates can be scattered over stretches of months, because judges have difficulty finding consecutive dates for a trial.¹¹

Custody cases typically take at least a year to resolve, and a divorce¹² can be in court for over a year before a trial is even scheduled, let alone decided. In between, parties may have to miss dozens of work days because their presence in court is demanded for preliminary matters.¹³ In addition to crowded court calendars, cases may be adjourned because reports may not have been prepared on time for that day's hearing.

The drawn-out nature of the cases is emotionally taxing on survivors. Many cannot move on with their lives and put their minds at rest until these cases are resolved. Each time they go to court they have to see the faces of their batterers looking at them from across the room. This may lead to survivors choosing to drop cases rather than face their batterers one more time. Others live in fear each time they go to court that their batterer will find a way to attack them in or around the courthouse.

⁹ Judge Joseph Lauria, Chief Administrative Judge of New York City Family Courts, by Diane Costanza, private e-mail message to Lisa Poris, subject: stats, January 31, 2005.

¹⁰ Judge Joseph Lauria, Chief Administrative Judge of New York City Family Courts, by Diane Costanza, private e-mail message with attachment to Lisa Poris, subject: Family Court State, February 10, 2005. According to e-mail, "average" was calculated by totaling the number of "O" petitions pending at the end of 2003 in each county with the number of new petitions filed in 2004 (including new original petitions and new supplemental petitions) in each county. That number was divided by the number of judges in each county hearing "O" cases, to arrive at an average number of petitions heard by each judge.

¹¹ Meeting of Public Advocate's Committee on Domestic Violence and the Civil Court System, April 28, 2005. It should also be noted that another factor in the delay of cases is the busy schedules of the lawyers.

¹² While divorces can only be heard in Supreme Court, and the calendars of Supreme Court judges are not as crowded as those of Family Court judges, some of the more complex cases involving custody and property can take years to complete.

¹³ Battered Women's Resource Center, Voices of Women Organizing Project, *Battered Women's Experiences with Family Courts in NYC*, October 2003.

Some of these problems currently are being examined by a task force created by the New York State Unified Court System in June of 2004. The task force, called the Matrimonial Commission, is examining every facet of the divorce process in New York's Supreme Courts¹⁴, including issues involving custody and legal representation.¹⁵

About a year ago, Kim's boyfriend punched her in the face. The force of the blow caused her to fall and she bruised her ribs against a coffee table before hitting the ground. Kim and her boyfriend have a two-year-old daughter. After the incident Kim left her boyfriend, moved into her own apartment, and went to Family Court to file for an order of protection and custody of her daughter. Kim is a low-wage government employee, and every time she misses work to go to court, she doesn't get paid. Kim had to go to court six or seven times over the past year. Each time she went to court, her case was delayed for various reasons. Eventually Kim told her lawyer that as long as she got custody, she would settle everything else, including visitation and her family offense petition -- she just couldn't keep going to court. She hated seeing her batterer, and she was in danger of losing her apartment because of her missed pay.

New York City Has Severe Lawyer Shortage

In the year 2000, there were 57,000 lawyers practicing in New York City.¹⁶ Despite this seemingly endless supply of lawyers, survivors of domestic violence have had, and continue to have, an incredibly difficult time finding lawyers to represent them.

Research indicates that the availability of legal resources is so important for a victim of domestic violence that it can even be a factor in a woman's decision to leave her batterer.¹⁷ Private attorneys are expensive, and often when a survivor leaves her batterer, she is not just leaving the person who abused her, she is also leaving the person who provided her with financial support. It is unlikely that she will be able to pay for an attorney.¹⁸ Free representation can be hard to find; while some survivors may be entitled to have a lawyer appointed to represent them by the court, others are not, and there is a scarcity of free legal resources for survivors in New York City.

¹⁴ In New York State, the Supreme Court is a trial level court.

¹⁵ New York State Unified Court System, Press Release, "Statewide Task Force to Fix Flaws in New York's Divorce Process Is Convened by Chief Judge: Custody Disputes in Divorce Cases - A Primary Topic of Inquiry for New Commission," June 1, 2004, available at http://www.courts.state.ny.us/press/pr2004_10_1.shtml.

¹⁶ Andrew Beveridge, *New York Lawyers a Profile*, Gotham Gazette.com, December 2004, available at <http://www.gothamgazette.com/article/20041228/5/1231>.

¹⁷ Amy Farmer and Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, *Contemporary Economic Policy*, 2003, vol. 21, issue 2, pages 158-172, available at <http://www.women-law.org/downloads/Thiefenthaler.pdf>.

¹⁸ As will be discussed further in Chapter Six, *Fleeing Abuse, Fighting Poverty: New York Law and Policy Challenges Domestic Violence Survivors Seeking Economic Stability*, women who leave their batterers often have fewer financial resources at their disposal than their batterers. Batterers often financially abuse victims by restricting the victims' access to bank accounts and work opportunities.

In order to understand her legal rights and multiple court cases, a survivor needs to have an attorney. Without representation, survivors are overwhelmed by the overlapping court systems and confused by the complexities of the law. The presence of an attorney will increase her chance for success and decrease the likelihood that she will drop a case due to anxiety about facing her batterer. Advocates report that survivors without representation often give up all of their financial rights in exchange for custody of their children, or agree to settlements due to a misunderstanding that the judge's proposed settlement was a final decision by the judge and not merely a proposal.¹⁹

Maribel moved out of her boyfriend's apartment six months ago and soon thereafter he began to stalk her and leave her harassing voicemails. After enduring a few weeks of this, she began to fear for her safety and she filed for an order of protection in Family Court. Maribel is on SSI and asked the judge to give her an attorney. She spoke with her attorney briefly in court, but she felt he didn't take her case seriously enough so she wanted to find someone else to represent her. Maribel looked up her local legal services office and gave them a call. They told her that they didn't have any lawyers available to take her case and instead gave her the number for another organization. When she called that organization, they gave her the number for the first organization she had called. For the next three months Maribel kept calling legal services organizations, only to be told over and over again that no one was available to take her case, and referred back to the same few organizations.

Attorneys appointed by the courts to take cases are commonly referred to as 18B lawyers, a reference to the section in Article B of the County Law which says that assigned counsel must be given to the indigent in certain kinds of matters.²⁰ In the Family Court, these matters include child welfare, as well as custody and order of protection cases but do not include child or spousal support cases.²¹ While there is legal support for a right to counsel in Supreme Court divorce cases involving contested custody and orders of protection, advocates report that Supreme Court justices rarely educate the litigants about this right or consider this to be an option.²²

Survivors complain that 18B lawyers do not understand domestic violence and are too busy to adequately represent them.²³ Citywide, there are only 314 18B attorneys to be appointed to the tens of thousands of cases filed in Family Court each year, and no borough has more than 97.²⁴ It should be

¹⁹Catherine Douglass, New York State Matrimonial Commission Public Hearing, October 14, 2004, available at <http://www.courts.state.ny.us/ip/matrimonial-commission/nyc.pdf> (hereinafter

“Douglass Matrimonial Commission Testimony”), 158.

²⁰ N.Y. County Law § 722

²¹ N.Y. Family Court Act § 262 (a)

²² Douglass Matrimonial Commission Testimony at 161.

²³ See 13.

²⁴ Number is based on conversations with Jane Shriver in the First Department and Nancy Matles in the Second Department.

noted that these attorneys are not limited to representing survivors of domestic violence who have filed petitions, and most have no special expertise in domestic violence. They can be appointed to represent any person in Family Court who qualifies for a court-appointed lawyer, including batterers. The 18B attorneys working in Queens, Brooklyn, and Staten Island can also be appointed as a law guardian on various matters, as well.

Even in cases in which a survivor may be entitled to have a court-appointed lawyer, if she is an undocumented immigrant who works off the books, a judge may refuse to assign her counsel. The refusal can be based on the fact that the survivor is unable to provide the court with documentation such as W-2 forms to demonstrate her income or lack thereof.²⁵ Immigrant survivors are also less likely to be aware that they may be entitled to a court-appointed lawyer and therefore may be less likely to ask the judge for a lawyer if the judge does not offer the option.²⁶

Some survivors obtain lawyers from organizations offering free legal services. Attorneys from these agencies are usually more specialized in serving the needs of survivors and have smaller caseloads. Even though there are 25 offices providing representation for survivors of domestic violence in New York City, these organizations have fewer than 80 attorneys combined to represent survivors in family and matrimonial court proceedings.²⁷ These organizations can only afford to hire a handful of attorneys to serve this population. At least one organization reports that it is particularly hard to find funding for a matrimonial attorney because some foundations consider divorce to be a frivolous action.²⁸ Unfortunately, this results in survivors being put on long waiting lists²⁹ or getting turned away entirely by legal service agencies.³⁰

Because of these complications in obtaining a lawyer, many survivors are forced to proceed *pro se*, meaning they have to represent themselves in their cases.³¹ This is particularly troubling in cases in which batterers are able to hire their own attorneys because they are better off financially and in cases in which women face language barriers. Unrepresented survivors

²⁵ Maria Arias, New York State Matrimonial Commission Public Hearing, October 14, 2004, available at <http://www.courts.state.ny.us/ip/matrimonial-commission/nyc.pdf> (hereinafter "Arias Matrimonial Commission Testimony"), 230.

²⁶ See 11.

²⁷ This number is based on a survey of legal services agencies conducted by the Public Advocate's office through phone and e-mail, from January 13, 2005 through February 18, 2005, with the assistance of Catherine Douglass, Executive Director of inMotion.

²⁸ Julie Domonkos, New York State Matrimonial Commission Public Hearing, October 14, 2004, available at <http://www.courts.state.ny.us/ip/matrimonial-commission/nyc.pdf> (hereinafter "Domonkos Matrimonial Commission Testimony"), 56.

²⁹ See 11.

³⁰ Domonkos Matrimonial Commission Testimony at 55; Rhonda Panken, New York State Matrimonial Commission Public Hearing, May 9, 2005, at 154, available at <http://www.courts.state.ny.us/ip/matrimonial-commission/MayNYC.TXT.pdf>.

³¹ Arias Matrimonial Commission Testimony at 229.

often are overwhelmed by the legal complexities of their cases and may agree to settlements in which they give up assets to which they are entitled, or to visitation arrangements that jeopardize their safety, because they are terrified of losing custody of their children.³²

One program has begun to address this gap in services. The Assigned Domestic Violence Counsel (ADVC) is a City program that provides funding to legal services agencies to pick up domestic violence cases in Family Court. These attorneys are essentially 18B attorneys working for legal services agencies. Currently, there are just 7 ADVC attorneys, and they work for two different organizations.³³ One of the advantages of this particular program is that the attorneys get involved on the cases very early on, representing the clients in court and helping connect them with much-needed support services.³⁴

Non-English Proficient Survivors Face Additional Hurdles

Immigrant survivors who do not speak English may find the court system to be particularly difficult to navigate. Court interpreters are not always readily available, and many interpreters are not trained, evaluated, or even licensed.³⁵ Language barriers can be a problem from the moment the woman walks into the petition room to file for an order of protection.³⁶

Currently, NYC courts employ a limited number of full-time interpreters who work in the courts and speak the twelve languages most commonly spoken in New York City. Often full-time interpreters have many cases for which they need to appear in a single day, and cases requiring the interpreter are delayed until the interpreter is available.

For other languages, such as Macedonian or Yiddish, the courts must hire per diem translators. The per diem translators are typically not readily available when a survivor first enters the courthouse, and even for scheduled court appearances, courts often neglect to request an interpreter from the Office of Court Administration in advance.³⁷ Furthermore, the per diem interpreters often have little training and supervision.

³² Domonkos Matrimonial Commission Testimony at 57, 60.

³³ Email communication between Elizabeth Brownback, Sanctuary for Families and Lisa Poris, April 12, 2005.

³⁴ Another program run by Sanctuary for Families in cooperation with the New York Legal Assistance Group, partly addresses the problem of the shortage of domestic violence attorneys. The program, called the Courtroom Advocates Program (CAP), recruits law students from local law schools to work with women who are petitioning for orders of protection in Family Court. The students assist the women in filling out the original petitions and appear in court with the petitioners on the day the petition is filed and then again on the first return date of the petition. The students are unable to represent the petitioners at trial.

³⁵ See 13.

³⁶ *Ibid.*

³⁷ Meeting between Purvi Shah and Catherine Shugrue dos Santos, representing the Domestic Violence Advocates for Court Interpretation Task Force, and Lisa Poris, Office of the New York City Public Advocate, May 16, 2005.

Advocates report that clients who do not speak English often have delays in their cases,³⁸ and sometimes have to have their cases adjourned to a different day entirely. These delays can become frustrating for survivors, and may lead to the total abandonment of their efforts to seek relief from the courts.³⁹ Anecdotal evidence indicates that advocates and their clients are sometimes pressured by judges and opposing counsel to proceed on a case without an interpreter, rather than face an additional delay, even if that means the survivor may not be able to participate as effectively in that day's court proceeding.⁴⁰

Even if an interpreter is available, many interpreters are not adequately trained in domestic violence issues and they may even belong to the victim's tight-knit ethnic community.⁴¹ While the full-time interpreters may have received some training, often the per diem interpreters have received minimal training; no training on domestic violence is required. Survivors report that interpreters may impose their own feelings about domestic violence in their translation or the survivors may be fearful about speaking in front of the interpreter if the interpreter knows their abusers.⁴² In extreme instances, advocates have reported that interpreters have tried to pressure survivors to drop their cases entirely.⁴³ On some occasions the shortage of interpreters means that a survivor is forced to stand in close proximity to her batterer so

Chana is an Orthodox Jewish woman who is fluent in Hebrew and Yiddish, but only speaks some English. Her husband used to beat her up at least once a week. The beatings stopped only after he disappeared with their youngest child. After he left, Chana filed for custody and an order of protection in Family Court. She also tried to get the District Attorney involved in the kidnapping part of the case. When she got to the petition room in Family Court to file for an order of protection, the petition room clerks were unable to locate a Hebrew translator for her. She was able to communicate only some of the incidents that had happened to her. They assured her that when she appeared before the judge, she would have an interpreter. Chana has appeared before the judge at least a half dozen times over the past two years, and not once has there been a Hebrew interpreter. Each time her lawyer has advised her to go ahead with her case without an interpreter saying it will be faster than waiting for an interpreter to arrive. Each time Chana feels like the judge is only able to understand a fraction of what she wants to tell her.

³⁸ Sakhi for South Asian Women, *The Voice of Justice: The Role of Court Interpretation in the Lives of Survivors of Domestic Violence*, presentation given April 12, 2004.

³⁹ See 37.

⁴⁰ *Ibid.*

⁴¹ *Ibid*; See 13. When interpreters are part of a victim's tight-knit ethnic community, this can also bring up issues of confidentiality.

⁴² See 13.

⁴³ See 38.

that both can share the sole interpreter.⁴⁴ This can be intimidating for a victim.

Survivors having negative experiences with interpreters have no clear way to report a grievance.⁴⁵ There are two possible options, but neither is simple, and it is unlikely that the survivor would even be aware of either. Every court has a supervising interpreter, and the survivor could attempt to report her interpreter to the supervising interpreter. However it is difficult to locate the supervising interpreter as that person is not always in the designated office. If the supervisor is not in the office, it is likely that he or she is actually in court interpreting.⁴⁶ Even if the survivor is able to locate the supervisor, she may not even be able to communicate her complaint without an interpreter.⁴⁷ Alternatively, a survivor could also try to file charges against the interpreter with the New York State Inspector General. However, this process requires filing criminal charges against the interpreter that would ultimately require the survivor's testimony and she may not want to testify for a number of reasons.⁴⁸

Judges should be attuned to the fact that testimony presented through an interpreter may not be as accurate or as compelling as testimony given directly by an English-proficient complainant. The absence of translators is not a problem limited only to the courtroom, however. Because many agencies do not have the resources to obtain interpreter services outside of the court, non-English speaking survivors may have difficulty communicating with their attorneys and prior to the court date. Instead, survivors and their lawyers must rely on the court interpreters to assist them in having a quick conversation the day of the court date⁴⁹ or ask the client to bring a family member or friend to translate.

Similar problems carry over to custody cases, as visitation supervisors, law guardians, and forensic examiners are all unlikely to speak multiple languages, making it extremely difficult, and in some cases impossible, for the survivors to communicate with these key players in their cases.⁵⁰

⁴⁴ Battered Women's Resource Center, Voices of Women Organizing Project, *What Family Courts Can Do To Increase Safety for Battered Women and Their Children: Recommendations from Survivors of Domestic Violence*.

⁴⁵ See 37.

⁴⁶ Phone conversation between Catherine Shugrue dos Santos, Sanctuary for Families, and Lisa Poris, Office of the New York City Public Advocate, October 14, 2005.

⁴⁷ *Ibid.*

⁴⁸ See 38.

⁴⁹ Court interpreters are not technically supposed to do any interpreting outside of the courtroom because it is beyond the scope of their role and it may damage their impartiality during the proceedings. Despite this, many interpreters do, in fact, provide this assistance.

⁵⁰ The roles of visitation supervisors, law guardians, and forensic examiners will be explained and expanded upon in the following sections.

Custody Cases Confuse Survivors

Often one of the hardest parts for a survivor leaving her batterer is her concern about what is going to happen to her children. Often, a survivor will choose to stay with her batterer because she is concerned that he will win custody of the children, and she wants to be near them to make sure they are safe. Custody cases can be much more emotional for a survivor than orders of protection cases.

Unfortunately for survivors, custody cases can also be extremely complex with many different phases. When a judge first receives a custody case, s/he may make a temporary order of custody until more information can be presented. The judge may also make a temporary order of visitation for the parent not receiving temporary custody. At that time, the judge can also appoint a law guardian. The law guardian's job is to represent the child throughout the custody case. Law guardians generally conduct interviews with the children and sometimes do some case investigation by speaking with relevant adults in the children's lives, such as teachers and pediatricians. A judge may also order that caseworkers from the Administration of Children's Services (ACS) make visits to the homes of the petitioner and the respondent so that a report called a Court Ordered Investigation (COI) can be made to the court about the state of those homes.⁵¹

If the case is particularly complicated, a judge may also order that a forensic examination be done. A forensic evaluation is generally a series of interviews and observations that a mental health professional has with all of the persons relevant to the court proceeding. This generally includes the parents, children, and any other people who may be living in the home. It also may consist of observations of the children with their parents.

It is only after the law guardian, ACS caseworker, and forensic examiner have completed their investigations that a judge will finally schedule a trial for the custody case. Custody cases can be initiated in Family Court or as part of a divorce in the Supreme Court.

LACK OF SUPERVISED VISITATION PROGRAMS LEADS TO UNSAFE SITUATIONS

Judges can order visitation for the parent who does not have physical custody of the subject child(ren). Given that custody cases have so many phases, it is important for judges to order visitation so that the children can maintain a relationship with both parents throughout the case proceedings. The framework for visitation can have a major impact on domestic violence

⁵¹ These ACS caseworkers are not investigating for the purpose of determining whether or not a child needs to enter foster care; in custody situations, they evaluate the homes of the parents.

survivors because visitation is an opportunity for batterers to confront and continue to abuse victims or to manipulate their children.⁵²

Visits can vary in length, frequency, location, and degree of supervision.⁵³ The least formal supervised visits are supervised by a layperson, usually a relative or friend. Stricter supervised visits are held at agencies with visitation programs. Supervised visitation programs provide a place for the non-custodial parent to visit with the children for a predetermined period of time in the presence of an employee of the program.

Latoya has a six-year-old daughter with her batterer. After suffering years of verbal abuse, one day he pushed her down a flight of stairs and she had to go to the emergency room. After that incident, she left him and moved out with her daughter. She went to Family Court to file for custody. The judge ordered the batterer to have supervised visits with the young girl, but emphasized that he wanted the visits to start right away because she didn't want to wait for the family to get into a supervised visitation program. The judge then ordered Latoya and her batterer to choose a neutral family member to supervise the visits. Her batterer suggested his mother, the child's paternal grandmother. Latoya, whose family all lived out of state, agreed after the judge asked her to articulate exactly why the grandmother would not be an appropriate supervisor. Latoya couldn't express anything specific, just general discomfort that this woman would be in charge. After the first visit, Latoya's daughter reported to her that her father had taken her for a drive to McDonald's and her grandmother had stayed behind. When Latoya's law guardian questioned the woman as to why she allowed her son to go off unsupervised with her granddaugther, the woman explained that she couldn't stop him and didn't understand why she should have to stop him anyway.

A judge's decision on the kind of supervision to order is based on what is called a "best interests" standard. This means that the judge will look at all of the particulars in a case and order the kind of visitation that is in the best interests of a child.⁵⁴ One of the factors that a judge must consider when awarding visitation is whether or not there has been a finding of domestic violence and whether the children were witnesses and/or victims of that violence.⁵⁵ These are the same factors that a judge will use to make an ultimate determination of custody. The presence of domestic violence is a relevant factor because it can help a judge decide whether or not a child would be safe visiting with a parent. If the judge has concerns about the

⁵² Sharon M. Maxwell, LCSW, Ph.D. & Karen Oehme, J.D., *Strategies to Improve Supervised Visitation Services in Domestic Violence Cases*, (Violence Against Women Online Resources) Oct. 2001, available at <http://www.vaw.umn.edu/documents/commissioned/strategies/strategies.pdf>.

⁵³ A judge can also choose to order unsupervised visits. Judges order unsupervised visits when they feel that leaving the children alone with the non-custodial parent poses no danger.

⁵⁴ N.Y. Dom. Rel. Law § 240 (1)

⁵⁵ *Ibid.*

safety of a child during a visit, it is likely that the judge will order supervised visits.

There are fewer than ten agencies offering free supervised visitation in New York City. These programs can only service a few hundred families, in total, at one time.⁵⁶ Advocates report that there are long waits for families trying to get into one of these programs.⁵⁷ Sometimes these waits can be up to six months long. Several agencies have been forced to close their visitation programs in recent years as a result of lost funding; two closed in 2004 alone.⁵⁸

Many of the programs that are still open are located in the Family Courts themselves.⁵⁹ Even if families are fortunate enough to be admitted into the programs, the limited locations can present an additional problem for survivors. The lack of community-based supervised visitation programs means that survivors, who are already struggling to balance many other appointments that are critical for getting their lives in order, may have to travel a great distance at least once a week to ensure that their children can visit with their fathers. These appointments can include doctor's visits, legal consultations, court dates and public assistance appointments. The time devoted to travel for visits creates an additional burden for survivors.⁶⁰

The long wait for agency programs means that a child may not be able to visit with a parent for an extended period of time. Alternatively, a judge may choose the less safe option of ordering that a visit be supervised by a friend or family member. However, this may not be appropriate in some cases because the parties may not be able to agree on a person, or the chosen person might not be willing or able to intervene if something inappropriate occurs during a visit. Survivors are often pressured by judges into agreeing to supervisors for the visits with whom they do not feel comfortable.⁶¹

Advocates report that once a family gets into a supervised visitation program, there might be other problems. Judges order, and advocates request, supervised visits because they want to protect children from the risk of being exposed to the batterer's violent and controlling behavior. However, there are many reports that batterers continue to exhibit harmful behavior even while participating in supervised visitation programs. A 2001 study by the Clearinghouse on Supervised Visitation (CSV) documented common behaviors of batterers during supervised visitations. The report

⁵⁶ This information was gathered during a phone survey of supervised visitation agencies conducted by the Public Advocate's office between January 19, 2005 and March 2, 2005.

⁵⁷ See 11.

⁵⁸ See 56.

⁵⁹ *Ibid.*

⁶⁰ Meeting of Public Advocate's Committee on Domestic Violence and the Civil Court System, February 7, 2005.

⁶¹ *Ibid.*

highlights a number of inappropriate and harmful behavioral patterns manifested by batterers while utilizing supervised visitation services including blaming the victim, control and manipulation of the children, denigrating parenting skills of the victim, making threats, stalking, and physical violence.⁶²

The batterers may be able to continue their abuse for several reasons. First, despite the fact that many of the families participating in the programs have a history of domestic violence, some programs do not provide adequate security to protect the survivor. There are no standard practices that the programs must follow in terms of monitoring interactions between the parents and making sure that the parties do not exit at the same time. The agency's security can range from having a live security officer during all hours of visitation, to simply having a camera and no live person to intervene to protect the survivor in the case of an attack.⁶³

Supervised visitation programs are supposed to provide the court with written reports describing the visits. However, programs have the discretion to include whatever they want in the report and to record that information in any format they choose. That means that the reports may not always be an accurate representation of the visit.

The quality of supervision during the actual visit can vary between agencies, which can result in an opportunity for the batterer to continue his abuse by attempting to manipulate and control the children. While some agencies offer therapeutic visitation – meaning a social worker or psychologist is present to intervene and facilitate a visit so as to help repair a damaged relationship between parent and child – some agencies only offer interns or volunteers to supervise the visits.⁶⁴ Typically these supervisors have completed 10-15 hours of training on supervising visits, but they may not have the expertise to identify and prevent more subtle abuse and manipulative behavior that can surface during the visits.

LAW GUARDIANS DO NOT ALWAYS ACT IN BEST INTERESTS OF SURVIVORS

Law guardians are appointed by judges in nearly every custody case to represent the interests of the children. Their opinions are often given great weight by judges. If law guardians do not fully understand the dynamics of domestic violence, they may take positions that hurt survivors' cases. Because not all law guardians are domestic violence experts,⁶⁵ they may negatively judge survivors' decisions or may not understand the effects of domestic violence on children. Survivors have reported cases of law guardians not believing allegations of child abuse and consequently turning the allegation against the woman by trying to prove "parental alienation

⁶² See 52.

⁶³ See 56.

⁶⁴ *Ibid.*

⁶⁵ Domonkos Matrimonial Commission Testimony at 61.

syndrome,” meaning that she is purposely trying to alienate the children from the batterer.⁶⁶

If a survivor does have complaints about the manner in which a law guardian handles a case, the courts have no accountability mechanism in place to file complaints of inappropriate or biased actions by the law guardian.⁶⁷

FORENSIC EVALUATIONS NOT FAIR TO MANY SURVIVORS

There are also problems with forensic evaluators. Often they have not received training in the area of domestic violence and may discount or pay little attention to accounts of domestic violence in their evaluations.⁶⁸ The lack of expertise in the area of domestic violence can lead to inappropriate recommendations about custody and visitation.

Immigrant women face additional hurdles when undergoing a forensic examination in that the evaluator may not have a cultural understanding of that particular family’s ethnic community. In addition, they may face language barriers. Very few evaluators are multilingual, and some interpreters insist on conducting interviews without translators if the interviewees speak any English at all. If interpreters are used, similar problems may exist to those discussed above involving court interpreters.⁶⁹

Keisha suffered years of abuse by her ex-husband, including beatings that ended in brutal rapes. He was arrested on three occasions for pushing her during visitation drop offs and pick ups of her daughter and was convicted of harassment after a trial. When he sought custody, Keisha expressed outrage to the forensic evaluator. The forensic psychologist recommended custody go to the father, even though the teenage child told the evaluator that her father disparaged her mother constantly. The evaluator testified that he attributed the rapes to "adjustment problems in the early years of marriage" and felt the mother was an unfriendly parent because she displayed anger toward the father in interviews. The evaluator believed that the mother's reports to the police, including the one that resulted in her ex-husband's conviction after trial, were motivated by anger and aimed at stopping visitation.

Survivors with disabilities, including deafness, may face additional barriers when meeting with a forensic evaluator. The evaluator may not provide a sign language interpreter for the deaf survivor, or may be unjustifiably skeptical of a disabled person’s ability to care for a child.

⁶⁶ Mary Williams, New York State Matrimonial Commission Public Hearing, October 14, 2004, available at <http://www.courts.state.ny.us/ip/matrimonial-commission/nyc.pdf> (hereinafter “Williams Matrimonial Commission Testimony”), 87.

⁶⁷ Williams Matrimonial Commission Testimony at 88.

⁶⁸ Nancy Erickson, New York State Matrimonial Commission Public Hearing, October 14, 2004, available at <http://www.courts.state.ny.us/ip/matrimonial-commission/nyc.pdf> (hereinafter “Erickson Matrimonial Commission Testimony”), 46-48.

⁶⁹ Arias Matrimonial Commission Testimony at 231.

Forensic evaluations can be extremely costly, and can be a huge financial hardship for survivors. There is technically no limit to the number of forensic evaluations that can be ordered, and in some cases, batterers request additional forensic reports as a way of harassing survivors.⁷⁰

Judges often place a great deal of weight on the outcome of forensic evaluations, and sometimes make custody decisions based almost entirely on evaluators' recommendations.⁷¹

Not All Survivors Able to Pursue Protective Orders

Protective orders can be issued by both *civil* and *criminal* courts. In New York State, *civil* orders of protection can be granted in either Family or Supreme Court proceedings.

In order to obtain a *civil* order of protection in New York, the petitioner and respondent must be "members of the same family or household,"⁷² a category that is defined to include people who either are or used to be married to each other, people related by blood, and people who have a child in common regardless of whether or not they have ever been married or have ever lived together.⁷³

New York's restrictions on *civil* protective orders exclude many victims of intimate partner violence, including young people in dating relationships.⁷⁴ Men and women in same-sex relationships, because they are currently unable to marry each other in New York State, are also left vulnerable by the restrictive definition. Neither of these populations are restricted from receiving *criminal* orders of protection.

Civil orders are initiated by the victim and she has full control over decisions made in the case, including the information she wants to give the judge and whether or not to continue the case at all. She also has the right to be represented by an attorney during civil court proceedings.

Criminal orders of protection must be pursued by a district attorney who makes the decision whether or not there is enough evidence to bring a case against the batterer, and it is ultimately the prosecutor and not the victim who makes all case-related decisions.⁷⁵ The victim does not have her own attorney for these proceedings.

⁷⁰ See 44.

⁷¹ Erickson Matrimonial Commission Testimony at 48.

⁷² NY CLS Family Court Act § 812 (1).

⁷³ *Ibid.*

⁷⁴ The limited eligibility for civil orders of protection and young people is discussed in more depth in Chapter Two, *Acting like Adults: Teenagers and Dating Violence*.

⁷⁵ Further information on the criminal court system can be found in Chapter Five, *Arresting Domestic Violence: New York's Law Enforcement and the Criminal Justice Systems*.

The final difference between *civil* and *criminal* orders is that there is a higher burden of proof in *criminal* cases than in *civil* cases. In *civil* cases, the petitioner needs to prove her case only by a “preponderance of the evidence.” In *criminal* cases, the prosecutor must prove “beyond a reasonable doubt” that a crime has been committed. In practice, this means that it is more likely a survivor will succeed in getting a protective order in *civil* court than in *criminal* court.

If her batterer was not arrested and a survivor still wants or needs a *criminal* order of protection, she can attempt to initiate a proceeding by going to the Court Dispute Referral Center (CDRC).

The CDRC can help her advocate with the District Attorney of that county to help her obtain an order of protection.⁷⁶

ACS brought Anna's girlfriend, Wilma, to Family Court for neglecting her son. They asked Anna if she would be willing to be the boy's foster parent, and she agreed. After that, Wilma regularly began to get into arguments with Anna, calling Anna names, and pushing Anna. When Anna came to court for the foster care case, Wilma jumped on top of her in the waiting area and began to punch her arms. A court officer came over to assist Anna and offered to arrest her girlfriend. Anna turned down the offer and instead chose to file for an order of protection in the petition room. When she got there, she was told they could not let her petition.

In 2004, the City Council passed a resolution calling on the State Legislature to allow persons in violent dating relationships to petition the family courts for an order of protection. The resolution would allow both same-sex adults and young people in dating relationships to petition for a *civil* order of protection. While the State has considered this issue in the past, the State Legislature has yet to pass a bill that protects those in dating relationships. Until the State changes the Family Court Act to permit these petitions, these vulnerable survivors will only be able to receive an order of protection in the context of the *criminal* justice system.

The Solution?: Integrated Domestic Violence Courts Solve Some Survivors' Problems

The Chief Administrative Judge of the New York State Unified Court, Jonathan Lippman, maintains that New York's “cumbersome and confusing network of courts” ill-serves families in crisis.⁷⁷ In 2001, the Chief Judge of New York State, Judith S. Kaye, spearheaded an effort to eliminate the overlap that often occurs in domestic violence cases. Her efforts helped create the New York State Integrated Domestic Violence Court Model (IDV)

⁷⁶ Further information on the CDRC can be found in Chapter Five, *Arresting Domestic Violence: New York's Law Enforcement and Criminal Justice Systems*.

⁷⁷ Jonathan Lippman, Chief Administrative Judge of the New York State Unified Court System, ‘IDV’ Court Shows New Way to Treat Families in Crisis, *NEW YORK LAW JOURNAL*, Jan. 21, 2003, at s1.

project, which embodies a holistic approach to complex domestic violence cases.⁷⁸

The mission statement for the IDV Courts sets out the goals of the court: “The court seeks to promote justice and protect the rights of all litigants while providing a comprehensive approach to case resolution, increasing offender accountability, ensuring victim safety, integrating the delivery of social services, and eliminating inconsistent and conflicting judicial orders.”⁷⁹

IDV courts operate under a “one family – one judge” approach, meaning that one judge will handle all of the family-related court cases involving one family. The theory is that this makes more sense than having each individual matter adjudicated by multiple judges in multiple courts, each of whom is only familiar with isolated chapters of a complex family history.⁸⁰ By bringing related matters together in a single court before a single judge who is specially trained, IDV Courts remove the jurisdictional barriers that now send families to multiple courts.⁸¹

Criminal charges arising from a domestic violence incident constitute the threshold requirement of eligibility for the IDV Court.⁸² For a family’s cases to be eligible for the IDV Court, there must be a domestic violence criminal case and at least one additional matter in Family Court or the Matrimonial Part of the Supreme Court involving the defendant in the criminal action and/or the complaining witness in the criminal action.⁸³

The pilot program initially established six integrated courts in New York State, with 18 currently in operation throughout the state. The City’s first Integrated Domestic Violence Court opened in the Bronx in the fall of 2001.⁸⁴ In the fall of 2003, IDV Courts opened in Queens and Staten Island, as well. An IDV Court opened in Brooklyn in November of 2005, and there are plans for an IDV Court to open in Manhattan by the end of the 2006.

One significant shortcoming of these innovative courts is that they do not regularly hear child welfare cases. While the Queens IDV Court will

⁷⁸ Press Release, New York State Unified Court System, *First Integrated Domestic Violence Court to Open in New York City* (Nov. 26, 2001), available at http://www.nycourts.gov/press/pr2001_20.shtml.

⁷⁹ *Ibid.*

⁸⁰ Office of Court Administration, Office of the Deputy Chief Administrative Judge for Statewide Operations and Planning, *New York State Unified Court System Integrated Domestic Violence Court: Mission Statement and Key Principles*.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ Office of Court Administration, Office of the Deputy Chief Administrative Judge for Statewide Operations and Planning, *New York State Unified Court System Integrated Domestic Violence Court: Model Court Components* [hereinafter “IDV Model Court Components”].

⁸⁴ See 78.

sometimes hear these cases, its ability to accept them is dependent on its caseload. Another short-fall is that, for some families, the “one-family-one judge” description of the IDV Court experience does not apply. Those with concurrent spousal or child support cases are assigned to a separate support magistrate for those cases. This limitation is due to federal regulations, but some protocols are in place for information sharing between the IDV judges and support magistrates in an effort to ensure that the parties are consistent in explaining their financial situations in both courts.

Overall, advocates report favorably on the IDV Courts and applaud the progressive thinking that brought about this positive step. The streamlined process means that their clients do not have to miss as many days of work, and the overall period of time that their clients have ongoing court cases is reduced. They report that their clients seem less likely to drop their cases and are also more likely to develop relationships with agencies such as Safe Horizon that can facilitate their access to needed services such as counseling.

Findings

The State has failed to provide for an adequate number of Family Court judges in New York City and throughout New York State. New York City’s Family Courts suffer from an extremely limited number of Family Court judges available to handle the tremendous volume. There are only 47 Family Court judges in New York City, and only a fraction of them hear family offense petitions. All of these judges have very high caseloads and full calendars. This judge-to-case ratio means that survivors’ cases take an unreasonably long time to get resolved, making it difficult for survivors to move on with their lives.

Survivors who need court interpreters have delayed cases and may have interpreters that are unable to appropriately translate their testimony. Interpreters are frequently unlicensed, untrained, unevaluated, and unaccountable for their actions. They may be from survivors’ close-knit ethnic communities and even know the batterers which can make survivors intimidated to speak in front of them. Survivors may feel confined by cultural restrictions when speaking in front of a person who either knows her or her batterer from her community. These problems can lead to a deprivation of the survivor’s ability to access justice for herself and her children.

Lack of funding and budget cuts have resulted in a limited number of supervised visitation programs in New York City. There are not enough sites to accommodate all of the families who need supervised visitation. Families may have to wait months to get into a supervised visitation program. This delay may cause judges and/or families to pressure survivors into utilizing less safe visitation alternatives, such as supervision by a family member.

Supervised visitation programs have inconsistent levels of security and training for supervisors. Not all visitation programs have security guards on site to protect survivors from their batterers during batterers' visits with their children, and they do not have a uniform policy on how to handle situations that might arise. Only qualified supervisors know how to appropriately intervene if a batterer is exhibiting abusive or manipulative behavior toward their victim and children.

Domestic violence victims have limited access to legal assistance because there are not nearly enough domestic violence attorneys available in New York City to provide representation for the overwhelming number of victims. In 2002, over 27,000 Family Offense petitions were filed in New York City. Currently, there are approximately 314 lawyers available to be appointed by the court in order of protection proceedings citywide, and fewer than 80 attorneys providing free legal services to domestic violence survivors from non-profit organizations. The lack of available legal support has a serious impact on survivors' ability to get appropriate relief from the courts.

The innovations of the IDV courts have helped ease some of the difficulties survivors have historically had to overcome in the court system. The IDV courts have helped to simplify the system and to connect survivors with much needed services. However, not all cases qualify for the IDV Court, and as a result of federal regulations families who have support cases in the IDV Court, also have the support component on their cases decided by a second judicial officer.

Recommendations

The State should expand the number of Family Court judges in New York City. The system is too overburdened to adequately meet the needs of those requiring assistance. Survivors are often forced to wait all day to have their case heard, many months between hearing dates and sometimes years for their cases to be completed. When their cases are finally called, judges' calendars are so crowded that litigants often have only a few minutes to present their cases to the judge. All of this contributes to the difficulty many survivors have in seeing a case to the end and in securing a final order of protection. This problem should not be remedied by adding new court attorney referees or other judicial hearing officers because such personnel are often inadequately trained and unqualified to handle the complexity of domestic-violence-related cases.

The State should ensure that all foreign language speakers with cases in court are given certified interpreters who are sensitive to issues surrounding domestic violence and are fluent in their native language and in English. It is inappropriate for a survivor to be unable to adequately testify in court and

fully communicate with the judge. All court interpreters, both full-time and per diem, should have to pass language tests and receive training in appropriate courtroom interactions.

City Council should mandate that all supervised visitation facilities with city contracts have adequate, uniform security arrangements and trained staff facilitating visits. Supervised visitation centers that accept referrals for cases that have a history of domestic violence should have standardized safety protocol, including having at least one security guard during visiting hours who is trained to handle domestic violence situations. Agencies should make sure that all of their staff members are trained to identify inappropriate behavior and to intervene safely when such behavior is exhibited.

The City should increase funding for supervised visitation programs. It is troubling that multiple facilities have closed in recent years when there are too few of them to begin with. The long waiting lists are harmful to children who need to be able to regularly and safely visit with their non-custodial parents.

The City should contract with more legal services organizations to accept 18b funds so that they can hire more attorneys to represent survivors of domestic violence. Right now the City has contracts with two agencies, Safe Horizon and Sanctuary for Families. Attorneys at these organizations have smaller caseloads and more specialized training in the area of domestic violence than court appointed attorneys and therefore are better able to represent their clients in court and are better able to respond to the particular needs of their clients. These contracts would enable other organizations to hire additional lawyers to represent domestic violence survivors.

Arresting Domestic Violence

New York's Criminal Justice
System Aids and Hurts Survivors



Executive Summary

Of the sixty-seven family related homicides committed in 2004 in New York City, close to seventy percent of the cases had no previous contact with the police. It is imperative for all the different components of the criminal justice system to encourage survivors to reach out for help. Police officers are often the first responders to a domestic violence victim's cry for help. It may be that by receiving a positive and effective response from the officers and other members of the criminal justice system, the survivor will have the courage to continue taking steps to free herself from the terrifying situation in which she lives.

All of the different parts of the criminal justice system have made tremendous progress in aiding survivors of domestic violence since the enactment of New York State's mandatory arrest law in 1994. In recent years, new laws and innovative technologies have been helping to fight domestic violence, and improving the criminal justice system's response to domestic violence. District Attorneys in New York City have established specialized prosecution bureaus and victim advocacy programs in their offices. The court system has established specialized criminal court parts in New York City to handle domestic abuse cases. Finally, new evidence-gathering technologies have helped prosecutors develop stronger cases against perpetrators of domestic violence.

However, some improvements in intervention and outreach are still needed. While many police officers respond appropriately to domestic violence calls, there are still some who do not follow protocol. Some survivors are re-victimized by policies that were created to protect them, and others still hesitate to engage the criminal justice system at all.

Summary of Findings

- New York State has not conducted a comprehensive study of its mandatory arrest law to determine its effectiveness locally and the law is scheduled to sunset in 2007.
- The New York Police Department currently has no system to track dual-arrests or cross-complaints in domestic violence cases. Without this information, it is impossible to determine the effectiveness of the State's mandatory arrest law in New York City.
- Advocates report that some law enforcement officers, including those in the NYPD, Department of Probation, Department of Corrections, Division of Parole, and court officers may not act properly when a fellow officer is accused of being a batterer.

- Advocates report that some law enforcement officers are not sensitive to the unique situations and cultures of underserved populations in New York City, including survivors of color, and especially immigrant and LGBT survivors
- The NYPD's Language Line pilot project was successful and has been expanded to all precincts.
- When responding to calls, the NYPD is not mandated to give victims of domestic violence information about services that can help protect them from further abuse, such as phone numbers for DV hotlines, information on obtaining an order of protection, or how to access domestic violence shelters.
- Some NYPD officers may not collect all of the admissible evidence at domestic violence crime scenes.
- The District Attorneys of each borough have different philosophies for determining when and how to prosecute domestic violence cases. It is impossible to determine which is the best approach, as simply looking at the numbers of convictions, dismissals, and dropped cases does not tell the full story.
- There is often a delay of up to several days between when an order of protection is issued and the survivor receives a copy in her hands.
- Prosecutors and lawyers defending battered women often disagree as to who the victim is in certain cases.
- Prosecutions of batterers who have violated parole often require survivors to testify against their batterers. Such experiences can be difficult for survivors, and are often unnecessary for successful prosecutions.

Summary of Recommendations

- New York State should extend mandatory arrest so that a study of the true impact of the law in the state can be completed.
- NYPD should modify its on-line booking sheet so that it can track whether or not a case is one-half of a cross-complaint or dual arrest.
- All law enforcement agencies should enforce their procedures and policies around the steps to take when a batterer is a part of the criminal justice system.

- Other officers who act inappropriately when domestic violence cases involve fellow officers, such as using their position to intimidate or discourage a survivor from filing a complaint, harass a survivor or batterer, or shield a fellow officer, should be held accountable for their actions.
- All law enforcement agencies should ensure that their officers receive ongoing sensitivity training on cultural and immigration issues in domestic violence cases.
- The NYPD should mandate that officers responding to domestic violence calls carry palm cards with them that they can leave with victims.
- The NYPD should continue to work with city District Attorneys around training officers on non-photograph-based evidence collection during responses to domestic violence calls, such as on the importance of information on domestic incident reports, and recording the excited utterances¹ of victims, batterers, and children.
- District Attorneys should assess each domestic violence case individually and speak with and counsel the survivor as to what actions are most appropriate to her situation.
- District Attorneys, the NYPD, and the criminal court system should work together to ensure that survivors receive their orders of protection as quickly and seamlessly as possible.
- Prosecutors and attorneys defending battered women accused of committing an act against their batterers, should engage in ongoing dialogues about complicated cases, so that a greater understanding can be reached.
- The Department of Parole should develop a policy for pursuing evidence-based prosecution on parole violations in all cases where the perpetrator has a history of domestic violence for all feasible cases.

¹ An excited utterance is a statement made by a person while s/he is still under the stress of excitement caused by a startling event or condition. The statement must relate to the startling event. American Prosecutors Research Institute, *DV 101*, available at: http://www.ndaa-apri.org/programs/vawa/dv_101.html.



Chapter Five

Arresting Domestic Violence

Introduction

Domestic violence is a crime that often involves a cycle of repeated incidents of abuse – which can include physical, verbal, emotional and financial abuse. Often these incidents escalate over time. Appropriate and timely interventions can be pivotal in the prevention of future abuse.

Police officers are often the first responders to a domestic violence victim's cry for help. She may not have told anyone about previous incidents, but then called 911 when the situation became unbearable. It may be that by receiving a positive and effective response from the officers the victim will have the courage to continue taking steps to free herself from the terrifying situation in which she lives.

In recent years, new laws and innovative technologies have been helping to fight domestic violence, and improving the criminal justice system's response to domestic violence. For example, New York State's Family Protection and Domestic Violence Intervention Act of 1994 instituted mandatory arrest and presumptive arrest policies for those who commit felonious acts of family violence and who violate orders of protection.¹ District Attorneys in New York City have established specialized prosecution bureaus and victim advocacy programs in their offices. The court system has established specialized criminal court parts in New York City to handle domestic abuse cases. Finally, new evidence-gathering technology, such as digital 911 recording and photography, helps prosecutors develop stronger cases against perpetrators, regardless of whether a survivor chooses to participate.² These programs are making an impact, as the Mayor's Office to

¹ N.Y. CRIM. PROC. LAW § 140.10.

² Richard R. Peterson, Ph.D., *Combating Domestic Violence in New York City, 2001*, New York City Criminal Justice Agency, Inc. Research Brief (2003).

Combat Domestic Violence reports that major domestic violence felony crimes have declined by thirty-six percent over the last four years.³

Despite this progress, some survivors still hesitate to engage the criminal justice system. In some cases the system can hurt as much as help: sometimes victims are arrested along with the batterer when the police respond to a call; the police do not always collect all of the possible evidence at the crime scene, making prosecution much more difficult and less likely to succeed; and often survivors are asked to testify when there is not enough other evidence, which can be an incredibly intimidating and emotional experience. All of the different components of the criminal justice system have made tremendous progress in aiding survivors of domestic violence since the enactment of the mandatory arrest law of 1994, but some improvements in intervention are still needed to ensure that survivors are not re-victimized by policies that were created to protect them.

This report explores the different facets of the law enforcement and criminal justice system - including the roles of police officers, District Attorneys, parole officers and probation officers - the efforts they are making to protect survivors of domestic violence, and the areas where work still needs to be done. It has been compiled through interviews conducted over the past year with District Attorneys, the New York Police Department (NYPD), and domestic violence advocates throughout the city. Much of the information contained in this chapter is based on anecdotal evidence provided by domestic violence advocates. Where possible, the report includes information about how widespread certain problems are. That was not always possible, as the data either does not exist or this office did not have access to it. Regardless, the research suggests that overall, the system has worked tremendously hard on improving its response to domestic violence, but there are still gaps in the system which are areas of serious concern.

Survivors Wary of 'the System'

In New York City, nearly one-third of female homicides, or femicides, are committed by intimate partners.⁴ A 1997 report issued by the New York State Office of Domestic Violence found that a history of domestic violence

³ Mayor's Office to Combat Domestic Violence, *Domestic Violence Fact Sheet November 2005*, <http://www.nyc.gov/html/ocdv/downloads/pdf/november2005.pdf>. The sheet does not detail which crimes are considered "major felonies," nor does it specify whether this number measures intimate partner domestic violence, or whether it is looking more broadly at domestic violence between family members.

⁴ Based on information from the following: Dewan, Shaila K., "As Murders Fall, New Tactics Are Tried Against Remainder," *The New York Times*, December 31, 2004 (hereinafter Dewan article); New York City Department of Health and Mental Hygiene, Bureau of Vital Statistics, *Summary of Vital Statistics 2003*, available at <http://www.nyc.gov/html/doh/downloads/pdf/vs/2003sum.pdf>; and New York City Department of Health and Mental Hygiene, *Femicide in New York City: 1995-2002*, 2004 available at http://www.nyc.gov/html/doh/downloads/pdf/ip/femicide1995-2002_report.pdf (hereinafter Femicide report). It should be noted that the perpetrators of intimate partner femicides can be of any gender. The femicide statistic is not limited to male perpetrators killing female victims.

usually precedes a domestic homicide.⁵ According to one source, of the forty-one intimate partner homicides committed last year in New York City, close to fifty percent of the couples had had no previous contact with the police.⁶ This number is consistent with the percent of cases of family related homicides that had no known prior police contact for the past couple of years.⁷

These statistics are alarming. Domestic violence victims are being killed by their partners, and in most cases, there most likely has been a history of

Eva is an undocumented immigrant from Mexico. Soon after coming to New York she met Angelo, a legal resident from Guatemala. She was impressed by Angelo's desire to give back to the community - he worked for the NYPD as an auxiliary police volunteer, in which he was trained by the local precinct and patrolled their neighborhood. They dated for a while and eventually moved in together; they now have a five-month-old daughter. After Eva moved in with Angelo he began to beat her up on a regular basis. When she threatened to call the police, he told her that if she called they would arrest her because of her status. Eva believed Angelo because he worked for the police. He would even take her to the precinct and after would mock her for not being able to confide in the officers there.

violence leading up to the murder. However, for many of the victims, the preceding violence goes unreported to the police. It is critical to ask, "Why?"

There are many reasons why victims may not be reporting the abuse. Embarrassment about having been abused and fear of retaliation from the abuser are two common reasons. Another explanation is that many victims do not want their batterers to be arrested;

they simply want the violence to stop. Some victims may not believe the violence is a criminal problem, but rather a family issue that should be dealt with in the home. Still others may fear that they will lose their children if the police come to their homes.

Underserved Populations Afraid to Contact NYPD

One explanation for why some femicide victims did not call the police about prior abuse is that more than 50 percent of victims of intimate partner femicides are foreign-born,⁸ and immigrants may be particularly hesitant to

⁵ Report to the Governor, New York State Office for the Prevention of Domestic Violence, Commission on Violence Fatalities (1997).

⁶ Mayor's Office to Combat Domestic Violence, Memo: *Corrections to the Public Advocate Report*, January 12, 2006. It is unknown how many may have sought help from a domestic violence organization.

⁷ See 3; Mayor's Office to Combat Domestic Violence, *Domestic Violence Fact Sheet, Winter 2004*, available at http://www.nyc.gov/html/ocdv/downloads/pdf/factsheet_winter2004.pdf. Family related homicides includes intimate partner homicides, in addition to homicides committed by other family members, including children who were killed as a result of the family violence. While the number of family related homicides has decreased over the past four years by 13.8 percent, the number of intimate partner homicides has increased.

⁸ Femicide report.

call police. Some may have had negative experiences with law enforcement in their own countries, others may be concerned about how calling police may affect their immigration status or that of their abuser, and still others may not realize that domestic violence is a crime in this country. Concerns about immigration status may be warranted. Some advocates report that the insensitivity of some law enforcement officers has led to the reporting of immigrant abusers to the Department of Homeland Security's (DHS) immigration bureau, against the wishes of victims.⁹ However, the NYPD reports that in cases where there is a question of possible terrorist or other dangerous activity in addition to the domestic violence, the NYPD will call in its counterterrorism or intelligence units. These units may call for a complete investigation, which may include contacting DHS.¹⁰ It is the policy of the NYPD to not inquire about a victim's immigration status.¹¹

Non-immigrant women of color may also hesitate to call 911, because of a history of barriers between the police and minority communities. They, or people they know, may have experienced violence or discrimination from the police. As a result, they may perceive the police as being hostile and unwilling to help them. This perception is likely accentuated by language and cultural differences. These feelings may be validated by some evidence that indicates women of color are more likely to be arrested during a police visit than other women.¹²

Victims in same-sex violent relationships may also be hesitant to contact police, as they may fear that calling the police will not offer them any protection and may even lead to further abuse, either from the police or from their batterers.¹³ One study by a program providing assistance to those in violent same-sex relationships found that just over one-third of their clients reported incidents to the police.¹⁴ The low number may be because of negative experiences they had had themselves or had heard of happening to others in the lesbian, gay, bisexual and transgender (LGBT) community. These experiences might have included police not taking a complaint or the officers wrongly arresting the victim because they were unable to distinguish

⁹ Public Advocate's Committee on Domestic Violence, Law Enforcement and Criminal Justice, April 14, 2005.

¹⁰ Phone conversation between Chief Kathy E. Ryan, NYPD and Lisa Poris, Office of the New York City Public Advocate, December 22, 2005.

¹¹ Mayor's Office to Combat Domestic Violence, *Special Issues: Immigrants, Immigrant Victims of Domestic Violence*, <http://www.nyc.gov/html/ocdv/html/issues/immigrants.shtml>.

¹² Holly Maguigan, Symposium: *Wading into Professor Schneider's "Murky Middle Ground" Between Acceptance and Rejection of Criminal Justice Responses to Domestic Violence*, 11 Am. U.J. Gender Soc. Pol'y & L. 427, 443, 2003.

¹³ Amnesty International, *Stonewalled: Police abuse and misconduct against lesbian, gay, bisexual and transgender people in the U.S.*, September 22, 2005 available at <http://web.amnesty.org/library/Index/ENGAMR511222005?open&of=ENG-USA>.

¹⁴ New York City Gay and Lesbian Anti-Violence Project, *Lesbian, Gay, Transgender and Bisexual Domestic Violence in New York, 2001, 2002*, available at <http://www.avp.org/>.

the victim from the abuser.¹⁵ Police response to incidents involving the LGBT community has improved over the years,¹⁶ and the NYPD continues to work with groups in the community to learn about how they can improve further.¹⁷

Many teenagers, particularly immigrants and those in same-sex relationships, do not trust police and do not see the criminal justice system as a source of help.¹⁸ The distrust may be a result of prior negative exposure to law enforcement, either through media, a personal experience, or the experience of someone a young person knows. Such a negative experience could be the result of the police not making an arrest or issuing a DIR when responding to a call from a young person. This lack of action could be caused by the fact that those in dating relationships that do not have a child in common are not covered by New York State's mandatory arrest law, nor are officers required to write out a Domestic Incident Report (DIR) for those in dating relationships without a child in common.¹⁹ It can also stem from a more general suspicion of authority figures.²⁰

Yet another explanation for the low number of victims who have had previous police contact may be that some of the victims either were involved with batterers who were part of the criminal justice system or were employees of the system themselves – either of which could be a deterrent in the reporting of the incidents. A victim may believe that her batterer's colleagues will not consider her to be credible, will try to protect him, or that reporting the batterer will jeopardize his career.²¹

The NYPD and the District Attorneys' offices are aware of the problems and have been, and continue to, take steps to improve their outreach and responses to these vulnerable populations. Some of these steps, including the City's LanguageLine program, a collaboration between the NYPD and the Mayor's Office to Combat Domestic Violence and the NYPD's work with community organizations is discussed in greater detail below.

¹⁵ National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual and Transgender Domestic Violence in 2000*, 7, 2001 Preliminary Edition, available at www.avp.org/publications/reports/2000ncavdvrpt.pdf.

¹⁶ Justin Rocket Silverman, *Report: Gays suffer from cop abuse*, September 23-25, 2005, amNewYork.

¹⁷ Meeting between Chief Kathy E. Ryan and Public Advocate Betsy Gotbaum, November 11, 2005.

¹⁸ Stephanie Nilva and Alison Yager, *Break the Cycle New York, Young Victims of Intimate Partner Violence: A Progressive Approach to Civic and Social Systems*, unpublished, April 2005. Additional information on teenagers, dating violence, and the criminal justice system can be found in Chapter Two, *Acting Like Adults: Teenagers and Dating Violence*.

¹⁹ N.Y. CRIM. PROC. LAW § 140.10 (5); N.Y. CRIM. PROC. LAW § 530.11. Mandatory arrest and DIRs are discussed in greater depth below.

²⁰ See 18.

²¹ This problem is discussed in more depth below.

NYPD Improving Call Responses

The tragedy of so many women not contacting police is that it is possible for law enforcement to play a critical role in stopping future abuse. To truly understand this role, it is necessary to recognize that law enforcement may be the first outside contact for a survivor trying to get help. How the police respond to a domestic violence call can impact someone's willingness to involve the police again in the future.²²

After receiving a 911 call, the local NYPD precinct sends out an on-duty patrol officer to respond to the call. In 1995, the NYPD established a Domestic Violence Unit, and now there are 385 uniformed officers (including sergeants and detectives) in the unit spread throughout the city. When a specially trained domestic violence police officer is available, that officer may respond to the initial call as well.²³ If a domestic violence prevention officer (DVPO) is not available to respond to the initial call, a DVPO will follow-up with the household at a later date.

When responding to calls, the police are required to investigate the incident that led to the call. The investigation often includes interviewing the victim, abuser and any other witnesses. Where possible, victims are interviewed separately from their abusers so that they will more likely to speak openly.²⁴

The police are also required to gather evidence from the crime scene, including collecting anything that may have been used as a weapon, or been broken during the course of the altercations such as shattered dishes and ripped clothing. It can also include taking photographs of injuries sustained by those involved in the incident,²⁵ and documenting and photographing damage to the homes such as a hole punched in the wall. It is critical for officers to gather as much evidence as possible so that a case can be successfully prosecuted, whether or not the victim is ready and willing to testify.²⁶

Officers receive training on evidence collection at the police academy and later receive additional training from the Domestic Violence Unit at various in-service trainings and roll-call trainings.²⁷ Some of the academy training is given by the staff of the District Attorneys.²⁸ Some additional training at the

²² Heather C. Melton, *Police Response to Domestic Violence*, Journal of Offender Rehabilitation, 1999, available at <http://www.crab.rutgers.edu/~goertzel/CJreadings/PoliceDomesticViolence.pdf>.

²³ See 17.

²⁴ Mayor's Office to Combat Domestic Violence, *Services for Victims: Police: Calling the Police*, available at http://www.nyc.gov/html/ocdv/html/services/police_call.shtml.

²⁵ *Ibid.*

²⁶ Further discussion of prosecuting a case without a victim's testimony can be found below.

²⁷ See 17.

²⁸ Phone conversation between Deirdre Bialo-Padin, Kings County District Attorney's Office, and Lisa Paris, Office of the New York City Public Advocate, December 19, 2005.

precincts may be provided by the District Attorneys,²⁹ and domestic violence advocacy groups.³⁰ However, while they are offered multiple trainings in various capacities on domestic violence, it is difficult to gauge how much substantive training a typical patrol officer receives on domestic violence and evidence collection.³¹

Some NYPD officers do not collect all of the admissible evidence at domestic violence crime scenes. This may be a result of officers not realizing what evidence could be helpful to District Attorneys, or it may be because they are frustrated that many cases are not prosecuted and consequently consider evidence collection to be an unnecessary burden.³²

A recent NYPD initiative to upgrade photographic evidence has led to the provision of a digital camera to each precinct. Patrol officers and others are then able to take photos of the crime scene and of injuries and immediately send them to District Attorneys so that the photos can be available at the arraignment of the arrested party. The use of digital photography at domestic violence crime scenes began in Queens and now occurs in all boroughs. By the end of 2005 the NYPD is scheduled to have a mainframe database that will make the photos accessible to every precinct and District Attorney's office.³³ If officers are unable to bring a camera with them when responding to a call, officers are able to call back to the precinct to get the camera delivered if there is a need to take photos.³⁴ In order to ensure that that extra step would not have to happen, the NYPD would need to have one for each police car, and not just one per precinct.

In addition to collecting evidence, officers are responsible for preparing a Domestic Incident Report (DIR). These reports include basic information about the parties involved in the incident, and a signed statement from the victim. By statute, the police are required to complete a DIR for each domestic dispute call to which officers respond where the parties are related by blood, were married or were formerly married, and/or have a child in common.³⁵ Advocates report that it does not always happen.³⁶ In fiscal year

²⁹ Phone conversation between Scott Kessler, Queens County District Attorney's Office, and Lisa Poris, Office of the New York City Public Advocate, April 27, 2005 (hereinafter Kessler phone call). Meeting between Audrey Moore and Andrew Seewald, New York County District Attorney's Office, and Lisa Poris and Mark Woltman, Office of the New York City Public Advocate, May 25, 2005 (hereinafter Moore/Seewald meeting). Meeting between Wanda Lucibello and Deirdre Bialo-Padin, Kings County District Attorney's Office, and Lisa Poris, Office of the New York City Public Advocate, April 29, 2005 (hereinafter Lucibello/Bialo-Padin meeting).

³⁰ See 10.

³¹ See 17.

³² See 9.

³³ *New York City Police Commissioner Raymond W. Kelly Announces a New Protocol for Sharing Domestic Violence Database With the City's District Attorneys*, NYPD Press Release 2004-114, October 21, 2004, available at <http://www.nyc.gov/html/nypd/html/dcp/pr-2004-114.html>.

³⁴ See 17.

³⁵ This limitation may exclude those in the LGBT community and some teenagers in dating relationships. See 19.

2004, police officers wrote up 236,759 domestic incident reports.³⁷ As of November 2005, all District Attorneys' offices are able to access a database that links DIRs to the related digital photographs.³⁸ A new DIR form, asking for more specific information is slated to be introduced across the state in early 2006.

Victims are given a copy of their DIR at the time of the officer visit. On the back of the copy given to the victims is information about a victim's legal rights, the domestic violence hotline for New York City and the locations of all Family and Criminal Courts in New York City. While officers are trained to point out this information to victims, it does not happen in all cases.³⁹

When responding to calls, the NYPD is not mandated to give victims of domestic violence information that could help protect them from further abuse, such as telephone numbers for domestic violence organizations or information on safety planning, obtaining an order of protection, or how to access domestic violence shelters. The only information that must be provided is the information on the back of the DIR.

However, officers are trained to provide some information and to hand over brochures with important information about how to stay safe and where to get help. Additionally, some precincts train their officers to give information on local community organizations that can provide assistance as well. Just as officers do not always point out the information on the back of DIRs, not all officers follow through on informing victims of these services.⁴⁰

When officers do give information, it is sometimes inaccurate or inappropriate for the situation, which can jeopardize the victim's safety. Many times, officers will advise victims, regardless of the victims' relationship with the batterer, to go to Family Court the next day and file for an order of protection.⁴¹ This advice may not be applicable to all survivors, as some may not qualify for a civil order of protection⁴² and some may be in even greater danger if they petition for an order of protection.

³⁶ See 9.

³⁷ Mayor's Management Report Fiscal 2005 Preliminary, Supplementary Indicator, NYPD, available at http://www.nyc.gov/html/ops/downloads/pdf/mmr/nypd_wi.pdf.

³⁸ See 17. E-mail communication between Christina Alex, Mayor's Office to Combat Domestic Violence, and Lisa Poris, Office of the New York City Public Advocate, December 22, 2005 (hereinafter 12/22/05 Alex e-mail).

³⁹ Phone conversation between Chief Kathy E. Ryan, NYPD and Lisa Poris, Office of the New York City Public Advocate, November 21, 2005.

⁴⁰ *Ibid.*

⁴¹ See 9.

⁴² See Chapter Two, *Acting Like Adults: Teenagers and Dating Violence*, for more information about the limitations on who qualifies for an order of protection.

Officer Perpetuated Domestic Violence⁴³

Lieutenant William Doyle once supervised the domestic violence unit in the 120th Precinct on Staten Island for the NYPD. On November 22, 2005, he celebrated his 47th birthday. After his wife arrived late to the party and brought him the wrong kind of birthday cake, he threatened her with a hammer. Several hours later, the couple got into another argument, during which he pressed his service revolver to the back of her head and threatened to kill her.

The NYPD reports that between the years 2000 and 2004, the department placed an average of 115 officers on modified assignment each year as a result of a domestic incident.⁴⁴ This means, that on average just three-tenths of a percent of the police force may be on modified assignment for domestic violence in a given year.

Studies have found that as many as 40 percent of police officer families experience domestic violence, a significantly higher rate than the general population.⁴⁵ As mentioned above, victims of police officers are more reluctant to report an incident than other domestic violence victims. Because her abuser is a part of the law enforcement community, she may worry about other

officers not believing her or not taking the case seriously. She may also be concerned about what reporting the incident may do to his career, or to his pension. If she, herself, works for the criminal justice system, she may be worried about what reporting the incident will do to her own career. The NYPD believes that the low number of officers on modified assignment is a result of early intervention and proactive steps taken by the department.⁴⁶

A woman who is being abused by an officer is particularly vulnerable because he has a gun, knows the criminal justice system and how to manipulate it, and may also know the locations of domestic violence shelters.⁴⁷ He may also be able to enlist other officers to help him control the victim. For example, one advocate reported an incident to the Public Advocate's office in which an officer who was abusing his wife and tightly controlling her activities asked a patrol car to go by his house regularly to check for signs of whether or not she was at home. The Performance

⁴³ Unlike the other survivor stories included in the report, the story included in this section is based on newspaper accounts of the incident. The news stories reported that after the incident the woman did call the police and he was arrested, suspended without pay and stripped of his gun and badge. Jamie Schram, *NYPD Wife-Saver Charged with Threatening His Own*, New York Post, November 23, 2005; *Officer Accused of Threat on Wife*, New York Times, November 23, 2005; Tanyanika Samuels, Tony Sclafani and Robert F. Moore, *Make a (Death) Wish!*, New York Daily News, November 23, 2005.

⁴⁴ Memorandum for Deputy Inspector Jones, from Sergeant Veronica Funchess, *Domestic Incident Statistical Data for 2000 Thru 2005*, November 25, 2005.

⁴⁵ National Center for Women and Policing, *Police Family Violence Fact Sheet*, available at <http://www.womenandpolicing.org/violenceFS.asp>.

⁴⁶ Phone conversation between Deputy Inspector Donna Jones, NYPD, and Lisa Poris, Office of the New York City Public Advocate, November 23, 2005.

⁴⁷ LifeSpan, *Police Domestic Violence*, available at <http://www.life-span.org/policedv.htm>.

Monitoring Unit of the NYPD is unaware of any cases where a fellow officer may have aided in an incident of domestic abuse.⁴⁸

Historically, women who have reported officers for domestic violence have not received the support of the law enforcement system.⁴⁹ They were ridiculed, their reports were not taken seriously, and their cases were left uninvestigated. As a result, various laws and protocols have been enacted. The federal government passed a law mandating that any officer convicted of a domestic violence offense has to relinquish all weapons. The National Association of Police Chiefs has promoted a model policy for addressing police perpetuated domestic violence, and law enforcement agencies, including the NYPD, have enacted portions of these policies for cases in which an officer is being reported for abuse.

When the NYPD responds to an emergency call that is deemed to be a domestic incident involving a member of the department, one of the first protocols to be followed is ensuring that a supervisor responds to the call.⁵⁰ Following that initial procedure, the NYPD's protocol on such matters also sets out that the Domestic Incident Report and the Complaint Report are provided to commanding officers in addition to the Chief of Internal Affairs. The case will then be investigated either by the Internal Affairs Bureau or the investigations unit.

However, advocates still report that some law enforcement officers, including those in the NYPD, Department of Probation, and court officers, may not act properly when a fellow officer is accused of being a batterer.⁵¹ Those working in law enforcement sometimes ignore the department's protocols when a colleague is involved by not arresting batterers, or by refusing to take complaints from victims against fellow officers. Other law enforcement officers may show favoritism towards their colleagues, minimize complaints, and create roadblocks in the proceedings. If an officer of the NYPD is caught acting inappropriately when taking a complaint, that officer would be subject to a disciplinary action which could result in a change in duty status and/or a loss of vacation days.⁵²

NYPD Has Learned From Past Mistakes

The fact that police have in the past often not been helpful when responding to domestic abuse incidents adds to victims' current reluctance to seek assistance from law enforcement officers. It was not that long ago that an officer responding to a call would intervene by making the batterer go for a

⁴⁸ See 46. The Performance Monitoring Unit is the unit to which officers are referred to after the Department is made aware that the officer has instigated an incident of domestic abuse.

⁴⁹ See 45.

⁵⁰ NYPD Patrol Guide Procedure No: 208-37, *Family Offenses and Domestic Violence Involving Uniformed or Civilian Members of the Service*, January 1, 2000.

⁵¹ See 9.

⁵² See 46.

walk around the block to 'cool off.' The officer would not take any formal reports and would not arrest the batterer. The NYPD has come a long way since those days.

Many things have contributed to the progress of the department. There is now greater awareness about the prevalence and lethality of domestic violence and that has led to increased attention to domestic violence within the NYPD. The department provides trainings, including in precincts and at the officer training academy, on related subjects such as the law on mandatory arrest.⁵³

In order to better respond to calls from immigrants, the Mayor's Office to Combat Domestic Violence and the NYPD began a year long pilot program in a precinct in Queens in March 2004 called the LanguageLine Program, and later expanded to a second precinct.⁵⁴ The service enables officers responding to calls to have instant, on-scene language interpretation, so that non-English speaking survivors will be able to accurately communicate with officers and help them understand what is going on.

The program has since expanded, and is now available in all police precincts throughout the city. Since the program launched, Language Line has been accessed over 2,100 times in over 150 languages.⁵⁵ In the two original precincts, all patrol officers were equipped with cellular telephones that had been pre-programmed to the LanguageLine. When the program expanded Citywide, only patrol supervisors were equipped with pre-programmed cellular phones, and patrol officers are instructed to call their supervisors to come to the scene if Language Line is needed.⁵⁶

Police officers have been trained to use the LanguageLine through a series of trainings and a video developed by the NYPD's Domestic Violence Unit.⁵⁷ Officers responding to a call should have "Language Identification Cards" which allow a witness to point to his or her native language.

New York State instituted a mandatory arrest provision under the Family Protection and Domestic Violence Intervention Act of 1994,⁵⁸ and this law has changed how police officers approach a domestic violence call. Under this law, arrest is mandatory when a police officer has probable cause to

⁵³ Letter from Chief Kathy Ryan to Public Advocate's Office, March 12, 2004.

⁵⁴ Mayor's Office to Combat Domestic Violence, *Mayor's Office to Combat Domestic Violence Joins Local and International Leaders to Announce Expansion of a Unique Interpretation Program in the 109th Precinct*, December 15, 2004, available at http://www.nyc.gov/html/ocdv/html/news/news_121504.shtml. The program is funded by the Department of Justice, office on Violence Against Women.

⁵⁵ 12/22/05 Alex e-mail.

⁵⁶ E-mail communication between Christina Alex, Mayor's Office to Combat Domestic Violence, and Lisa Poris, Office of the New York City Public Advocate, December 27, 2005.

⁵⁷ See 17.

⁵⁸ N.Y. CRIM. PROC. LAW § 140.10 (4) (2003).

believe a misdemeanor family offense or felony has been committed by one family member against another family member.⁵⁹ The significance of the mandatory arrest statute is that it removes some discretion from police officers to ensure that domestic violence incidents are promptly and responsibly handled by the police.

If the victim is not a "family member," as defined by the statute, mandatory arrest does not apply. Under the Family Court Act definition, a family or household is limited to parties who are or were formally married, parties with a child in common, and parties related by blood. The NYPD utilizes an "expanded" definition that also includes parties that either live together or lived together in the past in a family-type relationship.⁶⁰ While the NYPD's expanded definition is preferable to the Family Court Act's definition, and is broad enough to include some same-sex couples, it does not go far enough. It does not include parties in dating relationships who do not live together.

New York State's mandatory arrest law is scheduled to sunset in 2007. New York has not conducted comprehensive studies of this law to determine its effectiveness in the state.⁶¹ Research on equivalent laws in other jurisdictions suggests that such laws can be effective, but there is conflicting information on how well they can be implemented.

An unintended consequence of the passage of the mandatory arrest law was an increase in the number of victims of domestic violence being arrested, because they sometimes responded physically when defending themselves against the abuse.⁶² To help minimize these cases, New York adopted the Primary Physical Aggressor Law in 1997. The primary physical aggressor analysis applies to misdemeanor cases and instructs officers to assess the extent, location, and nature of injuries in order to determine who was the primary physical aggressor in the altercation, and then to arrest that person.⁶³ Officers must also assess whether or not there is a history of

⁵⁹ N.Y. CRIM. PROC. LAW § 140.10 (4) (c). An officer is not permitted to inquire as whether or not the victim desires the batterer to be arrested before making the arrest. However, for misdemeanor family offenses, an arrest does not have to be made if the victim specifically requests that an arrest not be made as long as there is no current order of protection.

⁶⁰ Mayor's Office to Combat Domestic Violence, *Services for Victims: Police*, available at <http://www.nyc.gov/html/ocdv/html/services/police.shtml>.

⁶¹ The New York State Office for the Prevention of Domestic Violence completed a study in 2001, but at least one of the recommendations from the study called for additional research. The study, *Family Protection and Domestic Violence Intervention Act of 1994: Evaluation of the Mandatory Arrest Provisions*, is available at: http://www.opdv.state.ny.us/criminal_justice/police/finalreport/contents.html.

⁶² Shamita Das Dasgupta, *Towards an Understanding of Women's Use of Non-Lethal Violence in Heterosexual Relationships*, National Electronic Network on Violence Against Women, February 2001, available at http://www.vawnet.org/DomesticViolence/Research/VAWnetDocs/AR_womviol.pdf.

⁶³ If police believe a felony has been committed, it does not matter for purposes of arrest who was the primary physical aggressor; the person committing the felony must be arrested. This can have a disparate impact on women, who often use weapons to defend themselves as the analysis set forth in

domestic violence and whether a person may have acted defensively in making the determination.⁶⁴

When officers are unable to determine who is the primary physical aggressor, the outcome of a call may be the arrest of both parties, known as dual arrest.⁶⁵ While preliminary research has indicated that the primary physical aggressor analysis has helped cut down on dual arrests, there are no hard numbers for New York City to confirm this or to help indicate how much more it could be reduced.⁶⁶ The NYPD does not specifically track this information.⁶⁷

The consequences of dual arrest can be devastating for the victim. It may result in her being less likely to call the police the next time there is an incident. It can also lead to problems with child care and job stability.

Another concern is that mandatory arrest may have a disparate impact on different racial groups. It was initially conceived as a way to ensure that all domestic violence cases, regardless of race, would be treated equally. However, there is some evidence from other jurisdictions to suggest that while mandatory arrest policies may help prevent violent acts against white women, it actually causes more incidents of violence against women of color.⁶⁸

Community-based Involvement Helps Deter Dual Arrests

Over the past few years, some domestic violence agencies have been working out of several police precincts throughout the city. In these programs, advocates provide support, legal information and advocacy to victims who have called the police for assistance. This is a means for reaching victims early on in their experience with violence. In those precincts, advocates and officers are also in close communication, and the advocates provide officers with critical, additional training on domestic violence and counsel officers on cases.

Preliminary data collection in these precincts has shown that after the agencies begin to work in the precincts, the number of domestic violence

the statute for misdemeanors clearly makes an exception for cases of self-defense, but does not do so for felony cases.

⁶⁴ N.Y. CRIM. PROC. LAW § 140.10.

⁶⁵ Women as defendants is discussed in more depth below.

⁶⁶ Mary Haviland, Victoria Frye, Valli Rajah, Juhu Thukral, Mary Trinity, *The Family Protection and Domestic Violence Intervention Act of 1995: Examining the Effects of Mandatory Arrest in New York City*, Urban Justice Center, 2001, available at

http://www.connectnyc.org/cnyc_pdf/Mandatory_Arrest_Report.pdf (hereinafter Haviland, etc.

article); *Symposium: Women, Children and Domestic Violence: Current Tensions and Emerging Issues*, 27 *Fordham Urb. L.J.* 565, February 2000.

⁶⁷ See 39.

⁶⁸ Leigh Goodmark, *The Legal Response to Domestic Violence: Problems and Possibilities: Law is the Answer? Do We Know that for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 *St. Louis U. Pub. L. Rev.* 7, 38, 2004.

related arrests increase and the number of dual arrests declines. In one precinct that works closely with the District Attorney's office, there were just 4 known cases of dual arrest in 2004 – a reduction from 48 in 1997 when the program began.⁶⁹ The reduction is credited to a new policy developed by that county's District Attorney's office to interview both parties pre-arraignment and to the coordinated approach involving the police, prosecutors and the advocates.

District Attorneys' Offices Take Different Approaches

After an arrest is made following the police response to a call, the NYPD turns the case over to the District Attorneys for prosecution. Domestic violence cases can be difficult to prosecute as survivors, who are often the sole witness to the crime, are frequently reluctant to cooperate. Societal, emotional, economic and safety reasons may all contribute to a survivor's unwillingness to aid the prosecution.

Assistant District Attorneys determine whether or not to prosecute the case and control the direction that a case may take. They may choose to go forward with a trial, try to reach a plea bargain, or they may offer an adjournment in contemplation of dismissal (ACD), which is discussed more below. There are many factors that can go into the decision to prosecute: whether or not the survivor is willing to cooperate with the prosecution, what evidence is available, the level of the offense, and what is going to be most likely to keep the survivor safe in the future.

Different DA offices in New York City approach domestic violence cases with different philosophies.⁷⁰ While one office might be aggressive with its prosecutions, attempting to get the highest possible rates of convictions on these cases, another office might choose to offer plea bargains, or choose the approach that is most likely going to ensure the safety of the survivor. All strategies have their advantages, and ultimately it may be best for prosecutors to treat each case individually when determining what will keep survivors safe and reduce the chance for recidivism.

DAs Offer ACDs

Approximately one out of five criminally prosecuted domestic violence incidents result in negotiated deals, called ACDs, wherein parties agree that the case will be dismissed after a set period of time if the abuser completes certain requirements.⁷¹ Generally the period of time that the case is kept open before ultimately being dismissed is anywhere from six to twelve

⁶⁹ Phone conversation between Debra O'Gara, CONNECT, and Lisa Poris, Office of the New York City Public Advocate, August 24, 2005.

⁷⁰ Kessler phone call; Moore/Seewald meeting; Lucibello/Bialo-Padin meeting.

⁷¹ New York City Criminal Justice Agency, *Combating Domestic Violence in New York City: A Study of DV Cases in the Criminal Courts*, April 2003, available at <http://www.nycja.org/research/reports/ressum43.pdf>.

months. Sometimes the sole requirement during that period is that there are no additional reported incidents between the batterer and survivor.

There are advantages and disadvantages to ACDs. In some instances, an ACD is preferable to taking a case to trial if a prosecutor believes a conviction is in doubt because of a lack of strong evidence. The extended period of adjournment allows the courts to continue to monitor batterers and make sure that they comply with any mandated requirements, such as a batterer intervention program. The closely monitored period of time is also an opportunity for all concerned to make sure that the batterer obeys the order of protection.

Another benefit of the extended adjournment is that by choosing not to dismiss a case until the time period has elapsed, a domestic violence survivor continues to receive an order of protection (which she may otherwise be unable to obtain in Family Court). It is also an opportunity for the survivor to determine the effectiveness of the order of protection; it is not unusual for a survivor of domestic violence who was initially ambivalent or even uncooperative to change her mind about a criminal prosecution and agree to testify on the prosecution of a violation of the terms of the ACD, including the violation of the order of protection. In those cases, it is possible to incarcerate the abuser for violating the terms of the ACD and also to prosecute him for any additional actions that may have happened during the time of the adjournment. It is also possible to reinstate the original case if there is a violation of the conditions of the ACD.

The negative side of ACDs is that they are not reflected on a rap sheet when there is a criminal background check done on a person, because there is no conviction or guilty plea. This means that a history of domestic violence could remain hidden during future prosecutions of the batterer or in other situations where background checks are given. For example, in Chapter Three, this report finds that foster children are at risk of being placed in foster homes with domestic violence because the foster parent screening process includes a criminal background check that is unable to identify ACDs.⁷²

Prosecuting Domestic Violence Trials

In domestic violence cases, in which there is a regular absence of cooperating witnesses, prosecutors must make the difficult choice of how to proceed. Some District Attorneys' offices in New York City have what is called a "no-drop" policy. In those offices the prosecutors will file complaints for the crimes for which they believe there to be legally sufficient evidence to prove that a crime was committed, whether or not the survivor is willing to cooperate. In the cases with no cooperating witnesses, prosecutors proceed

⁷² More information on foster parent screening can be found in Chapter Three, *Caring for the Children: Improving the City's Relationship with Children Exposed to Domestic Violence*.

with “evidence-based prosecution.” This means that they will use evidence other than the complaining witness’s courtroom testimony, such as medical records, photographs, and 911 calls in order to prove the case.

As previously mentioned, new technologies such as the digital recording and indexing of 911 calls and digital photography, make it possible for such evidence to be available to prosecutors within hours. The digital recordings of survivors’ 911 calls can be made available to all District Attorneys’ offices citywide by the NYPD within two to four hours if the office makes an expedited request. Digital photography will be available in all precincts across the five boroughs as of January 2006.⁷³

Even in cases where the survivor may be willing to testify, it is sometimes considered preferable and even necessary to proceed with an evidence-based case. Testifying can be traumatic for a survivor,⁷⁴ and being in the same location as her abuser can be intimidating and dangerous.⁷⁵

The father of Carmela's baby was incarcerated for attacking her. He regularly mailed Carmela threatening letters from jail and on multiple occasions placed menacing phone calls to her. She tried calling the Department of Probation to tell them what was going on, but the people she spoke to were unresponsive and didn't take any actions. She eventually told a family court judge, and that judge ordered an Assistant District Attorney to appear before him to discuss the case. The ADA agreed to prosecute the man. By that point, so much time had passed that Carmela didn't believe the system could work and she was terrified about the prospect of testifying and being in the same room as the batterer. Instead of appearing in court on the designated day, she left the state.

Pleading Guilty to Domestic Violence

In some instances, offering a plea bargain may be preferable to avoid taking a case to trial. There are many reasons why this might be so, including the large volume of cases and the strength, or rather weakness, of particular cases. In plea bargains, the offender agrees to plead guilty to a lesser offense in exchange for abiding by certain conditions.

In cases where batterers may have been originally charged with a lower class misdemeanor offense, the Assistant District Attorney handling the case may choose to allow the batterer to plead guilty to another type of lesser offense called a violation. Violations include disorderly conduct and harassment.⁷⁶ If the defendant pleads guilty to a violation, a judge may

⁷³ 12/22/05 Alex e-mail.

⁷⁴ Bronx District Attorney, *Violent Crime* available at <http://www.bronxda.net/fcrime/vcrime.htm>. It must be noted that there is also research that suggests it can be cathartic and empowering for survivors to confront their batterers in court.

⁷⁵ Battered Women’s Resource Center, Voices of Women Organizing Project, *Battered Women’s Experiences with Family Courts in NYC*, October 2003.

⁷⁶ NY PENAL LAW § 240.20 and NY PENAL LAW § 240.26.

impose a fifteen day jail term or the judge may impose certain conditions upon the defendant, such as a batterer's program, community service, and/or compliance with an Order of Protection. Additionally, if the defendant does not comply with the conditions imposed upon him by the judge, the judge may impose a maximum jail sentence of fifteen days.

Survivors may prefer that a batterer pleads guilty to a violation instead of to a misdemeanor for multiple reasons, including the fact that the batterer will not have a criminal record as the batterer will not have been convicted of a crime. Additionally, the record that the defendant admitted to a violation is sealed after one year. After the year, the guilty plea will not appear during a criminal background check.⁷⁷ One of the major disadvantages is that once the record is sealed, it is necessary to obtain permission judicially to access the sealed record.⁷⁸ This permission can be difficult to obtain.⁷⁹

Similar to conditions placed on cases that are “ACDed”, for plea bargains that result in probationary sentences, the period of close monitoring may also include requirements to attend a batterer intervention program rather than going to jail and to appear in compliance court.⁸⁰ Also similar to an ACD, the extended period of monitoring is an opportunity to make sure that the batterer abides by the order of protection. Research has shown that ongoing judicial monitoring may be the most effective way to reduce domestic violence recidivism.⁸¹ In some cases, because of the potential for extended periods of close monitoring, making plea deals with a batterer can actually be the best way to prevent future abuse.⁸² It also might be preferable to incarceration for the survivors who truly want the batterers to return home or the survivors who rely on their batterers’ income for child support.

Orders of Protection

After an arrest is made, batterers are brought before judges by for arraignments. At that time, it is typical for an ADA to request an order of protection for the survivor.⁸³ Many times it is granted on the spot. Survivors are not required to be present for this prosecution stage and therefore they often do not know that the order of protection has been granted.

⁷⁷ NY CRIMINAL PROCEDURE LAW § 160.55.

⁷⁸ Meeting between Audrey Moore and Alicia Riewarts, New York County District Attorney’s Office, and Lisa Poris, Office of the New York City Public Advocate, January 4, 2006.

⁷⁹ *Ibid.*

⁸⁰ Robyn Mazur and Liberty Aldrich, *What Makes a Domestic Violence Court Work? Lessons from New York*, available at http://www.courtinnovation.org/pdf/what_makes_dvcourt_work.pdf. A defendant pleading guilty to a violation may not receive a sentence of probation because a violation is technically not considered to be a crime.

⁸¹ *Ibid.*

⁸² Probation, and the potential for limiting recidivism is discussed in more depth below.

⁸³ Discussion about the effectiveness of orders of protection can be found in Chapter Two, *Acting Like Adults: Teenagers and Dating Violence*.

Some advocates and at least one District Attorney's office have expressed concern about delays between when orders of protection are granted and when women receive copies of the orders.⁸⁴ In some cases, women do not even know that orders have been granted until they receive them in the mail several days later. In other cases, women may receive calls from victims' advocates letting them know that orders have been granted, but then they may never actually receive copies of them.

It is critical for women to have actual copies of the orders of protection, because each order may contain different restrictions. One might state that a batterer only needs to stay away from her place of employment, while another prohibits him from being in the home. In order to ensure the order is appropriately enforced, she needs a copy of the order as soon as possible. However, she does not have to have the copy for it to be enforced; if there is a violation, and the police are called, the police can try to check to see whether an order of protection is in place through resources such as the New York Statewide Police Information Network's (NYSPIN) Order of Protection file.⁸⁵

In the event that the police do not initially arrest the batterer, it may still be possible for the victim to obtain a criminal order of protection. If her batterer was not arrested and a survivor still wants or needs a criminal order of protection, she can attempt to initiate a proceeding by going to the Court Dispute Referral Center (CDRC).⁸⁶ The victim must first try to go to the police and report the incident of abuse. Once she has done that, she can go to the CDRC where a screener will review her complaint. The screener can then refer the case to the District Attorney's office of that county. The DA's office has the discretion to decide whether or not to prosecute the case. There is no uniform policy for how DAs follow-up on these complaints because they are autonomous, though more often than not the DAs will not immediately prosecute and instead will encourage the relevant precinct to make an arrest.⁸⁷ One of the benefits of the precinct making an arrest is that if the case is ultimately prosecuted, there will have been the benefit of a police investigation. Even if the survivor is able to convince the DA's office to help her get an order of protection, that order of protection is not valid until that

⁸⁴ Lucibello/Bialo-Padin meeting. Public Advocate's Committee on Law Enforcement, Criminal Justice and Domestic Violence, meeting on June 6, 2005. It should be noted that the process for victims to be notified and to receive orders of protection varies borough to borough. It is possible that this may be a bigger problem in one borough than another.

⁸⁵ New York State Office for the Prevention of Domestic Violence, http://www.opdv.state.ny.us/criminal_justice/police/finalreport/registry.html.

⁸⁶ New York State Unified Court Systems, *New York City Criminal Court: Court Dispute Referral Centers*, available at <http://www.courts.state.ny.us/courts/nyc/criminal/specialprojects.shtml#Court%20Dispute%20Referral>

⁸⁷ Phone conversation between Les Lopes, Supervisor for the Manhattan Criminal Court CDRC and Lisa Poris, Office of the New York City Public Advocate, November 21, 2005.

order of protection is served on the batterer. Typically the batterer is served only if he is ultimately arrested.

Batterers Not Asked to Pay Financially

One advantage to victims when a District Attorney chooses to go forward with a case, rather than offer an ACD, is that if there is a conviction it may be possible for the batterer to serve a jail sentence, and the District Attorney can request restitution for the victim. Restitution can be requested in those cases where the victim may have medical expenses or other out-of-pocket expenses related to the abuse. Such restitution can be invaluable for a survivor who is trying to become financially stable after leaving her batterer.

Leaving a batterer can have a devastating economic impact for survivors of domestic violence as it may result in her having to give up her job, housing, child care, and partner's income.⁸⁸ She may also have tremendous medical expenses resulting from the injuries that he gave her. This negative financial impact is visible in the extraordinarily high correlation rate that has been found between women on welfare and women who have experienced domestic violence in the past.⁸⁹

For many, this is a result of the fact that their batterer prevented them from gaining financial independence during the relationship as a way of maintaining control.⁹⁰ Some victims may have been prevented from learning English,⁹¹ while others may have been convinced to drop out of school.⁹² Batterers of immigrant victims may have refused to aid them, and maybe even interfered with their immigration applications, thus preventing them from gaining access to legal employment opportunities.⁹³ Still other victims may have been forced to quit their jobs, or may have been fired from their jobs as a result of the abuse.⁹⁴

If survivors are awarded a restitution payment, it could help them offset some of the expenses that they incurred as a result of the battering, and

⁸⁸ Information contained in this paragraph and the following paragraph can also be found in Chapter Six, *Fleeing Abuse, Fighting Poverty: New York Law and Policy Challenges Domestic Violence Survivors Seeking Economic Stability*.

⁸⁹ *Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients*. United States General Accounting Office, November 1998, available at <http://www.gao.gov/archive/1999/he99012.pdf>

⁹⁰ Mayor's Office to Combat Domestic Violence, *You Have the Right to Be Treated with Dignity and Respect*, available at <http://www.nyc.gov/html/ocdv/downloads/pdf/dignity.pdf>.

⁹¹ Dwa Fanm, *Power and Control Tactics Used Against Immigrant Women*, available at <http://www.dwafanm.org/englishdv.pdf>.

⁹² Amy Farmer and Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, *Contemporary Economic Policy*, 2003, vol. 21, issue 2, pages 158-172, available at <http://www.women-law.org/downloads/Thiefenthaler.pdf>.

⁹³ See 91.

⁹⁴ NOW Legal Defense and Education Fund, *Surviving Violence and Poverty: A focus on the Link Between Domestic and Sexual Violence, Women's Poverty and Welfare*, September 18, 2002, available at <http://www.legalmomentum.org/issues/wel/Surviving.pdf>.

from leaving the batterer. District Attorneys have the statutory authority to request restitution for survivors at or before the time of sentencing in each case for which they secure a conviction.⁹⁵ Advocates report that this is rarely done.

One of the reasons it may be rarely done, is that it can be difficult to obtain restitution, even if it is ordered by the court. The Criminal Court is not set-up to enforce the payment, and some batterers may not have the financial resources to make the payment. It may be more effective for survivors to collect money through the Crime Victims' Board for any injuries she may have sustained. Further, it is important to have a survivor who is ready and willing to testify as part of the prosecution, in order to seek restitution.

Defending the Victim of Domestic Violence

The majority of incarcerated women in New York State are survivors of domestic violence.⁹⁶ In one study of an upstate prison, researchers found that 75 percent of women had experienced severe physical violence by an intimate partner during adulthood. Nationwide, 60 percent of women in state prisons have experienced abuse from prior or current husbands or boyfriends.⁹⁷

When women commit violent crimes, those crimes are generally against a spouse or partner and described by the women as self-defense.⁹⁸ Most of the women who are convicted of violent crimes do not have a prior history of violent behavior.⁹⁹ In one study, over 60 percent of females incarcerated for a violent offense had a prior relationship with their victim.¹⁰⁰ In another, it was shown that when women commit a violent crime, they are twice as likely as men to commit a violent offense against someone close to them.¹⁰¹ In general, women are less likely to be violent or homicidal than men, and when they are, it is after prolonged periods of abuse and seen as a last resort. When women kill it is generally because they feel that they or their children are in extremely harmful or life-threatening situations and escape is not possible.¹⁰²

⁹⁵ NY PENAL LAW § 60.27

⁹⁶ Women in Prison Project, Correctional Association of New York, *Survivors of Abuse in Prison Fact Sheet*, March 2005.

⁹⁷ *Ibid.*

⁹⁸ Owen, B., *Perspectives on Women in Prison*, In: Renzetti, C. M., & Goodstein, L., *Women, Crime, and Criminal Justice: Original feminist readings*, Los Angeles, CA: Roxbury Publishing Company, 2001.

⁹⁹ *See* 96.

¹⁰⁰ Cahn, N. R., *Battered Women, Child Maltreatment, Prison, and Poverty: Issues for theory and practice*, American University Journal of Gender, Social Policy, and Law, 11, 2003.

¹⁰¹ Trace L. Snell, *Women in Prison, Survey of State Prison Inmates*, 1991. Bureau of Statistics: March 1994, p.6.

¹⁰² Steffensmeier, D., & Alan, E., *Gender and Crime: Toward a gendered theory of female offending*. Annual Review of Sociology, 22 (459-487), 1996.

The incarcerated women who were battered but committed a non-violent crime often reported that their batterer had either forced them to comply with arrest or wrongfully implicated them. In a 1992 study, 35 percent of incarcerated women said that their offense was committed with or by their male partners.¹⁰³ Many other women reported that their abusive partner had forced them to commit crimes such as prostitution, drug dealing, or driving the getaway car.

Still other women are incarcerated as a result of a false report made by their batterers.¹⁰⁴ Often this malicious reporting resulting in the arrest of the real victim is in response to something she did to protect herself from the violence; therefore, this is generally referred to as retaliatory arrest.¹⁰⁵ Their abusers either fabricated an incident or perhaps even intentionally injured themselves. They report an exaggerated or manufactured incident to the police and have their victims arrested for the crime. In some instances, after a victim calls the police, a batterer will tell the police about the incident that happened between his victim and himself, but reversing the roles of the parties, making himself out to be the victim.

Close Monitoring of Probationers May Prevent Further Abuse

Svetlana lives in Queens. She is an immigrant from the former Soviet Union and has a limited understanding of English. She married Vladimir when she was 19 years old, and by the time she was twenty-five they had three children, and he had given her countless black-eyes, bruises, and cuts. After a particularly bad beating which occurred in front of their oldest child, she went to the police station to report the incident. She became scared when she got there, and did not file the report. The next day, after hearing what she had almost done, Vladimir stabbed himself in the hand with a metal object and went to the police. He showed the police the injury, and told them she had attacked him. Svetlana was arrested and, on the advice of her public defender who spoke no Russian, pled guilty to the crime in exchange for a year of probation. She was never allowed to return home or to reunite with her children because her husband used the incident to obtain an order of protection that excluded her from their apartment.

Rather than being sentenced to jail time, many batterers receive sentences of probation from judges or through their plea bargains. In New York State, probation is locally administered under the general supervision of the state.¹⁰⁶

¹⁰³ Gilfus, M. E., *From Victims to Survivors to Offenders: Women's routes of entry and immersion into street crimes*, *Women and Criminal Justice*, 4 (63-89), 1992.

¹⁰⁴ *Symposium: Women, Children and Domestic Violence: Current Tensions and Emerging Issues*, 27 *Fordham Urb. L.J.* 565, February 2000.

¹⁰⁵ Haviland, etc. article.

¹⁰⁶ New York City Department of Probation, *A History of Probation*, available at <http://www.nyc.gov/html/prob/html/history.html>.

In recent years, the New York City Department of Probation (DOP) has developed a priority system for monitoring offenders. Because of limited resources, the department has created a High Risk Unit, wherein those offenders most likely to commit a new offense receive more intense supervision. Included in this category are some offenders with a history of domestic violence.

Research has shown that close monitoring of domestic violence defendants on probation, with consequences for violations, can be effective in limiting further violence.¹⁰⁷ Therefore, from a policy perspective it can be beneficial to issue an order of protection, require regular court appearances, and maintain the option of issuing a bench warrant should the batterer fail to appear in court.¹⁰⁸

With the creation of the High Risk Unit, there are now two main ways DOP supervises adult offenders. Probationers classified as high risk are supposed to meet regularly with probation officers, including home visit meetings. Those not classified as high risk are able to register periodically at automated kiosks that are located around the city; they do not need to meet face-to-face with their probation officers.

The DOP receives daily updates on DIRs from the NYPD.¹⁰⁹ If the probationer was previously checking in at kiosks, he is treated as high risk until the department evaluates the situation and interviews the victim to determine whether or not he should be permanently moved to the high risk category. It is possible for the DOP to prosecute probationers for violating orders of protection. Similar to parole violation hearings discussed below, at these hearings brought by attorneys from the DOP, there is a lower standard of proof than in a standard criminal prosecution, making it easier to obtain a conviction.

Previously the Department of Probation had a specialized domestic violence unit. This unit was disbanded about two and half years ago. While the current system does allow for intense supervision of domestic violence offenders, because of its lack of specialization, advocates report it is not as effective as the old system. It takes experience to develop the specialized skills necessary to work with victims and offenders of domestic violence, therefore specialized domestic violence units are preferred for law enforcement and criminal justice agencies.¹¹⁰

¹⁰⁷ Leigh Goodmark, *The Legal Response to Domestic Violence: Problems and Possibilities: Law is the Answer? Do We Know that for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 St. Louis U. Pub. L. Rev. 7, 34, 2004.

¹⁰⁸ Lucibello/Bialo-Padin meeting.

¹⁰⁹ See 17.

¹¹⁰ Cherl Hanna, *The Paradox of Hope: The Crime and Punishment of Domestic Violence*, 39 Wm and Mary L. Rev. 1505, 1580, May, 1998.

Prosecuting Domestic Violence Parole Violators

As discussed earlier in this report, it is generally believed that perpetrators of domestic violence have a high rate of recidivism. Abusers are considered to be at high-risk for abusing again, even after they have been arrested and either put on probation or incarcerated. Parole officers can therefore play an important role in keeping survivors safe after their abusers leave prison.

There are three ways batterers serving jail sentences can get paroled in New York State. These are: discretionary release to parole supervision, conditional release to parole supervision, and release to a period of post-release supervision.¹¹¹ Regardless of which of these three ways the batterer was released, he must be supervised by a parole officer. The job of a parole officer is to assess and evaluate a parolee's adjustment to the community and to intervene when the parolee's behavior threatens the adjustment. The parole officer also determines if a delinquency action against the parolee is necessary.

In recent years, staff at the Division of Parole have tried to develop relationships with domestic violence advocacy organizations, as well as the survivors of domestic violence themselves.¹¹² Having a good relationship with survivors can be critical to tracking parolees, and making sure that they are not violating their parole conditions.

If the terms of parole are violated and reported, a parole violation hearing occurs. At parole violation hearings, parolees are prosecuted by parole revocation specialists who are parole officers and not attorneys. The standard of proof for the case is lower than that in criminal court. Rather than proving that someone is "guilty beyond a reasonable doubt," it is only necessary to show by a "preponderance of the evidence" that the alleged act occurred.¹¹³ Because this standard is lower, it is easier to prove the violation and to send the abuser back to jail in the event of parole violations.

Unfortunately, the current practice in New York often requires the survivor testify at the parole violation hearing. Typically, she is forced to testify, even if there is a way of proceeding based on the other available evidence. When deciding if they will cooperate, many survivors face pressure from his family and friends not to participate in his reincarceration. In 2001, advocates, judges and District Attorneys provided training of the parole revocation specialists and the administrative law judges that hear the cases, to teach them techniques of successful evidence-based prosecution. Despite the

¹¹¹ New York State Division of Parole, *Frequently Asked Questions*, available at <http://parole.state.ny.us/FAQs.html>. If a batterer serves his maximum sentence for incarceration, he is released without parole supervision.

¹¹² New York State Office to Prevent Domestic Violence, *OPDV Bulletin: NYS Parole Responds to Domestic Violence*, available at: http://www.opdv.state.ny.us/public_awareness/bulletins/fall2001/parole.html

¹¹³ 9 NYCRR § 8005.19.

training, this approach has not been integrated into practice,¹¹⁴ and policies have not been developed by the Division of Parole that would allow for the more routine use of evidence-based prosecution techniques.

While facing her abuser can be quite intimidating, the process has improved over the past few years. Previously there were no protections for the survivor when she went to testify at Riker's Island. She might have had to walk by the cell where her abuser was kept on the way to the hearing room. Also, it was possible for the survivor to be on the same bus with his family when going to the hearing. The Division of Parole has taken steps to protect the victim by providing a separate waiting room for the survivor, offering her an escort by a parole officer to Riker's Island, and scheduling domestic violence hearings in the largest two hearing rooms, so that she is not forced to be in a small space with her abuser.¹¹⁵

Findings

New York State's Mandatory Arrest Law is scheduled to sunset in 2007. New York has not conducted comprehensive studies of this law to determine its effectiveness locally; research on equivalent laws in other jurisdictions suggests that such laws can be effective, but there is conflicting information on whether implementation is successful.

The NYPD currently has no system to track dual-arrests or cross-complaints in domestic violence cases. Without this information, it is impossible to determine the effectiveness of the State's mandatory arrest law in New York City. Advocates report that while it is not uncommon for both batterer and victim to be arrested during domestic violence incidents, they have no way of truly knowing the frequency of such events.

Advocates report that some law enforcement officers, including those in the NYPD, Department of Probation, Department of Corrections, Division of Parole, and court officers may not act properly when a fellow officer is accused of being a batterer. Those working in law enforcement sometimes ignore the department's protocols when a colleague is involved by not arresting batterers, or by refusing to take complaints from victims against fellow officers. Other law enforcement officers may show favoritism towards their fellow officers, minimize complaints, and create roadblocks in the proceedings. This may be in response to systemic pressure to not follow protocol.

¹¹⁴ Phone conversation between Mary Haviland, Co-Executive Director of CONNECT and Lisa Poris, Office of the New York City Public Advocate, May 3, 2005.

¹¹⁵ *Ibid*; New York State Office to Prevent Domestic Violence, *OPDV Bulletin: NYS Parole Responds to Domestic Violence*, available at: http://www.opdv.state.ny.us/public_awareness/bulletins/fall2001/parole.html

Some law enforcement officers are not sensitive to the unique situations and cultures of underserved populations in New York City, including survivors of color, and especially immigrant and LGBT survivors. Advocates report that this insensitivity has led to the reporting of immigrant offenders of domestic violence to the Department of Homeland Security's immigration bureau, against the wishes of survivors. The history of homophobic responses, and continued questionable interactions by the NYPD with same-sex survivors, continues to have repercussions today. Officers' insensitivity places survivors at greater risk of further abuse by decreasing survivors' willingness to seek help in the future or continuing with whatever actions they may have initiated.

The City has expanded its Language Line pilot project to all precincts. The pilot project was a success and officers used the line over a 2100 times since the program began, accessing 35 different languages.

When responding to calls, the NYPD is not mandated to give victims of domestic violence information about services that can help protect them from further abuse, such as phone numbers for DV hotlines, information on obtaining an order of protection, or how to access domestic violence shelters. When officers do give information, it is sometimes inaccurate or inappropriate for the situation and can jeopardize the victim's safety.

Some NYPD officers may not collect all of the admissible evidence at domestic violence crime scenes. This may be a result of officers not realizing what evidence could be helpful to District Attorneys, or it may be because they are frustrated that many cases are not prosecuted. Currently, police officers receive most of their domestic violence evidence collection training while at the police academy. It is not clear exactly how much training they each receive after they leave the academy.

The District Attorneys of each borough have different philosophies for determining when and how to prosecute domestic violence cases. It is impossible to determine which is the best approach, as simply looking at the numbers of convictions, dismissals, and dropped cases does not tell the full story. In the end the safety of the survivor and others, including the children, should be considered when determining what to do in any specific situation. Overall, the offices should prioritize pursuing an evidence-based prosecution whenever possible, so that survivors will not be revictimized by having to go to court where they will see their batterers.

There is often a time delay of up to several days between when an order of protection is issued and the survivor receives a copy in her hands. Survivors are usually not present when criminal courts issue orders of protection. Sometimes the survivor is not even aware that an order was issued by the judge.

Prosecutors and lawyers defending battered women often disagree as to who the victim is in certain cases. When battered women are defendants there is often a disagreement as to who the victim is in certain cases. Prosecutors, even those who specialize in DV, may view her as the aggressor while domestic violence advocates and her attorney see her as a victim defending herself as best she can. It appears there are still many myths and misconceptions about who battered women are. Much of the disagreement is because we are still learning about domestic violence, and there is still a great deal of work to be done to understand who are the battered women defendants.

The Department of Probation fails to adequately monitor domestic violence offenders on probation. Currently, the department allows many offenders to report to a computer terminal rather than reporting face-to-face with a probation officer. Studies suggest that increased supervision could decrease recidivism.

Prosecutions of batterers who have violated parole often require survivors to testify against their batterers. Such experiences can be difficult for survivors, and are often unnecessary for successful prosecutions.

Recommendations

New York State should extend mandatory arrest so that a study of the true impact of the law in the state can be completed. As part of the study, a complete review of current research on the impact of mandatory arrest laws in other states should be incorporated into the findings. Police departments should turn over whatever data may be available to aid the study research. This data must include the number of domestic violence arrests, and information broken down by race, gender, and location. The outcome of such a study can help determine whether or not the State should permanently adopt a law on mandatory arrest.

NYPD should modify its on-line booking sheet, so that it can track whether or not a case is one-half of a cross-complaint or dual arrest. Without this information, it is difficult to quantify problems that may arise from New York State's mandatory arrest policy, and impossible to have a completely informed discussion on the subject. The NYPD should make this information available to city officials and advocates so that informed decisions can be made on related issues, such as the mandatory arrest law. This information should be made available quarterly, but at a minimum annually. The NYPD should also modify its on-line booking sheet to include a space for recording the domestic violence history of the parties, so that such information can be available at the time of arraignment.

All law enforcement agencies should enforce their procedures and policies around the steps to take when a batterer is a part of the criminal justice system. While it appears that at least some of the agencies have mandates about what actions need to be taken when one of its own is the batterer or victim, anecdotal evidence suggests that these rules are not uniformly followed and victims are suffering as a result. Victims should not be discouraged from reporting incidents, and Internal Affairs or the equivalent bureau should follow-up on the case within hours of the report. Those law enforcement agencies that do not have procedures and policies should take immediate steps to create them.

When either party, victim or batterer, is part of the law enforcement system, guns should be immediately confiscated from the home after an arrest is made.

Other officers who act inappropriately, such as using their position to intimidate or discourage a survivor, harass a survivor or batterer, or shield a fellow officer, when domestic violence cases involve fellow officers should be held accountable for their actions. Whether or not their actions are overt, agency protocol should clearly set out what penalties the officers should be subjected to. That protocol should be shared with domestic violence advocates upon request.

Every law enforcement or criminal justice agency should create a “know your rights” fact sheet for survivors of domestic violence, outlining the protocols that must be followed in cases involving a member of the agency. Such a fact sheet should outline the rights of the survivor, should be given to the survivor when a complaint is first made and should not be limited to a list of available services.

All law enforcement agencies should ensure that the officers receive ongoing sensitivity training on cultural and immigration issues in domestic violence cases. For the NYPD it is especially important that responding officers receive such training regularly. The information covered in such training should come out of discussions between commanding officers, community leaders, and advocates. Where officers are not responding with the appropriate actions, both verbal and written, officers should be held accountable and receive additional training.

The NYPD should mandate that officers responding to domestic violence calls carry palm cards with them that they can leave with victims. The palm cards should include emergency hotline numbers and basic information about obtaining an order of protection. Officers should give a card to victims so that victims will have something they can refer back to at a later date. These cards should also be given to victims when they contact officers to serve orders of protection. This same information should be printed as a

memo book insert, for the memo books that officers already carry around with them, and officers could refer to when giving advice to victims.

The NYPD should continue to work with city District Attorneys around training officers on non-photograph-based evidence collection during domestic violence calls, such as on the importance of information on domestic incident reports, and recording the excited utterances¹¹⁶ of victims, batterers, and children. Such training could include the utilization of case examples, demonstrating how the evidence can be helpful in the prosecution and conviction of a batterer. The training needs to be on an ongoing basis, as evidence laws are constantly changing based upon court rulings, and officers need to be kept up-to-date on these changes.

District Attorneys should assess each domestic violence case individually and speak with and counsel the survivor as to what is most appropriate to her situation. In some cases it may be appropriate to go forward without the survivor's consent and hope to incarcerate the batterer for an extended period of time, but in others it may be advisable to offer a plea bargain with a batterer whereby he has to complete a batterer accountability program and a period of probation. In the end the safety of the survivor and others, including the children, should be considered when determining what to do in any specific situation. Such consideration should also include whether or not it will be traumatic for the survivor to testify, whether or not it will be beneficial to her, and whether or not it is possible to prevail on the case without her testimony. Whenever possible, survivors' advocates who are not affiliated with the offices of the District Attorney should speak with the survivors early in the case to ensure that her voice can be heard.

District Attorneys, the NYPD, and the criminal court system should work together to ensure that survivors receive their orders of protection as quickly and seamlessly as possible. One way might be through computerization of the forms, similar to how they are computerized in family court. The orders could then be e-mailed to local precincts or be immediately available through the domestic violence registry. Employees at the precincts can be trained to regularly and frequently check the registry for new orders.

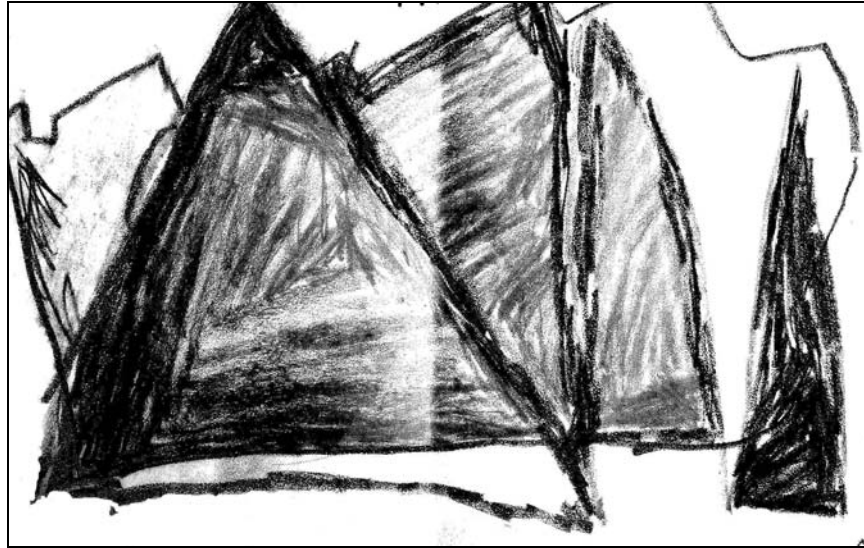
Prosecutors and attorneys defending battered women accused of committing an act against their batterers, should engage in ongoing dialogues about complicated cases, so that a greater understanding can be reached. Prosecutors should keep in mind that statistics have shown that women are primarily the survivors of domestic violence, and that women are often physically weaker and must use weapons to defend themselves. Attorneys representing battered women defendants must realize that

¹¹⁶ An excited utterance is a statement made by a person while s/he is still under the stress of excitement caused by a startling event or condition. The statement must relate to the startling event. American Prosecutors Research Institute, *DV 101*, available at: http://www.ndaa-apri.org/programs/vawa/dv_101.html.

prosecutors must prosecute violent crimes, and that sometimes women do initiate the violence.

The Department of Parole should develop a policy for pursuing evidence-based prosecution on parole violations in all cases where the perpetrator has a history of domestic violence cases for all feasible cases.

FLEEING ABUSE, FIGHTING POVERTY



NEW YORK LAW AND POLICY
CHALLENGES DOMESTIC
VIOLENCE SURVIVORS SEEKING
ECONOMIC STABILITY

Executive Summary

As the title of this report suggests, many survivors of domestic violence who are able to flee their abusers end up fighting poverty as they work to stabilize their new violence-free lives. An extraordinarily high number of public assistance applicants have been or are still victims of domestic violence. In 1998, the United States General Accounting Office reviewed a number of studies and found that between fifty-five and sixty-five percent of women on welfare had been abused by an intimate partner at some point in their lives, and up to fifty-six percent were current victims or had been victims of physical domestic abuse in the past twelve months.¹

This report looks at some of the dynamics of intimate partner violence that may lead to the economic instability many women experience after leaving an abusive relationship. It begins by looking at public assistance and recommends improvements to the welfare system that could aid survivors in making the transition to independent lives. Next, the report examines flaws in how New York State handles divorces, describes how those flaws negatively affect women, and suggests improvements that could help women negotiate better financial settlements as part of their divorce proceedings. Finally, it considers the impact of domestic violence in the workplace. It discusses recent improvements to the law that protect the rights of employed domestic violence survivors but also critiques the City's efforts to educate businesses about these rights. Not all survivors are employed, and many are forced to give up their jobs because of the domestic violence they have experienced.

Summary of Findings

- Over fifty percent of women receiving public assistance in the United States have experienced domestic violence at some point during their adult lives. Only three percent of public assistance recipients in New York City identify themselves to HRA as being survivors of domestic violence.
- HRA does not do an effective job of explaining to women why it is in their interest to disclose their status as victims of domestic violence to caseworkers.
- HRA may endanger some survivors of domestic violence by awarding partial child support and partial employment waivers that are less effective than the full waivers available to survivors of domestic violence.

¹ *Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients*. United States General Accounting Office, November 1998, available at <http://www.gao.gov/archive/1999/he99012.pdf>.

- HRA's policy of granting the minimum four-month waivers to domestic violence survivors rather than the maximum of six months is a waste of agency resources and is burdensome for survivors.
- HRA's ADVENT initiative has been successful, for the most part, and has helped survivors get their lives back in order, but is only located in three job centers.
- The distribution of marital assets and awards of maintenance as part of a divorce are highly unpredictable.
- In the event that New York State adopts a no-fault provision as a ground for divorce, women's financial stability could be protected by legislation creating a formula for maintenance.
- The City needs to make sure all employers and employees are aware of the rights of domestic violence survivors in the workplace.

Summary of Recommendations

- HRA should post highly visible signs in waiting areas, advising that special waivers may be available for domestic violence survivors.
- HRA should be more liberal in awarding full, as opposed to partial, child support and employment waivers.
- HRA should grant initial domestic violence waivers for longer than the minimum four-month period.
- HRA should expand the ADVENT program so that more survivors can benefit from it. ADVENT should be located at more than three locations and should be open to survivors who do not live in shelters.
- The State legislature should mandate uniform standards for maintenance awards in matrimonial cases.
- New York State should allow no-fault divorces only if it also makes corollary provisions to protect the non-monied spouse.
- The City should implement a program requiring the posting of signs about the workplace rights of domestic violence survivors in every place of employment.



Chapter Six

Fleeing Abuse, Fighting Poverty

Introduction

Survivors of domestic violence who leave their batterers may be forced to give up jobs, housing, child care, and their partners' income. The devastating economic impact of these sacrifices is evident in the extraordinarily high correlation between women on welfare and women who have experienced domestic violence in the past.¹

A high percentage of women leaving abusive relationships end up applying for and receiving public assistance. In 1998, the US General Accounting Office reviewed a number of studies and found that between fifty-five and sixty-five percent of women on welfare had been abused by an intimate partner at some point in their lives, and up to fifty-six percent were current victims or had been victims of physical domestic abuse in the past twelve months.² The high rate of correlation between abuse and welfare most likely indicates that women may use welfare as a way to escape from their batterers and that, before leaving their batterers, these women were reliant upon their batterers for financial support.³ Alternatively, it could indicate that they had to quit their jobs when they left their batterers in order to stay safe, possibly because they had to relocate.

Research shows that fear of poverty or economic insecurity is a major factor in the decision of some women to stay with their batterers.⁴ Many batterers completely control the family's finances, maintaining sole access to bank accounts and keeping all other assets and property in their names alone. For some survivors leaving their batterers may mean leaving all of their

¹ *Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients*. United States General Accounting Office, November 1998, available at <http://www.gao.gov/archive/1999/he99012.pdf>

² *Ibid.*

³ Amy Farmer and Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, *Contemporary Economic Policy*, 2003, vol. 21, issue 2, pages 158-172, available at <http://www.women-law.org/downloads/Tiefenthaler.pdf>.

⁴ *Ibid.*

financial resources. Survivors fear that they will have no way to earn money, and that without the income of the batterer, they and their children will end up hungry and homeless.

For many, this fear is magnified by the fact that their batterers, as a way of maintaining control,⁵ prevented them from gaining financial independence during the relationship. Some victims may have been prevented from learning English,⁶ while others may have been convinced to drop out of school.⁷ Batterers of immigrant victims may have refused to aid them with their immigration applications, thus preventing them from gaining access to legal employment opportunities.⁸ Still other victims may have been forced to quit their jobs or fired from their jobs as a result of the abuse.⁹

Women who can support themselves, or who have the opportunities and education to support themselves, are more likely to leave abusive relationships because they do not have to rely on their batterers for support.¹⁰

This chapter is composed of three sections, each of which will discuss the ability of survivors to obtain and maintain economic security. The first section examines Human Resources Administration (HRA) programs and policies that adversely affect survivors in need of public assistance. The second looks at divorce laws in New York State and how they can negatively affect a woman's financial stability after a marriage ends. The last section explores the rights of working victims of domestic violence, including the right to safety accommodations at the workplace and to unemployment insurance.

HRA Must Work Harder to Help Survivors

HRA FAILS TO APPROPRIATELY SERVE THOUSANDS OF DOMESTIC VIOLENCE SURVIVORS

Over fifty percent of women receiving public assistance in the United States have experienced domestic violence at some point during their adult lives, and at least one study has shown the rate to be as high as eighty-one percent.¹¹ The New York State Office of Temporary and Disability Assistance (OTDA) agrees that domestic violence is a factor in the lives of a high

⁵ Mayor's Office to Combat Domestic Violence, *You Have the Right to Be Treated with Dignity and Respect*, available at <http://www.nyc.gov/html/ocdv/downloads/pdf/dignity.pdf>.

⁶ Dwa Fanm, *Power and Control Tactics Used Against Immigrant Women*, available at <http://www.dwafanm.org/englishdv.pdf>.

⁷ See 3.

⁸ See 6.

⁹ NOW Legal Defense and Education Fund, *Surviving Violence and Poverty: A Focus on the Link Between Domestic and Sexual Violence, Women's Poverty and Welfare*, September 18, 2002, available at <http://www.legalmomentum.org/issues/wel/Surviving.pdf>.

¹⁰ See 3.

¹¹ Richard M. Tolman, Jody Raphael, *A Review of Research on Welfare and Domestic Violence*, *Journal of Social Issues*, 56(4): 655-682, Winter 2000, available at http://www.ssw.umich.edu/trapped/jsi_tolman_final.pdf.

percentage of women receiving public assistance in the state,¹² yet only three percent of public assistance recipients in New York City identify themselves to HRA as being survivors of domestic violence.¹³ It is critical to establish why HRA's screening process is identifying so few applicants as survivors of domestic violence despite the fact that HRA's Office of Domestic Violence provides ongoing domestic violence training for Job Center staff.

Explaining the discrepancy is crucial because thousands of domestic violence survivors in the city are not receiving some of the advantages to which they are entitled through HRA. Most of these benefits, in the form of waivers of public assistance requirements,¹⁴ were established by the federal government to help survivors become financially secure. Because of the abuse they either are currently sustaining or have sustained in the past, many survivors are less likely to fulfill the public assistance requirements and therefore are at risk of losing their benefits. This puts survivors and their children at great danger of experiencing additional abuse and long-term poverty.¹⁵

One explanation for the disparity is that women may choose not to disclose their domestic violence experience to their caseworkers. There are many reasons why a person will not admit to experiencing domestic violence, including concerns about confidentiality and hesitation to talk about a painful experience. Survivors may be embarrassed about their experiences, uncomfortable identifying themselves as a victim of domestic violence, or they may not even know that what they have experienced is domestic violence.

If survivors are not made aware of why it is in their interest to disclose domestic violence to their caseworkers, they will not do it. Immigrant survivors may be concerned about how a disclosure might impact their status or may be unaware that they are entitled to certain benefits. And while there is nothing in the regulations that discriminates against survivors

¹² New York State Office of Temporary and Disability Assistance, *Administrative Directive 03 ADM 02*, February 24, 2003, available at http://www.otda.state.ny.us/directives/2003/ADM/03_ADM-02.pdf.

¹³ This percentage is based on HRA statistics for FY05. It measures the number of clients seeing domestic violence liaisons (6,870) as reported in the testimony of Jane Corbett, Executive Deputy Commissioner of HRA, to New York City Council on October 20, 2005, available at http://www.nyc.gov/html/hra/downloads/pdf/domestic_violence_testimony_102005.pdf. (Hereinafter Jane Corbett Testimony). This number is compared to the number indicated by HRA as being the public assistance caseload (211,100) for FY05 as reported in the Supplementary Indicator Tables of the Fiscal Year 2005 Mayor's Management Report available at http://www.nyc.gov/html/ops/downloads/pdf/mmr/hra_wi.pdf.

¹⁴ A waiver temporarily relieves a public assistance recipient from fulfilling certain requirements related to receipt of the assistance. Waivers and public assistance requirements are discussed in more depth below.

¹⁵ Jody Raphael, Richard Tolman, PhD., *Trapped in Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare*, University of Michigan, April 1997, available at http://www.ssw.umich.edu/trapped/pubs_trapped.pdf.

in same-sex relationships, they may be particularly unlikely to disclose if disclosing the abuse means disclosing their sexual orientation, or they may be unaware that they may qualify for the same entitlements as those in heterosexual relationships.

When applying for public assistance, applicants are given large packets filled with information and questions to be answered.¹⁶ Buried in the pile is a single sheet asking applicants whether or not they are survivors of domestic violence. According to one study many applicants never see or read that form, and therefore may never disclose their situations.¹⁷

Public assistance applicants are initially screened by a caseworker for domestic violence. In most cases, the applicants have never met the caseworker before. The screening form consists of a series of extremely personal “yes or no” questions, and typically the applicants are not told why it may be in their best interest to disclose the truth to a stranger. A sample question from the screening form asks applicants whether or not they are in danger of their partner, “forcing you to have sex when you don’t want or to do sexual things you don’t want to do?”¹⁸

At least one advocacy group has suggested that it might be more effective for the initial screening questions to focus on whether or not the applicant would be able to meet the work and child support requirements for public assistance, rather than what incidents of abuse may or may not have occurred.¹⁹ Such a line of questioning would elicit the initial information required for a caseworker to know whether or not to refer an applicant to a domestic violence liaison (DVL) without resorting to the same level of intrusion.

Another explanation for the underreporting of domestic violence is that women do not disclose their status as victims of domestic violence because their caseworkers do not ask them. While some caseworkers are ineffectively screening for domestic violence by asking overly personal questions, others are not asking questions at all.²⁰ Indeed, in a 2000 report by NOW Legal Defense and Education Fund, it was found that over fifty percent of welfare recipients and applicants surveyed were never screened

¹⁶ Some advocates estimate that the packets are at least an inch thick.

¹⁷ NOW Legal Defense and Education Fund, *Dangerous Indifference: New York City's Failure to Implement the Family Violence Option*, available at <http://www.legalmomentum.org/issues/wel/dangindif.pdf>.

¹⁸ Human Resources Administration Form M-322d.

¹⁹ According to the Greater Upstate Law Project of New York, Alaska’s form says: “Tell us if working, looking for a job, or going to school may put you or your children in danger of physical, emotional or sexual abuse, we may be able to excuse you from these activities until the situation is resolved.” Available at http://www.gulpny.org/Domestic%20Violence/Public%20Benefits%20and%20Domestic%20Violence/nys_family_viol_opt.htm.

²⁰ Women Welfare and Abuse Taskforce, meeting on March 8, 2005.

for domestic violence by their caseworkers.²¹ It is unknown how well HRA is currently performing in terms of applicant screening because it does not track this information.²² Advocates report that while HRA has improved since the 2000 report, HRA still fails to orally screen a large number of applicants despite the fact that the screening form is a required part of the application process.²³

Federal and state guidelines demand that recipients of public assistance fulfill certain obligations to receive public assistance benefits. These obligations include fulfilling work requirements and aiding in the collection of child support. In recognition of the fact that compliance with these requirements may increase a survivor's risk of harm or make it more difficult for her to escape abuse, the federal government created the Wellstone-Murray Family Violence Option as part of the federal welfare law, and New York State adopted the Family Violence Option (FVO) as part of the New York State Welfare Reform Act in 1997.²⁴

The FVO requires all applicants for public assistance to be screened for domestic violence and those applicants who self-identify as victims of domestic violence to be referred to a DVL.²⁵ If the appropriate process is followed, the DVL determines whether or not the domestic violence claim is credible and whether compliance with public assistance requirements would make it more difficult for the victim or her children to escape the domestic violence or if compliance would create the risk for more domestic violence.²⁶ The DVL is supposed to work collaboratively with the client to determine what, if any, waivers the survivor may need for herself or her children so that they will be able to stay safe or avoid the risk of more violence.²⁷ If the survivor does not agree with the decision that is ultimately made by the DVL, the survivor can appeal the decision through a fair hearing.²⁸

²¹ See 17.

²² Paul Ligresti, Records Access Officer, Human Resources Administration, to Elizabeth Saylor, Staff Attorney, The Legal Aid Society, Re: Freedom of Information Law Request, July 9, 2004.

²³ See 20.

²⁴ New York State Office for the Prevention of Domestic Violence, *Welfare Reform: Health and Human Services*, available at http://www.opdv.state.ny.us/health_humsvc/welfare/.

²⁵ DVLs in New York City are social workers who work for HRA. Other states' equivalents to New York's DVLs have varying skills and abilities, and may not be as qualified as the social workers hired in New York City. United States Government Accountability Office, *TANF: State Approaches to Screening for Domestic Violence Could Benefit from HHS Guidance*, August 2005.

²⁶ 18 NYCRR 351.2(l)(7)(iii).

²⁷ Office of Temporary Disability and Assistance, Administrative Directive, 98 ADM-3, March 13, 1998, available at http://www.otda.state.ny.us/directives/1998/ADM/98_ADM-03.pdf (hereinafter OTDA 98 ADM-3). In fiscal year 2005, a total of 6,870 clients were assessed by DVLs and 4,569 were granted temporary waivers from employment requirements or child support requirements. Jane Corbett Testimony.

²⁸ A fair hearing can be requested by a public assistance applicant or recipient any time their government benefits are cut off or reduced, or if their application for benefits have been denied. This includes domestic violence survivors who believe that they have been wrongly denied a waiver or have been granted a partial waiver that they consider to be inadequate.

Survivors who do not receive waivers, are at risk of being “sanctioned” by HRA, meaning that a share of their welfare grant will be taken away for a period of time or in some cases discontinued entirely.²⁹ Survivors are sanctioned either because they were unable to comply with welfare requirements or because HRA committed a bureaucratic error. Sanctions are a common occurrence: in April 2005, more than fifteen percent of welfare households were under sanction.³⁰

HRA PARTIAL WAIVERS FAIL TO HELP SURVIVORS

The standard for granting waivers is liberal. The regulation reads, “Waivers will be granted in cases where compliance with public assistance program requirements would make it more difficult for the individual or the individual’s children to escape from domestic violence or subject them to further risk of domestic violence.”³¹

The use of subjective standards in the regulation like, “make it more difficult,” and, “subject them to further risk,” should make it possible for a large percentage of survivors disclosing their domestic violence to qualify for waivers; the imposition of virtually any activities outside of the residence, especially for survivors who have only recently left their batterers, increases the risk of abuse. Further, many survivors apply for welfare as a way of supporting themselves after they leave their abuser, and anything that makes it more difficult for them to progress in their recovery subjects them to further risk of abuse.

Despite the subjective wording of the regulation, many survivors are not receiving waivers, either because they did not disclose their abuse or because they were found ineligible. Of the survivors who do receive waivers, the majority only receive inappropriate partial waivers, which are discussed below.

Waivers can be granted for a variety of public assistance obligations, including drug and substance abuse rehabilitation, learnfare, and the eligibility of minor parents.³² Most commonly, survivors receive waivers for child support and work requirements.

There are two levels of child support waivers that survivors might be eligible for: full waivers and partial waivers. A full waiver means that HRA will not

²⁹ For families with dependent children, the first sanction will be in place until the recipient shows that s/he is willing to comply with the public assistance rules; the second sanction lasts three months, or longer if the recipient has not shown willingness to comply with the rules; and the third sanction lasts six months, or longer if the recipient has not shown willingness to comply with the rules. After the first sanction, survivors without dependent children have their cases closed.

³⁰ Human Resources Administration, *PA – April 10, 2005 – Weekly Report*, available at <http://www.nyc.gov/html/hra/pdf/citywide.pdf>.

³¹ See 26.

³² OTDA 98 ADM-3.

pursue child support at all, and therefore survivors are at no risk of angering the batterers with child support papers and court summonses.

More commonly, survivors are granted partial child support waivers.³³ This means that HRA will pursue child support and the survivors have to cooperate in the pursuit of child support, but efforts will be made so that the women do not have to see the batterers in court.

Partial waivers are often ineffective in helping women avoid retribution because batterers may not understand that it is not the women initiating the child support cases but rather HRA's Office of Child Support Enforcement.³⁴ The court papers that the batterers are served with do not detail this difference, and consequently the batterers commonly assume that the victims are responsible. Partial child support waivers can endanger women and their children because batterers, out of anger at being brought to court, may become that much more determined to seek them out. Therefore, it would seem that some victims are being granted partial child support waivers in violation of the regulation protecting them from an increased risk of abuse.

Work waivers are divided along the same lines as child support waivers into partial and full waivers. A full waiver temporarily relieves a survivor from fulfilling all of her work requirements. A partial waiver means that a survivor has to fulfill her work requirements, but the work assignment cannot be in a borough that is considered to be dangerous because the batterer either lives or works in that borough. As in the case of child support waivers, survivors are much more likely to be granted partial waivers than full waivers; in fact, they are twice as likely to receive partial waivers as they are to receive full employment waivers.³⁵ As in the case of child support waivers, the granting of partial employment waivers may, in some cases, be in violation of the regulation protecting survivors from an increased risk of abuse.

Partial work waivers may be inadequate for survivors because many survivors, particularly those who have only recently left their batterers, are not fit emotionally or physically to accept a work assignment. Women who have been abused often suffer from chronic health problems, low self-esteem, depression, and behaviors associated with post-traumatic stress disorder. However, at least one study has found that many of the negative

³³ Between January 2002 and November 2003, HRA granted 2,708 partial child support waivers, and only 1,965 full child support waivers. Paul Ligresti, Records Access Officer, Human Resources Administration, to Elizabeth Saylor, Staff Attorney, The Legal Aid Society, Re: Freedom of Information Law Request, dated February 6, 2004 and received May 10, 2004. These are the most recent numbers available to the Public Advocate's Office at the time of writing this report.

³⁴ See 20.

³⁵ Between January 2002 and November 2003, HRA granted 2729 partial work waivers, and 1322 full work waivers. Paul Ligresti, Records Access Officer, Human Resources Administration, to Elizabeth Saylor, Staff Attorney, The Legal Aid Society, Re: Freedom of Information Law Request, dated February 6, 2004 and received May 10, 2004.

health effects of abuse diminish over time.³⁶ In fact, once survivors are ready, working can be a beneficial part of the recovery process. In order to truly be ready to work, women need time to recover from their abuse by attending counseling, support groups, and doctors' appointments, without the stress of reporting to work assignments each day.³⁷

Partial work waivers may also place women's safety in jeopardy. Every time a survivor leaves her home or shelter, she runs the risk of seeing her batterer or someone who knows her batterer. Forcing her to go to a work assignment every day, even if it is not in the same borough as the batterer, still places her in danger of encountering him or an acquaintance on the sidewalk or in the subway. The regulations specifically indicate that waivers should be granted if fulfilling the requirement would place a survivor at risk of further domestic violence.³⁸ For many survivors, partial work waivers do not alleviate this risk.

Nancy is the mother of two young children and suffers from severe endometriosis. Her husband used to beat her up so badly that she had to be hospitalized on more than one occasion for her injuries. She eventually built up enough courage to flee from her abuser and got an order of protection against him. After leaving him, she had no way of supporting herself or her children, and she applied for public assistance. She disclosed her status as a domestic violence survivor and showed her caseworker her order of protection and a letter from her domestic violence shelter confirming the severity and continued threat posed by her ex-husband. Despite all of this information, Nancy's DVL only gave her a partial employment waiver. Because Nancy truly believed that going to the work assignment would jeopardize her safety she did not go. For this lack of compliance, she was repeatedly sanctioned. She eventually was able to obtain legal counsel and receive a fair hearing. The Administrative Law Judge found in Nancy's favor and ordered the City to give her a full employment waiver and restore her benefits to the full amount.

One advantage of partial employment waivers, is that survivors who are looking to gain skills before seeking employment can fill their work requirement by enrolling in an education or job training program. Some of these programs are even offered in the shelters themselves, so that survivors' safety is protected.³⁹ According to HRA, a large percentage of

³⁶ *Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients*. United States General Accounting Office, November 1998, available at <http://www.gao.gov/archive/1999/he99012.pdf>.

³⁷ *Statement of Kathleen Krenek, Director, National Resource Center on Domestic Violence, Testimony Before the Subcommittee on Human Resources of the House Committee on Ways and Means Hearing on Oversight of Child Support Enforcement*, May 19 1998, available at <http://waysandmeans.house.gov/legacy/humres/105cong/5-19-98/5-19kren.htm>.

³⁸ OTDA 98 ADM-3.

³⁹ Meeting between Jane Corbett, Human Resources Administration and Anat Jacobson, Office of the New York City Public Advocate, December 19, 2005.

survivors choose partial employment waivers because they think it is the best choice for them.⁴⁰

RUNNING OUT OF TIME: WAIVERS NEED TO BE LONGER

According to State regulations, all waivers must be granted for a period of no less than four months, and they must be reevaluated no less often than every six months.⁴¹ This means that waivers can be granted for indefinite periods of time as long as they are re-evaluated at least every six months. However, HRA has implemented a policy whereby waivers are granted only for the minimum four-month period.⁴² For many survivors, the initial four-month waiver is an unreasonably limited amount of time in which to address all their immediate needs, including safety, therapy, medical and legal appointments, new schools for their children, and appropriate housing.⁴³

This policy is inefficient for all parties involved in the process. It means that in a one- year period of time, a survivor in need of extensions will have to apply twice, and that HRA caseworkers will twice have to evaluate the survivor, make a determination, and do the requisite paper work to extend the waiver.⁴⁴ All of this effort is in addition to the original waiver application and determination.

One benefit of the granting of the minimum time period offered by HRA, is that it provides an opportunity for follow-up between the survivor and her caseworker to assess any changes in her situation and whether or not referrals for supportive services have been effective, and/or if additional referrals need to be made.⁴⁵

HRA'S ALTERNATIVE PROGRAM NOT OFFERED TO ALL SURVIVORS

HRA has developed the Anti-Domestic Violence Needs Team (ADVENT), a pilot program designed to accommodate the needs of survivors who receive public assistance and are residing in a domestic violence shelter. The program recognizes that survivors may face many barriers to employment, including the mental strain of their situation, safety considerations, substance addictions, and child care concerns, and tries to work with the unique needs of the survivors. Those enrolled in ADVENT can count some

⁴⁰ Memo between Jane Corbett, HRA, and Anat Jacobson, Office of the New York City Public Advocate, January 11, 2006, "*Fleeing Abuse, Fighting Poverty*" Report.

⁴¹ OTDA 98 ADM-3..

⁴² Human Resources Administration, Family Independence Administration, *Policy Directive #03-65-ELI*, November 25, 2003, available at <http://www.legal-aid.org/Uploads/PD03-65-ELI.pdf>.

⁴³ See 20. According to HRA, some survivors who are anxious to get their lives on track find four months to be a more than adequate period of time, and find that six months would be excessive. See 39.

⁴⁴ It is unknown what percentage of survivors seeks waiver extensions as HRA does not track this information. Paul Ligresti, Records Access Officer, Human Resources Administration, to Elizabeth Saylor, Staff Attorney, The Legal Aid Society, Re: Freedom of Information Law Request, July 9, 2004.

⁴⁵ See 39.

hours in which they have received services related to their recovery from domestic violence towards their work requirements.⁴⁶ In fiscal year 2005, there was an average caseload of 803 ADVENT participants monthly.⁴⁷

While the philosophy behind the creation of ADVENT and the additional support it offers to participants should be applauded, the implementation of ADVENT merits scrutiny. Several concerns with the program have arisen, chief among them that survivors who enter the ADVENT program are typically not granted the waivers for which they would otherwise qualify. Because survivors participating in ADVENT are unlikely to be given the waivers to which they are entitled, they are still subject to sanctions if they fail to meet the work requirements.⁴⁸ This unfairly penalizes survivors who are working to get all aspects of their lives back in order, and the sanction could be a major but avoidable setback to the recovery process. The failure to grant waivers can be at least partially attributed to the fact that HRA believes ADVENT clients are often able to fulfill employment requirements in a safe environment.⁴⁹

There are three ADVENT centers in the city, located at three of the City's Job Centers: Hamilton (Northern Manhattan), Crotona (Bronx), and Linden (Brooklyn). In order to participate in the program, a survivor must be willing to travel to the ADVENT center designated for her area for every public assistance appointment that she has.

Admission to the ADVENT program can be difficult. When survivors enter a shelter, their shelter caseworker informs them of the option to enter the ADVENT program and the survivor can request that her case be transferred. If an applicant already has a public assistance case, her shelter caseworker faxes an ADVENT worker to get the case transferred. For new applicants, a public assistance case must first be opened, a process that takes 30 days, before they can be transferred to the ADVENT program. Advocates report that the application and transfer process can take over six weeks before clients actually get into the program, and even longer if they have an existing case at a different center.⁵⁰

Survivors may face further hardship due to the fact that there are only three ADVENT centers in the city. This means that many survivors have to travel great distances to meet with their ADVENT caseworkers. For example, survivors on Staten Island must travel to Northern Manhattan, a trip that can take over two hours in one direction. Establishing a center in each borough would at least partially ease the burden on some survivors.

⁴⁶ See 42.

⁴⁷ Jane Corbett Testimony.

⁴⁸ See 20.

⁴⁹ See 42.

⁵⁰ See 20.

Another shortfall of the ADVENT program is that it is only offered to survivors who are residing in domestic violence shelters. There are many survivors who do not reside in domestic violence shelters but would nonetheless benefit greatly from the ADVENT program. They may not have been able to gain access to shelters because of space limitations and consequently they may be in general population homeless shelters or staying in the homes of friends.⁵¹ However, these women face the same challenges as survivors in the domestic violence shelters, including the challenge of balancing public assistance work requirements with the need to access critical support services.

It should be noted that advocates have been pleased that in their experience, and their clients' experience, the ADVENT caseworkers have been more cooperative and easier to work with than regular welfare caseworkers.⁵²

HRA SUED FOR FAILING TO MEET THE NEEDS OF IMMIGRANT VICTIMS

On December 13, 2005, the Domestic Violence Project of the Legal Aid Society and The New York Legal Assistance Group filed a class action lawsuit against HRA, the state department of health and the state Office of Temporary and Disability Assistance. The suit alleges that flaws in computer programming, training and supervision at city and state welfare offices has deprived hundreds of survivors of domestic violence and their children, who are legal immigrants, of food stamps and other benefits.

Grounds for Change: New York State Divorce Law Challenging for Survivors

The legal landscape of divorce in New York State may undergo a major shift in the near future.⁵³ In June 2004, Chief Judge Judith Kaye of the New York State Unified Court created a task force to examine many of the problems with divorce in the state. The task force, called the Matrimonial Commission, is examining every facet of the divorce process in New York, including issues pertaining to marital property, custody, legal representation, and grounds for divorce.⁵⁴

Unlike most states, New York does not have "no fault" divorce.⁵⁵ Currently, in order to get a divorce, a couple must have grounds for divorce such as

⁵¹ More information on survivors and the shelter system can be found in Chapter One, *Safety Shortage: The Unmet Shelter and Housing Needs of New York City's Domestic Violence Survivors*.

⁵² *Ibid.*

⁵³ Patrick D. Healy, *Chief Judge Asks Legislature to Consider No-Fault Divorce*, New York Times, February 8, 2005 (hereinafter "Healy article"); Leslie Easton, *A New Push to Loosen New York's Divorce Law*, New York Times, November 30, 2004 (hereinafter "Easton article").

⁵⁴ New York State Unified Court System, Press Release, "Statewide Task Force to Fix Flaws in New York's Divorce Process Is Convened by Chief Judge: Custody Disputes in Divorce Cases - A Primary Topic of Inquiry for New Commission," June 1, 2004, available at http://www.courts.state.ny.us/press/pr2004_10_1.shtml.

⁵⁵ NY DOM REL § 170; Healy article; Easton article.

abandonment, incarceration, or cruel and inhuman treatment.⁵⁶ However, there has been a growing movement in the state calling for the relevant section of the Domestic Relations Law (DRL) to be amended to include a “no fault” ground.⁵⁷

There is disagreement over what impact this change in the law would have on survivors. Some argue that no-fault divorce would make it easier for survivors to end abusive marriages, consequently making them safer. Others argue that no-fault divorce would allow abusers to leave their victims with little money, stripping them of a powerful tool for negotiating a bigger financial settlement, health insurance, or custody.⁵⁸ Both sides make valid points.

It is sometimes critical to a victim’s safety to be able to quickly and legally end her marriage, and no-fault divorce could facilitate this process. Even in violence-free relationships, divorces have been known to make litigants act unpredictably and sometimes violently.⁵⁹ At least one study has found that, after states introduce no-fault divorce laws, there is a correlated decrease in female suicide, domestic violence, and femicides.⁶⁰

The no-fault divorce option could be beneficial to victims of domestic violence because some batterers manipulate the legal system, using delay tactics to continue their harassment of their partners.⁶¹ New York State’s current law on grounds for divorce enables an uncooperative partner to prolong the divorce process and in some cases makes it possible to prevent the divorce entirely if a party is unable to establish grounds for a divorce. A quicker divorce process could also help survivors who need to be completely free of their batterers before they can begin the process of healing mentally and emotionally.

Some advocates do not support no-fault divorces because they have found the need to establish grounds to be beneficial to survivors who are seeking a fair division of marital assets. In cases in which the batterer has filed for divorce, the need to establish grounds provides the non-monied spouse with some leverage to negotiate a more favorable financial settlement or a safer custody and visitation arrangement in exchange for not contesting the grounds. Leverage in negotiations is particularly important because ninety-five percent of divorce cases in New York State are settled by clients and

⁵⁶ NY DOM REL § 170.

⁵⁷ Healy article; Easton article.

⁵⁸ Easton article.

⁵⁹ Avi Salzman, *When the Courtroom Can’t Contain a Divorce Case*, New York Times, June 26, 2005.

⁶⁰ Betsey Stevenson and Justin Wolfers, *Bargaining in the Shadow of the Law: Divorce Laws and Family Distress*, National Bureau of Economic Research, March 2004, abstract available at <http://www.nber.org/digest/mar04/w10175.html>.

⁶¹ Julie Domonkos, New York State Matrimonial Commission Public Hearing, October 14, 2004, available at <http://www.courts.state.ny.us/ip/matrimonial-commission/nyc.pdf>, 59.

lawyers without a judge issuing a decision.⁶² There are several explanations for why the percentage is so high, but the primary reason is that divorce trials can be long and expensive with unpredictable outcomes.

For a married survivor of domestic violence, the financial terms of a divorce may determine whether or not she will be able to achieve economic independence. There are three major components to a divorce that can affect the economic stability of a domestic violence survivor: child support, maintenance,⁶³ and the equitable distribution of marital property. All three are relevant, regardless of which party initiated the divorce proceedings.

While child support is typically awarded based on a pre-established statutory formula, no such guidelines exist for maintenance. Because of the lack of specific guidelines for maintenance, outcomes are often unforeseeable, and it can be difficult for lawyers to give accurate predictions to their clients.

The law of equitable distribution provides a discretionary guideline for the distribution of marital property and can be more accurately predicted than maintenance. Case law in New York has at least developed the notion that as a starting point for long-term marriages to which both parties made financial contributions, marital assets should be distributed as equally as possible.⁶⁴

Maintenance in New York State is generally intended to assist the non-monied spouse⁶⁵ in getting back on his or her feet following a divorce.⁶⁶ In essence, maintenance is usually a time-limited transitional payment. It is intended to aid the non-monied party while she looks for a job, gets job training or an education, and sets herself up financially. Under New York State law, there is no standard duration for which maintenance must be awarded and therefore it is left to a judge's discretion.⁶⁷ According to the DRL, a judge's order should be based on a multitude of factors including how long the parties were married and the respective abilities of the parties to be self-supporting.⁶⁸

Equitable distribution of marital property includes the division of all assets and debts that have accumulated during the course of the marriage including bank accounts, investments, pensions, and real property. The

⁶² Moriarty and Dee, Attorneys at Law, *This is How A Case Proceeds*, available at <http://www.moriartydee.com/info/proceeds.html>.

⁶³ This is also sometimes referred to as alimony or as spousal support if the parties are still married.

⁶⁴ *Granade-Bastuck v. Bastuck*, 249 A.D.2d 444; 671 N.Y.S.2d 512; Second Department, 1998

⁶⁵ While in some instances, men may be the non-monied spouse, because this report discusses survivors of domestic violence and the vast majority of domestic violence is perpetrated by men against women, this section refers to non-monied spouses as women.

⁶⁶ Spousal support can also be obtained by means of an application in Family Court, even when there is no divorce proceeding, when one spouse is refusing to provide financial support to the other.

⁶⁷ NY DOM REL § 236 A-1.

⁶⁸ *Ibid.*

“equitable” component of the distribution is discretionary and is based on how much each party contributed to the marriage. However, as stated above, there is a presumption that property will be split evenly. Fault, or responsibility for the break up of the marriage, can only be considered a factor in the distribution of property in the most egregious of cases, generally limited by the courts to those marriages in which there was such severe abuse that victims sustained life-threatening injuries.⁶⁹

It is often more economically efficient for parties, particularly if they are paying their lawyers, to negotiate a financial settlement to their case rather than spend tens of thousands of dollars and countless hours on a trial. Settling is in the financial interests of spouses with limited funds and free legal representation, as well, because attending court dates can mean losing days of work, regardless of who filed for the divorce initially.

When domestic violence survivors come to the bargaining table as the non-momed spouse, they often have a very weak bargaining position. The batterers typically have the money, and the victims usually are desperate to

Joanna and her husband were married for four years. Throughout those four years, his verbal and emotional abuse continued to get worse. Eventually he filed for a divorce against her. She received Supplemental Security Income (SSI) and did not have enough money to hire an attorney, but she was able to retain one from a civil legal services organization. He claimed she was not entitled to any of the disability pension, which he received as a result of a condition that arose during the marriage. She threatened to fight the grounds of the divorce and eventually, rather than pay his lawyer to take the case to trial, he agreed to give her a lump sum payment that she was able to live off of for a few years, while she got her life back together.

keep custody of their children. As mentioned above, one of the most critical leveraging tools survivors currently have for negotiating better financial relief and custody is the threat of not agreeing to the divorce and forcing the batterers to go to trial and proving the grounds for the divorce.⁷⁰

To address this reality, some advocates have recommended that no-fault divorces only be adopted if New York State takes concurrent steps to protect the financially disadvantaged spouse.⁷¹ This plan would enable survivors to take advantage of the speed of a no-fault divorce while still providing the same protection for their financial and custodial situations.

To this end, they suggest adopting a standard formula to provide guidelines for calculating the amount and duration of maintenance. This step could eliminate the arbitrary nature of the awards and would protect victims who

⁶⁹ *Havell v. Islam*, 301 A.D.2d 339, 751 N.Y.S.2d 449, 2002.

⁷⁰ Julie A. Domonkos and Catherine J. Douglass, *Perspective: “No-Fault” Divorce Revisited*, *New York Law Journal*, July 28, 2005.

⁷¹ Julie A. Domonkos and Catherine J. Douglass, *Perspective: Thoughtful No-Fault*, *New York Law Journal*, February 16, 2005.

are forced to relinquish any claims they may have to financial support or property in return for custody of their children. It would also make it possible for parties to agree to fair financial awards as part of the negotiations and relieve the pressure many survivors feel to give up any claims to financial support in return for custody.

Another step to protect the interests of survivors, whether or not no-fault is adopted, would be to ensure that the non-monied spouse has access to free or low-cost legal services and equal access to marital assets throughout the divorce proceedings. Unrepresented survivors often are overwhelmed by the legal complexities of their cases and these steps will help to ensure that survivors are able to obtain counsel. Advocates report that survivors without representation often give up all of their financial rights in exchange for custody of their children, or agree to settlements on the misunderstanding that the judge's proposed settlement was a final decision and not merely a proposal.⁷²

Some survivors are able to obtain lawyers specializing in their needs from organizations offering free legal services to domestic violence survivors, but many are not. While there are 25 such offices in New York City, there are fewer than 80 lawyers at these organizations in the city who actually represent survivors in family and matrimonial court proceedings⁷³ because most organizations can only afford to hire a handful. At least one organization reports that it is particularly hard to find funding for a matrimonial attorney because some foundations consider divorce to be a frivolous action.⁷⁴ Unfortunately the lack of resources means that survivors either get put on long waiting lists⁷⁵ or get turned away entirely by legal service agencies.⁷⁶

Current New York State law also hurts same-sex survivors. Same-sex marriage is not legal in New York State, and even if the couple registers as a domestic partnership, the financial considerations that apply to a divorce, such as maintenance and equitable distribution of property, will not apply when the couple separates.⁷⁷ Further, if the couple has a child, the non-monied partner will not be able to obtain child support from the other party.

⁷²Catherine Douglass, New York State Matrimonial Commission Public Hearing, October 14, 2004, available at <http://www.courts.state.ny.us/ip/matrimonial-commission/nyc.pdf>, 158.

⁷³ This number is based on a survey of legal services agencies conducted by the Public Advocate's office through phone and e-mail, from January 13, 2005 through February 18, 2005, with the assistance of Catherine Douglass, Executive Director of inMotion.

⁷⁴ See 61 at 56.

⁷⁵ Battered Women's Resource Center, Voices of Women Organizing Project, *Battered Women's Experiences with Family Courts in NYC*, October 2003.

⁷⁶ See 61 at 55; Rhonda Panken, New York State Matrimonial Commission Public Hearing, May 9, 2005, 154, available at http://www.courts.state.ny.us/ip/matrimonial-commission/MayNYC_TXT.pdf.

⁷⁷ Empire State Pride Agenda, *Marriage and Same Sex Couples*, available at <http://www.prideagenda.org/briefingpackets/marriage/qanda.html>.

This means that the victim of abuse in a same-sex relationship, even if it is a long-term relationship, may be even more vulnerable to financial instability after leaving an abuser than a victim in a heterosexual marriage.

Working for a Future: New York City and State Protect Employed Survivors

An overwhelming number of women experiencing domestic violence in their homes find that the domestic violence spills into their work lives as well. While at work, some receive harassing phone calls and unwelcome visits from their batterers. Others stay away from work because they are embarrassed by visible signs of abuse such as black eyes and other bruises. Some victims in same-sex relationships live under the threat that their batterer may 'out' them at work.

Between thirty-five and fifty-six percent of women who were working while being abused at home report that their batterer harassed them at their place of work, and between fifty-five and eighty-five percent said that they were either late for work or missed work because of the abuse.⁷⁸ The Bureau of National Affairs has estimated that domestic violence costs employers between three and five billion dollars in days of lost work and reduced productivity.⁷⁹ Over 175,000 days of paid work are missed each year as a result of domestic violence.⁸⁰

These numbers are alarming for women and for employers. Employers may be hesitant to hire a victim of domestic violence out of fear that she will not be a productive employee or may want to fire her because her situation has made her unreliable or has been the cause of workplace disruptions.

For many victims, the opportunity to become financially secure is critical to successfully and permanently leaving her abusive situation and her employer's support can be invaluable.

Ilana is a religious woman and teacher who was married to her husband for 20 years. After suffering abuse that began in the first year of their marriage, she left him when he almost strangled her to death. Following their separation, he has called the principal of the school in the tight-knit community where she works, as well as some of her fellow teachers, spreading malicious rumors about her. She assumes he is trying to get her fired. On more than one occasion he has been waiting outside of the school for her when she was leaving for the day and followed her home in violation of the order of protection against him.

⁷⁸ United States General Accounting Office, *Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients*, November 1998, available at <http://www.gao.gov/archive/1999/he99012.pdf>.

⁷⁹ Safe@Work Coalition, *Domestic Violence & the Workplace: Facts and Statistics on Domestic Violence*, available at <http://www.safeatworkcoalition.org/dv/factsandstats.htm>.

⁸⁰ Family Violence Prevention Fund, *Working to End Domestic Violence: American Workplaces Respond to an Epidemic*, 2005, available at <http://endabuse.org/press/papers/workbrief.php3>.

New York City has taken steps to protect employed women experiencing domestic violence. In 2001, the City Council amended the Human Rights Law to provide protection against employment discrimination to actual and perceived victims of domestic violence.⁸¹ This means that it is now unlawful for an employer to refuse to hire or to offer different terms of employment to a victim of domestic violence. It is also illegal to fire a person because that person is a victim of domestic violence or because of something her batterer did at the workplace. The law protects victims from losing their jobs or losing out on job opportunities because of their status. Similar legislation has been proposed on the state level.⁸² In 2003, the law was further amended to protect victims of sexual assault and stalking from employment discrimination, as well.

In September 2004, the New York Supreme Court⁸³ decided *Reynolds v. Fraser*, the first case brought under this new amendment.⁸⁴ Gina Reynolds, an employee of the Department of Corrections (DOC), lost her job after the department's Health Management Division, which routinely visits employees on sick leave at home to verify that they are ill, was unable to confirm Ms. Reynolds's illness because she was residing at a domestic violence shelter with a confidential address. The judge ruled in Ms. Reynolds's favor, reinstated her employment, and awarded her back pay. In reaching that decision, the judge recognized the importance of economic security to women escaping domestic violence, stating, "The ability to hold onto a job is one of a victim's most valuable weapons in the war for survival, since gainful employment is the key to independence from the batterer."⁸⁵

Under the 2003 amendment to the Human Rights Law, victims of domestic violence are further protected in the workplace. If a victim discloses her situation to her employer, that employer must make 'reasonable accommodations' to prevent the batterer from injuring or harassing her at the workplace.⁸⁶ If a victim discloses her status to her employer, that employer must keep the information in strict confidence, or the employer may be liable to pay damages in court.

Reasonable accommodations may include changing work locations so that the batterer cannot find the victim at the work site, adjusting the employee's schedule so the batterer will not know when to find her at work, switching the employee's work number so that he will not be able to call her at work, and instructing building security not to let the batterer enter the building.⁸⁷

⁸¹ NYC ADMINISTRATIVE CODE § 8-107.1.

⁸² S 2271-A and A 4611-A, An act to amend the executive law, in relation to prohibiting employers from discriminating against victims of domestic violence or stalking.

⁸³ In New York, the Supreme Court is a trial level court.

⁸⁴ *Reynolds v. Fraser*, 5 Misc. 3d 758, 763; 781 N.Y.S.2d 885, 889 (2004).

⁸⁵ *Ibid.*

⁸⁶ See 81.

⁸⁷ Committee on General Welfare, *The Council Report of the Governmental Affairs Division Re: Prop. Int. No. 107-A*, December 12, 2003.

Legally, the employer must make reasonable accommodations as long as it is not an 'undue burden' on the business.⁸⁸

Unfortunately, one of the limitations of the law is that it does not set out, what, at a minimum, encompasses reasonable accommodations. The line between what is reasonable and what can be considered an undue burden is undefined. For example, one of the most common accommodations sought by survivors is time off to deal with the multitude of medical and legal appointments to which they must attend. There is no guideline as to how many days an employer legally must allow a survivor to take before it becomes an undue burden. Conversely, it can also be to a survivor's advantage that no time limitations have been set as the lack of guidelines allows for more flexibility in the definition of reasonable accommodations. Flexibility can be important as some survivors need to take more days off than others.

In March 2004, the Mayor's Office to Combat Domestic Violence (MOC DV) joined with several organizations, including the Safe@work Coalition and the New York Women's Agenda, to create a campaign to reach out to business owners about the economic impact of domestic violence on businesses. The campaign also offered assistance to businesses to help revise their business plans.

More must be done, however. Many large businesses did not participate in the MOC DV and continue to lack insight into the economic impact of domestic violence on the workplace. Additionally, this program was primarily targeted to large corporations, neglecting the thousands of small businesses in the city. While the City has begun to take steps to reach out to small businesses by working with the City's Department of Small Businesses and local Chambers of Commerce,⁸⁹ many small business owners continue to be unaware of the law.

Because the law is still relatively new, the lack of knowledge extends beyond businesses to domestic violence advocates themselves. Not all domestic violence advocates are familiar with the law or knowledgeable about how it applies to their clients. Many advocates have not received training related to domestic violence workplace discrimination and when it may be possible to take legal action on a case. They may not be able to adequately advise survivors when these situations arise.

For some victims, it is just not safe to maintain their jobs, no matter what precautions they take. Others may choose to leave a job in order to relocate to a different area away from a batterer; to take an extended period of time

⁸⁸ See 81.

⁸⁹ Yolanda Jimenez, Commissioner of the Mayor's Office to Combat Domestic Violence, testifying before the City Council General Welfare Committee and Women's Issues Committee, October 21, 2005.

to address the medical, legal, or psychological impact of the violence; or for other reasons related to the violence. If they do quit their jobs, they may be eligible to receive unemployment insurance benefits. In 1999, New York State amended the Labor Law to say that some circumstances arising out of domestic violence may be considered “good cause” for a victim to quit her job.⁹⁰ If “good cause” is found, the victim can be eligible to receive unemployment benefits.

Findings

HRA does not do an effective job of explaining to applicants why it is in their interest to disclose their status as victims of domestic violence to caseworkers. It is likely that fifty percent of people on welfare in the City are survivors of domestic violence, but only three percent identify themselves as such to caseworkers. Women likely are not disclosing domestic violence to their caseworkers because they do not know that there are any benefits to doing so, such as receiving child support and work waivers, and entering the ADVENT program.

HRA regularly awards partial child support and partial employment waivers that are less effective than the full waivers available to survivors of domestic violence. Partial child support waivers can endanger women because batterers do not realize that child support cases are being initiated by the government and not by the survivors. These cases can enrage the batterers and give them more motivation to seek out the survivors. Partial employment waivers may not give survivors the time they need to recover physically and emotionally from the abuse and can endanger them by forcing them to leave the protection of their home or confidential shelter locations in order to work.

HRA’s policy of granting the minimum four-month waivers to domestic violence survivors rather than the maximum of six months is a waste of agency resources. Four months is often not enough time for survivors to get their lives in order, and they often need extensions. Extension requests can be burdensome to survivors and their caseworkers. If survivors need waivers for a year, caseworkers may have to process two four-month extensions rather than just processing one, six-month extension,

HRA’s ADVENT initiative has been successful and has helped survivors get their lives back in order but is only located in three job centers. The limited number of locations makes it difficult for many survivors to access the program.

The distribution of marital assets and awards of maintenance in a divorce proceeding is highly unpredictable. The non-uniform nature of such awards

⁹⁰ NY LABOR LAW § 593 (1) (a).

makes it difficult for lawyers to advise clients and can lead to women settling for lesser amounts of money in exchange for guaranteed custody of children.

Survivors without legal representation are particularly at risk of economic instability after a divorce. Many survivors go unrepresented because it is so expensive to hire a private lawyer and there are so few attorneys who work for free. Unrepresented survivors may agree to divorce settlements that award them fewer financial resources than they may be entitled to.

In the event that New York State adopts a no-fault divorce ground, women's financial stability could be protected by legislation creating a formula for maintenance. The issue of whether or not New York should amend the Domestic Relations Law to include a no-fault divorce provision is extremely complicated. Amending the law to include no-fault could have a damaging effect on the financial stability of women after a divorce. However, women might be more safe if no-fault was an option for them. The State could standardize a formula for maintenance and ensure that non-monied spouses get a fair award as part of the divorce.

Recent changes to New York City's Human Rights Law help protect employed survivors of domestic violence. However, many businesses remain unaware of these changes and what these changes would mean to them if an employee were to disclose her status as a survivor of domestic violence.

Recommendations

HRA should post highly visible signs in waiting areas, advising that special waivers may be available for domestic violence survivors. These signs should explain why disclosing domestic violence to a caseworker may be beneficial to a victim of domestic violence. Signs should also include questions such as, "Are you ever afraid of your boyfriend/husband/partner? Has your boyfriend/husband/partner ever hurt you?" These kinds of questions might encourage survivors who may not know what 'domestic violence' means to disclose their history to a caseworker, so that the caseworker can determine whether they qualify for waivers. The sign should also explain that information given to the caseworker will be kept confidential.

HRA should be more liberal in awarding full child support and employment waivers. HRA's criteria should closely follow the liberal guideline set forth in the regulation, which states that, "Waivers will be granted in cases where compliance with public assistance program requirements would make it more difficult for the individual or the individual's children to escape from domestic violence or subject them to further risk of domestic violence."

HRA should grant initial domestic violence waivers for longer than the minimum four-month period. Victims of domestic violence who are seeking

public assistance often have a full schedule of appointments securing services such as legal counseling, court dates, medical treatment, and housing during the period after they leave their abuser. Having to worry about waivers expiring after only four months is an additional burden on them and also creates more work for already overwhelmed caseworkers. State regulations permit waivers to be granted for up to six months, and HRA should make granting six-month waivers its standard policy.

HRA should expand the ADVENT program so that more survivors can benefit from the program. ADVENT should be located at more than three locations and should be open to survivors who do not live in shelters. Additional locations would mean that survivors, who sometimes risk their safety by traveling, would be more readily able to access and enroll in the program. Expansion of the program should not result in the dilution of services that are already in existence. Because so many welfare recipients are victims of domestic violence, HRA could redistribute staff to accommodate the expansion of the ADVENT program.

There are many survivors who do not reside in domestic violence shelters who would benefit greatly from the ADVENT program. They may not have been able to access these shelters because of the limited number of beds available, and consequently they may be in general population homeless shelters or staying in the homes of friends. These women face the same challenges as those in domestic violence shelters, including balancing public assistance work requirements with the need to access critical support services.

The State legislature should mandate uniform standards for maintenance awards in matrimonial cases. The adoption of such standards would lend predictability and uniformity to the current discretionary nature of maintenance awards. Standards should take into account circumstances such as whether or not there was domestic violence in the relationship; what injuries, if any, may have been sustained as a result of the domestic violence; and what language barriers, if any, may be faced by the non-monied spouse as she begins her post-married life. Awards should also take into account a woman's need for continued health insurance, such as the need to make COBRA (Consolidated Omnibus Budget Reconciliation Act) payments.

New York State should adopt a no-fault divorce grounds only if it also makes corollary provisions to protect the non-monied spouse. For women leaving violent relationships, economic security is a vital component to their abilities to obtain and maintain independence. If New York State adopts no-fault divorce, then it also needs to adopt extra provisions to protect women who will be financially disadvantaged. These provisions could include the adoption of a formula for awarding maintenance. The formula should take

into consideration various factors including the length of the marriage and the respective current and future earning capacities of the parties.

The Human Rights Law should be amended to require businesses to post signs about the workplace rights of domestic violence survivors. Such signs should outline the protections available under the Human Rights Law. They should also include the number of the domestic violence hotline. These signs could be part of an awareness campaign to educate all businesses on the workplace rights of domestic violence survivors.

New York City Agencies' Responses⁹¹

ADDENDUM FROM THE HUMAN RESOURCES ADMINISTRATION TO CHAPTER ONE

“Safety Shortage”⁹²

Response:

- As of December 2005, ninety-five percent of the survivors in shelter were receiving public assistance and eligible for the HSP program.
- Domestic violence survivors exiting emergency shelters for either a domestic violence or a DHS Tier II facility retain their eligibility for HSP. Those exiting shelter for other destinations retain their HSP eligibility for thirty days after they leave shelter.
- The City has sought approval from the State for HSP subsidies for clients who are working and not eligible for public assistance. To date the State has not approved funding for the request.
- According to the NYC Domestic Violence Hotline statistics, in the first half of calendar year 2005, there were more domestic violence emergency beds available than were being requested.
- As part of the City's continuing effort to streamline access to housing for victims of domestic violence, NYCHA will implement new documentation requirements to provide victims with additional options.
- Allowing longer stays in emergency shelter would inevitably mean denying space to clients currently at risk of battering. The maximum length of stay in a domestic violence emergency shelter is determined by State law and regulation. Emergency shelters are designed and funded to provide intensive and comprehensive short term services.

Shelter residents who have not made their own arrangements are referred to domestic violence Tier II facilities and to the Department of Homeless Services for placement in a DHS Tier II. HRA Office of Domestic Violence staff provides counseling and referrals for domestic violence survivors in seven DHS Tier IIs.

- A streamlined eligibility process has been created that minimizes the disruption to families by allowing them to directly transfer from an HRA domestic violence shelter into an appropriate DHS shelter without the need to apply at the EAU or PATH intake facilities.

⁹¹ The responses in these addendums are being printed in the form in which they were received. The responses received from City agencies were in response to earlier releases of chapters within ‘Opening the Door.’ All responses were received by the Office of the New York City Public Advocate on January 12, 2006.

⁹² Safety Shortage was released by the Office of the New York City Public Advocate in March 2005.

**ADDENDUM FROM THE ADMINISTRATION FOR CHILDREN'S
SERVICES TO CHAPTER THREE**

“Caring for the Children”⁹³

Response:

Children's Services is committed to doing whatever we can to help the survivors of domestic violence and their children. Children's Services has made remarkable progress in this regard, and while we intend to continue enhancing our efforts, we are proud of our efforts to date.

Since 1994, Children's Services has worked closely with Connect, Inc., to implement the Family Violence Prevention Project (FVPP), which provides domestic violence training and consultation to more than fifty family support service and foster care programs throughout the city, and to develop best practice approaches to families affected by domestic violence. In 2001, Children's Services established an Office of Domestic Violence Policy and Planning, which issued Domestic Violence Guiding Principles, providing the foundation for policy, training and practice related to domestic violence for ACS and its contract providers.

In 2002, the Clinical Consultation Program was established, placing twelve multidisciplinary teams in child protective field offices throughout the city, where they provide case-specific guidance to child welfare staff regarding domestic violence, substance abuse, and mental health concerns. Children's Services believes that child protective decisions are best made by a team of skilled practitioners. Any member of the decision-making team, including workers, supervisors, managers, and family court attorneys can and will involve a domestic violence consultant in a case when the case calls for their involvement. The number of domestic violence consultations has increased each year since the program was established, with more than 4000 such consultations taking place in 2005.

Also since 2002, Children's Services has worked in collaboration with Connect, Inc. to implement the Community Empowerment Project (CEP), an innovative effort to develop coordinated community responses to domestic violence. In 2003, Children's Services issued a comprehensive domestic violence strategic plan which provides a blueprint for changes across foster care, preventive and child protective services. In implementing this plan, the agency has provided extensive domestic violence training to our child protective staff, including caseworkers, supervisors and managers, and to our family court attorneys. Children's Services has also conducted a series of neighborhood-based conferences to raise awareness in the community of the dynamics of domestic

⁹³ 'Caring for the Children' was released by the Office of the New York City Public Advocate in July 2005.

violence. This spring, Children's Services will issue domestic violence practice guidelines for foster care and preventive service agencies, and will launch a series of trainings to support full implementation of these guidelines. In recognition of the prevalence of teen dating violence, these guidelines include detailed recommendations for prevention and intervention strategies with youth at risk for abuse. Children's Services is also partnering with Day One, a non-profit advocacy group working to end teen relationship abuse, to further build the system's capacity in this area of practice.

On March 25, 2005, the New York City Council passed a law amending Section 617 (c) of the New York City Charter. Children's Services supported that legislation and has revised its policy on assigning case names for protective, preventive and other placement cases, specifying that the case name shall be that of the alleged subject of the report.

While Children's Services by law does not have access to the Domestic Violence Registry, which is the statewide database of orders of protection and warrants issued in domestic violence cases that can be accessed by law enforcement and court personnel only, Children's Services conducts extensive evaluations of prospective foster parents, including interviews and criminal background checks for all adults in the household.

We invite domestic violence advocates and service providers to continue to reach out to the Office of Domestic Violence Policy and Planning, so that we can work together to keep children and families safe. For more information, contact ACS -Domestic Violence Policy and Planning
150 William Street, 14th Floor, New York, NY 10038 / phone 212-341-0408 / fax 212-341-0733.

**ADDENDUM FROM THE DEPARTMENT OF EDUCATION TO
CHAPTER TWO**

“ACTING LIKE ADULTS”

We are writing in response to the Public Advocate’s report about domestic violence, specifically regarding the chapter entitled “Acting Like Adults: Teenagers and Dating Violence”. The DOE is committed to providing our students with a safe and secure learning environment. The following are our comments in response to your findings as outlined in the “Summary of Findings” section.

Finding: Ninety-seven percent of teenagers who are in violent relationships do not disclose the abuse to adults. If they speak to anyone, they are most likely to speak to their friends and peers.

DOE Response: Based on the DOE’s experience, this statement is not reflective of the students in New York City high schools. Further, the report cites no source and, as a result, DOE cannot study this further.

Findings: Because of the Department of Education (DOE) policy, survivors of relationship abuse often remain in the same schools as their batterers. There are only limited circumstances under which students can be transferred out of schools in the event of a violent incident. The only recourse consistently available to a victim is to request a safety transfer, which she may or may not be granted, and which penalizes her for the abuse she has suffered.

Suspending batterers from school does not offer victims any real, permanent protection. Suspended batterers return to school after the suspension is over, sometimes just six days later, exposing their victims to a risk that is potentially even greater than before.

The DOE neither has a uniform policy nor designated personnel to handle teen relationship abuse. The DOE does not have a coordinator specifically designated to address the problems of relationship abuse among youth. The lack of a uniform policy has led to a piecemeal approach in schools that makes the method for handling relationship abuse inconsistent and unpredictable from school to school.

DOE Response: The DOE has a uniform policy for addressing relationship abuse as documented in the DOE’s Code of Conduct and Chancellor’s Regulations A-443, A-450, and A-831. The Code of Conduct and the Chancellor’s Regulations are consistent with the requirements of federal and state law and implementing regulations of the Commissioner of Education.

Chancellor's Regulation A-412 outlines the procedures for notifying the New York City Police Department when a student has committed a crime. Additionally, the DOE Discipline Code sets forth a comprehensive description of inappropriate behaviors, including sexual misconduct, and sets forth the range of disciplinary consequences for engaging in such misconduct. Chancellor's Regulation A-443 establishes the procedures for disciplining students who violate the Discipline Code. And, Chancellor's Regulation A-450 outlines the procedures and due process requirements for involuntarily transferring students.

In addition, Chancellor's Regulation A-831 sets forth the DOE's policy on student to student sexual harassment. It establishes the DOE's protocols for teachers, guidance counselors, and school safety agents handling matters involving peer sexual harassment. DOE teachers, school administrators, and counselors work to resolve conflicts and provide counseling, intervention and prevention services to ensure student safety. Further, the Regional Directors of Student Placement and Youth and Family Support Services (SPYFSS) and Regional Directors of Substance Abuse Prevention and Intervention Services provide professional development to schools on all aspects of violence.

The Central Director of Prevention and Intervention Services also works closely with the Office of School Intervention and Development to ensure a safe school learning environment. Pursuant to Chancellor's Regulation A-412, school staff are required to prepare an on-line occurrence report of all school related crimes and safety incidents. If a question arises at a school as to how to handle the enforcement of an order of protection between students at the same school, the school can call the Office of Legal Services at the DOE for advice. These orders are handled on a case by case basis. When an order of protection exists between students attending the same school, school staff members work with the students and their families to provide a safe educational environment. To the extent possible, this may involve adjusting the student's schedule, to ensure that they do not share classes. Additionally, staff can also work with the student who was granted the order of protection to secure a safety transfer to another school.

Victims of teen dating violence are encouraged to report any forms of violence to their teachers, counselors, administrators, school safety agents, and all school personnel that they encounter daily. Counseling, changes of class schedules, new locker assignments, school safety transfers, and suspensions are measures available to assist in dealing with teen dating violence situations. Safety transfers are one of the many options made available to the victim when it becomes unsafe for the victim to continue at their present school. Counseling services are also available to assist the victim and to engage the batterer in behavioral change. Furthermore, pursuant to Chancellor's Regulation A-450, "When a student's behavior and/or academic record demonstrate that adjustment in school is unsatisfactory and if the principal believes that the student would benefit from a transfer or receive an appropriate education elsewhere, the principal may pursue an involuntary transfer...".

Acts of violence are not acceptable, nor are they condoned or tolerated at DOE schools. The DOE is committed to creating safe and productive learning environments for all our students. Students, including batterers, in violation of school policy will be disciplined as per the Citywide Standards of Discipline and Intervention Measures (DOE Discipline Code).

It is important to note that behaviors that fall under the Citywide Standards of Discipline and Intervention Measures are limited to those that occur “in school during school hours, before and after school, while on school property, while traveling in vehicles funded by the Department of Education, at all school-sponsored events and on other-than-school property when such behavior can be demonstrated to negatively affect the educational process or to endanger the health, safety, morals or welfare of the school community.” Therefore, the DOE cannot institute school-based disciplinary action against a student who has committed dating violence away from school, on weekends, and at any other time and place not connected to school or school related functions. Such behavior must be addressed through a complaint to the NYPD.

Findings: Teachers and other school staff do not receive training on how to identify and prevent dating violence among their students. While the DOE has some programs to teach students about relationship abuse, those programs are only in a limited number of schools. The DOE has a new health curriculum, which reportedly contains a segment on relationship abuse, but it remains to be seen how extensive and appropriate this curriculum will be.

DOE Response: DOE teachers, school administrators, and counselors work to resolve conflicts and provide counseling, intervention and prevention services to ensure student safety. Further, the Regional Directors of Student Placement and Youth and Family Support Services (SPYFSS) and Regional Directors of Substance Abuse Prevention and Intervention Services provide professional development to schools on all aspects of violence. In addition, the DOE has distributed materials, including posters, flyers, booklets, and pamphlets, covering teen dating and relationship violence, domestic violence, and suicide to middle and high schools. Materials on child abuse prevention were distributed to elementary, middle and high schools.

Furthermore, the DOE is currently engaged in systemic professional development on bullying prevention and intervention at all grade levels. Each school is expected to send a team of teachers and a counselor to this professional development. To date, middle schools training has been completed. Elementary school training will be completed in April 2006. (High school training will be completed in February 2006.) Training for elementary and middle school Parent Coordinators will begin in February 2006. Professional development on the needs of lesbian, gay, bisexual and transgender students began in November

2005. Middle and high school counselors and high school Coordinators of Student Affairs (COSAs) from Regions 1, 5, and 6 have received training. Training for Region 3 will take place in January 2006. Training for counselors and Coordinators of Student Activities (COSAs) in Regions 2, 4, 7, 8, 9, and 10 will continue through the school year.

The DOE was pleased to be able to expand, in partnership with HRA, the Relationship Abuse Prevention Program (RAPP) program from 20 to 30 DOE schools in September 2005. These programs include an MSW social worker and are funded by the Human Resources Administration (HRA). The DOE and HRA have discussed the possibility of expanding the program further, which is contingent upon securing the necessary funding. Additionally, the DOE regularly works with CBO's and agencies that conduct trainings, workshops, and presentations at our schools that address issues of domestic violence, and teen dating and relationship abuse. Any agency wishing to offer services in our schools should contact the Regional Director of Student Placement Youth & Family Support Services, Drug Directors, School Based Service Administrators, Regional CBO Coordinators, and/or the Regional Safety Administrators.

The DOE is committed to continued outreach to students through printed materials that encourage youth to seek assistance and that provide hotline numbers, continued collaboration with HRA and DYCD to provide programming to students that encourage reporting, and continued implementation and possible expansion of the RAPP Program. Further, the implementation of the new health curriculum will address the issue of healthy and unhealthy relationships to build the capacity of youth to recognize if they are in an abusive relationship and to report it.

Finding: The DOE does not track how many students have reported being in a violent relationship or have sought help from their schools during the school day as a result of their violent relationships. Without this critical information, it is impossible to know the extent of the problem in the schools, to figure out the best way of addressing it, and to know what resources should be dedicated to it.

DOE Response: Pursuant to Chancellor's Regulation A-412, school staff are required to prepare an on-line occurrence report of all school related crimes and safety incidents.

**ADDENDUM FROM THE HUMAN RESOURCES ADMINISTRATION
TO CHAPTER SIX**

“FLEEING ABUSE, FIGHTING POVERTY”

The Office of the Public Advocate provided a draft of this report to the New York City Human Resources Administration/Department of Social Services for review and comment. While revisions were made in response to HRA’s comments, we continue to disagree with a number of the findings and recommendations in the report. Rather than reiterating our areas of disagreement, HRA would like to make the following specific observations in response to the final report:

1. The domestic violence screening form, as mandated by New York State, is provided to all individuals making application for, or seeking recertification of, Public Assistance cash benefits. Although filling out the screening form is entirely voluntary, we encourage clients to do so, and to sign the form to indicate that they are aware of the process, whether or not they choose to complete it.
2. Every Public Assistance application package includes a palm card with domestic violence assistance referral numbers, and signs are posted in all Job Centers displaying the City’s Domestic Violence Hotline number.
3. HRA had requested that identifying information about the cases cited in the report be provided, to enable our Domestic Violence program to investigate and undertake specific, appropriate follow-up activities. However, the Office of the Public Advocate informed us that they were unable to do so. Without this information, it is impossible for us to determine whether the cases mentioned in the report were properly handled, whether they are anomalies, or whether they reflect systemic situations that require a broader response. It is our hope that any future issues are referred to us as soon as they become known, to ensure that immediate and appropriate services are provided to vulnerable individuals.

HRA appreciates the willingness of the Office of the Public Advocate to draw upon our in-depth knowledge about the dynamics of domestic violence as well as available services. HRA looks forward to working collaboratively with the Public Advocate's Office toward our common goal of ensuring that victims of domestic violence receive quality services from all providers in New York City.