SPECIALIZED DOMESTIC VIOLENCE COURTS: ARE THEY WORTH THE TROUBLE IN MASSACHUSETTS?

ANAT MAYTAL

I. INTRODUCTION

Domestic violence causes far more pain than the visible marks of bruises and scars. It is devastating to be abused by someone that you love and think loves you in return. It is estimated that approximately 3 million incidents of domestic violence are reported each year in the United States.
–Senator Dianne Feinstein[1]

In the twenty-first century, men and women have soared to new levels of equality in academics, careers, and even sports; but to this day, women of all ages, classes, and professions continue to be victims of domestic violence.[2] Sixty-four percent of all reported rapes, physical assaults, and stalking of women since age eighteen were committed by a current or former spouse, cohabitating partner, boyfriend, or date.[3] Some conservative surveys estimate that one million women are battered by an intimate partner annually, while other surveys report that the number assaulted each year is as high as four million.[4]

These startling numbers, as well as the "consciousness-raising efforts of domestic violence advocates," has led to a "sea change in the criminal justice response" to domestic violence, especially in the 1990s.[5] The enactment of the Violence Against Women Act ("VAWA") in 1994 focused national attention on

[1] 150 CONG. REC. 125 (daily ed. Oct. 6, 2004) (*statement of Sen.* Feinstein), *available at* http://feinstein.senate.gov/04Speeches/domestic.htm.

[2] The author acknowledges that domestic violence victims are not always women and the abusers are not always men. However, because eighty-five percent of all intimate partner violence victims are women compared to about fifteen percent men, this Note will use language reflecting these figures. *See* CALLIE MARIE RENNISON, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, INTIMATE PARTNER VIOLENCE, 1993-2001,No. NCJ 197838 (2003), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv01.pdf.

[3] PATRICIA TJADEN AND NANCY THOENNES, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN, No. NCJ83781, at iv (2000), *available at* http://www.ncjrs.gov/pdffiles1/nij/183781.pdf.

[4] Judith S. Kaye & Susan K. Knipps, *Judicial Responses to Domestic Violence: The Case for a Problem Solving Approach,* 27 W. ST. U. L. REV. 1, 3 (2000).

[5] Robyn Mazur & Liberty Aldrich, What Makes a Domestic Violence Court Work? Lessons from New York, 42 JUDGES' J. 5, 5 (2003).

domestic violence and "its detrimental effects on families, business, and society."[6] The Act also led to the infusion of large sums of money into the nation's court systems, law enforcement, and communities "to improve access to justice and services for domestic violence victims and to increase batterer and system accountability."[7] These efforts included the development of specialized judicial processes for domestic violence.[8]

In Massachusetts, only one specialized domestic violence court was established in 2000 in Dorchester.[9] The Quincy District Court also has a model program that integrates the police, prosecution, and court response to domestic violence.[10] But outside Dorchester and Quincy, all cases in Massachusetts must go through the broader probate and family court system, which has jurisdiction over all family matters.[11]

Although Massachusetts has an established structure in place, domestic violence remains a serious problem in the Commonwealth.[12] For example, between October 2005 and September 2006, there were nineteen domestic violence-related murders in Massachusetts.[13] These incidents involved the deaths of thirteen women, seven men and three children.[14] In addition, 28,760 restraining orders, or court directives prohibiting abusers from having any contact with their victims, were issued in 2005.[15] Of these orders, eighty-two percent were directed against male abusers.[16] At the same time, 4,347 adults or 3,825 men (88%) were arraigned for violating restraining orders issued against them.[17]

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[6] SUSAN KEILITZ ET AL., SPECIALIZATION OF DOMESTIC VIOLENCE CASE MANAGEMENT IN THE COURTS: A NATIONAL SURVEY 1 (National Center for State Courts 2000), *available at* http://www.ncjrs.gov/pdffiles1/nij/grants/186192.pdf.

[7] *Id*.

[8] Mazur & Aldrich, *supra* note 5, at 5.

[9] CHRISTY VISHER ET AL., FINAL REPORT ON THE EVALUATION OF THE JUDICIAL OVERSIGHT DEMONSTRATION: FINDINGS AND LESSONS ON IMPLEMENTATION 5 (2007), *available at* www.urban.org/UploadedPDF/411498_Volume_2_Final.pdf.

[10] Elena Salzman, Note, *The Quincy District Court Domestic Violence Prevention Program: A Model Legal Framework for Domestic Violence Intervention*, 74 B.U. L. REV. 329, 339 (1994).

[11] These family matters include divorce, paternity, child support, custody, visitation, adoption, termination of parental rights, and abuse prevention. *See* Kristin Littel, *Specialized Courts and Domestic Violence,* ISSUES OF DEMOCRACY (2003), http://usinfo.org/enus/government/branches/littel.html.

[12] *See* JANE DOE INC., MASSACHUSETTS COALITION AGAINST SEXUAL ASSAULT AND DOMESTIC VIOLENCE, BOSTON, MA., *DVAM STATISTICS* 2006 (2006), *available at* http://www.janedoe.org/know/2006%20DV%20Stats%20MA%20and%20National.pdf

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

This Note will evaluate the advantages and disadvantages of implementing specialized processes for domestic violence and argue that Massachusetts should expand the use of specialized domestic violence courts. Part II traces how the legal system in the United States has historically addressed domestic violence. Part III examines specialized domestic violence courts and compares before-and-after statistics to determine the effectiveness of these courts. Particularly, this section focuses on Massachusetts's current approach to domestic violence. Part IV demonstrates that Massachusetts should establish additional specialized domestic violence courts across the state.

II. The Legal History of Domestic Violence

A. *Domestic Violence – Early Approaches*

1. Historical Setting

In 1641, the Puritans enacted the Massachusetts Body of Laws and Liberties, which was the first criminal code in the world to make domestic violence explicitly illegal.[18] This statute provided that "every married woman shall be free from bodily correction or strips by her husband, unless it be in his own defense upon her assault."[19] While these criminal laws were innovative for their time, they were rarely enforced.[20] This is largely because the Puritans did not object to moderate violence within the household, viewing the family patriarch as having the responsibility and the "duty to enforce rules of conduct within the family."[21] The few domestic assaults the Puritans prosecuted were punished by a fine and, in fewer cases, by whipping.[22]

Between the late 1700s and 1850s, there were few efforts to eradicate domestic violence in the criminal justice system.[23] This lack of initiative was due to the "waning belief" that the community has a duty to "regulate activity that occurred in private."[24] Legal thinkers began to distinguish between public matters and private family matters, leaving the family under the governance of the husband and father.[25] In the early 1800s, the law went so far as to give men the

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[18] Elizabeth Pleck, *Criminal Approaches to Family Violence, 1640-1980*, 11 Crime & Just. 19, 22 (1989)).

[19] Eve S. Buzawa & Carl G. Buzawa, Domestic Violence: The Criminal Justice Response 62 (Sage Publications) (3d ed 2003) (quoting Pleck, *supra* note 18, at 22).

[20] *Id.* at 25.

[21] Buzawa & Buzawa, *supra* note 19, at 62.

[22] In the court records of Plymouth Colony—the only jurisdiction where the subject of abuse was studied at the time—"there were only nineteen cases of wife beating, husband beating, incest, or assault by a child on parents" from 1633 to 1802. Pleck, *supra* note 18, at 25.

[23] Buzawa & Buzawa, *supra* note 19, at 62.

[24] Pleck, *supra* note 18, at 28.

[25] Ann Jones, Next Time, She'll Be Dead: Battering and How To Stop It 19 (Beacon Press 2000).

legal right to "chastise" their wives without criminal prosecution for assault and battery.[26] For example, in 1824, the Supreme Court of Mississippi held that "a husband had the legitimate right to discipline his wife physically, as long as it was done in a moderate manner" or, more specifically, "with a stick no thicker than his thumb."[27] In effect, "the law drew a curtain of privacy about each man's household to shield it from legal scrutiny."[28]

It was not until 1871 that the Supreme Court of Alabama "determined for the first time that a husband did *not* have the right to beat his wife, and that a 'wife is entitled to the same protection of the law that the husband can invoke for himself.' "[29] By the end of the nineteenth century, twelve states considered enacting domestic violence-related laws "that made wife-beating a punishable offense."[30] These new efforts to crack down on domestic violence were credited to the strength and determination of women to "lift numerous legal restrictions on their freedom, including the right to vote, own property, and not be considered as the legal chattel of their husbands."[31]

Unfortunately, in the early decades of the 1900s, the criminal justice system moved away from addressing crimes committed in the home.[32] The era was overshadowed by the financial panics related to the Great Depression and female activists who centered their efforts on the primary goal of suffrage.[33] The courts reflected this move away from criminalizing domestic violence by directing family cases, originally handled in criminal courts, into newly-developed family courts.[34] The goals of these new courts were "to assist couples to work out problems within the family structure and seek reconciliation rather than address crimes committed."[35]

2. Changing Tides

Society did not begin to pay attention to violence within families until the 1960s,[36] starting with the alarming numbers of child abuse cases reported in

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[26] *Id.* at 20.

[27] Pleck, *supra* note 18, at 33; *see* BUZAWA & BUZAWA, *supra* note 19, at 62 (citing Bradley v. State, 1 Miss (1 Walker) 156 (Miss. 1824)).

[28] JONES, *supra* note 25, at 25.

[29] Betsy Tsai, Note, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 FORDHAM L. REV. 1285, 1289 (2000) (quoting Fulgham v. State, 46 Ala. 143, 147 (Ala. 1871)) (emphasis added).

[30] Only Maryland, Delaware, and Oregon adopted such laws, however. *Id. See* BUZAWA & BUZAWA, *supra* note 19, at 64.

[31] BUZAWA & BUZAWA, *supra* note 19, at 64.

[32] *Id.* at 65.

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] JEFFREY FAGAN, U.S. DEP'T OF JUSTICE, NAT'L INST. OF JUSTICE, THE CRIMINALIZA-

1962 by Dr. C. Henry Kempe.[37] Kempe's research on "the prevalence of severe battering of infants and young children" demonstrated that the public could no longer ignore violence occurring within the privacy of the home.[38] The same became true for the battering of wives and intimate partners.[39] Through the efforts of feminist activists, rape crisis centers, and battered women's shelters violence against women was another "private family matter" which became a public, social matter that society needed to confront.[40]

However, legal institutions were slow to criminalize wife and intimate partner abuse.[41] Early reforms related to domestic violence were limited to married couples.[42] For example, courts would not grant women restraining orders against their violent husbands unless they were "willing to file for divorce at the same time."[43] But even when restraining orders were available, enforcement was very weak, as judges would rarely punish violators of such orders.[44] Additionally, "mental health clinics would provide only couples counseling in cases of domestic abuse," and welfare offices had no emergency procedure in place to assist women fleeing abusive partners.[45]

The police response to domestic violence was also widely criticized for being inadequate and unhelpful.[46] The police did "everything possible to avoid formal legal processing of men who beat their wives or partners."[47] Many police officers trivialized such offenses and rarely made arrests, viewing them to be an "unjustified and unneeded intrusion into a couple's private family life."[48] In fact, many police departments had "hands off" policies prior to the 1970s, and police training manuals specified that "arrest was to be avoided whenever

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TION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS 7 (1996) *available at* http://www.ncjrs.gov/txtfiles/crimdom.txt.

[37] Pleck, *supra* note 18, at 47 (citing C. Henry Kempe et al., *The Battered Child Syndrome*, 181 JAMA 105 (1962)).

[38] *Id.*

[39] Fagan, *supra* note 36, at 7.

[40] FAGAN, *supra* note 36, at 7.

[41] *Id.* at 8.

[42] *Id.* at 8.

[43] *Id.* at 3 (citing U.S. COMMISSION ON CIVIL RIGHTS, UNDER THE RULE OF THUMB, BATTERED WOMEN AND THE ADMINISTRATION OF JUSTICE (1982)).

[44] *Id.*

[45] HANDBOOK OF DOMESTIC VIOLENCE INTERVENTION STRATEGIES: POLICIES, PROGRAMS, AND LEGAL REMEDIES, 424 (Albert R. Roberts ed., 2002) [hereinafter HANDBOOK OF INTERVENTION STRATEGIES].

[46] FAGAN, *supra* note 36, at 8.

[47] *Id.*

[48] MARCI L. FUKURODA, MURDER AT HOME: AN EXAMINATION OF LEGAL AND COMMUNITY RESPONSES TO INTIMATE FEMICIDE IN CALIFORNIA 35 (2005) *available at* http://www.cwlc.org/files/docs/MurderAtHome_FULL_REPORT.pdf.

possible in responding to domestic disputes."[49] As a result, when police officers responded to a domestic incident, they would perhaps "walk the husband around the block to 'cool off' instead of making an arrest, leaving the woman with no criminal recourse."[50]

It was not until the 1970s that the feminist movement spurred political pressure to strengthen the "criminal justice response to domestic violence."[51] It was during this time that the phrase "domestic violence" became synonymous with wife abuse.[52] In 1977, the first batterer's intervention program in the country opened in Boston, and similar programs were soon launched elsewhere, hoping to rehabilitate batterers and prevent further abuse.[53] The Law Enforcement Assistance Administration of the U.S. Department of Justice also attempted to make a better, broader response by funding twenty-three programs between 1976 and 1981 to provide various services, including rape crisis centers, battered women's shelters, special prosecution units, treatment programs for batterers, mediation units, and civil legal interventions.[54]

B. *Violence – Modern Approaches and Innovations*

1. Legal Challenges and Reform

The late seventies and the 1980s were consumed by litigation brought against police departments for their failures to protect women from their violent partners by "not responding to victims' calls to police," ignoring complaints or requests for protection, and not enforcing criminal assault laws when domestic violence occurred.[55]

In the defining 1984 case of *Thurman v. City of Torrington*, the U.S. District Court of Connecticut held that police protection was intentionally withheld from female victims who were assaulted by their intimate partners.[56] The court found the denial of police protection effectively constituted a denial of equal

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[49] FAGAN, *supra* note 36, at 8 (citing INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, TRAINING KEY 16: HANDLING DOMESTIC DISTURBANCE CALLS (1967)).

[50] HANDBOOK OF INTERVENTION STRATEGIES, *supra* note 45, at 424.

[51] Tsai, *supra* note 29, at 1290.

[52] *Id.*

[53] HANDBOOK OF INTERVENTION STRATEGIES, *supra* note 45, at 424.

[54] FAGAN, *supra* note 36, at 7.

[55] Domestic Violence: Explore the Issue (2003), http://www1.umn.edu/humanrts/svaw/domestic/link/policereform.htm (last visited Nov. 24, 2007).

[56] Over the course of eight months, from October 1982 to June 10, 1983, the city of Torrington was notified of the "repeated threats of violence," Tracey Thurman's husband Charles made against her. Thurman v. City of Torrington, 595 F. Supp. 1521 (D. Conn. l984). The police ignored or rejected complaints she filed regarding these threats. *Id.* On June 10, 1983, Charles nearly killed Tracey by stabbing her with a knife, and in the presence of an idle police officer, kicked her in the head twice. *Id.* Charles left her a paraplegic for life. *Id.* The City was found guilty of violating Tracey's rights to equal protection of the laws and she was awarded 2.3 million dollars. *Id.*

protection of the laws on the basis of gender.[57] In *Estate of Bailey by Oare v. York County*, the Third Circuit agreed, holding that the police have an affirmative duty to protect the "personal safety" of people in the community.[58] This duty requires officials "having notice of the possibility of attacks on women in domestic relationships 'to take reasonable measures to protect the personal safety of such persons in the community.'"[59]

These lawsuits compelled several states and their agencies to take action by instituting "statutory, procedural, and organization reforms."[60] New state legislation emphasized "the need to classify domestic violence as a crime" and was influenced by the theory that tougher legal sanctions would be influential in reducing the prevalence of domestic violence.[61] The idea was that "if an assault in a domestic situation goes unpunished by the criminal courts, society will not consider such behavior criminal" and batterers may continue "without fear of reprisal."[62] Thus, a criminal justice system with "severe consequences for domestic violence would ideally result in less violence."[63]

a. *Police Reform*

Among the initial reforms aimed at improving law enforcement's response to domestic violence was the implementation of pro-arrest policies in police departments.[64] These policies were greatly influenced by a 1981-82 study, the Minneapolis Domestic Violence Experiment ("MDVE"), which found arrest to be the most effective police response when handling domestic violence calls.[65]

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[57] *Id.* at 1528.

[58] ESTATE OF BAILEY BY OARE v. YORK COUNTY, 768 F.2d 503, 510 (3d Cir. 1985) (citing *Thurman, supra* note 46, at 1527).

[59] *Id.* For similar lawsuits, *see* Balistreri v. Pacifica Police Dept. 855 F.2d 1421 (3d Cir. 1988); Dudosh v. City of Allentown, 629 F.Supp. 849 (E.D. Pa. 1985); Sorichetti v. City of New York, 408 N.Y.S.2d 219 (N.Y. Sup. Ct. 1978).

[60] FAGAN, *supra* note 36, at 9. *See* Scott v. Hart, No. C-76-2395 (N.D. Cal. Filed Oct. 28, 1976) (lawsuit filed on behalf of a class of domestic violence victims against the Oakland Police Department resulted in a settlement in which the department agreed to adopt specific policies for responding to domestic violence, including policies for ensuring quick responses to domestic violence calls and for making felony arrests for domestic violence); Bruno v. Codd, 90 Misc.2d 1047, 396 N.Y.S.2d 974 (N.Y. Sup. Ct. 1977) (resulted in a consent decree imposing specific duties and responsibilities on the department in responding to and making arrests for domestic violence arrests).

[61] Tsai, *supra* note 29, at 1291.

[62] *Id.*

[63] *Id.*

[64] *See* Domestic Violence: Explore the Issue, supra note 55.

[65] CHRISTOPHER D. MAXWELL, JOEL H. GARNER & JEFFREY A. FAGAN, NATIONAL INSTITUTE OF JUSTICE, THE EFFECTS OF ARREST ON INTIMATE PARTNER VIOLENCE: NEW EVIDENCE FROM THE SPOUSE ASSAULT REPLICATION PROGRAM 1 (2001) (finding that other methods, such as counseling or temporary separation, were much less effective) *available at* http://www.ncjrs.gov/pdffiles1/nij/188199.pdf.

The MDVE found that arrest reduced the recidivism rate against the same victim by half within six months.[66] This study had an "unprecedented impact in changing then-current police practices."[67] In one year, the number of police departments with pro-arrest policies for domestic violence "tripled. . .from only ten percent to thirty-one percent—a figure that increased again to forty-six percent by 1986" (with more than thirty percent of all such departments crediting the MDVE as influencing their change in policy).[68]

Unfortunately, however, "policy is not practice."[69] Follow-up studies in Minneapolis and other pro-arrest cities revealed that while police made more arrests shortly after the new pro-arrest policy was adopted, they soon backed off and resumed their traditional "discretionary" methods.[70] Lawrence Sherman, one of the principal MVDE researchers, surveyed "big city police agencies" from 1984 to 1989 and found the seemingly prevalent pro-arrest policy "negated by 'widespread circumvention by police officers on the street.'"[71] As a result, at least fifteen state legislatures made arrest mandatory for cases of domestic assault.[72] But in much of the country, many police officers continue to be "inert spectator[s] to an unfolding tragedy."[73]

b. *Prosecutorial Response*

Once police departments began to institute pro-arrest policies and increase numbers of arrested alleged batterers, legislators and victim-rights advocates alike shifted their focus towards reforming prosecution practices.[74] Police complained that there was little point in arresting batterers if prosecutors did not initiate charges and follow through with criminal prosecution in domestic violence cases.[75] A Milwaukee study found that ninety-five percent of men arrested for domestic assaults were not prosecuted and only one percent were

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[66] *Id.* Fifty-one patrol officers in the Minneapolis Police Department participated in the study. *Id.* Each was asked to use one of three approaches for handling domestic violence calls in cases where officers had probable cause to believe an assault had occurred: (1) send the abuser away for eight hours; (2) advise and mediate disputes; or (3) make an arrest. *Id.* Interviews were conducted during a six-month follow-up period. *Id.* The study lasted approximately seventeen months, and included 330 cases. *Id.*

[67] BUZAWA & BUZAWA, *supra* note 19, at 94.

[68] *Id.* at 97-98.

[69] JONES, *supra* note 25, at 141.

[70] *Id.* at 141-142.

[71] *Id.*

[72] *Id.* at 142. However, eight states subsequently amended their mandatory arrest statutes to require arrest of only the "primary aggressor" because many officers were arresting both battering men and battered women, on the grounds that he and she were "assaulting" each other. *Id.*

[73] *Id.*

[74] KEILITZ ET AL., *supra* note 6, at 3.

[75] JONES, *supra* note 25, at 142; *see also* WILLIAM L. HART ET AL., ATTORNEY GENER-

convicted.[76]

Prosecutors often attributed the low conviction rates to battered women's non-cooperation and refusal to press charges.[77] However, studies have shown that when given "the slightest help with complicated legal procedures," women cooperate in the criminal prosecution of their batterers.[78] Studies in California found that with the help of victim assistance programs, only ten percent of domestic assault victims in Los Angeles refused to cooperate with the prosecutor, and in Santa Barbara, only eight percent refused to cooperate.[79] As a direct result, many prosecutors' offices have created specialized domestic violence units that are sensitive to the problems of prosecuting domestic assaults and have professional victim advocates on staff to "assist the victim in coping with the unfamiliar and often threatening process of the criminal justice system."[80] Lack of knowledge of the prosecution process "undoubtedly led to many victim-initiated dismissals in the past."[81]

While it is preferred to have the victims involved in the criminal prosecution of their batterers, many offices now have pro-prosecution or "no-drop" policies which require prosecutors to pursue cases even when the victim wants the case dropped and charges dismissed.[82] No charges related to domestic violence may be dropped except for a "demonstrated and documented failure to find evidence of commission of a crime."[83] Yet, no-drop policies vary considerably among different jurisdictions.[84] "Hard" no-drop policies never follow victim preferences unless certain criteria are met and "soft" no-drop policies permit victims to drop charges under limited circumstances, such as if the victim left the batterer.[85] In jurisdictions within California, Nebraska, and Washington, the attorneys general treat the no-drop policy more as a "philosophy rather than a strict

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AL'S TASK FORCE ON FAMILY VIOLENCE, FINAL REPORT 23 (1984) *available at* http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/2e/bf/7a.pdf.

[76] *Id.* at 143, (citing Joan Zorza, *The Criminal Law of Misdemeanor Domestic Violence, 1970-1990*, 83 J. CRIM. L. & CRIMINOLOGY 46, 71 (1992)).

[77] *Id.*

[78] *Id.*

[79] *Id.* (citing Carol Wright, *Immediate Arrest in Domestic Violence Situations: Mandate or Alternative*, 14 CAP. U. L.REV. 243, 263 n.120 (1985)).

[80] BUZAWA & BUZAWA, *supra* note 19, at 191.

[81] Victim advocates also provide victims with information on safety precautions including the availability of shelter, prior restraints, and the services of other social welfare agencies. *Id.*at 192.

[82] *Id.* .at 194. Currently, Florida, Minnesota, Utah, and Wisconsin are among the states that have adopted legislation encouraging the use of no-drop policies, which allow prosecuting attorney to disregard victim reluctance when deciding whether to pursue a case. *See* FLA. STAT. § 741.2901(2) (1995); MINN. STAT. § 611A.0311(2)(5) (1995); UTAH CODE ANN. § 77-36-2.7) (1994); WIS. STAT. § 968.075(7)(A)(2) (1995).

[83] BUZAWA & BUZAWA, *supra* note 19, at 191.

[84] *Id.*

[85] *Id.*

policy" because not every case filed is prosecuted.[86]

c. *Violence Against Women Act*

At the federal level, congressional legislation in 1990 proposed a strong response to the broad problem of violence against women and culminated in the enactment of the Violence Against Women Act ("VAWA"), which is Title IV of the Violent Crime Control and Law Enforcement Act of 1994.[87] VAWA led to the infusion of substantial funds into the nation's court systems, police enforcement, and "communities to improve access to justice and services for domestic violence victims and to increase batterer and system accountability."[88]

Through Special Training Officers and Prosecutors ("STOP") grants, VAWA was intended to help state and local governments "strengthen law enforcement, prosecution, and victim services in cases involving violent crimes against women."[89] Funds are allocated to states that work to further the purpose of domestic violence intervention and prevention through such activities as the implementation of mandatory or pro-arrest policies in police departments, the development of training programs to track cases of domestic violence (especially with repeat offenders), and the improvement of coordination between police enforcement and prosecution offices in such cases.[90]

C. *A Judicial Movement toward Specialized Domestic Violence Courts*

With the passage of mandatory arrest laws, increased funding for victims' services, and the creation of special domestic violence police teams, law enforcement was the first component of the criminal justice system that underwent major reforms in its response to domestic violence.[91] District attorneys' offices followed with their own reforms, which included victimless prosecution policies, specialized prosecution units, and expanded access to protection or-

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[86] The jurisdictions would first determine which cases should be screened out before imposing the no-drop policy and then coordinate with the judges, who would relax the rules of evidence and make available extra resources (i.e., victim advocacy and other methods of obtaining evidence) in order to make the policy feasible. BUZAWA & BUZAWA, *supra* note 19, at 194; *see also* CAL. PENAL CODE § 273.8-.88 (WEST 1996) (allocating funds for use by district attorneys' and city attorneys' offices under the Spousal Abuser Prosecution Program); N.J. STAT. ANN. § 2C:25-18 (WEST 1995) (encouraging broad application of remedies in criminal courts for domestic violence cases).

[87] GARRINE P. LANEY, CONG. RESEARCH SERVICE, VIOLENCE AGAINST WOMEN ACT: HISTORY, FEDERAL FUNDING, AND REAUTHORIZING LEGISLATION 6 (2005), *available at* http://holt.house.gov/pdf/CRSonVAWADec2005.pdf; *see also* Violence Against Women Act, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902 (1994) (codified as amended in scattered sections of 8, 16, 18, 28, and 42 U.S.C.).

[88] KEILITZ ET AL., *supra* note 6, at 3.

[89] LANEY, *supra* note 87, at 4.

[90] *Id.* at 6; *see* 42 U.S.C. § 10415(B)(3)(A)-(B)(1993), (repealed 1993)

[91] KEILITZ ET AL., *supra* note 6, at 2.

ders.[92] But the last branch of the criminal justice system—the courts—have been the slowest to change.[93]

Prosecutors frequently complained that it was moot to prosecute batterers when judges simply released them.[94] A 1991 study in Charlotte, North Carolina, found that, "among assaultive men arrested, convicted, and sentenced, less than one percent (0.9%) served any time in jail."[95] Judges have attempted to shift the blame to the victims themselves, arguing that it was a "waste of time" to issue temporary restraining orders against batterers because battered women do not "follow through" by appearing in court ten days later to extend the order further.[96] For example, a Massachusetts study found seventy-one percent of women who were issued domestic violence temporary restraining orders in the Brockton District Court in 1982 did not appear at a hearing ten days later.[97] However, this study actually "found fault with the court," as opposed to the battered women.[98] In Quincy District Court, where there is a *separate* office for restraining orders, daily court sessions for those seeking restraining orders, and support groups organized by the prosecutor's office, "only 2.8% of the women failed to show up for the hearing."[99] Some have observed that "given a little help to negotiate a complicated and hostile system beset with obstacles, women follow through."[100]

It soon became apparent that courts could no longer avoid reforming the adjudication of domestic violence crimes, especially when simultaneously faced with an overwhelming growth in domestic violence caseloads and a noticeable decline in resources.[101] Between 1989 and 1998, domestic violence filings in state courts increased 178 percent.[102] This increase may be explained by the higher number of arrests made by the police and, in turn, the number of cases prosecuted by prosecutor's offices.[103] The increase may also have been influenced by legislation making available civil protection orders in all states

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[92] *Id.*

[93] *Id.*

[94] JONES, *supra* note 25, at 143.

[95] *Id.*

[96] *Id.*

[97] *Id*. at 143-4.

[98] *Id.* at 144.

[99] *Id.* at 144; *see also* Patricia Nelson & Sean P. Murphy, *Thwarting the Killers is a Complex, Elusive Goal*. BOSTON GLOBE, June 2, 1992, at 6.

[100] JONES, *supra* note 26, at 144.

[101] Rekha Mirchandani, *What's So Special about Specialized Courts? The State and Social Change in Salt Lake City's Domestic Violence Court,* 39 LAW & SOC'Y REV. 379, 393 (2005).

[102] KEILITZ ET AL., *supra* note 6, at 3 (citing BRIAN OSTROM & NEAL KAUDER, EXAMINING THE WORK OF STATE COURTS, 1998. (National Center for State Courts 1999)). .

[103] *Id.*

and the District of Columbia.[104] As a result, it was clear the courts had to devise more efficient means of handling cases involving domestic violence.

The courts have faced "three major challenges to establishing effective case management systems for cases involving domestic violence."[105] The first challenge involves jurisdictional limitations because domestic violence is an issue that spans multiple jurisdictions within the court system—from civil protection orders and criminal prosecutions to divorce and child custody.[106] The second challenge is that most state courts lack consistent methods or data systems to identify and track domestic violence cases in criminal and civil caseloads.[107] The third challenge courts face is coordination of judicial operations with other branches of the criminal justice system (i.e., law enforcement, prosecution offices, etc.) as well as community service providers that offer programs and services to domestic violence victims and batterers.[108] To address these challenges, the courts began to "search for new tools, strategies, and new technologies that could help them address difficult cases where social, human, and legal problems collide."[109] The result was the development of "problem-solving courts" or specialized court systems for domestic violence cases.[110]

III. Specialized Domestic Violence Courts – In Depth

Today, there are more than 300 courts nationwide with special processing mechanisms for domestic violence cases.[111] These include centralized intake processes, separate court sessions for civil protection orders and proceedings in criminal domestic violence cases, and domestic violence units in police departments and prosecutors' offices.[112] These courts are often classified as "domestic violence courts" to highlight the need for special attention to domestic violence cases.[113] However, the specialized processes and specific aims vary greatly by jurisdiction, which makes classification as "domestic violence court" more difficult to define than other specialized courts including family, juvenile, and drug courts.[114]

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[104] *Id.*

[105] Amy Karan, Susan Keilitz, & Sharon Denaro, *Domestic Violence Courts: What Are They and How Should We Manage Them?,* 50 Juv. & Fam. Ct. J. 75, 75 (1999).

[106] *Id.*

[107] *Id.*

[108] *Id.*

[109] Mazur & Aldrich, *supra* note 5, at 5.

[110] *Id.* at 5-6.

[111] *Id.* at 6. These include courts in California, Colorado, Delaware, Florida, Illinois, Iowa, Minnesota, Nevada, New Mexico, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Washington State, and Wisconsin. Keilitz et al., *supra* note 6, at 11.

[112] Karan, *supra* note 105, at 75.

[113] *Id*. at 75-76.

[114] *Id*. at 76.

A. *Initial Roots in New York*

As domestic violence courts gain recognition across the country, many jurisdictions are reevaluating their own judicial response to cases of domestic violence, debating whether to institute similar courts, and if so, determining how to administer these courts most effectively.[115] For guidance, many turn to the state where the specialized domestic violence court first originated—New York.[116]

The first New York domestic violence court opened in Brooklyn in 1996 and handled felony-level domestic violence cases.[117] The model court featured a single presiding judge, a fixed prosecutorial team, and a court staff who received special training in domestic violence issues.[118] The model incorporated computer technology allowing judges to closely monitor defendants to ensure their compliance with court orders; probation programs that brings defendants back into court for "post-deposition monitoring;" and a wide range of support services for victims including "counseling, safety planning, and links to housing."[119]

The court also launched a public education campaign to "change the way the criminal justice community viewed domestic violence."[120] Through educational programs and partnerships, the court aimed to "stimulate a more coordinated response to domestic violence" that went beyond the interiors of the courtrooms.[121] As a result, the court established a "court partners' meeting," which included judges, court personnel, victim advocates, prosecutors, defense attorneys, probation and parole officers, representatives from batterers programs, and social service agencies.[122] The court partners meeting convened every six weeks to allow the various agencies to "exchange information and ideas on the most effective way to respond to domestic violence."[123] For example, discussions at these meetings revealed that many offenders left prison without knowing that the original order of protection for their victims was still in effect.[124] To ensure offenders were well-informed, the domestic violence court established a procedure requiring parolees to return to court for a formal review of

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[115] Mazur & Aldrich, *supra* note 5, at 6

[116] *Id*.

[117] *Id.*

[118] *Id.*

[119] ROBERT V. WOLF, LIBERTY ALDRICH, & SAMANTHA MOORE, CTR. FOR COURT INNOVATION, PLANNING A DOMESTIC VIOLENCE COURT: THE NEW YORK STATE EXPERIENCE,. 6 (2004), *available at* http://www.courtinnovation.org/_uploads/documents/dvplanningdiary.pdf.

[120] Mazur & Aldrich, *supra* note 5, at 6.

[121] *Id.*

[122] *Id.*

[123] *Id.*

[124] *Id.*

their order of protection.[125]

A study in 2001 by the Urban Institute Justice Police Center demonstrated that the Brooklyn model has produced promising results only five years after its initial launch in 1996.[126] Virtually every victim with a case pending was offered extensive services, such as housing, job training, and safety-planning.[127] Prior to the court's opening, only about 55 percent of domestic violence victims were assigned to a victim advocate.[128] But after the court opened, the percentage increased to virtually 100 percent.[129] The percentage of protection orders issued in these cases increased from 87 percent to 98 percent and the court helped cut the dismissal rate in half—from 8 percent to 4 percent.[130] Furthermore, while conviction rates increased only slightly (from 87 to 94 percent), plea bargaining was utilized more often and "convictions by guilty pleas were more common and trials were less common," which represented "a cost-savings to the court system."[131]

The success in Brooklyn served as a model for nearly thirty other domestic violence courts in other New York jurisdictions.[132] More recently, the state court system has launched "integrated" domestic violence courts on a trial basis.[133] These multi-jurisdictional courts allow a single judge to oversee criminal cases, orders of protection, custody, visitation, and divorce matters for one family.[134] These courts are viewed as a practical solution to simplify the court process for families in distress, "creating an environment where litigants no longer have to navigate multiple courts systems simultaneously and reducing the risk they will receive conflicting orders."[135]

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[125] *Id.*

[126] *Id.* (citing LISA NEWMARK ET AL.,SPECIALIZED FELONY DOMESTIC VIOLENCE COURTS: LESSONS ON IMPLEMENTATION AND IMPACTS FROM THE KINGS COUNTY EXPERIENCE (Urban Institute Justice Policy Center 2001), *available at* www.courtinnovation.org/_uploads/documents/SpecializedFelonyDomesticViolenceCourts.pdf)

[127] *Id.* at 6-7.

[128] Wolf, *supra* note 119, at 17.

[129] *Id.*

[130] *Id.*

[131] Guilty pleas rose significantly from seventy-three percent to eighty-eight percent and the number of those found guilty at trial dropped from fourteen percent to six percent. *Id.* (citing NEWMARK, *supra* note 126, at 76).

[132] These include both felony and misdemeanor courts in the Bronx, Queens, and Westchester Counties, the city of Buffalo, and smaller cities like Clarkstown and Binghamton. Ctr.for Court Innovation, The Center for Court Innovation - Domestic Violence Courts: Overview, http://www.courtinnovation.org/index.cfm?fuseaction=page.viewPage&pageID=512&documentTopicID=23 (last visited Nov. 25, 2007).

[133] Ctr.for Court Innovation, The Center for Court Innovation - Domestic Violence Courts: What Are They?, http://www.courtinnovation.org/index.cfm?fuseaction=page.ViewPage&PageID=600&currentTopTier2=true (last visited Oct. 14, 2008).

[134] *Id.*

[135] Mazur & Aldrich, *supra* note 5, at 7.

The Brooklyn model is still a work in progress, but it "offers lessons to anyone interested in sparking new thinking about the problem of domestic violence and experimenting with innovative ways to respond to it more effectively."[136] That includes Massachusetts, which has been trying to reform its current approach to domestic violence.[137]

B. *Massachusetts – Current Approach to Domestic Violence*

In Massachusetts, law enforcement, and the criminal justice system generally, have varied widely and inconsistently in their response to domestic violence.[138] The most significant step the state has undertaken to streamline its approach to domestic violence was the passage of its abuse prevention statute, officially known as Chapter 209A.[139] There are also well-known model programs in place to integrate the efforts of the police, prosecutorial offices, courts, and community agencies in tackling domestic violence.[140] In the rest of the state, all domestic violence-related cases must go through traditional Probate and Family Courts.[141]

1. M.G.L. c. 209A: Abuse Prevention Law

The "political and institutional will" to address domestic violence crimes was first fueled by the feminist movement, and it led to the 1978 passage of the Abuse Prevention Law, otherwise known as Chapter 209A.[142] The Abuse Prevention Law provides that in emergency situations, courts may impose restraining orders to prevent offenders from having contact with their abuse victims.[143] Chapter 209A makes this process as easy as possible by allowing women to obtain this relief without having to retain counsel.[144] The law allows women to obtain a restraining order at any of ninety-seven courts in the Com-

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[136] Wolf, *supra* note 119, at 2.

[137] *Report on Domestic Violence: A Commitment to Action*, 28 NEW ENG. L. REV. 313, 319 (1993).

[138] *Id.*

[139] *Id.* at 320; s*ee* MASS. GEN. LAWS ch. 209A, § 1, inserted by St. 1990, c. 403, § 2.

[140] *Id*.

[141] MASS. GEN. LAWS ch. 209A, § 1, *supra* note 139. These family matters include divorce, paternity, child support, and abuse prevention.

[142] *Id.*; *see Report on Domestic Violence, supra* note 137, at 320.

[143] *Id.* Two relevant orders are permitted under c. 209A. The first type of order requires the abusive defendant to "refrain from abusing" a family or household member and the second type requires the abusers to "vacate" the household altogether, creating "a haven for the abused party in which no further abuse need be feared." Commonwealth v. Gordon, 407 Mass. 340, 347 (1990); *see also* Kate Zernike, *Divorced Dads Emerge as a Political Force*, BOSTON GLOBE, May 19, 1998, at A1.

[144] Gender Bias Study Comm., Mass. Supreme Judicial Court, *Gender Bias Study of the Court System in Massachusetts, reprinted in* 24 NEW ENG. L. REV. 745, 750 (1990) [hereinafter Gender Bias Study].

monwealth, or attain an emergency order by phoning a local police station, which will contact the judge on call at any hour.[145]

Since the law's enactment, the Massachusetts legislature has consistently broadened the categories of people eligible for protection. For example, the legislature has amended the law to provide protection for not only traditional married couples and relatives but also for anyone related through marriage and "unrelated persons who have shared a household, or have shared in parenting a child, or have been in a 'substantive dating or engagement relationship.'"[146] In 2005, courts issued about 28,760 orders of abuse prevention, commonly referred to as restraining orders or 209As, the equivalent of seventy-nine per day.[147] A state court study in 2004 found that 80 percent of men with 209As issued against them are "veterans of the criminal justice system," and have considerable criminal records.[148] Of these men, 69 percent have previously been arraigned, though not necessarily convicted, for a non-battering related violent offense, with 43 percent having two or more such offenses.[149]

Unfortunately, as the Supreme Judicial Court noticed, "a disparity remains between the protection afforded to the victims by the statute and the actual manner in which the statute is being applied."[150] While the law relaxed the requirements for restraining orders to allow more victims to gain access to them, there is a corresponding rise in the number of offenders who have violated such orders.[151] In 2005 alone, 4,347 adults (88% of whom were men) were arraigned for violating restraining orders.[152] However, even if an offender violates the restraining order, he or she is not likely to receive severe punishment.[153] Studies indicate that the state's courts are not making use of available sanctions "to punish the violation of orders in a way that would clearly and publicly convey the message that abusive behavior is not acceptable."[154] One state court study of 2,017 restraining order violators found that "42% of defendants were found guilty, 20.2% had their case continued without a finding after admitting to sufficient facts for a finding of guilt,[155] 3.3% were found not

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[145] *Id.* Previously, obtaining an order required a hearing, but with overcrowded courts, restraining orders are now routinely granted if a judge receives an affidavit from a woman stating "she is in fear." *Id.*

[146] MASS. GEN. LAWS ch. 209A § 1, inserted by St. 1990, c. 403, § 2.

[147] JANE DOE, INC., *supra* note 12.

[148] STEPHEN BOCKO ET AL., OFFICE OF THE COMM'R OF PROB., RESTRAINING ORDER VIOLATORS, CORRECTIVE PROGRAMMING AND RECIDIVISM 3 (2004), *available at* http://www.mass.gov/courts/probation/crostudy.pdf.

[149] *Id.*

[150] Gender Bias Study, *supra* note 144, at 750.

[151] JANE DOE, INC., *supra* note 12.

[152] *Id.*

[153] *See* Gender Bias Study, *supra* note 144, at 751.

[154] *Id.*

[155] *See* MASS. GEN. LAWS ch. 278 § 18 (2006). In Massachusetts, a defendant may re-

guilty, and 29.4% had their charges dismissed."[156]

Women attempting to make full use of the statute face other barriers as well. For example, some women complained that they received unclear or wrong information about the respective jurisdictions of the probate and district courts and were confused as to where they should file a request for a 209A or seek other legal counseling.[157] In addition, while *pro se* proceedings are permitted, litigants without legal representation or the support of trained advocates have difficulty obtaining child custody, financial support, or other benefits available under the statute.[158] This is even more problematic "when one party, usually the male respondent, is represented by counsel and the female petitioner is not."[159]

While it is clear that chapter 209A has made domestic violence an important issue for the criminal justice system in Massachusetts, "it is equally clear that room for improvement remains."[160] In order to encourage victims to feel comfortable reporting abuse, seeking restraining orders, and participating in the prosecution of their abusers, "it is important to eradicate the perception of the courthouse as a hostile environment with few allies for the sexual assault victim."[161]

2. The Quincy Domestic Violence Prevention Program

To ensure that abused women have access to the full protection of the law, the Commonwealth has implemented several model programs, starting with the 1987 launch of Quincy District Court's Domestic Violence Prevention Program (hereinafter "Quincy Program").[162] The Quincy Program was "the first of its

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quest his case be "continued without a finding." A continuance without a finding ("CWOF") is not a plea of guilty but rather an "admission to facts sufficient for a finding of guilty." In laymen's terms, this means a defendant will admit to the facts as alleged by the government, effectively stating that the government would more than likely prove these facts were the case to proceed to trial. In doing this, the defendant voluntarily gives up his constitutional rights to a jury trial and any subsequent appeal. The court then orders the defendant be on probation with certain conditions (e.g., to stay away from the victim, pay restitution, attend counseling or other court-based programs, or complete community service). At the successful conclusion of the probation period, the case is dismissed and the defendant does not have a conviction on his record. Massachusetts Bar Association - Criminal Cases, http://www.massbar.org/about-the-mba/press-room/journalists%27-handbook/5-criminal-cases (last visited Nov. 7, 2008)

[156] BOCKO ET AL., *supra* note 148, at iii; *see* MASS. GEN. LAWS ch. 209A § 7 (1992) (Violating a restraining order "is a criminal offense" punishable by up to two and one-half years in prison, a fine of up to $5000, or both.)

[157] Gender Bias Study, *supra* note 144, at 751.

[158] *Id.* at 750.

[159] *Id.* at 751.

[160] *Id.* at 751.

[161] *Id.* at 752.

[162] Salzman, *supra* note 10, at 339.

kind in Massachusetts to integrate the traditionally separate roles of clerks, judges, district attorneys, probation officers, police officers, and batterers' treatment counselors."[163]

A key goal of the Quincy Program is to "empower victims" of domestic violence and provide maximum support to them.[164] To assist plaintiffs seeking protections, the Quincy District Court provides trained clerks to help victims fill out forms necessary to obtain retraining orders and to accompany them to court.[165] In addition, to ensure abused women are familiar with the system, the district attorney's office holds daily briefing sessions to explain to victims their rights, the court process, community resources, criminal complaint options, and safety planning.[166] In addition, the court offers two special sessions each day to expedite protection order hearings.[167]

The Quincy Program also "cracks down on abusers" by confiscating weapons and enforcing orders prohibiting the use of alcohol or drugs, "using random testing to monitor compliance."[168] The Quincy Program has a regular probation revocation session during which judges review complaints of restraining order violations and "may revoke probation without waiting for a new criminal trial and conviction."[169] This accelerated enforcement procedure was incorporated into the Quincy Program "because probation violators [can] pose tremendous safety risks to their victims."[170] Offenders who violate restraining orders may be sentenced to incarceration, but more often they are sent to specialized treatment programs for substance abuse, anger management, and rehabilitation.[171]

As a direct result of Quincy's more integrated approach, "more and more women [have been] seeking help, appearing at court hearings, entering support groups, and taking out criminal charges."[172] Between 1987 and 1992, there was a twofold increase in the number of women seeking restraining orders from the Quincy Court, and these victims persevered in pressing their cases two to three times more often than women in other jurisdictions.[173] But the most significant measure of success for the Quincy Program has been the decline in

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[163] *Id.* at 339.

[164] Quincy Court Model Domestic Abuse Program: 1992 Innovations in American Government Award, Government Innovations Network, http://www.innovations.harvard.edu/awards.html?id=3559 (last visited Jan. 31, 2008) [hereinafter Government Innovations Network].

[165] *Id.*

[166] *Id.*

[167] *Id.*

[168] *Id.*

[169] Salzman, *supra* note 10, at 344.

[170] *Id.*

[171] Government Innovations Network, *supra* note 164.

[172] *Id.*

[173] *Id.*

deaths from battering.[174] In 1991, the Quincy District Court had no domestic homicides, while nearby Essex County, which has a similar population and size, experienced fifteen domestic murders.[175]

a. *Flaws of the Program*

i. Jurisdictional Ambiguities

Despite its benefits, the Quincy Program has many weaknesses that need to be addressed.[176] One such weakness is the jurisdictional ambiguities between district and probate courts, and more specifically between civil and criminal matters.[177] Probate and family courts "may exercise civil contempt powers against violators" of restraining orders, but they lack jurisdiction over criminal cases arising from domestic violence.[178] At the same time, district courts "lack jurisdiction to enter orders for custody, visitation, and division of property."[179] District courts may enter orders for support and temporary custody but not if such an order has been issued or is pending in the probate court.[180]

As a result of "this confusing web of jurisdictional limitations," proceedings which involve issues of domestic violence as well as custody and support issues may become excessively complicated.[181] Elena Salzman's review of the Quincy Program explains that the Abuse Prevention statute is designed to make it convenient for petitioners to file petitions at nearby courthouses, but "jurisdictional limitations of the district and probate courts cause difficulties in the administration of proceedings under the statute."[182] This means the court system often must respond "to the same act of domestic abuse in two forums": the probate court, with its civil jurisdiction, and the district court, with its criminal jurisdiction.[183]

In fact, it is possible for the probate court and the district court to issue conflicting orders about the abuser's "permissible degree of contact" with the victim, or visitation rights with the children.[184] Moreover, information regarding the same incident from the same parties may be presented very differently in the context of a criminal court appearance versus a family restraining order

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[174] *Id.*

[175] *Id.*

[176] Salzman, *supra* note 10, at 360.

[177] *Id.*.

[178] *Id.*

[179] *Id.*

[180] *Id.*

[181] *Id.* at 361.

[182] *Id.* (citing Gender Bias Study, *supra* note 144).

[183] Julie A. Helling, *Specialized Criminal Domestic Violence Courts*, VIOLENCE AGAINST WOMEN ONLINE RES. (1999), http://www.vaw.umn.edu/documents/helling/helling.html.

[184] *Id.*

or custody hearing.[185] For example, in a criminal case, the prosecutor often provides the judge with the offender's criminal history, but in a civil case, that information is not usually shared with the judge.[186] In addition, arraignments in criminal cases usually take place shortly after the defendant's arrest, and the defendant's "demeanor may reflect the belligerence and level of intoxication or use of illegal drugs that was present during the abuse."[187] In contrast, a family court hearing is usually held days or weeks after the assault, which gives the defendant the opportunity to calm down and compose himself.[188] Victims are also more likely to forget about the immediate impact of the initial incident and decide to forgive their abuser rather than move forward with the proceedings.[189] This lends support to the idea that these "disjunctions in the system make the courts less effective in serving victims of domestic violence than the statute would indicate."[190]

ii. Judicial Insensitivity

Other weaknesses impeding the Quincy Program's ability to deal with violent domestic offenders include perceived judicial insensitivity and leniency.[191] As discussed earlier, many judges are ambivalent to imposing severe sanctions on offenders.[192] Salzman noted that these weaknesses impede the efficacy of the Quincy Program and proposed "comprehensive and ongoing training programs for judges" to ensure that those presiding over domestic violence cases are aware of the range of possible sanctions and are more sensitive to victims of abuse.[193]

Fortunately, specialized courts devoted to the legal issues related to domestic violence have addressed these flaws in the Quincy Program.[194] Among these courts is the Dorchester Domestic Violence Court, which is the only existing specialized court in Massachusetts.[195]

3. The Dorchester Domestic Violence Court

In 1999, the U.S. Department of Justice's Office on Violence Against Women ("OVW") launched the Judicial Oversight Demonstration ("JOD") Initiative[196] to test "the idea that a coordinated community response to domestic

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185 *Id.*
186 *Id.*
187 *Id.*
188 *Id.*
189 *Id.*
190 Salzman, *supra* note 10, at 361 (citing Gender Bias Study, *supra* note 144).
191 *Id.* at 360.
192 *See* Gender Bias Study, *supra* note 144, at 751.
193 Salzman, *supra* note 10, at 354, 356-357.
194 *See* VISHER ET AL., *supra* note 9, at 5.
195 *Id.*
196 *Id.* at 1. *The* Office on Violence Against Women (OVW) and the Office of Justice

violence, a focused judicial response, and a systematic criminal justice response can improve victim safety and service[s]. . . as well as increase offender accountability."[197] OVW selected three demonstration sites to participate in this five-year demonstration initiative, including Dorchester, Massachusetts.[198] One priority was to establish a specialized court in Dorchester to focus on all domestic violence matters, providing victims with vital resources and punishing offenders for their violent acts of abuse.[199] By September 2000, the Dorchester Domestic Violence Court opened its doors and began conducting "arraignments, bail hearings, pretrial hearings, probation violation hearings, probation review hearings, ex-parte and contested civil restraining order hearings."[200]

a. *Specialized Criminal Justice System: Police, Prosecutors, and Probation*

The development of the Dorchester Domestic Violence Court spurred further specialization in police departments, prosecutors' offices, and probation bureaus. Police reforms included requiring each of the three police districts serving the Dorchester Court to "assign[ ] three detectives to domestic violence investigation, thus covering both day and night shifts."[201] All officers received training to familiarize them with procedures and guidelines to best manage incidents of domestic violence.[202] Patrol officers received newly developed domestic violence checklists and report forms.[203] Furthermore, the police department established a database to enter daily information on all domestic violence incidence reports, and officers use it "to develop a monthly listing of repeat and high risk" violent offenders.[204] The database also includes the "defendants' criminal histories" and is shared with both the district attorney's office and the probation department so they remain current as to new details related to active

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Programs' National Institute of Justice (NIJ) jointly funded and managed the Judicial Oversight Demonstration Initiative.

[197] *Id.*

[198] *Id.* The other two sites were Washtenaw County in Michigan and Milwaukee in Wisconsin. *Id.*

[199] *Id.* at 10.

[200] *Id.*

[201] *Id.* at 14.

[202] *Id.* at 12. "New officers receive[ ] [sixty] hours of domestic violence training that include[s]: [twenty] hours on domestic violence, addressing the complexity of the crime and police response; [ten] hours of crisis intervention skills; [ten] hours of conflict resolution; [ten] hours of interpersonal relations skill building; [four] hours on child abuse; [four] hours on elder abuse; and [two] hours on victims' rights." *Id.* "Domestic violence detectives receive mandatory in-service training that includes [four] hours on case preparation and domestic violence investigations." *Id.* All officers are informed of any changes to domestic violence laws on an as needed basis. *Id.*

[203] *Id.* at 14.

[204] *Id.* at 15.

cases.[205]

At the Suffolk County District Attorney's office, on average, five attorneys, two victim witness advocates, and two investigators make up the newly-created domestic violence unit.[206] The unit strictly follows a policy of vertical prosecution, in which assistant district attorneys work on each assigned case from beginning to end and work closely with the unit's investigators.[207] These investigators are utilized to "locate victims, [make] home visits, and collect evidence."[208] These efforts, combined with the help of the police, mean that prosecutors "more routinely receive information on 911 calls, better criminal history records, medical records, and photographs."[209]

Finally, the probation department doubled the size of its domestic violence unit by adding four more officers when the specialized court opened its doors in Dorchester.[210] This reduced the average caseload to "between 60 and 80 cases per [probation] officer"—still heavy but more manageable—allowing officers to increase contact with victims and monitor conditions of probation accurately.[211] As a result, the officers can conduct more home visits and consult sources at batterer treatment programs, which notify probationers that they are subject to spontaneous checks.[212]

b. *Problem-Solving Courts*

Creating a specialized domestic violence court largely resolved issues problematic in conventional courts and programs such as the Quincy Program.[213] These issues include the confusion and ambiguity between civil and criminal jurisdictions as well as the pervasiveness of judicial insensitivity towards domestic violence victims.[214]

i. Combined Civil-Criminal Jurisdictions

The disjunction between civil and criminal jurisdictions is a critical issue and one that many models of specialized domestic violence courts address.[215] These specialized courts are structured to integrate jurisdiction for domestic violence-related criminal cases (both misdemeanors and felonies) *and* civil pro-

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[205] *Id.*

[206] *Id.* at 18; *see* Suffolk County District Attorney's Office: Help for Sexual Assault Victims, http://www.mass.gov/dasuffolk/help_sav.html (last visited Nov. 7, 2008).

[207] *Id.*

[208] *Id.* at 18.

[209] *Id.*

[210] *Id.* at 41.

[211] *Id.* at 32.

[212] *Id.*

[213] *Id.* at 5.

[214] Helling, *supra* note 183.

[215] *Id.*

tection order dockets.[216] Combining these jurisdictions not only results in efficient adjudication of domestic violence but also encourages the court and prosecutors to take any and all domestic violence incidents seriously, rather than dismissing what would be labeled as minor domestic bickering.[217]

For example, in the Dorchester Domestic Violence Court, the structure is streamlined to better ensure victim safety and offender accountability.[218] Since the domestic violence sessions began in September 2000, three staff judges adjudicate all civil restraining orders as well as all criminal arraignments, bail, dangerousness, pretrial, and probation surrender hearings.[219] Also in place is a new post-conviction compliance process, known as "judicial review hearings."[220] The judges schedule review hearings at 30, 60, and 120 days after sentencing to better monitor offender compliance and use "graduated sanctions and rewards to motivate offender compliance with probation officers and the terms and conditions of probation."[221]

The Clark County Domestic Violence Court in Vancouver, Washington illustrates effectively the structure of a system which combines criminal and civil jurisdictions. In Vancouver, the Clark County Superior Court agreed to give jurisdiction over civil protection orders to the Domestic Violence Court, thus allowing the specialized court to hear both petitions for restraining orders and all appearances for misdemeanor criminal domestic abuse cases, including arraignments, pretrial conferences, and sentencing.[222] This ensures that the presiding judge "is well informed about the entire situation and provides consistency in the court's orders."[223] Furthermore, the streamlining has shortened excessive time delays in processing domestic violence cases, making it an administrative advantage for specialized courts.[224]

ii. Judicial Insensitivity

The Dorchester Court has considered proposals for more and improved judicial training and historically has worked to develop a coordinated response to domestic violence.[225] Beginning in 1991, a Dorchester Court judge initiated the Dorchester Court Roundtable, allowing judges to come together "to share knowledge, discuss areas of concern, brainstorm about potential solutions and

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[216] *Id.*

[217] *Id.*.

[218] VISHER ET AL., *supra* note 9, at 1.

[219] *Id.* at 23.

[220] *Id.* at 22.

[221] *Id.*

[222] Helling, *supra* note 183.

[223] *Id.*

[224] E. Jane Ursel, *The Possibilities of Criminal Justice Invervention in Domestice Violence: A Canadian Case Study,* 8 CURRENT ISSUES IN CRIM. JUST. 263, 274 (1997).

[225] VISHER ET AL., *supra* note 9, at 9.

spark experimentation."[226] The roundtables take place more than once a year and usually begin with a panel or presentation by judges.[227] The afternoon sessions usually include discussions by experts on relevant issues, such as "offender accountability, innovations in high volume domestic violence court models, engaging the defense bar, judicial ethics and leadership."[228]

In addition, the Dorchester Court judges were active participants of the Massachusetts District Court Professional Development Group for Abuse Prevention Proceedings, which developed the "Trial Courts' Guidelines for Judicial Practice in Abuse Prevention Proceedings."[229] All judges assigned to the Dorchester Domestic Violence Court have since adhered to these guidelines and routinely emphasize to offenders that "domestic violence is a serious crime, and not a personal problem or lesser matter."[230] Judges often sanction offenders with jail or probation with conditions that include the successful completion of a Massachusetts Department of Public Health certified batterer intervention program and, if needed, substance abuse treatment.[231] The Trial Court also began conducting, in 1994, two-day training programs for all Massachusetts District Court judges and has provided similar training for all new judges since then.[232]

c. *Results of Specialization*

Available data on the impact of the specialized Dorchester Court shows that its results are very positive. In a 2001-2003 comparison study, the Urban Institute evaluated the three specialized domestic violence courts the JOD Initiative developed in (1) Dorchester, Massachusetts (2) Milwaukee, Wisconsin, and (3) Washtenaw County, Michigan.[233]

i. Victim Services

All abuse victims that participated in the study via surveys and focus groups were "generally satisfied with the response of police, prosecutors, and the court and rated their fairness and impact on future violence positively."[234] More victims were able to receive individualized attention and guidance as they navigated the civil and criminal court systems.[235] In both Dorchester and Washtenaw

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[226] Wolf, *supra* note 119, at 20.

[227] *Id.*

[228] *Id.*

[229] VISHER ET AL., *supra* note 9, at 9.

[230] *Id.* at 22.

[231] *Id.*

[232] *Id.* at 9.

[233] ADELE V. HARRELL ET AL., FINAL REPORT ON THE EVALUATION OF THE JUDICIAL OVERSIGHT DEMONSTRATION: EXECUTIVE SUMMARY, URBAN INSTITUTE 12 (2007), http://www.urban.org/UploadedPDF/411498_Executive_Summary.pdf.

[234] *Id.*

[235] *Id.*

County, victim advocates in prosecutors' offices or the court contacted at least 80 percent of victims in criminal cases and "provided an average of four or more different types of services to those contacted."[236] In addition, two-thirds to three-quarters of victims in Dorchester and Washtenaw County reported contact with probation officers, which was "about two to three times the number of comparison victims reporting such contact" from non-specialized court systems in other states.[237]

ii. Offender Accountability

The specialized court system also increased offender accountability in Dorchester.[238] Offenders in Dorchester were more likely than offenders in other states to be ordered to attend a treatment program, abstain from drug and alcohol use, undergo substance abuse testing, and be assigned longer terms in batterer intervention programs.[239] In addition, since offenders in Dorchester were more likely to be convicted and sentenced—and more likely to be sent to jail or probation—they were correspondingly more likely to comply.[240] Given the seriousness of the sentences, Dorchester experienced a dramatic increase in probation compliance from 221 offenders in 2001 to 602 in 2003, making up 90 percent of all offenders that year alone.[241] Offenders were more likely to attend all batterer treatment program sessions and report to probation in the first two months than comparison offenders.[242] In addition, they were significantly less likely to be re-arrested for domestic violence during their first year of probation.[243]

IV. BEYOND DORCHESTER:REPLICATING THE DOMESTIC VIOLENCE COURT MODEL IN MASSACHUSETTS

The Dorchester Domestic Violence Court is the only existing specialized court dedicated to the legal issues of domestic violence in Massachusetts.[244] In other parts of the Commonwealth, domestic violence is usually adjudicated in the family courts.[245] This is the typical method in most states and it does have benefits. For example, family court personnel often have expertise in address-

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[236] *Id.*

[237] *Id.*

[238] *Id.* at 13.

[239] *Id.*

[240] *Id.* at 13-14.

[241] VISHER ET AL., *supra* note 9, at 25.

[242] HARRELL ET AL., *supra* note 233, at 14-15.

[243] *Id.*

[244] *See,* e.g., Rebecca D. Edmonson et al., *Domestic Violence in Massachusetts: Providing Tools to Protect Victims,* 13-14, MA Joint Committee on Public Safety and Homeland Security (2006), http://senatorbarrios.org/dvreport.pdf.

[245] Littel, *supra* note 11; *see also* Wolf, *supra* note 119, at 14.

ing family matters associated with domestic violence.[246] In addition, at times it is convenient to adjudicate all legal issues facing a family in one courtroom.[247]

However, adjudication in family courts also presents serious disadvantages. For example, "family court personnel, attorneys, and service providers may lack understanding of the distinct nature of domestic violence and inadvertently make decisions that put victims and their children at risk for further harm."[248] More importantly, in family court, domestic violence is one of many issues to be addressed and it may not receive adequate attention.[249]

Massachusetts would greatly benefit if it replicated Dorchester's model domestic violence court in other parts of the Commonwealth. A domestic violence court would dramatically improve judicial responses to abuse victims.[250] In fact, "the more specialized a court is, the easier it generally is for a [domestic violence] victim to access" the judicial system.[251] The benefits of specialization would include, but not be limited, to the following: First, many domestic violence courts include specialized intake units that familiarize victims with court procedures, provide legal assistance, and refer them to community-based assistance agencies.[252] Second, because many domestic violence courts integrate their civil *and* criminal caseloads, victims can address all legal issues uniformly in one or two dedicated courtrooms, including petitions for protection orders and participation in criminal proceedings against their batterers.[253] Third, domestic violence courts designate "specialized judges or teams of judges to hear domestic violence cases exclusively or as their primary assignment."[254] These trained judges are not only more sensitive to abuse victims, but are also better able to monitor abusers and impose significant sanctions if they violate any court orders.[255] This greater judicial oversight helps victims "feel safer and more confident in pursuing their civil remedies and assisting the prosecution of criminal behavior."[256] Finally, establishing additional specialized domestic violence courts in Massachusetts will signal to the community "both the seriousness of domestic violence and the dedication of the justice system to addressing the problem."[257]

Despite the vast benefits of victim services, judicial expertise, and offender accountability that domestic violence courts may provide the Commonwealth's

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[246] *Id.*
[247] *Id.*
[248] *Id.*
[249] *Id.*
[250] Karan, *supra* note 105, at 76.
[251] Helling, *supra* note 183.
[252] Karan, *supra* note 105, at 76.
[253] *Id.*
[254] *Id.*
[255] *Id.*
[256] *Id.*
[257] *Id.*

citizens, Massachusetts has yet to follow New York's example, where over thirty specialized courts have been established.[258] Possible explanations may include opposition from the judicial bench or attorneys (both prosecutors and defense bar).[259] Other logistical obstacles, including the difficulties of combining civil and criminal jurisdictions and the lack of funding, may exist.[260]

A. *Judicial opposition*

Judges may be opposed to the creation of specialized criminal domestic violence courts. For example, elected judges in Washington State have a tendency to believe they have a mandate from the people and "a right to conduct their court as if it were their own kingdom."[261] This predisposition, when combined with "the desire to protect their own self-contained courtrooms, creates resistance to change among judges."[262] The Urban Institute noted that "relatively strong opposition" existed within the courts in Dorchester, Milwaukee, and Washtenaw County against making the changes in procedures required to establish the specialized domestic violence courts.[263] The Urban Institute reported that "pleas for additional judges were slow to be heard; space for project staff was difficult to arrange."[264]

1. Increased Workload

Many judges are also concerned that "any change which expands the duties of judges will substantially increase their workload."[265] This is largely true since in most domestic violence courts, the role of the judge is "a departure from standard judicial practice" in that he or she is more engaged with the community and required to "develop an understanding of the realities and limitations of service[s] . . . to victims, offenders, and children in order to sentence appropriately and to make appropriate [court] orders."[266] The judge in the domestic violence court is likely to "adopt a more inquisitorial style by making inquiries from the bench to better inform the course of action to be taken," which is similarly the case in other problem-solving courts, such as juvenile,

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[258] Wolf, *supra* note 119, at 1.

[259] Randal B. Fritzler & Leonore M.J. Simon, *Creating a Domestic Violence Court: Combat in the Trenches*, 37 CT.REV. 28, 36 (2000), *available at:* http://aja.ncsc.dni.us/courtrv/cr37/cr37-1/CR9FritzlerSimon.pdf.

[260] Helling, *supra* note 183.

[261] *Id.*

[262] *Id.*

[263] VISHER ET AL., *supra* note 9, at 31, 146.

[264] *Id.* at 146.

[265] Helling, *supra* note 183.

[266] JULIE STEWART, AUSTL. DOMESTIC & FAMILY VIOLENCE CLEARINGHOUSE, ISSUES PAPER 10, SPECIALIST DOMESTIC/FAMILY VIOLENCE COURTS WITHIN THE AUSTRALIAN CONTEXT (2005), *available at:* http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/Issuespaper_10.pdf.

mental-health, and drug courts.[267]

2. Emotional Toll and Frustration

In addition to increased workloads, judges prefer not to deal exclusively with domestic violence matters since domestic violence cases are "intensely emotional and can lead to great frustration" for judges as well as prosecutors in domestic violence units.[268] Judges get increasingly aggravated with victims they perceive as "refusing" to leave abusive relationships.[269] One prosecutor explained that it is "very hard to deal with individuals who don't want to help themselves."[270] In fact, some judges have gone so far as to make insensitive comments in open court towards domestic violence petitioners who have previously dropped charges.[271] For example, some judges have said, "oh, it's you again," or "how long are you going to stay this time," or "you want to go back and get beat up again."[272]

Unfortunately, judges can lose sight of the fact that "dealing with the criminal process is just a small piece of what the victim must cope with because of the violence in the victim's life."[273] Victims of domestic violence often face other issues like homelessness, unemployment, and uninsured medical concerns—all of which are "beyond the expertise and duty" of a domestic violence court judge.[274]

3. Infringing on Separation of Powers

Some judges oppose specialization because of concerns that expanded duties within the domestic violence court will infringe on the legislature's responsibilities.[275] Some judges believe the very structure of the specialized court and the additional responsibilities associated with it—including collaborating to develop new policies and procedures, obtaining grants or other funding—should not bypass the approval of the legislature.[276] In the context of drug courts, another

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[267] *Id.*; *see* Tamar M. Meekins, "*Specialized Justice": The Over-Emergence of Specialty Courts and the Threat of a New Criminal Defense Paradigm*, 40 SUFFOLK U. L. REV. 1 (2006) ("The judge often inquires of the defendant in open court about particular aspects of the defendant's life and compliance with treatment, including asking questions that, if truthfully answered, may inculpate the defendant in criminal activity.").

[268] Helling, *supra* note 183.

[269] Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 40 (1999).

[270] Helling, *supra* note 183.

[271] Epstein, *supra* note 269, at 40.

[272] *Id.*

[273] Helling, *supra* note 183.

[274] *Id.*

[275] Fritzler & Simon, *supra* note 259, at 36.

[276] *See* Joshua Matt, *Jurisprudence & Judicial Roles in Massachusetts Drug Courts,* 30 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 151, 153, 172-73 (2004).

type of specialized courts, some argue that "if it is the province of the democratically-elected legislature to set policy" on [domestic violence] crimes, then the [domestic violence] courts are apparently implementing a policy without democratic input, trampling on the legislature's domain."[277]

However, domestic violence courts are "not entirely dissociated from the polity."[278] District and Municipal Courts are, "by their nature, connected to the community they serve, and respond to pressures from that community."[279] The Dorchester Court in Massachusetts received the tacit approval to launch its domestic violence courtroom through organized community roundtables and approved federal grants.[280] Furthermore, separation of powers concerns may be unwarranted because they "confus[e] making new law with creating a new organizational structure to enforce existing laws more effectively."[281] To the extent that domestic violence court judges collaborate with other agencies to develop new procedures or "solutions to common problems, this enhances—not usurps—the authority of the other branches of government."[282] Chief Judge Judith Kaye of the State of New York emphasized that judges gain valuable information from their daily caseloads that could be used to find approaches that work best.[283] Kaye stated:

> Unlike other branches of government, courts don't need to hold lengthy investigative hearings or rely on anecdotal reports to get a sense of what the problems are. We simply need to look down the day's docket for all the data we need. When we share our experiences with the policymaking branches, everyone potentially gains.[284]

These factors, together with "fear of the unknown and concern that another judge may obtain some political advantage," make it difficult to embark upon a major court project like a specialized domestic violence court.[285]

4. Case Study of Clark County

Judicial opposition was at the core of the problems faced by the planners of the Clark County Domestic Violence Court in Vancouver, Washington.[286] During the court's planning and implementation phases, consultants described the

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[277] *Id.* at 174.

[278] *Id.* at 175.

[279] *Id.*

[280] Federal funding from the Department of Justice's Office on Violence Against Women and the Office of Justice Program's National Institute of Justice. *See* HARRELL ET AL., *supra* note 234, at 1.

[281] Fritzler & Simon, *supra* note 259, at 36.

[282] Kaye & Knipps, *supra* note 4, at 12.

[283] *Id.*

[284] *Id.*

[285] Fritzler & Simon, *supra* note 259, at 36.

[286] *Id.*

Clark County District Court judges as "highly resistant to change."[287] The presiding judge was required to obtain majority approval for any and each decision involving new initiatives.[288] This rule makes it "difficult to sustain a long-term project, as it can be undermined at any time by a vote of the judges."[289] In 1997 and 1998, at the direction of the presiding judge, the judges held retreats "to build a consensus and collegiality, [but] the consensus-building approach met with limited success, and decisions had to be made" without the full support of the judicial bench.[290]

A better approach to such resistance may be "positive publicity by external agencies" such as victim advocacy groups which may publicly promote and campaign for elected judges who "support court improvements for domestic violence."[291] In the case of Clark County, it helped that the county had an active domestic violence task force and the district attorney's office had a strong interest in bringing about this court innovation.[292] Letters from government officials including county commissioners and the enactment of state legislation offered additional support and demonstrated that legislators wanted to make domestic violence a high priority.[293] This "converging political support" made judges less likely to oppose the development of the specialized court.[294] In addition, given that 1998 was an election year, judges were likely aware that the issue was "an important one for many political constituents."[295]

B. *Prosecutors and Defense Bar Opposition*

Another reason for opposition against implementing a specialized domestic violence court is that it "interferes with courts' core value of neutrality" and breeds judicial bias in favor of the abuse victims.[296] The criminal defense bar has complained that "judicial education about family abuse and extended tenure on a calendar devoted to such cases creates a pro-victim, anti-defense bias."[297] There are strong concerns that the increased attention to domestic violence in a specialized court will only lead to more civil protection orders, longer jail sentences, and other penalties against their clients.[298]

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[287] *Id.*

[288] *Id.*

[289] *Id.*

[290] *Id.* at 36-37.

[291] Helling, *supra* note 183.

[292] Fritzler & Simon, *supra* note 259, at 37.

[293] *Id.*

[294] *Id.*

[295] *Id.*

[296] Kaye & Knipps, *supra* note 4, at 10; *see also*, Helling, *supra* note 183.

[297] Epstein, *supra* note 269, at 45.

[298] Helling, *supra* note 183.

1. Bargaining Chips

Due to the concern of judicial bias against offenders from the development of specialized domestic violence courts, the discussion inevitably turns to the bargaining chips available to prosecutors and the defense bar.[299] One such bargaining chip is the "affidavit of prejudice."[300] During the course of every criminal proceeding, the prosecutor and the defendant each have the right to file an affidavit of prejudice against a judge, which provides the "right to remove a judge once without a stated reason."[301] These affidavits are potentially damaging because, if filed routinely against the judges presiding over specialized domestic violence courts, "it would seriously impair the smooth operation of the court."[302]

However, there should be little concern that either prosecutors or defense attorneys would overuse this bargaining chip. In one study examining the development and progress of three specialized domestic violence courts, the prosecutors and defense attorneys did not abuse their right to file affidavits removing the judge on the basis of perceived bias.[303] This suggests that the fear of judicial bias, while discussed at length during the development of a specialized court, may not actually emerge in practice.

Another bargaining chip emerged in the development of the Clark County Domestic Violence Court.[304] There, the county prosecutor presumed from the start that the domestic violence court judges would be biased in favor of the abuse victims.[305] As a result, the prosecutor's office decided to deter the specialized court's smooth operation by reviving its "domestic violence diversion program."[306] This program allowed offenders to avoid prosecution and potential conviction in the Clark County Domestic Violence Court by agreeing to pay substantial fees, participate in a batterer treatment program, and be placed on formal probation for up to two years.[307] The Clark County judges and other developers of the specialized court could not prevent the diversion program from moving forward, but succeeded in controlling its impact through judicial reviews of dismissals.[308] In other words, a defendant could only be admitted to

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[299] *Id.*

[300] *Id.*

[301] *Id.*

[302] *Id.*

[303] *Id.* The three courts included in the study: Seattle Municipal Domestic Violence Court (WA), Sacramento Domestic Violence Home Court (CA), Clark County Domestic Violence Court (WA). *Id.*

[304] Helling, *supra* note 183.

[305] *Id.*

[306] Fritzler, *supra* note 259, at 36.

[307] Domestic Violence Diversion Program: Information and Eligibility Requirements, Chelan County District Court Probation Office, Washington State (2003), http://www.co.chelan.wa.us/dcp/data/diversion_eligibility_info.pdf.

[308] Fritzler & Simon, *supra* note 259, at 36.

the diversion program with judicial approval. The judge had to be satisfied that "appropriate justification exist[ed]" for admission. Otherwise, the judge ordered the case to remain open and to proceed through the usual channels at the domestic violence court.[309] By exercising this review, the court has been able to "limit the number of offenders diverted and cases dismissed."[310]

In Massachusetts, the defense bar has its own bargaining chip in Massachusetts General Laws, chapter 276, section 55, which allows for civil resolutions to misdemeanor offenses, including minor assaults.[311] This statute provides courts with the discretion, subject to certain exceptions, to dismiss a charge of assault and battery if the victim acknowledges that "he has received satisfaction for the injury."[312] This is also known as a so-called "accord and satisfaction" agreement.[313] The legislature never intended this provision to apply to domestic violence cases.[314] Even so, there is a growing trend in Massachusetts for defendants accused of assault and battery in domestic violence cases to "induce and/or manipulate" their victims into making "accord and satisfaction" agreement, which will allow charges against the batterer to be dismissed.[315] If more specialized courts are established, defense attorneys may resort to this bargaining chip more often.[316] Defense attorneys may perceive court specialization to mean judges will become "advocates for women and [will] no longer [be] impartial arbiters of the law."[317] Instead, they presume that these judges "will hammer every defendant" with greater jail time and penalties.[318] Consequently, defense attorneys may intensify their efforts to coerce victims into signing these agreements.[319]

2. Response to Judicial Bias Concerns

It is well acknowledged that specialized domestic violence courts have substantially influenced judicial attitudes toward domestic violence.[320] However, defendants remain "unquestionably entitled to the full panoply of due process

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309 *Id.*

310 *Id.*

311 MASS. GEN. LAWS ch. 276 § 55.

312 *Id,* "If. . .the person injured appears before the court. . .and acknowledges in writing that he has received satisfaction for the injury, the court. . .may in its. . .discretion. . .discharge the defendant from the indictment or complaint. . ." *Id.*

313 Edmonson et al., *supra* note 244, at 13-14.

314 *Id.*

315 *Id.* Many victims ultimately sign these agreements because they cannot afford adequate counsel to advise them, and, more importantly, fear retribution by the batterer if they don't sign. *Id.*

316 *Id.*

317 Helling, *supra* note 183.

318 *Id.*

319 Edmonson et al., *supra* note 244, at 13.

320 Epstein, *supra* note 269, at 46.

protections; appellate review still exists to check any erroneous applications of law."[321] Judge John Leventhal, who has presided over the Brooklyn Felony Domestic Violence Court since its opening in June 1996, was very clear about his role as a neutral judge in the specialized court: "I see my role as a dual obligation: to preserve and protect defendant's constitutional and procedural rights, but also to see that the complainant is safe both during the proceedings and after as well."[322] The purpose of the domestic violence court is not to weaken the rights of defendants but to improve victim safety and assure that victims receive "more complete justice—decisions that are based on more, not less information; orders that achieve more, not less compliance."[323]

Prior to specialization, the criminal court system arguably was biased against victims, denying them the complete justice they deserved.[324] Victims often could not afford proper counsel, and the fear of retribution loomed very large when seeking help from the courts.[325] Deborah Epstein, the director of the Domestic Violence Clinic at Georgetown University Law Center, recognized the "extensive history of anti-victim bias" in the legal system.[326] Consider the plethora of individual and class-action lawsuits in the early 1980s that determined women were denied equal protection because the police ignored court orders of protection and did not protect them from their violent partners.[327] Or consider the insensitivity of judges towards abuse victims, at times going so far as to "threaten victims with sanctions for repeated use of the court system."[328] For example, in North Dakota, a judge reportedly told a domestic violence petitioner, "If you go back [to the perpetrator] one more time, I'll hit you myself."[329] As a result, as Epstein stated, "it is difficult to believe that a newly-organized [specialized] court could have an impact so fundamental as to not only level the playing field, but to regrade it in the opposite direction—against perpetrators."[330] In a sense, then, what makes domestic violence courts differ-

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[321] Kaye & Knipps, *supra* note 4, at 10-11.

[322] *Id.* at 11, n.25.

[323] *Id.* at 11.

[324] *Id.*

[325] MARTHA WADE STEKETEE ET AL., IMPLEMENTING AN INTEGRATED DOMESTIC VIOLENCE COURT: SYSTEMIC CHANGE IN THE DISTRICT OF COLUMBIA, 85, 89 (2000), http://www.ncsconline.org/WC/Publications/Res_FamVio_ImplementIntegratedDVCrtFinalReportPub.pdf.

[326] Epstein, *supra* note 269, at 46.

[327] Stop Violence Against Women, Domestic Violence – Explore the Issue: Police, http://www1.umn.edu/humanrts/svaw/domestic/link/policereform.htm (last visited November 24, 2007); *see also* Scott v. Hart, No. C-76-2395 (N.D. Cal. Filed Oct. 28, 1976); Bruno v. Codd, 90 Misc.2d 1047, 396 N.Y.S.2d 974 (N.Y. Sup. Ct. 1977); Thurman v. City of Torrington, 595 F. Supp. 1521 (D. Conn. l984).

[328] Epstein, *supra* note 269, at 40.

[329] *Id.*

[330] Epstein, *supra* note 269, at 46.

ent and more effective is "their ability to get more out of the system, not less out of the Bill of Rights."[331]

More importantly, looking at the empirical data available, there seems to be little existence of judicial bias.[332] For example, since the inception of the new specialized court in the District of Columbia, the percentage of civil protection orders issued in civil protection cases has actually decreased, from 86% in 1989 to 78.6% in 1999.[333] In addition, judges' extended exposure to and experience with a domestic violence calendar does not appear to erode their impartiality.[334] The percentage of civil protection order trials in which domestic violence judges grant the petitioner's request of relief "remained fairly constant" (between 71 percent and 83 percent) during the first six months of the D.C. Domestic Violence Court's operation.[335] There has been no trend toward "increased sympathy for alleged victims."[336]

One proposed way to weaken or eliminate the perception of bias is to include prosecutors, public defenders, and the criminal defense bar in the creation of the specialized court from the start.[337] Although public defenders were reluctant to assist in the creation of the Clark County Domestic Violence Court in Vancouver, it still gave them the opportunity to "voice any misgivings about the court's creation and operation."[338] Another way to minimize judicial bias is to make "affidavits of prejudice" publicly available and, if possible, post it online for the public, attorneys, and others on the judicial bench to "see which judges are frequently rejected because they are perceived to be unfair."[339] Anyone interested could then "review the files, which are open to the public, and decide for themselves if there is a basis for those affidavits."[340] In addition, judges would be less likely to behave in a biased manner if this information is made more available to the public, especially during re-election campaigns.[341]

C. *Jurisdictional Difficulties*

1. Civil vs. Criminal Jurisdictions

One of the benefits of setting up a specialized domestic violence court is that it could combine both civil and criminal jurisdictions, allowing the resolution

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[331] Kaye & Knipps, *supra* note 4, at 11.

[332] Epstein, *supra* note 269, at 46.

[333] *Id.*

[334] *Id.*

[335] *Id.*

[336] *Id.*

[337] Helling, *supra* note 183.

[338] *Id.*

[339] Marc B. Hankin, *Legislative Projects*, Law Offices of Marc B. Hankin, http://www.marchankin.com/legislative_projects/LegislativeProjects.htm (last visited Nov. 14, 2008).

[340] *Id.*

[341] *Id.*

of all legal issues related to domestic violence.[342] In this way, domestic violence petitioners would not need to navigate between probate courts and district criminal courts, which may be a daunting, confusing, and very time-consuming process.[343]

However, combining jurisdictions is a difficult task, and many jurisdictions persist in maintaining separate courts for civil litigation and criminal cases related to domestic violence.[344] In Clark County, many critics pointed out that combining civil and criminal jurisdictions may inappropriately encourage judges and prosecutors to focus on factors that should not influence their decisions in criminal cases.[345] For example, judges, defendants, and even victims may pressure prosecutors to "cease a criminal prosecution based on the defendant's willingness to pay child support or alimony."[346] More importantly, combining jurisdictions may infringe the constitutional rights of defendants. For example, defendants in criminal proceedings have a Fifth Amendment right to remain silent and a Sixth Amendment right to be represented by counsel.[347] In contrast, parties in civil proceedings "have no right to remain silent and the parties often do not have attorneys."[348] While the Fifth Amendment applies to criminal proceedings only, the Supreme Court has held that any witness in a government proceeding—civil or criminal—may invoke the privilege against self-incrimination if the answer will lead to or provide evidence that could be used in a subsequent criminal case.[349] This suggests that courts which have both civil and criminal jurisdiction could potentially violate the defendant's constitutional right against self-incrimination.[350] In addition, if the defendant is aware that his testimony in a civil case (i.e., protective order requests) could be used against him later in a criminal case, he might invoke his right to remain silent immediately.[351] This would serve only to derail the civil proceedings intended to quickly provide victims the safety and resources they need.

Ensuring that defendants have legal representation at both civil and criminal proceedings to protect their constitutional rights can initially solve this problem.[352] Another approach is for prosecutors to enlist the courts to issue stays of the civil action and protective orders on behalf of the victims until the criminal case is resolved.[353] This way, the specialized courts can "prevent the disclosure

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342 Helling, *supra* note 183.
343 Hankin, *supra* note 339.
344 Helling, *supra* note 183.
345 *Id.*
346 *Id.*
347 U.S. CONST. amend. V; U.S. CONST. amend. VI.
348 Helling, *supra* note 183.
349 Lefkowitz v. Cunningham, 431 U.S. 801, 805 (1977).
350 Helling, *supra* note 183.
351 *Id.*
352 *Id.*
353 PETER FINN & MARIA O'BRIEN HYLTON, NATIONAL INSTITUTE OF JUSTICE, USING CIV-

of protected information and thus minimize danger to a criminal defendant's constitutional rights."[354] In addition, stays and protective orders may also aid the prosecutor because, "otherwise, the greater discovery rights available to a respondent in a civil case may give the defendant in the parallel criminal case a much greater advantage than will accrue to the prosecutor."[355] Furthermore, stays can prevent the victim's testimony at a civil proceeding from "damag[ing] chances for a successful prosecution" because that civil testimony can provide the defense attorney with "impeachment material" to use against the victim when testifying again in the criminal trial.[356]

Finally, this dilemma may be remedied through state legislation forbidding the use of a defendant's civil court testimony in a criminal proceeding.[357] This keeps intact the defendant's Fifth Amendment right to not be "compelled in any criminal case to be a witness against himself."[358] For example, the Minnesota Domestic Abuse Act protects the defendant's privilege to refuse to give incriminating evidence in a criminal case despite an admission of guilt in the civil case by providing that "any testimony offered by a respondent in a hearing pursuant to this section is inadmissible in a criminal proceeding."[359]

2. Misdemeanor vs. Felony Jurisdictions

Aside from the divide between civil and criminal jurisdictions, it is even more difficult to combine criminal courts that deal exclusively with misdemeanors with those that deal with felonies.[360] In Seattle, the Municipal Court has a specialized domestic violence pretrial calendar strictly for misdemeanor

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IL REMEDIES FOR CRIMINAL BEHAVIOR: RATIONALE, CASE STUDIES, & CONSTITUTIONAL ISSUES 74 (1994).

354 *Id.*

355 *Id.*

356 Helling, *supra* note 183.

357 *Id.*

358 U.S. CONST. amend. V.

359 MINN. STAT. § 518B.01, subd. 15. (1979); FINN & O'BRIEN, *supra* note 354.

360 These offenses are adjudicated in separate courts largely because of the differences in how serious the criminal charges are. Felonies are crimes for which the penalties range from one year in jail to life imprisonment and misdemeanors are lesser criminal acts for which the maximum penalty is one year. In domestic violence cases, charges may be filed as either a misdemeanor or a felony depending on the severity of the injuries involved. Both prior acts of reported domestic violence and the criminal history of the accused also influence how the case is filed.

See Michael A. Feit, *Criminal Law and Procedure*, in UNDERSTANDING THE LAW—A PRACTICAL GUIDE FOR NEW YORK RESIDENTS, 39 (The N.Y. State Bar Ass'n, ed. 2006) *available at* http://204.8.127.102/peopleslaw/media/Understanding_the_Law_Coursebook.pdf; *see also* 18 U.S.C.A. § 3559 (2006); DOMESTIC VIOLENCE COMM. OF THE N.C. BAR ASS'N, DOMESTIC VIOLENCE AND THE LAW: A PRACTICAL GUIDE FOR SURVIVORS 7, (rev. ed. 2005), *available at* younglawyersdivision.ncbar.org/LegalResources/Publications/Downloads_GetFile.aspx?id=3684.

domestic violence cases, while felony domestic violence offenses are heard in Superior Court.[361] The Seattle City Attorney's Domestic Violence Unit prosecutes only misdemeanor cases simply because there are significantly more misdemeanor domestic violence cases than felony cases.[362] Yet, the Domestic Violence Home Court for Sacramento County in California hears *both* misdemeanors and felonies, and the Domestic Violence Unit of the Sacramento District Attorney's Office prosecutes *both* levels of crime.[363]

Adjudicating both misdemeanor and felony cases in one specialized court system has certain advantages. Since domestic violence defendants tend to be repeat offenders—often escalating in the seriousness of their crimes—"when misdemeanor and felony cases are combined, a clearer picture of these defendants emerges."[364] In Clark County Domestic Violence Court, Court Services Supervisor Chuck Bristol noted that combining jurisdictions helped "eliminate the manipulation of the system by defendants" who try to get away with their acts of abuse by using different judges in different courtrooms and under different, and often conflicting, court orders.[365] Thus, combining misdemeanors and felony jurisdictions may compel defendants to comply more often with the court's rulings and to follow up with probation.[366] In turn, this structure "offers a strong opportunity to provide effective monitoring and demonstrate that the system takes domestic violence crime seriously."[367]

Despite its benefits, combining misdemeanor and felony jurisdictions lacks support from the judicial bench and prosecutors' offices.[368] Both judges and prosecutors are overly protective about their individual jurisdiction(s), and "any attempt to combine jurisdiction may be perceived as a loss of power and/or an undesired increase in workload."[369] Consequently, any effort to combine jurisdictions will likely require the active participation of the state legislature.[370]

D. *Insufficient Funding*

Insufficient funding of domestic violence programs creates a considerable barrier to the replication of specialized domestic violence courts in the Commonwealth. Since 2003, federal funding for domestic violence programs in Massachusetts, which helped pay for community agencies, victims' advocates

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[361] Helling, *supra* note 183.

[362] *Id.*

[363] *Id.*

[364] EMILY SACK, FAMILY VIOLENCE PREVENTION FUND, CREATING A DOMESTIC VIOLENCE COURT: GUIDELINES AND BEST PRACTICES 25 (2002), *available at* http://www.endabuse.org/programs/healthcare/files/FinalCourt_Guidelines.pdf.

[365] Helling, *supra* note 183.

[366] SACK, *supra* note 364.

[367] *Id.*

[368] Helling, *supra* note 183.

[369] *Id.*

[370] *Id.*

positions, and shelters, has decreased.[371] From 2003 to 2006, funding from the United States Department of Health and Human Services went from $1.85 million to $1.78 million.[372] During the same three-year period, a grant from the Department of Justice "decreased from $2.8 million to $2.54 million."[373] Moreover, in 2006 under former governor Mitt Romney, domestic violence shelters lost hundreds of thousands of dollars in financial support after the Department of Social Services "renegotiated contracts that shifted funding from shelters."[374] This forced many shelters to close their doors to battered women in need.[375]

The general lack of domestic violence funding makes it difficult to envision the Commonwealth establishing more specialized courts. Clearly, "it is crucial that government leaders and policymakers adopt and articulate a strong commitment to end domestic violence" but "this cannot be achieved without adequate funding."[376] Advocates for specialized courts should attempt to lobby the legislature but simultaneously apply for federal grants via the Violence Against Women Act or from parallel state agencies, including Departments of Social Services, Health, Public Safety, or Education.

V. CONCLUSION

"'There's no silver bullet to solve [the] problem' of domestic violence," as Judge Fritzler of the Clark County District Court stated.[377] In Massachusetts, there have been many efforts to address domestic violence, and specialized domestic violence courts are only one possible step for communities to take—but it is a step that more communities should take. Many are reluctant to change their court system, but this resistance can be overcome by emphasizing the benefits of specialization. A domestic violence court will not only enhance the operations of the courtrooms, but also improve procedures in police stations, provide more resources in prosecutor's offices, and garner more offender compliance within probation departments. Across the country, abuse victims have found that greater specialization provides them easier access to the system and the help they need. Simultaneously, offenders are finding it harder to get away with violent behavior. They are forced to recognize their battering for what it is: a criminal act and an act for which they must be punished. Special-

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[371] Maria Cramer, *Shelters Can't Help All Fleeing Abuse: Cutbacks, Shift in Policy Narrow Victims' Options*, BOSTON GLOBE, January 14, 2008, at A1.

[372] *Id.*

[373] *Id.*

[374] *Id.*

[375] *Id.*

[376] Salzman, *supra* note 10, at 363 (quoting SCOTT HARSHBARGER & JAY A. WINSTEN, REPORT ON DOMESTIC VIOLENCE: A COMMITMENT TO ACTION 5 (1993)).

[377] Helling, *supra* note 183.

ized courts are highly valuable and can be credited with finally bringing genuine support and, more importantly, real justice to victims of abuse who are largely ignored by traditional court systems.