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Cover Page Footnote

Domestic Violence Resource Coordinator for the Honorable Judy Harris Kluger, Administrative Judge of the Criminal Court of the City of New York (1997-98). This Note is dedicated to my family and friends for their support and encouragement.

THE TREND TOWARD SPECIALIZED DOMESTIC VIOLENCE COURTS: IMPROVEMENTS ON AN EFFECTIVE INNOVATION

*Betsy Tsai**

INTRODUCTION

During her twenty-two-year relationship with Ralph Santos, Eva Rosenthal suffered both physical and emotional abuse, often marked by "beatings and screams [heard] through the hallways of [their] housing project."¹ When Ms. Rosenthal eventually left Mr. Santos, she moved in with her mother.² Shortly thereafter, Mr. Santos followed Ms. Rosenthal home one day, waving a pair of pliers and threatening to kill her.³ After this incident, Ms. Rosenthal decided, for the first time, to go to the police.⁴ As a result of the criminal complaint she filed, a judge charged Mr. Santos with misdemeanor menacing, and Ms. Rosenthal received a one-year order of protection prohibiting Mr. Santos from coming near her.⁵

Six weeks later, despite the order, Mr. Santos followed Ms. Rosenthal onto a bus, cursing and threatening her.⁶ The police arrested Mr. Santos for criminal contempt for violating the order of protection, but released him from jail eight days later after he plead guilty to a lesser charge.⁷ Ms. Rosenthal thereupon received her second order of protection.⁸

* Domestic Violence Resource Coordinator for the Honorable Judy Harris Kluger, Administrative Judge of the Criminal Court of the City of New York (1997-98). This Note is dedicated to my family and friends for their support and encouragement.

1. David M. Herszenhorn, *Man Vowed All Week to Kill Companion, Neighbors Say*, N.Y. Times, Aug. 23, 1996, at B3. The couple's neighbors also described how Mr. Santos would yell at Ms. Rosenthal through the first-floor window of their apartment, ordering her to follow his instructions. *See id.* Neighbors described Mr. Santos as a "control freak" who regularly beat Ms. Rosenthal. *Id.*

2. *See id.* Ms. Rosenthal and Mr. Santos have a 21-year-old daughter who also moved in with Ms. Rosenthal's mother. *See id.*

3. *See id.*

4. *See id.* The complaint that Ms. Rosenthal filed quoted Mr. Santos as threatening: "I am going to kill you and kill myself." *Id.*

5. *See id.*

6. *See id.*

7. *See id.*

8. *See id.*

Neighbors reported that after Mr. Santos's release from jail, he repeatedly talked of his plans to kill Ms. Rosenthal.⁹ The night before her death, Mr. Santos said to one of his neighbors, "'I'm tired of her . . . [t]omorrow morning I am going to meet her in the train station and I'm going to kill that woman.'"¹⁰ The next day, Ms. Rosenthal was stabbed to death while carrying one of the two orders of protection in her purse.¹¹

Unlike many other women,¹² Ms. Rosenthal turned to the criminal justice system for help when she needed protection from a violent domestic partner.¹³ Unfortunately, although Ms. Rosenthal utilized all of the resources the justice system had to offer in an attempt to protect herself, it was not enough. The system ultimately failed her.¹⁴

Those who work in the criminal justice system are often frustrated and embarrassed by their inability to protect victims of domestic violence, even after the arrest and conviction of offenders and despite the issuance of judicial orders of protection.¹⁵ In response to the

9. *See id.* Mr. Santos's neighbors reported that he began lurking around his building's entrance and stopping random people to tell them of his plans to kill Ms. Rosenthal. *See id.* Mr. Santos made a point of showing his knife to passers-by, as well as waving around money and a plane ticket for his escape. *See id.* Although the neighbors warned Ms. Rosenthal of these threats, they never reported Mr. Santos to the police. *See id.* Apparently, they did not truly believe that he would take Ms. Rosenthal's life. *See id.*

10. *Id.*

11. *See id.* Ms. Rosenthal was 48 years old when she died, and Mr. Santos was 49. *See id.*

12. Although domestic violence affects men as well as women, and also occurs in same-sex relationships, 90-95% of victims of domestic violence are women and approximately 95% of perpetrators of such violence are men. *See* The Commission on Domestic Violence, *Statistics* (visited Oct. 15, 1999) <<http://www.abanet.org/domviol/stats.html>> [hereinafter *Statistics*]. As such, the term "domestic violence" in this Note refers to male perpetrators of domestic abuse against female victims.

13. *See generally id.* (citing the 1995 Bureau of Justice Statistics Special Report that only 55% of women who sustained injuries by intimate partners reported the incident to the police, while even fewer reported when there was no injury). Additionally, the American Psychological Association reports that battered women are six times less likely to report incidents to the police than are victims of crimes perpetrated by strangers. *See id.*

14. Many other battered women have turned to the criminal justice system, with similarly tragic results. *See, e.g.,* Michael Cooper, *Man Kills His Wife and Then Himself*, N.Y. Times, June 14, 1999, at B5 (detailing a husband's murder of his estranged wife with a single gunshot to the head, despite an order of protection issued against him); Adam Gershenson, *The Neediest Cases: After a Violent Attack, a Fresh Start*, N.Y. Times, Feb. 21, 1999, § 1, at 38 (describing how an estranged husband stabbed his wife nine times, despite the fact that she had obtained an order of protection); Nick Ravo, *Man Accused of Killing Girlfriend Who Had Order of Protection*, N.Y. Times, Mar. 18, 1997, at B2 (reporting that the victim was fatally stabbed by her ex-boyfriend, against whom she had an order of protection); Amy Waldman, *Striking Back*, N.Y. Times, June 28, 1998, § 14, at 1 (describing how a man bludgeoned his ex-girlfriend to death despite an order of protection requiring him to stay away from her for three years).

15. *See* David M. Herszenhorn, *Alarm Helps to Fight Domestic Violence*, N.Y. Times, July 27, 1999, at B3 (describing a new strategy for preventing attacks and

recognition of domestic violence as an ever-widening epidemic, the court system has begun to examine its traditional approaches to family violence more closely. This traditional approach, which involves little or no special attention or resources dedicated to domestic violence cases, is currently being challenged by the emergence of the following trend: many state courts have initiated the development of specialized domestic violence courts to handle domestic violence cases.¹⁶ These specialized courts consolidate judges, prosecutors, court personnel, and other domestic violence resources into one central system designed to provide a more effective response to domestic abuse cases. This approach incorporates the principles of therapeutic jurisprudence, a theoretical model rooted in "the tradition of sociological jurisprudence and legal realism."¹⁷ The multidisciplinary approach of therapeutic jurisprudence examines the positive and negative effects of the legal system on the social and psychological functioning of individuals, and is reflected in the model domestic violence programs' commitment to providing comprehensive services.¹⁸

This Note discusses several model domestic violence courts that have developed throughout the country and argues that, although the trend toward a greater judicial role in coordinating an effective response to domestic violence is promising, additional improvements are required. Part I of this Note describes the traditional court system's response to domestic violence cases, outlines criticisms of that system, and introduces the concept of therapeutic jurisprudence as a basis for creating a viable alternative approach. Part II sets forth several state model domestic violence programs that incorporate therapeutic jurisprudence theories into their approaches to combating domestic violence. This part also presents the criticisms and controversies surrounding these model programs. Part III analyzes and challenges the arguments against model domestic violence programs, concluding that a coordinated community response to domestic violence is preferable to the traditional handling of these cases. Part III then proposes areas of improvement to further develop the ideal prevention program.

violations of orders of protection through the use of electronic ankle bracelets that monitor defendants' whereabouts).

16. See, e.g., Eve S. Buzawa & Carl G. Buzawa, *Domestic Violence: The Criminal Justice Response* 174-75 (James A. Inciardi ed., 2d ed. 1996) (discussing specialized courts and their creation); Carole Burns, *Court That Takes a Single Focus*, N.Y. Times, June 1, 1997, § 13 (Connecticut Weekly), at 1 ("Specialized domestic violence courts, while not new, are becoming more popular . . ."); *Improving New York's Courts*, N.Y. Times, Jan. 4, 1997, § 1, at 22 (describing New York State's plan to create specialized domestic violence courts).

17. Bruce J. Winick, *The Jurisprudence of Therapeutic Jurisprudence*, 3 Psychol. Pub. Pol'y & L. 184, 206 (1997).

18. See generally *id.* (describing the theory of therapeutic jurisprudence).

I. THE TRADITIONAL LEGAL RESPONSE TO DOMESTIC VIOLENCE AND THE DEVELOPMENT OF THERAPEUTIC JURISPRUDENCE

Domestic violence involves individuals in intimate relationships who use their power to physically, emotionally, sexually, or verbally abuse their partners.¹⁹ The private, hidden nature of domestic abuse has historically led to a societal reluctance to acknowledge its existence and pervasiveness, or to criminalize the abuser's actions. This part traces the history and development of the legal system's traditional approach to domestic violence. It then examines the shortcomings of that system's approach, and presents the alternative theory of therapeutic jurisprudence, a theory that focuses on enhancing the positive effects of the law on individuals' mental and physical well-being.²⁰

A. *A Historical Perspective on Domestic Violence Within the Criminal Justice System*

Traditionally, both society and the legal system accepted domestic violence as a private family matter in which a husband could use force to discipline the members of his household.²¹ Husbands were therefore legally immune to sanctions, criminal or otherwise. Over time, however, the role that legal institutions play in the realm of domestic violence has evolved as society itself has changed.²²

Old English common law, which provides the foundation for American law, considered women to be the property of their husbands, and as such they were subject to "moderate chastisement"²³ according to the "rule of thumb."²⁴ This rule permitted a husband to beat his wife with a stick no wider than his thumb and exemplified the greater emphasis on family harmony and maintenance over the

19. See The Family Violence Prevention Fund, *It's Your Business: Community Action Kit* [hereinafter *Community Action Kit*] (on file with the *Fordham Law Review*).

20. See generally Winick, *supra* note 17 (describing the theory of therapeutic jurisprudence).

21. See *State v. Rhodes*, 61 N.C. 349, 351 (1868) (describing the family as an entity unto itself which the government should not disturb); *Skinner v. Skinner*, 5 Wis. 449, 451 (1856) (refusing a wife a divorce on the grounds of cruel or inhuman treatment, stating that "when the wife is ill-treated on account of her own misconduct, her remedy is a reform of her own manners"); Buzawa & Buzawa, *supra* note 16, at 26. *But see* *Commonwealth v. McAfee*, 108 Mass. 458, 461 (1871) (stating that it was unlawful for the defendant to beat his wife); *State v. Buckley*, 2 Del. 552, 552 (1838) ("We know of no law that will authorize a husband to strike his pregnant wife a blow with his fist . . .").

22. See Jeffrey Fagan, Nat'l Inst. of Justice, *The Criminalization of Domestic Violence: Promises and Limits* 6-9 (1996).

23. Nadine Taub, *Adult Domestic Violence: The Law's Response*, 8 *Victimology* 152, 153 (1983).

24. Buzawa & Buzawa, *supra* note 16, at 28 (emphasis omitted).

cessation of violence.²⁵ Courts, therefore, resisted becoming involved in family disputes, viewing the family as “complete in itself” and an inappropriate area for judicial intervention.²⁶ In *State v. Rhodes*,²⁷ the Supreme Court of North Carolina addressed the question of whether a husband could be punished for unprovoked and moderate correction of his wife, and stated that “we will not interfere with family government in trifling cases”²⁸ where “personal conflicts inflicting only temporary pain . . . are not comparable with the evils which would result from raising the curtain, and exposing to public curiosity and criticism, the nursery and the bed chamber.”²⁹

The courts’ general reluctance at common law to interfere in the affairs of the family reflects the strength of the widely held belief that the family was indeed its own private entity. From the late 1700s through the late 1850s, the criminal justice system was “a legislative vacuum” when it came to policies against domestic violence.³⁰ During the Civil War, however, the government began to exert more control over families through greater regulation and legislation, and there was a corresponding decrease in the husband’s supremacy over his wife.³¹ In 1871, the Supreme Court of Alabama in *Fulgham v. State*³² 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.”³³ By the end of the 19th century, several states had adopted laws against domestic violence that made wife-beating a punishable offense.³⁴ Despite these official sanctions against wife-beating, however, the evidence suggests that these laws were very rarely enforced, and sanctions were applied only in extreme circumstances of unequivocal and severe injury.³⁵

In the early 1900s, attention to domestic violence issues waned, as women began fighting battles over suffrage and temperance.³⁶ The

25. *See id.* at 28-29.

26. *Rhodes*, 61 N.C. at 351.

27. 61 N.C. 349 (1868).

28. *Id.* at 353.

29. *Id.* at 352.

30. Buzawa & Buzawa, *supra* note 16, at 30-31.

31. *See id.* at 31. The second half of the nineteenth century involved “major societal upheavals,” including the Civil War, the emergence of the women’s movement, and landmark court decisions limiting the legality of domestic abuse. *See id.*; *see also infra* text accompanying notes 32-34 (citing an influential court decision and additional legislation against domestic violence).

32. 46 Ala. 143 (1871).

33. *Id.* at 147.

34. *See Buzawa & Buzawa, supra* note 16, at 32. Three states, Maryland, Delaware, and Oregon, adopted laws against wife-beating at the end of the 19th century. At that time, nine other states were also considering stronger laws against wife-beating, and chastisement was no longer considered a defense to assault on one’s wife in most states. *See id.* at 31-32.

35. *See id.* at 32.

36. *See id.* at 32-33.

judicial trend also reflected a move away from concern over domestic violence by de-emphasizing the criminal nature of domestic abuse and focusing once again on compromise and reconciliation of the family.³⁷ The development of family courts facilitated this move away from the criminalization of domestic violence by directing family cases, originally handled in criminal courts, into family courts where the goal was to dispense with family cases by helping couples work out their problems.³⁸ In the 1960s, however, renewed attention to family violence emerged through the work of members of the feminist movement in establishing rape crisis centers and battered women's shelters.³⁹ The creation of victim assistance programs followed closely thereafter.⁴⁰

In the 1970s, particularly as a result of the feminist movement, efforts to increase the strength of the criminal justice response to domestic violence continued.⁴¹ It was during this time that the battered women's movement gathered steam, and the phrase "domestic violence" became associated with wife abuse.⁴² Numerous government programs directed at what was once considered a "private matter" began to appear, including state-funded shelters, batterer intervention programs, specialized prosecution teams, and published studies containing data on domestic violence.⁴³ In 1975, the first batterer intervention programs were created, and for the first time, domestic violence was seen as "the man's problem."⁴⁴ It was during this period of change that legal institutions responded to the new trends with uncertainty, however, and the majority of courts continued to view episodes of family violence as personal matters not suitable for prosecution.⁴⁵ In the 1980s, a variety of legislative and policy reforms finally began to change the legal response to domestic violence.⁴⁶ Some examples of these changes include additional

37. *See id.* at 33.

38. *See id.*; *see also* Elizabeth Pleck, *Domestic Tyranny: The Making of Social Policy Against Family Violence from Colonial Times to the Present* 137 (1987) ("The official policy of courts of domestic relations was to urge reconciliation ('home mending') whenever possible."). The city of Buffalo, New York, is the home of the country's first domestic relations court, founded in 1910 to handle all family-related criminal matters. *See* Pleck, *supra*, at 136.

39. *See* Fagan, *supra* note 22, at 7. In 1964, one of the first American battered women's shelters was founded in California. *See* Jill Davies et al., *Safety Planning with Battered Women* 12 (1998).

40. *See* Fagan, *supra* note 22, at 7.

41. *See id.* at 8-9.

42. *See* Davies, *supra* note 39, at 12; Pleck, *supra* note 38, at 194. Prior to the 1970s, the term "domestic violence" was used to refer to 1960s ghetto riots or urban terrorism. *See* Pleck, *supra* note 38, at 194.

43. *See* Fagan, *supra* note 22, at 7. The purpose of specialized prosecution units is to promote increased prosecution of domestic violence cases. *See id.* at 16.

44. Pleck, *supra* note 38, at 192.

45. *See* Fagan, *supra* note 22, at 8.

46. *See id.* at 9.

specialized domestic violence prosecution units, more batterer intervention programs, and reforms to protection orders that improved both access to emergency orders and options for relief.⁴⁷ In the 1990s, legislation strengthened the advances made in the 1980s, further acknowledging the need to classify domestic violence as a crime and providing a greater variety of remedies and sanctions.⁴⁸

Many of these reforms were based on the theory that paying close attention to domestic violence cases by imposing legal sanctions on batterers would be sufficient to decrease the incidence of domestic violence.⁴⁹ The notion is that if an assault in a domestic situation goes unpunished by the criminal courts, society will not consider such behavior criminal and individuals may engage in family violence without fear of reprisal.⁵⁰ As such, a system involving severe consequences for domestic violence would ideally result in less violence. This theory drove much of the domestic violence legislation enacted in the 1990s and resulted in more stringent policies on arrest, prosecution, and incarceration of perpetrators. Such policies were instrumental in shaping society's perception of domestic violence as a crime.⁵¹

B. *Criticisms of the Traditional Legal System's Approach to Domestic Violence*

The legal system has made great strides in its treatment of domestic violence. However, "[a] legal system remains viable only if it responds to the present-day needs and concerns of the public."⁵² With up to four million women undergoing severe assaults by their intimate partners each year,⁵³ and 34% of victims who obtain an order of protection experiencing violations of the order within six months,⁵⁴ the legal system is "doomed if it remains static"⁵⁵ and must continue to adapt to the changing social needs of our time.

One criticism of the manner in which the traditional system handles domestic violence cases is its inability to stem the tide of domestic

47. See *id.* For a brief discussion of protection orders, see *infra* text accompanying notes 58-64.

48. See Fagan, *supra* note 22, at 10. Remedies and sanctions further developed in the 1990s include arrest strategies, special prosecution units, mandatory attendance in batterer intervention programs, and specialized domestic violence courts that prioritize family abuse cases. See *id.* at 11-23. For a brief description of specialized prosecution units, see *supra* note 43.

49. See Fagan, *supra* note 22, at 11.

50. See Taub, *supra* note 23, at 158.

51. See *id.*

52. Judith S. Kaye, *Changing Courts in Changing Times: The Need for a Fresh Look at How Courts are Run*, 48 Hastings L.J. 851, 853 (1997).

53. See *Statistics*, *supra* note 12 (citing a 1996 study by the American Psychological Association).

54. See *id.* (citing a 1997 National Center for State Courts Research Report).

55. Kaye, *supra* note 52, at 851.

violence itself, as reflected in the sheer numbers of women who continue to be affected by domestic abuse. As noted, surveys in 1995 and 1996 estimated that anywhere between one million and four million women a year experience violence at the hands of their partners.⁵⁶ Another study found that of all violence perpetrated against women annually, 28% resulted from domestic abuse.⁵⁷ These statistics indicate that the legal system's approach requires further improvement.

A second criticism concerns the general inadequacy of protection orders to prevent further abuse. Many women turn to the courts for protection against domestic abuse, and one of the most common remedies is an order of protection. An order of protection is an injunctive order issued by the court that imposes restrictions on a person's future behavior.⁵⁸ The order may prohibit any contact between the parties, allow contact but forbid abusive behavior, and address issues such as mandated counseling, child custody, visitation, and support.⁵⁹ Unfortunately, orders of protection alone may not be the most effective remedy for preventing future violence in all cases. In 1996, one study found that 60% of orders of protection were violated within one year,⁶⁰ while another study indicated that almost 50% of court-issued protection orders were violated within two years.⁶¹ In addition, a third study found that more than 17% of victims killed in domestic incidents had obtained orders of protection.⁶² Even law enforcement officials admit that "protection orders do not necessarily save lives."⁶³ The experiences of many women mirror this sentiment.⁶⁴

56. See *Statistics*, *supra* note 12.

57. See *id.* (citing a 1994 Bureau of Justice Statistics Special Report).

58. See Buzawa & Buzawa, *supra* note 16, at 188.

59. See *id.* at 190; Waldman, *supra* note 14.

60. See *Statistics*, *supra* note 12 (citing Buzawa & Buzawa eds., *Do Arrests and Restraining Orders Work?* 240 (1996)).

61. See *id.* (citing Buzawa & Buzawa eds., *Do Arrests and Restraining Orders Work?* 10 (1996)); see also Buzawa & Buzawa, *supra* note 16, at 200-03 (discussing the general ineffectiveness of protection orders in deterring future abuse).

62. See *Statistics*, *supra* note 12 (citing a 1997 Florida Mortality Review Project).

63. David M. Herszenhorn, *Man is Arrested in Slaying of Ex-Companion in Bronx*, N.Y. Times, Nov. 8, 1996, at B3.

64. Three women's stories exemplify how the legal system and an order of protection often fail to prevent death at the hands of an abuser.

Ms. Martinez was in a five-year relationship with Mr. Taverez, during which she was hospitalized twice because of Mr. Taverez's beatings. See Charlie LeDuff, *Man Ordered to Stay Away Kills Woman, Then Himself, Police Say*, N.Y. Times, Apr. 29, 1998, at B3. Ms. Martinez had two valid orders of protection, one from Brooklyn Criminal Court and one from Queens Family Court, when Mr. Taverez, hearing that Ms. Martinez was seeing another man, flew from Miami, Florida, to her home in Brooklyn, New York, and shot her before shooting himself. See *id.*

In another case, Mr. Timmons was charged with breaking Mrs. Timmons's eye socket, holding her for two days at knifepoint, and refusing to let her seek medical treatment. See Michael Cooper, *Man, Freed in Plea, Is Accused of Killing Wife and*

The death-rate among women at the hands of a domestic partner illustrates a third shortcoming of the legal system—its inability to identify which batterers are lethal and which ones are not.⁶⁵ Although not pervasive, domestic homicides do happen, despite the criminal justice system's best efforts to prevent them. A 1997 Bureau of Justice Statistics Special Report indicates that 31% of homicides in which the victim and perpetrator knew each other involved women killed by their partners.⁶⁶ Such homicides are unpredictable, at best, and without a reliable means of identifying more dangerous batterers, the legal system is unable to accurately prioritize and target lethal cases.⁶⁷

A fourth criticism of the traditional legal system revolves around the often cursory treatment of domestic violence cases in court. Large numbers of crimes, including those of domestic violence, overwhelm the criminal courts in urban centers. In order to maintain judicial efficiency in such an environment, judges must review a great number of cases in a very limited amount of time.⁶⁸ Judges who are able to move cases along quickly are therefore highly regarded.⁶⁹ Domestic violence, however, is an extremely complex matter, involving issues of family dynamics and emotional relationships between the parties that are uncharacteristic of other crimes. These special features of domestic abuse cases require additional time and attention, as they often complicate otherwise straightforward situations.⁷⁰ Cursory

Sons, N.Y. Times, June 10, 1997, at B3. After entering a plea agreement, Mr. Timmons returned home with Mrs. Timmons with a limited order of protection requiring him to refrain from threatening, harassing, or intimidating Mrs. Timmons and the children. *See id.* Ten days later, Mr. Timmons decapitated his wife and their seven-year-old son, and stabbed to death his 13-year-old stepson. *See id.*

In another tragic incident, Ms. Edwards followed all the right legal steps—she filed for divorce, obtained an order of protection against her husband, and secretly moved to a new address. *See Sam Howe Verhovek, 2 Die, Despite Domestic-Violence Screen*, N.Y. Times, Dec. 14, 1998, at A18 (“[S]he took such clear steps to follow the procedures set up for such victims, and the system still failed her.”). The court granted Mr. Edwards visitation with their daughter, Carli, so Ms. Edwards, obeying the law, dropped Carli off at an appointed agency. *See id.* This compliance with the law ended up costing Ms. Edwards and Carli their lives. One night, Mr. Edwards remained at the agency after dropping Carli off and waited for Ms. Edwards to retrieve their daughter. When she arrived, he shot them both to death. *See id.*

65. *See Waldman, supra* note 14.

66. *See Statistics, supra* note 12.

67. The result of this inability to identify lethal batterers has had tragic results. *See supra* note 64. If the legal system had a method for predicting the lethality of batterers, these cases may have been subject to stricter monitoring and enforcement, potentially averting the deaths of these women.

68. *See Jan Hoffman, A Vital but Unglamorous Judicial Role; With Moves by Giuliani, the Focus is on Criminal Court Judges and Their Impact*, N.Y. Times, Jan. 8, 1996, § 1, at 29.

69. *See id.*

70. For example, a simple assault by a stranger may be a more straightforward case than a domestic violence assault by a husband on his wife. In a domestic violence case, the wife may depend on the husband for financial support and object to his

treatment of these cases, therefore, fails to adequately address the intricacies of the underlying problems in domestic violence cases. This may result in a lack of support and resources for victims as well as decreased accountability for perpetrators, ultimately culminating in insufficient methods of confronting the incidence of domestic violence.

Finally, organizational attitudes reflected by the officials working in the legal system may contribute to the system's ineffectiveness. "To date, despite official policies to the contrary, many police officers and prosecutors still strongly believe that society should not intervene in domestic disputes except in cases of extraordinary violence."⁷¹ Legislation can only go so far without effective enforcement. For example, prosecutors may give domestic violence cases low priority, because victims frequently withdraw from the prosecution, and the cases are often unsuccessful without victim participation.⁷² Police officers may also contribute to this organizational attitude by disproportionately failing to arrest perpetrators in domestic violence cases. Studies have shown that in domestic abuse situations, there is "still persistent bias against the use of arrest," and the more closely related the two parties are, the less likely officers are to arrest.⁷³ Several reasons cited for this result include officers' perceptions of domestic violence victims as unreliable and unpredictable, departmental policies discouraging arrest, and peer pressure among officers to obtain as large a conviction-to-arrest ratio as possible, a goal which is undermined by the high dismissal rate of domestic violence cases.⁷⁴ These prosecutorial and law enforcement outcomes reinforce traditional approaches to domestic violence by implying a legal condonation of family violence that runs contrary to the more recent criminalization of such abuse.

C. *Therapeutic Jurisprudence as an Alternate Approach*

Some legislatures and courts have addressed the weaknesses of the traditional approach to domestic violence cases by drawing upon other disciplines and attempting to create a more coordinated response to domestic violence.⁷⁵ Therapeutic jurisprudence provides just such an interdisciplinary approach in its treatment of the law.⁷⁶

arrest. She may fear for her safety and refuse to go forward with the prosecution. There may also be children involved, requiring considerations of custody, visitation, or support.

71. Buzawa & Buzawa, *supra* note 16, at 33.

72. See Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 Harv. L. Rev. 1849, 1860 (1996) [hereinafter Hanna, *Mandated Participation*].

73. Buzawa & Buzawa, *supra* note 16, at 51.

74. See *id.* at 52-56.

75. See Kaye, *supra* note 52, at 854.

76. See Dennis P. Stolle et al., *Integrating Preventive Law and Therapeutic*

Therapeutic jurisprudence began as a movement in the mental health arena but has expanded beyond its narrow origins and developed into an approach used in some legal systems.⁷⁷ The basic principle underlying therapeutic jurisprudence is that "law is a social force that has inevitable (if unintended) consequences for the mental health and psychological functioning of those it affects."⁷⁸ These consequences may have either therapeutic effects that enhance an individual's social functioning, or negative, anti-therapeutic effects. "Therapeutic" is defined very broadly to encompass any effects that improve the psychological, physical, or emotional health of a person.⁷⁹ Some examples of therapeutic effects may include respect for individual autonomy and limitation of governmental paternalism.⁸⁰

The goal of therapeutic jurisprudence is to increase the therapeutic effects of the law while decreasing its antitherapeutic effects.⁸¹ In order to accomplish this goal, therapeutic jurisprudence proposes examination of the law's effect on the mental and physical health of society through a social science lens.⁸² The costs and benefits of applying and enforcing laws are weighed and analyzed, focusing specifically on the overall psychological and physical consequences of the law on individuals in society.⁸³ This process may help to determine whether certain laws are accomplishing the public policy purposes for which they were enacted.⁸⁴ For example, issues such as "sentencing, offender rehabilitation, and deterrence" involve psychological and social components, making therapeutic jurisprudence particularly appropriate in these areas.⁸⁵ Examining the therapeutic and antitherapeutic effects of the law in this interdisciplinary manner combines the "knowledge, theories, and insights of . . . [different] disciplines [to] help shape the development of the law."⁸⁶

This is not to say that therapeutic jurisprudence advocates changing laws according to these therapeutic and social science philosophies. Rather, it is thought that the development of the law can benefit from incorporating the knowledge and insight that the field of mental

Jurisprudence: A Law and Psychology Based Approach to Lawyering, 34 Cal. W. L. Rev. 15, 17 (1997).

77. See Winick, *supra* note 17, at 201.

78. Stolle, *supra* note 76, at 17.

79. See Winick, *supra* note 17, at 192.

80. See *id.* at 191-92.

81. See *id.* at 185.

82. See *id.* at 187.

83. See *id.* at 188.

84. See Peggy Fulton Hora et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 Notre Dame L. Rev. 439, 444 (1999).

85. Winick, *supra* note 17, at 193-94.

86. *Id.* at 185.

health, as well as other relevant disciplines, may provide.⁸⁷ In fact, one of the major contributions of therapeutic jurisprudence stems from its attention to the previously overlooked "therapeutic dimension" of the law.⁸⁸ One of these therapeutic dimensions includes the "consideration of alternative legal arrangements that might produce more functional behavior."⁸⁹ One way that several jurisdictions have incorporated this philosophy into court programs developed to specifically address the issue of domestic violence is by including court-mandated batterer intervention programs as a sentencing option. The next part describes several model programs that were formulated in an effort to more effectively address the increasing problem of domestic abuse.

II. MODEL DOMESTIC VIOLENCE COURT PROGRAMS

This part examines a variety of innovative court programs designed to improve upon the traditional criminal justice response to domestic violence.⁹⁰ Under the traditional paradigm, which continues in some jurisdictions today, domestic violence cases typically do not receive any specialized attention or resources, and as a result, the pervasiveness of domestic abuse has escalated. This part describes several model programs aimed at reversing this trend, and then presents the major criticisms levied against these alternative programs.

A. *Model Domestic Violence Programs*

As domestic violence gains increasing national attention, the number of states developing specialized criminal justice responses to such violence continues to expand.⁹¹ Traditionally, courts have not given domestic violence cases individualized attention, but instead have grouped them together with other types of cases. The model programs developed by several communities, however, single out domestic violence cases for special treatment with numerous parties, from prosecutors and judges to batterer intervention programs,

87. See Hora, *supra* note 84, at 445-46 ("Therapeutic jurisprudence relies on the social sciences to guide its analysis of the law . . ."); Leonore M. J. Simon, *A Therapeutic Jurisprudence Approach to the Legal Processing of Domestic Violence Cases*, 1 Psychol. Pub. Pol'y & L. 43, 50-51 (1995) (exploring the psychology of offenders and victims and the effect of legal interventions on them).

88. Winick, *supra* note 17, at 198.

89. *Id.* at 194.

90. See *supra* Part I.

91. See generally Burns, *supra* note 16 ("Specialized domestic violence courts, while not new, are becoming more popular . . ."); *Improving New York's Courts*, *supra* note 16 (describing New York State's plan to create specialized domestic violence courts). Connecticut, Maryland, and Tennessee are among the many states that are joining cities like New York, San Diego, and Quincy in beginning to implement domestic violence courts. See Burns, *supra* note 16.

dedicated to addressing the multiple legal, mental health, and social aspects of family violence. This response deviates from the traditional approach to domestic violence by representing a more comprehensive and integrated approach that coordinates a greater variety of community resources. The interdisciplinary response is critical to addressing the many mental health and social issues, such as the effects on family, children, finances, and psychological functioning, that are an integral part of domestic violence. The domestic violence programs developed in Quincy, Massachusetts, New York City, Dade County, Florida, and the District of Columbia exemplify this approach.

1. Quincy, Massachusetts⁹²

Quincy, Massachusetts, is home to one of the country's first comprehensive domestic violence programs, which began development in 1976⁹³ and has since served as a model for other programs.⁹⁴ In fact, the Domestic Violence Advisory Committee of the National Council of Juvenile and Family Court Judges rated the Quincy program among the top fifteen of its kind in the country.⁹⁵

92. Director and Special Prosecutor Sarah Buel, a formerly battered woman, was instrumental in developing Quincy's court-based domestic violence program. See Michael Fechter, *Zero Tolerance; Stop Domestic Violence*, Tampa Trib., Nov. 28, 1994, Baylife, at 1.

I have had the pleasure of hearing Sarah Buel speak on several occasions, and the story of her life is remarkable. She was a battered woman with children, few resources, and even fewer options. She attempted to leave her abuser numerous times. During one such attempt, she had no money to support herself or her children, and during another attempt, she had no place to stay. Yet another time, when her batterer tracked her down in a laundromat, her pleas for help, in conjunction with a bruised face, fell on deaf ears once her abuser declared that he was her husband and that they had just had a "little fight." Sarah Buel finally left her abuser for good and finished college while on welfare. After much hard work, she eventually achieved her dream and entered Harvard Law School on a full scholarship. Her personal experiences, dedication to domestic violence, and exemplary work in Quincy, Massachusetts, have made her one of the most well-respected figures in the field of domestic violence. See generally Hara Estroff Marano, *Why They Stay: A Saga of Spouse Abuse*, Psychol. Today, May/June 1996, at 56 (providing a narrative of events in Sarah Buel's life and career).

93. Although the various components of the Quincy Program developed over time, the first domestic violence training sessions were conducted in 1976. See 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, 338-39 & n.57 (1994) (analyzing the Quincy program and citing it as a strong foundation for future domestic violence programs).

94. See *Report on Domestic Violence: A Commitment to Action*, 28 New Eng. L. Rev. 313, 336-37 (1993) [hereinafter *DV Report*]; see also Fechter, *supra* note 92 (describing a Tampa campaign against domestic violence that borrows ideas from the Quincy program); Tom Mashberg, *O.J. Case Offers Hope for Batter Victims*, Boston Herald, June 26, 1994, News, at 1 (citing the Quincy program as one example of increased attention to domestic violence cases).

95. See *DV Report*, *supra* note 94, at 358.

The success of Quincy's coordinated response is based on cooperation among the various parties involved in a domestic violence case.⁹⁶ Judges, clerks, district attorneys, police and probation officers, social service providers, and community agencies work together to provide an effective, comprehensive response to cases of domestic abuse.⁹⁷

In addition to cooperative efforts, the Quincy program strives to make domestic violence cases a top priority by using an approach that accomplishes the goals of controlling the abuser and empowering the victim.⁹⁸ The abuser is thus subject to a number of increased sanctions, including aggressive prosecutorial tactics, greater monitoring of defendant behavior, and a general emphasis on enhanced enforcement strategies, while the victim enjoys a process made easier by various victim/witness advocates and greater availability of support resources.⁹⁹

The Quincy program is structured to afford the victim a supportive and rapid procedural response to her complaint. When a woman wishes to obtain a restraining order, one of the most common remedies in this situation, her first contact at the Quincy District Court is with a domestic abuse clerk in a separate office established exclusively for restraining orders.¹⁰⁰ Individual clerks work directly with the battered woman by providing information on domestic violence resources and helping her fill out the appropriate paperwork.¹⁰¹ After completing this procedure, the woman attends a briefing, given daily by the District Attorney's Office, in which a victim/witness advocate informs her of how the court process works, what her legal rights are regarding criminal or civil actions, and what additional resources are available to her.¹⁰² Then, the domestic abuse clerk provides moral support by accompanying the woman to the courtroom where the "fast track" system of expedited hearings for restraining orders occurs.¹⁰³

This system of expedited hearings provides opportunities, during both morning and afternoon sessions, for women to obtain restraining orders without having to wait hours to appear before busy judges.¹⁰⁴ In addition to facilitating this process for victims, judges may also

96. See *id.* at 337, 359; Edwina Blackwell Clark, *Speakers Put Focus on Domestic Violence*, Dayton Daily News, Apr. 4, 1994, News, at 1B.

97. See *DV Report*, *supra* note 94, at 337; Salzman, *supra* note 93, at 339.

98. See Justice Research and Statistics Association, *Innovative Courts Programs: Results from State and Local Program Workshops* (July 1995) <<http://www.ncjrs.org/txtfiles/portland.txt>> [hereinafter *Innovative Courts*].

99. See *id.*

100. See Salzman, *supra* note 93, at 340.

101. See *id.* at 340-41.

102. See *Innovative Courts*, *supra* note 98; see also Salzman, *supra* note 93, at 341. For example, women may require assistance with finances, health care, child care, or mental health services, such as support groups.

103. See Salzman, *supra* note 93, at 341-42.

104. See *id.* at 343.

aggressively pursue batterers by exercising their authority to impose severe sanctions on these men.¹⁰⁵ Probation, one of the many sanctions in the judge's arsenal, is strongly monitored and enforced, either by tracking the batterer's attendance in a mandated batterer intervention program or regulating his abstinence from drugs and alcohol.¹⁰⁶ In addition, special domestic violence advocates within the Probation Department contribute to monitoring defendant compliance with court orders by establishing ongoing contact with the victim.¹⁰⁷

The District Attorney's Office also utilizes victim/witness advocates as part of their domestic violence staff in both civil and criminal matters.¹⁰⁸ Aside from conducting the daily briefings mentioned above, these advocates provide advice, information, and emotional support to battered women.¹⁰⁹ The advocates also conduct training seminars for members of the police department to promote better methods for both collecting evidence at the scene of domestic disputes and reporting such incidents in a comprehensive and thorough way. Such seminars ideally will facilitate later prosecution by the special domestic violence prosecution team in the District Attorney's Office.¹¹⁰ The police department uses a "tracking system" in which they report domestic violence incidents directly to the District Attorney's Office.¹¹¹ This information allows the victim/witness advocates to become aware of domestic abuse situations early on and to adopt a pro-active approach by reaching out and contacting the women involved to invite them to briefing sessions about restraining

105. *See id.*

106. *See id.* at 344, 348-49. Most batterers have a prior history of criminal activity, making them more likely to be chronic offenders. As such, increasing the levels of probation supervision is a critical component in promoting victim safety. *See id.* at 348.

107. *See Innovative Courts, supra* note 98.

108. *See Salzman, supra* note 93, at 344, 346.

109. *See id.* at 346. The advocates act as personal contacts for these women, helping them go step-by-step through a complicated, and potentially impersonal, system. Such support and attention from the advocates encourage more women to embrace the judicial remedies the system provides for them. Eighty-seven percent of women follow through and return to court in ten days to obtain their permanent orders of protection, as compared with 34% in a nearby county's court that does not benefit from a program such as Quincy's. *See Innovative Courts, supra* note 98.

110. *See Salzman, supra* note 93, at 344-45; *Innovative Courts, supra* note 98. The better the methods of documenting evidence at the scene of a domestic violence incident, the more likely it is that the prosecutor can pursue the case without victim participation. *See Salzman, supra* note 93, at 345. Some examples of these procedures include taking photographs of injuries or property damage at the scene and recording statements made in the heat of the moment. However, in some jurisdictions, prosecutors will not proceed with a case unless the woman agrees to testify against the defendant. *See id.*

111. *See id.* This tracking system includes computerized records that provide police officers with information about prior arrests, restraining orders, and potential weapons, thus preparing them before they arrive on the scene. *See id.* at 350.

orders, even before there is any court involvement.¹¹²

The Probation Department's role in domestic violence cases involves monitoring defendant behavior very closely. When an abuser is put on probation, he is typically required to attend an intervention program, with his probation officer supervising program attendance.¹¹³ Excessive absences from program sessions or indications of future violence against a spouse or partner result in warnings to both the woman and the police.¹¹⁴

2. New York City¹¹⁵

New York City created a plan for its Criminal Court domestic violence program in 1997 in response to a significant increase in domestic violence cases.¹¹⁶ Like the Quincy model, New York's program endeavors to provide a comprehensive multidisciplinary approach. In the words of New York State Chief Judge Judith S. Kaye, "Domestic Violence Courts... serve as the hub for a coordinated response to the scourge of family violence."¹¹⁷ The foundation of this comprehensive response to domestic violence consists of specialized domestic violence courtrooms dedicated to handling only domestic violence cases. These courtrooms are staffed by specially trained judges, prosecution teams, and a team of domestic violence personnel consisting of a Resource Coordinator, a Victim Advocate, and a Defendant Monitor.¹¹⁸

Similar to Quincy's program, the Victim Advocate provides assistance and support to victims of domestic violence throughout the court proceeding to promote victim participation in the process.¹¹⁹ The services rendered range from providing information about the court proceedings and orders of protection to counseling and social service agency referrals.¹²⁰ In essence, the Victim Advocate maintains up-to-date information on the status of the victim, including any violations of orders of protection that the victim reports.

The Defendant Monitor, on the other hand, is in charge of

112. *See id.* at 345-46.

113. *See id.* at 348-49.

114. *See id.* at 349.

115. The model discussed is currently in the process of being implemented but is not yet fully operational in all five boroughs of New York City.

116. *See Improving New York's Courts*, *supra* note 16. In 1997, close to 25% of the pending caseload of the New York City Criminal Court consisted of domestic violence cases. *See State of the Judiciary—1997* (visited Feb. 22, 2000) <<http://www.nylj.com/links/sotj97.html>>.

117. Chief Judge Judith S. Kaye, The State of the Judiciary Address (Mar. 23, 1998) (transcript available in the N.Y. L.J., Apr. 1, 1998, at 6).

118. *See The Criminal Court of the City of New York, Domestic Violence Intervention Plan 5-9* (1997) [hereinafter DV Plan].

119. *See id.* at 8-9.

120. *See id.* at 8.

defendant status and assists in overseeing defendant compliance with court-ordered conditions, such as orders of protection and participation in counseling programs.¹²¹ The Resource Coordinator, acting as a conduit of information for the judge in the domestic violence part, obtains victim status and defendant compliance information directly from Victim Advocates and Defendant Monitors.¹²² In case of a crisis situation, such as a violation of an order of protection, this network of information services ensures the judge's awareness of the situation as quickly as possible, ideally facilitating a rapid response and more stringent enforcement of sanctions.

The specialized domestic violence courtrooms include a general All-Purpose part, a Trial part, and a Compliance part. The All-Purpose part initially handles all domestic violence cases that enter the system. Once a case has been seen by the judge in the All-Purpose part, it may go to trial or be disposed of through a plea in that part. The case then goes to either the dedicated domestic violence Trial part or Compliance part. The dedicated Trial part ensures that the system will give high priority to domestic violence cases that are ready for trial in order to dispose of them expeditiously.¹²³ The Compliance part, on the other hand, strictly monitors defendant attendance in court-mandated intervention programs, such as substance abuse or batterer programs.¹²⁴ The system imposes these intervention programs as conditions of the case disposition, often in cases where the other options include little or no sanctions aside from the issuance of an order of protection. Any non-compliance with these programs may result in referral to the All-Purpose part for more severe sanctions, such as continued prosecution or imposition of a jail sentence.¹²⁵

Information technology is another important aspect of New York City's coordinated community response to domestic violence and is in the process of being fully implemented.¹²⁶ Technology facilitates the transfer of critical information between the court and a variety of

121. *See id.* at 9.

122. *See id.* at 7.

123. *See State of the Judiciary—1997, supra* note 116.

124. *See id.* The Compliance Part is staffed by a Judicial Hearing Officer and requires defendants to return once every 30 days. *See The Criminal Court of the City of New York, Domestic Violence Compliance Operations 10-11 (Draft Oct. 1997) [hereinafter DV Compliance]*. For those defendants who are on probation and mandated to attend a program, the probation officers monitor program attendance, rather than the court.

125. *See DV Compliance, supra* note 124, at 10.

126. Information technology is an integral component of New York City's domestic violence program plan, because it was created at a later point in time than other programs, such as Quincy's. Modern technology that is available now was not available in the 1980s when the Quincy program was developing. As a result, although earlier domestic violence programs may now use similar technology, they were not conceptualized with such technology in mind.

other agencies that may be involved in a domestic violence case.¹²⁷ For example, computer links among various court databases will assist in ascertaining whether there are already-existing orders of protection in the case. In addition, the court can develop communication links with agencies such as the District Attorney's office, police department, department of probation, and service providers of various intervention and support programs to ensure accurate, updated information.¹²⁸ This type of efficient communication among all parties involved contributes to a more effective, truly comprehensive community response to domestic violence.¹²⁹

Both the Quincy and New York court programs thus utilize an integrated community approach to domestic violence, focusing on providing support to victims through the use of victim advocates and imposing alternative sentences on abusers, such as court-mandated counseling. New York, however, has expanded the court's role in monitoring defendant attendance in intervention programs by establishing Compliance parts and Defendant Monitors, which are specifically designed to oversee defendant behavior. Quincy delegates that monitoring role to its Probation Department. This role expansion exhibits the New York City court system's strong emphasis on defendant accountability.

3. Dade County, Florida

The Dade County Domestic Violence Court (DCDVC) also exemplifies a comprehensive interdisciplinary system of handling domestic violence cases. The DCDVC has both a criminal and a civil component, combining traditionally separate systems into a single integrated approach.¹³⁰ This contributes to the comprehensive provision of services by supplying a single forum within which both criminal and civil matters can be addressed. The creators of this

127. See DV Plan, *supra* note 118, at 9-13.

128. See *id.*

129. Another excellent tool for promoting coordination among various domestic violence agencies in New York City is the Criminal Court Domestic Violence Committee. This Committee comprises representatives from Criminal Court, Family Court, District Attorney's offices, the police department, the probation department, social service providers, and other community agencies. Committee meetings, which occur approximately once every other month, provide a forum for an interdisciplinary discussion of and cooperation on various domestic violence issues.

130. See Fagan, *supra* note 22, at 21. Dade County was the first of three jurisdictions, including the District of Columbia and Hawaii, to integrate both civil and criminal domestic violence proceedings into a single unified court. See Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 Yale J.L. & Feminism 3, 28 (1999) (describing new domestic violence programs in the context of showing the disparity between recent domestic violence legislation and the enforcement response of the prosecutors, judges, and courts).

system subscribe to the therapeutic jurisprudence model¹³¹ and believe in “expanding traditional roles” in an effort to combat the ineffectiveness of the traditional approach to domestic violence.¹³² Historically, the court system emphasized punishment as a primary remedy,¹³³ an approach that has not been entirely successful. The DCDVC, in an attempt to create a more effective response to domestic violence, was designed with three main areas of focus: judicial activism in the community, batterer treatment, and victim services.¹³⁴

Judges who are specifically trained in family violence administer the DCDVC.¹³⁵ Family violence training is mandatory, not only for judges, but also for prosecutors and select public defenders.¹³⁶ Both within and outside the courtroom, the judges’ responsibilities extend to community education about domestic violence, requiring public appearances in both the community and the media.¹³⁷ This presence in the community is designed to promote public participation in the fight against domestic violence.¹³⁸

Treatment of abusers in domestic violence cases is emphasized over punishment in the Dade County model, according to a therapeutic jurisprudential philosophy.¹³⁹ This aspect of therapeutic jurisprudence accentuates the contemplation of alternative legal remedies to address certain dysfunctional behaviors.¹⁴⁰ As such, the system requires defendants to attend and complete programs ranging from batterer intervention programs and substance abuse programs to general mental health counseling¹⁴¹ in cases that may previously have been dismissed with nothing more than an order of protection. Additional sanctions include court-monitoring of attendance in these programs, requiring additional court dates for defendant progress reports.¹⁴²

131. See *supra* Part I.C. for a discussion of therapeutic jurisprudence.

132. Fagan, *supra* note 22, at 21.

133. See *id.* at 22.

134. See *id.* at 21-23.

135. See *id.* at 21.

136. See *id.* at 22-23.

137. See *id.* at 22.

138. See *id.* Going the extra step beyond the courtroom and prompting the community to take up the fight against domestic violence is an important step in progressing beyond addressing individual cases and beginning to attack the root of the problem. “We can throw money at the problem, and we can make changes in the system, but until we make the public understand that this is a community problem, it doesn’t matter.” Mary E. Miller, *Bruises, broken bones, battered women: Why doesn’t she leave him? Why doesn’t he stop beating her? More headlines, more talk, more laws, more programs*, News and Observer (Raleigh, NC), July 21, 1996, at E1 (quoting Katherine Loflin).

139. See Fagan, *supra* note 22, at 22; see also *supra* Part I.C (discussing therapeutic jurisprudence).

140. See *supra* text accompanying note 89.

141. See Fagan, *supra* note 22, at 22.

142. See *id.*

Another mandated treatment program focuses not on the defendant or the victim, but on the children who are living in violent households and witnessing domestic abuse.¹⁴³ Group counseling for these children is required as part of the defendant's probation.¹⁴⁴

The DCDVC's victim advocates address the needs of victims by assisting them in obtaining accessibility to services and resources.¹⁴⁵ As with victim advocates in both New York City and Quincy, their role includes encouraging and facilitating participation by the victim in the entire process, whether by pursuing prosecution of the batterer or obtaining an order of protection against him.¹⁴⁶

The three programs discussed thus far all utilize an integrated community approach to domestic violence cases that comprises support and advocacy services for victims. Dade County's program and New York City's share an additional emphasis on defendant accountability and court monitoring of attendance in intervention programs. However, the DCDVC is unique in its attention to the potential psychological trauma of children witnessing domestic violence and requires that they attend counseling. Neither Quincy nor New York City include components that specifically address children's psychological needs.¹⁴⁷

4. District of Columbia

The District of Columbia, like Dade County, incorporates both civil and criminal domestic violence cases into a unified court system.¹⁴⁸ The three main components of this system are the Domestic Violence Intake Center, the Domestic Violence Coordination Unit, and the

143. See *id.* Between 3.3 and 10 million children witness domestic abuse in their own homes each year. See American Bar Association, *The Impact of Domestic Violence on Children: A Report to the President of the American Bar Association 1* (1994) [hereinafter ABA Report].

144. See Fagan, *supra* note 22, at 22. Children who witness domestic violence may experience "serious behavioral, cognitive, and affective problems," thereby making counseling programs particularly critical for the mental health of such children. ABA Report, *supra* note 143, at 6. Statistics show that children who witness domestic violence in the home are likely to attempt suicide six times more frequently than children of non-violent households and 50% more likely to become drug and alcohol abusers. See Virginia E. Hench, *When Less is More—Can Reducing Penalties Reduce Household Violence?*, 19 U. Haw. L. Rev. 37, 38 (1997). In addition, children of violent households perpetuate the cycle of violence in adulthood. Approximately one out of four children who witness violence in the home utilizes physical violence against a spouse. See *id.* at 39.

145. See Fagan, *supra* note 22, at 23.

146. See *id.*; see also *supra* notes 107-12, 119-20 and accompanying text (describing victim advocate roles in Quincy and New York City).

147. See *supra* Parts II.A.1-A.2.

148. See Epstein, *supra* note 130, at 28. Although Dade County was the first jurisdiction to combine civil and criminal domestic violence cases, its court does not have the capacity to handle issues of child custody, visitation, and support. See *id.* at 28 n.140. The District of Columbia is able to handle such issues. See *id.*

Domestic Violence Court.¹⁴⁹

The Domestic Violence Intake Center is the first point of contact for victims of domestic violence who may be referred by sources such as police departments, shelters, and other social service organizations.¹⁵⁰ Upon entering the Intake Center, a battered woman meets with a Civil Intake Counselor who explains the process of obtaining an order of protection, assists the woman in filling out the appropriate paperwork, and provides additional advocacy services as needed.¹⁵¹ In addition, the Counselor may help the woman with child support, custody, or visitation issues as part of an order of protection remedy, if applicable.¹⁵² The Intake Center also houses advocates from the D.C. Coalition Against Domestic Violence who are available to provide women with referrals to counseling programs, shelters, or other social service agencies.¹⁵³ At this point, the battered woman may speak with a U.S. Attorney's Office Victim Advocate regarding pending (if the perpetrator has already been arrested) or potential (if the perpetrator has not been arrested) criminal matters.¹⁵⁴

The Domestic Violence Coordination Unit is the next step in the process. After intake, the woman proceeds to the Coordination Unit where domestic violence clerks perform the administrative role of scheduling hearings and compiling case histories.¹⁵⁵ This step is extremely critical, as the clerks ensure a comprehensive response by searching the computer database for any prior or additional cases involving the same parties.¹⁵⁶ In this way, judges are made aware of the history of the case before them, enabling them to make more informed decisions.¹⁵⁷

The Domestic Violence Court hears only domestic abuse cases and is staffed by specially trained judges assigned to serve a full year in the

149. *See id.* at 29-33.

150. *See id.* at 29.

151. *See id.* at 30. The Counselors, who are very similar to other jurisdictions' Victim Advocates, may also help battered women formulate safety plans, take photographs of any apparent injuries, or assist them in obtaining legal representation. *See id.*

152. *See id.* In the future, the Intake Center plans to become more involved in divorce and custody cases, once the resources are available. *See id.* at 31.

153. *See id.* The D.C. Coalition is a grassroots organization that provides services to victims of domestic violence. *See id.*

154. *See id.* If the perpetrator has already been arrested, the role of Victim Advocate focuses more on gathering information for the pending criminal case. *See id.* If there has been no arrest, however, the Victim Advocate assesses the merits of the case and will refer the woman to a police officer in the Intake Center if she decides to go forward with criminal prosecution. *See id.*

155. *See id.* at 31-32. The Coordination Unit is located next door to the Intake Center, facilitating the entire process for battered women by minimizing the time and effort necessary to proceed with their complaint. *See id.* at 31.

156. *See id.* at 31-32.

157. *See id.* at 33.

Court before rotating out.¹⁵⁸ As part of the coordinated community response, these domestic violence judges also participate in biweekly interdisciplinary meetings with other organizations to discuss problems that arise and to identify methods for improving the program.¹⁵⁹

The District of Columbia court system primarily utilizes extensive support and advocacy services for victims of domestic violence, as do the other programs discussed, but focuses less on stringent defendant monitoring by the court (seen in New York City and Dade County) and services to children (seen in Dade County). All four promote a comprehensive community response to domestic violence that integrates multiple services into a single court-based system. This multidisciplinary approach reflects the theory of therapeutic jurisprudence.¹⁶⁰ By providing a multitude of court-based resources for victims and perpetrators of domestic violence, the programs focus on the therapeutic jurisprudential goal of maximizing the positive effects of the law on an individual's psychological and physical well-being.

5. A Brief Overview of Additional Jurisdictions Implementing Domestic Violence Programs

The four jurisdictions discussed briefly in this section primarily emphasize prosecutorial and law enforcement interventions, with some including no-drop and mandatory arrest policies. A no-drop prosecution policy encourages prosecutors to pursue cases without victim participation by prohibiting victims from dropping formal charges against the perpetrator, regardless of the victim's wishes.¹⁶¹ This approach emphasizes that the state, and not the victim, has control over the progression of the case.¹⁶² Mandatory arrest is a law enforcement strategy in which an officer is required to arrest the primary physical aggressor¹⁶³ in a domestic violence situation when the

158. *See id.* Before the implementation of the Domestic Violence Court, judges would hear petitions for orders of protection for a month before rotating out. *See id.* at 32-33. This time period was too short for these judges to develop meaningful experience and expertise in the field and allowed them to shirk responsibility for complex cases by adjourning them for the next judge to hear. *See id.*

159. *See id.* at 33. Some of the organizations involved in these meetings include prosecutors, defense attorneys, court personnel, probation, and battered women advocates. *See id.*

160. *See supra* Part I.C.

161. *See* Angela Corsilles, Note, *No-Drop Policies in the Prosecution of Domestic Violence Cases: Guarantee to Action or Dangerous Solution?*, 63 *Fordham L. Rev.* 853, 856 (1994). *See generally* Hanna, *Mandated Participation*, *supra* note 72, at 1849 (discussing the advantages and disadvantages of mandatory victim participation in the prosecution of domestic violence cases).

162. *See* Corsilles, *supra* note 161, at 856.

163. Depending on the state, mandatory arrest statutes define primary physical aggressor differently. Some consider the primary physical aggressor to be the party

officer determines there is probable cause to believe that a crime has been committed.¹⁶⁴ Some of these jurisdictions also incorporate victim advocate components, but unlike Quincy, New York City, Dade County, and the District of Columbia programs, they do not focus as aggressively on court-based comprehensive community responses to domestic violence. Some of these programs, however, were among the first to lay the basic foundation upon which other jurisdictions have built their domestic violence programs. These programs are thus important to acknowledge for that reason.

Duluth, Minnesota, was the first community to implement mandatory arrest as part of its response to domestic violence in 1981.¹⁶⁵ An integrated community approach that coordinates the responses of the various components of the system later accompanied this arrest policy. This integrated approach requires police officers, judges, prosecutors, and other court personnel to follow official guidelines for domestic violence interventions.¹⁶⁶ In addition to mandatory arrest, Duluth utilizes a no-drop prosecution strategy by which prosecutors pursue a case even if the victim wishes to drop the charges.¹⁶⁷ Duluth is also known for its Domestic Abuse Intervention Project, which not only developed the Duluth model, an innovative batterer intervention program curriculum, but also established an agency that would monitor court-mandated attendance in these programs.¹⁶⁸ The Duluth model emphasizes the importance of using batterer intervention programs within a coordinated community response to domestic violence,¹⁶⁹ and thus signifies a move away from victim intervention to a greater focus on perpetrator intervention and examination of perpetrator psychology.¹⁷⁰

who initiated the incident, while others define primary physical aggressor as the party who presents the greater physical threat. See Machaela M. Hctor, Comment, *Domestic Violence as a Crime Against the State: The Need for Mandatory Arrest in California*, 85 Cal. L. Rev. 643, 678 n.237 (1997).

164. See *id.* at 680-81. See generally Buzawa & Buzawa, *supra* note 16, at 153-65 (discussing mandatory arrest policies).

165. See Buzawa & Buzawa, *supra* note 16, at 182; Hench, *supra* note 144, at 49.

166. See Buzawa & Buzawa, *supra* note 16, at 182. These guidelines attempted to increase staff awareness regarding issues of domestic violence and enact prescribed methods for responding to these cases, thereby limiting the discretion of individual actors in the system. See *id.*

167. See *id.*; Corsilles, *supra* note 161, at 862.

168. See Buzawa & Buzawa, *supra* note 16, at 182. The Duluth model is a psychoeducational model upon which many other batterer intervention programs are based. See Kerry Healey et al., U.S. Department of Justice, *Batterer Intervention: Program Approaches and Criminal Justice Strategies* 47 (1998). This model emphasizes the connection between domestic violence and the concept of "power and control," creating what is known as the "Power and Control Wheel." *Id.* This wheel diagrams the various control tactics used by men to influence their partners, such as intimidation, isolation, and different forms of coercion. See *id.*

169. See Healey et al., *supra* note 168, at 47; Fernando Mederos, *The Coordinated Community Response and Research on Men Who Batter* (1998).

170. See Hench, *supra* note 144, at 52.

In King County, Washington, although mandatory arrest and no-drop prosecution policies are not utilized, there exists extensive involvement in domestic violence cases by law enforcement personnel and prosecutors. Police officers forward information on all domestic violence incidents to the prosecutor's office, whether they involve arrests or domestic incident reports without arrests.¹⁷¹ In cases where there has been a domestic assault with no arrest, the Victim Assistance Unit of the King County Prosecutor's Office contacts the victim and provides information regarding legal options.¹⁷² This Unit was primarily created to facilitate victim participation in the prosecution process and provide support for battered women.¹⁷³ However, the Unit also participates in a vertical prosecution strategy in which the same prosecutors and court personnel handle a case from beginning to end.¹⁷⁴

Pima County, Arizona, not only employs a mandatory arrest policy, but also requires that domestic violence charges be filed with the court following arrest.¹⁷⁵ Complementing these procedures is the prosecutorial no-drop policy in which, regardless of the victim's expressed wishes, prosecutors have the discretion to decide whether or not to pursue a case.¹⁷⁶ The Pima County domestic violence program also includes extensive domestic violence education and training for prosecutors and police officers.¹⁷⁷ In addition to this training, Pima County has numerous written guidelines standardizing the various steps in domestic violence intervention from the filing of initial charges to the sentencing of perpetrators.¹⁷⁸

The District Attorney's Office in San Francisco, California, received a grant in 1980 to enhance the way law enforcement handled domestic violence cases.¹⁷⁹ A year later, the district attorney's office had implemented vertical prosecution strategies and victim advocacy and counseling.¹⁸⁰ A specialized unit called the Criminal Justice

171. See Buzawa & Buzawa, *supra* note 16, at 184.

172. See *id.*

173. See *id.* The Victim Assistance Unit provides such assistance by contacting the victim soon after the domestic incident, providing information regarding the court process, and accompanying victims to court proceedings. See *id.*

174. See *id.* Some jurisdictions that do not utilize a vertical prosecution policy have different prosecutors handle the same case at different points in the process. For example, one prosecutor may be involved in the case at arraignment, but another prosecutor would take over if the case progressed to the appellate level.

175. See *id.*

176. See *id.* Giving prosecutors control of domestic violence cases is particularly justified when the victim has children. Domestic violence adversely affects children, and a battered mother may not be capable of protecting her children from the effects of such violence without government assistance. See *id.* at 184-85.

177. See *id.* at 185.

178. See *id.* Other standardized guidelines include preliminary hearing and plea requirements. See *id.*

179. See *id.*

180. See *id.*; see also *supra* text accompanying note 174 (describing vertical

Advocacy Unit was successful at serving victims of felony domestic violence cases, and gave rise to the development of a corresponding advocacy unit for misdemeanor cases.¹⁸¹

These model domestic violence programs reflect a growing trend toward greater recognition of the seriousness of domestic violence, and seek to increase the resources and programs available to address this issue. This trend reveals greater integration of services within the legal system, from the earlier programs that focused purely on law enforcement and prosecution policies, to the more recent programs that also incorporate additional services for victims, perpetrators, and children. Aside from the basic legal claims in a case, issues of victim advocacy and support, perpetrator accountability and monitoring, and general mental health concerns of all parties involved are emerging as important considerations. These issues are addressed by model programs that, with increased resources and community attention to the problem of family violence, are promoting additional legal sanctions, such as enhanced offender supervision and court-mandated alternative remedies.

B. *Criticisms of Model Domestic Violence Court Programs*

The model domestic violence programs implemented by states across the country vary considerably from one another. For example, the Dade County program addresses children's issues by mandating group counseling, while the New York City program implemented a court part created for the sole purpose of monitoring defendant compliance with court-ordered counseling.¹⁸² Despite some differences in their approaches to processing domestic abuse cases and fighting family violence, these programs have several features in common that critics often attack. These features include the coordinated community response that attempts to integrate the roles and often conflicting goals of various players in the system, the indeterminate effect of mandating batterer intervention programs as a condition of probation or sentencing, and the questionable deterrent effect of alternative sanctions for domestic violence crimes, including enhanced monitoring and supervision of defendants in treatment programs and greater enforcement of severe penalties for violating orders of protection. Many of these criticisms stem from the lack of incontrovertible evidence as to the actual impact of these

prosecution). For examples of victim advocacy roles in other jurisdictions, see *supra* notes 107-12, 119-20, 145-46, 154 and accompanying text.

181. See Buzawa & Buzawa, *supra* note 16, at 185. In general, the San Francisco District Attorney's Office promotes consultation of victims with victim advocates, particularly when the victim does not want to testify. See Corsilles, *supra* note 161, at 862.

182. See, e.g., *supra* Part II.A (describing several states' model domestic violence programs).

interventions. Although some research has been conducted on the effectiveness of these programs and their various components, the results are often inconsistent, and the programs have not been in existence long enough for the formulation of a reliable body of research.¹⁸³

1. Conflicting Goals and Improper Enforcement in a Coordinated Community Response

The multidisciplinary approach of many model court programs involves numerous parties with a variety of perspectives, beliefs, and goals. Police officers, judges, prosecutors, victim advocates, and social service agencies may all be involved in a single domestic violence case. As a result, although there may be systemic agreement from a theoretical perspective that victim safety and defendant accountability are the primary goals of abuse intervention, the potential exists for creating conflict on a practical level in the actual implementation of interventions designed to further these goals.¹⁸⁴ In addition to this problem of conflicting goals, critics argue that despite innovative domestic violence advances, improper enforcement of new policies may negate their intended effect.¹⁸⁵

As domestic violence reforms developed, the emphasis of battered women's advocates was on victim safety, achieved through a framework of services that included legal sanctions for batterers.¹⁸⁶ Within the traditional legal system, however, the primary focus is typically on the perpetrator and the offense committed.¹⁸⁷ This difference in focus creates discord within a coordinated system as agencies and individuals struggle to balance role expectations with new policy goals. The following three examples illustrate this conflict.

First, through the criminalization of domestic violence, the legal system is urged to validate women's experiences by treating domestic violence crimes as seriously as stranger crimes.¹⁸⁸ However, the system must also take into account the psychological and emotional

183. It is difficult to pinpoint exactly when these specialized domestic violence programs began. The creation of a truly integrated interdisciplinary program takes place over the span of many years, with various components developing and improving over time. While some jurisdictions began formulating the very beginnings of their programs in the late 1970s and early 1980s, additional components necessary to make the program truly interdisciplinary were not implemented until many years later. *See generally* Buzawa & Buzawa, *supra* note 16, at 181-85 (describing various domestic violence programs); Salzman, *supra* note 93, at 338-53 (analyzing the Quincy program and citing it as a strong foundation for future domestic violence programs).

184. *See* Fagan, *supra* note 22, at 33, 38-40.

185. *See* Buzawa & Buzawa, *supra* note 16, at 171. Some prosecutors and judges in disagreement with domestic violence innovations may exercise their discretion and provide differential enforcement of these policies. *See id.*

186. *See* Fagan, *supra* note 22, at 38.

187. *See id.*

188. *See DV Report*, *supra* note 94, at 338.

complexities of domestic violence and the wishes of its victims. Taking these additional considerations into account requires paying special attention to domestic violence cases, thereby conflicting with those who advocate for identical treatment of all crimes.¹⁸⁹ The struggle between those who think that domestic violence cases should be set apart for special treatment and those who think that individual treatment can create the perception that the justice system is treating domestic violence perpetrators less seriously than other criminals, is difficult to reconcile.

Second, in the prosecution context, the contrast between the policy of punishing and reforming abusers and that of supporting and empowering victims tends to result in mixed messages and contradictory procedures. This is embodied in the ongoing effort to balance state interests with victim autonomy.¹⁹⁰ Not only is aggressive prosecution the responsibility of the prosecutor, but it also sends a public message that domestic violence is criminal and unacceptable.¹⁹¹ Such actions, however, may ultimately disempower victims by taking away their freedom of choice and forcing prosecution when they may ultimately benefit more from a different course of action.¹⁹²

Finally, diversion of defendants to counseling programs also creates conflict where courts do not use such diversion tactics as an alternative to jail time for other offenses. This approach may send a message that domestic violence cases are not considered to be serious, because defendants can avoid criminal punishment by attending counseling programs. These examples illustrate areas in which the clash of conflicting goals "may undermine the effectiveness of legal institutions in stopping domestic violence."¹⁹³ A lack of clarity regarding roles and objectives creates confusion and ineffective fulfillment of the intended program goals.

A second criticism of the coordinated community response model focuses on the fundamentally subjective nature of enforcement. Even with ideal programs and policies officially in place, "laws . . . are only as effective as the police, prosecutors, and judges who enforce them. Despite improvement in recent years, many officials still apply the law

189. See *id.* at 338-39.

190. See generally Hanna, *Mandated Participation*, *supra* note 72 (discussing "tensions between state accountability and victim autonomy").

191. See *id.* at 1889-90.

192. See *id.* at 1854-55. Some women rely on their abusers for financial support. If a criminal prosecution goes forward, the abuser may lose his job or be unable to work due to incarceration. Such an action will impact the victim's financial stability and result in an inability to support herself and her family. An additional concern in going forward with prosecution is the threat of violent retaliation once the abuser is released from jail. In cases involving financial or personal safety concerns, an order of protection or mandated counseling may be a more appropriate and desirable remedy for the woman.

193. Fagan, *supra* note 22, at 39.

half-heartedly.”¹⁹⁴ In some instances, systemic gender bias or a reluctance to change the traditional justice system exists,¹⁹⁵ resulting in insensitivity to victims of domestic violence despite innovative programs created to enhance sensitivity and to prevent victim mistreatment. For example, some judges in the Quincy Court were hesitant to mandate batterer intervention programs for men who had not only job and travel constraints, but also concerns regarding the stringent policies of the program.¹⁹⁶ Prosecutors may also play a large role in promoting domestic violence laws or, alternatively, in limiting the use of such laws. When time and resources run low, some prosecutors prioritize their cases and discourage battered women from going forward with prosecution.¹⁹⁷ Conversely, situations may exist in which a city’s legal system has a sincere desire to implement domestic violence programs and policies, but case-specific circumstances dictate otherwise:

[W]hat do all the progressive policies and administrative adjustments add up to when a prosecutor is sitting across the desk from a woman who doesn’t want a protective order and doesn’t want her boyfriend locked up because she has no money and no family and sometimes she’s too exhausted to go out and pick up diapers?¹⁹⁸

Problems of active enforcement point toward the larger issue of firmly entrenched cultural attitudes that inhibit the effectiveness of innovative domestic violence policies.

2. The Controversy Surrounding Batterer Intervention Programs

A great deal of uncertainty exists as to the effectiveness of batterer intervention programs. Most mainstream batterer programs, which are often court-mandated as an alternative to incarceration, utilize a group approach, requiring batterers to attend weekly group sessions run by program staff and composed of other batterers.¹⁹⁹ Each of these programs, however, may vary in overall length of program and

194. *A Cultural Revolution for Domestic Violence*, The Record (New Jersey), July 5, 1994, at B04.

195. See Innovative Courts, *supra* note 98; see, e.g., Jeanine Ferris Pirro, *Legal Developments: Disquieting the Silence: The Responsibility of Change*, 58 Alb. L. Rev. 1253, 1255 (1995) (“[T]he truths that I had learned about equal justice and equal rights within our criminal justice system were far removed from the reality of life . . .”).

196. See Innovative Courts, *supra* note 98.

197. See *Developments in the Law—Legal Responses to Domestic Violence: III. New State and Federal Responses to Domestic Violence*, 106 Harv. L. Rev. 1528, 1540 (1993) [hereinafter *Developments in the Law*].

198. Alison Frankel, *Domestic Disaster*, Am. Law., June 1996, at 55, 56.

199. See generally Healey et al., *supra* note 168, at 33-55 (describing the most common models of batterer intervention programs).

number of sessions as well as content of the curriculum.²⁰⁰ Although various program evaluation studies have been conducted over the years, the outcome is inconclusive as to whether batterer intervention programs actually result in reduced levels of violence.²⁰¹ As one commentator notes, “[T]here is virtually no methodologically sound evidence of effective treatment interventions for domestic violence.”²⁰² In fact, studies have shown extremely inconsistent results, with some indicating a decrease in the rate of recidivism for men in intervention programs and others indicating an increase in such violence.²⁰³

Another source of controversy within the batterer intervention area involves the varied methods of structuring programs to incorporate the most effective intervention strategies.²⁰⁴ Factors such as program length, educational versus confrontational format, and group versus individual counseling produce conflicting approaches.²⁰⁵ To date, no one approach has been shown to have a greater effect than others on decreasing future violence.²⁰⁶ Critics question whether a “one-size-fits-all” strategy works best or whether different types of batterers should be treated differently.²⁰⁷ Currently, some states are working on guidelines for batterer intervention programs, and perhaps such guidelines will attempt to answer these questions.²⁰⁸ In the meantime, absent conclusive research on the most effective model for batterer intervention programs, the impact of using these programs as an option for domestic violence offenders is uncertain.

200. *See id.*

201. *See id.* at 8. Many of these studies involve methodological problems of sample size, lack of control groups, unavailability of quality data, and inadequate follow-up time. *See id.*

202. Fagan, *supra* note 22, at 35.

203. *See* Fagan, *supra* note 22, at 1, 19-20; Healey, *supra* note 168, at 8. Compare Frankel, *supra* note 198, at 67 (“The counseling . . . made little difference.”), and Patricia Nealon, *Batterers: Common Characteristics*, Boston Globe, June 1, 1992, Metro/Region, at 1 (“Completion of the program does not guarantee success.”), with Kristen Go, *Study Turns Spotlight on the Legal System*, Denver Post, Oct. 24, 1999, at 22A (discussing the results of a study that concluded: “Treatment programs generally work.”), and Jay Meisel, *Treat Abuse as a Crime, Officer Says Domestic Violence Cut by Jail, Therapy*, Ark. Democrat-Gazette, Jan. 16, 1997, at 1B (citing statistics that indicate a lower re-arrest rate for men attending a San Diego batterer intervention program).

204. *See* Healey, *supra* note 168, at 44-53; Mederos, *supra* note 169.

205. *See* Healey, *supra* note 168, at 44-53; Mederos, *supra* note 169.

206. *See* Healey, *supra* note 168, at 33.

207. *See generally id.* at 57-78 (describing current trends in batterer intervention programs). Research has not shown any one type of mainstream batterer intervention approach to be more effective than any others, so researchers have recognized the need for new approaches. *See id.* at 57. An emerging trend in batterer intervention involves programs that are tailored specifically to both batterers’ psychological typologies and sociocultural differences, such as race, ethnicity, socioeconomic status, etc. *See id.*

208. *See id.* at 10.

A third source of controversy involves the use of valuable domestic violence resources on services for perpetrators. Many battered women's advocates object to spending money on long-term interventions for batterers when doing so diverts limited funds away from services for battered women.²⁰⁹ Advocates argue that with the effect of batterer programs so indeterminate,²¹⁰ battered women are losing resources to interventions that may not even benefit them in the long run. This overall criticism may stem from a possessiveness that has developed among women who originally formed the domestic violence movement and consider the movement a "woman's issue."²¹¹ As such, it is difficult for battered women's advocates to see the funding that they fought so hard to obtain channeled away from women's services and into men's programs.

3. Deterrent Effects of Legal Sanctions

The impact of alternative legal sanctions on the recidivism rate of domestic violence offenders is another area of contention. Traditionally, legal sanctions included arrest and incarceration in serious cases of domestic violence, with perpetrators in less serious cases enduring little or no punishment.²¹² Model domestic violence programs, however, have promoted not only a greater variety of legal sanctions, with the advent of alternative sentences such as court-mandated counseling, but also greater severity of sanctions in cases that previously went unpunished, such as mandatory arrest, more stringent monitoring of defendant behavior by the court,²¹³ and greater enforcement of orders of protection through the criminalization of violations.²¹⁴ Research on the deterrent effects of various legal sanctions in domestic violence cases, however, is sparse and inconclusive.²¹⁵ Despite this lack of certainty, numerous policies were promoted under just such an assumption: legal sanctions result in decreased violence.²¹⁶

Traditionally, experts considered arrest to be the primary tool for deterrence in domestic violence cases, as shown by the landmark Minneapolis study that found a dramatic decrease in repeat incidents following an arrest.²¹⁷ Since that time, however, other studies have

209. See Susan R. Paisner, *Batterer Treatment: VAWA funding for batterers?*, Domestic Violence Prevention Online, Oct. 1999 (visited Oct. 15, 1999) <<http://www.quinlan.com/dvp/toptext.html>>.

210. See *supra* Part II.B.2.

211. See Paisner, *supra* note 209.

212. See Fagan, *supra* note 22, at 3-4, 32.

213. See *id.* at 4.

214. See Buzawa & Buzawa, *supra* note 16, at 189.

215. See Fagan, *supra* note 22, at 1, 25.

216. See *id.* at 5.

217. See *id.* at 11-13. The Minneapolis experiment involved 314 cases of misdemeanor domestic violence in which perpetrators eligible for arrest were

produced conflicting results.²¹⁸ Furthermore, in the context of the model domestic violence court programs discussed herein, the newly created specialized courts have taken straightforward legal sanctions and intertwined them with a network of other factors, making it difficult to assess the impact of any given legal sanction alone.²¹⁹ It remains to be seen, therefore, whether the imposition of stricter and non-traditional legal sanctions actually deters batterers.

In sum, the primary criticisms of model domestic violence programs that feature a comprehensive response include the potential difficulty in coordinating the multiple philosophies of the parties involved and the subsequent problems of enforcing domestic violence policies in the midst of these conflicting goals. Furthermore, the effectiveness of alternative methods of punishment, such as batterer intervention and increased legal sanctions, has not been empirically substantiated. Many of these uncertainties are a natural result of innovation and can only be resolved over time. New programs naturally require a period of adjustment in transitioning from the old method to the new. They must also be operating for a substantial period of time before their true effects can be detected. As a result, more satisfying answers to many of these criticisms may emerge in the future. The next part argues that despite the lack of definitive statistical evidence of success, model domestic violence programs like those described in this part are important advances in the fight against domestic abuse. While their current features, such as a coordinated community response and emphasis on victim support and defendant monitoring, are crucial, additional steps can be taken to increase their effectiveness. These steps include focusing on systemic accountability and broader

randomly assigned to one of three interventions. See Hctor, *supra* note 163, at 655; Lawrence W. Sherman, *The Influence of Criminology on Criminal Law: Evaluating Arrest for Misdemeanor Domestic Violence*, 83 J. Crim. L. & Criminology 1, 16 (1992). The three possible interventions were: (1) arrest; (2) counseling or mediation by the police officers on the scene; and (3) separating the victim and perpetrator, with a warning for the future. See Hctor, *supra* note 163, at 655. The outcome of the study showed that of the three interventions, arrest resulted in the lowest rate of recidivism. See Hench, *supra* note 144, at 45; Hctor, *supra* note 163, at 655; Sherman, *supra*, at 19.

218. See Fagan, *supra* note 22, at 13-15. After the Minneapolis experiment, six studies were conducted in Nebraska, Wisconsin, North Carolina, Colorado, Florida, and Georgia in an attempt to replicate the results of the Minneapolis experiment. See Hctor, *supra* note 163, at 656-57. While three of the studies showed that arrest resulted in deterrence of future incidents, the other three studies found an increase in violence. See Sherman, *supra* note 217, at 25. These additional studies also showed differences in the deterrent effects of arrest based on specific characteristics of the offenders, particularly employment and marital status. See Fagan, *supra* note 22, at 13-14. For the most part, arrest had a greater deterrent effect on those who were employed, with unemployed perpetrators exhibiting greater violence after arrest. See Sherman, *supra* note 217, at 25. The same deterrent effect was seen with perpetrators who were married and employed, with unmarried and unemployed perpetrators showing increased violence. See Fagan, *supra* note 22, at 13-14.

219. See Fagan, *supra* note 22, at 20.

community involvement.

III. Advantages to the Model Domestic Violence Court Programs and Some Proposed Improvements

Despite the criticisms levied against model domestic violence programs, this part argues in favor of the continued implementation of these programs. This part goes on to propose components of a hypothetical program that combine the best aspects of various model programs in order to provide a solution that will facilitate an eventual decrease in family violence. This hypothetical program emphasizes accountability between the parties charged with adjudicating domestic violence cases and increased community participation aimed at confronting domestic abuse at its source.

A. *Arguments in Favor of the Model Domestic Violence Court Programs*

Despite arguments to the contrary, the movement toward model domestic violence court programs is a more promising alternative for combating domestic violence than the traditional approach, an approach that did little to discourage violence in the home.²²⁰ As times change, so do the kinds of cases that courts handle, and while "[e]ach case has its legal issues . . . it may also involve social issues that challenge the effectiveness of our traditional adjudicative models."²²¹ Domestic violence is just such an issue. A coordinated community response that unifies various adjudicative and therapeutic resources, drawing on a therapeutic jurisprudence perspective,²²² and that provides for batterer intervention programs combined with traditional legal sanctions is a more effective method for remedying and preventing domestic violence than that afforded by the traditional paradigm.

1. The Need for a Coordinated Community Response

Domestic violence is a problem that elicits potential interventions from a wide variety of sources, including judges, prosecutors, police officers, and mental health agencies. As such, "[t]he need for an interdisciplinary approach is especially compelling in the field of domestic violence . . . which cuts across psychology, sociology, public policy, criminology, medicine, public health, and law."²²³ Family violence cases often involve parties from numerous disciplines

220. See *supra* Part I.A.

221. Kaye, *supra* note 52, at 854.

222. See *supra* Part I.C.

223. Joan S. Meier, *Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice*, 21 Hofstra L. Rev. 1295, 1297 (1993).

working to provide various types of services to the victim or the batterer. A coordinated response is crucial in these cases because the provision of separate services might suffer if they exist in a vacuum, uninformed by other areas of practice.²²⁴ For example, a woman may seek assistance from social workers or psychologists regarding her mental and emotional health, but the treatment plan implemented by a mental health worker must take potential legal implications into account in order to be truly effective. If there is a criminal case pending and the batterer is in jail, a social worker may develop a different intervention strategy than if the batterer is being released from custody, at which point safety planning becomes more critical. Alternatively, attorneys whose clients are involved in domestic violence cases need to consult with expert psychologists in order to best represent their clients and, among other things, seek the most appropriate remedies.²²⁵ For example, an attorney should understand the dynamics of the cycle of domestic violence and the potential psychological effects on a victim in order to best evaluate various aspects of the case, including the available legal remedies.

An integrated approach that advocates for the unification of various parties' efforts reflects the underlying principle of therapeutic jurisprudence²²⁶ that "legal decisionmaking can and should benefit from the insights of the mental health and related disciplines."²²⁷ Such coordination and integration of services and knowledge may be a powerful tool in the fight against domestic violence, because it considers different elements of a case, including legal, psychological, and emotional factors and provides appropriate services and resources. According to Massachusetts Attorney General Scott Harshbarger, in order to solve the problem of domestic violence, we must "'develop and utilize . . . multidisciplinary approaches'" that involve multiple community agencies.²²⁸

While the often conflicting goals of the multiple parties involved in an integrated community response may present difficulties in consistent enforcement of domestic violence policies,²²⁹ such problems are not insurmountable and do not warrant the elimination of innovative approaches. In the absence of a coordinated response to domestic violence, the traditional approach is currently our remaining alternative. In the traditional legal system, the primary emphasis is on the perpetrator and the crime that has been committed.²³⁰ Victim support and advocacy services, as well as the incorporation of

224. *See id.*

225. *See id.*

226. *See supra* Part I.C.

227. Simon, *supra* note 87, at 50-51.

228. *DV Report, supra* note 94, at 343-44.

229. *See supra* Part II.B.1.

230. *See Fagan, supra* note 22, at 39.

counseling programs, are secondary concerns to be handled outside of the system. This leads to a disjointed approach to domestic violence cases in which service provision to all parties involved is extremely disconnected and likely to leave victims without reliable support mechanisms. Coordination and centralization of services will result in greater organization and more efficient service provision, despite the potential problems mentioned above.²³¹

Perhaps the most compelling argument for a coordinated community response in the fight against domestic violence is that it has worked in several jurisdictions.²³² The Quincy District Court Domestic Abuse Program is one example of how an integrated community response can be extremely successful in dramatically decreasing the incidence of domestic violence in a community.²³³ The number of domestic violence homicides in the Commonwealth of Massachusetts had increased from one woman killed every twenty-two days in 1986 to one woman killed every four days during the early part of 1995.²³⁴ However, in the area served by the Quincy District Court Domestic Abuse Program, there has been only one homicide resulting from domestic violence in 16 years.²³⁵ This accomplishment is due in large part to the unification of the efforts of everyone from judges, police officers, and prosecutors to social service agencies serving victims, batterers, and children.²³⁶ It is this coordinated community response that has made the Quincy District Court program such a success.²³⁷

2. Evidence of the Effectiveness of Batterer Intervention Programs

Batterer intervention programs, as utilized in the model domestic violence programs, are often court-mandated as alternatives to incarceration. These programs involve mainstream group treatment modalities with varying duration and curriculum content for discussion in sessions. Although some statistics are contradictory,²³⁸ the majority of methodologically sound studies²³⁹ conducted on

231. See *supra* Part II.B.

232. See, e.g., Salzman, *supra* note 93, at 349-50 (describing the Quincy District Court Domestic Violence Program's coordinated approach as a "tremendous success"). The Quincy Program began its first domestic violence training sessions in 1976, with other components of the program developing over time. See *supra* note 93.

233. See Innovative Courts, *supra* note 98.

234. See *id.*

235. See *id.*

236. See *id.*

237. See Salzman, *supra* note 93, at 349-50.

238. See *supra* text accompanying note 203.

239. Methodological problems that often plague such studies include small sample size, the absence of control groups, inadequate follow-up time, and untrustworthy sources of data in follow-up procedures (such as a reliance solely on victim self-reports, or arrest data). See Healey et al., *supra* note 168, at 8; see also *supra* note 201 (listing some methodological problems that may arise in batterer intervention

batterer intervention programs thus far have shown that men who attend these programs are less likely to be violent in the future than men who do not attend any programs at all.²⁴⁰ Some studies have specifically found that these positive effects are stronger in the short term and decrease in intensity over the long term, but that non-treated batterers continue to exhibit a greater frequency of violent incidents than do treated batterers.²⁴¹ As noted above, however, there is also some data contradicting the general effectiveness of batterer intervention programs.²⁴² This controversy makes it difficult to assess the true effect that batterer intervention programs have in and of themselves.

In addition to studies that show the overall effectiveness of batterer intervention programs, there is also some preliminary evidence that court-mandated counseling in particular, as opposed to voluntary counseling, may have deterrent effects on future violence.²⁴³ One study documented that of those batterers under court supervision, the treated batterers showed a decrease in psychological abuse, as opposed to physical abuse, when compared with untreated batterers.²⁴⁴ Some suggest that one reason for the initial success of court-mandated counseling may relate to the additional influence of

studies).

240. See Healey et al., *supra* note 168, at 8; see also K. Daniel O'Leary et al., *Symposium on Reconceptualizing Violence Against Women by Intimate Partners: Critical Issues: Assessment and Treatment of Partner Abuse: A Synopsis for the Legal Profession*, 58 Alb. L. Rev. 1215, 1225 (1995) ([E]vidence derived from men who complete such programs suggest that they can be effective."); Go, *supra* note 203 (discussing the results of a study that concluded, "Treatment programs generally work"); Meisel, *supra* note 203 (citing statistics that indicate a lower re-arrest rate for men attending a San Diego batterer intervention program). For a brief discussion of some methodological issues that arise in batterer intervention studies, see *supra* notes 201, 239.

241. See Mederos, *supra* note 169 (analyzing treatment outcome research on batterer intervention groups). This information was obtained from a 10-year research study, published in 1995, in which those who had completed a batterer program were compared with those who had dropped out (the untreated group). See *id.*; see also O'Leary et al., *supra* note 240, at 1232 (discussing a study in which men who had completed a batterer intervention program were less violent during a six-month follow-up period).

242. See *supra* Part II.B.2.

243. See Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, 944-46 (1993) (citing a study by the National Institute of Justice that found batterers could be taught non-abusive relationship skills in mandatory domestic violence counseling situations); see also Cheryl Hanna, *The Paradox of Hope: The Crime and Punishment of Domestic Violence*, 39 Wm. & Mary L. Rev. 1505, 1526 (1998) [hereinafter Hanna, *Paradox*] ("[T]he most successful treatment occurs when mandated by the criminal justice system." (quoting the Attorney General's Task Force on Family Violence)).

244. See Klein & Orloff, *supra* note 243, at 946. Another study found that at least 50% of men who completed a court-mandated batterer intervention program were not violent in the year following their treatment. See *id.* at 945.

the court intervention itself.²⁴⁵ This suggests that batterer intervention programs may be more effective when coordinated with other community interventions and further emphasizes the need for a coordinated community response.²⁴⁶

Aside from the effectiveness of the content and design of batterer intervention programs, some criminal justice experts focus purely on the structural aspects of these programs.²⁴⁷ They believe that regardless of the type of intervention, any program that requires batterers to be held accountable for their behavior can be successful.²⁴⁸ For example, programs typically require weekly attendance at sessions by batterers and monitor this behavior stringently. Such strict behavior regulation may help control batterers' abuse, regardless of variations in program content and length.²⁴⁹

Although there is conflicting evidence regarding the overall effect of batterer intervention programs on reducing future violence, there is promising research indicating that these programs may be particularly effective either as part of a coordinated community response or as a method of strictly monitoring behavior. Until additional research can be done on the effectiveness of batterer intervention programs alone, these programs can be usefully implemented as part of a larger systemic response or as a method for supervision and regulation of behavior aimed at altering patterns of abuse. Absent convincing evidence that counseling programs actually increase violence, there is no sound reason to eliminate them based simply on uncertainty as to their overall effectiveness.

3. The Effectiveness of Legal Sanctions

There remains a great deal of controversy regarding the effect that legal sanctions, from arrest and incarceration to court-mandated counseling programs, have on the incidence of domestic violence.²⁵⁰ Without clear evidence to the contrary, however, a decision to de-emphasize the implementation of sanctions is not warranted. The responsiveness of the court system to incidents of domestic violence through the imposition of varied and more strongly enforced legal sanctions can potentially send a message to the batterer that such behavior will not be tolerated. These additional sanctions have been shown to have a "consistent small effect" on decreasing future violence in particular situations.²⁵¹ For example, batterers who know

245. *See id.* at 946.

246. *See DV Report, supra* note 94, at 377.

247. *See* Healey et al., *supra* note 168, at 33-34.

248. *See id.*

249. *See id.*

250. *See supra* Part II.B.3.

251. Simon, *supra* note 87, at 48-49.

that the consequences of their conduct may include strictly enforced penalties will be less likely to reoffend.²⁵²

Legal sanctions can vary from potential jail time and court supervision of batterers within counseling programs to more stringent enforcement of orders of protection. One study showed that any type of court intervention resulted in a decrease in violence, whether specific sanctions were ordered or not.²⁵³ This could be because "[t]he continuing threat of legal sanctions . . . has a stronger deterrent effect than the actual imposition of a sanction"²⁵⁴

Due to the extraordinarily high occurrence of domestic violence incidents relative to other crimes, however, legal sanctions and deterrents alone are not sufficient to control the problem.²⁵⁵ Studies have shown that legal sanctions are more effective in deterring domestic violence when used in conjunction with informal social controls.²⁵⁶ These informal social controls may involve an individual's own internal values and beliefs or external factors such as community and social reinforcers of particular behaviors.²⁵⁷ For example, batterers who anticipate greater social costs, such as a negative impact on their employment, children, or reputation in the community, in addition to legal sanctions, may be less likely to reoffend than batterers who do not have as much to lose.²⁵⁸ Despite the uncertainty regarding the effect of legal sanctions on deterring family violence, such sanctions are critical as part of a multi-layered response to domestic violence.

Thus, a coordinated community response that integrates the various parties involved in a domestic violence case results in a more organized and comprehensive system that is better suited to handling the intricacies of family violence. The implementation of mandated batterer programs as well as stronger enforcement of varied legal

252. See *id.* at 49; see also Salzman, *supra* note 93, at 354 (referring to studies that show a significant change in batterers' behavior as well as increased compliance with court orders due to the imposition of more severe sanctions).

253. See Klein & Orloff, *supra* note 243, at 945-46. Another study showed that court intervention alone resulted in six months of non-violence for 60% of the batterers who appeared in court. See *id.* at 946.

254. Fagan, *supra* note 22, at 14. One of the replication studies of the Minneapolis arrest deterrence study involved an experimental group of domestic violence perpetrators who were not arrested, but were given warrants instead. See *id.* This resulted in an extremely strong deterrent effect, a consequence that is often reflected in prosecution policies. See *id.*

255. See *id.* at 29.

256. See *id.* at 26.

257. See *id.* at 26-27.

258. See *id.* A similar effect was seen in the replication studies of the Minneapolis arrest deterrence study. Arrest had a greater deterrent effect on employed men than on unemployed men. See *supra* note 218. The employed perpetrators have the greater perceived social cost of losing their jobs, and that informal social control, in conjunction with the legal sanction of arrest, seemed to have the greatest deterrent effect on future violence.

sanctions are additional elements that enrich this comprehensive response. Despite criticisms about the lack of demonstrated effectiveness of these innovations, implementing a model domestic violence program is a better approach than maintaining a traditional model that has been proven to be ineffective in stemming the tide of family violence.

B. *A Proposed Model Program*

Despite the plethora of arguments favoring innovative domestic violence programs over the traditional approach to family violence cases, such programs require further improvements in order to more effectively address the problem of domestic violence.²⁵⁹ This section proposes several improvements on a hypothetical program that should be integrated into any therapeutic approach to domestic violence.

This hypothetical program should ideally combine aspects of the various model domestic violence programs discussed in Part II. A coordinated community response integrating the many service providers involved in domestic violence cases is an important first step. Within this comprehensive framework should be a component of victim advocacy designed to provide support and information to victims who may be overwhelmed by the complexity and unfamiliarity of a legal proceeding.²⁶⁰ Services for children should also be a priority, due to the destructive influence of family violence on children and its contribution to later patterns of abuse.²⁶¹ These services may take the form of children's advocates who provide support and information in court proceedings or mandated counseling sessions for children of abusers.²⁶² Mandated counseling should also be required of defendants in domestic violence cases.²⁶³ Enhanced supervision of defendant behavior, including regulation of defendant attendance in batterer programs and greater enforcement of violations of orders of protection, ensures that batterers realize their actions have strictly-enforced consequences.²⁶⁴

Such a model program draws upon the best elements of programs

259. While a comprehensive approach to combating domestic violence in any community consists of numerous pieces, including arrest and prosecution procedures, detailed discussions of each of these is beyond the scope of this Note. This Note primarily focuses on the components involved in a court-based domestic violence program.

260. See, e.g., *supra* Part II.A (describing domestic violence programs that incorporate such victim advocacy components).

261. See generally ABA Report, *supra* note 143 (detailing the effects that family violence has on children).

262. See *supra* Part II.A.3 (describing the Dade County program's group counseling requirement for children of domestic violence perpetrators).

263. Both New York City and Dade County emphasize court-mandated counseling and intensive supervision of defendant behavior as components of their domestic violence programs. See *supra* Parts II.A.2-A.3.

264. See generally *supra* Part III.A.3.

currently in force. Both current and future programs, however, must focus on two areas requiring significant improvement. These include enhanced accountability among the various players in the system and expansion of both the definition of community and the sanctions that are currently available for batterers.

1. Accountability is Critical

Domestic violence cases comprise so many different components, ranging from legal entities to mental health agencies, that it is important to maintain a coordinated community response, such as those advanced by communities like Quincy and New York City.²⁶⁵ This coordinated response consolidates a variety of legal and non-legal domestic violence services into a single system, including judges, prosecutors, victim advocates, and mental health agencies. Aside from the coordination of different participants in this process and the provision of services from a centralized system, however, it is crucial that each component is held accountable to the other components within the network. Legal sanctions alone are not useful²⁶⁶ without stringent enforcement, and greater enforcement can be achieved through increased accountability among all agencies involved in the case.

For example, on a very basic level, courts must hold batterers accountable for their actions, whether for a violation of an order of protection or lack of attendance at a court-mandated counseling program. An order of protection, for instance, is ineffectual unless someone reports violations to the court and the court in turn takes steps to enforce its terms. If mental health agencies are held accountable to the courts when they discover violations of orders of protection, the court's ability to enforce the terms of such orders is increased. By the same token, batterer intervention programs should be accountable to both the courts and the victims. If the court mandates that a batterer attend sessions and that batterer fails to appear, the program should report this transgression to the court as well as the victim. This will enable the court to institute sanctions and allow the victim to be fully informed of her batterer's status. Other participants, including prosecutors, police officers, and social service agencies also need to realize the importance of accountability. Although each of these agencies is an entity unto itself, it is important that they surrender their customary autonomy in order to improve the overall response to domestic violence.

Batterer intervention programs must also be held accountable to the general public.²⁶⁷ The first step in a comprehensive community

265. See *supra* Parts II.A.1-A.2.

266. See Fagan, *supra* note 22, at 26.

267. See Hanna, *Paradox*, *supra* note 243, at 1535.

plan should be to establish guidelines and certification procedures to ensure that courts are referring batterers to qualified intervention programs.²⁶⁸ Of course, the accuracy of such guidelines depends on the expansion and continuation of research into what constitutes an effective batterer program.²⁶⁹ This research can then be used to regularly evaluate the effectiveness of these programs.²⁷⁰ If guidelines for effective batterer intervention programs are based upon sound scientific research, adherence to these guidelines will produce qualified programs. Courts can then ensure that perpetrators are mandated only to programs that comply with the official guidelines and are therefore presumed effective.

Even before more conclusive evidence and formalized guidelines on intervention programs become available, however, these programs can still play a part in the criminal justice process. Such programs can closely monitor batterers' behavior and be held accountable to the appropriate parties in the event of violations of court orders regarding either attendance in the program or threats to victims in violation of an order of protection.²⁷¹ Of the model domestic violence programs discussed in this Note,²⁷² only New York City has implemented a separate component that is specifically designed to emphasize defendant accountability.²⁷³

Accountability becomes increasingly critical the more components a system attempts to consolidate. A lack of responsibility exhibited by one component to other components within the system results in an absence of knowledge and creates the potential for disorganization of service provision and inadequate enforcement of sanctions. For example, if a batterer intervention program is unaware of a court mandate, batterers may not be held accountable for their attendance in the program. By the same token, if courts are unaware of violations of orders of protection, they are unable to enforce that order through the imposition of additional sanctions. A coordinated community response, integrating entities from the court system itself to batterer intervention programs, requires accountability in order to promote the organization that is necessary for a truly successful approach.

268. See, e.g., *DV Report*, *supra* note 94, at 380 (reporting the substance of a domestic violence discussion session entitled "Batterers' Treatment Programs: Do They Work?").

269. See *supra* Parts II.B.2, III.A.2.

270. See, e.g., Dennis Tatz, *Man who beat up son back in jail*, *Patriot Ledger*, Oct. 2, 1997, at 13C (describing how a defendant who had gone to jail for beating up his son was sentenced to return to jail for leaving a batterer program).

271. See Healey et al., *supra* note 168, at 53.

272. See *supra* Part II.A.

273. See *supra* Part II.A.2 (discussing the Compliance Part component of the New York City domestic violence program).

2. The Importance of Expanding the Existing Framework

The existing framework within which domestic violence court programs operate includes a community of criminal justice and social service agencies working together to fight the crime of domestic violence in a system that offers a limited selection of sanctions. Although this framework provides a sound start, it requires further expansion and must both define the notion of community more broadly and implement a greater variety of effective sanctions.

A coordinated "community" response generally refers to interdisciplinary programs that integrate the services of the courts, police departments, and various social service agencies.²⁷⁴ To be truly effective in addressing domestic violence in our society, however, we must expand our current conception of "community" and reach out to families, individuals, schools, and churches in order to provide education about issues of violence and send the message that domestic violence will not be tolerated.²⁷⁵ This education may take the form of parenting-skills classes, emphasizing and facilitating family counseling, and reaching out to children of violent households.

Involving all members of a community in dealing with the issue of domestic violence is a more promising approach, because it attacks the violence at its source. Family violence often stems from deeply ingrained social and cultural beliefs that cannot be effectively changed by laws and legal sanctions alone.²⁷⁶ Expanding the target community to include more than formal legal and social institutions will facilitate far-reaching reforms and begin changing societal attitudes toward domestic violence.²⁷⁷ One such program, called "It's Your Business," suggests mobilizing the entire local community to raise awareness about domestic violence and assist in stopping violence.²⁷⁸ Suggestions for raising community awareness include hosting fundraisers, posting signs and educational advertisements, and educating others through open discussions and presentations.²⁷⁹ The program also emphasizes community intervention by providing individuals with information about how to recognize abuse and

274. See *supra* Part II.A.1.

275. See, e.g., Community Action Kit, *supra* note 19 (encouraging individuals to get involved in the fight against domestic violence in their local communities).

276. See, e.g., Marano, *supra* note 92, at 78 ("Battering . . . enforces social rules. It is a learned behavior . . ."); Miller, *supra* note 138 (insisting that it is critical for the public to see and understand domestic violence as a community issue); Nealon, *supra* note 203 ("[B]attering is particularly difficult to reverse . . . because you must counter cultural signals that condone, even encourage, violence toward women.").

277. See, e.g., *DV Report*, *supra* note 94, at 340 (summarizing suggested long-term strategies for preventing domestic violence).

278. This program is co-sponsored by the Family Violence Prevention Fund and the National Institute on Domestic Violence in the African American Community. See Community Action Kit, *supra* note 19.

279. See *id.*

encourage family members, friends, and co-workers to seek assistance.²⁸⁰ Expanding the definition of "community" and increasing public awareness of domestic violence through education and training, as "It's Your Business" suggests, will contribute immeasurably to curbing domestic violence. Preventive measures such as educating children in schools will also aid in the education and awareness-raising process.²⁸¹ Ongoing training and education of judges and court personnel, in addition to the other parties involved, may not only assist in decreasing insensitive treatment of victims but also enhance application and enforcement of new domestic violence laws.²⁸²

Finally, it is necessary to expand the number of available sanctions and treatment alternatives.²⁸³ There currently exists a remarkably narrow range of legal interventions,²⁸⁴ limiting the ability of courts to provide appropriate and effective remedies. Legal sanctions include arrest, incarceration, and intensive supervision of defendant behavior, with arrest being the primary sanction and incarceration and intensive supervision occurring only in cases of severe injury.²⁸⁵ Possibilities for expansion include the imposition of graded sanctions that correspondingly increase in severity as the level of violence and injury increase,²⁸⁶ or more treatment alternatives in the form of greater types and numbers of counseling programs for batterers. Instead of concentrating solely on issues of violence, as most batterer programs currently do, additional counseling programs could integrate related topics, such as substance abuse, parenting, and child abuse, into the curriculum of these programs.²⁸⁷ An expansion of options for sentencing and treatment will provide better tools to more effectively address domestic violence in the courts.

CONCLUSION

Domestic violence is a pervasive social problem that affects millions of people and places an immense burden on both social and legal programs, many of which are under-funded.²⁸⁸ With the effects of domestic violence ranging from emergency room expenses, costs to

280. *See id.*

281. *See DV Report, supra* note 94, at 340.

282. *See generally*, Salzman, *supra* note 93, at 356-57 (recommending reforms to the Quincy program and citing it as a strong foundation for future domestic violence programs).

283. *See* Hanna, *Paradox, supra* note 243, at 1575.

284. *See* Fagan, *supra* note 22, at 32.

285. *See id.*

286. *See DV Report, supra* note 94, at 339.

287. *See* Healey et al., *supra* note 168, at 76 (discussing a movement away from the "one-size-fits-all" batterer programs to a more specialized approach that takes individual offender characteristics into account). *See generally id.* at 33-55 (describing mainstream batterer programs).

288. *See* Salzman, *supra* note 93, at 333-34.

employers from missed days of work, and government funds expended in providing for homeless battered women and children in foster care,²⁸⁹ its prevention is critical to the overall mental and financial health of individuals in our society. The criticisms of the model domestic violence court programs are limited and unconvincing. These programs reflect a trend that shows promise in addressing the issue of family violence in our society. Many communities have implemented programs that utilize techniques such as coordinated community responses, mandated batterer intervention programs, and more severe legal sanctions for domestic abuse. Increased accountability within this coordinated response and ongoing expansion of already existing standards must complement any approach to domestic violence in order to eradicate one of society's most damaging and long-standing evils.

289. See Hctor, *supra* note 163, at 646.

Notes & Observations