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### Lessons Learned, Lessons Offered: Creating a Domestic Violence Drug Court

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**LESSONS LEARNED, LESSONS OFFERED:  
CREATING A DOMESTIC VIOLENCE DRUG COURT**

**JUDGE ROSIE SPEEDLIN GONZALEZ\* &  
DR. STACY SPEEDLIN GONZALEZ**

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\* Presiding judge of County Court at Law #13—a domestic violence court in Bexar County. The author would like to acknowledge her wife, Dr. Stacy Speedlin Gonzalez, NCC, LPC, LCDC for her contributions to this project and her continued support of my work. Both authors would like to especially thank State Representative Roland Gutierrez and Senator José Menéndez for sponsoring House Bill 3529, making the Domestic Violence Therapeutic Court a reality. This article is dedicated to Judge Speedlin Gonzalez’s mother, Alicia Garcia Gonzalez, who passed away in December of 2018, prior to her taking the bench. She lived her life as an example to many; to whom much is given, much is demanded. “I love you mom.”

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## INTRODUCTION

Domestic violence is a persistent challenge within court systems.<sup>1</sup> Despite the legal system's involvement with domestic violence, this issue remains a top safety concern.<sup>2</sup> In 2010, approximately one in three women—and one in four men—reported suffering from intimate partner violence at some point in their lives.<sup>3</sup> In the United States, an estimated twenty people experience intimate partner violence every minute.<sup>4</sup> This aggregates to more than ten million abuse victims annually.<sup>5</sup>

Without adequate intervention, instances of domestic violence continue to escalate—leaving victims and communities at risk.<sup>6</sup> Domestic violence, also known as intimate partner violence, is not new

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1. See generally Jessica Klein, *How Domestic Abusers Weaponize the Courts*, ATLANTIC (July 18, 2019), <https://www.theatlantic.com/family/archive/2019/07/how-abusers-use-courts-against-their-victims/593086/> [<https://perma.cc/CJ3N-KCXX>] (providing a broad overview of challenges courts face with domestic violence cases).

2. See, e.g., *id.* (“[A domestic violence victim] lived in fear that the very courts designed to protect her would force her to spend time with her abuser.”).

3. MICHELE C. BLACK ET AL., NAT’L CTR. FOR INJ. PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, U.S. DEP’T HEALTH & HUM. SERVS., *THE NAT’L INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 37–39* (Nov. 2011) [https://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf) [<https://perma.cc/3544-HND7>].

4. NAT’L COALITION AGAINST DOMESTIC VIOLENCE, *DOMESTIC VIOLENCE*, [https://assets.speakcdn.com/assets/2497/domestic\\_violence2.pdf](https://assets.speakcdn.com/assets/2497/domestic_violence2.pdf) [<https://perma.cc/U333-SZE3>].

5. *Id.*

6. See generally Amy Thompson, *Can It Really Go That Far: Escalation in Domestic Violence*, BREAK THE SILENCE AGAINST DOMESTIC VIOLENCE (Dec. 22, 2017), <https://breakthesilencedv.org/escalation-domestic-violence/> [<https://perma.cc/WSQ5-NNZ7>] (outlining the escalation process from a domestic abuser’s verbal threats to repeated violence that may result in strangulation or death).

to political arenas.<sup>7</sup> In 1994, the Violence Against Women Act (VAWA) was signed into federal law by President Bill Clinton.<sup>8</sup> VAWA provided \$1.6 billion towards the investigation and prosecution of violent crimes against women, imposed mandatory restitution on convicted persons, and allowed civil redress for victims.<sup>9</sup> Additionally, VAWA established the Office on Violence Against Women within the Department of Justice, which has provided grant funding to victims of domestic violence.<sup>10</sup> VAWA's reauthorization in 2000 increased federal grants for battered women's shelters, established a National Domestic Violence Hotline, required restraining orders to be enforced from state to state, and created necessary amendments to the Federal Rules of Evidence.<sup>11</sup> However, the primary focal point within historical public policies and law is to protect victims—with only limited discussion on resolving violent behavior for perpetrators.<sup>12</sup>

Legal systems seeking to provide support to victims are imperative.<sup>13</sup> In fact, failure to meet the needs of victims can further complicate the court's ability to mediate domestic crimes.<sup>14</sup> The authors suggest a more comprehensive strategy for alleviating the challenge of domestic violence.<sup>15</sup> Without addressing the front-line issue—violent behaviors of perpetrators—court systems will only succeed in treating the problem,

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7. See *Violence Against Women Act*, NAT'L NETWORK TO END DOMESTIC VIOLENCE (2017), <https://nnedv.org/content/violence-against-women-act/> [<https://perma.cc/3EV6-GA7V>] (providing the details of numerous acts which are in place to protect individuals against domestic violence).

8. *Id.*

9. *The Reauthorization of VAWA*, PAVE (2013), <https://www.shatteringthesilence.org/latest-news/the-reauthorization-of-vawa/> [<https://perma.cc/7MYS-ZM67>].

10. *Id.*

11. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000).

12. See NAT'L NETWORK TO END DOMESTIC VIOLENCE, *supra* note 7 (“Up for renewal every five years, each Violence Against Women Act reauthorization builds on existing protections and programs to better meet the needs of survivors.”).

13. See *generally id.* (discussing the current legislative system in place to help domestic violence victims).

14. See, e.g., *Mediation*, STOP VIOLENCE AGAINST WOMEN (May 2019), <http://www.stopvaw.org/mediation> [<https://perma.cc/Z733-5DPK>] (“Due to the unequal bargaining power between a victim of domestic violence and her abuser, abusers are afforded with further opportunities to exercise power over the victim.”).

15. See *generally* BLACK ET AL., *supra* note 3 at 89 (understanding the challenges of domestic violence).

but not preventing it.<sup>16</sup> Perpetrators who do not rehabilitate continue to pose a threat to the community, future relationships, and family members.<sup>17</sup> Further, as the number of victims continues to increase, the cost for services will also intensify as a direct correlation.<sup>18</sup>

Part I of this article describes the issue of domestic violence from a comprehensive perspective of social, psychological, and communal threat—illuminating challenges to help address the issue with traditional court operations.<sup>19</sup> Part II defines the Drug Court Model as a potential intervention for addressing the problem of domestic violence and discusses how the authors created the domestic violence drug court in Bexar County.<sup>20</sup> Part III provides recommendations for creating similar courts, conducting future research, and improving policy.

### I. DOMESTIC VIOLENCE: STATISTICAL INFORMATION

Domestic violence is defined as “the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a systematic pattern of power and control perpetrated by one intimate partner against another.”<sup>21</sup> This definition contextually includes but is not limited to: physical violence, sexual violence, threats, and emotional/psychological abuse.<sup>22</sup> Domestic violence can also include financial abuse—where the abuser withholds resources as a method of

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16. See, e.g., Samantha Gluck, *Domestic Abusers: Perpetrators of Domestic Violence*, HEALTHY PLACE (May 3, 2019), <https://www.healthyplace.com/abuse/domestic-violence/domestic-abusers-perpetrators-of-domestic-violence> [<https://perma.cc/AS9P-8JYJ>] (explaining the need for rehabilitation of perpetrators).

17. See *id.* (“Domestic abuse is a vicious cycle both within a violent relationship, as well as within an abuser’s entire life.”).

18. See generally Wendy Max et al., *The Economic Toll of Intimate Partner Violence Against Women in the United States*, 19 VIOLENCE & VICTIMS 259, 259 (2004) (reporting that intimate partner violence cost women \$5.8 billion in 1995—including \$320 million for rapes, \$4.2 billion for physical assault, \$342 million for stalking, and \$893 million for murders).

19. See generally BLACK ET AL., *supra* note 3 at 7–13 (elaborating on the statistical relevance of domestic violence as an issue).

20. Cf. Deborah Koetzle et al., *Treating High-Risk Offenders in the Community: The Potential of Drug Courts*, 20 INT’L J. OFFENDER THERAPY & COMPARATIVE CRIMINOLOGY 449, 458–61 (2015) (explaining the positive outcomes of drug court participants).

21. U.S. DEP’T OF CORR., DV/IPV: DOMESTIC VIOLENCE/INTIMATE PARTNER VIOLENCE 2 (Feb. 2018), [https://nicic.gov/sites/default/files/031384\\_0.pdf](https://nicic.gov/sites/default/files/031384_0.pdf) [<https://perma.cc/YC8M-WXTU>].

22. *Id.*

control.<sup>23</sup> Coercive behaviors, including threats to harm the victim, harm others, or damaging property, also meet criteria as domestic violence.<sup>24</sup> Additionally, recent literature highlights the role of gaslighting within intimate partner relationships.<sup>25</sup>

Current statistics show approximately one in four women in the United States will experience domestic violence in their lifetime.<sup>26</sup> Female victims have the highest chance to experience domestic violence for the first time between the ages of 18–24 (38.6%), followed by ages 11–17 (22.4%), ages 35–44 (6.8%), and ages 45+ (2.5%).<sup>27</sup> Almost one out of five murder victims in the United States were killed by an intimate partner.<sup>28</sup> Women account for nearly one-third of victims killed by intimate partner homicide.<sup>29</sup> Violence against women occurs predominantly in privacy and is the most underreported crime in the United States.<sup>30</sup> Domestic violence is the third leading cause of homelessness among families.<sup>31</sup> Undomiciled families often report domestic violence as the precipitating event leading to their homelessness.<sup>32</sup>

The prevalence of this issue leads to cyclical behavior across generational family systems.<sup>33</sup> Witnessing battering behavior between

23. See Jo Carrillo, *Financial Intimate Partner Violence: When Assets and Transactions Become Weapons*, 22:2 DOMESTIC VIOLENCE REP. 17 (2017) (“[F]inancial interpersonal violence, which occurs when an asset (like money) or a transaction (like a loan, a sale, or a bank withdrawal) is used by an intimate partner as a weapon against the other partner.”).

24. See BLACK ET AL., *supra* note 3 at 107 (listing common indicators of coercive behavior).

25. See generally Paige L. Sweet, *The Sociology of Gaslighting*, 84 AM. SOC. REV. 851 (2019) (arguing that gaslighting is primarily a sociological rather than a psychological phenomenon).

26. BLACK ET AL., *supra* note 3 at 39.

27. See *id.* (recounting statistics based on forms of intimate partner violence).

28. ALEXIA COOPER & ERICA L. SMITH, U.S. DEP’T OF JUST., HOMICIDE TRENDS IN THE UNITED STATES 1980–2008, 18 (Nov. 2011) <https://www.bjs.gov/content/pub/pdf/htus8008.pdf> [<https://perma.cc/X5LL-P33E>].

29. CTRS. FOR DISEASE CONTROL & PREVENTION, DEP’T HEALTH & HUM. SERVS., COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES (Mar. 2003), <https://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf> [<https://perma.cc/BH89-BU2U>].

30. BLACK ET AL., *supra* note 3 at 91.

31. THE U.S. CONF. OF MAYORS, HUNGER & HOMELESSNESS SURVEY 46–47 (Dec. 2013), <https://mazon.org/assets/Uploads/Hunger-and-Homelessness-Survey.pdf> [<https://perma.cc/86YC-R3PB>].

32. See *id.* at 56 (reporting that 60% of homeless adults were victims of domestic violence).

33. See Tuppett Yates et al., *Exposure to Partner Violence and Child Behavior Problems: A Prospective Study Controlling for Child Physical Abuse and Neglect, Child Cognitive Ability,*

parents is the primary predictor of perpetrating domestic violence.<sup>34</sup> Likewise, individuals who grow up in homes where abuse occurs are at a greater risk of becoming victims.<sup>35</sup> Childhood witnessing of domestic violence supersedes all other factors, including race, gender, and socioeconomic status.<sup>36</sup> Given the conundrum of this cyclical issue, there exists a greater need to examine how court systems can address domestic violence at the source—the perpetrators.<sup>37</sup> Further, there is also a need for legal professionals to better understand domestic violence within complex variables because the existing social constructs remain steadfast.<sup>38</sup>

#### A. *Systemic Issues That Perpetuate Domestic Violence*

The problem of domestic violence overwhelms our society at the macro-, meso-, and micro-levels.<sup>39</sup> Therefore, the authors highlight domestic violence as a social, psychological, and public health problem that persists across ecological systems.<sup>40</sup> Macrosystems include federal

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*Socioeconomic Status, and Life Stress*, 15 DEV. & PSYCHOPATHOLOGY, 199, 200 (2003) (concluding that up to four million children between the ages of three and seventeen observe interparental violence and experience behavioral problems as a result).

34. See Michael Lynch, *Consequences of Children's Exposure to Community Violence*, 6 CLINICAL CHILD. FAM. PSYCHOL. REV. 265, 268 (2003) (connecting exposure to community violence as a child and the likelihood of perpetuating the cycle of violence).

35. See Tuppett Yates et al., *supra* note 33 at 201 (“girls are predisposed to develop internalizing problems [following exposure to marital violence]”).

36. See *id.* at 200 (“Thus, exposure to partner violence during early childhood is expected to have a stronger and more enduring negative effect on future adaptation than later exposure experiences . . .”).

37. See *Specialized Domestic Violence Court Systems*, STOP VIOLENCE AGAINST WOMEN (May 2019), [http://www.stopvaw.org/specialized\\_domestic\\_violence\\_court\\_systems](http://www.stopvaw.org/specialized_domestic_violence_court_systems) [<https://perma.cc/N23R-DQRR>] (stating that specialized domestic violence courts can “properly respond to each case of domestic violence . . . and formulate the system’s response to the offense . . . to ensure victim safety and offender accountability”).

38. See ABA COMM’N ON DOMESTIC VIOLENCE, STANDARDS OF PRAC. FOR LAW. REPRESENTING VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT AND STALKING IN CIVIL PROTECTION ORDER CASES (2007), [https://www.americanbar.org/content/dam/aba/administrative/domestic\\_violence1/20110419\\_aba\\_standards\\_of\\_practice\\_dv.pdf](https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/20110419_aba_standards_of_practice_dv.pdf) [<https://perma.cc/5MBC-PM2L>] (signifying the need for lawyers to be informed and educated about their clients who are victims of domestic violence).

39. See generally Urie Bronfenbrenner, *Ecological Models of Human Development*, READINGS ON THE DEVELOPMENT OF CHILDREN 37–41 (2d ed. 1993) (describing the macro, meso, and micro levels of human development).

40. See generally *id.* (describing the different ecological models of human development).

and public policies, and mesosystems include communities, local politics, religion, and culture.<sup>41</sup> Microsystems involve familial and marital structures, including values within a family or marriage.<sup>42</sup>

### 1. *Macrosystems*

At the macro-level, more effective intervention policies for batterers are poorly represented and lack advocacy.<sup>43</sup> Little research exists on empirical interventions for rehabilitating violent offenders, much less violent offenders with substance issues.<sup>44</sup> In fact, more time and resources are spent on therapeutic court systems for first-time offenders—those less likely to recidivate—than nonviolent offenders.<sup>45</sup> Current policy postulates that violent offenders should be incarcerated with no therapeutic support.<sup>46</sup> However, multiple challenges go against this perception.<sup>47</sup> First, taxpayer dollars and federal funds for therapeutic interventions should not be directed towards rehabilitating

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41. *See id.* at 40 (defining macrosystems as the “specific and psychological features” in a specific culture and mesosystems as the relationships affecting the development of an individual).

42. *See id.* at 39 (comparing “microsystems” from “macrosystems” while emphasizing the way in which microsystems signify familial values).

43. *See* Jennifer S. Rosenberg & Denise A. Grab, *Supporting Survivors: The Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence*, INST. FOR POL’Y INTEGRITY 18–20 (July 2015), <https://policyintegrity.org/documents/SupportingSurvivors.pdf> [<https://perma.cc/6MZY-YWC6>] (illustrating market failures associated with the supply of legal services to domestic violence victims); *see also* Lundy Bancroft, *The Current State of Domestic Violence Services* (Aug. 1, 2019), <http://lundybancroft.com/current-state-of-domestic-violence-services/> [<https://perma.cc/793E-F32D>] (expressing concerns with the available domestic violence services in the United States); Bronfenbrenner, *supra* note 39 at 39 (“Macrosystem[s] consists of the overarching pattern of micro-, meso-, and exosystems characteristic of a given culture or subculture, with particular reference to the belief systems, bodies of knowledge, material resources, customs, life-styles, opportunity structures, hazards, and life course options that are embedded in each of these broader systems.”).

44. Christine A. Saum & Matthew L. Hiller, *Should Violent Offenders be Excluded from Drug Court Participation?*, 33 CRIM. JUST. REV. 291, 303 (2008).

45. *See id.* at 292, 305 (suggesting that the inclusion of violent offenders under the supervision of drug courts can improve public safety).

46. *See id.* at 292 (“Community and political sentiments often do not favor spending money and/or offering programs to violent offenders and because of the community safety responsibility of the criminal justice system, courts may be hesitant to include those with a history of violence in drug courts, regardless of funding issues.”).

47. *See id.* at 304–05 (explaining views disfavoring the inclusion of violent offenders in the drug court system who are “statistically no more likely than” non-violent offenders to be re-arrested during their post-drug court release).



persons who will likely reform on probation alone.<sup>48</sup> Second, the limited amount of federal resources should be allocated to more risky offenders—rather than those who are less menacing to the public.<sup>49</sup> Finally, incarceration does not resolve this public health crisis; rather, it merely gives the perpetrator a minimal “time out.”<sup>50</sup>

## 2. *Mesosystems*

Community perception of domestic violence is even less supportive.<sup>51</sup> The public often views perpetrators as evil and therefore deserving of harsher punishment.<sup>52</sup> Victims of domestic violence are seen as weak and as sympathizers of their abusers.<sup>53</sup> Multiple sources recognize domestic violence as a community issue—cutting across diverse communities and sections of life.<sup>54</sup> However, stigma still exists in labeling domestic violence as a problem of poor communities.<sup>55</sup> While

48. See Christine A. Saum et al., *Violent Offenders in Drug Court*, 31.1 J. DRUG ISSUES 107, 110 (2001) (explaining the view of some drug courts to use their limited resources on more serious offenders “rather than those with less severe problems who might be helped through” the use of other programs).

49. See Saum & Hiller, *supra* note 44 at 292 (stating “numerous substance-using offenders with a history of violent offending” need treatment but are precluded by the policies surrounding the disbursement of federal funds to drug courts); see also Saum et al., *supra* note 48 (illustrating drug courts’ rationalizations on treating more serious offenders rather than less serious offenders).

50. See Skaidra Smith Heisters, *The Nonviolent Offender Rehabilitation Act: Prison Overcrowding, Parole and Sentencing Reform (Proposition 5)* REASON 4–7 (Oct. 2006), <https://reason.org/wp-content/uploads/files/fca481a6c38c69c7f9ae9761e97bb053.pdf> [<https://perma.cc/8Z8Y-SPGS>] (reiterating reform is needed to ensure public safety is improved instead of disregarded by treating violent offenders instead of releasing them without opportunities for treatment and thus exploiting a greater danger to the general well-being).

51. See Saum et al., *supra* note 48 at 108 (contrasting the public perceptions of violent and non-violent offenders).

52. See *id.* (“Violent offenders, on the other hand, are often treated differently because of the way in which they are perceived by the public, legislatures, and the criminal justice system.”).

53. See Jill Filipovic, *14 Misconceptions About Domestic Violence*, DOMESTIC SHELTERS (Jan. 29, 2018), <https://www.domesticshelters.org/articles/domestic-violence-op-ed-column/14-misconceptions-about-domestic-violence> [<https://perma.cc/8PGQ-UE79>] (addressing the misconception that women who stay in abusive relationships are weak-willed by asserting that victims are most at risk when they try to leave).

54. See Megan L. Haselschwerdt & Jennifer L. Hardesty, *Managing Secrecy and Disclosure of Domestic Violence in Affluent Communities*, 79 J. MARRIAGE AND FAM. 556 (Apr. 2017) (acknowledging that domestic violence is a problem affecting all individuals without discrimination to their status).

55. See Susan R. Palsner, *Five Myths About Domestic Violence*, WASH. POST (Feb. 23, 2018, 8:46 AM), <https://www.washingtonpost.com/outlook/five-myths/five-myths->

research demonstrates domestic violence occurs at higher rates in lower socioeconomic status communities,<sup>56</sup> more recent literature highlights the pervasiveness of secrecy and family unity in affluent communities.<sup>57</sup> Thus, reasons for remaining in a home with violence may not be exclusive to those lacking resources.<sup>58</sup>

Domestic violence can include financial abuse, regardless of income bracket.<sup>59</sup> Financial abuse involves preventing survivors from going to work, sabotaging their employment, or ruining their credit.<sup>60</sup> These tactics may eventually lead to job loss, financial ruin, and even homelessness.<sup>61</sup> Therefore, education and professional careers are not

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about-domestic-violence/2018/02/23/78969748-1819-11e8-b681-2d4d462a1921\_story.html [https://perma.cc/6KGG-B6U4] (“Domestic abuse is what might be called an ecumenical crime, with no regard for age, ethnicity, financial status or educational background.”).

56. Claire M. Renzetti, *Chapter 9: Economic Issues and Intimate Partner Violence*, SOURCEBOOK ON VIOLENCE AGAINST WOMEN 171, 173 (2d ed. 2011); see Rosenberg & Grab, *supra* note 43 at 4 (“Data collected by the Department of Justice’s Bureau of Justice Statistics showed that women in the lowest income households experience seven times the rate of abuse suffered by women in the highest income households.”).

57. See SUSAN WEITZMAN, NOT TO PEOPLE LIKE US: HIDDEN ABUSE IN UPSCALE MARRIAGES 25 (2001) (“Isolation is one of the most conspicuous predicaments in which abused affluent women find themselves, and this sense of utter aloneness can be traced, ironically to their social milieu. When a woman meets her friends at the country club . . . there is little opportunity for these kinds of disturbing and intimate confidences.”); see also Haselschwerdt & Hardesty, *supra* note 54 (observing through grounded theory how affluent mothers maintain secrecy surrounding domestic violence in their community).

58. See *Why Do Victims Stay?*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/why-do-victims-stay> [https://perma.cc/7R5R-KDQW] (noting additional reasons why domestic violence victims stay with their abusers); see also Haselschwerdt & Hardesty, *supra* note 54 at 563 (explaining that there is a lack of dissemination of domestic violence specific resources in affluent communities).

59. See Adrienne E. Adams et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563, 581 (2008); cf. Nancy Nason-Clark, *When Terror Strikes at Home: The Interface Between Religion and Domestic Violence*, 43:3 J. SCI. STUD. RELIGION 303 (2004) (“Domestic violence knows no boundaries of class, color, or religious persuasion.”).

60. See Adams et al., *supra* note 59 at 565–57 (identifying various methods abusers employ to affect their victim’s economic security and potential for self-sufficiency to create economic dependence as a means of control over their victim); see also Pamela C. Alexander, *Childhood Maltreatment, Intimate Partner Violence, Work Interference and Women’s Employment*, 26 J. FAM. VIOLENCE 255, 259 (2011) (“The fact that 92.5% of women who reported having experienced work interference also experienced physical violence by their partner suggests that work interference is an important indicator of what may be otherwise hidden abuse.”).

61. See Adams et al., *supra* note 59 at 565–68 (identifying various methods abusers employ to affect their victim’s economic security and potential for self-sufficiency to create economic dependence as a means of control over their victim); see also Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CALIF. L. REV. 951, 1000 (2012) (detailing the

always protective factors for domestic abuse.<sup>62</sup> Perpetrators can interfere with their partner's ability to obtain or maintain employment, thereby exhausting a victim's professional integrity and viability.<sup>63</sup>

Once violence ensues, other factors complicate leaving.<sup>64</sup> Multiple studies have examined how social location, mediated power, and social relations operate in families and communities of higher status.<sup>65</sup> These constructs illuminate the role of power and status within family and community contexts, while also signifying how actual affluence, prestige, and fiduciary endowment can complicate a victim's ability to leave.<sup>66</sup> Further, the fear of public, family, or community scrutiny may cause victims to retreat deeper into silence.<sup>67</sup> One author further argued, "those with the most power in society tend to control the distribution of resources, the availability of opportunities, and the discourse that maintains dominance for privileged groups, suppressing belief systems that challenge their own."<sup>68</sup> Thus, affluence is irrelevant to resolving

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long-term economic effects that domestic violence victims experience); Emily F. Rothman et al., *How Employment Helps Female Victims of Intimate Partner Violence: A Qualitative Study*, 12 J. OCCUPATIONAL HEALTH PSYCHOL. 136 (2007) (stating that 21–60% of domestic violence victims lose their jobs for reasons connected to the abuse).

62. See Adams et al., *supra* note 59 at 572 (showing minor statistical differences between the victim's education level and employment status affecting abuse).

63. See, e.g., *id.* at 565 (providing numerous examples of how an abuser interferes with his or her victim's ability to economically improve their situation).

64. See Deborah K. Anderson & Daniel G. Saunders, *Leaving an Abusive Partner: An Empirical Review of Predictors, the Process of Leaving, and Psychological Well-Being*, 4 TRAUMA, VIOLENCE & ABUSE 163, 165 (2003) (reporting that the common predictors of leaving after being the victim of domestic violence are: "(a) the nature of the violence, (b) the woman's life history, (c) social psychological factors, (d) external resources, and (e) previous coping strategies").

65. See Haselschwerdt & Hardesty, *supra* note 54 at 567 (concluding that the prominent role of husbands in affluent families and communities greatly affected how the victim managed their domestic violence experience); cf. Kristine M. Baber, *Postmodern Feminist Perspectives and Families*, HANDBOOK OF FEMINIST FAM. STUD. 56, 60 (Sally A. Lloyd et al. eds., 2009) (opining that social relations—such as class, socioeconomic condition, and national or immigrant status—are factors leading to power disparities and oppression).

66. See Haselschwerdt & Hardesty, *supra* note 54 at 558, 567 (concluding that wives in affluent communities are less likely to disclose their abuse due to the "false perceptions that affluent communities are free from family problems").

67. See *id.* at 558 (asserting that despite the benefits of prosperous communities, there are also detriments associated with their social values, as such "affluent women go to extensive lengths to keep [domestic violence] a secret due to the pervasive emphasis on privacy in the culture of affluence").

68. Baber, *supra* note 65 at 57.

issues of domestic violence if resources are controlled and sifted through by spouses and their families.<sup>69</sup>

Religion is a frequent topic of investigation for domestic violence researchers and religious scholars.<sup>70</sup> Typical exploration of the intersection of religion and domestic violence pursue two overarching categories: 1) religious victims and 2) religious perpetrators.<sup>71</sup> Religion as a social variable can serve as a double-edged sword.<sup>72</sup> One approach shows how religion can be a source of support while families are in crisis, including domestic violence.<sup>73</sup> Religion can serve as a mediator of wellness and emotional wellbeing.<sup>74</sup> Congregations are a microcosm of safety and resources for families.<sup>75</sup> Research shows the role of faith as a source of sustenance—enabling the abused to flee their abuser and seek refuge, thereby beginning a new life without warranty.<sup>76</sup> Yet, other

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69. Cf. Anderson & Saunders, *supra* note 64 at 171 (finding that women who have access to independent economic resources are more likely to leave an abuser than those who do not).

70. See e.g., Christopher G. Ellison et al., *Race/Ethnicity, Religious Involvement, and Domestic Violence*, 13 VIOLENCE AGAINST WOMEN 1094, 1095–96 (2007) (providing a comprehensive summary of studies that examined the role of religion in domestic violence).

71. Nason-Clark, *supra* note 59.

72. See e.g., *id.* (“For many religious victims, their faith sustains them through long periods of domestic crisis: it empowers them to ultimately flee their abuser and to seek refuge and safety where they begin a new life free from abuse. There are others who are not so fortunate: they are consumed by the “sacred silence” on the issue, never finding spiritual or practical support that would enable them to leave . . .”).

73. See Ellison et al., *supra* note 70 at 1107 (finding that frequent attendance of religious services “may serve as a proxy for prayerfulness, positive religious coping styles, [and] self-discipline . . . [Further, t]he fact that religious involvement often involves members of the immediate and extended family may mean that these relationships are actually being strengthened through religious involvement, minimizing the risk not only of domestic violence, but also of other forms of family violence as well”); see also Nason-Clark, *supra* note 59 (stating the ways in which women rely on religion during the times in which they are suffering from an abusive partner).

74. See Christopher G. Ellison & Kristin L. Anderson, *Religious Involvement and Domestic Violence Among U.S. Couples*, 40 J. SCI. STUDY RELIGION 269, 272 (2001) (postulating that religious social ties provide support, coping assistance, and buffers for stress that may lessen the risks of domestic violence).

75. See *id.* (“Congregations provide contexts for the formation of friendships, offer opportunities for regular social interaction, and can serve as gateways to other types of community involvement . . . Moreover, religious groups also commonly promote informal exchanges of tangible support . . . socioemotional support, [and] offer pastoral counseling, formal programs, and other supports to aid their members.”).

76. See Nason-Clark, *supra* note 59 (“For many religious victims, their faith sustains them through long periods of domestic crisis: it empowers them to ultimately flee their abuser and to seek refuge and safety where they begin a new life free of abuse.”).

sources demonstrate the negative effects of religion and how victims can become “consumed by the sacred silence” while never finding the spiritual support that would empower them to leave or amend the current familial norms.<sup>77</sup> When victims are contemplating leaving their marriage, religion can also present a message that inadvertently fosters shame.<sup>78</sup> Further, religious doctrine can be perceived by the perpetrator as evangelical justifications for abuse and public or private scolding.<sup>79</sup> While this perception of justification is unintentional, more research recognizes the value of churches collaborating with mental health professionals to navigate these murky waters.<sup>80</sup>

### 3. *Microsystems*

Finally, an examination of factors complicating domestic violence would lack comprehensiveness without discussion of the family and community (microsystem).<sup>81</sup> Family and community can serve as allies or adversaries to the victim.<sup>82</sup> Both can act as the instigation into violence for victims.<sup>83</sup> Many studies show exposure to domestic and community violence are associated with a significant risk for developing emotional issues—including depression, suicidal ideation, anxiety disorders, attachment injuries, and post-traumatic stress symptoms.<sup>84</sup>

77. *Id.*

78. See Brandon Withrow, *When Leaving Religion Costs You Everything*, DAILY BEAST (Apr. 13, 2017 3:39 PM), <https://www.thedailybeast.com/when-leaving-religion-costs-you-everything> [<https://perma.cc/5MNR-82MJ>] (explaining the social repercussions of leaving one’s religious community).

79. See *id.* (“Sometimes, secular shelter workers and others believe that it is in fact the religious ideology that gives rise to the violence . . .”).

80. See Nason-Clark, *supra* note 59 at 305 (citing completion of rehabilitation programs when encouraged by religious authorities).

81. See Paul Boxer et al., *Exposure to Violence across the Social Ecosystem and the Development of Aggression: A Test of Ecological Theory in the Israeli-Palestinian Conflict*, U.S. NAT’L LIBR. OF MED. NAT’L INST. OF HEALTH 1, 2 (Jan. 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3505223/> [<https://perma.cc/P89E-UGZG>] (listing the factors of a microsystem which physically and psychologically influence a child).

82. See COMM. ON THE ASSESSMENT OF FAM. VIOLENCE INTERVENTIONS, ET AL., *VIOLENCE IN FAMILIES: ASSESSING PREVENTION AND TREATMENT PROGRAMS* 31, 37 (Rosemary Chalk & Patricia A. King, eds., National Academy Press 1998) (providing an example of how parental behavior can be either supportive or harmful towards children).

83. See Boxer et al., *supra* note 81 (expanding on how families can contribute to the stresses for domestic violence victims—particularly in the context of the Israeli-Palestinian conflict).

84. See Yuk-Chung Chan & Jerf Wai-Keung Yeung, *Children Living with Violence Within the Family and Its Sequel: A Meta-Analysis from 1995–2006*, 14 *AGGRESSIVE VIOLENT BEHAV.*

Emotionally-regulated coping shows promise as a protective role for an individual's mental health to combat the effects of exposure to violence.<sup>85</sup> Without such coping, children who are exposed to violence are less likely to sustain emotional safety and self-efficacy when confronted with domestic violence in their own household.<sup>86</sup>

Family and communal structures can become the primary source of healing and restoration.<sup>87</sup> Studies show family support increases self-efficacy, lowers anxiety levels, and produces more stabilization for families over time.<sup>88</sup> Family members who are able to tend to the abused individual, assist with children and other members of the household, and provide counsel are a tremendous source of strength.<sup>89</sup> When family members offer emotional or financial resources (including a safe house), a victim's ability to negotiate seeking help is significantly

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313, 314 (2009) (showing the link between exposure to domestic violence and resulting behaviors of the exposed); Ann L. Coker et al., *Physical and Mental Health Consequences of Intimate Partner Violence in Men and Women*, 23 AMER. J. PREVENTIVE MED. 260, 271 (2002) (citing research showing the link between exposure to intimate partner violence and long-term physical and mental health); Gayla Margolin & Elana B. Gordis, *The Effects of Family and Community Violence on Children*, 51 ANN. REV. PSYCHOL. 445, 466 (2000) (“[C]hildren with a documented history of childhood abuse and neglect, compared to nonabused children from the same neighborhood and born at the same time, are at a two times greater risk for arrest for a violent crime . . . .”); Maria A. Pico-Alfonso et al., *The Impact of Physical, Psychological, & Sexual Inmate Male Partner Violence on Women's Mental Health: Depressive Symptoms, Posttraumatic Stress Disorder, State Anxiety, and Suicide*, 15 J. WOMEN'S HEALTH 599, 608 (2006) (corroborating results from previous studies about the lasting negative effects of intimate partner violence); Yates et al., *supra* note 33 at 213 (“The current findings provide compelling evidence that [witnessing partner violence has] an enduring deleterious impact on children's behavioral adjustment.”).

85. See Esror Tammim Mohammad et al., *Impacts of Family and Community Violence Exposure on Child Coping and Mental Health*, 43 J ABNORMAL CHILD PSYCHOL. 203, 205 (2015) (suggesting a child's coping skills can protect their mental health when the child is exposed to violence).

86. See *id.* (asserting that child coping mechanisms may buffer the extent to which previous exposure to violence correlates to mental health symptoms).

87. See Angie C. Kennedy et al., *The Effects of Community and Family Violence Exposure on Anxiety Trajectories During Middle Childhood: The Role of Family Social Support as a Moderator* 38 J. CLINICAL CHILD & ADOLESCENT PSYCHOL. 365, 367 (2009) (providing the positive impacts that family members can have on victims).

88. See *id.* at 376 (advancing a theory that family social support can help children deal with their violent experiences and develop effective coping strategies).

89. See Bushra Sabri et al., *Cumulative Violence Exposures: Black Women's Responses and Sources of Strength*, U.S. NAT'L LIBR. OF MED. NAT'L INST. OF HEALTH (May 1, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4821689/> [<https://perma.cc/K99C-8N7R>] (describing family members as a source of strength for domestic violence victims).

higher.<sup>90</sup> Further, families who challenge societal normalization of domestic violence aid in the victim's self-perception and willingness to share his or her story.<sup>91</sup>

Community support programs for survivors and their families—including shelter programs, advocacy services, financial resources, supervised visitation centers, and counseling services—are proven to increase victims' perceptions of hope.<sup>92</sup> Despite this knowledge, federal research recognizes the disparity between the need and the number of available services across national communities.<sup>93</sup> The National Network to End Domestic Violence reported a service gap of over 12,000 unmet requests for services daily across the country.<sup>94</sup> Therefore, relying solely on services to help victims without addressing the behavior of the perpetrator does not resolve the issue.<sup>95</sup>

Through acknowledgment of complex external issues within macro-, meso-, and micro-systems, legal professionals can better surmise the scope of the domestic violence problem and work towards legal solutions.<sup>96</sup> Domestic violence is not an issue exclusively impacting one

90. See Imogen Parker, *A Link in the Chain: The Role of Friends and Family in Tackling Domestic Abuse*, CITIZENS ADVICE 1, 27 (Aug. 2015), <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Crime%20and%20Justice%20Publications/Linkinthechain.pdf> [<https://perma.cc/TC33-ACND>] (stating that friends and family may positively impact victims by increasing their confidence, self-esteem, and dignity).

91. See Mariana Plata, *Why Do We Normalize Violence Against Women?*, PSYCHOL. TODAY 1, 3–4 (Nov. 21, 2018), <https://www.psychologytoday.com/us/blog/the-gen-y-psy/201811/why-do-we-normalize-violence-against-women> [<https://perma.cc/R2FV-3EZ5>] (outlining steps for challenging societal normalization of domestic violence).

92. See Cris M. Sullivan, *Understanding How Domestic Violence Support Services Promote Survivor Well-Being: A Conceptual Model*, 33 J. FAM. VIOLENCE 123, 127–28 (2017) (asserting that domestic violence support programs can result in a myriad of positive influences and benefits to victims).

93. See *id.* at 128 (suggesting federal support of domestic violence services need to be strengthened).

94. NAT'L NETWORK TO END DOMESTIC VIOLENCE, DOMESTIC VIOLENCE COUNTS 2015: A 24-HOUR CENSUS OF DOMESTIC VIOLENCE SHELTERS AND SERVICES (2016), [https://nndv.org/mdocs-posts/census\\_2015\\_handout\\_report/](https://nndv.org/mdocs-posts/census_2015_handout_report/) [<https://perma.cc/9QGT-BC3W>].

95. See EMILY F. ROTHMAN ET AL., INTERVENING WITH PERPETRATORS OF INTIMATE PARTNER VIOLENCE: A GLOBAL PERSPECTIVE 1–2 (2003), <https://apps.who.int/iris/bitstream/handle/10665/42647/9241590491.pdf?sequence=1> [<https://perma.cc/A5PQ-SY2C>] (highlighting that when contrasted with victim support services, “intervention with the perpetrators of intimate partner violence has received comparatively little attention . . .”).

96. See Stephanie R. Montesanti & Wilfreda E. Thurston, *Mapping the Role of Structural and Interpersonal Violence in the Lives of Women: Implications for Public Health Interventions and Policy*, BMC WOMEN'S HEALTH (Nov. 11, 2015), <https://bmcwomenshealth.biomedcentral>.

community, race, or section of persons within our society.<sup>97</sup> Violence within a family can be difficult to resolve if victims do not have adequate access to resources, faith communities, or family and communal supports.<sup>98</sup> Legal settings that only direct their efforts towards victims are insufficient.<sup>99</sup> Also, interventions at the level of law and policy should be aimed towards ceasing maladaptive behaviors in perpetrators.<sup>100</sup> Therefore, the authors seek to describe these issues, as they are more enigmatic within judicial systems.<sup>101</sup> The following sections illuminate such maladaptive behavioral issues.<sup>102</sup>

### B. Substance Abuse and Domestic Violence Perpetrators

Substance abuse, now known as “substance use disorder,” has been historically examined from many different viewpoints.<sup>103</sup> Multiple scholars and federal entities signify addiction as a “brain disease,” having many organic traits similar to other degenerative disorders (e.g., diabetes, cardiovascular disease, etc.).<sup>104</sup> More specifically, addiction is defined by other researchers as a mental disorder, affecting the brain and changing behavior.<sup>105</sup> Research in the medical, psychological, and

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com/articles/10.1186/s12905-015-0256-4 [https://perma.cc/X6QC-ZVY5] (explaining how violence against women results from different levels of the micro-, meso-, and macro-systems).

97. See *id.* (“Interpersonal violence against women is multidimensional problem with no single satisfactory explanation.”).

98. See Sullivan, *supra* note 92 at 126 (describing the benefits of having communities for victims of domestic violence to retreat to).

99. See Michael Vitiello, *Reconsidering Rehabilitation*, 65 TUL. L. REV. 1011, 1033-34 (1991) (arguing rehabilitation should be adopted in the justice system to avoid recidivism).

100. See generally GRANT T. HARRIS ET AL., *VIOLENT OFFENDERS; APPRAISING AND MANAGING RISK* (3d ed. 2015) (promoting abstinence from substance use for violent domestic violence perpetrators); cf. Stephanie Riger et al., *Barriers to Addressing Substance Abuse in Domestic Violence Court*, 53 AM. J. COMMUNITY PSYCHOL. 208 (2014) (explaining how substance abuse and domestic violence reciprocate each other but neither are addressed in drug or domestic violence court).

101. See Sullivan, *supra* note 92 at 123–31 (detailing the best ways to support survivors of domestic abuse).

102. See generally HARRIS, ET AL., *supra* note 100 (understanding maladaptive behavioral issues that inhibit individuals’ ability to adapt to situations).

103. See AM. PSYCHIATRIC ASS’N, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS*, 133–37 (5th ed. 2013) (overviewing the brief history of substance abuse views).

104. NAT’L INST. ON DRUG ABUSE, U.S. DEP’T HEALTH & HUM. SERVS., NO. 10-5605, *DRUGS, BRAINS, AND BEHAVIOR: THE SCIENCE OF ADDICTION* 5, 21 (Aug. 2010).

105. *Id.*



clinical world postulate that addictions occur as a result of environmental and biological factors, beginning with genetic variations.<sup>106</sup> Critics of this concept believe a more broad-based definition should be utilized, beyond the mere categorization of a “brain disorder.”<sup>107</sup> Addiction accompanies more complex traits than simply within the neurological context.<sup>108</sup> Nevertheless, addiction is globally recognized as having a severe psychological, emotional, legal, and social impact on its sufferers.<sup>109</sup> Moreover, families whose members struggle with addictions often experience psychological and physical stressors.<sup>110</sup>

Substance use and domestic violence have high co-occurrence rates (50% or higher), holding steadfast across clinical and forensic settings.<sup>111</sup> A study revealed 75.7% of domestic violence perpetrators met alcohol use disorder criteria.<sup>112</sup> Additionally, 64.9% of persons met the criteria for other substance use disorders.<sup>113</sup> Within this study, substance use appeared to be involved in the commission of 64.9% of domestic violence cases.<sup>114</sup> Without addressing substance use with perpetrators, legal interventions can result in motions to revoke or repeat offenses.<sup>115</sup> Failure to assist offenders by linking to treatment programs can also set them up for re-offense and continuation of cyclical maladaptive behaviors.<sup>116</sup> Abstinence is an appropriate goal for domestic violence perpetrators—especially when substances are linked

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106. AM. PSYCHIATRIC ASS'N, *supra* note 103.

107. See Rachel Hammer et al., *Addiction: Current Criticism of the Brain Disease Paradigm*, 4 *AJOB NEUROSCIENCE* 27, 32 (2013) (advocating for a broader definition of addiction due to the circumstances surrounding the disease).

108. See *id.* (explaining the many factors that can lead to addiction).

109. See Alex G. Copello et al., *Family Interventions in the Treatment of Alcohol and Drug Problems*, 24 *DRUG & ALCOHOL REV.*, 369, 370 (2005) (describing the negative impact substance abuse has on families).

110. See *id.* at 369–85 (explaining why families who struggle with addiction must continue to battle the disease for long durations of time).

111. Riger et al., *supra* note 100.

112. Marcus Juodis et al., *What Can Be Done About High-Risk Perpetrators of Domestic Violence?*, 29 *J. FAM. VIOLENCE* 381, 383 (2014).

113. *Id.*

114. *Id.* at 383–84.

115. Cf. *id.* at 382 (providing creative and effective solutions for high-risk perpetrators—outside of mere legal intervention).

116. See *id.* at 383 (explaining how intervening can help perpetrators learn alternatives to violence).

to violent behaviors.<sup>117</sup> However, abstinence as a goal towards repentance in court systems is more complicated than merely a judicial hearing because it requires rehabilitation in accordance with the severity of the addictions.<sup>118</sup>

Contemporary literature emphasizes the necessity of intervention for perpetrators who are problem drinkers or substance users.<sup>119</sup> Yet, there is limited research describing the methods court systems utilize to manage the issue of substance abuse among perpetrators.<sup>120</sup> A study revealed substance abuse is typically not identified among perpetrators unless the police indicate an altered state, the victims report historical substance use, or the offender attends court hearings under the influence.<sup>121</sup> This results in a lack of awareness for judges and prosecutors who directly deal with such cases.<sup>122</sup> Additionally, there is limited knowledge provided in academic settings to educate legal professionals in recognizing the signs of substance abuse.<sup>123</sup> Consequently, the scope and severity of this issue is underreported and,

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117. *See id.* at 384 (propounding how abstinence is often the root of perpetrators' violence).

118. *See* Michael J. Taleff & John D. Swisher, *The Seven Core Functions of a Master's Degree Level Alcohol and Other Drug Counselor*, 42 J. ALCOHOL & DRUG EDUC. 3, 7 (1997) (describing the importance of personalizing treatment to the patient to ensure quality and effective care); *see generally* NAT'L INST. ON DRUG ABUSE, *supra* note 104 at 19–20 (explaining how long-term drug use can trigger a reflex to crave drugs even after many years of abstinence).

119. *See* DENNIS C. DALEY & G. ALAN MARLATT, *OVERCOMING YOUR ALCOHOL OR DRUG PROBLEM: EFFECTIVE RECOVERY STRATEGIES* 6 (2d ed., Oxford U. Press 2006) (describing how to complete an effective intervention for alcoholics); *see also* ELIZABETH E. EPSTEIN & BARBARA S. MCCRADY, *A COGNITIVE-BEHAVIORAL TREATMENT PROGRAM FOR OVERCOMING ALCOHOL PROBLEMS* 8–9 (David H. Barlow ed., Oxford Univ. Press, 2009) (providing guidance to therapists on how to conduct an intervention with an addict).

120. *See* Riger et al., *supra* note 100 (describing specialized domestic violence courts that address the relationship between domestic violence and drug abuse).

121. *Id.* at 212–13.

122. *See generally* *In re J.W.*, 16 N.E.3d 489, (Ind. Ct. App. 2014) (rejecting an order to complete a domestic violence assessment and submit to random drug testing despite the party admitting usage of drugs); *In re Maya C.*, 764 A.2d 116, 119 (R.I. 2001) (“With respect to the mother’s assertion that DCYF should have provided services to assist her in overcoming her domestic violence issues, the trial justice noted that the evidence identified substance abuse as the mother’s primary issue and the trial testimony revealed ‘that until that issue was satisfactorily dealt with, it would not be productive to deal with domestic violence and other issues.’”).

123. *See* DRUG USE DISORDERS, A.B.A. (2018), [https://www.americanbar.org/groups/lawyer\\_assistance/resources/drug\\_abuse\\_dependence](https://www.americanbar.org/groups/lawyer_assistance/resources/drug_abuse_dependence) [<https://perma.cc/6EGE-ZES9>] (providing a general overview of how to spot substance abuse in the workplace).

therefore, less understood.<sup>124</sup>

The consequences of addiction on our society include: ruptures within families, interference with work performance, a national expense of billions of dollars per year, increased crime and homelessness, and chronic diseases or death.<sup>125</sup> Substance use disorders are associated with early death—addicted persons die approximately 20 years before their life expectancy.<sup>126</sup> Despite billions of dollars being allocated to treatment and research, the United States is still unable to reduce the problem.<sup>127</sup> Within clinical settings, substance abuse interventions are often complex and call for specific knowledge, skills, and education.<sup>128</sup> Intuitively, the legal system must also possess the ability and aptitude to work with this population.<sup>129</sup> However, working with perpetrators of domestic violence who also suffer from substance abuse requires exclusive and purposeful plans of action.<sup>130</sup> Legal systems often have limited time with offenders to ameliorate criminal behaviors; hence, judicial orders should promote abstinence and improved community

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124. See Riger et al., *supra* note 100 (stating that specialized courts which focus on one problem often overlook the possibility of addressing issues that commonly co-occur).

125. See NAT'L DRUG THREAT ASSESSMENT, IMPACT OF DRUGS ON SOCIETY (2010), <https://www.justice.gov/archive/ndic/pubs38/38661/drugImpact.htm> [<https://perma.cc/Q34B-XEKT>] (describing how drug abuse affects the economy, crime, environment); see also NAT'L INST. ON DRUG ABUSE, *supra* note 104 at 22 (explaining how addiction can cause disease and harm an abuser's children's health); THE U.S. CONF. OF MAYORS, *supra* note 31 (reporting several reasons for why individuals experience homelessness suffer from substance abuse while lacking the necessary services to overcome the abuse).

126. See Vincent J. Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14 AM. J. PREV. MED. 245, 256 (1998) (explaining how substance abuse can cause early deaths due to disease and other long-term effects).

127. See NAT. INST. ON DRUG ABUSE, FISCAL YEAR 2018 BUDGET INFORMATION- CONGRESSIONAL JUSTIFICATION FOR NATIONAL INSTITUTE ON DRUG ABUSE (2018), <https://www.drugabuse.gov/about-nida/legislative-activities/budget-information/fiscal-year-2018-budget-information-congressional-justification-national-institute-drug-abuse> [<https://perma.cc/6TAA-A5E6>] (reporting a request for \$865 million for programming and epidemiology or clinical research).

128. See Taleff & Swisher, *supra* note 118 at 6–7 (explaining the preferred education and skill set that substance abuse counselors should have).

129. See Riger et al., *supra* note 100 at 216 (encouraging courts to accommodate the complexities of individuals rather than reducing the issues to their simplest legally defined target).

130. See *generally id.* (describing the difficulties in working with criminal defendants who report substance use).

safety using adequate supervision and accountability structures.<sup>131</sup>

### C. *The Role of Trauma and Perpetrators*

“Trauma” is defined as “a deeply distressing or disturbing experience.”<sup>132</sup> A more comprehensive definition describes trauma as “exposure to death, threatened death, actual or threatened serious injury, or actual/threatened sexual violence, in the following way(s): direct exposure, witnessing the trauma, learning that a relative or close friend was exposed to a trauma, and/or indirect exposure to aversive details of the trauma, usually in the course of professional duties (e.g., first responders, medics).”<sup>133</sup> Since the most recent Adverse Childhood Experiences Study, trauma has been studied and documented as the number one public health crisis.<sup>134</sup>

Post-traumatic stress disorder (PTSD) is defined by the exposure to a traumatic event followed by a set of symptoms that persist beyond thirty days.<sup>135</sup> Indicators of PTSD can include a myriad of symptoms—as reactions to trauma are uniquely based on the actual traumatic event.<sup>136</sup> One significant symptom with perpetrators of domestic violence is hypervigilance.<sup>137</sup> Hypervigilance is described as constantly and subconsciously anticipating danger.<sup>138</sup> Individuals who experience childhood abuse, even witnessing domestic violence in their own home, can develop a heightened sense of awareness followed by symptoms of

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131. *See generally id.* (explaining how substance abuse is not an issue for consideration that the court will bring up absent a specific report or testimony).

132. *Trauma*, WEBSTER’S NEW WORLD DICTIONARY (4th ed. 2005), <https://www.merriam-webster.com/dictionary/trauma> [<https://perma.cc/GBG3-TDKD>].

133. AM. PSYCHIATRIC ASS’N, *supra* note 103 at 271.

134. *See* Shanta R. Dube et al., *Adverse Childhood Experiences and Personal Alcohol Abuse as an Adult*, 27 ADDICTIVE BEHAV. 713, 714 (2002) (showing that alcohol misuse and abuse is substantially important to medicine and public health).

135. AM. PSYCHIATRIC ASS’N, *supra* note 103 at 194.

136. *See id.* at 275–76 (discussing the numerous ways individuals suffer from PTSD).

137. *Cf. id.* at 823 (describing the many ways in which hypervigilance may bring about a state of increased anxiety).

138. *See* Lana Burgess, *Hypervigilance: What You Need to Know*, MED. NEWS TODAY (Sept. 7, 2017) <https://www.medicalnewstoday.com/articles/319289.php> [<https://perma.cc/3EAQ-6L8B>] (“When someone experiences hypervigilance, their subconscious is constantly anticipating danger.”).

avoidance or aggression.<sup>139</sup> In fact, studies suggest that exposure to family abuse is a significant predictor of PTSD symptomatology.<sup>140</sup> More noteworthy, intimate partner violence is associated with symptoms of aggression.<sup>141</sup> Hypervigilance can also manifest into paranoid behaviors, such as thinking others are watching them, out to “get them,” or trying to hurt them.<sup>142</sup> PTSD occurs when alterations in the brain cause the individual to behave in protective ways to avoid further trauma.<sup>143</sup> The concept that individuals can “unlearn” these reactions without therapeutic intervention is repeatedly challenged by research.<sup>144</sup>

Trauma is also a primary variable for individuals who meet the criteria for substance abuse disorders.<sup>145</sup> Alcohol abuse has also been linked to adverse childhood experiences such as abuse, neglect, or child exploitation.<sup>146</sup> Additionally, 75% of women and men who receive substance abuse treatment report histories of trauma.<sup>147</sup> A case for trauma can be depicted through the past experiences of Vietnam Veterans.<sup>148</sup> Vietnam Veterans were referred to as “shell shocked” and would react disproportionately to sounds or sudden lights flashing, and

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139. See AM. PSYCHIATRIC ASS'N, *supra* note 103 at 265, 271 (describing the specific criteria for PTSD and how it continuously affects individuals' lives).

140. See Anthony Charuvastra & Marylene Cloitre, *Social Bonds and Posttraumatic Stress Disorders*, 59 ANN. REV. PSYCHOL. 301, 302 (2008) (listing many specific predictors of PTSD—a major one being family abuse).

141. See generally Angela C. Kirby et al., *An Examination of General Aggression and Intimate Partner Violence in Women with Posttraumatic Stress Disorder*, 27 VIOLENCE VICT. 777 (2012) (documenting significant relationships between PTSD, aggression, and intimate partner violence).

142. Burgess, *supra* note 138.

143. See Charuvastra & Cloitre, *supra* note 140 at 307 (discussing the various ways in which people suffering from PTSD behave in protective ways).

144. See *id.* at 309 (signifying the importance of research within PTSD studies).

145. See SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., U.S. DEP'T HEALTH & HUM. SERVS., No. 03-3781, MORTALITY DATA FROM THE DRUG ABUSE WARNING NETWORK, 2001, at 6 (Jan. 2003) (providing the ways in which suffering from trauma can cause and contribute to substance abuse).

146. See generally Dube et al., *supra* note 134 (studying the impact of adverse childhood experiences on adult alcohol abuse).

147. Linda Rosenberg, *Addressing Trauma in Mental Health and Substance Use Treatment*, 38 J. BEHAV. HEALTH SERVS. & RES. 428, 428 (2011).

148. See *Drugs in the Vietnam War*, ESRI, <https://www.arcgis.com/apps/Cascade/index.html?appid=b59fef8b2af345d28553d58509b365a2> [<https://perma.cc/ELV3-AYV4>] (“[To cope with their struggles,] 51% of soldiers had smoked marijuana, 25% had consumed heroin or cocaine, and 31% had used psychedelics such as LSD or mushrooms.”).

they react by fighting or hiding under tables.<sup>149</sup> Reassurance of their safety did not relieve this behavior.<sup>150</sup> Many Vietnam Veterans abused alcohol or returned home addicted to drugs.<sup>151</sup> The use of drugs and alcohol assisted in coping with PTSD symptoms—such as lack of sleep, nightmares, disassociation, or aggression.<sup>152</sup>

By comparison, children who grow up in a home or community with violence are essentially living in a war zone.<sup>153</sup> More impacting is violence which occurs during brain development, where cognitive functions grow towards safety versus milestones.<sup>154</sup> Children who experience abuse and neglect are 59% more likely to be arrested as a juvenile, 28% more likely to be arrested as an adult, and 30% more likely to commit violent crimes.<sup>155</sup> Without adequate treatment or therapy, children grow up as adults living in a state of hyperawareness—experiencing difficulty concentrating, practicing poor sleep habits, suffering from nightmares, and having over-reactive response patterns.<sup>156</sup> These children are at risk of abusing drugs and alcohol in order to cope.<sup>157</sup> Consequently, they often become the next generation of offenders in the judicial system.<sup>158</sup> And the system punishes them for

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149. *Cf. id.* (“American soldiers in Vietnam began using drugs while off duty to help cope with all their struggles during the war.”).

150. *See id.* (describing the many ways that the soldiers misused drugs—regardless of the circumstances).

151. *See id.* (describing the long-term effects of the soldiers’ alcohol and drug use during the Vietnam War).

152. *See* AM. PSYCHIATRIC ASS’N, *supra* note 103 at 494 (explaining several reasons why soldiers were abusing drugs as a way to cope with PTSD).

153. *See generally* Shanta R. Dube et al., *Childhood Abuse, Household Dysfunction, and the Risk of Attempted Suicide Throughout the Life Span*, 286 JAMA 3089 (2001) (describing how childhood trauma and adverse experiences can lead to substance abuse).

154. *See* AM. PSYCHIATRIC ASS’N, *supra* note 103 at 31 (describing the effects of neurodevelopmental disorders on achieving milestones).

155. CATHY S. WISDOM & MICHAEL G. MAXFIELD, AN UPDATE ON THE “CYCLE OF VIOLENCE,” OFF. JUST. PROGRAMS: NAT’L INST. OF JUST. (2001), <https://www.ncjrs.gov/txtfiles1/nij/184894.txt> [<https://perma.cc/H68X-G24R>].

156. *See generally* AM. PSYCHIATRIC ASS’N, *supra* note 103 at 31 (summarizing the characteristic signs and symptoms which point to an underlying disorder).

157. *See* Dube et al., *supra* note 134 at 723 (discussing the urge adults have to drink alcohol in order to cope).

158. *See* OFF. WOMEN’S HEALTH, U.S. DEP’T HEALTH & HUM SERVS., EFFECTS OF DOMESTIC VIOLENCE ON CHILDREN <https://www.womenshealth.gov/relationships-and-safety/domestic-violence/effects-domestic-violence-children> [<https://perma.cc/CP4K-2Q78>] (“[Children who witness domestic violence] are at greater risk for repeating the cycle as adults by entering into

being sick.<sup>159</sup> Worse yet, the criminal justice system provides no support for rehabilitation of trauma—prison settings actually worsen trauma symptoms.<sup>160</sup> Offenders come home with elevated hypervigilance and trauma reactions.<sup>161</sup> This may satisfy the public perception that perpetrators of domestic violence should suffer; however, this does not resolve the cyclical factors perpetuating domestic violence as a public health concern.<sup>162</sup>

#### D. Domestic Violence Within the Judicial System

Intimate partner violence is a relatively new issue to the legal system.<sup>163</sup> It is only within the past forty years that domestic violence became a criminal issue involving the court system.<sup>164</sup> Historically, laws were in place which gave men the right to physically scold or “correct” their spouse’s behaviors.<sup>165</sup> For example, in *Bradley v. State*, the Mississippi State Supreme Court affirmed the right of a husband to exercise moderate discipline of his wife.<sup>166</sup> This was reinforced by other cases—confirming that the court could not invade the domestic domain

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abusive relationships or becoming abusers.”); see also BRENDA UEKERT ET AL., NAT’L CTR. FOR ST. CTS., JUVENILE DOMESTIC AND FAMILY VIOLENCE: THE EFFECTS OF COURT-BASED INTERVENTION PROGRAMS ON RECIDIVISM 14 (2006) (“Studies have also demonstrated that interparental violence or child abuse was an important predictor that a youth would commit dating violence.”).

159. See UEKERT ET AL., *supra* note 158 at 5 (noting the justice system has had challenges in addressing the needs of juvenile offenders).

160. See Susan Sered *Be Careful About Sending Domestic Abusers to Jail. It Might Make Them Even More Violent*, WASH. POST (Sept. 12, 2004), <https://www.washingtonpost.com/posteverything/wp/2014/09/12/sending-domestic-abusers-to-jail-might-actually-make-them-more-violent/> [https://perma.cc/A3AX-94CD] (stating that prison magnifies certain attitudes and may make domestic violence perpetrators even more violent).

161. See *id.* (observing that prison does not therapeutically reform domestic offenders but rather, magnifies their “acts of gendered violence”).

162. See *id.* (admonishing the view that incarceration reforms domestic offenders).

163. See Edna Erez, *Domestic Violence and the Criminal Justice System: An Overview*, 7 *ONLINE J. ISSUES IN NURSING* 1 (Jan. 31, 2002), <http://ojin.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TableofContents/Volume72002/No1Jan2002/DomesticViolenceandCriminalJustice.html> [perma.cc/GP42-DRVU] (discussing the emergence of intimate partner violence in the legal context and how the criminal justice system treats the issue).

164. *Id.*

165. See 1 Miss. 156, 157–58 (1824) (“Let the husband be permitted to exercise the right of moderate chastisement, in cases of great emergency . . . without being subjected to vexatious prosecutions.”).

166. *Bradley v. State*, 1 Miss. 156, 158 (1824).

unless “some lasting injury was inflicted, or excessive violence was used only to gratify bad passions.”<sup>167</sup> Further, cases such as *Joyner v. Joyner* demonstrate how courts further recognized a husband’s right to use the necessary degree of force to compel the wife to “behave” and “know her place.”<sup>168</sup>

Courts also co-signed various agreements within marital law, including restrictions on a wife’s right to certain property, ability to enter contracts, or file a lawsuit.<sup>169</sup> Many of these “protections” were set in place with the intent to keep families intact.<sup>170</sup> Consequently, for many years, courts did not feel that the legal system possessed the right to intervene in marital quarrels.<sup>171</sup> Accordingly, domestic violence was overlooked as a personal matter between a man and his wife.<sup>172</sup> Even in the most recent century, domestic violence was still being debated in the legal context as to whether domestic violence could constitute a sufficient justification for divorce.<sup>173</sup>

In the 1970s, the women’s movement illuminated the need for laws to protect women who were being abused.<sup>174</sup> Such a need sparked an advocacy movement.<sup>175</sup> Later in the 1990s, the battered women’s shelter agencies began a powerful call for battered spouse protections.<sup>176</sup>

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167. *See* *State v. Black*, 60 N.C. 262, 264 (1864) (“[Domestic] matters are excluded from the courts, unless there is a permanent injury or excessive violence or cruelty indicating malignity and vindictiveness.”).

168. *See* 59 N.C. 322, 325 (1862) (“The law gives the husband power to use such a degree of force as is necessary to make the wife behave herself and know her place.”).

169. *See, e.g., Erez, supra note 163* (providing examples of several laws which restricted a woman’s legal rights in her marriage).

170. *See id.* (describing the reasoning behind some of the laws which restricted women’s rights).

171. *See id.* (illustrating the common law view of courts to not intervene in familial matters and how such a view plagued the country until the end of the nineteenth century).

172. *See id.* (“Because the wife was viewed as belonging to her husband, what happened between them was regarded as a private matter and was not a concern to the criminal justice system.”).

173. *See id.* (illustrating the more recent battles for women who are fighting against domestic violence in the legal context).

174. *See, e.g., id.* (describing how, prior to the 1970s, domestic violence was not even defined as a crime).

175. *See id.* (explaining why intervention by the criminal justice system was critical for the issue of domestic violence).

176. *See id.* (“The emergence of the battered women shelters movement . . . , together with grass roots advocacy organizations, called for legal and practical solutions to domestic violence victims.”).



During this era, “many jurisdictions began to create specialized domestic violence courts for judges to ensure follow-through on cases, aid domestic violence victims, and hold offenders accountable, with the assistance of justice and social service agencies.”<sup>177</sup> Yet, the formulation of laws remained stifled by perceptions of the public and legal community.<sup>178</sup>

In 1983, a landmark case was determined when Tracy Thurman sued the city of Torrington after her repeated attempts to seek protection from the police department due to her husband’s abuse were ignored.<sup>179</sup> Unfortunately, the police department’s lack of efforts resulted in severe injuries to Thurman inflicted upon her by her husband.<sup>180</sup> Thurman stated she filed a protective order, yet the husband continued to make threats.<sup>181</sup> She also made several attempts to file charges, but the police refused to take her complaints.<sup>182</sup> This resulted in the husband eventually stabbing her twenty-five times—nearly killing her.<sup>183</sup> Even when the ambulance arrived and attempted to render aid, the husband approached the stretcher and threatened her further.<sup>184</sup> Her lawsuit resulted in the City and the Police Department being held liable for violating her civil rights due to their lack in protecting the victim.<sup>185</sup> Ultimately, a federal jury awarded Thurman 2.3 million

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177. NAT’L INST. OF JUST., U.S. DEP’T OF JUST., DOMESTIC VIOLENCE CTS. (July 17, 2019), <https://nij.ojp.gov/domestic-violence-courts> [<https://perma.cc/DW4H-P3EE>].

178. Cf. Jeffrey Fagan, *The Criminalization of Domestic Violence: Promises and Limits*, NAT’L INST. OF JUST. 1, 4 (1995), <https://www.ncjrs.gov/pdffiles/crimdom.pdf> [<https://perma.cc/P2BK-MGJQ>] (describing the trend in legal reform and public contempt for domestic violence).

179. Thurman v. City of Torrington, 595 F. Supp 1521, 1524 (D. Conn.1984).

180. *Id.*

181. *Id.* at 1525.

182. See *id.* at 1524 (“[Over a four-month period,] numerous telephone complaints to the Torrington Police Department were taken . . . in which repeated threats of violence to the plaintiffs by Charles Thurman were reported and his arrest on account of the threats and violation of the terms of his probation was requested.”).

183. *Id.*

184. *Id.* at 1526.

185. See *Officers Must Pay 2.3 Million to Wife Maimed by Husband*, N.Y. TIMES (June 26, 1985), <https://www.nytimes.com/1985/06/26/nyregion/officers-must-pay-2.3-million-to-wife-maimed-by-husband.html> [<https://perma.cc/ZLM5-3PHG>] (reporting that the jury found the police officers guilty of violating Thurman’s Equal Protection rights); see generally Thurman, 595 F. Supp at 1529 (failing to dismiss Tracey Thurman’s case and failing to drop the charges against the police officers).

dollars.<sup>186</sup> This judgment became a landmark case.<sup>187</sup> The outcome led to Governor William A. O’Neill appointing a panel of experts to examine how the state of Connecticut responded to domestic violence.<sup>188</sup> This resulted in Public Act 86-337, known by victim advocates and judges as the “Tracey Thurman Law.”<sup>189</sup>

Despite laws in place to intervene, domestic violence still remains one of the most chronically underreported crimes.<sup>190</sup> As such, data regarding domestic violence resolution only represents reported cases.<sup>191</sup> Even when domestic violence is reported, the risk towards police and first responders increases dramatically.<sup>192</sup> In fact, domestic violence related

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186. See N.Y. TIMES, *supra* note 185 (“A Federal jury awarded \$2.3 million today to a woman who contended that Torrington police officers had violated her rights by failing to protect her from an attack by her estranged husband.”).

187. See Hannah Dellinger, *Domestic Violence Victims No Longer ‘Voices in the Dark’*, AP (Oct. 19, 2018), <https://apnews.com/fe7dd9045a6347d5b78b0e5db25a880c> [<https://perma.cc/PNV5-RTWS>] (honoring *Thurman* as a landmark case because of the effect it had on the perception of domestic violence intervention).

188. See Dirk Johnson, *Abused Women Get Leverage in Connecticut*, N.Y. TIMES 8, 9 (June 15, 1986), <https://www.nytimes.com/1986/06/15/weekinreview/abused-women-get-leverage-in-connecticut.html> [<https://perma.cc/7P62-WLEC>] (explaining the policy changes and funding provided for domestic violence services in Connecticut).

189. See Carolyn Battista, *Family Violence Law Has ‘Growing Pains’ But Is Changing Attitudes*, N.Y. TIMES (Nov. 23, 1986), <https://www.nytimes.com/1986/11/23/nyregion/family-violence-law-has-growing-pains-but-is-changing-attitudes.html> [<https://perma.cc/6V8L-A53X>] (demonstrating how perceptions relating to domestic violence within the household are constantly changing and evolving); see also Josh Kovner & Alaine Griffin, *High-Profile Cases Put Spotlight on Domestic Abuse*, HARTFORD COURANT (Aug. 16, 2009) <https://www.courant.com/news/domestic-violence/hc-domestic-violence-0816.artaug16-story.html> [<https://perma.cc/3VGW-NB66>] (detailing judicial cases that have brought domestic abuse to the spotlight).

190. See, e.g., BUREAU JUST. STAT., DEP’T OF JUST., CRIMINAL VICTIMIZATION IN THE UNITED STATES, 2006 STATISTICAL TABLES (Aug. 2008), <https://www.bjs.gov/content/pub/pdf/cvus06.pdf> [<https://perma.cc/8TNR-E36B>] (stating that nearly half of domestic violence calls are not responded to by the police).

191. See ANDREW KLEIN, NAT’L INST. OF JUST., U.S. DEP’T OF JUST., PRACTICAL IMPLICATIONS OF CURRENT DOMESTIC VIOLENCE RESEARCH: FOR LAW ENFORCEMENT, PROSECUTORS, AND JUDGES (June 2009), <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf> [<https://perma.cc/TDZ6-BAGV>] (describing the reasons for flawed data relating to domestic violence).

192. See NICK BREUL & MIKE KEITH, U.S. DEP’T OF JUST., COMMUNITY ORIENTED POLICING SERV., DEADLY CALLS AND FATAL ENCOUNTERS: ANALYSIS OF US LAW ENFORCEMENT LINE OF DUTY DEATHS WHEN OFFICERS RESPONDED TO DISPATCHED CALLS FOR SERVICE AND CONDUCTED ENFORCEMENT (2010-2014) at 4 (2015), <https://www.nationalpublicsafetypartnership.org/clearinghouse/Content/ResourceDocuments/Deadly%20Calls%20and%20Fatal%20Encounters.pdf> [<https://perma.cc/9BY9-RFXR>] (“[C]alls related to domestic disputes and

police calls have been found to constitute the single largest category of calls received by police, accounting for 15–50+% of all calls.<sup>193</sup> From 2010 to 2014, 22% of law enforcement officers' "line of duty" deaths occurred while responding to a call involving a domestic dispute.<sup>194</sup> In an effort to protect all affected parties, courts are in a unique position to provide better safety measures.<sup>195</sup>

Court systems should familiarize themselves—not only with the level of risk but also with secondary factors that attribute to re-offense.<sup>196</sup> As such, careful consideration of each case should warrant the amount of supervision and accountability to ensure public and victim safety.<sup>197</sup> This is true especially once the protective order is initiated.<sup>198</sup> Research shows more than two-thirds of the restraining orders against intimate partners were violated.<sup>199</sup> Further, there is a 21% chance that violent behavior will escalate after a protective order is issued.<sup>200</sup> For such cases, protective orders should bring a sense of relief rather than create a sense of urgency and alarm.<sup>201</sup> Because violence is likely to occur post-

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domestic-related incidents represented the highest number of fatal types of calls for service and were also the underlying cause of law enforcement fatalities for several other calls for service").

193. PAUL C. FRIDAY ET AL., NAT'L INS. OF JUST., EVALUATING THE IMPACT OF A SPECIALIZED DOMESTIC VIOLENCE POLICE UNIT 9 (Oct. 2006), <https://www.ncjrs.gov/pdffiles1/nij/grants/215916.pdf> [<https://perma.cc/JA9Z-DS97>].

194. See BREUL & KEITH, *supra* note 192 ("The analysis of calls for service that were classified as Domestic Dispute accounted for . . . 22%, that resulted in an officer fatality.").

195. See MELISSA LABRIOLA ET AL., NAT'L INST. OF JUST., U.S. DEP'T OF JUST., A NATIONAL PORTRAIT OF DOMESTIC VIOLENCE COURTS 79 (Dec. 2009), <https://www.ncjrs.gov/pdffiles1/nij/grants/229659.pdf> [<https://perma.cc/MP5V-LL3W>] (discussing the numerous social and legal efforts by domestic violence courts).

196. See KLEIN, *supra* note 191 at 16–17 (providing the factors associated with repeat offenders); see also LABRIOLA ET AL., *supra* note 195 at 53 (presenting findings related to the risks of re-offending).

197. See LABRIOLA ET AL., *supra* note 195 at 30–31 (explaining the factors domestic violence courts take into account when evaluating cases).

198. See *id.* at 50–51 (stating domestic violence courts' goal to increase the safety of victims); see also Brian H. Spitz, *The Tactical Topography of Stalking Victimization and Management*, 3 TRAUMA, VIOLENCE & ABUSE 261, 276 (2002) ("Threat management experts are often suspicious of restraining orders . . . suspecting . . . that such actions may escalate or enrage the stalkers.").

199. Brian H. Spitz, *supra* note 198 at 275.

200. See *id.* at 276–77 (approximating the likelihood of escalation from eight independent studies).

201. See *id.* at 275–76 (indicating the subjects of a protective order violate it 40% of the time, creates escalation of violence or stalking 21% of the time, and that 23% of women seeking an order expect retaliation and an increase in the level of violence).

court intervention, determining the risk of further abuse should be assessment-driven.<sup>202</sup> Further, assessments should be conducted to determine whether substance abuse, trauma, or both is prevalent in the defendant's case.<sup>203</sup> The two most common therapeutic interventions ordered by domestic violence courts are 1) anger management and 2) Batterer Intervention Prevention Programs (BIPP).<sup>204</sup> While evidence supports the fidelity and strength of BIPPs, anger management is not an effective intervention for defendants with trauma history.<sup>205</sup> If violent actions are an individual's response to trauma-induced hypervigilance, then traditional anger management strategies will not work.<sup>206</sup> An anger management participant once stated, "[a]nger management works unless you are *truly* angry."<sup>207</sup> Court systems are also likely to order defendants to a substance abuse treatment program.<sup>208</sup> However, judges are not as

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202. See *id.* at 278 (claiming protective orders may enrage or escalate the risk to the victim and should only be granted after careful consideration of the case's circumstances); see also Janice Roehl et al., *Intimate Partner Violence Risk Assessment Validation Study, Final Report* 82 (Mar. 28, 2005) (unpublished research report), <https://www.ncjrs.gov/pdffiles1/nij/grants/209731.pdf> [perma.cc/6ZKS-72ZM] (finding that risk assessment instruments and methods are reasonably effective in predicting domestic violence and subsequent assaults but also identifying the need for a combination of instruments, formal methods, and expert judgments to achieve an acceptable level of reliability).

203. See Vittoria Ardino et al., *PTSD and Re-Offending Risk: The Mediating Role of Worry and a Negative Perception of Other People's Support*, 4 EUR. J. PSYCHOTRAUMATOLOGY 1 (2013) (assessing seventy-five prisoners convicted of medium to serious violent offenses and finding a strong association between PTSD symptoms and the risk of re-offending); see also KLEIN, *supra* note 191 at 23 ("Acute and chronic alcohol and drug use are well-established risk factors for reabuse as well as domestic violence in general.").

204. See KLEIN, *supra* note 191 at 46 (describing a study of domestic violence arrests in which about half of the perpetrators were ordered into either anger management or batterer programs).

205. See *id.* at 66, 68 (asserting that abusers "who completed anger management programs recidivated at higher rates than those who completed batterer programs," who "reduced their risk of reassault in a range of 46 to 66 percent").

206. See Matthew Tull, *Hypervigilance with PTSD and Other Anxiety Disorders*, VERYWELL MIND, <https://www.verywellmind.com/hypervigilance-2797363> [https://perma.cc/DJW2-Z2NP] (describing hypervigilance as an anxiety disorder where the person is in a state of extreme alertness, constantly on guard, and prone to overreaction).

207. See Rajiv Desai, *The Anger*, <http://drrajivdesaimd.com/2011/07/17/the-anger/> [https://perma.cc/A2M7-WGAU] (claiming anger management is unsuccessful for individuals with problem anger because it treats problem anger "as an extreme or uncontrolled version of ordinary anger," rather than an unconscious, habitual behavior).

208. Cf. Koetzle et al., *supra* note 20 at 451 (discussing the increasing number of policies implemented by state legislatures mandating substance abuse treatment for non-violent drug offenders).

well versed in determining the appropriate level of care for persons with addiction.<sup>209</sup> Assessments, such as the Addiction Severity Index-Lite and the Substance Abuse Subtle Screening Inventory (SASSI), are helpful in making this determination; however, they require a skilled clinician.<sup>210</sup>

In order to develop the most effective program for the rehabilitation of battering behaviors, courts should utilize a “wraparound form” of service delivery.<sup>211</sup> In determining the necessary programs, attention should be paid to the following issues: 1) risk level of re-offense, 2) substance abuse issues, 3) trauma treatment, and 4) economic and educational needs.<sup>212</sup> Therefore, the authors suggest the Drug Court Model as an effective modality—when combining the legal and therapeutic professionals.<sup>213</sup>

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209. See COUNCIL ST. GOV'TS JUST. CTR., PRACTICAL CONSIDERATIONS RELATED TO RELEASE AND SENTENCING FOR DEFENDANTS WHO HAVE BEHAVIORAL HEALTH NEEDS: A JUDICIAL GUIDE 3 (Nov. 2017) [https://csgjusticecenter.org/wp-content/uploads/2020/02/11.15.17\\_Practical-Considerations-Related-to-Release-and-Sentencing-for-Defendants-Who-Have-Behavioral-Health-Needs.pdf](https://csgjusticecenter.org/wp-content/uploads/2020/02/11.15.17_Practical-Considerations-Related-to-Release-and-Sentencing-for-Defendants-Who-Have-Behavioral-Health-Needs.pdf) [<https://perma.cc/WQS8-WEY2>] (“[Judges] often struggle with not having enough information to help guide their decision making. Judges rarely have information about defendants’ specific behavioral health needs and may also be unaware of the treatment resources that are available in the community.”).

210. See *id.* at 7 (emphasizing assessments administered by trained clinicians are helpful in determining proper treatment and relieve judges of the burden of making the decision with inadequate information available); John S. Cacciola et al., *Initial Evidence for the Reliability and Validity of a “Lite” Version of the Addiction Severity Index*, 87 DRUG & ALCOHOL DEPENDENCE 297, 301 (2007) (asserting that the Addiction Severity Index-Lite, an abbreviated version of the latest version of the Addiction Severity Index, is highly reliable and widely relied upon by researchers and clinicians); see also John M. Laux et al., *Assessing the Accuracy of the Substance Abuse Subtle Screening Inventory-3 Using DSM-5 Criteria*, 6 PROF. COUNS. 121, 122 (2016) (reporting that certified professionals frequently use the SASSI with individuals who deny substance abuse).

211. See WHITE HOUSE, 1 IS 2 MANY: TWENTY YEARS FIGHTING VIOLENCE AGAINST WOMEN AND GIRLS 38, 74, 81, 108, 120 (Sept. 2014) <https://obamawhitehouse.archives.gov/1is2many> [<https://perma.cc/A3X4-R79K>] (providing a brief summary on how the Violence Against Women Act has driven change across the nation—including the use of wraparound services across five states).

212. See KLEIN, *supra* note 191 at 20, 25 (contending that there is an increased risk associated with individuals who are economically disadvantaged, chronically use alcohol and drugs, and have already committed an offense); see also Peggy Fulton Hora & Theodore Stalcup, *Drug Treatment Courts in the Twenty-First Century: The Evolution of the Revolution in Problem-Solving Courts*, 42 GA. L. REV. 717, 744 (2008) (stating that the first choice to use alcohol or drugs, socioeconomic status, and a history of abuse are among the significant factors that contribute to ongoing drug addiction).

213. See Xiaohan Mei et al., *Collaboration: A Mechanism of Drug Court Model Adherence*, 49 J. OF DRUG ISSUES 253, 255 (2019) (“[Drug courts] rel[y] on a collaborative approach to

These professionals can work in conjunction to rehabilitate while also providing resources to the victims and families.<sup>214</sup> Section III describes the Drug Court Model and the House Bill which came into law in San Antonio, Texas for domestic violence court.<sup>215</sup>

## II. DRUG COURT MODEL: AN EFFECTIVE INTERVENTION

The first drug court was created in 1998 in Dade County by then-Associate Chief Judge Herbert Klein who took leadership of the project.<sup>216</sup> At the time, Judge Klein saw drug court as a remedy for the oversaturation of incarcerated offenders with drug-related charges.<sup>217</sup> Drug court is designed for creating effective punishment, treatment, and support for offenders with drug charges.<sup>218</sup> It seeks to eliminate barriers to more complex service delivery, such as drug and alcohol treatment, education, and psychoeducational needs.<sup>219</sup> Support beyond criminogenic needs is addressed through a multi-disciplinary team

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generate positive outcomes and behavioral change by combining efforts with other agencies such as public health, social services, and education.”); *cf.* BUREAU JUST. ASSISTANCE, U.S. DEP’T OF JUST., DEFINING DRUG COURTS: THE KEY COMPONENTS 1 (Oct. 2004) <https://www.ncjrs.gov/pdffiles1/bja/205621.pdf> [<https://perma.cc/4FJV-LVSW>] (suggesting drug courts require a team approach and the combined energies of all professions involved will aid offenders).

214. *See* COUNCIL ST. GOV’TS JUST. CTR., *supra* note 209 at 10 (“Over time, these collaborative relationships should result in more efficient referrals of defendants to community-based treatment, and decrease case processing time within the court setting.”); Hora & Stalcup, *supra* note 212 at 727 (quoting William H. Simon, *Criminal Defenders and Community Justice: The Drug Court Example*, 40 AM. CRIM. L. REV. 1595, 1596 (2003)) (“The primary goal of the drug treatment court is finding solutions that will be ‘mutually beneficial to the defendant, the larger community, and . . . [the] victims.’”).

215. Tex. Gov’t Code Ann. § 509.018; *see generally* BUREAU JUST. ASSISTANCE, *supra* note 213 at 1–24 (detailing the ten key components of adult drug courts).

216. Koetzle et al., *supra* note 20.

217. *Id.* at 450.

218. *See* BUREAU JUST. ASSISTANCE, *supra* note 213 (understanding that “[d]rug courts usually employ a multiphased treatment process, generally divided into a stabilization phase, an intensive treatment phase, and a transition phase”); *cf.* Koetzle et al., *supra* note 20 at 450 (noting the success of drug courts in reducing recidivism, drug use, and criminal behavior and increasing employment or educational attainment in offenders); Mei et al., *supra* note 213 at 254 (stating that collaboration amongst criminal justice and social service professionals is crucial in the success of drug courts).

219. Mei et al., *supra* note 213; *see* BUREAU JUST. ASSISTANCE, *supra* note 213 at 7 (“Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.”).

approach.<sup>220</sup> The Drug Court Model operates from an evidenced-based set of strategies known as the ten key components for adult drug courts.<sup>221</sup>

The ten key components guide drug court fidelity and operations.<sup>222</sup> Notably, in 1997, the National Association of Drug Court Professionals (NADCP) articulated the ten key components.<sup>223</sup> Under the first key component, the criminal justice system should be focused on effective treatment and rehabilitation—rather than punishment and incarceration.<sup>224</sup> The second component, which contemplates a non-adversarial approach, directs prosecution and defense counsel to serve under a team approach.<sup>225</sup> Under the third component, assessment and screening tools are utilized to determine eligibility for enrollment in a drug court.<sup>226</sup> While substance use is the criteria to determine whether screening occurs, evidenced-based assessments are conducted to diagnose substance use disorders.<sup>227</sup> If the assessment outcome proves that the individual meets the criteria for a moderate to severe substance use disorder, he or she is then referred to a drug court program.<sup>228</sup>

Pursuant to the fourth component, once an individual is enrolled, the participant receives a “wraparound” model of service delivery with abstinence from all substances as one of the primary goals.<sup>229</sup> If an individual needs medical attention to monitor withdrawing from substances, then they are referred to a treatment provider.<sup>230</sup> With this

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220. See BUREAU JUST. ASSISTANCE, *supra* note 213 (listing common members of a multi-disciplinary team in a drug court).

221. See *generally id.* (listing and dissecting the ten key components which are typically examined in adult drug courts).

222. See *generally id.* at 23 (describing several factors that provide guidance and direction to the drug court program).

223. See *generally id.* (elaborating on the specific details of each of the ten key components of adult drug courts).

224. See *id.* (articulating a drug court’s alternative approaches to punishment and incarceration for drug offenders).

225. *Id.* at 3.

226. See *id.* at 5 (explaining when screening takes place and who conducts such a screening).

227. See *id.* (describing specific types of issues to be screened by trained professionals).

228. See *id.* (explaining how quickly an assessment and—depending on the results—placement into a drug program takes place).

229. See *id.* at 13 (“Abstinence and public safety are the ultimate goals of drug courts . . .”).

230. See *id.* at 19 (listing numerous medical services, such as detoxification).

group, learning to refrain from violent and threatening behavior is also paramount to moving towards recovery.<sup>231</sup> Following the language of the fifth component, abstinence from all substances is monitored by frequent drug testing.<sup>232</sup> Urine analysis (UA) drug screens are conducted by various team members—including pretrial officers, treatment providers, and the court itself.<sup>233</sup> Under the sixth component, a coordinated, intentionally graduated continuum of treatment occurs in accordance with the compliance of the participant.<sup>234</sup> Graduation to various levels may occur based on sanctions or incentives.<sup>235</sup> Sanctions for noncompliant behavior include, but are not limited to, essay writing, days or weekends in jail, and more stringent requirements for supervision and oversight.<sup>236</sup> Incentives can include, but are not limited to, reduced number of appointments with a pretrial officer, fewer UA tests, and decreased court appearances.<sup>237</sup>

According to the seventh component, the judicial supervision of participants is structured, intense, and ongoing.<sup>238</sup> Participants must appear for monthly status hearings with the judge.<sup>239</sup> The judge will determine the length and frequency of supervision based on participant compliance with program requirements.<sup>240</sup> Pursuant to the eighth component, program evaluation is essential to ensuring the process and outcomes.<sup>241</sup> Hence, third party independent evaluators assess outcomes

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231. *See id.* at 7 (naming several facets of an individual's life that are large predictors of recovery, known as co-occurring problems).

232. *Id.* at 11.

233. *See id.* (explaining the urinalysis procedure within the adult drug courts).

234. *Id.* at 13–14.

235. *See id.* at 15 (providing the different factors that can motivate individuals to graduate from an adult drug court program).

236. *See id.* at 14 (listing several responses to or sanctions for noncompliance with a drug court program).

237. *See id.* (elaborating on responses and incentives for compliance with a drug court program).

238. *See id.* at 15 (“The judge is the leader of the drug court team, linking participants to [Alcohol and Other Drugs] treatment and to the criminal justice system. This active, supervising relationship, maintained throughout treatment, increases the likelihood that a participant will remain in treatment and improves the chances for sobriety and law-abiding behavior.”).

239. *Id.*

240. *Id.*

241. BUREAU JUST. ASSISTANCE, U.S. DEP'T OF JUST., DEFINING DRUG COURTS: THE KEY 17 (Oct. 2004).



and make recommendations for continuous improvement.<sup>242</sup> Component nine requires weekly staff meetings to be held in order to ensure the receipt of interdisciplinary education.<sup>243</sup> And finally, under component ten, the drug court develops partnerships with various community-based organizations to ensure the quality of treatment for participants.<sup>244</sup>

The primary purpose of drug courts is to act as a problem-solving court—namely, to reduce drug use and reduce recidivism.<sup>245</sup> Drug courts use a therapeutic approach rather than a punitive approach to resolving these issues.<sup>246</sup> Using a “court-centered, rehabilitative treatment paradigm,”<sup>247</sup> court systems can provide access to services essentially aimed towards abstinence and rehabilitation of target behaviors.<sup>248</sup> Through assessment-driven inquiry, courts are able to identify individuals who meet the criteria for moderate to severe substance use disorders.<sup>249</sup> Once the individual “accepts the diversion program, they consent to a guilty plea, agree to remain drug-free, participate in mandatory drug testing, adhere to treatment recommendations, and report to drug court at least biweekly for supervision.”<sup>250</sup>

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242. *See id.* at 17, 18 (signifying the importance of neutral independent evaluators who can evaluate the progress of individuals).

243. *See id.* at 21 (identifying the benefits of interdisciplinary education in order to effectuate successful drug court standards).

244. *See id.* at 23 (“Because of its unique position in the criminal justice system, a drug court is especially well suited to develop coalitions among private community-based organizations, public criminal justice agencies, and [Alcohol and Other Drugs] treatment delivery systems.”).

245. *See* Mei et al., *supra* note 213 (providing the primary goals of drug courts).

246. *See id.* at 254, 256, 266 (“Compared with traditional punitive court, we have invested and will continue to invest significant amounts . . . hoping they could reduce recidivism and illicit drug use.”).

247. *See* John R. Gallagher, *A Behind-the-Scenes Perspective on the Key Components of Drug Court: A Narrative Analysis*, 29 J. HUM. BEHAV. SOC. ENV'T. 909, 910 (2019) (“By accepting this diversion, drug court participants agreed to plead guilty, remain drug-free, participate in periodic drug testing, follow treatment recommendations, and report to drug court for supervision.”).

248. *See id.* at 917 (emphasizing the important effects of internal abstinence motivation factors as opposed to the external factor of avoiding incarceration).

249. *See* BUREAU JUST. ASSISTANCE, *supra* note 213 at 5 (addressing the eligibility requirements for drug court programs).

250. Gallagher, *supra* note 247; *see* David Wexler, J.D., *Therapeutic Jurisprudence in a Comparative Law Context*, 15 BEHAV. SCI. L., 233, 237 (1997) (advocating the more flushed out therapeutic jurisprudence).

Typical reports of drug court outcomes show approximate recidivism rates at 32% for drug court graduates—compared to 48–55% among comparison groups.<sup>251</sup> Overall, the benefits of drug courts have been documented in several journals.<sup>252</sup> First, drug court reduces the high levels of incarceration and overcrowding in prisons across the country.<sup>253</sup> Second, drug courts are more cost-effective for counties than incarceration.<sup>254</sup> Finally, drug courts show promising results in the number of individuals who remain abstinent from substances after graduation.<sup>255</sup> Current literature demonstrates how drug courts work successfully with various populations—including veterans, driving while intoxicated (DWI) offenders, juveniles, individuals who engage in prostitution, and felonious offenders.<sup>256</sup> Further, research shows high-risk offenders with greater needs also show improvement with drug court accountability and supervision.<sup>257</sup>

#### A. *Creating a Domestic Violence Drug Court in Bexar County*

Although several programs exist across the United States, little empirical data has been published on the effectiveness of the Drug Court Model with domestic violence.<sup>258</sup> Currently, there are over 400

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251. Gallagher, *supra* note 247; see John S. Goldkamp, *Miami's Treatment Drug Court for Felony Defendants: Some Implications of Assessment Findings*, 74 PRISON J. 110, 138 (1994) (utilizing other sources of data to accurately predict recidivism rates in drug courts).

252. See, e.g., Gallagher, *supra* note 247 at 918 (summarizing the high value in treating those who abuse substances via drug court programs); accord Koetzle et al., *supra* note 20 at 451 (prioritizing treatment over punitive adjudication); Mei et al., *supra* note 213 at 268 (“[D]rug court is one of the most promising and effective justice interventions that can rehabilitate drug offenders.”).

253. See Ellen L. Wolfe et al., *Perspectives on the Drug Court Model Across Systems: A Process Evaluation*, 36 J. PSYCHOACTIVE DRUGS 379, 385 (2004) (alleviating the pressure on the prison system by providing a creative alternative to combating drug abuse problems).

254. See Koetzle et al., *supra* note 20 at 451 (demanding alternatives to prisons because of diminishing state budgets for correctional facilities).

255. See Gallagher, *supra* note 247 at 917 (attributing graduates' abstinence to their newfound internal motivation after receiving treatment as opposed to incarceration).

256. See Goldkamp, *supra* note 251 at 119 (determining certain traits that identify individuals at risk for drug abuse).

257. JAMES BONTA & DONALD A. ANDREWS, *THE PSYCHOLOGY OF CRIMINAL CONDUCT* 169–70 (6th ed., Routledge 2017); see Gallagher, *supra* note 247 at 917 (reporting frequent drug testing as an important deterrent from relapse).

258. See Wolfe et al., *supra* note 253 at 380, 385 (suggesting the need for more targeted research on the effect of drug courts generally and among different groups).

domestic violence drug courts in the United States.<sup>259</sup> However, in Bexar County, a domestic violence drug court did not exist.<sup>260</sup> This was surprising, given that Bexar County shows the highest number of fatalities in the state of Texas (twenty-eight deaths in 2018; an increase of 54% over the previous two years) and ranks in the top ten in the country for intimate partner homicide (IPH) deaths.<sup>261</sup>

Within the past five years, San Antonio experienced an upsurge in numbers of IPH deaths—five women were murdered in 2014, nine in 2015, eleven in 2016, eighteen in 2017, and twenty-eight in 2018.<sup>262</sup> Multiple media sources have labeled Bexar County as “one of the deadliest counties in Texas for domestic violence.”<sup>263</sup> In 2017, nine of the eleven women who died due to domestic violence were murdered by gunfire.<sup>264</sup> Two of the women were pregnant at the time of their

259. See Catherine Shaffer, *Therapeutic Domestic Violence Courts: An Efficient Approach to Adjudication?*, 27 SEA. U.L. REV. 981, 987, 990 (2004) (documenting the success of the therapeutic model for drug courts as a possible remedy for domestic violence).

260. Cf. Courtney Friedman, *Bexar County to Have First Domestic Violence Drug Court in Texas for Offenders*, KSAT (June 18, 2019), <https://www.ksat.com/news/domestic-violence/bexar-co-to-have-first-domestic-violence-drug-court-in-the-state-for-offenders> [<https://perma.cc/RW69-3K4Q>] (reporting the emergence of the first domestic violence drug court in Bexar County due to rising support and fundraising to combat abuse).

261. David Caltabiano, *Domestic Violence Survivor Fighting to be More Than a Statistic*, NEWS 4 SA (Oct. 18, 2018), <https://news4sanantonio.com/news/local/domestic-violence-survivor-fighting-to-be-more-than-a-statistic> [<https://perma.cc/A7WD-AT6M>].

262. TEX. COUNS. ON FAM. VIOLENCE, HONORING TEXAS VICTIMS: FAMILY VIOLENCE FATALITIES IN 2017 at 14–15 (2017), [http://tcfv.org/wp-content/uploads/2019/02/2017HTV\\_Full\\_Report\\_PROOF3\\_8.5x11.pdf](http://tcfv.org/wp-content/uploads/2019/02/2017HTV_Full_Report_PROOF3_8.5x11.pdf) [<https://perma.cc/8QFV-7E2U>].

263. See Emilie Eaton, *Bexar County Has One of the Highest Numbers of Domestic Violence Homicides*, MYSA (Oct. 21, 2017, 11:30 AM) <https://www.mysanantonio.com/news/local/article/Bexar-County-has-one-of-the-highest-numbers-of-12295076.php> [<https://perma.cc/FDA7-L5NW>] (describing the record-breaking increase in murdered women in San Antonio and the Bexar County area); see also Courtney Friedman, *22 Domestic Violence Deaths in 2018; SA Record Highest in the State*, KSAT12 (Oct. 3, 2018, 7:25 PM), <https://www.ksat.com/news/domestic-violence/22-domestic-violence-deaths-in-2018-sa-record-and-highest-in-the-state> [<https://perma.cc/DA45-7YRM>] (discussing that by October 2018, San Antonio had the highest number of domestic violence deaths year to date); Stephanie Serma, *Local Group Rallies to End Domestic Violence in Light of Recent Murder*, KSAT12 (Apr. 8, 2019, 6:33 PM), <https://www.ksat.com/news/local-group-rallies-to-end-domestic-violence-in-light-of-recent-murder> [[perma.cc/HN7S-ZF4F](https://perma.cc/HN7S-ZF4F)]; Alex Zielinski, *Bexar Named One of the Deadliest Counties in Texas for Domestic Violence*, SAN ANTONIO CURRENT (Oct. 23, 2017), <https://www.sacurrent.com/the-daily/archives/2017/10/23/bexar-one-of-deadliestcounties-in-texas-for-domestic-violence> [<https://perma.cc/224A-D9WK>] (citing a report from the Texas Council on Family Violence naming Bexar County as one of the deadliest counties in Texas for domestic violence).

264. Zielinski, *supra* note 263.

death.<sup>265</sup> In 2019, fifteen women have been killed by intimate partners.<sup>266</sup> Despite efforts by the city of San Antonio to reduce domestic violence, the number of cases continues to escalate—from 10,648 cases in 2010 to 11,466 cases in 2017.<sup>267</sup>

In 2002, Judge Alfonso Alonso created the first drug court serving the greater metropolitan city of San Antonio.<sup>268</sup> Subsequently, approximately fourteen drug courts were created for various needs such as misdemeanor drug court, felony drug court, adult drug court, DWI court, juvenile drug court, mental health court, prostitution drug court, veterans' drug court, etc.<sup>269</sup> However, one primary criteria for eligibility is no violent charges, which automatically denies enrollment for domestic violence offenders.<sup>270</sup> Domestic violence is typically grouped with other violent offenses—where the public perception is that they should be detained.<sup>271</sup> Yet, despite frequent incarceration, domestic violence is still increasing in Bexar County.<sup>272</sup> Further, failing to address certain criminogenic variables (such as substance abuse or past trauma) does not reduce the likelihood that an offender will refrain from future

265. *Id.*

266. See CITY OF SAN ANTONIO, COMPREHENSIVE DOMESTIC VIOLENCE PLAN (2019), [https://www.sanantonio.gov/Portals/0/Files/NewsReleases/LoveIs\\_COMP%20PLAN\\_FINAL\[2\].pdf?ver=2019-10-30-133905-743](https://www.sanantonio.gov/Portals/0/Files/NewsReleases/LoveIs_COMP%20PLAN_FINAL[2].pdf?ver=2019-10-30-133905-743) [<https://perma.cc/N2S5-UU47>] (providing a year to date screenshot at domestic violence as of July 2019).

267. See 2018 Impact Report, SA2020, <https://report.sa2020.org/community-safety/> [<https://perma.cc/9QQ2-6EFY>] (reporting an increase in domestic violence from 2010 to 2017).

268. See Judge Al Alonso Honored September 26 with Portrait Unveiling in County Court I, SAN ANTONIO BAR ASS'N (Sept. 30, 2019), <https://sanantoniobar.org/index.cfm?pg=Blog&blAction=showEntry&blogEntry=8729> [<https://perma.cc/UFB4-RNAZ>] (reporting an increase in domestic violence from 2010 to 2017).

269. See OFF. TEX. GOVERNOR, TEX. SPECIALTY COURTS (July 16, 2019), <https://gov.texas.gov/uploads/files/organization/criminal-justice/Specialty-Courts-By-County.pdf> [<https://perma.cc/368B-A4HJ>] (including Bexar County in a statewide listing of specialty courts); see also SAN ANTONIO BAR ASS'N, *supra* note 268 (attributing Judge Alonso's efforts as the reason drug courts continue to thrive in Bexar County).

270. See *Bexar County Adult Drug Court*, BEXAR, <https://www.bexar.org/1994/Bexar-County-Adult-Drug-Court> [<https://perma.cc/K823-YVZD>] (listing the disqualifiers for the adult drug court program).

271. See CITY OF SAN ANTONIO, *supra* note 266 (describing the wide range of reactions to domestic violence).

272. See SA2020, *supra* note 267 (reporting data that supports the increase of domestic violence in Bexar County).

violent behavior.<sup>273</sup>

Given the overwhelming number of deaths in Bexar County, the authors attempted to remedy this issue by creating the Domestic Violence Therapeutic Drug Court Program.<sup>274</sup> The primary drive behind implementation of drug courts is they are proven to be effective.<sup>275</sup> Despite having fourteen existing drug courts, violent offenders were ineligible for the programs due to the nature of their offense.<sup>276</sup> Most therapeutic courts' eligibility standards require that there be "no history of violent offenses."<sup>277</sup> The authors wrote a proposal and searched out multiple funding sources, only to discover the following challenges: 1) several funding Requests for Application (RFAs) did not allow funds to be allocated for violent offenders, and 2) federal funding agencies required the drug court to be already established *prior to* applying for funding. Available grants were already awarded to other drug courts within the county—making the current request ineligible.<sup>278</sup>

Therefore, the authors sought out to create the program by appealing to the 86th Legislature in Texas.<sup>279</sup> The authors, Judge Rosie Speedlin

273. See CITY OF SAN ANTONIO, *supra* note 266 (describing the limitations of criminal justice-based strategies).

274. See Friedman, *supra* note 263 (reporting Judge Rosie Speedlin Gonzalez as forming a team to raise funding for the new drug court).

275. See Jessie Degollado, *Felony Drug Court Graduates Defeat Their Demons*, KSAT12 (Oct. 5, 2018, 7:22 PM), <https://www.ksat.com/news/felony-drug-court-graduates-defeat-their-demons> [<https://perma.cc/96L5-VXT2>] (celebrating the success of the drug court program in Bexar County).

276. See OFF. TEX. GOVERNOR, *supra* note 269 (listing the number of alternative courts in Bexar County as of 2019); see also BEXAR, *supra* note 270 (outlining disqualifications of the current drug court program).

277. See BEXAR COUNTY DWI CT., BEXAR, <https://www.bexar.org/1088/DWI-Court> [<https://perma.cc/T6TA-BXBQ>] [hereinafter *Bexar DWI Court*] (listing violent offenders as ineligible for DWI court); see also MENTAL HEALTH CT., BEXAR, <https://www.bexar.org/1991/Mental-Health-Court> [<https://perma.cc/3SX6-X7LH>] [hereinafter *Bexar Mental Health Court*] (excluding individuals with active felonies from Mental Health Court).

278. See Sanford Nowlin, *Bexar Judge Rosie Gonzalez Launches Effort to Fund Court Focused on Reducing Domestic Violence*, SAN ANTONIO CURRENT (July 29, 2019, 1:40 PM), <https://www.sacurrent.com/the-daily/archives/2019/07/29/bexar-judge-rosie-gonzalez-launches-effort-to-fund-court-focused-on-reducing-domestic-violence> [<https://perma.cc/X6T8-W2P8>] (reporting that the Governor signed the Bill into law but simultaneously denied funding).

279. See Jade Esteban Estrada, *Bexar County Judge Rosie Speedlin Gonzalez – is Holding – and Improving – Court*, SAN ANTONIO CURRENT (Sept. 13, 2019, 9:13 AM), <https://www.sacurrent.com/the-daily/archives/2019/09/13/bexar-county-judge-rosie-speedlin->

Gonzalez and Dr. Stacy Speedlin Gonzalez, met with State Representative Roland Gutierrez and requested to have a bill filed regarding the allowance of the pilot drug court program, with the support of the Texas Criminal Justice Coalition.<sup>280</sup> Additionally, they requested a rider to appropriations be submitted, requesting funds be allocated for the startup of this pilot program.<sup>281</sup> The next section provides the information detailing the bill and rider—known as Texas House Bill 3529 (HB 3529).<sup>282</sup>

*B. HB 3529: Changing the Law for Violent Offenders*

HB 3529 reads as follows: “[an] act relating to the creation of a family violence pretrial diversion pilot program in Bexar County.”<sup>283</sup> To reduce rates of family violence recidivism, the Community Justice Assistance Division (CJAD), the probation arm of the Texas Department of Criminal Justice, must collaborate with judges in Bexar County to establish a family violence pretrial diversion pilot program—where participants must be charged with a family violence offense and meet the assessment criteria for substance use disorder.<sup>284</sup>

The pilot program must include:

- 1) assessment instruments to accurately analyze the needs of participants;
- 2) a comprehensive substance abuse disorder and chemical dependency treatment program which includes case managers, clinicians, peer mentors, or recovery coaches; 3) a procedure (in collaboration with law enforcement agencies) to rapidly respond to participants who fail to comply with requirements, including immediate removal from the pilot program when appropriate; and 4) the use of a video conferencing system in court to

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gonzalez-is-holding-and-improving-court [<https://perma.cc/DW94-GP7R>] (noting Judge Speedlin Gonzalez’s role in creating the pilot program and obtaining its approval by Governor Greg Abbott).

280. See Nowlin, *supra* note 278 (describing Judge Speedlin Gonzalez’s efforts to secure funding).

281. See generally U.S. SENATE, GLOSSARY TERM, [https://www.senate.gov/reference/glossary\\_term/rider.htm](https://www.senate.gov/reference/glossary_term/rider.htm) [<https://perma.cc/PC3Z-3YJ9>] (explaining the definition of a rider and its use to amend a bill in order to provide additional funding).

282. H.B. 3529, 86th Leg., Reg. Sess. (Tex. 2019).

283. *Id.*

284. See TEX. CRIM. JUST. COAL., 2019 LEGISLATION: SAFE DIVERSIONS FROM INCARCERATION & SUPPORT FOR COMMUNITY-BASED SUBSTANCE USE AND MENTAL HEALTH TREATMENT (2019), <https://www.texascjc.org/2019-legislation-safe-diversions-incarceration-support-community-based-substance-use-and-mental> [<https://perma.cc/WH92-6HKG>] (describing the unique powers and roles of the Community Justice Assistance Division).

facilitate the cooperation of witnesses in the justice system and to reduce costs associated with transporting defendants.<sup>285</sup>

Biennially, CJAD must review the pilot program and submit a report to the legislature including a summary of the status and results of the program, an analysis of the effectiveness of the program in reducing the rate of family violence recidivism among participants, sources of funding available to extend the pilot program to other counties or for a longer period of time, and any legislative or other recommendations.<sup>286</sup> This pilot program expires in September 2023.<sup>287</sup>

After passing both the Texas House and Senate, HB 3529 was signed into law by Governor Greg Abbott on June 10, 2019, and became effective immediately.<sup>288</sup> The law was mandated without funding; therefore, the burden of seeking funding to support the pilot program persists.<sup>289</sup> The rider to the appropriations was submitted as a support bill; however, the rider was filed under Article 9.<sup>290</sup> Article 9 is known throughout lobbyists as the “wish list” and is typically not viewed as a priority expense.<sup>291</sup> This resulted in the authors seeking out funding sources at the local level—particularly the private sector.<sup>292</sup>

### III. DISCUSSION

The passage of HB 3529 is only the beginning.<sup>293</sup> More work must be done in order to resolve the complicated issues of domestic

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285. *Id.*

286. *Id.*

287. *Id.*

288. *See generally* TEX. LEG. ONLINE, HISTORY (2019), <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=HB3529> [https://perma.cc/R9XV-CCV8] (providing the details and history of HB 3529).

289. *See id.* (indicating a lack of funding within HB 3529's history).

290. 86th LEG. STATE BUDGET – ITEMS OF INTEREST TO COUNTIES, TEXAS ASS'N OF COUNTIES (May 20, 2019), <https://www.county.org/TAC/media/TACMedia/News/County-Issues/2019/HB-1-Conference-Committee-Decisions-5-20-19.pdf> [https://perma.cc/88PY-MG5D].

291. *See generally id.* (providing a proposed budget breakdown on various programs and bills).

292. *See id.* (detailing the manner in which bills and programs receive funding).

293. *See* H.B. 3529, 86th Leg., Reg. Sess. (Tex. 2019) (sparking a trend in advocating for effective solutions regarding the issue of domestic violence).

violence.<sup>294</sup> For example, traditional court proceedings have not been effective in providing adequate supervision, accountability, and therapeutic intervention—which is essential to effect change.<sup>295</sup> The authors felt drawn to write this article in order to elicit a call to action for other judicial members who take on this challenge in their courts.<sup>296</sup> Out of the anvils of contemplation, practice, and experience, we strive to put forth knowledge for fellow professionals interested in therapeutic justice practices for domestic violence offenders.<sup>297</sup>

While therapeutic jurisprudence is not a relatively new concept, applying the drug court model to violent offenders is still in its infancy stages.<sup>298</sup> Despite having over 400 domestic violence drug courts across the United States, more confirmatory research is needed in order to empirically validate this practice.<sup>299</sup> Further, more qualitative inquiry to evaluate the perceptions of domestic violence drug court participants is essential in order to improve outcomes.<sup>300</sup> Within political arenas, advocacy is also imperative to promote changes in policies—thereby granting access to therapy for violent offenders.<sup>301</sup> Finally, educating future legal professionals on the integration of therapeutic processes within court settings would assist in improving future practices.<sup>302</sup>

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294. See generally MICHELE C. BLACK ET AL., *supra* note 3 at 1–3 (detailing the complexity of domestic violence as an issue).

295. See Gluck, *supra* note 16 (discussing what is needed to reform domestic abusers).

296. See generally *id.* (highlighting the complexities of domestic violence—which make it difficult for individuals to seek solutions).

297. See generally *id.* (proposing creative solutions for how to remedy domestic violence while also rehabilitating the abusers).

298. See H.B. 3529, 86th Leg., Reg. Sess. (Tex. 2019) (suggesting recent remedies and solutions to domestic violence).

299. See BUREAU JUST. ASSISTANCE, *supra* note 213 (explaining how evaluation studies can help develop these programs and how multiple sources of information can increase credibility of this practice).

300. See Wolfe et al., *supra* note 253 at 380 (showing how a qualitative study improves perception about effectiveness and outcomes concerning drug courts).

301. See Gluck, *supra* note 16 (signifying the harmful effects of domestic violence—thereby signifying the need for advocacy on the issue).

302. See AUBREY FOX & ROBERT V. WOLF, THE FUTURE OF DRUG COURTS: HOW STATES ARE MAINSTREAMING THE DRUG COURT MODEL 44 (2004) <https://www.courtinnovation.org/sites/default/files/futureofdrugcourts.pdf> [<https://perma.cc/2Q3H-RPMV>] (advocating for the recruitment of drug court supporters because of the strong effect these courts have on instituting positive change).



### A. *Suggestions for Future Practice, Research, and Policy Change*

In order to promote effective change within courts, public perception, and future policies, we make the following recommendations:

#### 1. *Continued Advocacy for Therapeutic Courts*

Although there were approximately 1,600 drug courts in 2010<sup>303</sup> across the United States, therapeutic courts are still not widely accepted.<sup>304</sup> Public and political perceptions of therapeutic courts are still conflicted at best.<sup>305</sup> Advocacy should begin in local politics, then expand to the macro-level.<sup>306</sup> Lawyers and judges should become more involved in civics, including co-authoring bills with state senators and representatives, to ensure changes in policy and practice.<sup>307</sup> More advocacy is needed in order to humanize defendants, as well as push for more person-centered court practices.<sup>308</sup>

#### 2. *Advocacy Towards Treatment Options for Violent or High-Risk Offenders*

Research demonstrates that treatment options for violent or high-risk offenders, as opposed to traditional court proceedings, is both beneficial to reduce recidivism and is a fiscally responsible use of taxpayer dollars.<sup>309</sup> Therefore, advocacy at the local, state, and federal levels is

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303. RYAN S. KING & JILL PASQUARELLA, DRUG COURTS: A REVIEW OF THE EVIDENCE 1 (Apr. 2009), <https://www.sentencingproject.org/wp-content/uploads/2016/01/Drug-Courts-A-Review-of-the-Evidence.pdf> [<https://perma.cc/BN6F-864E>].

304. See FOX & WOLF, *supra* note 302 at 2 (attributing the disappearance of therapeutic courts to problems like scaling and lack of institutionalization).

305. See Ojmarh Mitchell et al., *Assessing the Effectiveness of Drug Courts on Recidivism: A Meta-Analytic Review of Traditional and Non-traditional Drug Courts*, 40 J. CRIM. JUST. 60 (2012) (identifying some of the issues and concerns surrounding the effectiveness of drug courts).

306. See KING & PASQUARELLA, *supra* note 303 at 2 (emphasizing the challenges arising from the varying intricacies of localized drug courts).

307. See FOX & WOLF, *supra* note 302 at 7–8 (emphasizing the important role legal professionals must play in advocating for drug courts).

308. See *Treatment Courts Work*, NADCP (2019), <https://www.nadcp.org/treatment-courts-work/> [<https://perma.cc/7KRM-3ME4>] (describing the positive impacts that treatment courts can have, especially in humanizing the perpetrators who seek to be rehabilitated).

309. See Koetzle et al., *supra* note 20 at 553–54, 560 (targeting a group in great need of support and providing them the added treatment necessary to reduce recidivism).

imperative.<sup>310</sup> Further, continued lobbying for adequate funding sources, which will support research and practice for the treatment of violent offenders, should also be part of the agenda for advocacy groups.<sup>311</sup> Lobbyists, judges, and victims' advocates can seek out opportunities to meet with political figureheads to discuss these barriers and brainstorm avenues for policy change.<sup>312</sup>

### 3. *Collaboration with the Therapeutic Community*

Judicial communities can learn a lot from the already established practices within the clinical professions.<sup>313</sup> Quite often, our clientele intersects.<sup>314</sup> However, because of varying perspectives and roles with offenders, the legal community rarely requests assistance from members of the clinical community unless they are called as expert witnesses.<sup>315</sup> The authors recommend collaborative efforts to attend and present at clinical conferences.<sup>316</sup> Additionally, efforts should be made to provide opportunities for inclusion with the clinical community at law events.<sup>317</sup> Collaboration is key to effective court practices.<sup>318</sup> Evidence shows that

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310. See FOX & WOLF, *supra* note 302 at 2 (highlighting reliance on federal funding to finance these programs and emphasizing the high costs states are burdened to pay).

311. See REGINALD FLUELLEN & JENNIFER TRONE, DO DRUG COURTS SAVE JAIL AND PRISON BEDS? 5 (2000) <https://www.prisonpolicy.org/scans/vera/drugcourts.pdf> [<https://perma.cc/5NJH-CSXN>] (including violent offenders among potential candidates for drug court rehabilitation in order to relieve some of the strain on the prison system); see also *id.* at 13 (depicting the influence federal funding and agencies have on drug court operations and research).

312. See FOX & WOLF, *supra* note 302 at 7–8 (recognizing the persuasive powers of judges and lawyers and their effect on advocating for certain programs); see also Caltabiano, *supra* note 261 (introducing the idea of extending the eligibility of drug courts to high-risk offenders because of the increasing popularity of drug court treatment among policy makers and practitioners).

313. See generally Linda Morton et al., *Encouraging Physician-Attorney Collaboration Through More Explicit Standards*, 29 *HAMLIN J. PUB. L. & POL'Y* 317 (2008) (revising the relationship between the legal and medical professions in order to better serve the community).

314. See Mei et al., *supra* note 213 at 254, 255 (implying many of the individuals in need of psychological and medical treatment find themselves in the crosshairs of the legal system).

315. See *id.* at 256 (reinventing the relationship between the legal and clinical communities via judges relinquishing some autonomy to act on the learned recommendations of drug court teams).

316. See Morton et al., *supra* note 313 at 319 (encouraging interdisciplinary communication in order to bridge the professional gap between law and medicine).

317. See *id.* at 322, 330 (converging the two professions in order to spearhead larger healthcare policies and goals).

318. See Mei et al., *supra* note 213 (finding collaboration to be one of the most important factors in maintaining program fidelity).

effective collaboration entails each member of the court recognizing and operating within their unique role but also working well with other professionals.<sup>319</sup>

4. *Seek out Knowledge Regarding More Complex, Neurological, and Psychiatric Issues*

Working with this population calls for more understanding of issues, such as trauma and addiction.<sup>320</sup> Quite often, families with domestic violence issues have historically attempted to resolve these issues but have fallen short.<sup>321</sup> They look to judges and attorneys to have more understanding and empathize with their complicated lives.<sup>322</sup> If judges or attorneys lack personal experience with these issues, they are challenged to find empathy with crimes, such as domestic violence.<sup>323</sup> To be effective, courts require a great degree of empathy and patience.<sup>324</sup>

5. *Stay Current with Research Praxis*

Research and scholarly efforts demonstrate the best practices, not only with drug courts but other models for court systems.<sup>325</sup> Literature review on such subjects, such as drug court or therapeutic jurisprudence, can provide a wealth of current knowledge.<sup>326</sup> Further, collaborations

319. *See id.* at 266 (discussing the importance of inter-agency collaboration).

320. *See id.* at 256 (signifying how the drug court's success is based on collaboration between judges and practicing experts).

321. *See generally* ROBERT C. DAVIS & CHRISTOPHER MAXWELL, PREVENTING REPEAT INCIDENTS FAMILY VIOLENCE – A REANALYSIS OF DATA FROM THREE FIELD TESTS, VERA INST. OF JUST. (July 2002) <https://www.ncjrs.gov/pdffiles1/nij/grants/200608.pdf> [<https://perma.cc/UJ M4-TLZN>] (providing statistics showcasing the nature of domestic violence and its tendency to repeat in the absence of third-party interventions).

322. *See* BUREAU JUST. ASSISTANCE, *supra* note 213 at 7–8 (discussing the use of comprehensive studies to provide better insight into effective treatment); *see also* Mei et al., *supra* note 213 at 256 (exhibiting the importance of the judge's role through the course of a domestic violence proceeding).

323. *See* Mei et al., *supra* note 213 at 256 (discussing the delicate balance between solving legal problems while also experiencing empathy for the individuals involved).

324. BUREAU JUST. ASSISTANCE, *supra* note 213 at 15; *cf. id.* at 253 (showing the need for continued research in domestic violence issues).

325. *See generally* Mei et al., *supra* note 213 (demonstrating how research elevates the drug court system).

326. *See* BUREAU JUST. ASSISTANCE, *supra* note 213 at 7–8 (discussing the use of comprehensive studies to provide better insight into effective treatment); *see generally* Mei et al.,

with the academic and scholarly community are also beneficial.<sup>327</sup> For legal scholars, the authors recommend research activities that reach across disciplines.<sup>328</sup> Studies of criminogenic needs and legal practices, which involve other professions, can involve a broader, more comprehensive view.<sup>329</sup>

#### CONCLUSION

Billions of dollars are allocated every year to help victims of domestic violence.<sup>330</sup> Judges, attorneys, court systems, police, and victims' advocates work tirelessly to resolve wreckage in the wake of domestic violence.<sup>331</sup> Community agencies treat the symptoms by working with victims and their families.<sup>332</sup> Yet, we never treat the condition.<sup>333</sup> The community deserves a more comprehensive plan to address this problem at its root—with the perpetrators.<sup>334</sup> Court systems can address domestic violence at the crux of the problem—with perpetrators.<sup>335</sup> This begins with acknowledging the issues prevalent in such cases: trauma, history, and addiction.<sup>336</sup> Judges and attorneys are in a unique position, as they can collaborate with therapeutic communities to resolve domestic

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*supra* note 213 (elaborating on how imminent threats to model adherence have been identified in previous literature).

327. *See* Mei et al., *supra* note 213 at 266 (showing how scholars have contributed to the drug court model system).

328. *See generally id.* (discussing the importance for drug courts to utilize interdisciplinary and collaborative judicial approaches).

329. *See id.* at 255 (explaining that interdisciplinary approaches benefit the criminal justice system).

330. *See* NAT'L INST. ON DRUG ABUSE, *supra* note 104 at 4 (requesting over one billion dollars for fiscal years 2016 and 2017).

331. *See* Mei et al., *supra* note 213 at 256 (discussing members that make up drug court teams).

332. *See id.* (expanding on the ways in which community agencies foster relationships with domestic violence victims and their families).

333. *See* BUREAU JUST. ASSISTANCE, *supra* note 213 (indicating that repeat offenders are common due to a surface treatment of the issues).

334. *See generally* Mei et al., *supra* note 213 (discussing the importance for drug courts to utilize interdisciplinary and collaborative judicial approaches).

335. *See* ROTHMAN ET AL., *supra* note 95 (signifying the need to address the root of the battles of domestic violence perpetrators because it will reduce future occurrences of domestic violence).

336. *See* BUREAU JUST. ASSISTANCE, *supra* note 213 at 7 (providing the many addictions and diseases that perpetrators suffer from).

violence offenses.<sup>337</sup> Communities rely heavily on courts to resolve this domestic issue; therefore, courts should assume this burden with intention and innovation.<sup>338</sup>

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337. *See id.* at 15 (listing the complexities of the issues within drug courts—thereby creating the need for a team approach to solve the issues).

338. *See id.* at 17 (outlining the severity of the reoccurring problems in drug courts which need creativity and hard work from both lawyers and judges in order to be changed).