
Volume 109
Issue 4 *Dickinson Law Review - Volume 109,*
2004-2005

3-1-2005

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Tara R. Pfeifer, *Out of the Shadows: The Positive Impact of Lawrence v. Texas on Victims of Same-Sex Domestic Violence*, 109 DICK. L. REV. 1251 (2005).

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Out of the Shadows: The Positive Impact of *Lawrence v. Texas* on Victims of Same-Sex Domestic Violence

Tara R. Pfeifer*

I called [the Kansas City Anti-Violence Project] after my partner Clay attacked me twice. I had only known Clay for two months when his behavior became very erratic. He attacked me and broke several bones including my collar bone. When I called the police, they said it was a sex thing and laughed at me. They wouldn't arrest Clay even though I had to go to the emergency room for my injuries. . . .

—Bennie¹

I. Introduction

“The bottom line is that homosexuals tend to shut up about domestic violence.”² Following the murder of a lesbian by her live-in lover, a gay rights advocate commented on the reluctance of victims of

* J.D. Candidate, The Dickinson School of Law of the Pennsylvania State University, 2005; B.A. History, *cum laude*, The College of William and Mary, 2000. The author wishes to thank Professor Carlos A. Ball for his thoughtful suggestions. The author also wishes to thank her family for their love and support.

1. NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL AND TRANSGENDER DOMESTIC VIOLENCE: 2003 SUPPLEMENT (2004), *available at* <http://www.avp.org/publications/reports/2003NCAVPdvrpt.pdf> (last visited February 3, 2005) [hereinafter 2003 SUPPLEMENT]. The National Coalition of Anti-Violence Programs noted that the 2003 supplement is to serve as an “update” to the 2001 and 2002 editions, which contained definitions, policies, theories and an extensive survey of civil protective orders, because as of October 2004, “nothing appreciable about this information had changed.” *Id.* at 2. Much of the data and statistics in this comment are derived from the 2001 and 2002 reports and are cited accordingly.

2. Rosemary Barnes, *When Secrecy Is Deadly: Experts Say Gays, Lesbians Fear Being ‘Outed’ If They Report Battering*, SAN-ANTONIO EXPRESS NEWS, May 17, 2003, at 1B (quoting Graciela Sanchez, executive director of the Esperanza Peace and Justice Center in San Antonio, Texas).

same-sex domestic violence to report incidents of abuse.³ Her statement reflects the harsh reality confronted by victims of domestic violence within the gay, lesbian, bisexual, and transgendered (“GLBT”) community and the tragic consequences resulting from the disparate protection afforded to these victims.

In October of 2004, the National Coalition of Anti-Violence Programs⁴ (“NCAVP”) released its most recent statistics on the prevalence of same-sex domestic violence.⁵ The participating NCAVP member organizations documented a record 6,523 same-sex domestic violence incidents in 2003.⁶ This total represented a 13% increase in the number of cases reported by the same agencies in 2002, and included six reported same-sex domestic violence-related deaths.⁷

3. *Id.* Ms. Sanchez explained that many gays and lesbians in San Antonio feared the insensitivity of law enforcement officers and mistrusted mainstream domestic violence centers. *Id.*

4. See generally NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS, available at <http://www.ncavp.org/> (last visited February 3, 2005). NCAVP is a coalition of lesbian, gay, bisexual, and transgender victim advocacy and documentation programs located throughout the United States. See THE NEW YORK CITY GAY & LESBIAN ANTI-VIOLENCE PROJECT, *NCAVP/Members*, available at <http://www.avp.org/ncavp.htm> (last visited February 3, 2005). Before officially forming in 1995, NCAVP member organizations worked with the National Gay and Lesbian Task Force for over a decade to forge a coordinated response to violence against the lesbian, gay, bisexual and transgender community. *Id.* Initially, member organizations focused on promoting public education about bias-motivated crimes against lesbian, gay, bisexual, and transgender people. *Id.* However, “[a]s the prevalence of domestic violence in [the lesbian, gay, bisexual, and transgender] community has emerged from the shadows, NCAVP member organizations have increasingly adapted their missions and their services to respond to violence within the community as well.” *Id.* NCAVP issued its first annual domestic violence report in October of 1997. *Id.* NCAVP won a recent victory in its war against same-sex domestic violence when U.S. Senator Charles E. Schumer (New York) announced that the New York-based Gay and Lesbian Anti-Violence Project, a member of NCAVP, would receive \$225,000 from the Department of Justice. *Schumer Announces \$225,000 for New York Gay and Lesbian Anti-Violence Project*, STATES NEWS SERVICE, January 27, 2005, available at 2005 WL 60514427. The funds will be used to “[improve] the awareness of, service to and policy around lesbian, gay, transgender, bisexual, and HIV-affected individuals who are domestic violence and sexual assault survivors.” *Id.*

5. The report contains the number of domestic violence incidents recorded in 2003 by twelve NCAVP member agencies and several affiliates. 2003 SUPPLEMENT, *supra* note 1, at 1-2. NCAVP acknowledged the limitations of the document because of the varying organizational structures and program capacities of the reporting agencies, as well as the different collecting and reporting instruments employed. *Id.* Accordingly, NCAVP carefully noted that the supplement “does *not* present a comprehensive survey of [lesbian, gay, bisexual and transgender] domestic violence in the U.S.” *Id.*

6. 2003 SUPPLEMENT, *supra* note 1, at 3.

7. 2003 SUPPLEMENT, *supra* note 1, at 3. In 2002, NCAVP member agencies reported 5,718 cases of same-sex domestic violence. *Id.* NCAVP stated that a significant increase in reported incidents stemmed from Los Angeles, California. *Id.* NCAVP attributed this increase to the presence of a large and well-established NCAVP member agency in Los Angeles and extensive support provided by that city’s law enforcement departments. *Id.* Other large cities, such as Boston and New York, also reported

The NCAVP study demonstrated that same-sex domestic violence cut across gender and racial lines. Of the 6,523 cases reported in 2003, 44% of the victims identified as male, 36% identified as female, 2% identified as transgender and the remaining victims did not self-identify.⁸ Although member agencies reported the race/ethnicity of victims in only 42% of cases, those numbers indicated that 44% were white, 25% were Latino, 15% were of African descent, 5% were Asian/Pacific Islander, and 4% were multi-racial.⁹

These statistics reveal that same-sex domestic violence continues to be a significant problem in the United States. In fact, same-sex domestic violence is believed to occur at a rate equal to heterosexual domestic violence, estimated in 25-33 percent of relationships.¹⁰ Some experts have even speculated that gay men's domestic violence occurs more frequently than heterosexual domestic violence.¹¹ Yet, despite the prevalence of same-sex domestic violence, the issue has traditionally been plagued by invisibility and lack of societal awareness.¹²

In addition to facing societal invisibility, victims of same-sex domestic violence also encounter obstacles in the legal system. In 2001, NCAVP provided a state-by-state survey of the legal protections available to victims of same-sex domestic violence.¹³ NCAVP reported

meaningful growth in the number of reported incidents. *Id.* at 4. Incidents reported in smaller cities either remained the same or slightly decreased. *Id.*

8. 2003 SUPPLEMENT, *supra* note 1, at 7.

9. 2003 SUPPLEMENT, *supra* note 1, at 10.

10. Sharon Cammack & Patrice Pujol, *Domestic Violence: A National Epidemic*, HOUSTON LAWYER, September/October 2004, at 13 ("Domestic violence among same-sex couples occurs with the same statistical frequency as those found among heterosexual couples."). See also John Leland, *Silence Ending Abuse in Gay Relationships*, N.Y. TIMES, November 6, 2000, at A18; Nancy J. Knauer, *Same-Sex Domestic Violence: Claiming A Domestic Sphere While Risking Negative Stereotypes*, 8 TEMP. POL. & CIV. RTS. L. REV. 325, 329-31 (Spring 1999); NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL AND TRANSGENDER DOMESTIC VIOLENCE IN 2002: A REPORT OF THE NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS (2003), available at <http://www.avp.org/publications/reports/2002NCAVPdvrpt.pdf> at 7-9 (last visited February 3, 2005) [hereinafter 2002 REPORT].

11. Marc Spindelman, *Surviving Lawrence v. Texas*, 102 MICH. L. REV. 1615, 1635 n.99 (June 2004) (citing DAVID ISLAND & PATRICK LETELLIER, MEN WHO BEAT THE MEN WHO LOVE THEM: BATTERED GAY MEN AND DOMESTIC VIOLENCE 14 (1991)).

12. See, e.g., Kathleen Finley Duthu, *Why Doesn't Anyone Talk About Gay and Lesbian Domestic Violence?*, 18 T. JEFFERSON L. REV. 23, 24-25 (Spring 1996) ("Most people are unaware that domestic violence exists in gay and lesbian relationships. . . . Domestic violence is generally referred to synonymously as spousal abuse or wife abuse and victims are often called battered wives or battered women. These types of references have placed the focus of domestic violence on heterosexual marital relationships, and inaccurately imply that domestic violence does not apply to gay and lesbian relationships.").

13. NAT'L COALITION OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL AND TRANSGENDER DOMESTIC VIOLENCE IN 2001: A REPORT OF THE NATIONAL COALITION OF

that some states had legal remedies that explicitly excluded victims of same-sex domestic violence from civil protection.¹⁴ Other state domestic violence statutes contained ambiguous language that, when coupled with state anti-sodomy statutes or conservative judicial interpretations, barred gay and lesbian victims of domestic violence from protective orders against their abusers.¹⁵

It is difficult to say how much progress, if any, would be made in affirmatively extending legal protection to victims of same-sex domestic violence if this were left entirely up to the state legislative process. Fortunately, this inquiry need only remain a rhetorical one because the recent United States Supreme Court decision of *Lawrence v. Texas*¹⁶ will have a significant positive impact on the resources and legal protections available to victims of same-sex domestic violence.

This comment will explore the direct and indirect effects that the *Lawrence* decision will have on same-sex domestic violence. Part II of this comment provides a background on same-sex domestic violence, including the special issues faced by GLBT victims of domestic violence and the current availability of civil protective orders for victims of same-sex domestic violence. This section also describes the effect of the U.S. Supreme Court decision of *Bowers v. Hardwick*¹⁷ and state anti-sodomy laws on the recognition and prevention of same-sex domestic violence. Part III analyzes the implications of the *Lawrence* decision on same-sex domestic violence. Subpart A summarizes the *Lawrence* decision itself, exploring the majority's analysis and the overruling of the *Bowers* decision. Subpart B focuses on the effect of *Lawrence*'s invalidation of state anti-sodomy laws on same-sex domestic violence. Finally, Subpart C postulates that by paving the way for same-sex marriage, *Lawrence* will lead to equal access to civil protective orders for victims of same-sex domestic violence.

II. Background

A. *Special Issues in Same-Sex Domestic Violence*

Domestic violence is defined as a "pattern of behaviors utilized by one partner (the abuser or batterer) to exert and maintain control over another person (the survivor or victim) where there exists an intimate,

ANTI-VIOLENCE PROGRAMS 47-67 (2002), available at <http://www.avp.org/publications/reports/2001NCAVPdvrpt.pdf> (last visited February 3, 2005) [hereinafter 2001 REPORT].

14. *Id.* at 13.

15. *Id.* at 13-16.

16. 539 U.S. 558 (2003).

17. 478 U.S. 186 (1986).

loving and dependent relationship.”¹⁸ Although this neutral definition literally encompasses both heterosexual and homosexual relationships, victims of same-sex domestic violence often encounter obstacles not faced by their heterosexual counterparts.

Many victims of same-sex domestic violence fear that reporting their abuse will elicit homophobic or inadequate responses from the police and the court system.¹⁹ One lesbian recalled that when police responded to her report of domestic violence, they exclaimed that they “don’t understand lesbian relationships” and told her abuser to take a “cool-down walk.”²⁰ Victims have also encountered ridicule and homophobic remarks by attorneys and court personnel, causing their experience in the court system to be a humiliating nightmare.²¹

Oftentimes domestic violence shelter programs and workers are unprepared and ill-equipped to handle cases of same-sex domestic violence.²² Domestic violence shelters have been “slow and late” in providing services to battered gays and lesbians, with many shelters refusing to admit GLBT victims or expressing homophobic attitudes when those individuals do elicit support.²³ A lesbian victim of domestic violence in Minnesota reported that she felt like an “outcast” at her local domestic violence shelter, often hearing anti-gay remarks being made by fellow victims.²⁴

Reporting their abusive partners forces closeted gay and lesbian victims to “out” themselves, a significant decision that may adversely affect other important aspects of the victim’s life.²⁵ The homophobia of

18. 2002 REPORT, *supra* note 10, at 5.

19. *Id.* at 14-15. See also Pam Elliott, *Shattering Illusions: Same-Sex Domestic Violence*, in *VIOLENCE IN GAY AND LESBIAN DOMESTIC PARTNERSHIPS I* (Claire M. Renzetti and Charles Harvey Miley, eds., 1996).

20. 2002 REPORT, *supra* note 10, at 16. See also Leland, *supra* note 10, at A18 (A lesbian victim of abuse described a police response to her injuries as: “Tomorrow you will kiss and make up.”).

21. See Sandra E. Lundy, *Abuse That Dare Not Speak Its Name: Assisting Victims of Lesbian and Gay Domestic Violence in Massachusetts*, 28 *NEW ENG. L. REV.* 273, 290-91 (Winter 1993).

22. 2002 REPORT, *supra* note 10, at 17 (describing the inability of many domestic violence shelters and agencies to serve the needs of GLBT victims of domestic violence). See also Lisa Marie Gomez, *Abused gay partners can now turn to counseling program; Oftentimes, gays and lesbians don’t feel comfortable going to police, other social services*, *SAN ANTONIO EXPRESS-NEWS*, October 24, 2004, at 1B.

23. See Lundy, *supra* note 21, at 287-89.

24. 2002 REPORT, *supra* note 10, at 14-15.

25. *Id.* at 18. See also Duthu, *supra* note 12, at 31-32 (Spring 1996); see Knauer, *supra* note 10, at 337. “Homophobia in the United States often prompts (or forces) individuals in same-sex relationships to conceal their relationship or at least the sex of the partner. This concealment requires extraordinary skills in information management because the extent to which an individual chooses to be ‘out’ may vary greatly in different aspects of her life.” *Id.*

society and victim apprehension about revealing his or her sexual orientation provides batterers with the reassurance that their abuse will continue in secrecy.²⁶

Another special issue in same-sex domestic violence is the difficulty of identifying the abuser and the presumption of mutual battering.²⁷ A batterer can use the improper screening techniques at domestic violence shelters to gain access to the shelter or to a support group, threatening the safety of his or her victim.²⁸ Furthermore, because of misconceptions surrounding the gender dynamics of domestic violence, law enforcement officials, service providers, and court officials assume that mutual abuse/battering exists between same-sex individuals in a relationship.²⁹

Even the gay community has been reluctant to confront the problem. Members of the community are often afraid that recognition of same-sex domestic violence will provide right-wing conservatives with ammunition to counter the community's political progress and damage the image of positive, egalitarian gay and lesbian relationships.³⁰ One same-sex domestic violence victims' advocate commented that members of the gay community "don't like to air our dirty laundry. People don't like to admit, especially women in this community that this is going on. We live with the myth that women are not violent towards other

26. Duthu, *supra* note 12, at 31-32.

27. 2002 REPORT, *supra* note 10, at 10-12. See, e.g., 2003 SUPPLEMENT, *supra* note 1, at 16-17 (Lynn, a lesbian, recalled her experience with police after being abused by her partner who called the police to pose as a victim before Lynn could; after pleading with the police offers to help her and showing her injuries, the officers informed Lynn that her partner had called first "and that there was nothing they could do.").

28. 2002 REPORT, *supra* note 10, at 10. The report explained that because many domestic violence program employees and volunteers are not trained to handle same-sex domestic violence situations, they often offer services only to the "first caller" and deny services to the subsequent caller from the same relationship. *Id.* Moreover, a batterer, (especially a female one) can take advantage of improper screening to gain access to a domestic violence shelter or support group by posing as a victim of another abusive relationship or of an abusive heterosexual relationship. *Id.* "[W]ithout proper screening, mainstream [domestic violence] programs can't be appropriately equipped to provide safety to LGBT people and arguably place all their clients in danger by leaving open the possibility of admitting a batterer for services or shelter." *Id.*

29. 2002 REPORT, *supra* note 10, at 11-12.

30. Knauer, *supra* note 10, at 331. See Peter Sprigg, *Pressing 'Domestic Unions,'* THE WASH. TIMES, August 25, 2002, at B5. Mr. Sprigg, Director of Culture Studies at the highly-conservative Family Research Council, wrote an editorial comparing heterosexual and homosexual unions. He opposed the recognition of same-sex civil unions and marriage, arguing "that homosexuals have higher rates of physical disease, mental illness, substance abuse, and, according to some sources, domestic violence as well. There is little evidence that 'committed' same-sex unions mitigate those risks significantly, if at all." *Id.* See also Sharon Terlep, *Order Bans Gay Co-Adoptions,* LANSING STATE J., June 6, 2002, at 1A (quoting Gary Glenn, president of the American Family Association, as saying a judge's decision to halt the practice of gay adoption "prevents the state from giving its seal of approval to adoption situations that put children at risk").

women.”³¹

B. *Availability of Protective Orders for Victims of Same-Sex Domestic Violence*

According to domestic violence workers, “an order of protection is one of the most important tools in attempting to protect a survivor from further abuse.”³² These orders prohibit the abuser from abusing and/or harassing his or her victim, provide the victim with a wide-range of remedies and impose significant penalties on the abuser for violations of the order.³³

The NCAVP’s 2001 report summarized the protection orders available to same-sex victims of domestic violence on a state-by-state basis.³⁴ In this report, the NCAVP grouped the fifty states’ domestic violence protective orders into four categories.³⁵ This comment uses the NCAVP 2001 report as a starting point in providing a brief summary of the current status of legal protections available to victims of same-sex domestic violence.

Several states prevent victims of same-sex domestic violence from accessing protective orders.³⁶ Delaware,³⁷ Montana,³⁸ New York,³⁹

31. Annie Sweeney, *Violence in Same-Sex Relationships Often is Secret Due to Stigma*, CHICAGO SUN-TIMES, October 28, 2002, at 19 (quoting Lisa Tonna, Director of Advocacy Legislative Affairs at Horizons Community Services in Chicago, Illinois); see also Leland, *supra* note 10, at A18 (quoting a domestic violence worker at a gay and lesbian clinic as stating “People feel, ‘Why should we air out our dirty laundry? People feel so negatively about us already, the last thing we should do is contribute to negative stereotypes of us.’”).

32. 2001 REPORT, *supra* note 13, at 13.

33. See Pamela M. Jablow, *Victims of Abuse and Discrimination: Protecting Battered Homosexuals Under Domestic Violence Legislation*, 28 HOFSTRA L. REV. 1095, 1111-12 (Summer 2000).

34. 2001 REPORT, *supra* note 13, at 47-67.

35. *Id.* at 13. The NCAVP categorized the state statutes as: protective orders that are clearly unavailable to survivors of same-sex domestic violence; protective orders that are arguably unavailable to survivors of same-sex domestic violence; protective orders that are neutrally available to survivors of same-sex domestic violence; and protective orders that are affirmatively available to survivors of same-sex domestic violence. *Id.* In its 2001 report, the NCAVP included only Florida in its “arguably unavailable” category. *Id.* at 14. However, a recent Florida court decision places Florida among the jurisdictions that make domestic violence protection clearly available to victims of same-sex domestic violence. See *infra* notes 69-72 and accompanying text. Consequently, I do not refer to an “arguably unavailable” category in this comment.

36. 2001 REPORT, *supra* note 13, at 13-14.

37. DEL. CODE ANN. tit. 10, § 1041 (WESTLAW through 2004 legislation). In order to petition for a Protection from Abuse Order, a victim of domestic violence must be a member of a “protected class.” DEL. CODE ANN. tit. 10, § 1041(3)(a) (WESTLAW through 2004 legislation). A “protected class” is then defined as a “family member” or “[f]ormer spouses, a man and a woman co-habiting together with or without a child of either or both, or a man and a woman living separate and apart with a child in common.”

South Carolina,⁴⁰ and Virginia⁴¹ currently have statutes that make protective orders unavailable to victims of same-sex domestic violence. These statutes make protective orders unavailable to victims of same-sex domestic abuse by narrowly defining the class of people who can obtain a protective order and excluding individuals within same-sex relationships from that definition.

DEL. CODE ANN. tit. 10, § 1041(2)(b) (WESTLAW through 2004 legislation). The state further excludes victims of same-sex domestic violence by defining “family member” as “husband and wife; a man and woman cohabiting in a home in which there is a child of either or both; custodian and child; or any group of persons related by blood or marriage who are residing in one home under one head or where one is related to the other by any of the following degrees of relationship, both parties being residents of this State.” DEL. CODE ANN. tit. 10, § 901(9) (WESTLAW through 2004 legislation).

38. MONT. CODE ANN. § 45-5-206 (WESTLAW through 2003 legislation). Montana’s domestic violence statute broadly extends protection to the partners and family members of the abuser. MONT. CODE ANN. § 45-5-206(1) (WESTLAW through 2003 legislation). Yet, the legislature prevents victims of same-sex domestic violence from eligibility by narrowly defining these two classes. A “family member” means “mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents.” MONT. CODE ANN. § 45-5-206(2)(a) (WESTLAW through 2003 legislation). “Partners” means “spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.” MONT. CODE ANN. § 45-5-206(2)(b) (WESTLAW through 2003 legislation).

39. The New York Family Court has the ability to grant both temporary/emergency orders of protection from abuse and longer-term protection orders. N.Y. FAM. CT. ACT §§ 828, 842 (McKinney, WESTLAW through 2004 legislation). However, the court has jurisdiction to grant such orders only for persons related by consanguinity or affinity, persons legally married to one another, persons formally married to one another, and persons who have a child in common regardless whether such persons have been married or have lived together at any time. N.Y. FAM. CT. ACT § 812(1) (McKinney, WESTLAW through 2004 legislation).

40. S.C. CODE ANN. § 20-4-20 (LEXIS through 2003 legislation). The state’s Protection From Domestic Abuse statute protects a “family or household member” of the abuser, but adds that “family or household member” means “spouses, former spouses, persons who have a child in common, and a male and female who are cohabiting or formerly have cohabited.” S.C. CODE ANN. § 20-4-20(b) (Law Co-op., WESTLAW through 2004 legislation).

41. A court may issue an order to protect a family or household member of an abuser. VA. CODE ANN. § 16.1-279.1(A) (Michie, WESTLAW through 2004 legislation). But the Code further defines “family or household member” to be a spouse, former spouse, immediate family or in-laws, any individual who has a child in common with the alleged abuser and any individual who “cohabits” with the alleged abuser. VA. CODE ANN. § 16.1-228 (Michie, WESTLAW through 2004 legislation). In 1994, the Attorney General issued an opinion that “cohabiting” individual includes only unrelated persons of the opposite sex living in the same household as husband and wife. 1994 Va. Op. Atty. Gen. 60, July 22, 1994, at *2 (1994). The Attorney General added that “[i]f the General Assembly had intended those statutory definitions to encompass unrelated persons of the same sex, either in a homosexual relationship or merely as lodgers sharing a common dwelling, in my opinion, it would have used a broader term. . . .” *Id.*

The New York assembly is currently considering a bill that would expand the definition of individuals who may obtain a protection order from domestic abuse.⁴² Likewise, in February of 2003, Montana legislator Jeff Mangan proffered a draft bill that makes the state's domestic violence law more accessible to victims of same-sex domestic violence.⁴³

The vast majority of states have protective orders that are neutrally available to victims of both opposite-sex and same-sex domestic violence.⁴⁴ In these states, survivors of same-sex abuse should be able to

42. NY A.B. 2235, 226th Ann. Leg. Sess. (N.Y. 2003) (WESTLAW through 2004 legislation). The proposed bill modifies the current definition of members of the same family or household for purposes of issuance of orders of protection from abuse. *Id.* Specifically, the bill expands § 812(1) of the Family Court Act by defining "members of the same family or household" as: "a) persons related by consanguinity or affinity; (b) persons legally married to one another; (c) persons formerly married to one another *regardless of whether they still reside in the same household*; (d) persons who have a child in common regardless whether such persons have been married or have lived together at any time; (e) *unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household.*" *Id.* (emphasis added).

43. MT M.D. 2059, 58th Reg. Sess. (Mont. 2003). The bill proposes to delete the phrase "with a person of the opposite sex," which currently modifies "dating or ongoing intimate relationship." *Id.* See *supra*, note 38.

44. ALA. CODE § 30-5-2 (WESTLAW through 2004 legislation); ALASKA STAT. § 18.66.990 (Michie, WESTLAW through 2004 legislation); ARIZ. REV. STAT. § 13-3601 (WESTLAW through 2004 legislation); ARK. CODE ANN. § 9-15-103 (Michie, WESTLAW through 2004 legislation); CAL. FAM. CODE § 6211 (West, WESTLAW through 2005 legislation); COLO. REV. STAT. § 13-14-101 (WESTLAW through 2004 legislation); CONN. GEN. STAT. § 46b-38a (WESTLAW through 2005 legislation); D.C. CODE ANN. § 16-1001 (WESTLAW through 2004 legislation); FLA. STAT. ch. 741.28 (WESTLAW through 2004 legislation); GA. CODE ANN. § 19-13-1 (WESTLAW through 2004 legislation); IDAHO CODE § 39-6303 (Michie, WESTLAW through 2004 legislation); IND. CODE ANN. §§ 34-6-2-34.5 (WESTLAW through 2004 legislation); IOWA CODE § 236.2 (WESTLAW through 2004 legislation); KAN. STAT. ANN. § 60-3102 (WESTLAW through 2003 legislation); ME. REV. STAT. ANN. tit. 19-A, § 4002 (WESTLAW through 2004 legislation); MD. CODE ANN., FAM. LAW § 4-501 (WESTLAW through 2005 legislation); MASS. GEN. LAWS ch. 209A, § 1 (WESTLAW through 2004 legislation); MICH. COMP. LAWS ANN. § 600.2950 (West, WESTLAW through 2004 legislation); MINN. STAT. ANN. § 518B.01 (West, WESTLAW through 2004 legislation); MISS. CODE ANN. § 93-21-3 (WESTLAW through 2004 legislation); MO. REV. STAT. § 455.010 (WESTLAW through 2004 legislation); NEB. REV. STAT. ANN. § 42-903 (WESTLAW through 2004 legislation); NEV. REV. STAT. ANN. 33.018 (Michie, WESTLAW through 2004 legislation); N.H. REV. STAT. ANN. § 173-B:1 (WESTLAW through 2004 legislation); N.M. STAT. ANN. § 40-13-2 (Michie, WESTLAW through 2004 legislation); N.D. CENT. CODE § 14-07.1-01 (WESTLAW through 2003 legislation); OKLA. STAT. ANN. tit. 22, § 60.1 (West, WESTLAW through 2004 legislation); OR. REV. STAT. § 107.705 (WESTLAW through 2003 legislation); R.I. GEN. LAWS § 8-8.1-1 (WESTLAW through 2004 legislation); S.D. CODIFIED LAWS § 25-10-1 (Michie, WESTLAW through 2004 legislation); TENN. CODE ANN. § 36-3-601 (WESTLAW through 2004 legislation); TEX. FAM. CODE ANN. §§ 71.0021, 71.004, 71.005 (Vernon, WESTLAW through 2004 legislation); UTAH CODE ANN. § 30-6-1 (WESTLAW through

secure a protective order against their abusers because these laws are written in gender-neutral language.⁴⁵

For example, Alabama extends protection to victims who are “present or former household members” of the abuser’s household, regardless of the nature of the relationship between the abuser and his or her victim.⁴⁶ Likewise, Colorado extends domestic violence protection to victims with whom the batterer “is living or has lived in the same domicile” or with whom the batterer is “involved or has been involved in an intimate relationship.”⁴⁷ Neither state limits the definition of individuals who fall under the scope of protection by requiring an opposite-sex or marital relationship.

The District of Columbia’s domestic violence statute makes a protective order available to family members, including an individual who “shares or who has shared a mutual residence” or “maintains or maintained a romantic relationship not necessarily including a sexual relationship” with the abuser.⁴⁸ Similarly, New Mexico protects victims who are “household members” of the abuser, including spouses, family members, and individuals “with whom the petitioner has had a continuing personal relationship.”⁴⁹ These state statutes provide just a few examples of laws that, by virtue of their neutral language, make civil protective orders equally accessible to both opposite-sex and same-sex victims of domestic violence.

In its 2001 statutory analysis, the NCAVP included Louisiana among the states that had a domestic violence law “clearly unavailable” to individuals in same-sex relationships.⁵⁰ Currently, the state’s Domestic Abuse Assistance statute does exclude victims of same-sex domestic violence.⁵¹

2004 legislation); VT. STAT. ANN. tit. 15, § 1101 (WESTLAW through 2004 legislation); WASH. REV. CODE ANN. § 26.50.010 (WESTLAW through 2005 legislation); W.VA. CODE ANN. § 48-27-204 (Michie, WESTLAW through 2004 legislation); WIS. STAT. ANN. §§ 46.95, 813.12 (West, WESTLAW through 2003 legislation); WYO. STAT. ANN. § 35-21-102 (Michie, WESTLAW through 2004 legislation). See also 2001 REPORT, *supra* note 13, at 15-16.

45. 2001 REPORT, *supra* note 13, at 15-16.

46. ALA. CODE § 30-5-2(a)(4) (WESTLAW through 2004 legislation).

47. COLO. REV. STAT. § 13-14-101(2) (WESTLAW through 2004 legislation).

48. D.C. CODE ANN. § 16-1001(5)(a)(b) (WESTLAW through 2004 legislation).

49. N.M. STAT. ANN. § 40-13-2(D) (Michie, WESTLAW through 2004 legislation).

50. 2001 REPORT, *supra* note 13, at 15-16.

51. LA. REV. STAT. ANN. § 46:2132 (West, WESTLAW through 2004 legislation). Louisiana defines domestic abuse as “physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana . . . committed by one family or household member against another.” LA. REV. STAT. ANN. § 46:2132(3) (West, WESTLAW through 2004 legislation). In the next section, the legislature defines “family member” as “spouses, former spouses, parents and children, stepparents, stepchildren, foster parents, and foster children” and “household members” as “any

However, GLBT individuals in Louisiana now have an alternative source of protection. Under Louisiana's "Protection from Dating Violence Act," a victim of a dating partner is eligible for the same services, benefits, and assistance as victims under the domestic violence statute.⁵² The definition of "dating partner"⁵³ contains neutral language inclusive of GLBT individuals.⁵⁴

North Carolina's domestic violence law technically provides neutral coverage for victims of both opposite-sex and same-sex domestic violence. The statute protects those individuals in a "personal relationship" with the abuser, including "current or former household members."⁵⁵ However, a subsequent section of the statute provides that a domestic violence protective order shall not be a defense to individuals charged with offenses against "public morals,"⁵⁶ including sodomy.⁵⁷ As a result, gay and lesbian individuals seeking domestic violence protection made themselves legally vulnerable to prosecution for sodomy, significantly deterring reports of such abuse.⁵⁸

person of the opposite sex presently or formerly living in the same residence with the defendant as a spouse, whether married or not, who is seeking protection under this Part." L.A. REV. STAT. ANN. § 46:2132(4) (West, WESTLAW through 2004 legislation).

52. L.A. REV. STAT. ANN. § 46:2151(A) (West, WESTLAW through 2004 legislation).

53. L.A. REV. STAT. ANN. § 46:2151(B) (West, WESTLAW through 2004 legislation). "Dating partner" is defined as "any person who is or has been in a social relationship of a romantic or intimate nature with the victim" and where a relationship is determined by factors such as length of the relationships, type of relationship and frequency of interaction between the individuals. *Id.*

54. See People for the American Way, *Louisiana-Hostile Climate: Domestic Violence Law Covers Same-Sex Dating Partners*, Civil Rights and Equal Rights, at <http://www.pfaw.org/pfaw/general/default.aspx?oid=3440> (last visited February 3, 2005) (reporting opposition to the Protection from Dating Violence Act from right-wing groups and politicians because it covers homosexual relationships).

55. N.C. GEN. STAT. § 50B-1(b)(5) (WESTLAW through 2004 legislation).

56. N.C. GEN. STAT. § 50B-8 (WESTLAW through 2004 legislation).

57. N.C. GEN. STAT. § 14-177 (WESTLAW through 2004 legislation). In 1964, the North Carolina Supreme Court explained, "[i]n this jurisdiction crime against nature embraces sodomy, buggery and bestiality as those offenses were known and defined at common law." *State v. O'Keefe*, 138 S.E.2d 767, 768 (N.C. 1964). Two years later, the same court addressed the legislative purpose of § 14-177: "It is manifest that the legislative intent and purpose of G.S. § 14-177 prior to the 1965 amendment and since [the amendment provided that if a person committed a crime against nature with mankind or beast, that individual shall be guilty of a felony and will be fined or imprisoned per the discretion of the court] is to punish persons who undertake by unnatural and indecent methods to gratify a perverted and depraved sexual instinct which is an offense against public decency and morality." *State v. Stubbs*, 145 S.E.2d 899, 902 (N.C. 1966).

58. 2002 REPORT, *supra* note 10, at 19. See also Patricia G. Barnes, 'It's Just a Quarrel': Some States Offer No Domestic Violence Protection to Gays, 84 A.B.A. J. 24, 24 (February 1998) (referring to a "Catch-22" for GLBT victims of same-sex domestic violence who may risk criminal prosecution under state sodomy laws by reporting incidents of abuse).

A handful of jurisdictions have made domestic violence protection clearly available to victims of same-sex domestic violence.⁵⁹ Of the states in this group, only Hawaii specifically includes same-sex relationship victims in the sweep of its domestic violence protection via statutory language.⁶⁰ The Hawaii statute affords protection to spouses or “reciprocal beneficiaries” of the abuser. The phrase “reciprocal beneficiaries” is a term of art that describes the status of same-sex partners who take certain legal steps.⁶¹

Other states have affirmatively extended domestic violence protection to GLBT individuals through statutory interpretation.⁶² In its 2001 state-by-state analysis, the NCAVP reported that courts in Illinois,⁶³ Kentucky,⁶⁴ New Jersey,⁶⁵ Ohio,⁶⁶ and Pennsylvania⁶⁷ have interpreted

59. 2001 REPORT, *supra* note 13, at 16-17. NCAVP includes Hawaii, Illinois, Kentucky, New Jersey, Ohio and Pennsylvania in its “affirmatively available” category. *Id.*

60. HAW. REV. STAT. ANN. § 586-1(2) (Michie, WESTLAW through 2003 legislation). The statute protects “family or household members” of the abuser and defines those terms to mean “spouses or reciprocal beneficiaries, former spouses or former reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, persons jointly residing or formerly residing in the same dwelling unit, and persons who have or have had a dating relationship.” *Id.*

61. In creating the reciprocal beneficiary legal status, the Hawaii legislature acknowledged that “there are many individuals who have significant personal, emotional, and economic relationships with another individual yet are prohibited by such legal restrictions from marrying. For example . . . two individuals who are of the same gender. Therefore, the legislature believes that certain rights and benefits presently available only to married couples should be made available to couples comprised of two individuals who are legally prohibited from marrying one another.” HAW. REV. STAT. ANN. § 572C-2 (Michie, WESTLAW through 2003 legislation).

62. 2001 REPORT, *supra* note 13, at 16-17.

63. In 1993, the First District, Fourth Division of the Appellate Court of Illinois affirmed a trial court’s granting of a protective order filed by one man against another. *Glater v. Fabianich*, 625 N.E.2d 96 (Ill. App. Ct. 1993). A lower court granted a plenary order of protection based on several witnesses’ oral testimony regarding the nature of the relationship between the two men. *Id.* at 98. The court reasoned that the purpose of the state’s Domestic Violence Act (“the Act”) was to prevent abuse between family and household members. *Id.* at 99. The court also rejected the respondent’s argument that the Act applied only to persons related by marriage and blood, finding that the Act was “designed to prevent abuse between persons sharing intimate relationships,” including a relationship between two men. *Id.*

64. The Court of Appeals of Kentucky determined that state legal protection is equally available to victims of domestic violence stemming from both opposite-sex and same-sex relationships. *Ireland v. Davis*, 957 S.W.2d 310 (Ky. Ct. App. 1997). The lower court dismissed a domestic violence proceeding between two men in an intimate relationship, reasoning that same-sex couples had other protective remedies such as criminal complaints and restraining orders. *Id.* at 312. Reversing the lower court’s decision, the Kentucky Court of Appeals pointed out that to exclude gay and lesbian couples on that basis would deny them the same protection from domestic violence available to heterosexual couples. *Id.* The court ultimately concluded that Kentucky’s domestic violence statutes “afford protection to same-sex couples just as they do to the others enumerated therein. The General Assembly has not given preferential treatment to

their respective gender-neutral statutes to specifically include gay and lesbian victims of domestic violence.⁶⁸

In October of 2003, Florida became the most recent state to affirmatively protect GLBT victims of domestic violence. In *Peterman v. Meeker*,⁶⁹ the Second District of the Court of Appeal of Florida concluded that its state domestic violence law equally protects victims of both opposite-sex and same-sex domestic violence.⁷⁰ The court pointed out that subpart (1)(e) in section 741.30 of the Florida Code stated: “No

same-sex couples or homosexuals; rather, it has provided for equal treatment under the law for same-sex or homosexual victims of domestic violence.” *Id.*

65. In 2001, the Chancery Division of the Superior Court of New Jersey determined whether it had jurisdiction to issue a protective order filed by a stepdaughter against her stepmother. *Storch v. Sauerhoff*, 757 A.2d 836 (N.J. Super. Ct. Ch. Div. 2000). The defendant/stepmother claimed that she was neither a family member nor a member of petitioner’s household under the scope of New Jersey’s Domestic Violence Act of 1991 (“the Act”). *Id.* at 837. The court disagreed and reasoned that when the state legislature amended the Act by replacing the word “cohabitant” with “household member,” it intended to expand the scope of the Act’s coverage. *Id.* at 839. The court claimed proper jurisdiction and noted that “[w]hile the prior law required that victims be cohabitants of opposite sex, or, if not of the opposite sex, related by blood, the current Act protects unrelated, same sex persons living together. . . .” *Id.*

66. The Court of Appeals of Ohio heard an appeal from the State of Ohio seeking to reverse municipal court’s decision to dismiss a domestic violence charge against a lesbian. *State v. Hadinger*, 573 N.E.2d 1191 (Ohio Ct. App. 1991). The Franklin County Municipal Court dismissed the charge based upon its determination that under Ohio’s domestic violence law, two women could not be married and therefore could not be living in a “spousal relationship.” *Id.* at 1191. Not wanting to “eviscerate the efforts of the legislature to safeguard, regardless of gender, the rights of victims of domestic violence,” the court held that the domestic violence law, which defined a “person living as a spouse” as a person “who otherwise is cohabiting with the offender,” included two persons of the same sex. *Id.* at 1193. *See also* *State v. Linner*, 665 N.E.2d 1180 (Ohio Ct. App. 1996); *State v. Yaden*, 692 N.E.2d 1097 (Ohio Ct. App. 1997) (“It is true that same-sex couples are not permitted to be ‘spouses’ of each other. But the definition of ‘living as a spouse’ includes a larger segment of couples—not only ‘spouses’ but also ‘cohabitators.’ Opposite-sex couples who ‘cohabit’ are protected. We can see no tangible benefit to withholding [domestic violence] protection from same-sex couples.”); *In re Bicknell*, Nos. CA2000-07-140, CA2000-07-141, 2001 Ohio App. LEXIS 650, at *26-30 (Ohio Ct. App. 2001), *rev’d on other grounds*, 771 N.E.2d 846 (Ohio 2002).

67. In 1999, the Superior Court of Pennsylvania concluded that a man had proper standing to file a petition for a protection order against his former male lover. *D.H. v. B.O.*, 734 A.2d 409 (Pa. Super. Ct. 1999). In his petition, the appellee “referred to appellant as his former roommate and homosexual lover” and the Pennsylvania Superior Court found enough evidence existed for the two men to meet the intimate relationship requirement to trigger potential coverage under Pennsylvania’s domestic violence law. *Id.* at 410. Despite the appellee’s proper standing, the court concluded that there was insufficient evidence to justify the entry of a Protection From Abuse order. *Id.*

68. 2001 REPORT, *supra* note 13, at 16-17.

69. 855 So.2d 690 (Fla. Dist. Ct. App. 2003).

70. *Id.* at 690. The appellant argued that same-sex couples did not qualify as “persons residing together as if a family” because same-sex couples are barred from marriage in Florida. *Id.*

person shall be precluded from seeking injunctive relief pursuant to this chapter solely on the basis that such a person is not a spouse.”⁷¹ Accordingly, the court held that the state domestic violence law did not exclude victims of same-sex domestic violence.⁷²

C. *The Effect of Bowers v. Hardwick and State Anti-Sodomy Laws on Same-Sex Domestic Violence*

In 1986, the GLBT community was faced with a formidable obstacle to accessing equal rights and protections following the United States Supreme Court’s decision in *Bowers v. Hardwick*.⁷³ In *Bowers*, the Court confronted the issue of “whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy and hence invalidates the laws of the many States that still make such conduct illegal. . . .”⁷⁴

By narrowly framing the constitutional issue in *Bowers*, the Court found that a Georgia anti-sodomy statute was constitutional.⁷⁵ It rejected the Court of Appeals’ conclusion that the Constitution conferred a right of privacy extending to intimate acts such as sodomy.⁷⁶ The Court reasoned that “no connection between family, marriage, or procreation on the one hand and homosexual activity on the other has been demonstrated.”⁷⁷ Finally, the Court held that the state’s belief that homosexual sodomy is immoral is a legitimate basis for the law and the statute therefore passed rational-basis scrutiny.⁷⁸

71. *Id.*

72. *Id.* The court also acknowledged that other jurisdictions have concluded that individuals in same-sex relationships were eligible for protection under state domestic violence statutes, citing judicial decisions in Illinois, Kentucky, and Ohio. *Id.*

73. 478 U.S. 186 (1986).

74. *Id.* at 190.

75. In his dissenting opinion in *Bowers*, Justice Blackmun criticized the majority’s characterization of the case and argued that “[t]his case is no more about a ‘fundamental right to engage in homosexual sodomy,’ as the Court purports to declare, *ante*, at 2844, than *Stanley v. Georgia*, 394 U.S. 557 (1969), was about a fundamental right to watch obscene movies, or *Katz v. United States*, 389 U.S. 347 (1967), was about a fundamental right to place interstate bets from a telephone booth. Rather, this case is about ‘the most comprehensive of rights and the right most valued by civilized men,’ namely, ‘the right to be let alone.’” *Bowers*, 478 U.S. at 199 (citing *Olmstead v. United States*, 277 U.S. 438, 478 (1928)).

76. The majority provided a history of sodomy laws within the United States to counter the argument that a right to sodomy has been valued in America. *Bowers*, 478 U.S. at 192-94. The Court refused to “discover new fundamental rights imbedded in the Due Process Clause” and rejected the argument that there is not a right to engage in sodomy within the home because no textual support for such a right existed in the Constitution. *Id.* at 194-195.

77. *Bowers*, 478 U.S. at 191.

78. *Id.* at 196.

The *Bowers* decision functioned to exclusively link the stigmatized conduct of sodomy with gay and lesbian individuals. By advocating such a narrow view of an entire class of people, “the Court dehumanized and depersonalized gay men and lesbians by removing all other aspects of personal and social identity.”⁷⁹

In *Padula v. Webster*,⁸⁰ one federal circuit court followed the *Bowers* Court’s lead by defining gay and lesbian individuals primarily by their stigmatized intimate acts. The United States Court of Appeals for the District of Columbia rejected a woman’s claim that the Federal Bureau of Investigation unconstitutionally discriminated against her when it failed to offer her a position due to her sexual orientation.⁸¹ The court concluded that “it would be quite anomalous, on its face, to declare status *defined by conduct that states may constitutionally criminalize* as deserving of strict scrutiny under the equal protection clause.”⁸²

Sodomy statutes affect important aspects of the lives of the GLBT community.⁸³ The existence of sodomy laws encouraged violence and harassment towards the homosexuality community, supported discrimination in employment cases, prevented equal treatment in family and custody matters, undermined the growth of pro-gay rights organizations, and fostered discrimination in immigration cases.⁸⁴ As recently as the year 2000, officials and legislators in states including Arizona,⁸⁵ Arkansas,⁸⁶ and Missouri⁸⁷ actively worked to keep the

79. See Todd M. Hughes, *Symposium: Towards a Radical and Plural Democracy: Making Romer Work*, 33 CAL. W. L. REV. 169, 171 (1997). See also Carlos A. Ball, *The Positive in the Fundamental Right to Marry: Same-Sex Marriage in the Aftermath of Lawrence v. Texas*, 88 MINN. L. REV. 1184, 1211-15 (May 2004) (addressing the *Bowers* Court’s narrow view of gay and lesbian relationships in contrast to the view adopted by the *Lawrence* Court).

80. 822 F.2d 97 (D.C. Cir. 1987).

81. *Id.* at 102-04.

82. *Id.* at 103 (emphasis added).

83. See generally Gary D. Allison, *Sanctioning Sodomy: The Supreme Court Liberates Gay Sex and Limits State power to Vindicate the Moral Sentiments of the People*, 39 TULSA L. REV. 95, 109-41 (providing an extensive review of the history of sodomy laws in the United States and their impact on the lives and rights of GLBT individuals).

84. See Christopher R. Leslie, *Creating Criminals: The Injuries Inflicted by “Unenforced” Sodomy Laws*, 35 HARV. C.R.-C.L. L. REV. 103 (2000). See also Allison, *supra* note 83, at 109-41.

85. PEOPLE FOR THE AMERICAN WAY FOUNDATION, *HOSTILE CLIMATE 2000: REPORT ON ANTI-GAY ACTIVITY 80* (2000). The People for the American Way Foundation reported that right-wing legislators in Arizona strategically blocked the repeal of the state’s anti-sodomy statute. On a day an openly gay legislator and key supporter of the repeal was absent, Republican House Speaker Jeff Grocost used parliamentary maneuvers to kill the repeal. *Id.*

86. *Id.* at 86. On multiple occasions, Arkansas’ attorney general and other state prosecutors moved to dismiss a lawsuit filed by seven gay and lesbian plaintiffs to challenge the state’s sodomy law, which was passed in 1977. The Arkansas state courts

discriminatory anti-sodomy laws in effect.

In the area of domestic violence law, sodomy laws have negatively impacted the availability of protection for victims of same-sex domestic violence. One of the most significant issues in same-sex domestic violence is that the abuser can maintain control over the victim by threatening to “out” him/her.⁸⁸ In a jurisdiction that had an anti-sodomy law, a victim’s fear of being “outed” and having his or her sexual orientation revealed was further compounded by the threat of being criminalized as a result of his or her intimate acts.⁸⁹ Thus, isolation experienced by victims of domestic violence was felt even more acutely by victims in homosexual relationships.⁹⁰

Although the sodomy laws may not have been regularly enforced, consensual homosexual sodomy convictions still occurred, and the accompanying criminal stigma continued to be a reality.⁹¹ A victim of same-sex domestic violence would be reluctant to report abuse because of the negative implications that may result from revealing their sexual orientation and being subject to arrest and criminal prosecution.⁹² Even if a state no longer enforced its anti-sodomy statute, the statute’s existence sent a clear message to GLBT individuals that they were criminals within that state’s legal system.⁹³

As discussed in Section II.A, a unique issue in same-sex domestic

ultimately denied these motions. *Id.*

87. *Id.* at 221. In August of 2000, Missouri State Attorney General Jay Nixon requested a clarification of a ruling issued by a state court. One month earlier, a state court of appeals overturned a man’s sexual misconduct conviction because the man’s partner consented to the sex at issue. The Missouri sexual misconduct statute prohibited sodomy without a person’s consent. Attorney General Nixon asked the court to rule that the “consent” provision of the statute was inapplicable to homosexual sexual acts. *Id.*

88. 2002 REPORT, *supra* note 10, at 9. *See also generally* Elliott, *supra* note 19.

89. 2002 REPORT, *supra* note 11, at 18 (reporting that at the time of the *Lawrence v. Texas* decision, criminal sodomy statutes remained in thirteen states). *See also* Patricia G. Barnes, *supra* note 58, at 24.

90. Rosemary Barnes, *supra* note 2, at 24. Sandra Moore-Pope, a clinical social worker, explained that “Domestic violence is a process that starts gradually and gets more severe as time goes by. At some point in the process, the stronger partner begins isolating the weaker one. The stronger partner takes advantage of the victim’s fear of being outed. They’ll threaten to tell their boss, their parents. They harp on about how the police and other mainstream groups will discriminate against them. Severe isolation is a huge problem for abused gays and lesbians. Early intervention is so critical.” *Id.*

91. *See* WILLIAM N. ESKRIDGE, JR., *GAYLAW: CHALLENGING THE APARTHEID OF THE CLOSET* 374-376 (1999). *See generally* Leslie, *supra* note 84 (discussing the harmful effects of enforced and unenforced state anti-sodomy statutes and the criminal stigma created by such laws).

92. *See, e.g.* Patricia G. Barnes, *supra* note 58, at 24; 2002 REPORT, *supra* note 10, at 19.

93. Krisana M. Hodges, Comment, *Trouble In Paradise: Barriers to Addressing Domestic Violence in Lesbian Relationships*, 9 TUL. J. L. & SEXUALITY 311, 324 (1999-2000).

violence is that the abuser may perpetuate and encourage the internalized homophobia within his or her victim, thereby increasing control and isolation of the victim.⁹⁴ Sodomy laws linked the sexual expression of gay and lesbian individuals with negative criminal connotations and contributed to the self-hatred and shame of individuals in those relationships.⁹⁵

In an article focusing on the negative impact of anti-sodomy laws, Christopher Leslie explained that sodomy laws contribute to internalized homophobia within GLBT individuals, “including denial of membership in the group, self-derision, self-hatred, hatred of others in the group, and acting out self-fulfilling prophesies about one’s own inferiority.”⁹⁶ Sodomy laws acted as a weapon for the abuser because they underscored the disparate power dynamic between abuser and victim, a key factor in abusive relationships.⁹⁷

Sodomy laws directly affected the legal remedies available to the victims of same-sex domestic violence and the resources available to them. For example, in 1998, North Carolina Republican Representative Russell Capps tried to utilize the state’s anti-sodomy statute to exclude same-sex domestic violence victims from protection under the state’s Crime Victims Rights Amendment.⁹⁸ Representative Capps argued, “This doesn’t take away anyone’s rights. It simply keeps us from adding a benefit to a group violating the law.”⁹⁹ North Carolina’s domestic violence law also made victims of same-sex domestic violence susceptible to criminal prosecution under the state anti-sodomy statute.¹⁰⁰

The increased social and criminal stigma associated with the gay community following the *Bowers* decision also played a part in the treatment of victims of same-sex domestic violence by law enforcement officials and domestic violence workers. The NCAVP compiled incident reports from several regions in the country and found that many police officers responding to same-sex domestic violence situations continued to express homophobia.¹⁰¹ The reports indicated that domestic violence shelter workers often possessed homophobic attitudes towards same-sex domestic violence victims and many shelter employees lacked the

94. 2002 REPORT, *supra* note 10, at 9-10.

95. *See generally* Leslie, *supra* note 84, at 116-21.

96. *Id.* at 117.

97. 2002 REPORT, *supra* note 10, at 5-7, 11.

98. Joseph Neff, *Panel Backs Victims’ Rights in Domestic Violence*, THE NEWS AND OBSERVER, July 1, 1998, at A3.

99. *Id.*

100. N.C. GEN. STAT. §§ 50B-1, 50B-8 (LEXIS through 2003 legislation). *See* discussion *supra*, Part II.C.

101. 2002 REPORT, *supra* note 10, at 14-15.

sensitivity and training to help those individuals.¹⁰²

Victims of same-sex domestic violence have faced many obstacles on the path to equal access to legal protection and resources. These victims have encountered either restrictive or ambiguous state domestic violence statutes and/or homophobic attitudes from law enforcement, media, courts, and shelter workers. Further compounding the inadequate treatment provided to these victims was the *Bowers* decision, which validated stigmatizing state anti-sodomy laws and reinforced society's negative attitudes toward and treatment of the GLBT community at large.

III. Analysis

A. *Lawrence v. Texas: A Victory for the Gay, Lesbian, Bisexual and Transgendered Community*

On June 26, 2003, the United States Supreme Court handed down a landmark decision that significantly impacted the lives of GLBT individuals throughout the United States. In *Lawrence v. Texas*,¹⁰³ the Court held that a Texas statute criminalizing same-sex sodomy violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution.¹⁰⁴

Writing for the majority in *Lawrence*, Justice Kennedy recognized that sodomy laws have “far reaching consequences, touching upon the most private human conduct, sexual behavior, and in the most private of places, the home.”¹⁰⁵ The Court reasoned that the government cannot be allowed to “demean” the “existence or control” of the lives of GLBT individuals by criminalizing their private, consensual, sexual conduct.¹⁰⁶ Relying upon prior cases establishing the constitutional right to privacy in the home and autonomy of personal relationships,¹⁰⁷ the Court acknowledged the Constitutional right of two adults to engage in consensual sexual practices common to homosexual partners without

102. *Id.* at 17. Based on a review of incident reports and surveys of domestic violence programs, the NCAVP concluded that the denial of services to gay and lesbian victims occurred in many ways. Some programs had an express exclusionary statement regarding same-sex domestic violence victims, while other programs failed to prioritize the issue and properly train their staffs regarding homophobia and special issues within same-sex intimate relationships. *Id.*

103. 539 U.S. 558 (2003).

104. *Id.* at 577-79.

105. *Lawrence*, 539 U.S. at 567.

106. *Id.* at 578.

107. *Id.* at 564-67.

government intervention.¹⁰⁸ The petitioners, like all GLBT individuals, were “entitled to respect for their private lives.”¹⁰⁹

It is significant, however, that the Court went beyond the recognition of GLBT individuals’ freedom of consensual sexual conduct. The *Lawrence* majority also made the connection between the sexual conduct at issue and the personal relationships complementing that conduct.¹¹⁰ The Court noted that “[f]reedom extend[ed] beyond spatial bounds”¹¹¹ and concluded that “[l]iberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct.”¹¹² Thus, the Court reasoned that sexual conduct and expression, limited by sodomy laws, is just “one element in a personal bond that is more enduring.”¹¹³

In reaching its decision, the *Lawrence* Court necessarily overruled *Bowers v. Hardwick*.¹¹⁴ The *Lawrence* majority criticized the narrowly framed constitutional issue upon which the *Bowers* decision was based. Justice Kennedy reasoned that to conclude the issue in *Bowers* was solely about the right to engage in sodomy “demeans the claim the individual put forward, just as it would demean a married couple were it said marriage is simply about the right to have sexual intercourse.”¹¹⁵

The *Lawrence* Court also recognized the failure of the *Bowers* decision to appreciate the negative implications the decision would have on the lives of so many individuals.¹¹⁶ In assessing the Texas anti-sodomy statute at issue in the *Lawrence* case, the majority acknowledged the far-reaching, dire consequences to those convicted under state anti-sodomy statutes.¹¹⁷

108. *Id.* at 578.

109. *Id.*

110. *See* Ball, *supra* note 79, at 1212-13 (“The *Lawrence* Court recognized that criminalization of particular kinds of sexual intimacy not only limits the autonomy of individuals to decide which kinds of sexual acts they want to engage in and with whom; it also, directly and necessarily, has an impact on the autonomy of individuals to build relationships that are based, in part, upon that sexual intimacy.”).

111. *Lawrence*, 539 U.S. at 562.

112. *Id.*

113. *Id.* at 567.

114. 478 U.S. 186 (1986). *See* Allison, *supra* note 83, at 141-50 (discussing the justification and reasoning behind the *Lawrence* Court’s overruling of the *Bowers* decision).

115. *Lawrence*, 539 U.S. at 567.

116. *Id.* “The laws involved in *Bowers* and here are, to be sure, statutes that purport to do no more than prohibit a particular sexual act. Their penalties and purposes, though, have more far-reaching consequences, touching upon the most private human conduct, sexual behavior, and in the most private of places, the home. The statutes do seek to control a personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of persons to choose without being punished as criminals.” *Id.*

117. *Id.* at 574-76. “The stigma the Texas criminal statute imposes, moreover, is not trivial. The offense, to be sure, is but a class C misdemeanor, a minor offense in the

The *Lawrence* decision effectively signaled an end to state anti-sodomy laws nationwide.¹¹⁸ To do so, the *Lawrence* majority recognized that *Bowers v. Hardwick* was largely based on the premise that history and tradition have supported the condemnation of homosexuality as immoral.¹¹⁹ The Court then answered in the negative the question of “whether the majority may use the power of the State to enforce these views on the whole society through operation of the criminal law.”¹²⁰ Consequently, the majority concluded that the Texas anti-sodomy statute at issue “furthered no legitimate state interest which can justify its intrusion into the personal and private life of the individual.”¹²¹

A post-*Lawrence* Eleventh Circuit case demonstrated the acknowledgment of at least one state that its anti-sodomy statute no longer passed constitutional muster.¹²² In a lawsuit challenging an Alabama anti-sodomy statute, the court ultimately found that the plaintiffs lacked standing, but it recognized that *Lawrence v. Texas* rendered statutory prohibitions on consensual sodomy unconstitutional.¹²³ The court noted that Alabama’s Attorney General conceded in his supplemental brief that the *Lawrence* decision nullified the state’s anti-sodomy statute because it applied to private, consensual sodomy between unmarried persons.¹²⁴

By overruling *Bowers* and recognizing the constitutional privacy right of homosexuals to engage in private, consensual acts, the *Lawrence* decision was a tremendous step forward for the GLBT community. However, while *Lawrence v. Texas* voided the remaining state anti-sodomy statutes,¹²⁵ “it is less clear how the decision will affect hot-

Texas legal system. Still, it remains a criminal offense with all that imports for the dignity of the persons charged. The petitioners will bear on their record the history of their criminal convictions.” *Id.* at 575.

118. At the time of the *Lawrence* decision, the following states had criminal anti-sodomy statutes: Alabama, Florida, Idaho, Kansas, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Texas, Utah, and Virginia. 2002 REPORT, *supra* note 10, at 19.

119. *Lawrence*, 539 U.S. at 571.

120. *Id.* The Court subsequently quoted from its decision in *Planned Parenthood v. Casey*: “Our obligation is to define the liberty of all, not to mandate our own moral code.” 505 U.S. 833, 850 (1992).

121. *Lawrence*, 539 U.S. at 578.

122. *Doe v. Pryor*, 344 F.3d 1282 (2003). ALA. CODE § 13A-6-65(a)(3) criminalizes deviate sexual intercourse as defined by ALA. CODE § 13A-6-60(2) (WESTLAW through 2004 legislation).

123. *Doe*, 344 F.3d at 1287.

124. *Id.* at 1287.

125. *But see* Chris Bull, *The Lawrence Legacy*, THE ADVOCATE, January 20, 2004, at 38. Mr. Bull reported that four months after the *Lawrence* decision, a Virginia Beach, Virginia judge allowed state prosecutors to proceed with sodomy charges against a homosexual man. Pat Logue, interim legal director of Lambda Legal Defense and Education Fund, explained that despite the tremendous victory for the GLBT community

button issues such as same-sex marriage, the Pentagon's 'don't ask, don't tell' policy, and family law."¹²⁶ Just how far the consequences of the *Lawrence* decision will reach has become a highly-debated question.¹²⁷

B. The Effect of the Nullification of State Anti-Sodomy Laws on Victims of Same-Sex Domestic Violence

In the aftermath of *Lawrence v. Texas*, the media and legal commentators have primarily focused on the decision's implications for controversial issues in gay rights politics, particularly same-sex marriage.¹²⁸ The decision will also be felt, however, in the area of same-sex domestic violence. By invalidating state anti-sodomy laws, *Lawrence* will have both direct and indirect effects on same-sex domestic violence.

The *Lawrence* decision directly affected North Carolina domestic violence law.¹²⁹ As referenced in Part II.B and II.C of this comment, a victim of same-sex domestic violence faced prosecution under North Carolina's sodomy law, a threat specifically referenced in the domestic violence protection statute.¹³⁰ Without this threat attached to the process of securing civil protection from their abusers, GLBT victims of domestic violence in North Carolina will now be more likely to seek legal remedies.

Although North Carolina is the only state whose domestic violence law is directly linked to an anti-sodomy statute, the removal of anti-sodomy statutes positively affects state legal remedies for victims of same-sex domestic violence in all states. Sodomy laws stigmatized not only the GLBT community at large, but also functioned as an obstacle to victims of same-sex domestic violence in their quest to obtain legal protection from abuse.

In its brief in support of Johnny Baxley, the appellee who challenged his conviction under Louisiana's anti-sodomy statute, the Lambda Legal Defense and Education Fund, Inc. ("Lambda") explained

following *Lawrence*, "[t]here are definitely a few rogue cases out there. There's a reluctance to accept what *Lawrence* really means about equality and a desire to keep going after gay people. These are the last gasps of legal resistance to equality." *Id.*

126. *Id.* at 38.

127. *Id.* at 38. In Mr. Bull's article, David Garrow, author of *LIBERTY AND SEXUALITY: THE RIGHT TO PRIVACY AND THE MAKING OF ROE V. WADE*, remarked on the state of flux of gay rights following the decision: "What is going to be the analytical and interpretive impact of *Lawrence*? How broadly will it be interpreted? It is limited to sodomy statutes or more sweeping in its effect? It's going to take some time to sort this all out." *Id.*

128. *Id.*

129. 2002 REPORT, *supra* note 10, at 19.

130. See N.C. GEN. STAT. §§ 50B-1, 50B-8 (WESTLAW through 2004 legislation).

how sodomy laws perpetuated violence towards and hatred of homosexuals.¹³¹ Lambda reasoned that state sodomy laws “penalize specific forms of sexual expression, or that come to be used or understood as branding a particular group of outlaws, convey a message of social disapproval to all citizens.”¹³² Lambda added that the laws “reinforce individual hostility against people who practice (or who are deemed to practice) such behaviors, or who are inaccurately held to be ‘the class defined by the conduct’ ostensibly proscribed by the law.”¹³³

In 2001 and 2002, the NCAVP reported that many victims of same-sex domestic violence faced criminal prosecution under a state anti-sodomy statute, and also faced criminal and social stigma associated with same-sex intimacy.¹³⁴ As long as sodomy laws remained in effect, “many individuals in same-sex relationships are considered criminals under their state sodomy law. They do not call 911 out of fear that the police will not be responsive, that they will be dismissive, or worse.”¹³⁵ Because *Lawrence* effectively overruled existent state anti-sodomy statutes and underscored the legitimacy of same-sex intimacy, the decision helps combat the special issues confronted by victims of same-sex domestic violence.

Without anti-sodomy laws, individuals abused by their same-sex partners will no longer face criminal prosecution inherent in the admission of involvement in an intimate same-sex relationship. Furthermore, the stigma associated with sodomy will decrease as the laws are nullified, prosecutions cease, and the Court’s recognition of the freedom and dignity of sexual intimacy between adults, heterosexual and homosexual, sinks into the consciousness of American society.¹³⁶ Victims of same-sex domestic violence will be more likely to publicly acknowledge their relationships and to report abuse.

Anti-sodomy laws have contributed to other special issues faced by abuse victims in homosexual relationships. The stigma associated with sodomy laws furthered discrimination and homophobia towards the GLBT generally.¹³⁷ Consequently, victims of same-sex domestic violence contended with the negative implications of being “outed” by

131. Brief of Amici Curiae Lambda Legal Defense and Education Fund, Inc., *Louisiana v. Baxley*, 633 So.2d 142 (La. 1994).

132. *Id.*

133. *Id.*

134. See generally 2001 REPORT *supra* note 13; 2002 REPORT, *supra* note 10.

135. See Knauer, *supra* note 10, at 348.

136. See Allison, *supra* note 83, at 129-40 (discussing the positive strides made by the GLBT community in recent years vis-à-vis advancements in the portrayal of GLBT individuals, increased political presence, greater religious acceptance and invalidation of sodomy laws).

137. See discussion *supra* Part II.C.

their abusive partners.¹³⁸ These individuals also faced homophobic attitudes and responses by law enforcement officers, abuse shelter workers, and the court system.¹³⁹ Harassment and discrimination by police and shelter workers will no longer be tolerated as the recognition, respect, and education regarding the GLBT community increase over time.¹⁴⁰

The principles set forth in the *Lawrence* decision underscore the progress that the GLBT community has made in seeking respect, dignity, and recognition within our country.¹⁴¹ The backlash following the decision only highlights the fact that *Lawrence v. Texas* represents increased approval (or at least greater tolerance) of GLBT individuals within our country.¹⁴²

C. *Lawrence: Paving the Way for Same-Sex Marriage and GLBT Individuals' Equal Access to Domestic Violence Laws*

Lawrence v. Texas recognized the privacy right of adult individuals to engage in consensual, sexual conduct within the privacy of their homes.¹⁴³ And, generally, domestic violence laws center upon the private nature of the crime.¹⁴⁴ Thus, “[f]or same-sex couples to gain the same protections, they must first assert the private nature of their relationship.”¹⁴⁵

The *Lawrence* decision represented a tremendous step for the GLBT community in claiming an important right stemming from their private, intimate relationships. The *Lawrence* Court recognized the connection between the sexual conduct at issue and the personal relationships accompanying that conduct.¹⁴⁶ The Court concluded that sexual conduct and expression, limited by sodomy laws, is just “one element in a

138. See discussion *supra* Parts II.A.

139. See generally 2001 REPORT, *supra* note 13; 2002 REPORT, *supra* note 10.

140. See Allison, *supra* note 83, at 129-40.

141. Dissenting in *Lawrence*, Justice Scalia acknowledged this trend and expressed his disdain that “[t]oday’s opinion is the product of a Court, which is the product of a law-profession culture, that has largely signed on to the so-called homosexual agenda, by which I mean the agenda promoted by some homosexual activists directed at eliminating the moral opprobrium that has traditionally attached to homosexual conduct.” *Lawrence*, 539 U.S. at 602.

142. See Associated Press, *Polls Hint at Backlash After Gay-Rights Ruling*, CHICAGO TRIBUNE, July 30, 2003, at 10.

143. See discussion, *supra* Part III.A.

144. Knauer, *supra* note 10, at 339.

145. *Id.* at 340.

146. See, e.g., Ball, *supra* note 79, at 1212 (“The Court in *Lawrence* understood that the Texas sodomy statute implicated liberty interests associated with personal relationships as much as liberty interests associated with sexual conduct.”).

personal bond that is more enduring”¹⁴⁷ Therefore, by extending privacy protection to the sexual conduct of GLBT individuals and the personal relationships in which they engage in such conduct, the *Lawrence* decision constituted an important progression by including GLBT individuals within the ambit of domestic violence laws.

Specifically, the growing reality of same-sex marriage following the *Lawrence v. Texas* decision represents an indirect way in which *Lawrence* will impact same-sex domestic violence.¹⁴⁸ If states use the *Lawrence* decision to lay the constitutional foundation for same-sex marriages, the civil and criminal protections available to individuals as spouses, including domestic violence protections, will likewise be readily available to members of the GLBT community.

In his dissenting opinion in the *Lawrence* case, Justice Scalia recognized that the rationale and principles underlying *Lawrence v. Texas* “leave[] on pretty shaky grounds state laws limiting marriage to opposite-sex couples.”¹⁴⁹ Although Arizona¹⁵⁰ and Indiana¹⁵¹ recently barred the extension of marriage rights to homosexual couples following the *Lawrence* decision, the Massachusetts Supreme Court opened the door to the existence of same-sex marriage.

In *Goodridge v. Dep’t of Pub. Health*,¹⁵² the Supreme Judicial Court of Massachusetts analyzed whether the Commonwealth’s denial of civil marriage to homosexual couples was consistent with the principles in the

147. *Lawrence*, 539 U.S. at 567.

148. See generally Ball, *supra* note 79 (providing a thorough analysis of the Due Process implications of *Lawrence* decision in the context of affirmative government recognition of same-sex marriage).

149. *Lawrence*, 539 U.S. at 601.

150. *Standhardt v. Arizona*, 77 P.3d 451 (Ariz. Ct. App. 2003). In *Standhardt*, petitioners argued that the *Lawrence* decision “implicitly recognized” that the fundamental right to marry includes the freedom to choose a same-sex partner. *Id.* at 456. The court rejected this argument, pointing to explicit language in *Lawrence* that the decision “[did] not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter.” *Id.* (citing *Lawrence v. Texas*, 539 U.S. 558, 578 (2003)). The court also reasoned that “because other language in *Lawrence* indicates that the Court did not consider sexual conduct between same-sex partners a fundamental right, it would be illogical to interpret the quoted language as recognizing a fundamental right to enter a same-sex marriage.” *Id.* at 457. Ultimately, the court rejected any fundamental due process right to marry a same-sex partner and determined that “it is for the people of Arizona, through their elected representatives or by using the initiative process, rather than this court, to decide whether to permit same-sex marriages.” *Id.* at 465.

151. *Morrison v. Sadler*, 821 N.E.2d 15 (Ind. Ct. App. 2005) (holding that Indiana’s Defense of Marriage Act did not violate the state constitution because the state had a legitimate interest in encouraging opposite-sex couples to enter into and remain in the stable institution of marriage for the sake of children who are frequently the natural result of sexual relations between a man and the state’s constitution did not require the government to act affirmatively in extending benefits of marriage to same-sex couples).

152. 798 N.E.2d 941 (Mass. 2003).

Massachusetts Constitution.¹⁵³ The suit arose when fourteen individuals (seven same-sex couples) were denied marriage licenses from their local clerk's offices, preventing them from taking an administrative step necessary for marriage in the Commonwealth.¹⁵⁴

The Supreme Judicial Court of Massachusetts recognized that marriage is a "vital social institution."¹⁵⁵ It further acknowledged that when same-sex couples are denied marriage, those individuals are "arbitrarily deprived of membership in one of community's most rewarding and cherished institutions" and "barred access to the protections, benefits, and obligations of civil marriage. . . ."¹⁵⁶ Following an analysis of the nature of marriage itself and the guarantees of liberty within the Massachusetts Constitution, the court concluded that the Commonwealth's ban on marriage was an unconstitutional violation of the rights of GLBT individuals seeking marriage.¹⁵⁷

The *Lawrence* decision, handed down only five months earlier, played an important role in this landmark Massachusetts decision. Although the Massachusetts court noted that *Lawrence* did not specifically address same-sex marriage, it acknowledged that *Lawrence* stood for the concept that government is prohibited from intruding "into the deeply personal realms of consensual adult expressions of intimacy and one's choice of an intimate partner."¹⁵⁸ As is the case with many state constitutions, the court concluded that the Massachusetts Constitution is "more protective of individual and equality" than the federal Constitution and tolerates even less government interference with "protected spheres of private life."¹⁵⁹

The *Goodridge* case exemplified the way that the post-*Lawrence*

153. *Id.* at 948. The plaintiffs argued that denial of same-sex marriage violated Articles 1, 6, 7, 10, 12 and 16 and Part II, Clause 1, Section 1, Article 4 of the Massachusetts Constitution. *Id.* at 950.

154. *Id.* at 950. The Department of Public Health, the named defendant in this lawsuit, is commanded by state statute to safeguard public health, including overseeing the Commonwealth's vital records relative to the issuance of marriage licenses. *Id.* at 949.

155. *Goodridge*, 798 N.E.2d at 948.

156. *Id.* at 949.

157. *Id.* at 968. The *Goodridge* majority discussed the numerous benefits attached to marriage, granting "enormous private and social advantages" to married individuals and their families. *Id.* at 954-57. In light of these benefits, the court recognized that marriage has been conceptualized as a "civil right" on both the federal and state level and that laws should protect this right from government intrusion. *Id.* at 957. Reflecting on prior federal and state court decisions addressing the right of marriage, the Supreme Judicial Court of Massachusetts concluded that the Commonwealth's ban on same-sex marriage "deprives individuals of access to an institution of fundamental legal, personal, and social significance" solely because one's sexual orientation. *Id.* at 958.

158. *Goodridge*, 798 N.E.2d at 948.

159. *Goodridge*, 798 N.E.2d at 948-49.

path to same-sex marriages in the states will yield positive results for victims of same-sex domestic violence. Throughout its opinion, the *Goodridge* court repeatedly noted the way in which marriage bestows numerous legal, social, and civil benefits upon individuals.¹⁶⁰ Upon entering into marriage, an individual immediately gains access to important rights such as financial, tax, medical, insurance, and inheritance benefits.¹⁶¹ In other words, being a “spouse” has enormous advantages.

One crucial benefit stemming from being a married individual is reflected in domestic violence statutes. In each and every state that makes protection either unavailable or only neutrally available to abuse victims in same-sex relationships, the domestic violence statutes clearly afford protection to “spouses.”¹⁶² In these states, abused GLBT individuals are either excluded from protection access because of narrow statutory definitions, or they must hope state courts liberally construe the neutrally worded statutes to include them within the scope of protection.

If other states follow Massachusetts’ path in the wake of the *Lawrence* decision, ambiguity will no longer be an obstacle. Given the opportunity to enter into marriages, many GLBT individuals will choose to have the same benefits and advantages traditionally provided to married heterosexuals. Victims of abuse in same-sex relationships will finally have the unequivocal protection of state domestic violence laws.

IV. Conclusion

Domestic violence in same-sex relationships is a national problem. Incident reports and statistics gathered by the NCAVP and other domestic violence institutions reveal that same-sex domestic violence occurs at the same frequency as heterosexual domestic violence. Clearly, the power dynamics and patterns of abuse in domestic violence transcend sexual orientation.

160. “[M]arriage provides an abundance of legal, financial, and social benefits.” *Goodridge*, 798 N.E.2d at 948. “Barred access to the protections, benefits, and obligations of civil marriage. . . .” *Id.* at 949. “[D]enying marriage licenses to the plaintiffs was tantamount to denying them access to civil marriage itself, with its appurtenant social and legal protections, benefits, and obligations.” *Id.* at 950. “[Marriage] is central to the way the Commonwealth identifies individuals, provides for the orderly distribution of property, ensures that children and adults are cared for and supported whenever possible from private rather than public funds, and tracks important epidemiological and demographic data.” *Id.* at 954. “Marriage also bestows enormous private and social advantages on those who choose to marry.” *Id.* “Tangible as well as intangible benefits flow from marriage.” *Id.* at 955. “The benefits accessible only by way of a marriage license are enormous, touching nearly every aspect of life and death.” *Id.*

161. *Goodridge*, 798 N.E.2d at 955-57.

162. See discussion *supra* Part II.B and accompanying footnotes.

Despite this evidence, law enforcement officials, courts, legislators, and domestic violence shelters have been slow to recognize and treat the problem. Although the GLBT community has made tremendous strides in attaining visibility, respect, and rights over the past few decades, domestic violence law continues to be an area in dire need of improvement.

The *Lawrence v. Texas* decision is an important victory for the gay community. The United States Supreme Court acknowledged the respect between and privacy rights of consenting adults to engage in private sexual intimacies. By reversing *Bowers v. Hardwick*, the Court rid the nation of archaic and stigmatizing anti-sodomy laws whose only purpose was to dehumanize and target GLBT citizens.

In the wake of *Lawrence*, our nation has focused on the decision's implications for the controversial issue of same-sex marriage. Domestic violence law, however, represents another area of the law that will be positively affected by that landmark decision. By overruling state anti-sodomy laws, promoting privacy rights and respect of GLBT individuals, and paving the way for spousal benefits via same-sex marriage, *Lawrence v. Texas* is a significant triumph for victims of same-sex domestic violence across the country.
