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The Ball is in Whose Court? Rhode Island's Need for an Integrated Domestic Violence Court

Brendan Horan*

Trigger Warning: This Comment discusses domestic violence and includes descriptions of murder, kidnapping, and suicide

“Now more than ever, we need to challenge the systems that fail survivors when they do speak out. That is why today, I share my voice.”¹

INTRODUCTION

In December 2018, Berta Hudson, a resident of Providence, Rhode Island, and a mother of three, filed for divorce from her husband, Oscar.² Seeking a quick resolution, Berta filed for a nominal-track³ divorce citing irreconcilable differences while

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1. Press Release, *Candlelight Vigil Honored Victims of Domestic Violence*, R.I. COALITION AGAINST DOMESTIC VIOLENCE (Oct. 17, 2018), <http://www.ricadv.org/en/what-we-do/communications/newsroom> [<https://perma.cc/X9GX-PLVB>] (statement of Damaris Roman).

2. Brian Amaral, *Shooter in Providence Murder-Suicide Had Previously Violated No-Contact Order*, PROVIDENCE JOURNAL (Aug. 26, 2019, 5:21 PM), <https://www.providencejournal.com/news/20190826/shooter-in-providence-murder-suicide-had-previously-violated-no-contact-order> [perma.cc/29FV-6ZSV].

3. Nominal-track divorces are filed when “the party who filed believes that the case can be settled relatively quickly or wants the divorce to be settled

Oscar, intending to prolong the process, filed for a contested-track divorce.⁴ In February 2019, while the divorce complaint was still pending,⁵ Berta “filed an abuse complaint against Oscar” with the Rhode Island Family Court alleging that he placed her and her children “in fear of imminent physical harm” while also engaging in cyber-stalking and harassment.⁶ As a means of increasing his ominous presence in their lives, Oscar moved to a house only doors down the street from Berta and her family.⁷ Because he failed to adhere to an earlier court order, Oscar was charged with the misdemeanor offense of violating a family court protective order.⁸ He was found guilty and received a one year filing.⁹ As a condition of his disposition, Oscar was required to complete domestic abuse counseling and was once again ordered to have no contact with Berta.¹⁰ One month later, Oscar violated a protective order for the last time, murdering Berta in front of her home in broad daylight.¹¹ He then fled to an apartment and killed himself.¹² If a more comprehensive system for handling domestic violence had been in

relatively quickly.” *Rhode Island Divorce From Soup to Nuts*, HG.ORG, <https://www.hg.org/legal-articles/rhode-island-divorce-from-soup-to-nuts-18174> [perma.cc/52PZ-QA78] (last visited May 25, 2021).

4. Amaral, *supra* note 2.

5. *Hudson v. Hudson*, No. P20186268 (R.I. Fam. Ct. Aug. 30, 2019) (historical docket information available at, <https://publicportal.courts.ri.gov/app/RegisterOfActions#/BD6FC11B76C0A6B0CC8016AEC6D44D6EA699465F679FDCD1E76EAB2B99548FFB1F9AB2543CF3DC10B4053C55539C1993/anon/portalembd> [perma.cc/RMW3-PN6N]).

6. Amaral, *supra* note 2.

7. *See id.*

8. *Id.*

9. *State v. Hudson*, No. 61-2019-03918 (R.I. Dist. Ct. July 17, 2019) (historical docket information available at, <https://publicportal.courts.ri.gov/app/RegisterOfActions#/DDE92CE487BEF4833ED10731F8B4A54EBB679604F5B0C6EB381CF46AECC795A26E19AB9A3AD2296047499EED74209DE2/anon/portalembd> [perma.cc/8G6A-JSCY]); *see* 12 R.I. GEN. LAWS § 12-10-12 (2020). A judge may file a complaint in any criminal case as long as the defendant has not been convicted of a felony and the current case before the court is not a felony. 12 R.I. GEN. LAWS § 12-10-12 (2020). In cases of domestic violence, the matter will automatically be expunged if the defendant is not convicted of a subsequent charge of domestic violence within three years. *Id.*

10. Amaral, *supra* note 2.

11. *Id.*

12. *Id.*

place, including better screening and monitoring of abusers, Berta might still be alive today.

There are more than ten million domestic violence incidents annually in the United States.¹³ Intimate partner violence in the United States rose by forty-two percent between 2016 and 2018.¹⁴ The Rhode Island Coalition Against Domestic Violence (RICADV) assisted over ten thousand victims of domestic violence in 2019, an increase of over fifteen hundred victims from the previous year.¹⁵ In order to help prevent the increasing number of domestic violence cases, the State of Rhode Island should amend Rhode Island General Laws Title 8 to allow for the creation of an Integrated Domestic Violence (IDV) court that provides a single judge with jurisdictional authority over civil and criminal cases involving a single family.¹⁶ The utilization of an IDV court in Rhode Island will reduce dismissal rates of domestic violence cases, promote victim safety, increase accountability for abusers, allow for more knowledgeable judicial decision-making through the sharing of information across courts handling matters of families involved in domestic violence, and lower incarceration costs by reducing the number of domestic violence offenders serving at the Adult Correctional Institute (ACI) through more informed screening, sanctioning, and supervision.

13. NAT'L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE, https://assets.speakcdn.com/assets/2497/domestic_violence-2020080709350855.pdf?1596828650457 [perma.cc/7D7F-AUD6] (last visited May 25, 2021) (citing M.C. BLACK ET AL., CTR. FOR DISEASE CONTROL, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT (2011), https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf [https://perma.cc/6NQS-87CQ]).

14. *Id.*

15. Compare R.I. COAL. AGAINST DOMESTIC VIOLENCE, ANNUAL REPORT (2019), www.ricadv.org/images/Annual_Reports/RICADV_2019_Annual_Report.pdf [perma.cc/7S8T-UFLT] (last visited May 25, 2020) [hereinafter RICADV 2019 REPORT] (10,134 victims helped), with R.I. COAL. AGAINST DOMESTIC VIOLENCE, ANNUAL REPORT (2018), www.ricadv.org/images/Annual_Reports/Annual_Report_2018.pdf [https://perma.cc/N9PD-CGLB] (last visited May 25, 2021) [hereinafter RICADV 2018 REPORT] (8,514 victims helped).

16. See CTR. FOR COURT INNOVATION, INTEGRATED DOMESTIC VIOLENCE COURTS: KEY PRINCIPLES 1, https://www.courtinnovation.org/sites/default/files/documents/IDV_FACT_SHEET.pdf [perma.cc/BF4A-NN7C] (last visited May 25, 2021).

Part I of this Comment provides background on the prevalence of domestic violence in Rhode Island and the current adjudication process for domestic violence cases. Part II analyzes the positive impact that the adoption of an IDV court would have on Rhode Island's justice system, including the benefits of employing a specialized domestic violence prosecution unit, more informed decision making on the part of judicial officers, and the more effective sanctioning of defendants processed through an IDV court. Part III will address potential problems that may arise through the implementation of an IDV court as well as how these problems can be mitigated.

I. THE STATE OF DOMESTIC VIOLENCE IN RHODE ISLAND

A. *A View of the History and Current Prevalence of Domestic Violence in Rhode Island*

Domestic violence has been a scourge upon Rhode Islanders since the time of Roger Williams's banishment from the Massachusetts Bay Colony and subsequent establishment of Providence in 1636.¹⁷ In 1638, Joshua Verin, one of Williams's original five companions who joined him in fleeing the Massachusetts Bay Colony, was brought before the Providence town government and accused of "breach[ing] a town covenant for restraining his wife's liberty of conscience."¹⁸ Notably, it was said, "he hath troden her under foote tyrannically and brutishly: wch [sic] she and we long bearing though with his furious blowes she went in danger of Life"¹⁹ This first recorded incident of domestic violence in Rhode Island would certainly not be the last.

The prevalence of domestic violence in Rhode Island has had a devastating impact on the state and its inhabitants. In Rhode Island, almost thirty percent of women have suffered because of

17. See Edward J. Eberle, *Another of Roger Williams's Gifts: Women's Right to Liberty of Conscience: Joshua Verin v. Providence Plantations*, 9 ROGER WILLIAMS U. L. REV. 399, 399–400 (2004).

18. *Id.* 400–02.

19. *Id.* at 402 (quoting Letter from Roger Williams to John Winthrop (May 22, 1638), reprinted in 1 THE CORRESPONDENCE OF ROGER WILLIAMS 155–56 (Glen W. LaFantasie ed., 1988)).

domestic abuse.²⁰ This type of cruelty is not unique to females, however, as over nineteen percent of men have borne the brunt of domestic violence.²¹ These numbers, already excessively high, are trending in the wrong direction. The RICADV served an average of 9,000 victims annually between 2014 and 2019.²² The number of victims served by the RICADV in 2019 jumped to 10,134, the highest number of victims served in the past five years.²³ These numbers only represent the reported incidents of domestic violence, which do not provide a truly accurate account because domestic violence is a crime that is underreported in the United States.²⁴

The majority of domestic violence incidents take place in the home and led, unfortunately, to children being present for twenty-seven percent of domestic violence arrests in Rhode Island during 2017.²⁵ Children exposed to domestic violence can suffer from a multitude of various physical and mental afflictions.²⁶ These issues can include cognitive, behavioral, and psychological problems, as

20. NAT'L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE IN RHODE ISLAND, https://assets.speakcdn.com/assets/2497/rhode_island_2019.pdf [perma.cc/HC9H-WSU5] (last visited May 25, 2021) (citing BLACK ET AL., *supra* note 13).

21. *Id.*

22. RICADV 2019 REPORT, *supra* note 15; RICADV 2018 REPORT, *supra* note 15; R.I. COAL. AGAINST DOMESTIC VIOLENCE, ANNUAL REPORT (2017), http://www.ricadv.org/images/Annual_Reports/RICADV_AnnualReport2017_forweb.pdf [perma.cc/R2HL-L3CY] (last visited May 25, 2021); R.I. COAL. AGAINST DOMESTIC VIOLENCE, ANNUAL REPORT (2016), http://www.ricadv.org/images/Annual_Reports/RICADV_2016_AnnualReport.pdf [perma.cc/Z8Q8-S3QM] (last visited May 25, 2021); R.I. COAL. AGAINST DOMESTIC VIOLENCE, ANNUAL REPORT (2015), http://www.ricadv.org/images/Annual_Reports/RICADV_2015_AnnualReport.pdf [perma.cc/46XC-XNP8] (last visited May 25, 2021); R.I. COAL. AGAINST DOMESTIC VIOLENCE, ANNUAL REPORT (2014), http://www.ricadv.org/images/Annual_Reports/RICADV_2014_AnnualReport.pdf [perma.cc/PE9W-YFXQ] (last visited May 25, 2021).

23. RICADV 2019 REPORT, *supra* note 15.

24. Jennifer Koshan, *Investigating Integrated Domestic Violence Courts: Lessons from New York*, 51 OSGOODE HALL L.J. 989, 991–92 (2014).

25. R.I. KIDS COUNT, 2020 R.I. KIDS COUNT FACTBOOK 104, <https://www.rickidscount.org/Portals/0/Uploads/Documents/Factbook%202020/RIKC Factbook2020.pdf?ver=2020-04-03-124327-163> [perma.cc/9KHU-NGZ3].

26. See Marielsa Bernard, *Domestic Violence's Impact on Children*, 36 MD. B.J. 10, 11–12 (2003).

well as physical symptoms such as stomachaches and headaches.²⁷ Children who witness domestic violence are also “at an increased risk for aggression, learning difficulties and subsequent school failure, delinquency and even suicide.”²⁸ Surveys have found that children exposed to domestic violence may feel that violence and abuse are common occurrences in a relationship.²⁹ Domestic violence is a cycle doomed to repeat itself unless properly addressed.

B. Rhode Island’s Current Process for Adjudicating Domestic Violence Matters

Domestic violence cases are dismissed far too often in our state’s courthouses.³⁰ According to the RICADV, about half of the perpetrators who committed the forty-five intimate partner homicides in Rhode Island between 2006 and 2015 had a previous domestic violence criminal history.³¹ A staggering seventy-five percent of these perpetrators had previous domestic violence charges dismissed.³² These murderers were not the only offenders arrested in Rhode Island on charges of domestic violence to later have the case against them dismissed. Between December 2011 and March 2013, two-thirds of all misdemeanor domestic violence cases in Rhode Island were dismissed³³ Providence and Warwick, Rhode Island’s first and third most populous cities respectively,³⁴

27. *Id.* at 12.

28. *Id.*

29. *Id.* at 13 (citing C. Wisdom, *Does Violence beget Violence?*, 106 PSYCHOL. BULL. 3, 3–23 (1989)).

30. See Cierra Putman, *Report: 66 Percent of Domestic Violence Cases Dismissed*, NBC 10 NEWS, (May 15, 2013), <https://turnto10.com/archive/report-01-17-2016> [perma.cc/UGL6-EU9E].

31. R.I. COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE HOMICIDES IN RHODE ISLAND 2006-2015 at 1, 3, 5 (2016), http://www.ricadv.org/images/Policy/RICADV_HomicideReport_final_for_web.pdf [perma.cc/2HPK-JJW6] [hereinafter RICADV HOMICIDE REPORT].

32. *Id.* at 5.

33. Putman, *supra* note 30.

34. *Rhode Island Cities by Population*, R.I. DEMOGRAPHICS, https://www.rhodeisland-demographics.com/cities_by_population [perma.cc/6QRY-BC39] (last visited May 25, 2021).

dismissed seventy percent of their misdemeanor domestic violence cases.³⁵

Dismissals of domestic violence cases can ultimately lead to disastrous results.³⁶ In 2007, Daniel L. Rodriguez was charged with the kidnapping of his twenty-two-year-old former girlfriend, which he facilitated by holding a knife to her throat.³⁷ This kidnapping charge was eventually dismissed because the witnesses in the matter refused to cooperate with authorities.³⁸ In July of 2013, his subsequent girlfriend, Evelyn Burgos, fearing for her life, filed for a protective order against Rodriguez after their relationship ended.³⁹ Two weeks after filing her application, Evelyn and her twenty-five-year-old daughter, Vanessa Perez, would be dead at the hands of Rodriguez after he shot them with a .357 caliber revolver.⁴⁰

The dismissal of domestic violence charges against a defendant who later went on to commit a more heinous act is no anomaly in Rhode Island. In 2012, Mario Ponte strangled his wife Lucy inside their home and she later succumbed to her injuries several months later.⁴¹ Mario had a history of domestic violence, with a prior case of domestic simple assault being dismissed before he murdered Lucy.⁴² Similarly, in 2009, Linda Encarnacao was stabbed, strangled, and beaten so severely by her estranged boyfriend, Herbert Byrd, that her exact cause of death was indeterminable.⁴³ Like Evelyn's killer and Vanessa and Lucy's killer, Byrd had previously been charged with domestic violence, but the charges were dismissed.⁴⁴

35. Putman, *supra* note 30.

36. RICADV HOMICIDE REPORT, *supra* note 31, at 1.

37. Mark Reynolds, *Failure to Protect: Most Agree R.I. Can Do More Prevent Domestic Murders*, PROVIDENCE JOURNAL (Mar. 22, 2014, 9:57 PM), <https://providencejournal.com/article/20140322/NEWS/303229932> [perma.cc/CQ6L-GD5B].

38. *Id.*

39. *Id.*

40. *Id.*

41. RICADV HOMICIDE REPORT, *supra* note 31, at 14.

42. *Id.*

43. *Id.* at 10.

44. *Id.*

There are numerous reasons why domestic violence cases are dismissed. Some abusers threaten their victims to frighten them about testifying in the case while others sweet-talk their victims so that they do not want to participate in the prosecution of the matter.⁴⁵ In one study, one-third of domestic violence charges were dismissed because of problems finding a victim or witness or getting them to testify.⁴⁶ In domestic violence cases, fear and other pressures can deter the victim, often the only witness, from testifying, which often leads to a dismissal of the charges.⁴⁷

The reduction in severity of the charged crime often occurs in domestic violence cases through the use of plea bargaining.⁴⁸ Defendants in domestic violence cases routinely take plea deals, reducing uncertainty for prosecutors by guaranteeing a conviction, but typically for a more lenient punishment than they would have faced if found guilty at trial.⁴⁹ For example, in one Pennsylvania county, more than ninety-eight percent of cases closed in one year were done through guilty pleas.⁵⁰ In cases where the victim refuses to testify against their abuser, prosecutors will hesitate to go to trial, which can also lead to increased plea bargaining.⁵¹

The usage of plea bargains in domestic violence cases can have dramatically harmful effects on victims.⁵² Though rare,

45. See Sarah Buduson & Mark Ackerman, *Case Dismissed: Why Domestic Violence Offenders Often Get Away With It*, ABC NEWS 5 CLEVELAND (Nov. 15, 2019, 4:03 PM), <https://www.news5cleveland.com/news/local-news/investigations/case-dismissed-why-domestic-violence-offenders-often-get-away-with-it> [perma.cc/T5A4-H4S8].

46. Matt Nowlin, *Reported Domestic Violence Victims Declining, but Most Cases Are Dropped or Dismissed*, SAVI (Mar. 23, 2018), <https://www.savi.org/2018/03/23/reported-domestic-violence-victims-declining-but-most-cases-are-dropped-or-dismissed/> [perma.cc/3WPP-NEDN].

47. *Id.*

48. Nick Keppler, *In Allegheny County, domestic violence offenders often avoid the most serious punishment*, PUBLICSOURCE (Feb. 18, 2019), <https://www.publicsource.org/allegheny-county-domestic-violence-offenders-avoid-most-serious-punishment/> [perma.cc/92UG-7QXE].

49. *Id.*

50. *Id.*

51. Elizabeth Lehmann, *One Family, One Judge, Ten Lawyers: The Need for Attorney Training in the New York Integrated Domestic Violence Courts*, 69 SYRACUSE L. REV. 635, 655 (2019).

52. Telephone Interview with Melissa Leahey, Deputy Dir., R.I. Pretrial Servs. Unit (Nov. 16, 2020).

prosecutors can reduce a charge of domestic violence to a non-domestic charge in order to secure a plea deal.⁵³ When a domestic violence case is pled down to a non-domestic charge, a no-contact order is usually not issued.⁵⁴ The offender also is not ordered to undergo batterers' intervention counseling, as is typically required in domestic violence cases.⁵⁵ A non-domestic charge does not count as a domestic violence conviction, which can typically lead to enhanced penalties for subsequent domestic violence arrests.⁵⁶ These types of plea agreements can be finalized without consulting the victim, robbing them of their voice in the prosecution of the matter.⁵⁷

In Rhode Island, domestic violence cases are prosecuted by either the Rhode Island Attorney General's office (RIAG), or city and town solicitors, depending on the type of charge that has been filed against the defendant.⁵⁸ Under Rhode Island law, a misdemeanor is "[a]n offense which may be punished by imprisonment for a term not exceeding one year."⁵⁹ Arrests for misdemeanor offenses by cities' and towns' police departments are prosecuted by the solicitors retained by those cities and towns while misdemeanor arrests made by the Rhode Island State Police (RISP) are prosecuted by the RIAG's office.⁶⁰ Offenses that "may be punished by imprisonment exceeding one year . . . may be prosecuted by indictment or information signed by the attorney general or one of the attorney general's designated assistants."⁶¹ Individuals arrested and charged with violating either their bail or probation conditions are also prosecuted by the RIAG's office, regardless of whether the new arresting offense is a misdemeanor or a felony.⁶²

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. Zoom Interview with Andrew Horwitz, Assistant Dean for Experiential Ed., Roger Williams Univ. Sch. of Law (Nov. 11, 2020).

59. 12 R.I. GEN. LAWS § 12-12-1.3 (2020).

60. Horwitz, *supra* note 58.

61. 12 R.I. GEN. LAWS § 12-12-1.2 (2020).

62. Horwitz, *supra* note 58.

The vast majority of criminal cases filed in Rhode Island District Court are misdemeanors, which are typically handled by city and town solicitors.⁶³ Each city and town employs its own solicitors.⁶⁴ Almost all city and town solicitors work on a part-time basis.⁶⁵ This system of using part-time solicitors to prosecute criminal cases inevitably leads to conflicts of interest.⁶⁶ Many of the city and town solicitors are doing criminal defense work in their full-time positions and then prosecuting criminal matters in their part-time solicitor roles.⁶⁷ Cities and towns are faced with two choices when hiring a part-time solicitor: either hire someone who does not handle criminal matters in their full-time job or hire someone who mainly does criminal defense work in their full-time position and risk the possibility of conflicts of interest arising between issues that could affect their private clients and obligations to prosecute matters on behalf of a city or town.⁶⁸ These issues are inevitable in a system that does not have a dedicated unit solely for the prosecution of all domestic violence cases.

C. Domestic Violence Victims May Be Forced to Navigate Multiple Forums

In Rhode Island, petitions for divorce, motions for custody of children, and the issuance of protective orders fall under the jurisdiction of the family court.⁶⁹ The district court has

63. R.I. JUDICIARY, 2019 ANNUAL REPORT 30 <https://www.courts.ri.gov/PublicResources/annualreports/PDF/2019.pdf> [perma.cc/UYZ3-CCD4] (last visited May 25, 2021); Horwitz, *supra* note 58.

64. R.I. ASS'N OF CRIMINAL DEF. LAWYERS, *List of City Solicitors and Their Contact Information*, https://docs.google.com/spreadsheets/d/1aN003mw8Mr2ZQvNYdhtugkdsesr8Qd5smMk_47vocRE/edit#gid=0 [perma.cc/UWA4-FFL2] (last visited May 25, 2021); see Bill Rappleye, *Exeter Sole Town in RI Without Police Department*, NBC 10 NEWS, (Feb. 23, 2018) <https://turnto10.com/politics/exeter-sole-town-in-ri-without-police-department> [perma.cc/58GK-FYMP] (last visited May 25, 2021). The Town of Exeter's cases are prosecuted by the RIAG's office as the town does not have its own police department and is policed by the RISP. *Id.*

65. Horwitz, *supra* note 58.

66. *Id.*

67. *Id.*

68. *Id.*

69. 8 R.I. GEN. LAWS § 8-10-3 (2020); 15 R.I. GEN. LAWS § 15-15-3 (2020).

“jurisdiction and cognizance of all crimes which are not expressly designated as felonies, offenses, [or] misdemeanors,”⁷⁰ and the superior court has “original jurisdiction of all crimes, offenses, and misdemeanors, except as otherwise provided by law.”⁷¹ Applications for restraining orders seeking protection against a spouse, a former spouse, a person with whom you have a child in common, or an adult related to you by blood or marriage are filed in the family court.⁷² Restraining orders seeking protection against an adult with whom you currently live, an adult with whom you have lived within the past three years, or an adult with whom you are currently in a dating relationship or have been within the past year are filed in the district court.⁷³ This segregated system “often produces piecemeal resolutions that may foster dangerous situations while not effectively addressing a family’s needs.”⁷⁴ For example, in *Mullane v. Mullane*, a woman filed for divorce in family court after an incident of domestic violence involving her husband.⁷⁵ After the divorce filing, “[t]he parties attempted to reconcile their marriage.”⁷⁶ The reconciliation, however, “was short-lived because of [the husband]’s abusive attitude and language directed at [his wife] and three minor children, and [it] was capped off by another incident of domestic violence,” which resulted in the husband’s “arrest and a District Court conviction for domestic violence.”⁷⁷ The victim was forced to navigate multiple forums to resolve these issues due to the jurisdictional limitations of Rhode Island’s court system,⁷⁸ potentially leading to the family court judge hearing the petition for divorce not being fully informed of the situation because the domestic violence cases were heard before a district court judge.

70. 12 R.I. GEN. LAWS § 12-3-1 (2020).

71. 8 R.I. GEN. LAWS § 8-2-15.

72. *Restraining Orders*, R.I. COAL. AGAINST DOMESTIC VIOLENCE, <http://www.ricadv.org/en/restraining-orders> [perma.cc/UJJ4-3J9P] (last visited May 25, 2021).

73. *Id.*

74. CTR. FOR COURT INNOVATION, *supra* note 16, at 1.

75. *Mullane v. Mullane*, 741 A.2d 275, 276 (R.I. 1999).

76. *Id.*

77. *Id.*

78. *See Id.*

The parties in domestic violence matters—victims, offenders, and their children—sometimes appear in multiple courts to address their issues, which can lead to a host of complications.⁷⁹ The lack of communication between civil, criminal, and family courts only compounds the problems inherent in a system where a single family is involved with multiple courts.⁸⁰ This system leads to multiple trips to court due to matters being scheduled on different days.⁸¹ Moreover, “conflicting orders may also result from the different objectives of the various courts,” varying from maximum contact between parents and children when looking towards a child’s best interest to limited contact to protect domestic violence victims.⁸² Additionally, bail release terms in criminal court may prohibit contact between an alleged abuser and their victim while orders from the family court “are premised on a continuing relationship and visits between the abuser and children,” inevitably leading to contact between the parents, which is prohibited by the criminal court protection order.⁸³

Because domestic violence incidents usually take place at home, there are typically “few—if any—witnesses to the abuse.”⁸⁴ Judges are often left with the words of the alleged victim against the alleged abuser when making determinations.⁸⁵ Because of the frequent “he said, she said” situations that arise in domestic violence incidents, batterers can file for their own protection orders against the victim and fight for custody of children.⁸⁶ In Rhode Island, a batterer could have a protection order issued against him in district court as a result of a pending criminal charge while

79. Koshan, *supra* note 24, at 1007.

80. *Id.*

81. See Kathryn Gillespie Wellman, *Taking the Next Step in The Legal Response to Domestic Violence: The Need to Reexamine Specialized Domestic Violence Courts from A Victim Perspective*, 24 COLUM. J. GENDER & L. 444, 463 (2013) (discussing how a specialized domestic violence court leads to fewer court appearances, which also lessens the economic burden on victims).

82. Koshan, *supra* note 24, at 1008.

83. Rachel Birnbaum, Nicholas Bala & Peter Jaffe, *Establishing Canada’s First Integrated Domestic Violence Court: Exploring Process, Outcomes, and Lessons Learned*, 29 CAN. J. FAM. L. 117, 129 (2014).

84. Tiffany Sala, *What Do You Get When You Abuse Your Spouse? Spousal Support.*, 50 U. PAC. L. REV. 735, 757 (2019).

85. *Id.*

86. See Wellman, *supra* note 81, at 453.

obtaining his own protection order against the victim in front of a different judge in family court.⁸⁷ This system can re-victimize those who are abused by forcing them to repeatedly appear in court for hearings initiated by the abuser.⁸⁸ A single judge overseeing all issues involving a single family could help to alleviate the opportunities for this type of continued harassment by the abuser.

D. *Domestic Violence Criminal Defendants Are Not Effectively Sanctioned*

Domestic violence is believed to be learned criminal conduct⁸⁹ with a high recidivism rate.⁹⁰ The type of sanctions imposed on domestic violence defendants may have a direct impact on recidivism among offenders.⁹¹ One study found that conviction has some effect on domestic violence recidivism rates, but “the deterrent value may disappear when ongoing monitoring and other provisions to ensure [offender] accountability are not part of the sentence.”⁹² Intense supervision of domestic violence offenders has been shown to significantly reduce recidivism rates among abusers.⁹³ A comparison of low-risk offenders monitored by traditional probation officers versus low-risk offenders monitored by a specialized domestic violence probation unit showed the offenders monitored by the specialized unit had a forty percent less chance of reoffending.⁹⁴ This demonstrates the importance of properly

87. See R.I. COAL. AGAINST DOMESTIC VIOLENCE, *supra* note 72.

88. Wellman, *supra* note 81, at 463–64. Having all matters involving one family heard before a single judge “lessens the danger of a judge ‘getting it wrong’ and granting the batterer the relief he requested solely as a means of harassing his victim.” *Id.*

89. C. R. Jeffery, *Criminal Behavior and Learning Theory*, 56 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 294, 294 (1965). The theory of differential association posits “criminal behavior is learned in association with those who have criminal attitudes and values.” *Id.*

90. Aaron Horth, *Toward a Comprehensive Gender-Based Violence Court System*, 24 B.U. PUB. INT. L.J. 221, 234 (2015).

91. Leigh Goodmark, *Should Domestic Violence Be Decriminalized?*, 40 HARV. J.L. & GENDER 53, 80 (2017).

92. *Id.*

93. ANDREW R. KLEIN ET AL., EVALUATION OF THE RHODE ISLAND PROBATION SPECIALIZED DOMESTIC VIOLENCE SUPERVISION UNIT 6 (Mar. 31, 2005), <https://www.ncjrs.gov/pdffiles1/nij/grants/222912.pdf> [perma.cc/FBU4-NUX6].

94. *Id.*

screening and monitoring offenders to lower the chances of re-offense.

Besides the conflicting studies as to whether jail time is effective on reducing recidivism rates, using incarceration as the sentencing standard increases the costs of criminalization exponentially.⁹⁵ Incarceration does not conclusively deter future violence and may actually lead to further criminal offenses upon release.⁹⁶ Incarcerating offenders for domestic violence offenses is a major financial burden on Rhode Island taxpayers.⁹⁷ The average cost of housing an inmate at the Rhode Island Department of Corrections is \$93,635 per year.⁹⁸ For both the female and male sentenced population, the most common misdemeanor offense was domestic assault, tied with shoplifting for female offenders, with those individuals making up 28.6% and 18.9% of the population respectively.⁹⁹ More intensive monitoring of these offenders, instead of incarceration, may help to reduce recidivism rates while also reducing the high costs associated with imprisonment.

The nightmare scenario of any incident of domestic violence is one that ends in homicide. In the United States, one-in-two female murder victims, and one-in-thirteen male murder victims, are murdered by intimate partners.¹⁰⁰ Intimate partners commit sixty-five percent of all murder-suicides.¹⁰¹ Women constitute ninety-six percent of this class of victims.¹⁰² In Rhode Island, fifty-four people lost their lives to domestic violence between 2006 and 2015.¹⁰³

95. Goodmark, *supra* note 91, at 84.

96. *Id.*

97. R.I. DEP'T OF CORR., COSTS PER OFFENDER—FY 2020 ACTUAL, <http://www.doc.ri.gov/documents/administration/FY2020%20Cost%20Per%20Offender.pdf> [perma.cc/XTA7-P8NX] (last visited May 25, 2021).

98. *Id.*

99. R.I. DEP'T OF CORR., FISCAL YEAR 2020 ANNUAL POPULATION REPORT 16 (Sept. 2020), <http://www.doc.ri.gov/docs/FY20%20Annual%20Population%20Report.pdf> [perma.cc/DUG6-YL2Z].

100. NAT'L COAL. AGAINST DOMESTIC VIOLENCE, *supra* note 13 (citing Allison Ertl et al., *Surveillance for Violent Deaths—National Violent Death Reporting System*, 32 *States*, 2016, 68 *MMWR SURVEILLANCE SUMMARIES* 1 (2019), <https://www.cdc.gov/mmwr/volumes/68/ss/ss6809a1.htm> [https://perma.cc/Y6W4-TBGR]).

101. *Id.*

102. *Id.*

103. RICADV HOMICIDE REPORT, *supra* note 31, at 1.

Forty-one of these incidents “involved perpetrators who killed their intimate partners and/or who killed bystanders in an incident related to intimate partner violence.”¹⁰⁴ Perpetrators with a previous criminal domestic violence history accounted for forty-nine percent of these murders.¹⁰⁵ Seventy percent of perpetrators with a previous criminal history were convicted or pled *nolo contendere* in at least one prior domestic violence case.¹⁰⁶ Clearly, focusing on incarcerating abusers is not working and adopting an IDV court may better address these problems.

II. ADOPTING AN INTEGRATED DOMESTIC VIOLENCE COURT WILL BETTER SERVE THE CITIZENS OF RHODE ISLAND

An Integrated Domestic Violence Court, “referred to as a ‘One Judge, One Family’ model[,] places all the issues involving a single family before one judge.”¹⁰⁷ This system addresses all “inter-related family problems in a comprehensive manner, provid[ing] integrated service delivery and improv[ing] court efficiency and informed judicial decision-making.”¹⁰⁸ Having one courtroom for all related cases allows a judge to consistently impose court mandates that address all issues regarding a single family, “including orders of protection, bail conditions and sentences, support, visitation and custody orders, divorce, treatment mandates, and services for children.”¹⁰⁹ IDV courts “treat[] the entire family[,] referring adult and child victims to supportive services while holding the offender accountable through mandated programs.”¹¹⁰ Court staff serve as resource coordinators, working with local providers to ensure that services are readily available to each family member.¹¹¹ Unlike traditional courts, IDV courts typically hold weekly compliance reviews to improve offender accountability.¹¹² Court staff ensure that offenders are complying

104. *Id.*

105. *Id.* at 5.

106. *Id.*

107. CTR. FOR COURT INNOVATION, *supra* note 16, at 1.

108. *Id.*

109. *Id.*

110. *Id.* at 1–2.

111. *See id.* at 2.

112. *Id.*

with court-ordered services, including batterers' intervention and substance abuse counseling, and transmit that information to the judge before the offender's weekly status review hearing.¹¹³

The central goal of IDV courts is victim safety.¹¹⁴ IDV courts employ dedicated victim advocates to provide safety planning, counseling, and access to services to domestic violence victims and their children.¹¹⁵ They also "ensure[] that victims know the status of their case."¹¹⁶ IDV court judges receive special training in both legal areas and domestic violence issues, educating them on the "dynamics of domestic violence" and its impact on the family.¹¹⁷ These courts work closely with community agencies including victim service agencies, batterers' intervention programs, mental health and substance abuse treatment providers, and children's services.¹¹⁸

A. *Creating a Specialized Prosecution Unit Will Reduce Domestic Violence Dismissal Rates*

Under the current process in Rhode Island, most misdemeanor domestic violence cases are prosecuted by solicitors employed by the city or town where the arrest took place, and felony cases are prosecuted by the RIAG's office.¹¹⁹ In contrast, IDV courts use units dedicated to the prosecution of domestic violence cases.¹²⁰ The allocation of resources singularly addressing domestic violence issues through the usage of specialized courts sends the message "that the legal system takes domestic violence seriously."¹²¹ Courts that adopt strategies that encourage victim safety can help victims to move forward and improve their lives while also feeling secure

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. Horwitz, *supra* note 58.

120. *Cf.* Wellman, *supra* note 81, at 463 n.89 (outlining some IDV processes).

121. *Id.* at 465.

enough to appear in court to testify against their abusers.¹²² Where domestic violence victims are more likely to testify against their abusers, there will be fewer dismissals and plea deals by prosecutors.¹²³

Brooklyn, New York, has implemented an IDV court similar to the system advocated for in this Comment.¹²⁴ Fifty-nine percent of victims involved in the Brooklyn IDV court participated in the prosecution of the case while only twenty-seven percent of victims participated in the prosecution of cases in the traditional criminal court.¹²⁵ This gap might be reflective of “victims’ involvement in concurrent visitation, custody, or matrimonial cases” before a single judge in the IDV court.¹²⁶ Victims that have ongoing cases in the IDV court may also be more likely to participate in the prosecution of their criminal matter.¹²⁷ Importantly, the New York IDV courts have a dismissal/acquittal rate of only sixteen percent, over four times less than that of Rhode Island.¹²⁸

To combat high dismissal rates, some jurisdictions have instituted no-drop prosecution policies regarding domestic violence cases.¹²⁹ These policies deny the victim “the option of freely

122. KATIE ARNOLD, JACOB HAYNES, NICK OHMANN & MEGAN WATERMANN, LOBECK TAYLOR FAMILY ADVOCACY CLINIC, *CULTIVATING A SUCCESSFUL FUTURE FOR THE INTEGRATED DOMESTIC VIOLENCE COURT IN TULSA COUNTY 10* (Dec. 2014), <https://45e2ly1gtqp9jmqme2fiw751-wpengine.netdna-ssl.com/wp-content/uploads/sites/3/2015/01/CAC-Cultivating-a-Successful-Future-Final-Report.pdf> [perma.cc/HM6M-RWBL].

123. See Nowlin, *supra* note 46.

124. RICHARD R. PETERSON, N.Y.C. CRIMINAL JUSTICE AGENCY, *RESEARCH BRIEF: CASE PROCESSING IN BROOKLYN’S INTEGRATED DV COURT 1* (Jan. 2014), <https://www.nycja.org/publications/research-brief-no-33-case-processing-in-brooklyns-integrated-dv-court> [perma.cc/B4GD-QGCQ].

125. *Id.* at 5.

126. *Id.*

127. *Id.*

128. Compare SHANI KATZ & MICHAEL REMPEL, *CTR. FOR COURT INNOVATION, THE IMPACT OF INTEGRATED DOMESTIC VIOLENCE COURTS ON CASE OUTCOMES 15* (Dec. 2011), https://www.courtinnovation.org/sites/default/files/documents/Nine_IDV.pdf [perma.cc/SD5D-6LG2] (dismissal rate of sixteen percent), with Putman, *supra* note 35 (dismissal rate of more than sixty percent).

129. Angela Corsilles, *No-Drop Policies in the Prosecution of Domestic Violence Cases: Guarantee to Action or Dangerous Solution?*, 63 *FORDHAM L. REV.* 853, 856 (1994).

withdrawing a complaint once formal charges have been filed.”¹³⁰ The no-drop prosecution approach also represents an official acknowledgment of the fear that victims often feel when asked to testify against their abusers.¹³¹ To address this problem, IDV courts employ prosecutors who are specially trained in prosecuting cases involving domestic violence.¹³² When a victim refuses to testify, specialized prosecutors use an evidence-based approach to prosecute the case, instead of issuing a subpoena to force an unwilling victim to testify.¹³³ This allows prosecutors to litigate the case without relying on the victim’s testimony to proceed.¹³⁴ For example, a number of prosecutors use the excited utterance exception to the hearsay rule to prosecute the case without the victim’s testimony.¹³⁵ The theory “behind evidence-based prosecution is to train law enforcement to gather as much evidence as possible at the scene of the crime, including recorded statements of the victim and the offender, so that even if the victim recants, the prosecution is still in a position to bring the case to trial.”¹³⁶ Evidence-based prosecution through a specialized prosecution unit in an IDV court could help reduce the dismissal rates of domestic violence cases in Rhode Island by allowing prosecutors to bring cases forward without forcing a victim to testify.

B. Adopting an Integrated Domestic Violence Court Will Lead to More Informed Judicial Decision Making and Improved Victim Safety

IDV courts place all related matters pertaining to a single family before a single judge, allowing the judge to gain comprehensive information and impose mandates that are consistent and designed to address all the issues, including but not limited to, “orders of protection, bail conditions and sentences,

130. *Id.*

131. *Id.* at 858.

132. Koshan, *supra* note 24, at 1000.

133. Donna D. Bloom, “Utter Excitement” About Nothing: Why Domestic Violence Evidence-Based Prosecution Will Survive *Crawford v. Washington*, 36 ST. MARY’S L.J. 717, 730 (2005).

134. *Id.*

135. *Id.*

136. *Id.* at 731.

support, visitation and custody orders, divorce, treatment mandates, and services for children.”¹³⁷

An IDV court leads to increased victim safety due in part to court staff receiving specialized domestic violence training.¹³⁸ This creates a system where victims are more likely to participate in the adjudication of their cases because it is easier for them to connect to domestic violence advocates.¹³⁹ IDV courts can increase victim safety by reducing multiple conflicting orders that cause confusion and multiply court appearances.¹⁴⁰

Victim safety in an IDV court is further increased through the expansion in sharing of information between cases, which can result in a rise in new criminal contempt charges.¹⁴¹ These charges result from the violation of a previous protection order.¹⁴² Defendants in IDV courts “are more likely to be charged with violating protective orders” than defendants whose cases are heard in the traditional court system, which “suggests that IDV courts may be particularly effective at detecting” forbidden contact between victims and defendants.¹⁴³ Nearly twice as many IDV court defendants (fifteen percent versus eight percent) “were rearrested exclusively on criminal contempt charges” as defendants in the traditional court system.¹⁴⁴ This suggests that enhanced monitoring by a single, informed judge who receives information across cases may be better equipped to detect such violations of protective orders.¹⁴⁵ These results show that IDV courts add layers of protection for domestic violence victims that traditional criminal courts do not.¹⁴⁶

137. CTR. FOR COURT INNOVATION, *supra* note 16, at 1.

138. Amanda B. Cissner, Sarah Picard-Fritsche & Michael Rempel, *New York State’s Integrated Domestic Violence Court Model: Results from Four Recent Studies*, 19 CIVIC RES. INST. DOMESTIC VIOLENCE REP. 51, 62 (April/May 2014), <https://www.bwjp.org/assets/documents/pdfs/webinars/new-york-states-integrated-domestic-violence-courtmo.pdf> [perma.cc/NW7C-4ZVL].

139. Koshan, *supra* note 24, at 1021.

140. *Id.* at 1007–08.

141. Cissner et al., *supra* note 138, at 62.

142. *Id.*

143. *Id.*

144. *Id.* (emphasis removed).

145. *Id.*

146. *See id.* at 63.

IDV courts are more capable than traditional criminal courts at identifying situations where the defendant is manipulating the system in order to further victimize the abused.¹⁴⁷ In *People v. Tancredi*, after multiple instances of physical, verbal, and psychological abuse, and an initial reluctance on the part of the victim to report these incidents, the perpetrator's appalling actions eventually led to his arrest.¹⁴⁸ The victim aided the prosecution by providing written depositions detailing the history of abuse between her and her abuser.¹⁴⁹ The case ended up in the New York IDV court.¹⁵⁰ Within a month of the defendant's arraignment, his attorney filed a separate lawsuit on behalf of the victim alleging that "certain state actors had violated her civil rights by coercing her into testifying."¹⁵¹ The state immediately filed a motion to appoint independent counsel for her and the IDV court, recognizing the elements of domestic violence in the perpetrator's actions, granted the motion.¹⁵² While a traditional court's lack of resources might have prevented it from giving proper attention to the state's motion, the IDV court was able to fully analyze the issues presented before it.¹⁵³

The adoption of an IDV court in Rhode Island would also help protect the financial safety of domestic violence victims.¹⁵⁴ Worldwide, victims of domestic violence lose "8,000,000 days of paid work a year, the equivalent of 32,000 full-time jobs."¹⁵⁵ Domestic violence is estimated to cost the United States economy between \$5.8 billion and \$12.6 billion annually.¹⁵⁶ As a result of domestic violence, between twenty-one percent and sixty percent of victims

147. See Wellman, *supra* note 81, at 444.

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.* at 445.

153. See *id.*

154. *Id.* at 463.

155. NAT'L COAL. AGAINST DOMESTIC VIOLENCE, *supra* note 13 (citing WORLD HEALTH ORG., THE ECONOMIC DIMENSIONS OF INTIMATE PARTNER VIOLENCE, <http://apps.who.int/iris/bitstream/handle/10665/42944/9241591609.pdf;jsessionid=8055D85110F99F0C8B570955DD6A89CE?sequence=1> [perma.cc/2XVK-C4EQ]).

156. *Id.*

lose their jobs in the aftermath of the abuse.¹⁵⁷ In addition, participants in an IDV court find that having all of their cases heard in one court leads to fewer missed work days.¹⁵⁸ As a result of same day scheduling, IDV litigants took drastically fewer trips to court.¹⁵⁹ Trips to court in the Suffolk County and Erie County IDV courts declined by sixty-two percent and forty-four percent respectively compared to their counterparts in the traditional criminal courts.¹⁶⁰ By consolidating matters before a single judge, IDV courts ease the financial burden on victims of domestic violence.¹⁶¹

C. Offenders Processed Through an IDV Court will be Sanctioned More Effectively

IDV courts can potentially help reduce recidivism rates for domestic violence abusers through their unique way of addressing offender needs.¹⁶² Rather than arbitrarily imposing criminal sanctions, IDV courts work with community based social service providers to help the offender confront and address the root of the problem.¹⁶³ Judges in IDV courts are encouraged to motivate defendants “through the creative uses of the court’s authority to accept needed services and treatment.”¹⁶⁴ Participants in IDV courts report feeling that IDV court judges, lawyers, and other staff “display greater sensitivity to domestic violence issues than other courts because of their knowledge, expertise, and commitment, and that this resulted in more thoughtful outcomes.”¹⁶⁵

IDV courts, through more comprehensive supervision of offenders, including the use of status reviews, can help to reduce

157. *Id.*

158. Cissner et al., *supra* note 138, at 52.

159. *Id.* at 51.

160. *Id.* at 51–52.

161. Wellman, *supra* note 81, at 463.

162. Leslie M. Tutty & Jennifer Koshan, *Calgary’s Specialized Domestic Violence Court: An Evaluation of a Unique Model*, 50 ALTA. L. REV. 731, 735 (2013).

163. Wellman, *supra* note 81, at 460–61.

164. *Id.* at 461.

165. Koshan, *supra* note 24, at 1021.

the chances that a domestic violence offender will reoffend.¹⁶⁶ A study found that within three years of conviction, forty-six percent of the domestic violence court sample and forty-nine percent of the comparison group were rearrested, with twenty-nine percent and thirty-two percent re-arrested on a domestic violence charges.¹⁶⁷ Though the number is not staggering, it makes a difference for every single victim of domestic violence included in these statistics. Evidence indicates that those domestic violence courts that prioritize deterrence and “both prioritize and implement specific policies to sanction non-compliance” are the most successful at reducing recidivism.¹⁶⁸ Studies have shown that the use of specialized courts may also help to identify the factors that increase the likelihood of recidivism.¹⁶⁹ This spotlight may help IDV courts mitigate the chances that abusers will reoffend.

Effective sanctioning of domestic violence offenders through an IDV court can also help keep these individuals from being sentenced to serve time at the ACI, as repeat offenders generally have a greater chance of being incarcerated than first-time offenders.¹⁷⁰ As noted above, incarceration costs for misdemeanor domestic violence offenders are a significant strain on the state’s financial resources.¹⁷¹ More effective screening and sanctioning of offenders in an IDV court can help keep individuals from being incarcerated through alternative sentences.¹⁷² One study found a greater use of probation (twenty-one percent versus seven percent) and lesser use of prison sentences (seven percent versus twenty-one percent) in cases sentenced in an IDV court.¹⁷³ The usage of intense probation supervision of domestic violence offenders has proven to

166. AMANDA B. CISSNER, MELISSA LABRIOLA & MICHAEL REMPEL, CTR. FOR COURT INNOVATION, TESTING THE EFFECTS OF NEW YORK’S DOMESTIC VIOLENCE COURTS: A STATEWIDE IMPACT EVALUATION 36 (Feb. 2013) <https://www.ncjrs.gov/pdffiles1/nij/grants/242583.pdf> [perma.cc/UR8L-UGP4].

167. *Id.*

168. Amanda B. Cissner, Melissa Labriola & Michael Rempel, *Domestic Violence Courts: A Multisite Test of Whether and How They Change Offender Outcomes*, 21 VIOLENCE AGAINST WOMEN 1102, 1118 (2015).

169. Wellman, *supra* note 81, at 464.

170. *See, e.g.*, 12 R.I. Gen. Laws §12-29-5 (2020).

171. *See supra* notes 95–99 and accompanying text.

172. KATZ & REMPEL, *supra* note 128, at 18.

173. *Id.*

be more effective than traditional supervision at lowering recidivism rates.¹⁷⁴ Though the IDV court may lead to more arrests due to better detection of protective order violations, intense supervision could help to keep individuals from serving prison time at the ACI through better oversight.

Lethality assessments are another critical IDV court tool used to protect domestic violence victims.¹⁷⁵ While Rhode Island has a screening tool for domestic violence offenders, it does not regularly use the more effective assessments employed by other jurisdictions.¹⁷⁶ Rhode Island typically screens domestic violence offenders using the Domestic Violence Screening Instrument (DVSI) after arrest.¹⁷⁷ “The DVSI is an actuarial assessment tool used to classify offenders and determine level of supervision”¹⁷⁸ and can be administered without the defendant’s participation.¹⁷⁹ Lethality assessments, which are conducted with the participation of the crime victims and are more effective at identifying the potential for escalation to a domestic violence homicide, are not completed for every domestic violence arrest.¹⁸⁰ Increasing the usage of lethality assessments would improve the odds of identifying a perpetrator likely to escalate their violence to the level of a homicide.

Unlike the DVSI assessments more frequently used in Rhode Island, a lethality assessment can help prioritize between the most serious cases that must be pursued immediately and those cases that could potentially be delayed.¹⁸¹ The specialized knowledge of the IDV court judge and court staff help to facilitate this process.¹⁸² Lethality assessments are critical when making decisions about

174. KLEIN ET AL., *supra* note 93, at 4.

175. Randal Fritzier & Leonore M.J. Simon, *The Development of a Specialized Domestic Violence Court in Vancouver, Washington Utilizing Innovative Judicial Paradigms*, 69 UMKC L. REV. 139, 160 (2000).

176. Leahey, *supra* note 52.

177. *Id.*

178. Carrie M. Hobbs, *Domestic Violence and the Budget Crisis: The Use of a Risk Assessment Tool to Manage Cases in Prosecutors’ Offices*, 35 SEATTLE U. L. REV. 949, 964 (2012).

179. Leahey, *supra* note 52.

180. *Id.*

181. Hobbs, *supra* note 178, at 950–51.

182. *Id.*

what restrictions should be placed on alleged perpetrators.¹⁸³ These assessments take place in one of two ways: clinical or subjective judgments and actuarial risk-assessment instruments.¹⁸⁴ Anecdotal risk assessments have been used for years in domestic violence cases, but “most scholars agree that statistical tools are far more accurate than subjective, informal clinical evaluations, particularly when predicting violent behavior.”¹⁸⁵ Lethality assessments for all domestic violence offenders in an IDV court may help identify victims who are at most risk of losing their lives.

Rhode Island currently employs several specialty calendars across its superior, district, and family Courts, most notably the Adult Drug Calendar of the superior court and Rhode Island Veterans Treatment Calendar.¹⁸⁶ In 2004, the position of drug court magistrate was created by the Rhode Island General Assembly, empowering the magistrate to hear and decide “all matters relating to adult offenders who come before the jurisdiction of the superior court on any offense relating to the offender’s participation in the adult drug court.”¹⁸⁷ The Adult Drug Court initially began as a pilot initiative but eventually transitioned into a full-time program.¹⁸⁸ The mission of this court is “to focus on treatment while providing defendants with an opportunity to have their records cleared if they successfully complete the program.”¹⁸⁹ The results of the Adult Drug Court have been positive, since 2006 it has had a graduation rate of seventy-one percent with recidivism rates of 12.3% after one year and 11.3% after three years, reflecting an effective diversion program.¹⁹⁰

In order to address the specific needs of veterans and active military, the Veteran’s Treatment Calendar was signed into law in

183. *Id.*

184. *Id.* at 957.

185. *Id.* at 957.

186. R.I. JUDICIARY, 2018 ANNUAL REPORT 3–4, <https://www.courts.ri.gov/PublicResources/annualreports/PDF/2018.pdf> [perma.cc/DVV9-KSZ4].

187. 8 R.I. GEN. LAWS § 8-2-39.2(c) (2020).

188. *See id.* § 8-2-39.2.

189. R.I. JUDICIARY, *supra* note 186, at 3.

190. *Id.*

2015.¹⁹¹ The purpose of this court is to “successfully rehabilitate participants by providing the tools and skills necessary to address their unique challenges and to develop the insight to reintegrate successfully into society and maintain a productive and law-abiding lifestyle within the community.”¹⁹² Since its inception as a pilot initiative in 2011, the Veteran’s Treatment Calendar has had a successful graduation rate of ninety-four percent, higher than many other veteran’s courts across the county.¹⁹³ The success of these courts, and the General Assembly and Judiciary’s enthusiastic adoption of these courts, demonstrate that Rhode Island is more than capable of adopting new court models.

III. POTENTIAL PROBLEMS ARISING FROM IMPLEMENTING AN INTEGRATED DOMESTIC VIOLENCE COURT IN RHODE ISLAND

Implementing an IDV court could potentially lead to an increase in the Rhode Island Judiciary’s budget for the costs associated with the court’s initial setup and annual operating expenses. Former Governor Raimondo’s 2021 Annual Budget Plan recommended allocating \$256,686 in funding to the superior court’s drug court.¹⁹⁴ Though not a direct comparison, this figure may help to provide some insight as to what an IDV court may cost to operate in Rhode Island.

The costs associated with funding an IDV court can be offset by engaging in better sanctioning and screening of offenders to lower the number of individuals incarcerated at the ACI.¹⁹⁵ Court staff could also be redeployed from existing roles in lieu of hiring new employees to defray the costs of maintaining an IDV court. Additionally, data collected through the implementation of the

191. 8 R.I. GEN. LAWS § 8-8-1.1.

192. *Id.*

193. R.I. JUDICIARY, *supra* note 186, at 4.

194. 2021 R.I. OFF. MGMT. & BUDGET FISCAL YEAR BUDGET PROPOSAL, TECH. APPENDIX at 195, http://www.omb.ri.gov/documents/Prior%20Year%20Budgets/Operating%20Budget%202021/TechnicalAppendix/4_Public%20Safety.pdf [perma.cc/R3QL-LN4V].

195. See KATZ & REMPEL, *supra* note 128, at 18 (noting that jurisdictions using IDV courts had fewer incarcerated defendants and relied more on alternatives like probation).

court might be used to identify under-utilized resources.¹⁹⁶ Federal funding sources for staff positions may also be identified through this data collection.¹⁹⁷

Implementing an IDV court could also present constitutional issues.¹⁹⁸ In *People v. Fernandez*, the main issue on appeal was whether the IDV division of the New York Supreme Court had subject matter jurisdiction to hear misdemeanor charges without a grand jury indictment or a superior court information.¹⁹⁹ The defendant argued that the IDV court did not have jurisdiction over the case because he had not been indicted by a grand jury and the district attorney had not filed a written complaint against him.²⁰⁰ The court rejected this argument and held that an IDV court does not “impos[e] a limitation on the superior court’s constitutional jurisdiction over [a domestic violence] case.”²⁰¹ It also established that IDV courts may order the transfer of criminal and civil cases to their jurisdiction.²⁰² Currently in Rhode Island, both the district and superior courts are authorized to hear civil *and* criminal cases.²⁰³

The Fifth Amendment of the United States Constitution,²⁰⁴ states that “no person . . . shall be compelled in any criminal case to be a witness against himself.”²⁰⁵ This “right against self-incrimination applies when a communication is ‘testimonial,

196. CTR. FOR COURT INNOVATION, CREATING A DOMESTIC VIOLENCE COURT: ADAPTING THE MODEL TO YOUR COMMUNITY 52 app. d, supp. g, <https://www.supremecourt.ohio.gov/JCS/domesticViolence/topics/DVCourts/DVCToolkit.pdf> [perma.cc/2LL3-3MJ3] (last visited May 25, 2021).

197. *Id.*

198. Rhona Mae Amorado, Comment, “*I Plead the Fifth*”: *New York’s Integrated Domestic Violence Courts and the Defendant’s Fifth Amendment Dilemma*, 32 TOURO L. REV. 709, 720 (2016).

199. *People v. Fernandez*, 897 N.Y.S.2d 158, 160 (N.Y. App. Div. 2010).

200. *Id.* at 161.

201. *Id.* at 166.

202. *Id.* at 164.

203. See 8 R.I. GEN. LAWS §§ 8-2-14, -2-15, -8-3 (2020); 12 R.I. GEN. LAWS § 12-3-1.

204. *Malloy v. Hogan*, 378 U.S. 1, 3 (1964) (holding that the Fifth Amendment privilege against self-incrimination applies to the states through the Fourteenth Amendment).

205. U.S. CONST. amend V.

incriminating, and compelled.”²⁰⁶ Defendants in IDV courts may find themselves in proceedings where a judge can access all of the information from their criminal, family, *and* civil cases.²⁰⁷ Defendants in IDV courts are also typically ordered to complete batterers’ intervention programs as part of their plea agreements or conditions of bail.²⁰⁸ One way to address the concern of “self-incrimination” is to use limited immunity for the therapeutic confessions of these defendants.²⁰⁹ Limited immunity lessens the defendants’ concern that statements made during therapy may be used against them in a later proceeding while also allowing them to take the program seriously, increasing their chance of rehabilitation.²¹⁰ Even though IDV courts have potential drawbacks, those drawbacks can be mitigated and any detriments are more than offset by the benefits as set forth in this Comment.

CONCLUSION

In Rhode Island, survivors of domestic violence require a better system for adjudicating the cases in which they are involved, and the state should implement an Integrated Domestic Violence court model to rectify the flaws in the current process. Adopting an IDV court will result in: a reduction in dismissals and instances of pleading down domestic violence cases because of the new specialized domestic violence prosecution unit; more informed judicial decision making through the sharing of information across multiple courts; the more effective sanctioning of individuals processed through the IDV court; and the reduction of incarceration costs through lowered recidivism rates because of better offender screening to determine level of treatment required and more intensive supervision. The IDV court will increase victim safety by eliminating conflicting orders that arise from having matters in multiple courts and potentially reduce homicide rates through more frequent use of lethality assessments.²¹¹ It is time to

206. Amorado, *supra* note 198, at 723 (quoting *Hiibel v. Sixth Judicial*, 542 U.S. 177, 189 (2003)).

207. *Id.* at 724.

208. *Id.* at 725.

209. *Id.* at 738.

210. *Id.* at 738–39.

211. *See* Hobbs, *supra* note 178, at 972.

rethink the approach to domestic violence as the current system is failing victims in a multitude of ways, which can unfortunately lead to deadly results. We owe it to the victims of domestic violence in Rhode Island to have a system in place that does as much as possible to protect them, and the IDV court is that system.