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A Public/Private Partnership with the
New York State Unified Court System

Criminal Domestic Violence Case Processing

A Case Study of the Five Boroughs
of New York City

Submitted to
the New York State Division of Criminal Justice Services
and the Office on Violence Against Women of the
U.S. Department of Justice

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EXECUTIVE SUMMARY

In the decade since the passage of the Violence Against Women Act in 1994, jurisdictions across the country have sought to redefine their response to domestic violence. In New York City, all five boroughs now consolidate their criminal (misdemeanor) domestic violence caseload in a dedicated, specialized domestic violence court that seeks to achieve offender accountability and victim safety through aggressive prosecution, close monitoring of defendants and provision of services and advocacy to victims. The current study sought to establish what the policies and practices of these courts are, to understand their underlying rationale, and to learn what stakeholders perceive as their strengths and weaknesses.

For this research, court observations and interviews with judges, attorneys, victim advocates, clerks and resource coordinators were conducted in the Bronx, Brooklyn, Manhattan, Queens and Staten Island in the spring and summer of 2002. Caseload statistics were collected for the same period from the New York State Office of Court Administration.¹

PRACTICES AND POLICIES OF DOMESTIC VIOLENCE COURTS AND PROSECUTORS

While courts are structured similarly in all boroughs, the most notable cross-borough differences lie in court resources and prosecution policies. Queens and the Bronx have more staff (resource coordinator, defendant monitor, and, in the Bronx only, project director), than the other boroughs, although Brooklyn has a resource coordinator. Additional funding obtained by the victim services agency Safe Horizon also allows for enhanced victim advocacy in Queens and the Bronx. The impact of these additional resources is evident in such areas as the court's ability to research and maintain contact with community resources and programs for defendants.

PROSECUTORIAL PRACTICES AND POLICIES

District Attorney policies varied greatly from borough to borough on a number of issues:

- § Queens is the only borough to narrow its definition of domestic violence to exclude not only non-intimate partner family violence (e.g., violence between siblings), but also violence between intimate partners who have never been married or lived together. This significantly decreases the number of cases eligible for the domestic violence court.
- § Queens is also unique in having prosecutors remain involved in cases during the post-sentence monitoring phase.
- § Manhattan, on the other hand, is the only borough that has not created a dedicated domestic violence bureau, instead assigning assistant district attorneys to domestic violence cases as to any other type of case, with extra support from a dedicated supervisor.
- § Queens and Manhattan both, however, conduct vertical prosecution (that is, assign a single prosecutor to a case from beginning to end); other boroughs attempt some degree of vertical prosecution, but not to the extent of these two.
- § Bronx is unique in having a first-party complaint policy that results in the District Attorney declining to prosecute those cases in which the victim does not sign a complaint. All boroughs practice some degree of evidence-based prosecution—that is, prosecution based on material evidence, conducted without the cooperation of the victim—but are hesitant to identify precise criteria for deciding when to conduct such a prosecution and when to accede to the victim's wishes to drop the case.

¹ Please note that important changes have taken place in many boroughs' practices since that time; where possible, those changes have been noted, but it should not be assumed that this document entirely reflects the current landscape.

It is difficult to assess the impact of these prosecutorial differences on case processing and outcomes. While vertical prosecution and dedicated domestic violence prosecutors might seem to be preferable from the standpoint of the complainant, there has been no attempt to directly assess complainant perceptions of different prosecution styles. Opinion is also divided on such issues as the narrow definition of domestic violence employed by the Queens District Attorney's Office: on the one hand, caseloads are large, and may impede the ability to prosecute and adjudicate cases as effectively as possible, making reduction of the caseload desirable; on the other hand, it is possible that cases that would benefit from the domestic violence court model are being denied the opportunity.

DOMESTIC VIOLENCE COURT PRACTICES AND POLICIES

Queens and Brooklyn are the only two boroughs that routinely accept conditional pleas—those in which the defendant pleads to a higher and lower charge, with the higher charge to be dropped if conditions, usually program mandates, are met. Proponents argue that such pleas give judges greater leverage over the defendant and increase the severity of potential sanctions if the defendant fails to comply with court conditions. It is unclear why this practice is not used elsewhere; stakeholders in other boroughs did not identify it as a practice that they wished to introduce, or to which there had been opposition, but neither did they object to it.

In most other respects, the courts demonstrated considerable consistency: all imposed orders of protection throughout the case, usually full ('stay-away') orders; all provided advocacy to victims, whether through the District Attorney's office, a community agency, or both; all made at least some use of program mandates (most boroughs made extensive use of these; Manhattan was unable to document how many cases were mandated); and all conduct regular, usually monthly, judicial monitoring of defendants mandated to programs, with some of the larger courts employing separate court parts for this purpose.

STAKEHOLDER PERCEPTIONS

Interviews with judges and judicial hearing officers, prosecutors and defense attorneys, and victim advocates addressed issues such as the goals of the domestic violence court; court operations; and program mandates for defendants. Most stakeholders believed very strongly that domestic violence courts provide tangible benefits in the areas of victim safety and defendant accountability. Others cited practical benefits resulting from the structure of the courts.

The most significant benefit of domestic violence courts cited by stakeholders was the enhanced training of judges, attorneys and court staff, and the experience that comes from handling the same types of cases every day. Many felt that this level of expertise enhanced the consistency of the court's response to domestic violence. Additionally, some stakeholders opined that a specialized court staff facilitates the sharing of information, in particular through the resource coordinator position and through the partners meetings convened by the court.

GOALS OF THE DOMESTIC VIOLENCE COURT

Perceptions of goals were generally consistent within each stakeholder role; differences emerged more often between roles than between boroughs. *Judges and judicial hearing officers* described their goals as being to uphold the law, protect the complainant, punish the defendant, and rehabilitate the defendant; goals which sometimes seemed to be at odds. *Prosecutors* were concerned with prosecuting the defendant to the fullest extent of the law, and with finding the

best and safest outcome for the complainant. *Defense attorneys*, unsurprisingly, sought the least punitive court outcome for the defendant, while *victim advocates*' primary concern was the safety of the victim.

While most stakeholders felt that the courts were doing a reasonable job of maintaining defendant accountability, they were less confident about victim safety. Nearly everyone interviewed lamented the fact that a lack of information about violations, new arrests, and long-term outcomes makes it difficult to assess the court's impact.

SPECIALIZED PERSONNEL

Stakeholders cited the use of trained staff—including the presence of trained judges and prosecutors—as a primary benefit of the domestic violence court model. Most stakeholders also agreed that the court model increases defendant accountability. In particular, those courts with resource coordinators reported that they were much better able to manage relationships with programs and obtain compliance reports, allowing them to more effectively monitor defendants' compliance with orders and mandates.

CASE VOLUME AND RESOURCES

Most parties interviewed cited the overwhelming court volume as a barrier to better and more efficient case processing, pointing to its negative effects on the ability to coordinate and share information between players, and particularly to its impact on assistant district attorneys. ADAs are perceived by many stakeholders to be frequently unprepared and ill-informed regarding their own cases, leading to unnecessary adjournments and additional appearances. Some stakeholders—primarily members of the defense bar—pointed out that the court model actually increases case volume, as cases make more appearances and are dismissed later than they would otherwise be.

THE DEFENSE BAR

Stakeholders indicated that the defense bar, while an active participant in the court, remains opposed to its fundamental tenets, a view that defense attorneys themselves supported. Defense attorneys continue to harbor philosophical, practical and legal concerns about the domestic violence court model, decrying it as biased against defendants and paternalistic toward victims.

PROGRAM MANDATES

While most courts rely primarily on mandates to batterer intervention programs (as opposed to treatment programs), all parties seemed dubious about the value of such programs. There were also concerns raised about the cost and quality of programs, and the availability of programs for female and homosexual batterers.

CONCLUSION

Specialized domestic violence courts are now established in all five New York City boroughs. While they continue to face challenges, they have been endorsed by the majority of stakeholders as a significant improvement in the criminal justice response to domestic violence crime. Most stakeholders asserted that the court substantively improved victim safety and defendant accountability. In particular, stakeholders spoke positively of the increased training and information available to judges, court staff, and partners, which enable them to handle cases more consistently and monitor offender behavior more closely. At the same time, they identified

limited resources as a key challenge to the courts' survival, and pointed to a need for increased communication between court partners. Stakeholders also expressed a desire for more information regarding long-term outcomes for victims and defendants, underscoring the importance not only of conducting further research into these issues, but also of disseminating the results of that research to the widest possible audience.

I. INTRODUCTION

In the decade since the passage of the Violence Against Women Act in 1994, jurisdictions across the country have sought to redefine their response to domestic violence—few more so than New York State. The Act forced local legislatures to institute new measures such as mandatory arrest policies, and provided funding for new specialized prosecution and police units. In New York, district attorneys were encouraged to pursue cases even without victim cooperation—cases they might previously have declined—through the practice of an “evidence-based” prosecution that relied on physical evidence and 911 tapes rather than victim testimony.

In 1996, New York went a step further with the opening of an experimental, specialized felony domestic violence court in Brooklyn. The new court was intended to address those issues that so often go unaddressed by the justice system, yet pose serious risks to victim safety. It would monitor defendant behavior more closely—in part by requiring attendance of a batterer intervention program as a condition of bail or sentence—impose and enforce orders of protection, coordinate conditions and orders with those issued by Family Court, and provide victims with resources such as advocacy and links to services. All of this would stand in stark contrast to traditional criminal domestic violence case processing, which was often reported to be characterized by high dismissal rates, inconsistent rulings, a dearth of consequences for defendant noncompliance with orders, unusually lenient sentencing, and relative indifference to the concerns of victims.

To accomplish all this, the court featured a single presiding judge; a dedicated prosecution team; victim advocates to provide support and resources to complainants; and a resource coordinator to monitor defendant compliance with orders of protection and mandates to batterer intervention programs. It was envisioned as one component of a larger community response to domestic violence, and the judge and court staff met regularly with prosecutors, defense attorneys, probation, victim advocates, batterer intervention providers and others to coordinate policies across institutions.

The success of the court was such that it was soon expanded to a second dedicated court part and judge, and plans were made to adapt the model for criminal (misdemeanor) courts. The state’s first misdemeanor domestic violence court opened in the Bronx, with other misdemeanor courts shortly following in the other four boroughs, as well as outside of the New York City metropolitan area.

In New York State, domestic violence courts were only the latest development in a larger movement toward problem-solving courts and alternative sentencing. However, domestic violence courts differed substantially from initiatives such as drug courts and community courts. The nature of domestic violence makes it unique among criminal behaviors, and accordingly difficult to prosecute: Complainants are often the only witnesses to crimes that have left no physical evidence; yet complainants—whether due to fear for their safety, concern for their children, pressure from the defendant, or a genuine disinclination to press charges—often decline to cooperate, thereby severely limiting the prosecution. In these cases, the prosecutor must decide whether to dismiss the case, try it on the strength of what little material evidence there may be, or subpoena the complainant as a hostile witness. (Many victim advocates have criticized the latter two tactics as disempowering for the complainant, and potentially dangerous.) Thus, domestic violence courts have become laboratories for innovative prosecution strategies, as well as for victim safety and defendant accountability measures.

Domestic violence courts also differ from other problem-solving courts in that most do not

seek to rehabilitate the defendant. The goals of New York State domestic violence courts are victim safety and offender accountability—not offender reform. The complainant is a central concern of the prosecution and the court, and interventions such as batterer intervention programs are used more for monitoring and punitive purposes than for rehabilitation.

Yet this creates ambivalence among stakeholders about the goals of the court. Would not rehabilitation of the defendant be the best guarantor of victim safety? Logically it might seem so, but is rehabilitation possible? One of the difficulties faced by court reformers is the relative paucity of available knowledge on domestic violence: its causes, the impact of criminal sanctions, the nature of recidivism, and the potential for rehabilitation. The complexity of the issue, inconsistency in defining and measuring constructs, and difficulty in locating and interviewing victims have all severely limited research in this area, with the result that most criminal justice practitioners are basing policies and practices as much on their own philosophies and experience as on empirical knowledge.

The current research sought to establish what existing policies and practices are, to understand their underlying rationale, and to learn what stakeholders perceive as their strengths and weaknesses. To do so, it drew on courtroom observations and individual interviews conducted by one of the authors in the spring and summer of 2002. Courtroom observation focused on court processes, interactions between stakeholders, and other courtroom dynamics.

Interviews were conducted with primary stakeholders in criminal domestic violence courts in five boroughs: Bronx, Brooklyn, Manhattan, Queens, and Staten Island. Only one person declined to be interviewed. Interview subjects included judges and court staff—clerks, resource coordinators, defendant monitors—permanently assigned to the domestic violence court parts, as well as assistant district attorneys associated with the District Attorney’s Domestic Violence Bureau, defense attorneys, and victim advocates. Defense attorneys were selected on the basis of the frequency with which they appeared in the court, or on the recommendation of judges and court staff; they included members of both local defense agencies and the Legal Aid Society. The victim advocates interviewed all worked for Safe Horizon and were heads of their respective county’s Criminal Court Division. Safe Horizon does not have dedicated domestic violence court advocates (except where noted as a result of special funding). Subjects were asked a standard set of questions based on role (see Appendix A), with key points of inquiry being case processing, philosophical differences, and challenges.

Additionally, quantitative data on borough demographics and domestic violence case outcomes were collected from the United States Census and the New York State Office of Court Administration.

The report opens with a review of the literature on domestic violence courts; proceeds to a detailed description of the practices of each New York City borough; and then outlines the strengths, weaknesses and concerns raised by stakeholders—judges, prosecutors, advocates, the defense bar—in interviews. Appendices offer a review of legislative actions that have influenced the development of domestic violence courts and a glossary of criminal justice terminology.

II. LITERATURE REVIEW

The court system has long been deplored as inimical to justice and safety for battered women. Critics contend that the criminal justice system's historic inability either to secure the safety of individual women or to reduce the incidence of domestic violence within the community can in large part be attributed to the courts, and a culture that fails to take domestic violence seriously (Tsai 2000) and focuses on "procedures and defendants at the expense of the victim" (Fritzler and Simon 2000, p. 28). "To be fair," argue Mazur and Aldrich (2003) in their assessment of the historical record, "...no one knew what worked with these difficult cases." But whatever the causes, the outcome was clear: "in all too many instances, either perpetrators were never brought to court or their cases were quickly dismissed (p. 5)."

The federal Violence Against Women Act of 1994 provided domestic violence activists an opportunity to address these criticisms and explore the possibilities of what *might* work with these cases. In collaboration with police, prosecutors, judges and probation, they have wrought substantial changes in nearly all aspects of domestic violence case handling, increasing practitioner expertise and consistency (Helling 1998, Karan, Keilitz and Denaro 1999); monitoring of defendant compliance with court orders (Helling 1998, Karan et al. 1999); timely response of the court to defendant noncompliance (Epstein 1999, Frisch, Mackey, Hall and Warden 2001, Fritzler and Simon 2000, Helling 1998); and accountability for criminal justice professionals (Helling 1998, Karan et al. 1999, Tsai 2000). Some jurisdictions set new goals for the court's or prosecutor's response to the complainant, such as increased information and access to court proceedings (Helling 1998; Mazur and Aldrich 2003); validation of the experience of the complainant (Frisch et al. 2001); provision of services and victim advocacy to the complainant (Mazur and Aldrich 2003; Newmark, Rempel, Diffily and Kane 2001; Sack 2002); and documentation of the incident for non-criminal justice purposes, such as verification of the abuse to social workers, health care providers and employers (Frisch et al. 2001).

While these goals are lauded by most domestic violence advocates and many criminal justice professionals, they are certainly not yet universally embraced, particularly by the defense bar. And, coherent though they may be in theory, in practice they sometimes conflict (Fagan 1996). For example, prosecutors may perceive victim advocacy as a tool for securing the cooperation of complainants—a view not generally shared by advocates themselves (Peterson 2001). Complainants' own goals may in turn be inconsistent with those of the prosecution and the court, particularly if they include reconciliation with the abuser (Bennett, Goodman and Dutton 1999; Buzawa, Hotaling, Klein and Byrne 1999). Further aggravating these conflicts is the dearth of knowledge regarding best practices, which allows for differing interpretations of how common goals might be achieved: so, for instance, some assert that courts can advance victim safety only by closely monitoring defendant behavior, while others maintain that they can do so only by promoting offender rehabilitation.

This section reviews the major innovations in domestic violence case prosecution and adjudication of the last decade, and then describes their coordination within a specialized domestic violence court model such as that implemented in the five boroughs of New York City. Special attention is given to what we know regarding the impact of these courts, and to the challenges and criticisms they face.

ELEMENTS OF DOMESTIC VIOLENCE PROSECUTION AND ADJUDICATION

There are many components to prosecution and adjudication of any type of case; domestic violence cases, with their special needs and additional concerns, have more than most. The list below is not exhaustive, but rather includes those issues that are most fundamental, or that feature most prominently in the discussion of the five boroughs to follow. In particular, these include dedicated domestic violence prosecution bureaus; no-drop prosecution; victim advocacy; orders of protection; sentencing; program mandates; and judicial supervision.

1. DEDICATED DOMESTIC VIOLENCE PROSECUTION BUREAUS

Following the passage of the Violence Against Women Act and local mandatory arrest legislation, many prosecutors drew on the national momentum—and the accompanying funding—to create dedicated domestic violence bureaus. These bureaus attempted to provide prosecutors with the training and resources to pursue more cases, more aggressively. Their rationale for doing so was twofold: to support and advance the impact of the mandatory arrest policies by ensuring that arrests were not an end in themselves, but led to further action on the part of the criminal justice system; and to address victims' complaints regarding the historic failure of the system to respond to domestic violence as a serious crime.

2. NO-DROP PROSECUTION

Whether out of respect for victims' wishes or due to a perception that "victimless" crimes could not be successfully prosecuted, most domestic violence bureaus initially deferred to complainants' desires not to proceed with prosecution. However, the resulting high dismissal rates contradicted these units' professed goal of bringing offenders to justice, and left prosecutors frustrated (Ursel and Brickey 1996). As a result, many bureaus have since implemented a "no-drop" policy (Buzawa and Buzawa 1996; Cahn 1992; Epstein 1999). Under such a policy, the prosecutor decides whether or not the case has sufficient merit to prosecute and proceeds whether the complainant wishes it or not. If the complainant is uncooperative, the prosecutor will proceed on the evidence of the case (i.e., without her testimony).

Some studies have found that no-drop policies reduce recidivism, if only for a short time (Epstein 1999; Ford and Regoli 1993). No-drop policies may reduce dismissal rates (Davis, Smith and Davies 2002), or they may increase them (Ford 2003); regardless, many prosecutors continue to cite victim non-cooperation as the primary cause of dismissals (and, conversely, successful prosecution may be dependent on the amount of contact the prosecutor has with the victim) (Belknap, Graham, Hartman, Lippen, Allen and Sutherland 2000). Supporters argue that the policy serves an ideological purpose—that the state must be perceived as consistent and inflexible in its response to domestic violence if a culture of intolerance is to be created. Explains Ford (2003), "No-drop policies are justified to the public on grounds that prosecution protects victims, albeit not necessarily the victim who requested protection (p. 672)."

Some supporters of no-drop policies also claim that they actually help to ensure victim safety by making it clear that the defendant is being prosecuted by the state, not the complainant, thereby reducing the defendant's incentive to intimidate or retaliate against her. Detractors, however, claim that this policy removes agency from the complainant, essentially revictimizing her; and may put her at risk from the defendant (Ford 2003; Hanna 1996; Hart 1998; Mills 1998; O'Connor 1999). One of the few studies of the impact of no-drop policies has found that victims who are empowered to make the prosecution decision are at lower risk of future violence—but only if their decision is to prosecute (Ford and Regoli 1993).

Victims' reasons for opposing or opting out of prosecution are many and varied. They may have initiated contact with the criminal justice system only to stop an immediate act of violence, without any interest in further interventions (Bennett et al.1999). They may want offenders to "get help"—usually counseling or substance abuse treatment—rather than go to jail, particularly if the offender provides for them financially (Bennett et al.1999; Buzawa et al.1999). Or they may simply wish to reconcile with the offender (Plecas, Seggar and Marsland 2000). In the eyes of victims, prosecution may be unnecessary or even contradictory to these goals. Indeed, victims have been reported to perceive "a gap between their interests and those of the prosecutors (Buzawa et al.1999, p. 13)" while prosecutors often fail to understand victims' motives in making prosecution decisions (Ford 1983).

When asked to consider the issues theoretically, however, victims have demonstrated greater ambivalence about the balance of power between complainant and prosecutor. One survey of domestic violence victims found that the majority (69%) supported no-drop prosecution policies, and believed that they would be more likely to report future violence if they knew such policies were in place—but they then went on to say that those policies were more likely to benefit other victims than themselves (Smith 2001). In another study, a nearly equal proportion of victims (65%) believed that victims *should* be allowed to drop charges (Erez and Belknap 1998).

3. VICTIM ADVOCACY

Because the term "advocacy" can encompass so many activities, undertaken at both systemic and individual levels, it is often unclear just what is meant by domestic violence victim advocacy (Bohmer, Bronson, Hartnett, Brandt and Kania 2000). Bell and Goodman (2001) tell us that, "At its best, advocacy for battered women in the justice system consists of four overlapping components: (a) assistance in planning for safety, (b) provision of emotional support, (c) provision of information about and access to community resources, and (d) provision of information about and accompaniment through the legal process (p. 1381)." In particular, advocates help victims to assess the potential impact of the process on their safety, and make plans for their own protection (Davies, Lyon and Monti-Catania 1998).

Advocates may work for the District Attorney or for a community organization, and usually make contact with victims through referrals from the police, prosecutors or court staff; some also approach victims directly in police stations, complaint rooms and courthouses, where they may be stationed to provide immediate assistance with the arrest, complaint, and court processes (Bohmer et al. 2000). These latter are often "legal advocates" who primarily address victims' legal needs, providing advice on subjects such as how to effectively petition for an order of protection (Bell and Goodman 2001).

Research indicates that most victims appreciate the support and assistance of advocates, particularly in helping them to navigate the court process (Smith 2001). It may also boost their opinion of the larger system, or at least their willingness to participate in it; in one study, three-quarters of domestic violence victims who had received advocacy indicated that it had increased the likelihood that they would report future violence (Smith 2001). Anecdotal evidence from New York City criminal court advocates indicates that victims with advocates are also more likely to cooperate with the prosecution on the current case. Notably, this evidence came from advocates who were *not* associated with a prosecutor's office, as might be expected.

While it is hoped that victims with advocates are more comfortable prosecuting because they feel safe and supported, there is always concern about the potential for victim confusion and coercion when advocates work for District Attorneys. In a study of the Quincy, Massachusetts

domestic violence court, victims reported high levels of satisfaction with advocates, yet expressed uncertainty regarding the advocates in this regard, wondering if the advocate's role was really just to get information for the prosecution (Buzawa et al. 1999).

There has not been extensive evaluation of the long-term impact of victim advocacy. One study found that at two years post-intervention, victims who had used advocates experienced less violence, depression, fear and anxiety than those who had not; other studies have found shelter-based advocates and legal advocates to have positive effects, particularly in supporting victims in leaving their batterers (Bell and Goodman 2001; Davis and Srinivasan 1995; Gondolf and Fisher 1988).

4. ORDERS OF PROTECTION

Most research on orders of protection has been conducted on civil orders, which are substantively different from criminal orders: they must be actively sought by the victim, while criminal orders are imposed at the request of a prosecutor, often against the complainant's wishes. It is difficult to know how effective an unwanted order of protection may be, or how likely victims are to disregard such orders. As with no-drop prosecution, many advocates argue that orders of protection issued against victims' will be counterproductive and an infringement of victims' autonomy (O'Connor 1999, Mills 1998). One survey of victims, however, found that 82% agreed with the policy of mandating no-contact orders in all domestic violence cases, regardless of the victim's wishes—this in spite of the fact that many of the victims surveyed reported having experienced financial hardship as a result of the no-contact order, and having suffered offender violations of the order (Plecas et al. 2000).

At least in New York City, however, judges report that it is common for complainants to request that an order of protection be dropped or modified from full (stay-away) to limited. Judges vary in their policies on this subject, but most report that in making the decision they consider the nature and severity of the allegation, the defendant's criminal history, the stage of the case, and extenuating factors such as children and finances.

5. SENTENCING

Even today, domestic violence cases continue to result in lower conviction and incarceration rates than comparable assaults (Peterson 2003). It is questionable, however, to what extent activists wish to make this the focus of criminal justice reform, for there is as yet no conclusive evidence that harsher sanctions reduce recidivism. Contradicting classic deterrence theories, the defendant's demographic profile has proved to be a better indicator of future compliance than the length or severity of the punishment imposed on the instant case. Research does not support the hope that prosecution outcomes on domestic violence misdemeanor cases might influence future recidivism (Davis, Smith and Nickels 1998). Equally disturbing, there is evidence that the expectation of future sanctions has no impact on an individual's likelihood of re-offending (Gondolf and Heckert 2000, Hanson and Wallace-Capretta 2000). (Fagan (1996) suggests that one possible explanation for these observations is that batterers' ability to act rationally is impaired, making deterrence futile—deterrence assumes a rational actor. This view directly contradicts the feminist theory of domestic abuse as calculated and rational action.)

Other studies, however, have sought to qualify this apparent lack of a relationship between criminal justice sanctions and recidivism. At least one study has found that demographic factors such as length of employment, length of residence and neighborhood stability all influence defendants' probability of being deterred by more punitive dispositions (Thistlethwaite,

Wooldredge and Gibbs 1998). Other research suggests that while recidivism may not be deterred by the sentence *per se*, it may be affected by defendants' cumulative experience of the criminal justice system. This study found that defendants who were arrested, prosecuted, sentenced to probation and mandated to an intervention program demonstrated less recidivism than defendants who exited the system at an earlier stage of the process—i.e., were arrested but not prosecuted, were prosecuted but not convicted, or were convicted but did not receive a meaningful sentence involving continued supervision (Murphy, Musser and Maton 1998).

6. PROGRAM MANDATES

Many courts mandate defendants to batterer intervention or other types of programs as a condition of sentencing, usually a conditional discharge or probation sentence. However, many domestic violence advocates worry that programs may be used to divert cases from the criminal justice system, or that treatment programs and poorly structured batterer intervention programs may undermine the message of accountability that the court sends. The New York State Office for the Prevention of Domestic Violence advocates the use of an educational, not treatment, model for batterer intervention programs, and has posted a “Batterer program checklist” on its website to assist attorneys and court staff in evaluating programs for use. In particular, the Office stresses that the program should reinforce accountability through such practices as strict monitoring of absences and immediate response to excessive absences and noncompliance, including notification of the court.

7. JUDICIAL SUPERVISION

Regular judicial monitoring is frequently cited as essential to any effort to maintain defendant accountability, and is considered a cornerstone of the domestic violence court model discussed below (Mazur and Aldrich 2003, Sack 2002). In misdemeanor courts, monitoring is conducted pre-disposition by scheduling frequent court dates, usually no fewer than one a month. After sentencing, defendants who have been mandated to programs may also be required to return to court on a regular basis, at which time the judge may review any program updates and compliance with orders of protection. Courts with very large caseloads may designate a separate part and judge for this purpose; others may simply devote a subset of the domestic violence calendar to compliance monitoring.

Judicial monitoring is theorized to impress defendants with the realization that the court knows what they are doing at the program, is aware of any infractions or violations that they have committed, and will respond strongly to noncompliance. There is evidence to suggest that defendants are in fact less likely to be re-arrested while under supervision (San Diego Superior Court 2000, Taylor, Davis & Maxwell 2001).

THE SPECIALIZED DOMESTIC VIOLENCE COURT MODEL

Any of the practices and policies described in the previous section may be applied in isolation or in combination with the others. However, in the hope of maximizing the effectiveness of any one of these practices, increasing numbers of U.S. jurisdictions—more than 300 at present—are choosing to consolidate most or all of them within a dedicated, specialized criminal domestic violence court (Keilitz 2000). Because there is no uniform definition of what a domestic violence court is, or even what constitutes domestic violence, or family violence, each individual jurisdiction is free to create its own definitions, and goals (Karan et al. 1999). Nevertheless, commonalities have developed. Domestic violence courts are generally understood to include a

dedicated, trained judge and prosecutor, and dedicated, trained court staff to assist in case coordination and transmittal of information between parties, attorneys, the judge and community and law enforcement agencies. Advocacy and services for victims are provided by the prosecutor, the court, or community agencies; lethality assessments and safety planning are perceived as essential (Keilitz 2000). Close judicial oversight of defendant behavior is maintained through frequent court appearances and regular information exchange with probation, programs, police and others (Healey, Smith and O'Sullivan 1998, Mazur and Aldrich 2003, Sack 2002, Steketee, Levey and Keilitz, 2000). The court may operate full-time, or may function more as a dedicated calendar heard at a fixed time on a regular schedule, usually once a week or once a month. By definition, such a court hears all domestic violence cases in the jurisdiction, with screening mechanisms established by the prosecutor or court clerks to identify all eligible cases (Mazur and Aldrich 2003, Sack 2002, Weber 2000).

All of the practices discussed above are time- and labor-intensive; domestic violence courts demand accordingly large quantities of resources. Judges, attorneys and staff must receive continuous training; close monitoring requires additional appearances, more frequent appearances, and outreach by court staff to advocates, programs and others for information; and maintenance of system-wide consistency necessitates regular meetings between all stakeholders. Given these demands, one might reasonably ask, to what extent do the benefits of domestic violence courts outweigh their costs?

Advocates, defense attorneys, judges and other stakeholders have all expressed concerns about domestic violence courts: that they will divert offenders from prosecution to treatment; that they may jeopardize judicial neutrality; that they will have unintended consequences for victims, such as increasing the number of victims prosecuted for failure to protect their children from the violence (Keilitz 2000). More optimistically, they hope that the courts will result in greater consistency in prosecutors' and judges' treatment of cases; more advocacy and relief to victims; and increased compliance with court orders from defendants (Keilitz 2000).

There has not yet been extensive rigorous evaluation of domestic violence courts, but what little exists has been positive. Much more than conventional courts, domestic violence courts link victims to advocacy and services (Henning and Klesges 1999, Newmark et al. 2001) and are perceived by victims to do a good job of case handling, to produce fair outcomes, and to be generally more satisfactory than conventional courts (Eckberg and Podkopacz 2002, Gover, MacDonald and Alpert 2003, Hotaling and Buzawa 2003). The introduction of a domestic violence court has been found to result in significant reductions in dismissal rates (Davis, Smith & Rabbitt 2001, Henning and Klesges 1999, Newmark et al. 2001), to increase the pursuit of cases with lower charges, to increase the percentage of defendants mandated to batterer intervention, and to increase the frequency and regularity of judicial monitoring (Newmark et al. 2001), as well as to increase the incidence of jail sentences (Ursel and Brickey 1996). A survey of domestic violence victims found overwhelming support for the idea of a dedicated court, with almost three-quarters of respondents saying that they believed such a court would benefit them, and that knowing of the existence of such a court would increase their chances of reporting future violence (Smith 2001).

The results of victims' experience with specialized courts are more equivocal. At least two studies found that three-quarters of victims were satisfied with the handling of their case in a domestic violence court, but that satisfaction hinged not only on the outcome of the case but on a broad range of factors, including victims' perception of having been treated fairly, their personal motivation to end the relationship, and even the criminal history of the offender (Henning and

Kesges 1999, Hotaling and Buzawa 2003). This implies that the court experience itself is only a small percentage of the victim's total experience with the case.

Moreover, it is important to note that even as victims have in practice and theory approved the domestic violence court as an improvement over standard case processing, at least one study found that 40% of victims still found the court experience "embarrassing" and said they would not return to court if they experienced another incident of domestic violence (Hotaling and Buzawa 2003).

The impact of domestic violence courts on recidivism appears equivocal. One study found no effect on misdemeanor offenders' re-arrest rates (Henning and Klesges 1999); another found no reductions in re-arrests among felony offenders, but suggested that this might have been partially attributable to the court and prosecutor's increased knowledge of defendant behavior, which made it more likely that they would learn of re-offending (Newmark et al. 2001). Finally, three other studies (one of a program targeted to substance-abusing domestic violence offenders) found small to significant reductions in re-arrest rates among misdemeanor offenders (Goldkamp, Weiland, Collins and White 1996, Gover et al. 2003, San Diego Superior Court 2000).

CHALLENGES OF THE MODEL

The domestic violence court model poses many operational challenges to court planners and administrators. The most obvious challenge is often volume—close monitoring requires that cases make more, and more frequent, appearances than usual; post-sentence monitoring may keep cases returning to court up to a year after they would normally be off the calendar. The size of the caseload and the nature of the cases may also affect judges and court staff, significantly increasing individual workloads and potentially leading to burnout (Helling 1998). Other common administrative challenges include linking and tracking cases and storing and accessing additional case information, such as victim advocate reports and order of protection history, while also protecting the parties' privacy rights (Karan et al. 1999). Maintenance of courtroom security also becomes more complex in domestic violence courts, where it is critical to victim safety (Fritzler and Simon 2000).

Domestic violence courts must also negotiate relationships with other courts and outside agencies. The introduction of a domestic violence court impacts other courts—primarily Family Court—that handle similar cases or cases involving the same parties. All of the courts involved may need to identify their jurisdictional limitations in relation to each other (Epstein 1999, Helling 1998, Karan et al. 1999), and judges may need to be sensitive to the potential for conflict between courts, especially in regard to orders of protection and visitation.

Finally, domestic violence courts change the way that criminal justice professionals and other stakeholders interact with each other and with the parties, potentially leading to confusion as new roles are added and existing roles are redefined (Tsai 2000). In order to appropriately serve the parties, domestic violence courts must work to coordinate the courts' operation with the initiatives and resources of other agencies (Karan et al. 1999).

CRITICISMS OF THE MODEL, AND THE NEED FOR FURTHER RESEARCH

Many criminal justice professionals and even some victim advocates have criticized the very concept of a specialized domestic violence court, on the grounds that a criminal justice intervention is not always the appropriate response to domestic violence. Others, primarily defense attorneys, protest what they perceive as a bias against defendants (Helling 1998, Tsai

2000). A smaller group of critics worries that a concerted criminal justice response jeopardizes, rather than increases, victim safety, and decries the specialized courts as easier on defendants than traditional courts (primarily because of their use of alternative sentences such as batterer intervention programs rather than jail) (Tsai 2000). Many of these critics also condemn the expenditure of resources on services for batterers rather than victims (Tsai 2000). Other critics have focused on the possible negative impact on minority populations, including immigrants and African Americans (Epstein 1999).

In responding to these criticisms, proponents of domestic violence courts are hampered by the lack of conclusive research on the impact of key court components (Tsai 2000), including batterer intervention programs and enhanced defendant monitoring. What research exists is also rendered less effective by inconsistency across studies in defining terms (e.g., recidivism as re-arrest versus victim-reported re-offense) and follow-up periods, and by small sample sizes, particularly in longitudinal research with victims. This latter is due in large part to the difficulty and expense of making and maintaining contact with victims, who have little incentive to participate in research and may have compelling reasons for wishing to escape attention. But if victim safety is indeed a primary goal of domestic violence courts, than evaluation of long-term outcomes for victims and their children must be a priority of research.

III. DOMESTIC VIOLENCE CRIMINAL CASE PROCESSING IN THE FIVE BOROUGHES OF NEW YORK CITY

This section describes case processing in the criminal (misdemeanor) domestic violence court parts in all five counties of New York City. Although there are significant differences in case processing between boroughs, the criminal justice system and domestic violence court norms dictate that many elements are universal. The implications of specific practices and policies, as well as a cross-borough comparison, will follow in the next section.

DEMOGRAPHIC CONTEXT

Table 1 describes the makeup of each borough's population, and their relative wealth, as of 2000 (U.S. Census, 2000).

	Bronx	Brooklyn	Manhattan	Queens	Staten Island
Total population	1,332,650	2,465,326	1,537,195	2,229,379	443,728
Race					
Caucasian	32%	43%	57%	47%	78%
African-American	38%	38%	18%	21%	10%
Native American	1%	0	1%	1%	0
Asian/Pacific Islander	3%	8%	19%	19%	6%
Other	26%	11%	12%	12%	6%
Ethnicity					
Hispanic/Latino	51%	21%	28%	27%	12%
High school diploma ²	62%	69%	79%	74%	83%
B.A. degree or higher	15%	22%	49%	24%	23%
Per capita income	\$13,959	\$16,775	\$42,922	\$19,222	\$23,905
Percent of population living below the poverty line	31%	25%	20%	15%	10%

The gaps between the boroughs are evident, with the Bronx at one extreme and Manhattan at the other. Overall, the populations of Queens, Manhattan, and Staten Island are significantly more prosperous than Brooklyn and the Bronx. Incomes and poverty rates further confirm these differences; in Brooklyn and the Bronx over one-quarter of residents live below the poverty line, while poverty rates become much lower when moving to Manhattan, Queens and Staten Island.

KEY COMPONENTS OF CASE PROCESSING

1. THE ARREST OR COMPLAINT

One of three things must happen for a domestic violence incident to become a crime: the police are called to the scene; the complainant goes to the police precinct and files a report; or the complainant appears in the District Attorney's complaint room. In the first instance, police are required to notify the complainant of her available legal recourses, both criminal and civil;

² Among residents 25 years of age or older.

complete a Domestic Incident Report; direct the complainant to appropriate community resources; and arrest the alleged offender. Having made the arrest, the officer takes the defendant to the precinct for booking, then forwards the booking report and the Domestic Incident Report to the District Attorney's Office. In the second instance, when the complainant goes to the precinct to file the report, the police fill out the Domestic Incident Report, take the complainant's statement, inform her of the available legal remedies, and launch an investigation. In the third instance, complainants come to the District Attorney's complaint room either to file an initial complaint or to corroborate the complaint filed by the police. Clerks, paralegals, and prosecutors staff the complaint rooms, and Safe Horizon victim advocates are available. With some exceptions (to be described in the borough sections), complaint rooms operate during regular business hours and are located in each county's criminal court.

2. THE DECISION TO PROSECUTE

Most boroughs attempt to practice some degree of vertical prosecution—assigning a single prosecutor to follow the case from beginning to end. In all boroughs but Manhattan, new domestic violence cases are directed to the District Attorney's Domestic Violence Bureau. An Assistant District Attorney (ADA) from the Bureau reviews the case and the evidence, and sometimes speaks with the complainant, before deciding whether there is sufficient evidence for prosecution. In Manhattan, the process is essentially the same, but the ADA's caseload is not exclusively composed of domestic violence cases.

The cooperation of the complainant is usually the critical factor in deciding whether there is sufficient evidence to prosecute the case: by New York State law, if prosecution is based on the police report rather than complainant report, the complainant must corroborate the report within five days if the defendant is incarcerated, or 90 days if the defendant is released. At that time, the prosecution must either produce the corroborating statement or declare its readiness to continue with an evidence-based prosecution, without the assistance of the complainant. The frequency with which District Attorneys pursue the latter course varies; for example, the Brooklyn District Attorney's Office is more likely to continue the case without the complainant than is the Bronx District Attorney's Office (Peterson 2002).

3. INITIAL COURT PROCESSING

Domestic violence cases are usually arraigned in a regular court part, then adjourned to the domestic violence court. Every domestic violence case receives an order of protection at arraignment; the order is renewed at subsequent court appearances, and a final order is usually issued at disposition or sentencing. The ADA will generally request a full order of protection whether the complainant wishes it or not; the courts generally issue very few limited orders, particularly in the early stages of the case.

At the case's first appearance in the domestic violence court, an ADA restates the charges against the defendant and, in most cases, offers a plea deal, under which the defendant would plead to a reduced charge and receive a specified sentence. The defendant then has the option of pleading guilty to the original charges, agreeing to the plea deal, or going to trial.

4. SENTENCING, PROGRAMS AND COMPLIANCE MONITORING

The most commonly imposed sentence in the criminal domestic violence courts is a one-year conditional discharge, usually with the condition of participation in an intervention or treatment program (most commonly a batterer intervention program), which may last anywhere from

twelve weeks to twelve months. Program mandates are complemented by compliance monitoring, consisting of regular appearances before the judge or, in Queens, Brooklyn and the Bronx, before a dedicated judicial hearing officer (JHO). During monitoring appearances, the defendant monitor or resource coordinator will review program reports on the defendant, and the judge or JHO will address any infractions. Common responses to minor noncompliance include motivational talks, lectures, and an increase in the frequency of court appearances. Major infractions, such as alleged violations of the order of protection, a new arrest, or program failure must be addressed by the sentencing judge, who will assess the circumstances and determine whether or not the defendant has violated the conditions of his conditional discharge. If so, an alternative sentence (usually a jail sentence, the length of which may have been specified at the time of sentencing) is imposed. If the offense does not reach the level of a violation, the judge will return the case to the compliance part with a warning or other sanction.

BRONX³

Bronx County has a population of 1,332,650, divided almost into thirds between African-Americans, Caucasians and all other races. Half of Bronx residents are of Hispanic ethnicity. Sixty-two percent of the population has a high school diploma, while 15% has a bachelor's degree or higher. Nearly a third of Bronx residents live below the poverty level.

In 2002, 5,491 domestic violence cases were arraigned in Bronx County, and 6,467 were disposed: 49% plead guilty or were convicted, 44% were dismissed, and 3% were adjourned in contemplation of dismissal; less than 1% were acquitted, and the remainder received other dispositions. Approximately 40% of convictions resulted in jail sentences; most others received conditional discharges.⁴

THE DOMESTIC VIOLENCE COURT

The Bronx Misdemeanor Domestic Violence complex opened in 1999 with funding from a STOP grant from the Violence Against Women Office. It is staffed by specialized personnel, including a project director, resource coordinator and two defendant monitors, and consists of three court parts: one for trials, one for post-sentence compliance monitoring, and one for all other types of appearances. The all-purpose and trial parts hear cases five days a week, while the compliance part operates three days a week.

THE DEDICATED DOMESTIC VIOLENCE PROSECUTION BUREAU

In the 1980s, the Bronx District Attorney created a single bureau for all cases involving sex crimes, child abuse, and domestic violence. In 2003, domestic violence cases were moved to their own dedicated Domestic Violence Bureau, currently staffed by 17 misdemeanor and six felony assistant district attorneys. The Bureau's prosecution is nearly vertical: a single assigned ADA follows the case to disposition and appears at all court dates after arraignment.

Under its first-party complaint policy, the District Attorney's Office usually declines to prosecute cases in which the victim will not sign a complaint. Should the victim sign a complaint and then later withdraw her cooperation, ADAs may choose to proceed with an

³ In November 2004 Bronx County underwent a court restructuring process that combined the criminal (misdemeanor) and supreme (felony) courts into a single entity. This section reflects court and District Attorney practices prior to restructuring.

⁴ All 2002 case statistics for all boroughs provided by the Office of the Administrative Judge, Criminal Court of the City of New York.

evidence-based prosecution. The decision to do so is based primarily on the strength of the evidence against the defendant, but also takes into consideration other factors, such as whether the complainant is seeking to resolve the matter in Family Court.

THE COMPLAINT ROOM, CASE ASSIGNMENT AND PROSECUTION During regular business hours, the arresting police officer usually escorts the complainant directly to the complaint room. If the police officer does not believe the complainant to be in immediate danger, or if the arrest is made at night or on a weekend, the officer directs the complainant to appear in the District Attorney's complaint room as soon as possible during business hours.

In the complaint room, an ADA from the Bronx District Attorney's Domestic Violence Bureau asks the complainant to corroborate the arresting officer's report, as well as to describe any history of abuse with the defendant. After the complaint is filed, an ADA is assigned to the case; this may or may not be the same person who met with the complainant in the complaint room, or who will represent the complainant at arraignment.⁵ ADAs are expected to make contact with the complainant when first assigned to the case, and before all court appearances thereafter. The number of contacts varies, depending not only on the length of the case but on the accuracy of the contact information obtained from the complainant, and on her interest in cooperating.⁶

ORDERS OF PROTECTION

The Domestic Violence Bureau requests a full order of protection in all assault cases, and usually considers a limited order appropriate only after an intervention that either demonstrates to the defendant the severity of the charges (jail) or provides him with tools to avoid future violence (a batterer intervention program).

The judge's decision of whether to impose a full or limited order of protection is based on the defendant's prior criminal history, past allegations of physical assault, and information about the particular case (such as whether there are children living in the home) gathered by the resource coordinator. Limited orders are rare and are generally issued only at or after sentencing, often after the defendant has demonstrated compliance with existing orders and any program mandates.

PROGRAMS AND COMPLIANCE

The court often includes a program mandate with a sentence of conditional discharge. The judge draws on information provided by the resource coordinator, and possibly the defense attorney (usually if the defendant is already enrolled in a program), in choosing a program. The ADA may also provide input on what type of program the complainant believes will be most beneficial.

In most cases, the defendant is sentenced to a type of program rather than to a specific provider. When the defendant monitor meets with the defendant after sentencing, she assesses his needs (schedule, ability to pay, language facility, etc.) and recommends a particular program.

⁵ At the time of data collection, the Domestic Violence Bureau was in the process of restructuring the department in order to handle cases vertically. Other stakeholders reported that even the partial implementation (the coordinated effort to have the ADA come to Safe Horizon to interview the defendant) had made a significant difference.

⁶ Bureau ADAs report that the contact information given in the complaint room is often incorrect, or changes as a result of attempts to evade the defendant (or the prosecutor). In some cases, the complainant may not have a permanent address; in interviews, many different parties observed that the Bronx has a highly transient population. However, ADAs add that complainants who are interested in pursuing the case will make sure to stay in contact.

Representatives from the programs used most frequently by the court come to the courthouse to assess defendants. For all other programs, the defendant monitor schedules an intake appointment for the defendant.

One month after sentencing, defendants mandated to a program return to the compliance part for monitoring by a judicial hearing officer. No attorneys are present, unless the defendant commits a major infraction and is forthwithed back to the sentencing judge. Compliance is monitored primarily via program reports faxed to the defendant monitors, but at least one agency sends a representative to court to report on compliance in person.

Most defendants are required to appear for monitoring once a month for approximately six months (the length of the typical batterer intervention program); however, defendants who miss program dates or are otherwise not in compliance with the program mandate may be monitored longer.

VICTIM ADVOCATES

While victims of domestic violence felonies receive victim advocacy primarily from the District Attorney's Crime Victims Assistance Unit, victims in misdemeanor domestic violence cases receive advocacy from an independent agency, Safe Horizon. Access to victim advocacy is provided regardless of whether the complainant decides to cooperate with the prosecution, and advocates do not have an active role in the prosecution. The information shared by victim advocates with the District Attorney's Office is usually limited to the lethality assessment and the notification of a violation of an order of protection. Nonetheless, in interviews ADAs stressed their perception that victim advocacy plays a critical role in prosecuting domestic violence cases: "If she's safe and secure and her needs are addressed, there is a direct correspondence to her willingness to continue with the prosecution," said one prosecutor.

BROOKLYN

The borough of Brooklyn, or Kings County, occupies 71 square miles and has a population of 2,465,326. Forty-three percent of residents are Caucasian, 38% are African-American, eight percent are Asian/Pacific Islander, and 11% are of other races; 21% are of Hispanic ethnicity. Sixty-nine percent of the population has graduated from high school, and 22% has a bachelor's degree or higher. One-quarter of the population lives below the poverty line.

In 2002, 6,976 domestic violence cases were arraigned in Brooklyn (almost 1,500 more than in the borough with the next largest caseload, the Bronx). That same year, 9,157 domestic violence cases were disposed: 18% plead guilty or were convicted, 51% were dismissed, and 30% were adjourned in contemplation of dismissal; the remaining 1% was acquitted or received other dispositions. Approximately 35% of sentences imposed included imprisonment, while 51% of sentences were conditional discharges only.

THE DOMESTIC VIOLENCE COURT

The Brooklyn Misdemeanor Domestic Violence complex opened in 1997, and consists of two all-purpose parts and a compliance part. Each all-purpose part has a dedicated judge, is active five days a week, and handles misdemeanor cases through trial. A judicial hearing officer staffs the compliance part, which is active two days a week. In 2003 the court hired a resource coordinator with funding from the Grants to Encourage Arrest Policies program of the Office on Violence Against Women.

THE DEDICATED DOMESTIC VIOLENCE PROSECUTION BUREAU

The Brooklyn District Attorney created a Domestic Violence Bureau in 1990, which is staffed by 14 trial attorneys; all but the newest ADAs to the Bureau prosecute both felony and misdemeanor cases. Due to recent budget restrictions, the Bureau reviews all domestic violence cases but retains only the most serious for prosecution; the rest are returned to the general trial division.

The Domestic Violence Bureau does sometimes prosecute cases without the support of the complainant, estimating that just under twenty percent of trial cases proceed with the complainant's participation. These cases, which are converted primarily on the basis of statements from the police and excited utterances, generally involve serious allegations and severe injuries. The Bureau emphasizes that its priority is the complainant's safety, which it believes may be advanced by prosecution. If the ADA judges that in a particular instance prosecution would instead jeopardize the safety of the complainant, she may choose to drop the case.

THE COMPLAINT ROOM, CASE ASSIGNMENT AND PROSECUTION Complainants rarely come to the District Attorney's Office after an arrest; instead, ADAs obtain their contact information from the arresting police officer and interview them over the phone. The interview includes a special battery of questions created by the Domestic Violence Bureau for domestic violence cases, relating to the history of abuse between the complainant and the defendant. The ADA will also conduct a risk assessment with the complainant; complainants identified as being in imminent danger may be immediately referred to a social worker.

The District Attorney's Office stations a paralegal in arraignments to contact complainants immediately after their case is arraigned, alerting them to the existence of any orders of protection, as well as to the bail status of the defendant. Once the case is transferred to the Domestic Violence Bureau after arraignment, the assigned ADA contacts the complainant to arrange an interview, at which they discuss both the case and any service needs of the complainant.

While the Bureau does assign a single ADA to a case from arraignment through disposition, the assigned ADA does not necessarily appear in court on the case. Instead, assistants are assigned to the two domestic violence court parts on a rotating basis; complainants may not necessarily be interacting with the same assistant every time they come to court.

ORDERS OF PROTECTION

The Domestic Violence Bureau does not categorically object to limited orders of protection; a limited order is appropriate if it is sufficient to protect the complainant. The Court routinely issues full orders of protection out of concern for the safety of the complainant, but grants of limited orders at the request of the victim are not infrequent.

CONDITIONAL PLEAS

The Brooklyn Court does sometimes accept conditional pleas. In those cases, defendants plead guilty to a misdemeanor; sentencing is then deferred while they participate in a court-mandated program, such as batterer intervention. If they successfully complete the program, defendants' charges are reduced to the level of a violation, or the case is Adjourned in Contemplation of Dismissal. In those cases where defendants fail to complete the program, the judge retains the discretion to sentence the defendant as appropriate for the misdemeanor charge.

PROGRAMS AND COMPLIANCE

As one element of a conditional discharge – or, less often, of an Adjournment in Contemplation of Dismissal – Brooklyn Domestic Violence Court may sentence defendants to batterer intervention, or to a substance abuse or mental health treatment program. The court currently refers almost all defendants to a single batterer intervention program, Safe Horizon’s Domestic Violence Accountability Program; defendants are sent elsewhere only under exceptional circumstances, such as residence in another borough.

After being sentenced to a program, cases are adjourned to the compliance part for regular monitoring, usually on a monthly basis.

In December 2003, the court introduced a new program, the Youthful Offender Domestic Violence Court (YODVC), for all domestic violence defendants between the ages of 16 and 19. The YODVC calendar is held one afternoon a week, and as a condition of plea most offenders participate in a free 12-week intervention program offered by a local community organization, STEPS to End Family Violence. The program is intended to be a more interactive and developmentally appropriate version of the traditional batterer intervention model.

VICTIM ADVOCATES

From the complaint room, complainants’ contact information is passed to Safe Horizon victim advocates, who attempt to reach the complainant as soon as possible. Safe Horizon provides victim advocacy for all complainants, and the District Attorney’s Office provides social workers for those complainants whose cases are identified as high-risk at intake. In addition, the Domestic Violence Bureau has close relationships with community agencies and legal services organizations such as Droit Femmes, the City Bar Fund, the New York Asian Women’s Center, Sanctuary for Families, South Brooklyn Legal Services and the Urban Justice Center, to which complainants are referred as appropriate. The Bureau also has a number of grant-funded service programs for special populations – such as women with disabilities – for which all complainants are screened and, if eligible, referred at the time of intake with the victim advocate.

MANHATTAN

Manhattan, or New York County, encompasses 23 square miles, with a population of 1,537,195. Fifty-seven percent of residents are Caucasian, 19% are Asian/Pacific Islander, 18% are African-American, and the remaining 13% are of other races; 28% are of Hispanic ethnicity. Seventy-nine percent of the population graduated from high school, and 49% have a bachelor’s degree or higher. Twenty percent of the population lives below the poverty line.

In 2002, 4,063 domestic violence cases were arraigned in Manhattan, and 4,627 were disposed: 34% plead guilty or were convicted, 48% were dismissed, and 13% were adjourned in contemplation of dismissal; less than 1% acquitted, and the remainder received other dispositions. Approximately 35% of sentences imposed included imprisonment, while 47% of sentences were conditional discharges only.

THE DOMESTIC VIOLENCE COURT

The Manhattan Misdemeanor Domestic Violence Court, known as Part D, opened in 1999. It operates five days a week,⁷ with one judge hearing all cases, including compliance. Cases are referred to other parts for trials. The court receives no outside funding, and has no additional staff or resources.

⁷ At the time of observation, the court was also hearing the traffic violations docket.

PROSECUTION STAFF

The Manhattan District Attorney's Office does not have a specialized bureau to handle domestic violence cases; instead, when the Domestic Violence Court was created, a position of Assistant District Attorney in Charge of Supervising in the Prosecution of Misdemeanor Domestic Violence Cases (the Domestic Violence Supervisor) was instituted. Misdemeanor ADAs are assigned to domestic violence cases as part of their regular rotation, and are supervised by their regular bureau chiefs as well as by the Domestic Violence Supervisor.

The primary factor in the decision to prosecute cases is the strength of the evidence. In cases where the evidence is insufficient, the ADA may decide to prosecute the case with the complainant as a hostile witness.

THE COMPLAINT ROOM, CASE ASSIGNMENT AND PROSECUTION Cases usually reach the District Attorney's Office six to twelve hours after an arrest. The arresting officer brings the online booking sheet to the District Attorney's intake department, and remains while an ADA attempts to contact the complainant. The ADA also reviews the evidence at this time, and may ask the officer to collect additional evidence before drafting the accusatory instrument.

Domestic violence cases are the only cases in Manhattan to be handled vertically, meaning that the same ADA who handles the case at intake keeps it through final disposition (with the exception of arraignment, which is handled by whatever ADA is assigned to arraignments that day).

The office makes contact with the complainant prior to arraignment in approximately 50% of cases. The ADA usually meets with the complainant within a few days to document the history of abuse and collect evidence on the present case, including photographs and witness statements.

ORDERS OF PROTECTION

The Domestic Violence Supervisor bases the decision of what type of order of protection to request on the ADA's assessment of potential risk to the complainant. ADAs notify the court if they are requesting a full order against the wishes of the complainant; the Court routinely issues full orders of protection unless the parties request otherwise.

PROGRAMS AND COMPLIANCE

Defendants may be mandated by the court to attend a program as a condition of sentence. However, while an ADA may offer a program as part of a plea deal if the complainant requests it, the District Attorney's Office reports that it does not feel confident that batterer intervention programs are effective, or even accountable. After sentencing, the case is adjourned for compliance, with defendants returning to court every month or two for monitoring.

VICTIM ADVOCATES

The District Attorney's Office has its own social workers, who provide all victim advocacy to complainants participating in the prosecution. These advocates are available to complainants whenever they come to the office; in addition, an ADA may refer complainants to them for specific services. For services that the District Attorney's Office does not offer, such as shelter placement, advocates refer complainants to Safe Horizon. Complainants who do not want to continue with the criminal prosecution are also referred to Safe Horizon for continued advocacy.

QUEENS

Queens County occupies 109 square miles and has a population of 2,229,379. Forty-seven percent of residents are Caucasian, 21% are African-American, 19% are Asian/Pacific Islander, and 13% are of other races; 27% are of Hispanic ethnicity. One quarter of the population graduated from high school, and 49% has a bachelor's degree or higher. Fifteen percent of residents live below the poverty line.

In 2002, 4,676 domestic violence cases were arraigned in Queens, and 5,248 were disposed: 56% plead guilty or were convicted, 20% were dismissed, and 22% were adjourned in contemplation of dismissal. Approximately 21% of sentences imposed included imprisonment, while 74% of sentences were conditional discharges, making Queens the borough that relies most heavily on conditional discharges and least on jail sentences.

THE DOMESTIC VIOLENCE COURT⁸

The Queens Domestic Violence Court opened in 1997, and consists of two parts, AP4 and QDVC. AP4, the all-purpose part, handles sentencing, bench trials and the monitoring of some cases; it hears misdemeanor cases through plea or bench trial and felony cases through indictment or felony waiver plea. QDVC, which is staffed by a judicial hearing officer, monitors most compliance cases. The court operates under two grants, one received through the District Attorney's Office and one through Safe Horizon, which funds enhanced victim advocate outreach. The court has several specialized staff positions, including a resource coordinator and defendant monitor.

THE DEDICATED DOMESTIC VIOLENCE PROSECUTION BUREAU

The Queens District Attorney created a Domestic Violence Bureau in 1997, at approximately the same time that the court opened. The bureau is staffed by nine misdemeanor assistants, whose caseloads average 70 to 90 cases. Prosecution is vertical, so the assistant who interviews the complainant also appears at arraignment and for all future appearances.

On average, ADAs speak to the complainants once every week, while cases appear in court approximately once every three weeks.

THE COMPLAINT ROOM, CASE ASSIGNMENT AND PROSECUTION When Queens police officers make domestic violence arrests, they immediately page the Domestic Violence Bureau. During regular business hours, ADAs from the Domestic Violence Bureau are on-call and available to meet immediately with complainants, off-site if necessary. As a result, ADAs usually make contact with the complainant within one hour of the incident.

Misdemeanor arrests made during nights and weekends are handled by the District Attorney's general intake process. Intake speaks with the complainant, then refers the case to a Domestic Violence Bureau ADA on the next business day. The assigned ADA will then speak to the complainant and the police officer, and may also collect some evidence, usually digital photographs. Once the ADA has spoken with the complainant and reviewed all of the evidence, she decides whether or not the case is appropriate for prosecution.

The Domestic Violence Bureau attempts to develop every case so that it can be tried on the evidence, even if the complainant is willing to cooperate. Several factors influence the decision to continue without the cooperation of the complainant, including the defendant's criminal history, the escalation of violence, the safety of the complainant, and the defendant's refusal to

⁸ For a more detailed evaluation of the Queens Domestic Violence Court, please refer to Miller (2002).

take a plea or his perceived failure to “show remorse.”

ORDERS OF PROTECTION

The Domestic Violence Bureau asks for a full order of protection at arraignment in any case where the ADA’s assessment is that contact threatens the safety of the complainant. While the Bureau doubts that a limited order of protection can effectively secure the safety of the complainant, ADAs may support a complainant’s preference for a limited order after a thorough investigation of the case.

When deciding on an appropriate order of protection, the judge takes into account the couple’s prior history, the defendant’s prior violations of orders of protection, the complainant’s wishes, and the guarantee of safety provided by the programs for which the defendant is eligible.

CONDITIONAL PLEAS

In addition to imposing standard pleas, Queens also accepts conditional pleas from defendants with a prior criminal history. In these cases, the defendant pleads guilty to an “A” misdemeanor charge and a violation. If the defendant complies with the mandate, the judge drops the misdemeanor charge and only the violation remains on the defendant’s rap sheet. If the defendant fails to comply with the conditional discharge, the judge can impose a maximum sentence—one year on an “A” misdemeanor—that is much higher than would have been possible under the violation conviction alone.

PROGRAMS AND COMPLIANCE

The court’s resource coordinator is responsible for selecting new programs for use by the court, maintaining relationships with them, and making recommendations to the court about appropriate programs for particular defendants. The court routinely uses four or five different programs, which provide batterer intervention or treatment for alcohol, substance abuse, and mental health issues. The defendant monitor communicates the requirements of the programs to the defendants and receives information about defendant compliance from the programs.

The Queens District Attorney’s Domestic Violence Bureau is unique in that it also receives monitoring updates directly from the programs, although at that stage (post-sentence) it is no longer actively involved with the case. However, an ADA will appear in the compliance part to speak on record if the complainant notifies the office of a violation of the order of protection.

VICTIM ADVOCATES

Safe Horizon provides victim advocacy to complainants in misdemeanor cases for the duration of the case. Victim advocates work to secure services for the complainant, but generally have no role in the prosecution of the case unless the complainant specifically asks them to relay information to the ADA.

In addition, two full-time court staff members provide assistance to victims immediately after arrest. After drafting the accusatory instrument, the ADA calls these advocates and they begin working with the complainant on safety planning, changing locks, relocation, etc. In addition, these advocates follow up with the complainant regarding adjournment information and the order of protection.

STATEN ISLAND

Staten Island, or Richmond County, occupies 109 square miles, and has a population of 473,728. More than three-quarters of the population is Caucasian, 10% is African-American, and equal percentages are Asian/Pacific Islander and other races. Twelve percent are of Hispanic ethnicity. Eighty-three percent of the population has a high school diploma, and 24% has a bachelor's degree or higher. Fifteen percent of the population lives below the poverty line.

In 2002, 960 domestic violence cases were arraigned in Staten Island and 1,031 were disposed: 35% plead guilty or were convicted, 40% were dismissed, and 23% were adjourned in contemplation of dismissal; less than 1% were acquitted, and the remainder received other dispositions. Approximately 30% of sentences imposed included imprisonment, while 58% of sentences were conditional discharges.

THE DOMESTIC VIOLENCE COURT

The Staten Island Misdemeanor Domestic Violence Court, part AP2DV, opened in 1997. A dedicated judge hears an all-purpose domestic violence calendar, including trials, at least one day a week. It does not maintain a separate compliance calendar. The court operates without additional funding or staff.

THE DEDICATED DOMESTIC VIOLENCE PROSECUTION BUREAU

The Sex Crimes/Special Victims Bureau of the Staten Island District Attorney's Office was created in 1993 and handles sex crimes, child abuse, domestic violence and crimes against seniors. It is staffed by a Bureau Chief, a Deputy Bureau Chief, two felony attorneys, three criminal court (misdemeanor) attorneys, and three victim advocates, one of whom is grant-funded to assist with domestic violence cases.

THE COMPLAINT ROOM, CASE ASSIGNMENT AND PROSECUTION After an arrest, police officers review the case with an ADA in the complaint room, located in the criminal court building. Felonies are prosecuted by ADAs from the Sex Crimes/Special Victims Bureau, while misdemeanors are usually prosecuted by criminal court ADAs.

If the evidence is strong enough, the District Attorney may proceed with an evidence-based prosecution without the complainant. In cases where the evidence is not strong enough to win the case alone, ADAs may agree to seek certain conditions or dispositions in exchange for the complainant's cooperation.

ORDERS OF PROTECTION

The District Attorney's Office generally seeks a full order of protection. The office feels that every contact puts the complainant at risk for further abuse, so all contact should be avoided unless there are mitigating circumstances, e.g., children in common. The office will sometimes request a full order of protection against the wishes of the complainant, because "they [complainants] don't perceive the dangers and risks that we do." The court routinely issues a full order of protection.

PROGRAMS AND COMPLIANCE

The court reports that it is hampered by the lack of appropriate programs in the borough. Safe Horizon's Domestic Violence Accountability Program, the most widely used batterer intervention program in the other boroughs, is not available in Staten Island. This means that defendants are often required to travel to attend their programs, or must attend programs other

than batterer intervention.

VICTIM ADVOCATES

Victim advocates from the District Attorney's Office provide support and referral services to the complainant, including contacting the complainant about court matters and walking with the victims to court.

IV. SYNTHESIS AND COMPARISON OF DOMESTIC VIOLENCE COURT POLICIES AND PRACTICES

Table 2 compares the 2002 domestic violence caseloads of each borough, including case dispositions and sentences imposed in each borough in 2002. Data obtained from the Office of the Administrative Judge, Criminal Court of the City of New York.

	Bronx	Brooklyn	Manhattan	Queens	Staten Island
Arraignments	5,491	6,976	4,063	4,676	960
Disposed at arraignment	2%	2%	1%	3%	5%
Dispositions	6,467	9,157	4,627	5,248	1,031
Pleas	48.9%	17.6%	33.5%	55.5%	35.3%
Convicted	.4%	.3%	.7%	.5%	0
Acquitted	.5%	.1%	.6%	.3%	.3%
ACD	2.7%	30.0%	13.3%	21.8%	23.1%
Dismissed	44.4%	51.0%	47.8%	19.6%	39.8%
Other	3.0%	.1%	4.1%	2.4%	1.6%
Sentences	3,477	1,675	1,722	3,133	373
Community Service	.6%	5.1%	9.7%	.7%	.8%
Fine	.6%	1.1%	2.7%	.6%	6.7%
Imprisonment	38.9%	35.3%	35.2%	21.2%	30.0%
Probation	4.7%	7.3%	5.6%	3.1%	3.8%
Conditional Discharge	55.5%	50.9%	46.5%	74.1%	58.2%
Other	.1%	.2%	.1%	.2%	.5%

It is interesting to note that differences in arraignment and disposition volume do not strictly correspond to population size, as shown in Table 1. For instance, Queens, with a population nearly the size of Brooklyn's, has substantially fewer arraignments and dispositions. This is probably due to its more restricted definition of domestic violence; many cases that are heard in the domestic violence court in Brooklyn would in Queens be heard on a general calendar. Similarly, although Manhattan has a slightly larger population than the Bronx, it has significantly fewer domestic violence cases.

Most District Attorneys' Domestic Violence Bureaus strive for low dismissal rates. Bronx stakeholders were careful to point out that while their dismissal rate appears high, they have a very low rate of Adjournments in Contemplation of Dismissal (ACDs). However, Brooklyn prosecutors emphasized that their commitment to pursuing every possible case took precedence over dismissal concerns. While acknowledging that some cases dismissed in Brooklyn would have been declined for prosecution in other boroughs, prosecutors believed that prosecution provided victims with opportunities and services that would advance their safety, even if their cases did not result in a conviction.

DOMESTIC VIOLENCE COURT PRACTICES

While court size and resources vary between the boroughs, all of the courts share similar structural and operational elements. As shown in Table 3, features on which there is the most variation include additional funding and staffing, and charges and pleas accepted.

TABLE 3: DOMESTIC VIOLENCE COURT FEATURES

	Bronx	Brooklyn	Manhattan	Queens	Staten Island
Year opened	1997	1999	1999	1997	1997
Additional funding	STOP grant from VAWO	None	None	2 grants, one from DA, one from Safe Horizon	None
Dedicated court parts	3: All-purpose, trial, compliance	3: All-purpose (2), compliance	1: All-purpose & compliance	2: All-purpose & trial, compliance	1: All-purpose & compliance
Separate compliance part?	Yes	Yes	No	Yes	No
Project director?	Yes	No	No	No	No
Resource coordinator?	Yes	Yes (as of 2003)	No	Yes	No
Defendant monitor?	Yes	No	No	Yes	No
Cases with felony charges heard?	No	No	No	Yes, through felony waiver plea	No
Conditional pleas taken?	No	Yes	No	Yes	No
Defendants mandated to programs?	Yes	Yes	Sometimes, at victim's request	Yes	Yes
Victim advocacy provider(s)	DA, Safe Horizon	DA, Safe Horizon	DA	Safe Horizon	Safe Horizon

STAFFING AND RESOURCES

Brooklyn has recently gained a resource coordinator; Queens and the Bronx are staffed by a resource coordinator, defendant monitor, and, in Bronx only, project director. Additional funding through Safe Horizon provides enhanced victim advocacy in these two boroughs, and in Queens grants obtained by the District Attorney's Office have allowed for enhanced services at intake as well.

All of the stakeholders agreed that the biggest challenge for domestic violence courts is the lack of resources. All courts labor under substantial caseloads. In courts without a resource

coordinator, an additional burden is placed on the court clerks, prosecutor and judge to select, screen and communicate with potential programs.

CHARGES

All of the courts but Queens accept only misdemeanor and violation charges. Brooklyn and the Bronx have separate Felony Domestic Violence Courts; felony domestic violence cases in Manhattan and Staten Island are prosecuted on general dockets. Queens, by contrast, processes both felony and misdemeanor cases in the misdemeanor domestic violence court, keeping the felony cases through indictment or felony waiver plea. Queens stakeholders argue that this creates a consistent judicial response to domestic violence at all levels of the criminal justice system, as well as creating a pool of Assistant District Attorneys with multiple levels of experience.

CONDITIONAL PLEAS

Plea bargaining occurs in all counties, but only in Brooklyn and Queens does the court routinely accept conditional pleas. Under the terms of a conditional plea, the defendant pleads guilty to an “A” misdemeanor charge and a violation; the former is dropped if the defendant successfully completes the mandate. If the defendant fails to comply with the conditional discharge, the judge imposes the maximum sentence (one year on an “A” misdemeanor, as opposed to 15 days on a violation). This policy gives the court substantial added leverage to coerce defendants to comply with the program mandates.

This practice is used most commonly in Queens; it is unclear why it is less used in Brooklyn and not at all in the other boroughs. Stakeholders in other boroughs did not identify it as a practice that they wished to introduce, or to which there had been opposition, but neither did they object to it.

PROGRAMS AND COMPLIANCE

The courts vary in their approach to compliance monitoring. In Manhattan and Staten Island compliance is conducted by the presiding judge in the single court part dedicated to domestic violence. In the Bronx and Brooklyn, however, a separate court part presided over by a judicial hearing officer is dedicated to compliance monitoring. Queens has a dedicated compliance part and judicial hearing officer as well, but the sentencing judge may decide to monitor compliance herself on select cases.

All of the courts conduct compliance monitoring through regular post-sentence court appearances. The monitoring judge may increase or decrease the frequency of appearances based on the defendant’s compliance.

All of the courts mandate a range of program types, but rely most heavily on batterer intervention programs, primarily Safe Horizon’s Domestic Violence Accountability Program (although until 2005 Brooklyn mandated almost as many defendants to a shorter program with a more therapeutic orientation, Interborough Developmental and Consultation Center, and Safe Horizon’s program is not available in Staten Island). Not surprisingly, the two courts that have long had resource coordinators, Queens and the Bronx, draw on the greatest number of treatment programs, demonstrating the value of additional staff in exploring and maintaining relationships with community resources.

ORDERS OF PROTECTION

The courts are extremely consistent in their policies and practices regarding orders of protection; all routinely issue full orders in all cases, granting very few limited orders, and then often only at or after sentencing.

VICTIM ADVOCATES

Most of the courts refer victims to victim advocates from Safe Horizon, although Manhattan routinely uses the District Attorney's Office victim advocates. The Brooklyn District Attorney's Office employs social workers to work with high-risk complainants at intake; the Queens District Attorney's Office also has additional intake victim advocacy, but it is provided by Safe Horizon. All courts appear to successfully link complainants to victim advocates, regardless of their agency affiliation. Among the District Attorney's Offices that maintain victim advocates, only Manhattan does not extend services to complainants who choose not to prosecute, referring them to Safe Horizon instead.

DISTRICT ATTORNEY PRACTICES

Some of the primary distinctions between the processing of cases in domestic violence courts are the policies and practices of the District Attorneys. Each borough has a unique approach to prosecuting domestic violence cases.

TABLE 4: DISTRICT ATTORNEY PRACTICES

	Bronx	Brooklyn	Manhattan	Queens	Staten Island
Dedicated DV Bureau?	Yes	Yes	No	Yes	Yes
Dedicated DV staff	17 ADAs	14 ADAs	1 supervisor	9 ADAs	3 ADAs
Definition of domestic violence: Persons who: • are related by blood; • have children in common; or • are, or have been, married, living together, or involved in an intimate relationship.	Yes	No Persons who are intimate partners (inc. same-sex couples and couples that do not live together).	Yes	No Persons who: • have children in common, or • are or have been married or living together	Yes

INTAKE PROCESSES

Most counties make first contact with the complainant over the phone, and may draft the accusatory instrument without meeting with the complainant in person. In Bronx and Queens, however, an ADA from the Domestic Violence Bureau always interviews the complainant in person before drafting the accusatory instrument. During regular business hours, Queens makes first contact with the complainant within hours of the incident.⁹ The arresting officers page the assistants who go to meet the complainant at their home, the police station, hospital, etc. In the

⁹ During nights and weekends, the complainants in misdemeanor cases will make telephone contact with the Queens District Attorney's general intake within several hours, but will not make contact with the Domestic Violence Bureau until the next business day.

Bronx, the police encourage the complainant to appear at the complaint room in person, either immediately or on the next business day. In Staten Island, the police review their reports with ADAs in the complaint room; an ADA from the Sex Crimes/Special Victims Bureau usually contacts the complainant within a few days. In Brooklyn and Manhattan the police transmit their reports to the District Attorney's Office general intake unit, which conducts a preliminary telephone interview and drafts the accusatory instrument. General intake then forwards all information to the Domestic Violence Bureau. The Brooklyn Bureau will not draft an accusatory instrument without speaking with the complainant. In Manhattan, the only borough which does not have the Domestic Violence Bureau, the assistant conducting the general intake becomes the assigned assistant and collaborates with the misdemeanor Domestic Violence Supervisor. The assistant may draft the accusatory instrument without speaking to the complainant.

Those Domestic Violence Bureaus that have placed an emphasis on connecting with the complainant as early as possible assert that this practice helps to ensure the complainant's safety and cooperation. Complainant safety, because the Domestic Violence Bureau is able to provide resources ranging from information on the case to relocation assistance; complainant cooperation, because it allows the Domestic Violence Bureau to forge a relationship with the complainant close to the point of crisis, when trust and cooperation may be more easily established.

DEFINITION OF DOMESTIC VIOLENCE

The New York City Police Department defines domestic violence as any violence occurring within a family or between intimate partners, regardless of the duration of the relationship. The Domestic Violence Bureaus, however, are not bound by these definitions, and may impose stricter criteria. Judges, also, may decline to hear a case that they do not feel falls under their jurisdiction. However, most counties respect the police definition of domestic violence. As a result, most courts are hearing not only cases involving intimate partners—married, dating and former couples—but also cases involving relatives, primarily siblings or parents and their older children.

The Queens Domestic Violence Bureau is unique in its adherence to a narrow definition of domestic violence that results in the Queens Domestic Violence Court seeing proportionally fewer cases than the other counties. The Queens Bureau's definition of domestic violence is limited to couples, regardless of gender, who are legally married or who have been legally married; who are living together or who have lived together; or who have children in common. This definition excludes all non-intimate partner violence. This definition also excludes intimate partner violence among dating couples who have never lived together.

There are advantages and disadvantages to these restrictions. Certainly issues such as child and elder abuse are distinct from domestic violence, and ideally should be addressed by experts in those areas; but in a less than ideal world, judges' training in domestic violence might provide them with more insight into these issues than is enjoyed by judges with no extra training. As one judge said in reference to a case in which an adolescent boy was accused of abusing his parent: "I know he's not strictly domestic violence, but another [court] part is not going to have the understanding that I do, or the resources."

EVIDENCE-BASED PROSECUTION

The Bronx is the only borough to explicitly require victims to sign a complaint before the District Attorney will proceed with prosecution. All District Attorneys assert that they will pursue evidence-based prosecutions under some circumstances; however, those circumstances are not well defined. No prosecutor indicated that her office had a formal, written policy dictating the decision to prosecute without the victim, nor was anyone able to articulate definitive criteria that she used in making her own assessment of whether or not to do so. (Although the Bronx does have a first-party complaint policy, the decision to proceed with an evidence-based prosecution may well come later in the case, when an initially cooperative complainant withdraws; the Bronx has no more absolute policies for making decisions at this stage than does any other borough.)

VERTICAL PROSECUTION

Only Queens and Manhattan handle cases vertically. In Queens, the ADA conducts an interview with the complainant at the time of the incident, and then appears at arraignment and all court dates. The same is true in Manhattan, with the exception of arraignment, where the ADA assigned to arraignments for the day will take the case.¹⁰ In the Bronx, Brooklyn and Staten Island, the case goes through general intake, after which the Domestic Violence Bureau Chief assigns it an ADA. This ADA will not appear at arraignment, and may not necessarily appear at court dates; instead, one or several ADAs are assigned to the part for the day, representing all cases on the calendar. However, these bureaus will attempt to have the assigned ADA appear in court if the appearance is expected to be particularly complex or significant. Court observations indicated that it was not unusual for the judge to request the presence of the assigned ADA.

While it is possible that the handling of the case by different assistants has no effect on processing, court observations indicate that ADAs standing up on cases not their own are often lacking even basic information on the case, leading to delays.

COMPLIANCE INVOLVEMENT

All Assistant District Attorneys will return to court if they become aware of a violation of an order of protection, an act of violence, or a new arrest. However, most Domestic Violence Bureaus do not remain involved in the case after sentencing, and are therefore unlikely to know if any infractions have occurred. The exception to this is the Queens Bureau, which continues to meet with the complainant and monitor the defendant during the compliance period, receiving monthly updates about the defendant's conduct directly from the mandated program. This means that the ADA is able to alert the complainant if the defendant has not been compliant and might pose a danger. It also makes Queens ADAs more likely to be aware of any violations of the order of protection.

¹⁰ However, during courtroom observation, it appeared that the same assistants remained in the court for several hours handling all cases, only contacting the assigned assistant at the request of the judge or the complainant.

V. STAKEHOLDER PERCEPTIONS

Interviews with judges and judicial hearing officers, prosecutors and defense attorneys, and victim advocates addressed several broad themes related to domestic violence courts on the levels of both theory and practice. In particular, stakeholders were asked to explain their perceptions of the domestic violence court's purpose; to consider the strengths and weaknesses of the court's routine operations and procedures; and to discuss the use and impact of program mandates for defendants.

Most stakeholders believed very strongly that domestic violence courts provide tangible benefits in the areas of victim safety and defendant accountability. Others cited practical benefits resulting from the structure of the courts. While there was not a lot of disagreement among stakeholders about the benefits of the courts, there were differences in emphasis. Many of these differences correlated with role—for instance, judges were more likely to report on the benefits of the trained and dedicated staff, as well as the mechanisms for defendant accountability.

The most significant benefit of domestic violence courts cited by stakeholders was the enhanced training of staff and stakeholders, and the experience that comes from handling the same types of cases every day. Most stakeholders reported that domestic violence court judges and staff are attuned to the complexities of domestic violence cases, and know what issues to expect and how to respond. Many felt that this level of expertise enhanced the consistency of the court's response to domestic violence, a development which was perceived to benefit not only victims and the community but also attorneys, who reported that they could more accurately predict the behavior of the judge in a specialized part. This consistency enables defense attorneys to better advise their clients, thus benefiting defendants as well.

Additionally, some stakeholders opined that a specialized court staff facilitates the sharing of information, if only because there is a staff position (resource coordinator) that is explicitly responsible for coordination. A few noted that information sharing is also facilitated by the courts' practice of holding semi-regular "partners meetings," which are attended by judges, court staff, attorneys, victim advocates and service providers from the community. At these meetings the focus is not on individual cases but on larger issues, such as sentencing trends and program availability, that impact the court.

GOALS AND OBJECTIVES

The official goals of domestic violence courts are to promote defendant accountability and victim safety. Within the court, particular actors may be overwhelmingly concerned with only one of the primary goals (e.g., victim safety), or with goals of their own (e.g., speedy case processing, defendant rehabilitation). Perceptions of goals were generally consistent within each role. Differences emerged more often between roles than between boroughs.

Each of the *judges and judicial hearing officers (JHOs)* had slightly different perceptions of the goals of the domestic violence court. Goals articulated by judges/JHOs included: uphold the law, protect the complainant, punish the defendant, and rehabilitate the defendant. These sometimes seemed to be at odds.

The *prosecutors* interviewed were concerned with prosecuting the defendant to the fullest extent of the law, and with finding the best and safest outcome for the complainant. Some offices balanced these two objectives, while others assigned one or the other manifest importance, or seemed to believe that the first guaranteed the second.

Some prosecutors felt that their goals were sometimes at odds with those of other stakeholders. One ADA stressed that processing cases quickly, while relevant, was not the primary concern of the office, because a quick disposition might not be in the best interest of the complainant, or might not result in the most appropriate sentence.

The *defense attorneys* interviewed were unanimous in a narrower focus on the “fairest” court outcome for the defendant. While they disagreed on whether “fairest” was always a dismissal, or whether some cases merit a conviction and sentence, they consistently perceived adjudication in the domestic violence court to be prejudicial (an objection that will be examined more closely later in this section).

In general, *victim advocates* were not as invested in the court process as other stakeholders. Their primary concern was the safety of the victim, which, in their minds, takes precedence over the court case.

DEFENDANT ACCOUNTABILITY

Most stakeholders agreed that the domestic violence court model increases defendant accountability. However, while nearly everyone felt that the court possesses the appropriate mechanisms to respond to defendant noncompliance, judges expressed doubts regarding the accuracy and timeliness of the information they receive regarding infractions and new arrests; other stakeholders shared this concern. Stakeholders agreed that the court is most likely to be aware of, and is best able to respond to, noncompliance at a mandated program (e.g., not attending the program, or exhibiting disruptive behavior). However, many defendants are attending treatment for half or less of the duration of their conditional discharge; and some receive no program mandate at all. Moreover, this does not account for pre-sentencing compliance.

VICTIM SAFETY

There is pronounced disagreement among stakeholders regarding the ability of the court to assure the safety of the complainant. Judges, in particular, felt very positive about the ability of the court to secure victim safety. However, two judges said that they do not have adequate information about victim outcomes to evaluate whether or not the court is actually accomplishing this goal.

There were also differences between counties. More stakeholders feared for victim safety in the Bronx, fewer in Queens, though reasons for this were unclear. The prosecutor’s continued contact with the victim during post-sentence monitoring in Queens might be expected to contribute to a greater sense of certainty regarding victim safety in that borough.

Concerns about victim safety extend from courtroom dynamics to the defendant’s mandated program participation. Although courtroom safety was a concern for most stakeholders, some felt that the courts did not translate these concerns into safe practices. Court observations revealed that defendants and complainants often wait in close proximity to one another.

Although Safe Horizon provides safe waiting spaces in all courthouses, many complainants do not take advantage of this, whether because they do not know about them (although an ADA or victim advocate should have informed them), do not feel they need them, or have other concerns (most commonly, that they will miss their court appearance—waiting on another floor requires the complainant to coordinate communication between Safe Horizon and the ADA, which may be difficult).

More than one stakeholder recommended periodic sweeps of the courtroom and waiting areas

to identify complainants who may require information or services. However, there is disagreement about who should be doing this, and how often. In one borough, one stakeholder complained that it was not being done, while on the same day another reported that periodic sweeps of the courtroom were a regular practice. One stakeholder regretted that courtroom outreach by advocates is “not as structured as it should be.”

One stakeholder criticized the common District Attorney policies of requiring the complainant to attend all pre-disposition court appearances, and announcing the complainants’ names in the courtroom, feeling that it made victims vulnerable to their abusers. Reasons for doing this include allowing the complainant to settle any disagreements about order of protection preferences, and giving the ADA and complainant the opportunity to meet in person. However, one District Attorney’s Office eliminated this policy and now sees complainants prior to the defendant’s court date whenever possible.

Complainants who attend court and do not take advantage of the safe waiting areas expose themselves to the defendant and defense attorney. Stakeholder testimony and court observations indicate that defense attorneys frequently initiate contact with complainants; defendants and their family members and friends may also subtly (and not so subtly) harass them. Complainants are likely to be unaware that they can notify court officers or the ADA about this harassment.

MINORITIES AND SUBGROUPS

All stakeholders agreed that the courts could improve their response to parties who do not fit the standard model of abuser and victim. Some stakeholders mentioned the lack of batterer intervention programs for female batterers, both homosexual and heterosexual. Several stakeholders expressed concern about the lack of victim advocacy services for male victims, both heterosexual and homosexual. (Most stakeholders were satisfied with the victim service advocacy for homosexual women.) A few stakeholders also mentioned the lack of support for heterosexual women who are single or working.

RECIDIVISM

None of the stakeholders interviewed mentioned recidivism reduction as an explicit goal or benefit of the court; when asked, none had any substantive information on recidivism rates in their court, and few were confident about the courts’ impact on recidivism. One District Attorney suggested that the courts may effect a reduction in recidivism over time; but for now, many stakeholders agreed with one who observed that “I’ve been seeing a lot of defendants over and over again.” In particular, stakeholders in the Bronx and Kings Counties were least confident that domestic violence courts lower recidivism.

COURT PROCEDURES

FLOW OF INFORMATION

Stakeholders disagree about the adequacy of information available to them. Judges, in particular, were not sure that they were receiving information about defendant conduct, compliance with orders of protection and new arrests through the duration of the conditional discharge. This was true even in counties with defendant monitors and other resources to expand contact with the complainant. Judges were also not confident they were reliably receiving information from either Safe Horizon victim advocates or the prosecution.

In the three counties where the District Attorney’s Office and Safe Horizon both provide victim advocacy, stakeholders reported occasional problems with the overlap of services.

However, no one reported that this overlap resulted in a failure to provide the complainant with services. Most stakeholders were confident that the two agencies communicate well enough that the complainant receives access to services, without any redundancy. Although most prosecutors reported no concerns about the accuracy of the information received from Safe Horizon, they were not always knowledgeable about Safe Horizon’s practices, intake and outreach.

CASE VOLUME

Most stakeholders agree that the courts’ volume is overwhelming, especially given the complex nature of the cases they are hearing. Stakeholders disagree, however, on the best solution to the problems created by overwhelming caseloads. Judges, in particular, believe that the current system is sufficient, but that the counties need more courts to handle the volume. Some judges and prosecutors cite a need for more judges to conduct bench trials, saying that a shortage of trial judges results in more pleas to lesser charges. Some stakeholders believe the courts should narrow their definition of domestic violence, usually by eliminating cases that do not involve intimate partners. Some—mostly defense attorneys—go even further, arguing that some intimate partner cases should not be heard in the domestic violence court if they do not qualify as “textbook” domestic violence.

ORDERS OF PROTECTION

There is significant disagreement among stakeholders about the efficacy of orders of protection. Many stakeholders do not believe that orders of protection are effective at securing the safety of the complainant. Others, however, do see benefits. One judge stated that “police respond more quickly and more appropriately” in situations where the complainant has an order of protection. Prosecutors pointed out that, should the complainant decline to cooperate, it is easier to win a conviction on a criminal contempt charge than on charges such as assault and harassment. For instance, one prosecutor explained, the testimony of police or witnesses that the defendant was at the complainant’s house on a date when a stay-away order was in effect is sufficient for conviction.

ASSISTANT DISTRICT ATTORNEYS

Many stakeholders cited the inexperience of domestic violence ADAs as a concern. Stakeholders reported that junior ADAs tend to work more slowly, and are often unwilling to make difficult decisions without consulting a supervisor, leading to unnecessary adjournments and additional court appearances. Everyone interviewed qualified these criticisms with the acknowledgment that ADAs labor under large and difficult caseloads, made more difficult when the complainant is uncooperative. Whatever the reason, however, the frequency with which ADAs appear in court without having spoken to the complainant was a source of particular frustration to judges who must then rely on defense counsel for information about the complainant: “The information is obviously skewed,” said one judge.

Another common concern was that some ADA practices put the complainant at risk. One of these practices, requiring complainants to appear in court on the same day as the defendants, was not common to all Bureaus. Another concern, more widespread, involved conferencing with clients in hallways and other public locations. Many stakeholders attributed this to excessive caseloads, which may prevent the ADA from contacting the complainant prior to the court date, as well as to the lack of available space for meeting with clients in the courthouses.

DEFENSE COUNSEL

No stakeholders believed the defense bar to be fully supportive of the domestic violence court model. Many felt that defense attorneys were exclusively interested in reducing clients' charges and sanctions, consistent with their traditional role. However, defense attorneys themselves presented a more complex picture. While recognizing why other stakeholders are in favor of the specialized court, defense counsel are not enthusiastic about it, in part perhaps because they do not specialize domestic violence practice. No defense attorneys reported that handling these cases differently: "We don't believe there's a unique specialty to trying a D.V. case," explained one.

Concerns about the defense counsel were mostly related to time constraints. In most counties, the domestic violence court has a dedicated judge, clerk, prosecutor, etc. In no borough, however, are the defense attorneys dedicated to the part. This means that often the judge, prosecutor and court staff are ready to hear the case, but must wait for the defense attorney to appear. Although several stakeholders expressed irritation with the delays—"Everyone sits around and waits for defense counsel"—none were able to offer a solution other than dedicating defense counsel to the part, which did not appeal to defense attorneys themselves: "It's not necessary, and even if it was, I couldn't get anybody to do it, to hear these cases all day, everyday."

Another concern in regard to defense counsel was the belief of many stakeholders that the defense agencies are not providing appropriate services to their clients. One stakeholder asked, "If they have social workers, why aren't they using them?" Defense attorneys indicated that they make extensive use of their in-house social workers to provide resources and referrals to clients. However, they admit that they may intentionally conceal these efforts from the court. One reason for this is that sometimes the service referrals run counter to the goals of the domestic violence court model. For instance, the defense counsel might refer a defendant to an organization that does couples counseling, because "A lot of times if you can get the two of them into counseling together, the complainant will not follow through with the prosecution." Another reason defense counsel may conceal services provided to the defendant is for fear of implied guilt: "How does it look if I'm arguing that he's not guilty of drug charges, but I've got him in a drug program?" The final reason that defense counsel may conceal the extent or nature of the social services delivered to their clients is a simple unwillingness to share any information with the prosecution and the court if they are not required by law to do so.

A small group of stakeholders, including some defense attorneys, was critical of a perceived failure to include the defense bar in planning and operating domestic violence courts. Although some members of the defense bar were completely hostile to domestic violence courts, others expressed interest in becoming more involved, for instance, in the monitoring phase. Overall, the defense attorneys interviewed were invested in their clients and interested in addressing the issue of recidivism. Some would be willing to collaborate with the courts in order to become more informed about possible programs; participate in program selection; and intervene when defendants are non-compliant, before sanctions become necessary.

PARTICIPANT UNDERSTANDING

Stakeholders identified established mechanisms for explaining the court process, requirements, and potential consequences to the complainant and the defendant. In theory, the court process is first explained to the complainant by the ADA, and then again by a victim advocate. In addition, many judges make a point of informing the complainant to stay away from the defendant when

explaining an order of protection, even though the order does not formally enjoin the complainant. Nonetheless, stakeholders also agree that the parties are often confused and uninformed. Those who work in direct service confirm that the parties are often oblivious to the ramifications of courtroom proceedings. Stakeholders reported that complainants were most likely to misunderstand the significance of signing the corroborating statement, or the implications of an order of protection. They also observed that complainants rarely understood that the case would not necessarily be dropped just because they declined to cooperate. Stakeholders reported that defendants, for their part, often do not realize that the order of protection supersedes the complainant's stated wishes.

In addition, it was reported that defendants often misunderstand instructions to attend the program or to appear for the next court date, although those instructions are usually explained first by the judge and then again by the defense attorney. In courts with enhanced staffing resources, the defendant will also receive these instructions from the defendant monitor, and possibly the resource coordinator. In spite of this, defendants often appear at programs or court on the wrong day, or not at all. Some attend no program, others the wrong program. One defense attorney attributed this to "wishful thinking," noting, "They block out all of the bad stuff, how bad this is. I'm more concerned about their cases than they are."

TIME EXPENDITURE

Most stakeholders agreed that the prosecution of domestic violence cases requires more work than that of other types of cases, for several reasons. First, domestic violence cases require stakeholders to make more nuanced decisions, and making such decisions requires more interaction with the parties than is customary in standard court parts. In addition, evidence-based prosecution is more time-consuming than prosecution based on victim testimony, and requires judges and attorneys to be intimately familiar with the rules of admissible evidence. Finally, the frequency with which program mandates are included as an element of conditional discharge and probation sentences requires stakeholders to be familiar with community resources and appropriate programs. The increased burden falls most heavily on the District Attorney's Office, especially in the case of evidence-based prosecution, which requires extensive research—securing copies of 911 calls, speaking with doctors about victim injuries, interviewing the police, etc. In counties without enhanced staffing, all stakeholders find themselves pressed for time in which to meet the extra demands of domestic violence cases.

STAFFING

Adequacy of staffing was a recurring theme among stakeholders. Those courts with enhanced staff positions cited these as a significant contribution to their success, and those courts without additional staff perceived the lack as a significant obstacle. In some of the courts without additional staff, judges have taken on some of the work a resource coordinator or project director would normally do, such as training court staff in domestic violence issues and searching for appropriate programs.

PROGRAM MANDATES

BATTERER INTERVENTION PROGRAMS

Most jurisdictions have formed relationships with the batterer intervention programs that they use, in part to get more information about their philosophies, policies, and practices. However, almost all stakeholders expressed uncertainty regarding the value of the programs, and said they

would welcome research on their efficacy. In particular, some judges and prosecutors were concerned about mandating an intervention that has not been proven effective. Victim advocates were concerned that these programs have no effect, or even a negative effect, on victim safety. (No advocate reported having noticed this phenomenon; however, many were concerned.)

Almost all stakeholders mentioned that there are very few high-quality batterer intervention programs available, and very few that accept female batterers. In addition, many stakeholders commented on the need for a greater diversity of program models: the New York City courts overwhelmingly favor programs using the Duluth model. Some research has suggested that different types of batterers may respond to different types of intervention. Counties with sufficient resources have made an effort to provide culturally-competent batterer intervention programs for members of different ethnic communities. Unfortunately, not all counties have access to these types of programs, or the staffing resources to evaluate their appropriateness.

TREATMENT PROGRAMS

Many domestic violence courts impose other types of programs as part of the conditional discharge. Some stakeholders felt that this was inappropriate; in the words of one judge, “This is the domestic violence part. While substance abuse may have been a contributing factor, it did not cause domestic violence, and not sentencing the defendant to a batterers program sends the wrong message.”

Other stakeholders cited the excessive cost of drug and alcohol programs as prohibitive. Defense attorneys also felt that the potentially fluid nature of the drug treatment mandate was unfair to their clients (that is, if there is no completion date for drug treatment established at the time of the mandate, the defendant does not know how long he will have to remain in treatment).

Stakeholders who supported the use of different types of programs argued that the court should offer the most appropriate solution for each individual family. Some felt that it would be difficult for certain defendants to benefit from the batterers program without first becoming sober. Explained one defense attorney, “The philosophy of the office is that in cases where the defendant has substance abuse or alcohol abuse issues, then these should be dealt with either prior to entering the batterer intervention program, or concurrently with the batterer intervention program.”

Since very few facilities offer concurrent treatment, and since defense attorneys are likely to resist a mandate involving two programs as excessively onerous, the result of such a policy is that defendants are often mandated to substance abuse treatment only. Other stakeholders pointed out that many batterers programs will not admit defendants who are not sober. Some expressed the belief that some defendants have strictly alcohol- or drug-related issues and would not benefit from the batterer intervention program at all. Finally, a small group felt that it is better to send defendants to a program that, unlike batterer intervention, has been proven efficacious.

FREE OR INEXPENSIVE PROGRAMS

Although not many stakeholders raised the issue of program cost, those that did were overwhelmingly in favor of free or less expensive programs—in spite of the fact that most batterer intervention programs consider payment an element of accountability.

CONCERNS

While defense attorneys were, overwhelmingly, the stakeholders most critical of domestic violence courts, they were not always alone in voicing concerns. In general, concerns fell roughly into three categories: philosophical—related to the goals and ideals of domestic violence courts; practical—more narrowly focused on the operations of the courts; and legal—sometimes related to court practices and sometimes to underlying ideologies and assumptions of the court.

PHILOSOPHY

The philosophy at the foundation of the domestic violence court model was challenged by some stakeholders, almost exclusively defense attorneys. These critics argued that the courts were developed to favor the complainant as a means of ensuring the safety of battered women, but that there is no way to know at the outset of the criminal process that the complainant is a battered woman. This argument against domestic violence courts is multi-layered. Detractors argue that: 1) the fact that a case has been filed does not mean that an incident has occurred; 2) the fact that an incident has occurred does not mean that it was not mutual; 3) the fact that an incident has occurred and was not mutual does not, necessarily, constitute domestic violence and make the complainant a battered woman; and 4) the fact that an act of domestic violence occurred and that the victim is a battered woman does not mean that it is the court's jurisdiction to force the victim to take action against the defendant, as in the case of no-drop or evidence-based prosecution.

FALSE CLAIMS Many stakeholders in varying roles—including at least one victim advocate—reported that false claims of abuse are not uncommon. According to this group, many of the cases reported are completely spurious, and do not reflect an act of violence on anyone's part: "A large percentage of the women are just manipulating the system...the larger portion of complaining witnesses are not afraid of their spouses." The complainant, sometimes with the cooperation of the defendant, initiates these cases in order to secure resources (women producing an order of protection can receive additional money and food benefits, as well as expedited processing for public and Section 8 housing). Or complainants may file charges as an act of retaliation against a partner or former partner, although at least one judge asserted this happened rarely, usually in the context of divorce.

While the number of false claims filed was disputed, the existence of false claims was not. Critics argued that the courts and the District Attorney's Offices do not screen out these cases early in the process, although judges were consistently confident that false claims are appropriately disposed. However, victim advocates stated that they did not notify the judge or the District Attorney's Office about claims they knew to be false. This was true even when the complainant admitted to the victim advocate that the charges were invented in order to secure services. Most ADAs who noted this problem stated that it was not at all common; however, they were less aggressive in cases where they suspected that no offense had occurred—in part because these cases were not likely to involve severe violence or serious charges, and so were not high priority.

MUTUAL VIOLENCE According to some stakeholders, more common than false claims were cases of mutual violence, often as the result of drug use. New York State's mandatory arrest laws require the police to identify and arrest the "primary aggressor" in these cases. Stakeholders report that the police will usually arrest the male party.¹¹ However, if the police cannot determine the primary aggressor, then they must remove both parties. One defense attorney

¹¹ This is supported by research, though with some exceptions (Haviland et al. 2001).

reported that, if there are children in the home, one partner, usually the father, will claim to be the primary aggressor in order to ensure that the other parent can stay home with the children.

Many stakeholders expressed the belief that even when violence is mutual, it should still be treated as domestic violence. Judges did not specifically address this issue in interviews. However, during courtroom observations, the author noted that in some cases the judge would address this issue with the defendant when issuing the order of protection, or as advice on the last court date: e.g., “Staying away from women who hit you is better than hitting them back.”

DEFINITION OF DOMESTIC VIOLENCE A small percentage of stakeholders argued that many cases in the domestic violence court do not meet the definition of domestic violence as a cycle of violence involving an acute power imbalance, even if there has been an assault. “It’s crazy,” argued one defense attorney. “You’ve got an ex-boyfriend who allegedly called his ex-girlfriend once on the phone and threatened her in the same court with the married couple, married ten years with children, and he’s put her in the hospital. There’s no way these should be in the same court.”

None of the defense attorneys interviewed suggested that the criminal justice system should not treat an event like the phone threat as a crime; the criticism is that the system should not treat it as a *domestic violence* crime. Others, however, argued that the phone threat is indeed a domestic violence crime, and that addressing it as such at the earliest possible stage may prevent escalation—a primary justification for misdemeanor-level domestic violence courts. These stakeholders did not see the disparity as a reason to dismiss, or treat more lightly, the “less severe” case.

EVIDENCE-BASED PROSECUTION Finally, some stakeholders cited the District Attorneys’ no-drop policies as potentially harmful to complainants. Critics, mostly defense attorneys and victim advocates, argued that removing their ability to make free choices could undermine complainants’ sense of agency, while instilling in them distrust for the criminal justice system. Some victim advocates further stated that the complainant is in the best position to know whether or not it is safe to pursue the criminal case. One prosecutor pointed out that complainants in misdemeanor cases rarely want to go forward with cases, and that this phenomenon is not unique to domestic violence courts: “If we only prosecuted cases where people wanted to testify, we wouldn’t prosecute anything at all.”

CASE PROCESSING METHODS

Some stakeholders also expressed criticisms of court operations and case processing. Domestic violence cases increase stakeholders’ workloads without, as one defense attorney put it, “actually increasing the number of cases prosecuted.” This attorney claimed that, where equivalent non-domestic violence cases would be dismissed at arraignment or at first appearance, domestic violence cases are only dismissed three months later, after a minimum of three court appearances. District Attorneys justify these practices in the belief that the courts’ intervention, even when it does not result in conviction, enhances the safety of the complainant through monitoring of the offender, and the threat of a harsher penalty if the defendant is re-arrested and returned to court.

Another practical consideration involves the conflict of interest inherent in complainant-defense attorney contact. All of the defense attorneys reported that complainants often approach them, usually with the desire to help the defendant. Judges also reported that defense attorneys sometimes have more information on the complainant than the District Attorney’s Office does. Complainants who are in contact with the defendant may ask the defense attorney to help them

have the case dropped, obtain services, or update them about the status of the case. The frequency of this contact varies, but defense attorneys interviewed reported receiving uninitiated complainant contact in 50-80% of their cases. In addition, some defense attorneys reported that they will call the complainant to determine the chances that the case will go forward. But all defense attorneys interviewed felt that complainant-initiated contact was inappropriate.¹²

The most common criticism of the courts was the reliance on a form of intervention—batterer programs—which has not been proven effective in changing behavior or reducing recidivism. This concern was expressed across all roles.

LEGALITY/CONSTITUTIONALITY

The criticism of domestic violence courts voiced most strongly by the defense was the perceived abrogation of the defendant's legal and constitutional rights. According to one defense attorney, "My client is guilty the minute he walks in the door. I have no problem with the process post-conviction, but the "batterers' court"—you haven't proven that he's a batterer yet."

The defense bar believes that the presumption of guilt is made evident at arrest, and continues throughout the court proceedings. Indications of this attitude include the orders of protection issued at arraignment and the tendency to refer to complainants as victims, as well as the focus on the complainant throughout the process. Many do not object to special handling of these cases post-conviction, only before. The few who do object to the post-conviction treatment do so on the basis of their uncertainty about the cost and efficacy of batterer intervention programs.

Critics felt that the relaxed rules of evidence for an order of protection are also evidence of a systematic bias towards the complainant. By issuing a full order of protection at arraignment, the judge may be evicting the defendant from his home, yet there has been no guilty verdict or even a hearing. (The defense bar was split on why there are not more hearings. Many defense attorneys said they were impossible to get. One stakeholder, however, was adamant that the lack of hearings was the fault of the defense attorneys.)

Defense attorneys also report that domestic violence defendants are more likely to be held at arraignment. This hampers the defense attorneys' negotiating leverage, because the clients will "agree to almost anything" in order to get out of jail. (This may also explain why more defense attorneys do not push for a hearing, choosing instead to secure the immediate freedom of their clients.)

Most defense attorneys opined that judges' perceptions are biased. One prosecutor acknowledged this possibility as well: "If I were the defense lawyer, that [judge's attitude toward domestic violence] would be my concern." In jurisdictions where the domestic violence court judge also presides over bench trials, some defense attorneys believed that it is even more difficult for their clients to receive fair treatment: "The defendant's only remedy is to plead not guilty, upon which the D.A. reduces the charges to the "B" [misdemeanor] and waives jury trial, resulting in the bench trial in front of the same judge." Some of these defenders report that it is rare to win a bench trial;¹³ others find the bench trial process fair. Most defense attorneys believed that the judge's behavior is the result of the media and the publicity that domestic violence cases receive when they go wrong. Others attributed it to the judge's perception of the

¹² Defense attorneys suspect that this may be particularly true in communities where the complainant is more likely to have a criminal record. In these cases, the complainant may have an inherent distrust of the prosecution while having had prior contact with defense attorneys, even if it was not the same defense attorney, in the past.

¹³ This should not be generalized; the conviction rate varies dramatically across boroughs.

defendant's innocence or guilt, and his belief about what message a lenient sentence would send to the defendant: "Judge is thinking...D.A. may not have proved it beyond the shadow of the doubt, but I think he's guilty; and, if I release him, that gives him carte blanche to go home and beat the crap out of her."

Some defense attorneys believed that this concern for the safety of the complainant, while admirable in an individual, is not appropriate in the legal system, which is supposed to presume defendants to be innocent. The perception of the defense counsel is that domestic violence courts are designed to save the few complainants who are in imminent physical danger, at the expense of many defendants who are wrongly accused.

All of the defense attorneys believe that the courts are "victims' courts." Most other stakeholders did not share this perception, arguing that they still operate within a criminal justice system that protects the rights of the accused. One ADA argued that it was actually a defendants' court, because the judge interacts with the defendant and not the victim, and because there is no penalty to the defendant or the defense bar for not being ready. The prosecutor, on the other hand, is legally required to meet certain time constraints. "The defendant can show up late, the bench warrant is vacated and the case is adjourned." This stakeholder reported that, while judges may penalize the defense counsel for failure to be ready, most of them are not willing to do so (an assertion supported by court observations).

CONCLUSIONS AND FUTURE RESEARCH

Specialized domestic violence courts are now established in all five New York City boroughs. Most stakeholders asserted that the court substantively improved victim safety and defendant accountability. In particular, stakeholders spoke positively of the increased training and information available to judges, court staff, and partners, which enable them to handle cases more consistently and monitor offender behavior more closely.

However, even after years of successful operation, the city's domestic violence courts continue to face challenges. As identified in stakeholder interviews and court observation, two of the most prominent are related to limited resources and communication between stakeholders.

All New York City courts struggle with a shortage of resources. In domestic violence cases, which require frequent appearances and additional attention, the need for case management and administrative staff becomes acute. All stakeholders cited limited resources as a key challenge, with most pointing to the difficulties posed by overwhelming caseloads—far larger than those in most specialized problem-solving courts. Some judges reported that they were routinely unable to get through the calendar by the end of the business day. In a related vein, much was made of the overwhelming caseloads faced by ADAs, and of the negative impact it had on case progression.¹⁴ As most District Attorney's Offices have suffered budget cuts in recent years, this has become an even more pressing concern. Although Queens has addressed some of these resource issues by limiting the number of cases eligible for the court, none of the prosecutors or judges in other counties identified this as a possibility. It is unclear at this time what recourse, other than grant funding for additional positions, District Attorneys and courts might have in dealing with resource limitations.

It also appeared that most of the courts could increase and improve communication among stakeholders. In almost all jurisdictions, stakeholders appeared in interviews to be unfamiliar

¹⁴ This is supported by research, which has found that the size of prosecutors' caseloads strongly predicts dismissal rates and sentence severity; the more cases prosecutors have, the less effectively they are able to pursue them (Belknap, Graham, Hartman, Lippen, Allen & Sutherland 2000).

with the policies and practices of many of their partner agencies, and this confusion sometimes extended to their understanding of their respective roles.

THE NEED FOR FURTHER RESEARCH

In the current project, stakeholder interviews, in particular, raised as many questions as they answered. Many issues were perceived entirely differently by stakeholders in different roles, and these conflicts were not easily reconciled. Future research should address such issues as:

- how cases reach the criminal justice system;
- criteria influencing the decision to pursue an evidence-based prosecution without the victim, the process and outcome of such prosecutions, and the impact on complainants' safety;
- impact of vertical case processing;
- any perceived bias of the courts against defendants;
- use and impact of conditional versus regular pleas;
- use and impact of batterer intervention and treatment programs;
- motivations, desires and help-seeking of complainants; and
- complainants' and defendants' perceptions and understanding of court processes and outcomes.

The present study sought to clarify the methods of criminal domestic violence case processing in the five boroughs of New York City, to establish the motivations and rationales of various players in creating and responding to policies and practices, and to identify any weaknesses or conflicts within the system as a whole. It found considerable consistency in court operations across the boroughs, slightly less in District Attorney practices; but it also revealed frustration over a perceived dearth of information about domestic violence courts' impact on victim safety, defendant rights, and long-term outcomes. These findings underscore the importance not only of conducting further research into these issues, but also of disseminating the results of that research to the widest possible audience, so that stakeholders may make more informed assessments of the criminal justice system's response to domestic violence.

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Appendix A. Stakeholder Interview Questions

JUDGES / JHOs

In what way is your part unique?

What are the strengths and weaknesses of the current structure?

How could it be improved?

How have things changed since before the existence of the dedicated DV part?

Do you interact with defendants differently than you would in another part, and if so, how?

What, if anything, about the specialized part do you think makes an impact on the defendant?

If the defendant returns to the part, are you aware that he has been there before, and if so how do you respond?

Does returning to the same judge have an impact on the defendant?

If a defendant is re-arrested, even for a non-DV crime, while the case is pending, are you aware of it? How do you respond? Does it vary according to the new charge?

Do you have any concerns regarding Orders of Protection?

Do you believe that defendants understand that an issued Order supercedes the victim's wishes, and that they can be arrested for violating the Order?

Under what conditions do you agree to issue limited Orders of Protection? What do you consider the advantages/disadvantages of Limited Orders of Protection?

How do you coordinate your Orders of Protection with the Family Court Orders of Protection, or do you?

Do you make your Orders "subject to modification by family court," and if so, what does that mean?

What are the borough DA's policies on proceeding with/without the complaining witnesses support? What are the advantages/disadvantages of these policies?

How much information do you get from the victim advocates or resource coordinator about issues with the victim (such as ongoing harassment, custody issues, etc.)?

Would you like less or more information? Do you believe that the information you receive is adequate?

How much should the victim's wishes influence program sentencing?

What are the dispositions in your court?

What factors influence the terms of the plea bargain, particularly in regard to requesting or agreeing to program assignment?

What criteria do you use in advocating one type of program over another (particularly, batterer intervention versus substance abuse treatment)

If the defendant is sentenced to the program and the court monitors compliance, what if anything is your role during monitoring?

Do you become involved if the defendant is found guilty of violating a conditional discharge, or are the terms for the courts' response set at sentencing?

PROSECUTION

Have specialized courts influenced the number or type of cases that your office prosecutes?

In what way does prosecution in the specialized court differ from the traditional court setting?

What is your office's policy on continuing with /out the support of the complaining witness?

How does this policy affect the prosecution of domestic violence cases?

Is it possible to win the domestic violence case without the support of the complaining witness?

Are there varying levels of involvement that the complaining witness can choose to have in the case?

When do you first make contact with the victim? Who makes this contact?

How often do you make contact with the victim while the case is active?

What role do victim advocates have in working with the complaining witness? What role do they have in prosecution?

How much contact do you have with the complaining witness?

Are you aware of the services offered to the complaining witness by victim advocates? If so, are these services provided by victim advocates in your office, or victim advocates of the court?

What is your role in the issuance of an Order of Protection? Under what circumstances do you request or agree to the limited as opposed to the full Order of Protection?

What do you perceive as the advantages / disadvantages of a limited Order?

Does the type of Order of Protection issued impact the complaining witness' involvement in the case? Does it impact the resolution of the case? Does it impact the complaining witness' safety?

Is the defense bar supportive of the domestic violence court? Why or why not?

Does prosecution in the domestic violence part entail more work than in a traditional court part?

What does it entail?

How aware is the judge / JHO of what services are available for victims or defendants?

How much do you influence the judge's decision to place defendants in programs? How do you choose the type of program, or the specific program to request for the defendant?

What are some issues that might make it more difficult to place the defendant?

Does the court monitor defendant compliance with the programs? If so, how does this monitoring work?

Is there a formal policy for responding to noncompliance? What are the possible responses that the court might have for non-compliance? Is the Judge / JHO consistent in his/her response to non-compliance?

What types of infractions do defendants commit?

How often are defendants sanctioned for program non-compliance?

If the defendant completes the program but is rearrested, is it possible that s/he will receive another program sentence?

How do the court and programs exchange information about defendant compliance (e.g. faxes, phone calls)?

How well does this system work? What are the challenges for this system of communication?

DEFENSE COUNSEL

Are you specifically assigned to the domestic violence court?

How long have you worked in the domestic violence court?

How often do you appear in the domestic violence court?

Do you represent misdemeanor cases and felony cases, or just misdemeanor?

What are the strengths / weaknesses of the domestic violence court overall?

What are the advantages / disadvantages of the domestic violence court for your clients?

What are the advantages / disadvantages of the domestic violence court for the complainants?

Are cases in domestic violence courts processed more slowly, more quickly, or at the same rate as equivalent cases in other parts?

What is your role in the issuance of an Order of Protection? Do you ever advocate for a limited rather than a full Order of Protection? If so, under what circumstances?

Does the type of Order of Protection have any impact on the complainant's involvement in the case, or the resolution of the case?

What are the dispositions in this court?

Do complainants ever come to you to request treatment or programs for your client?

Do your clients ever request treatment or programs?

Under what conditions do you decide to request a program for your client?

Do you ever have contact with the complainant? If so, what does this contact usually consist of? Do you ever speak on behalf of the complainant, or give the complainant referrals?

How often do you give referrals to your client?

What factors influence the terms of the plea bargain, particularly in regard to requesting or agreeing to the program assignment?

What criteria do you use in choosing one type of program over another (e.g. batterer intervention vs. substance abuse treatment)?

If your client is sentenced to a program, is his/her progress monitored by the court? If so, what, if anything, is your role in the monitoring?

If your client is found guilty of violating a conditional discharge, are the terms for the court's response negotiable, or were they set at sentencing?

Has the defense bar bought into the model?

Why, or why not?

CLERKS / DEFENDANT MONITORS / RESOURCE COORDINATORS

What is your role in the court?

How do cases flow through the court?

How well does the domestic violence court safeguard victim's safety?

Do you have any safety concerns that the existing system is not able to address?

Does the domestic violence court treat defendants fairly?

Many defense attorneys have protested domestic violence courts by calling them "prosecutors' courts." In what way is this description accurate/inaccurate?

What is your role in helping the judge decide whether or not the terms of a plea bargain are appropriate? What criteria do you take into account when making your recommendation? What criteria do you take into account when choosing a program?

How do defendants perceive programs? (Do they think they're getting off easy, they're being discriminated against for some reason, the programs are brain-washing attempts...?)

Do you monitor the defendant's compliance with the court / program? If so, what does that involve?

What types of infractions do defendants commit?

What are the court's responses to non-compliance?

Are these responses decided by the judge at the time of the infraction or are they codified in some way?

When defendants fail out of programs, what is your role in helping the judge to decide whether or not they get the second chance? What criteria do you take into account when making your recommendation?

Do you believe that the domestic violence court has A greater or lesser effect on defendants than the traditional court part?

Do you believe that program attendance and /or completion deters recidivism?

POLICY (questions asked of various people in administrative positions)

Is this the full-time or part-time DV court?

How many judges or JHOs are involved, and who are they?
are they part time or full time; if the former, do they sit in the regular part the rest of the week?

are non-intimate partner domestic violence cases (such as child abuse, elder abuse or sibling violence) or child sexual abuse cases included?

Does the court include: victim advocates, resource coordinators, defendant monitors, children's coordinators? What are their roles?

are defendants ever assigned to programs? If so, what kind of programs (substance abuse, batterer intervention, etc.)? at what stage are they assigned (pre-sentence; as the condition of the Conditional Discharge or probation)?

What is the official D.A. policy regarding prosecution?

What are the most common charges, dispositions and sentences?

Appendix B. Key Terms

Definitions included in this section have been extracted and modified from New York State Penal Law, New York State Criminal Procedure Law, New York State Standards for Intervention with Men Who Batter, and the New York City Criminal Glossary. These definitions have been edited both for simplicity and for specific applicability to domestic violence court issues.

Accusatory Instrument – A written accusation filed with the court charging the defendant with one or more offenses.

Adjournment in Contemplation of Dismissal (ACD) – A final case disposition that is neither a conviction or an admission of guilt. Cases are adjourned for a specified length of time—in family offense cases, one year—and are then dismissed if there have been no further infractions in that time. The ACD may include conditions, such as attendance at a batterer intervention program, to be met during the adjournment period.

Assault – A criminal offense that falls into three categories. Assault is a common charge in misdemeanor domestic violence courts.

Assault in the Third Degree (“A” misdemeanor)

- Causing intentional physical injury to the complainant
- Recklessly causes physical injury to the complainant
- Causing unintentional, but criminally negligent, physical injury to the complainant with a weapon

Assault in the Second Degree (“D” Felony)

- Intentionally causing physical injury to the complainant.
- Intentionally causing physical injury to the complainant with a weapon.
- Intentionally preventing a civil employee from performing a lawful duty, including the administering of first aid, by failing to control an animal.
- Recklessly causing physical injury to the complainant with a weapon.
- Causing physical injury to the complainant during the commission of a felony.

Assault in the First Degree (“B” Felony)

- Intentionally causing serious physical injury to the complainant with a weapon.
- Causing injury while attempting to disfigure or permanently disable the complainant.
- Causing serious physical injury through reckless conduct that demonstrates a depraved indifference to human life.
- Causing serious physical injury to the complainant during the commission of a felony.

Batterer Intervention Program -An educational course that provides batterers with information about domestic violence, and tools to stop domestic abuse.

Bench Warrant – A court order issued for a defendant’s arrest if s/he fails to appear for a court proceeding other than an arraignment.

Complainant – A person who charges an individual or corporation with committing an offense.

Complaining Witness – A complainant who is also able to act as a witness in a court case.

Conditional Discharge – A period of court supervision offered to defendants who are not considered sufficiently harmful to public safety so as to require incarceration or probation. Defendants who accept a conditional discharge must fulfill all requirements set forth by the judge. Defendants who fail to comply with the mandated conditions may face additional sanctions, including jail time and or probation, as specified at disposition. In domestic violence cases, in New York City, defendants are sentenced to programs, and monthly judicial monitoring, as part of their conditional discharge sentence. A conditional discharge term for an “A” misdemeanor may not exceed 1 year. The length may be shortened at the discretion of the judge.

Conditional Plea – A guilty plea entered by a defendant with the agreement, from the judge, that the guilty plea will be vacated if the defendant meets specifically articulated requirements.

Criminal Contempt – A criminal offense that falls into 3 categories. Criminal Contempt is a very common charge in misdemeanor domestic violence courts; specifically, for the violation of full orders of protection.

Criminal Contempt in the Second Degree – “A” misdemeanor

- Disorderly conduct within or within view of the court.
- Intentionally disobeying the lawful processes or mandate of a court.
- Refusing to be sworn as a witness in any court proceeding or, after being sworn, to answer any legal and proper interrogatory

Criminal Contempt in the First Degree – “E” Felony

- Refusing to be sworn as a witness before a grand jury or, after being sworn, to answer any legal and proper interrogatory
- Violating a duly served order of protection, damaging the property of the holder of the order of protection, or attempting to place the holder of the order of protection in fear of physical injury.
- Committing the crime of criminal contempt in the second degree by violating an order of protection, while having been previously convicted of the crime of criminal contempt in the second degree by violating an order of protection within the preceding five years.

Aggravated Criminal Contempt – “D” Felony

Violating a duly served order of protection by intentionally or recklessly causing physical injury or serious physical injury to the holder of the order of protection.

Defendant Monitor – A courtroom position created for the specialized domestic violence parts. The defendant monitor meets with the defendant on the day of sentencing and reiterates the conditions of the sentence. The defendant monitor also gives the defendant the necessary treatment program information and arranges the initial interview. Thereafter, the defendant monitor meets with the defendant on subsequent court dates to monitor program compliance.

Domestic Violence - A pattern of coercive behavior that involves physical, sexual, economic, emotional and/or psychological abuse. These coercive and abuse behaviors are used by one family member (usually an intimate partner) to control the and maintain power over another family member.

Duluth Model – A specific type of Batter Intervention Program that originated in Duluth, Minnesota. This model stresses a feminist perspective of the batterer’s place in society. The model identifies structures in society that support or contribute to the batterer’s behavior, and then challenges the batterers to re-educate and re-socialize themselves. This model is highly confrontational and places the onus of recovery on the batterer. This is the most popular type of Batterer Intervention Program.

Evidence-Based Prosecution - Prosecution conducted without the support of the complainant, relying instead on other witnesses (including police officers and neighbors), 911 recordings, and hospital records.

Felony – A criminal offense for which a sentence to a term of imprisonment in excess of one year may be imposed.

Harassment – An offense that is described in four categories. Harassment is the most common charge pled to in misdemeanor domestic violence courts, in New York City.

Harassment in the Second Degree (Violation)

- Striking, shoving kicking or otherwise subjecting the complainant to physical contact, or attempts or threats to do the same.
- Following the complainant
- Engaging in conduct or acts which alarm or seriously annoy the complainant.

Harassment in the First Degree (“B” Misdemeanor)

- Following the complainant
- Engaging in conduct or acts which places the complainant in reasonable fear of physical injury.

Aggravated Harassment in the Second Degree (“A” misdemeanor)

- Communicating, either directly or indirectly, with the complainant in any way in a manner likely to cause annoyance or alarm.
- Making a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication.
- Striking, shoving, kicking or otherwise subjecting the complainant to physical contact, or attempts and threats to do the same, to anyone who is a member of a group protected by the Hate Crime Act.
- Committing the crime of harassment in the first degree while having previously convicted of the crime of harassment in the first degree within the preceding ten years.

Aggravated Harassment in the First Degree (“E” Felony)

- Behaving with the intent to harass, annoy, threaten or alarm the complainant based on their belonging to a group protected by the Hate Crimes Act.
- Committing a crime of aggravated harassment in the second degree while having been a) previously convicted of the crime of Aggravated Harassment in the Second Degree, subsection 3 (third bullet in the list above), or b) previously convicted of the crime of aggravated harassment in the first degree within the preceding ten years.

Mandate – A condition imposed on a defendant as a requirement of a conditional discharge.

Menacing – An offense that falls into three categories. Menacing is a common charge in misdemeanor domestic violence courts.

Menacing in the Third Degree (“B” Misdemeanor)

Intentionally places, or attempts to place, the complainant in fear of death, physical injury, or imminent serious physical injury.

Menacing in the Second Degree (“A” misdemeanor)

- Intentionally places, or attempts to place, the complainant in fear of physical injury, serious physical injury or death by displaying a weapon.
- Repeatedly, over a period of time, intentionally follows the complainant.
- Repeatedly, over a period of time, intentionally placing or attempting to place the complainant in fear of physical injury, serious physical injury or death
- Committing the crime of menacing in the third degree in violation of an order of protection.

Menacing in the First Degree (“E” Felony)

- Committing the crime of menacing in the second degree while having been previously convicted of the crime of menacing in the second degree within the preceding ten years.

Misdemeanor – A specific type of criminal offense for which a person may be sentenced to no more than one year in jail. The sentence of imprisonment for an “A” misdemeanor may not exceed one year. The sentence of imprisonment for a “B” misdemeanor may not exceed 90 days.

Order of Protection – In a criminal court context, this is the court order setting forth conditions of behavior for one of the parties in a criminal action. In domestic violence cases a *full* order of protection forbids the defendant from having any contact with the complainant and any other children or family members specified on the order. A full order forbids the defendant to call the protected parties, or visit their homes, offices or schools. In contrast, a *limited* order allows contact, including cohabitation, but forbids the defendant from harassing, menacing, hitting, striking, or threatening the protected parties. (In New York State, anyone can seek a civil order of protection against an intimate partner in the Family Court, without bringing criminal charges against them. However, violation of a civil order is a criminal offense.)

Resource Coordinator – A courtroom position created for specialized court parts to enhance judicial monitoring. The resource coordinator acts as a liaison between the court room and partnering agencies outside of the courtroom, primarily the batterer intervention programs used by the courts.

Stalking – A criminal offense that falls into four categories. Stalking is a common charge in misdemeanor domestic violence courts.

Stalking in the Fourth Degree – “B” Misdemeanor

Intentionally engaging in conduct that:

- Is likely to cause fear of material harm in the complainant
- Causes material harm where the conduct consists of following or communicating with the complainant or any member of the complainant’s household after having been informed to cease such conduct

- Is likely to cause fear that the complainant’s employment, business, or career is threatened where such conduct consists of appearing or communicating with the place of employment after having been told to cease such conduct.

Stalking in the Third Degree – “A” misdemeanor

- Committing the crime of stalking in the fourth degree against three or more persons in three or more separate transactions
- Committing the crime of stalking in the fourth degree while having been previously convicted of specified predicate crime against the same complainant or an immediate family member of the complainant.
- Intentionally causing the complainant to fear physical injury, serious physical injury, the commission of a sex offense, kidnapping, or death of the complainant or an immediate family member.
- Committing the crime of stalking in the fourth degree while having been previously convicted of stalking in the fourth degree within the preceding ten years.

Stalking in the Second Degree (“E” Felony)

- Committing the crime of stalking in the third degree while displaying a weapon.
- Committing the crime of stalking in the third degree while having been convicted of a specified predicate crime against the same complainant, or an immediate family member of the complainant, within the past five years.
- Committing the crime of stalking in the fourth degree while having been convicted of stalking in the third degree against any person.

Stalking in the First Degree (“D” Felony)

Committing the crime of stalking in the third degree or stalking in the second degree while: a) intentionally or recklessly causing physical injury to the complainant, or b) committing an “A” misdemeanor, “E” Felony, or “D” Felony crime.

Statewide Domestic Violence Registry – A statewide database of all orders of protection.

Trial – Defendants facing six months, or more jail time (“A” misdemeanor or higher) are entitled to a trial by jury. Defendants facing a “B” misdemeanor or lower are entitled to a bench trial. A defendant who is entitled to a jury trial may waive that right in favor of a bench trial (one conducted before a judge, without a jury).

Vertical Prosecution – A prosecution management strategy under which a single assistant district attorney is assigned to a case and follows that case to disposition.

Violation – An offense for which a person may be sentenced to no more than 15 days in jail. A violation is not a crime, and a person convicted of a violation will not have a criminal record.

Appendix C. Legislation

Changes in the criminal justice system's response to domestic violence have been driven in part by legislation that has explicitly specified changes in arrest, evidentiary and court procedure. This section will briefly discuss some of the most crucial pieces of legislation in New York State.

The legislation that has had the greatest impact on the criminal justice response to domestic violence are the Federal and New York State Family Protection and Domestic Violence Intervention Acts of 1994. Most notably, these Acts included changes in the issuance and enforcement of orders of protection; an increased burden on public officials to inform complainants in domestic violence cases of their rights and remedies; and mandatory arrest laws. Under the new legislation, the rules of evidence necessary to obtain an order of protection were relaxed, allowing complainants to obtain an order of protection earlier in the criminal justice process, and to have it extended for a longer period of time. The Acts also increased sanctions for violating an order of protection, without respect to the specific details of the violation.

Much of the new legislation focused on the tendency of law enforcement to minimize domestic violence issues. It provided police with access to the education and funding they needed to raise their awareness and understanding of domestic violence, as well as to develop specialized domestic violence units. In addition, police were mandated in cases of domestic violence to make an arrest, inform the complainant of her rights and the legal remedies available, and complete a Domestic Incident Report detailing the incident. These reports are kept on file for four years, whether or not an arrest is made; in addition to encouraging police attention to domestic violence cases, they also provide a mechanism for legislators and outside agencies to monitor the police response to domestic violence crimes.

Mandatory arrest laws in New York State specify that police must make an arrest whenever an order of protection is knowingly violated, a felony is committed against a member of the same household, or an "A" misdemeanor is committed against a member of the same household. In the last instance, the complainant may request that no arrest be made. The police are allowed to comply with such a request, as long as they judge it to be freely made (i.e., not coerced by the batterer). The police are prohibited from inquiring whether the complainant seeks the arrest of the perpetrator.

Further, all police officers, as well as other public officials such as peace officers and District Attorneys, were required by these Acts to inform complainants in domestic violence cases about available community services, including shelters; and to give the complainant written notice of all of the legal rights and remedies available under both criminal and civil law.

Much of the domestic violence legislation enacted since 1994 has enhanced and/or expanded the remedies created then. Among these, the most significant may be the classification of domestic violence as a hate crime (2000),¹⁵ which increased the severity of possible sanctions; and the laws against stalking (1999), which made stalking a crime even in the absence of assault or verbal threats.

¹⁵ However, the designation of hate crime does not apply to harassment in the second degree (a violation), or disorderly conduct. At this time, many "A" misdemeanor domestic violence cases in New York City are disposed on a charge of second-degree harassment.

The following chronological list of state and federal legislation includes exclusively those laws which directly impact the arrest, processing, prosecution and disposition of defendants arrested on domestic violence charges.

1994

Family Protection and Domestic Violence Intervention Act	
Criminal Procedure Law	530.11
Family Court Act	812

Concurrent Jurisdiction: Eliminated the prior 72-hour ‘choice of forum’ rule, whereby a victim of a family offense had 72 hours to choose whether to proceed in Family or Criminal Court.

Sanctions and Orders of Protection: Enhanced sanctions and allowed for longer orders of protection.

Notice to Victims: Required police officers and district attorneys to advise family offense victims of the availability of services in the community, and immediately provide written notice of the legal rights and remedies available to them.

Family Protection and Domestic Violence Intervention Act	
Criminal Procedure Law	140.10

Mandatory Arrest Policies: Authorized police officers to make an arrest without a warrant, and *required* them to make an arrest, without attempting to reconcile the parties, in cases where:

- An “A” felony is committed against a member of the same household;
- An order of protection is violated (knowingly, because the defendant was present in court when the order was issued);
- An “A” misdemeanor family offense is committed. This last may not result in a mandatory arrest if the victim voluntarily requests that no arrest be made. The responding officer is prohibited from inquiring whether the victim seeks the arrest of the perpetrator

Police Reports: Required that police file a Domestic Incident Report, including statements made by the victim and any witnesses, when investigating a report of an offense between two members of the same household. The Domestic Incident Report is filed and held for four years, whether or not the police officer makes an arrest.

1995

Family Court Act	154
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Confidentiality: Authorized Family Court to allow a party in an order of protection proceeding to keep his or her address confidential, where the court finds that disclosure of the address would substantially increase the risk of violence.

Service of Orders of Protection: Facilitated service of orders of protection in matrimonial and family court proceedings:

- Created an alternative to court delivery to police headquarters, by allowing petitioner to personally deliver a temporary order of protection to law enforcement personnel;
- Added Orders of Protection issued upon default to delivery and service provisions in Family Court Act and Domestic Relations Law;
- Required Sheriffs, city, town and village police to make service;
- Required date and time of service to be entered on statewide registry of Orders of Protection and warrants; and
- Provided that same service provisions be available for Orders of Protection issued in Supreme Court.

Family Court Act	
Criminal Procedure Law	530.11

Family Offenses: Added aggravated harassment in the second degree (an “A” misdemeanor) to the definition of family offense in the Family Court Act and Criminal Procedure Law. This offense includes the "stalking" behaviors common in domestic violence cases—telephone and mail harassment.

Out-of-State Service of Process: Authorized service of process outside NYS in family offense, child support, paternity, custody and guardianship, child abuse and neglect proceedings where an Order of Protection is sought, if:

- The acts occurred in New York State; and
- The applicant for the order resides or is domiciled in New York State, or has substantial contacts in New York State, including presence on a regular basis.

If non-resident respondent fails to appear, the court may proceed to a hearing.

Criminal Procedure Law	530.11
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Interstate Deterrence of Mutual Orders of Protection: To further limit the abuse of mutual orders and to make New York State law consistent with the Federal Violence Against Women Act "full faith and credit" requirements for interstate enforcement of orders, required that:

- Any complainant seeking an order of protection must serve and file a petition or counterclaim; and
- Family Court and Supreme Court must make a finding on the record regarding the petitioner or counter-claimant's entitlement to an order of protection.

Criminal Procedure Law	530.12
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Conditions for Orders of Protection: Redefined permissible terms and conditions in orders of protection in family court, matrimonial and criminal cases:

- Made Family Court Act and Domestic Relations Law consistent with Criminal Procedure Law by creating uniform Order of Protection language directing a party to "stay away from the home, school or place of employment;"
- Expanded visitation language to persons other than parents;
- Narrowed "offensive conduct" language:
 - "Refrain from committing a family offense.. or any criminal offense... or from harassing, intimidating or threatening such persons;"
 - "Give proper attention to the home" was eliminated; replaced by a new condition that the party out of the home can retrieve belongings, accompanied by a police officer;
 - "Acts of commission or omission that tend to make the home not a proper place" was replaced by "to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child."

Family Protection and Domestic Violence Intervention Act of 1994	
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Records: Added Supreme Court (Domestic Relations Law) to the record-sharing system; required that forms for Orders of Protection in matrimonial/Supreme Court be compatible with the statewide registry; and added to the registry all warrants issued for criminal contempt in a family offense case, not just arrest warrants, .

1996

Domestic Relations Law	240
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Domestic Violence/Custody Factor: Amended the Family Court Act and Domestic Relations law, requiring judges to consider the effect of domestic violence in assessing the best interests of a child when making custody and visitation determinations.

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Youthful Offender Orders in Registry: Overturned the exemption of youthful offenders' Orders of Protection from entry in the statewide registry.

Penal Law	215.14
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Victim Rights: Prohibited an employer from penalizing or firing an employee, who, as the victim of a criminal offense, exercises his or her rights to appear in court, consult with a district attorney, etc. If the victim of a crime is deceased as a result of the offense, the next of kin is afforded the same protection. The bill also covered a representative of the victim, or a good samaritan as defined by law.

Criminal Procedure Law	530.12
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Penalties for Order of Protection Violations: Expanded the acts that constitute criminal contempt in the first degree (E felony) when committed in violation of an order of protection to include:

- Intentionally placing or attempting to place a person in reasonable fear of physical injury by possession or threat of a weapon, by a course of conduct or repeated behavior over a period of time, or by mechanical/electronic communication, telephone, telegraph or mail;
- Harassing, by making repeated telephone calls or by threatening or actually striking, kicking, shoving, or other physical contact; and
- Physically menacing.

The law also increased the penalty for violations of an order of protection when the violating behavior causes physical injury, constituting the new crime of Aggravated Criminal Contempt, a “D” felony.

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Mandatory Arrest: Office for the Prevention of Domestic Violence bill extended the statute on mandatory arrest.

Family Court Act	842
Criminal Procedure Law	530.14

Revocation/Suspension of Firearms License: Set forth the conditions under which a judge is mandated, or may elect, to revoke or suspend a firearms license, upon the issuance of an order of protection, or upon the violation of an order of protection.

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Classification of Assault: Upgraded Assault in the First Degree from a Class “C” to a Class “B” felony, punishable by up to twenty-five years in prison.

Criminal Procedure Law	530.14
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Suspension and Revocation of Firearms License: Outlined the mandatory and permissive conditions under which a defendant’s license to carry or possess a firearm may be suspended or revoked once the defendant has been issued an order of protection.

1997

Criminal Procedure Law	140.10
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Primary Physical Aggressor Act: Amended mandatory arrest provisions to clarify that in family offense cases, where both parties allege an offense, arrest of both parties is not required if an officer believes one party was acting in self-defense. In misdemeanor cross-complaint cases, police are not required to arrest both parties, only the primary physical aggressor. Specific guidelines were provided to assist in the identification of the primary physical aggressor. The bill also prohibited an officer from threatening arrest in order to discourage a person's request for police intervention and specified that arrest may not be based on a complainant's willingness to testify.

Family Protection and Domestic Violence Intervention Act of 1994	
Family Court Act	154
Criminal Procedure Law	530.12

Local Criminal Court Authority: Clarified ambiguities in the Family Protection and Domestic Violence Intervention Act of 1994 regarding the authority of, and procedures for, local criminal courts to act on behalf of the Family Court or Supreme Court in family offense cases when these courts are closed.

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Extension of Temporary Orders of Protection: Clarified that in cases where the court has issued a temporary order of protection ex-parte or with a warrant for the arrest of a defendant, the order remains in effect until the defendant appears in court.

1998

Family Court Act	Amends
Criminal Procedure Law	
Penal Law	

Enforcement of Out-of-State Orders of Protection (Full Faith and Credit): Conformed state law to the federal Violence Against Women Act by stipulating that a valid order of protection issued by an out-of-state court must be enforced as if it were a New York State Order. Allowed out-of-state orders to be entered on the statewide Registry, but did not require such orders to be on the registry in order to be enforced.

Executive Law	632-a
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Stalking/Expansion of Crime Victim Benefits: Extended crime victim benefits to victims of harassment, menacing and other similar non-physical injury offenses.

Family Court Act	1085
Domestic Relations Law	240

Custody Prohibition in Murder Cases: Barred courts from issuing an order of visitation or custody to anyone who has been convicted of murder of a parent or legal custodian of the child, unless the child is of suitable age to assent, does assent, and the court finds that such visitation is in the child's best interest. Granted exceptions where the murderer was the victim of domestic violence and the individual murdered was the perpetrator of the domestic violence.

1999

Penal Law	120.40, 120.60
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Clinic Access and Anti-Stalking Act of 1999: Created the new crime of stalking in the first, second, third and fourth degrees.

Criminal Procedure Law	530.11
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Family Offense Court Jurisdiction: Provided that a victim's choice to proceed in Family Court does not divest the criminal court of jurisdiction over the family offense.

Domestic Relations Law	240, 252
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Supreme Court Orders of Protection: Implemented technical changes in the law. A victim requesting a temporary order of protection must be heard that same day or on the next day the court is in session. Additionally, upon issuing an order of protection or upon violation of an order, the court may require the surrender of firearms. Brought Domestic Relations Law into conformity with the Family Court Act and the Criminal Procedure Law.

NYS Adoption and Safe Families Act	49
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Domestic Violence Provisions: Conformed New York state law to the federal Adoption and Safe Families Act by stipulating that:

- Courts must consider the presence of domestic violence in the home when determining if the need to place a child would be eliminated by an order of protection removing the abuser from the home; and
- The Office of Children and Family Services must investigate the extent to which the court now removes children from domestic violence victims due to the abuser's conduct.

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Interim Probation Supervision: Expanded allowable conditions of interim probation supervision to include electronic monitoring and any other reasonable condition necessary to ameliorate the conduct which resulted in court involvement.

2000

Hate Crimes Act of 2000	
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Domestic Violence Provisions: Provided that the commission of certain specified crimes are punishable as hate crimes when committed because of a belief regarding the race, color, national origin, ancestry, gender, religion, age, disability or sexual orientation of the victim. Sanctions for hate crimes were increased by raising an offense to a higher category. All of the family offenses were included as specified offenses, except harassment in the second degree and disorderly conduct.

Clinic Access and Anti Stalking Act of 1999	
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Amendments: Added stalking in the second degree to the class “D” felony of stalking in the first degree when the crime involves a sex offense or an intentionally/recklessly caused injury.

2001

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Mandatory Arrest Extension: Extended mandatory arrest in family offense cases to September 1, 2003.

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Order of Protection: Required a criminal court judge to state on the record the reasons for issuing or not issuing an order of protection in cases where the defendant had pled guilty or been convicted.

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Uniform Child Custody Jurisdiction and Enforcement Act: Created consistent court rules for interstate custody decisions, including an expedited procedure for enforcement and protections for domestic violence victims.

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Aggravated Harassment: Reversed recent case law and clarified that aggravated harassment can be charged and prosecuted based on the perpetrator's behavior, regardless of which party initiated the contact.

Family Court Act	154
Domestic Relations Law	

Address Confidentiality/Family Court & Supreme Court: Established a mechanism for the clerk of the court, or another designated person, to receive court papers on behalf of a party, where the court finds that disclosure of an address would pose an unreasonable risk to the party or a child.

Criminal Procedure Law	4317
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Family Court Referees: Granted authority to court referees and judicial hearing officers to issue temporary orders of protection ex-parte (without the accused party present) in evening sessions of Family Court.