

**REPORT ON DOMESTIC VIOLENCE PRACTICES AND SERVICES OF
THE PUERTO RICO COURT SYSTEM AND ITS PARTNERS:
ASSESSMENT, EVALUATION AND RECOMMENDATIONS**

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May 17, 2006**

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INTRODUCTION

This Report on Domestic Violence Practices and Services of the Puerto Rico Court System and its Partners is based on my review of numerous documents provided to me by the court and multiple partner agencies; interviews I conducted with representatives of the court and these agencies during two site visits in February and March 2006, as well as telephonically in March and April 2006; direct observations of court operations during the site visits; and my review of reports from focus groups conducted by Office of Court Administration (OAT) personnel during February and March 2006 with: Municipal Court judges; Superior Court judges; domestic violence victims; and domestic violence offenders currently attending a batterers' intervention program. The Report assesses court operations in both criminal and civil courts handling domestic violence cases, as well as relevant practices and procedures by partner agencies, law enforcement and attorney agencies, victim advocacy organizations, batterers intervention programs, and other social service agencies and private community-based organizations, probation, correction and pre-trial service agencies, and other city, state and private organizations that impact domestic violence response in the community. The Report identifies needs in domestic violence response among these courts and its partners, as well as current effective practices and procedures. The Report concludes with several recommendations for addressing problems that I believe should have the highest priority. Specifically, the Report discusses the feasibility of implementing a specialized domestic violence court, and provides guidance on particular features and beginning steps that would be critical if such a specialized court were developed.

Like any report of this type, it should be noted that its assessments and conclusions are based on a defined sphere of information, and derived in large part from interviews and observations that were made at only a few points in time over a several day period. Therefore, it is a “snap-shot” of the system, and its conclusions should be taken in that framework. However, I have attempted to make the Report as comprehensive as possible, and it is my hope that it will achieve its goal to provide assistance to court and community partners who are committed to improving the response to domestic violence in the Puerto Rico community.

It should also be noted that while positive aspects of the existing system are identified, because of the focus of the Report, there is far more attention given to concerns, needs and issues to be addressed. The court and community should recognize that there is much that they are doing right in their response to domestic violence; this Report is meant to assist them in achieving an even higher standard and greater effectiveness in that response. It is a sign of the community’s commitment to improving that response that its members were willing to undertake this evaluation. In that regard, I want to thank all of the court and partner representatives who expended substantial time and effort in talking with me and providing documents and other written information, and who were willing to speak candidly about the issues they see in the community. I believe that there is great promise both in the efforts already undertaken, and in the tremendous commitment that I observed by the court and community to take additional steps to improve response and further promote victim safety, offender accountability and the reduction of domestic violence incidents in the country.

EXECUTIVE SUMMARY

This Report on Domestic Violence Practices and Services of the Puerto Rico Court System and its Partners is designed to assist the court and its partners achieve their goal of improving the justice system's response to domestic violence in Puerto Rico. Based on an examination of written materials, numerous interviews of court and partner personnel, review of reports on focus groups conducted in February and March 2006, and on-site observation of the court process in February 2006, the Report reviews and assesses the operations, policies and practices of the court and its partners in domestic violence cases.

This observation and review revealed both the institutional foundation and the commitment necessary to improve the system response to domestic violence. The court system and its partners demonstrated several strengths that make significant progress in domestic violence response feasible. There already has been substantial self-examination and focus on some of the most important problems. For example, the Batterers Intervention Programs Certification Board has investigated and begun to make recommendations regarding standards for batterers intervention programs. The court system is piloting an innovative electronic protection order registry that will increase the information available to the court about protection order history. The Marshal Service and law enforcement have begun to meet to clarify roles in service of protection orders. In addition, many of the key agencies already have a specialized structure in place. There are specialized domestic violence units in the departments of Probation and Police, and there is a dedicated unit in the Prosecutor's Office.

Currently, however, there are some significant gaps in both the civil and criminal justice system response to domestic violence. The key issues in the order of protection process that

require attention include: inconsistent and antiquated data collection systems that fail to produce reliable data, and do not capture statistics at key stages; lack of follow-up with petitioners between ex parte orders and the final protection order to ascertain the reasons for failing to appear; inadequate linkage between petitioners and victim advocates due to understaffing of advocate unit and its distant location from protection order courtrooms; delays in adjudication of protection orders, due in part to confusion over responsibility for service of summons and ex parte order; and dramatic under-enforcement of violations of protection orders.

A review of the processing of criminal domestic violence cases revealed even more severe, challenges, including: a significant drop in domestic violence case volume in at least two critical stages of the criminal process: 1) the period between police domestic violence calls and filing of criminal complaints; 2) the period between presentment at the preliminary hearing and disposition; inadequate data collection systems, together with inconsistent definitions among agencies, which fail to produce reliable and meaningful statistics; inadequate staffing of both specialized domestic violence police and specialized domestic violence prosecution units, creating the inability to provide coverage of all domestic violence cases, lack of vertical prosecution, and sufficient evidence collection and case investigation; lack of consistent coordination between police and prosecutors in domestic violence case development; failure by court to monitor defendant compliance with release conditions, deferred sentencing and other post-disposition conditions, and employ sanctions for failures to comply; overuse of deferred sentencing option under Law 54, even when defendants are legally ineligible for this option; deeply inadequate batterers' program resources, and inappropriate court deference to defense in identifying program for defendant conditions; overuse of dismissals under *People v. Castellón*;

underdevelopment of evidence-based prosecution and inappropriate reliance on participation and presence of the victim to proceed in domestic violence cases; multiple adjournments and lack of preparedness for court appearances; and lack of knowledge of domestic violence dynamic by judges.

There is also a need for greater resources for domestic violence victim services, including more victim advocacy, lawyers to handle civil matters such as divorce and custody, assistance in obtaining housing and public entitlements, and job-training and educational programs to help victims attain economic self-sufficiency. In addition, these resources must be easily accessible to victims, and coordinated. Further, the courthouse environment is very difficult for victims and does not encourage them to seek protection. There is inadequate security in many courthouses, and in particular, the Investigations Rooms and courtrooms where domestic violence cases are regularly heard. There is no child care, so that petitioners must keep their children with them during court appearances where they are reliving the violence that often has been caused by the other parent. There are long waiting times for court appearances, where victims must sit in the same room with domestic violence offenders, and where their kids must wait without access to any food or playthings.

Perhaps the most fundamental question in this area concerns the treatment of domestic violence cases under Law 54 by the judiciary and its criminal justice partners. Law 54 is a strong law that provides significant penalties for domestic violence conduct. In practice however, the processing of criminal domestic violence cases, is not meeting the standards set by Law 54. The low percentage of cases that proceed through the system and produce convictions demonstrates a serious problem in enforcement of the law. There are two alternative explanations

for this phenomenon. It may be that the community, including practitioners in the criminal justice system and the court itself, does not think that many of the domestic violence incidents charged merit the severe treatment mandated by Law 54. Because the Law makes all domestic violence crimes punishable as felonies, and does not permit substantial gradations in punishment, it is legitimate to consider whether the Law adequately addresses the qualitative differences in severity of conduct. This could indicate that the system is “self-correcting” through under-charging, overuse of dismissals and deferred sentences. Alternatively, this failure to enforce the domestic violence law may reveal a deep attitudinal problem on the part of court and partner personnel that fails to recognize the seriousness of domestic violence crime, as well as the dangers in which victims are placed.

The Report concludes that the unavailability of any misdemeanor charge under Law 54 may create the unintended consequence of increasing the number of dismissals, and reducing convictions in domestic violence cases. The creation of such a charge should be seriously considered, though it must be carefully restricted to conduct truly not deserving of more severe treatment. Unfortunately, however, it is clear that the attitudinal problem is the primary cause of this under-enforcement, given that failures to charge, dismissals and deferments, are not limited to the “less serious” cases. In order to make substantial progress in addressing domestic violence crime, Puerto Rico must confront the attitudes that permeate the criminal justice system, and which continue to excuse batterer conduct and place victims at risk.

The Report makes a number of specific recommendations throughout the text in order to move forward in addressing domestic violence. A separate Recommendations section near the end of the Report highlights the suggestions that are most critical:

- Conduct a comprehensive data collection project and institutionalize ongoing procedures;
- Address the legal issues raised by the *People v. Castellón* dismissals and diversion sentences imposed outside the requirements of Law 54;
- Expand the court's role in monitoring both civil and criminal domestic violence cases;
- Expand and Relocate Advocacy for Domestic Violence Victims at the courthouse;
- Expand independent victim advocacy to include follow up from Ex Parte Hearings and to Access Victims in Criminal cases;
- Identify key gaps in victim service needs and focus on augmenting resources in those areas;
- Develop a formalized partnership meeting to focus on justice system response to domestic violence;
- Consider the development of a fatality review team;
- Expand training programs for all personnel involved with domestic violence cases and litigants;
- Review security protocols at the courthouse;
- Coordinate information from different courts;
- Explore use of a Resource Coordinator in Domestic Violence cases; and
- Improve consistency among judges handling domestic violence cases.

While many of these issues can be addressed within the regular case handling process, the development of a specialized domestic violence court offers a highly effective way to confront these problems and handle them effectively. This Report recommends that the Puerto Rico court system seriously consider the development of a specialized court, and

provides several concrete ideas for its implementation. The Report recommends that the court initially handle a caseload composed of criminal domestic violence cases brought under one or two provisions of Law 54, and domestic violence protection order cases in which such a criminal case is pending. The target caseload for a pilot court project should be approximately 50 to 75 pending criminal cases, with approximately an equal number of related protection order cases. Additional case types can be added gradually, once the court is operating smoothly and its procedures are institutionalized. The specialized court initially would have one or two dedicated judges.

While one judge could handle both the civil and criminal process through the preliminary hearing, it may be preferable to have one judge handle protection orders and Rule 6 hearings, and have a second judge handle the preliminary hearing stage and any non-trial dispositions. The cases that proceed to trial would initially be referred to regular trial courtrooms. Near the end of the Report there is a step-by-step analysis of both the order of protection and the criminal case process, which includes the responsibilities of all staff and the movement of both the victim and the respondent/defendant through the system.

While there are numerous issues to be addressed, there are many key partners from diverse parts of the system that are strongly committed to improving domestic violence response. The willingness of the court system and its multiple partners to engage in a candid appraisal of the current response indicates this commitment to change. This is the first step in a long and challenging process to create a coordinated response to domestic violence that will make victim safety a priority, hold batterers accountable for their conduct, and send a message to the community that domestic violence will be not be tolerated.

I. THE CIVIL JUSTICE SYSTEM

The Domestic Violence Order of Protection Process

Puerto Rico's Domestic Abuse Prevention and Intervention Act, Public Law 54 (Law 54), provides domestic violence victims with broad access to orders of protection. Under Law 54, a petitioner may request an order of protection in any Court of First Instance. The Court will hold an ex parte hearing on the petition, and may issue an ex parte order if the petitioner shows that "there is a substantial probability of immediate risk of abuse."¹ If the Court grants the petition, a hearing on the final order will be scheduled within 20 days, and the ex parte order remains in effect until the hearing date. A hearing for a final order is also scheduled within 20 days even when the Court denies the petition for an ex parte order.

The respondent in the case must be served with notice of the final hearing date, and if an ex parte order has been granted, the respondent is also served with a copy of that order. Under Law 54, police must receive a copy of each order of protection that is issued.

At the final hearing, both the petitioner and the respondent have an opportunity to present information to the court. The court may issue the final order of protection, deny the order, dismiss the case or extend an ex parte order if the final hearing does not go forward for a variety of reasons (respondent not served, respondent does not appear, petitioner does not appear).²

Law 54 also grants the Court authority to impose conditions as specific terms of an order, which cover a wide range of areas. These conditions include: a stay-away order from the person

¹ 8 L.P.R.A. § 625 [Ex Parte Orders].

of the petitioner; an order requiring the respondent to leave the dwelling which he or she shares with the petitioner regardless of any claimed property right; provisional custody terms; an order to pay child support; an order forbidding the disposal of any community assets; order to pay restitution, including compensation_for any property repair, medical expenses, and legal fees relating to damage caused by the respondent’s conduct; an order to surrender all firearms; and any other “order needed to enforce the purposes and public policy of this chapter.”³

The law does provide substantial access to protection orders for domestic violence victims, and grants significant authority to judges in framing individualized orders that are able to address a number of concerns. The court system and its partners have clearly made an effort to ease and improve the process with such measures as providing extensive evening hours when protection orders may be obtained at some judicial centers, and placing victim advocates and lawyers at the courthouse. In the many courthouses I observed, there were always a number of petitioners in the process of seeking protection orders, indicating that domestic violence victims are accessing this opportunity for protection. In practice, however, the protection order process has some gaps that need to be addressed in order to improve the justice system’s response to victims of domestic violence.

Issues in the Domestic Violence Order of Protection Process

The primary areas that require focus are: lack of comprehensive and easy access of petitioners to victim advocacy; unexplained significant decline in the number of final orders

² The Court can also modify a protection order on motion of one of the parties.

obtained from the number of ex parte orders issued; delays in adjudication of protection orders and lack of adequate data to fully address these issues.

Orders of Protection: The Numbers

There are several statistics available concerning the number of domestic violence order of protection cases in Puerto Rico. However, the categorization of the data does not provide enough detail to gain a complete understanding of the actual processing of protection orders. In addition, the inconsistencies in some of the data raise a concern about the reliability of data collection in this area.

In 2004, 28,837 orders of protection were requested in the Commonwealth, and 17,387, or 60.3% of these requests resulted in the issuance of an order. There has been some fluctuation in these numbers since 1999. For example, in 2002, 31,053 orders were requested, and 19,977 were granted, while in 1999, 25,905 protection orders were requested, and 20,105 were granted. A potential concern is that the rate of orders granted compared to those requested has declined from 1999 to 2004. While this percentage has not declined each year, by 2004 this rate was noticeably lower: 1999: 77.6%; 2000: 67.2%; 2001: 68.5%; 2002: 64.3%; 2003: 61.0%; 2004: 60.3%. While more information is needed before final conclusions are drawn, if correct, these statistics suggest that there has been some change in case processing, which is lowering the order of protection issuance rate. This could be any number of things (change in application of legal standard? changes in court attitude? increase in numbers of petitions not completed properly?).

³ See 8 L.P.R.A. § 621 [Protective Orders].

This point in the justice process deserves scrutiny in order to determine what is causing this decline.

The issuance rate for protection orders varies somewhat dramatically among regions. In 2004, for example, only 36.9% of the orders requested were granted in Aguadilla, while in Mayaguez, the percentage was 73.3%. Moreover, the issuance rate fluctuated from year to year somewhat significantly in some regions. For example, in San Juan, in 2003, the rate was 73.3%, but in 2004 that rate dropped to 47.1%. Conversely, in Carolina, the 2003 percentage was 36.9%, and then rose in 2004 to 62.4%. Such fluctuations raise questions about the reliability of the data, as it is unlikely that the issuance rate would vary so greatly in a one-year period. If the data are correct, however, this raises concerns about the consistency of the protection order hearing process.

A closer look at the numbers from the San Juan region is instructive. The 2005 figures were available for the San Juan region. During 2005, 2,857 protection orders were requested in the region. Of the 2,857 requests, 936 ex parte orders were issued, and 1,362 final orders were issued. Requests for orders were denied in 286 cases, and 273 orders were dismissed after issuance of the ex parte order and before granting of a final order. It is somewhat difficult to analyze issuance rates, however, because these statistics do not provide some necessary breakdowns. For example, we do not know how many of the 1,362 final orders issued, involved the same cases where the 936 ex parte orders had previously been granted. We also do not know how many of the 286 request denials were at the ex parte stage, and how many occurred at the final order stage. There are also a very large number of cases (1,993) that are transferred to other

jurisdictions, apparently after an ex parte order has been granted, and which are not included in the 2,857 number.⁴

The questions raised by these statistics suggest that OAT may want to provide more exact categories for capturing data, in order to make meaningful analyses of these figures possible.

Advocacy at the Courthouse

The process for obtaining a domestic violence protection order begins in the Investigations Room of the Municipal Court. The orders are available both at the Municipal Court area located within the central courthouse of each region, which also houses the Superior Court, as well as at satellite Municipal Courts located at various towns within the region. A person seeking an order first obtains a petition from marshals located at the front of the room behind a counter or desk. The person seeking the order then sits on a wooden bench in the Investigations Room to complete the petition. Upon completion, the petition should be brought to the Municipal Court clerk's office window, which is situated close to the Investigations Room, in all of the courthouses that I observed. Once the petition has been submitted to the clerk's office, the petitioner waits in the Investigations Room for the petitioner's court appearance. When the petitioner's case is called, the petitioner proceeds into a small courtroom, often without any seats. Only the judge and a marshal are present.

In this environment, assistance with completing the petition can be very important to a victim. In addition, victims who have taken the step to obtain an order are likely to be in need of

⁴ Moreover, OAT data from 2004 shows that 4,477 protection orders requests were made in San Juan. The large discrepancy between this figure and the 2005 figure suggest that the categories were defined differently in the two years.

a number of services. Through the Office of the Women's Advocate, victim advocates have been made available to provide assistance at services on-site at the courthouse. OAT has enabled this project by providing space in the courthouses for these advocates.

The courthouse advocates (Intercesoría Legal) assist victims with filling out petitions for protection orders, explain the legal process, provide short-term counseling, and make referrals for numerous services such as shelter, housing issues, counseling for children, and longer-term counseling. The relationship between advocates and their clients is confidential. The advocates can also reach out to police, for those victims who want to initiate criminal proceedings. The advocates accompany victims to their court appearances for protection orders; judges vary on whether or not they will permit advocates to speak on the victim's behalf. Civil attorneys are also available to provide free legal representation to clients in contested final protection order hearings, where they can also advocate for specific terms in the order on custody and visitation, and child support. However, these attorneys do not have the resources to represent the victims with other critical legal issues, including representation in family court for a permanent custody or support order. They refer clients with these needs to some civil legal assistance organizations, but there is a great need for more civil legal services for these victims.

Staff turnover as well as cutbacks has left several of the court victim advocates' offices understaffed from their original number. For example, in Bayamón, which had had two court victim advocates and one attorney, now had only one victim advocate staffing the office. In San Juan as well, there was currently only one victim advocate where there had previously been two in the office.

In the three courts I visited, the advocates' offices were not located close to the Investigations Room, often on a different floor. In Bayamón, the advocates' office was several floors above the Investigations Room behind a closed security area guarded by a marshal. Any victim wishing to see an advocate would have to navigate to the correct floor, tell the marshal the purpose of the visit, and wait while the marshal contacted the advocate, before the victim could be permitted to go to the advocate's office. While it is helpful to have security at close hand to an advocate office, this set-up discourages victim contact and likely decreases the number of victims who actually obtain services from the advocates significantly.

While advocates in all the courts I spoke to said that they tried to go to the Investigations Room periodically to see if there were victims needing assistance, in the hours I spent at the various courts, I did not see any advocates walking through the Investigations Room to check on victims needing assistance.⁵ This may be understandable, given the low staff numbers, because one victim advocate cannot be both helping a client at her office on a different floor and down at the Investigations Room at the same time. The advocates relied primarily on the marshals in the Investigations Room to direct victims needing assistance to the advocate's office. In some jurisdictions, the advocates had provided flyers that marshals were supposed to hand out to victims seeking protection orders, which explained the existence, purpose and location of the advocate's office at the courthouse. There were also some posters publicizing the victim advocate's office. Though I did not see this first-hand when observing protection order hearings, some of those interviewed stated that some judges would also refer victims to advocates during

⁵ I did observe one lawyer in the Room, but she was there accompanying a particular victim to a protection order hearing, and was not attempting to check for other victims.

the appearance. This is not a consistent protocol for judicial personnel, but is a practice of particular judges. While it is beneficial for these judges to take such an initiative, it would be most effective for there to be a consistent protocol in place, ensuring that victims are aware of the advocacy services at the courthouse. On the other hand, some judges interviewed could not identify the advocates and did not know where they were located in the courthouse.

There are several points in this procedure subject to breakdown. It was not clear that the marshals were consistently either informing victims orally about the office, or distributing the informational flyers. Even assuming that this was done regularly, there was no one assigned to escort victims to the advocate's office, which was on a different floor and often difficult to find. Further, if a victim were waiting in the Investigations Room for the victim's case to be called, the victim would not want to leave the Room and risk losing the victim's turn for a court appearance. After the appearance, when the process had taken a period of time, the victim was likely not interested in proceeding to the advocate's office. Even if the victim did, the victim would have missed receiving some assistance that could be critical before the court appearance, such as help with drafting the petition. Another concern is that even in courts where protection orders may be requested and hearings are held into the late evening, the victim advocates' offices were open only during daytime business hours. Therefore, victims seeking assistance during the evening, which are likely to be in crisis situations, will not be able to access advocacy services on-site.

Despite the gaps in the referral procedures, the advocate's offices were busy. In San Juan, for example, office personnel estimated that they saw 80 to 90 victims monthly during a slow period, and in the busier season, they saw 140 to 160 victims monthly. Victims in the focus

group listed early victim advocacy and a greater amount of interaction with advocates as a high priority.

Delays in Adjudication of Orders of Protection

A central reason for repeated adjournments in protection order hearings has been problems in the procedure for serving respondents prior to the hearing date.

Responsibility for Service of Orders of Protection

There has been confusion over which agency is responsible for serving respondents ex parte orders and summons to appear at the hearing on the final order. Law 54 states that service shall be performed “by a marshal or by any other law enforcement officer (§ 624).⁶ As a result, it has not been clear whether the marshals or police officers are ultimately responsible for this service. Judges from several different regions who participated in the focus group indicated the complicated patchwork of responsibility for service that exists. In many of these regions, marshals would serve one type of order, but police would serve a different type, or marshals would go to one town, but police would handle the rest of the region. In many regions, it appeared that any division of responsibility was informal, where police might be responsible, but then marshals would “help out” if needed. Moreover, the judges indicated that they have observed a particular problem with inter-jurisdictional summons, and estimated that 80% to 90% of hearings in cases involving inter-jurisdictional service were adjourned at least once.

⁶ See also 8 L.P.R.A. § 627 (b) (“Any order issued under this chapter shall be served personally to the respondent, whether through a marshal of the court, a law enforcement officer, any person over eighteen (18) years of age who is not a party to the case . . .”).

The consequence has been that there have been problems with the efficiency and speed of service, all of which places the victim at risk, and reduces judicial efficiency. The victim is in danger if service of the ex parte order is delayed, and when hearings on the final order are postponed due to failures of service, this impedes the judicial process. Moreover, though Law 54 states that service of these summons shall have priority over any other type of summons, in practice, the confusion over roles has meant that service of the orders has not always received this priority.

Some of those interviewed suggested that perhaps the twenty-day period for service should be extended to attempt to raise the service rate. However, a further extension of this period can create real hardship for a victim for several reasons. A judge is far more likely to impose conditions on a respondent after a hearing on the final order, so that an extension of the time until the final hearing delays the resolution of important issues for domestic violence victims. Moreover, it extends the time period in which the respondent may not have been served and therefore leaves the victim without any protection. Finally, an extension in time does not address the real issue – lack of clarity in role, responsibility and protocol. It is these issues that must be faced.

Many of the personnel involved are aware of the problems with service, and efforts are currently being made to address them. Recently, OAT convened a meeting with the Marshal's Office and the Police to begin work on a protocol that would clarify responsibilities and ensure more consistent and efficient procedures. The issues raised with inter-jurisdictional service suggest that any procedures developed must include service between regions. This effort deserves high priority to ensure that victims are not placed at additional risk.

Violations of Orders of Protection

Information from many sources indicates that violations of order of protection are not consistently charged or prosecuted. OAT data from 2003 - 04 show that these violations made up only 12.7% of the total number of domestic violence criminal cases that were open during that period. In contrast, in many jurisdictions, protection order violations make up approximately 30% of the domestic violence criminal caseload. Moreover, interviews of judges, advocates, and victims themselves suggest that a large number of violations are never addressed by the justice system.

When asked how often orders of protection were violated by respondents, one judge exclaimed, "All the time!" Other judges' estimates of violations ranged from 20% to more than 50%. A victim who participated in a focus group explained that her abuser violated the protection order frequently. He called her constantly at work, on her cell phone and at home, and on one occasion he went to her child's daycare center. She always called the police when this occurred. The police would summon him to court, but at the court appearance, the judge only warned him. He was arrested on only one occasion for violating the order. The victim stated that the prosecutor assigned to the case reprimanded her, asking her why she would want to damage the defendant's record. However, the case was finally processed and he was found guilty of violating the order.

As one participant in the batterers' focus group put it, "I had a protection order, but I always violated it . . . I always violated it because nothing ever came out of it." Moreover, the violations are not due to misunderstanding of the conditions or inadvertence. All of those in the batterers' focus group who had orders issued against them stated that they understood the

conditions of the order, and those who had violated an order said that they had done so knowingly.

Until recently, the violation of a protection order was chargeable as a misdemeanor (§ 628). In December 2005, the law was amended to make such a violation a felony. It is too early to tell whether the change in the law will affect the degree to which violations are enforced and charged, and ultimately whether or not the law provides a deterrent to defendants. One comment by a participant in the batterers' focus group does provide some hope that the change in the law may have some impact, though as indicated here, perhaps only in the level of opposition to the order itself. One of the participants stated that he had not thought it important to bring a lawyer for the protection order, but under the new law things would be different: "because before they would ask for it [a protection order] and you didn't care because you were only offending the judge and that was it, you know? Not now . . . now . . . the penalties are higher, so you think twice before going near a partner who has filed for it [the protection order], because it means jail time, and that's it."

II. THE CRIMINAL JUSTICE PROCESS

Tracking Cases through the Criminal Justice System

Statistics consistently demonstrate that a significant percent of the of domestic violence incidents reported to police ultimately do not result in convictions, and that there are large drops in case volume at two critical stages: at the time of filing of charges by prosecutors; and at the preliminary hearing stage. According to a recent study of male and female offenders under Law

54, which was commissioned by the Commonwealth's Department of Justice and conducted by researchers at the University of Puerto Rico, domestic violence has surpassed burglary to become the highest volume crime in Puerto Rico. However, it also has the lowest conviction rate, measured by percent of incidents reported to police which result in convictions. The study found that of the approximately 20,000 domestic violence incidents reported to the police each year, 17% resulted in convictions.

Statistics from the Department of Justice for FY 2003 -2004, which were included in the ARREST Report, are similar. They indicate that of the approximately 21,000 domestic violence incidents reported to the police that year, 4,072 (19%) resulted in complaints filed by the Department of Justice. Of the 3,795 cases that had been resolved by the end of the fiscal year, 68% resulted in convictions, 11% acquittals, and 21% were dismissed. Therefore, of the approximately 21,000 domestic violence incidents reported to police, by the end of the year, only 2,586 (12.3%) had resulted in convictions.

The low conviction rate for domestic violence crimes has several impacts. It fails to protect the victims of these crimes and it fails to hold offenders accountable for their conduct. It is a waste of judicial resources to process large numbers of cases that ultimately do not move forward. It is damaging to prosecutor morale, and it gives abusers cause to believe that they can manipulate the system or the victim to avoid conviction.

Interviews, direct observation, and written reports consistently point to three issues that are contributing to the low conviction rate: diversion sentencing; dismissals under *People v. Castellón*; and prosecution only when victims participate in the case. It is important to examine

each of these issues in detail. After understanding the problems, however, we then need to focus on why they are occurring.

After a brief summary of Puerto Rico's domestic violence statute, we will first examine the earliest parts of criminal case processing - arrests, charging, and the initial probable cause hearing. We will then explore the criminal justice case processing challenges outlined above.

Domestic Abuse Prevention and Intervention Act, Public Law 54

There are several domestic violence crimes chargeable under Law 54:

➤ **Section 3.1 - Abuse**⁷

A person may be guilty of a felony for causing physical or grave emotional harm. A person who makes use of physical force or psychological abuse, intimidation or persecution against a person with whom he has a relationship recognized under Law 54, to cause physical harm to the person, or property, or to cause grave emotional harm, is guilty under Section 3.1. Conviction on the charge brings a sentence of 12 months imprisonment, which with aggravating circumstances can be increased to 18 months, and with extenuating circumstance, can be reduced to 9 months.

➤ **Section 3.2 - Aggravated Abuse**⁸

When the abuse described above is committed with one or more of certain aggravating circumstances, a person can be charged under Section 3.2, which carries a punishment of three years imprisonment. If there are aggravating circumstances, the penalty may be raised up to a maximum of 5 years imprisonment, and if there are extenuating circumstances, the penalty may be reduced down to a minimum of 2 years.

➤ **Section 3.3 - Abuse by threat**⁹

Law 54 also includes a charge for threats to cause specific damage to a person or property of the person meeting the law's relationship definition. Conviction under Section 3.3

⁷ This has been codified at 8 L.P.R.A. § 631.

⁸ This has been codified at 8 L.P.R.A. § 632.

⁹ This section has been codified at 8 L.P.R.A. § 633.

carries a penalty of imprisonment for 1 year, which may be increased with aggravating circumstances up to 18 months, or decreased for extenuating circumstances to a minimum of 9 months.

➤ Section 3.4. Abuse by restriction of liberty¹⁰

The Law also carries a penalty of 3 years' imprisonment (up to 5 years under aggravating circumstances and down to 2 years with extenuating circumstances) for using violence or intimidation to restrain the liberty of a person meeting the statute's relationship definition.

➤ Section 3.5 Conjugal sexual assault¹¹

The sexual assault charge under Law 54 carries the heaviest penalties. A conviction for forced sexual assault results in 30 years imprisonment, with the possibility of up to 50 years imprisonment for aggravating circumstances, and a lowered penalty to a minimum of 20 years in extenuating circumstances. If this assault takes place after a forced entry into the victim's home, or a place where the victim is present, and the assailant had no legal right to be there, the penalty is raised to 60 years (up to 99 years for aggravating circumstances and down to 40 years in extenuating circumstances). Other types of sexual assault (accomplished by drugging the victim, where the victim has a mental disability or where the victim is forced to have sex with third persons) are subject to 15 years imprisonment (up to 25 for aggravating circumstances and down to 10 in extenuating circumstances).

Law Enforcement and Prosecution

Law 54 mandates warrantless arrests in domestic violence cases if the law enforcement officer has reason to believe that the person has committed a crime under the Law even if not in the officer's presence, or if the person is committing a Law 54 crime in the officer's presence.¹²

¹⁰ This section has been codified at 8 L.P.R.A. § 634.

¹¹ This section has been codified at 8 L.P.R.A. § 635.

¹² See Section 3.8, codified at 8 L.P.R.A. § 638. The forms for these reports are currently in the process of being revised, in order to better record information and evidence helpful in prosecution.

Law 54 also requires law enforcement officers to prepare a written report of any domestic violence incident, whether or not any criminal charge is filed.¹³

The Puerto Rico Police have created specialized domestic violence units in each region.¹⁴ However, the specialized Domestic Violence Officers (DVOs) are not usually the first responders on the scene, and until recently, they were not responsible for the crime scene investigation. The DVOs have been utilized to work primarily with the victim. DVOs are responsible for following up with a victim after an incident, and helping to place the victim in a shelter if the victim wants to go to one. The DVOs also follow up with victims before each court appearance to remind the victim of the court date, and to assist the victim in getting to court if the victim cannot do so independently. In addition, DVOs are usually responsible for serving ex parte orders and summons on respondents in protection order cases.

In my interviews, there was generally a positive response to the specialized DVOs, whom many felt were committed and worked well with domestic violence victims. It is also a benefit that the specialized DVOs are assigned to evening and night shifts, when domestic violence incidents are most likely to occur. However, because of the limited number of DVOs, as well as the scope of their responsibilities, domestic violence cases were frequently handled by non-specialized officers without specific training in domestic violence dynamics.

Police representatives interviewed stated that the DVOs are now going to have responsibilities in the investigation of domestic violence cases. This is a positive development, so that officers with training in domestic violence will become involved in the evidence

¹³ See Section 3.11, codified at 8 L.P.R.A. § 641.

gathering that is so important in successful prosecution of domestic violence cases. Interviews with both police and prosecutor representatives did not reveal a strong coordination between the two agencies in case development. Given the need for an increase in evidence-based prosecution, police and prosecutors should collaborate to develop consistent procedures in such areas as comprehensive incident report writing, crime scene photos and photos of all injuries; body diagrams indicating location of injuries; and medical documentation. In addition to the state police, each municipality also has local law enforcement. Many of those interviewed had little knowledge of the municipal police jurisdiction or the scope of their authority in the area of domestic violence cases. To the extent that they are involved in domestic violence criminal law enforcement, these police need to be trained and included in any effective domestic violence community response.

The Prosecutor's Office has specialized units in all thirteen judicial regions which handle cases involving domestic violence, sex crimes and crimes against children. At present there are 45 prosecutors working in these specialized units. Violence Against Women Act (VAWA) funding supports six prosecutor positions, though only four of these positions are currently filled. These four positions are included in the total of 45 prosecutors.

In 1987, an Administrative Order from the Department of Justice established a Victim and Witnesses Assistance Program in prosecutors' offices in each judicial region. While the advocates working in this program can be assigned to any felony case in the prosecutor's office, a high percentage of their caseload is made up of domestic violence cases. Program advocates

¹⁴ The number of officers in each unit varies by district, ranging from a minimum of four officers in some regions, to thirty-three officers in San Juan.

provide crisis intervention and counseling, make referrals to other agencies, explain the legal process, and inform victims of their rights.

The prosecutors in the specialized units do not further specialize within this group of cases, so that there is not a group of prosecutors handling solely domestic violence cases. The prosecutors in the specialized units currently do not operate under a vertical prosecution system, where one prosecutor handles a case from its earliest stages through disposition. In a few cases, where the charges are particularly severe and/or the victim is especially fearful, the office tries to assign only one prosecutor to handle all stages of the case. The specialized domestic violence prosecutors rotate through all phases of the prosecution process – charging, preliminary hearings, trials, sentencing, and bail reduction hearings. A prosecutor from the specialized unit is on call evenings and weekends.

The Prosecutor's Office considers increasing its number of specialized prosecutors one of its highest priorities in this area, since the overwhelming caseloads currently prevent them from instituting further specialized operating procedures. Representatives of many diverse agencies confirmed that the domestic violence prosecution units are understaffed, with very high caseloads. The proportion of the total number of prosecutors that is assigned to domestic violence does not match the proportion of the total prosecution caseload that is made up of domestic violence cases. Because the court dockets are not specialized, the domestic violence prosecutors must be available in all courtrooms at a particular stage. For example, in San Juan, there are three judges handling preliminary hearings simultaneously. Because a domestic violence case could arise in any of the three courtrooms, the specialized prosecutor must cover all three rooms (in addition to covering child abuse or sexual assault cases in any of the three

courtrooms). In addition, prosecutors note that it is well known that a greater number of domestic violence incidents occur in the evening and weekend hours, but currently only one specialized prosecutor is available during that time. The prosecutors interviewed also believed that vertical prosecution would be preferable, but is not possible under current staffing levels.

In my observation of courtroom operations, it was apparent that the current court structure, in which the domestic violence caseload is spread throughout multiple courtrooms, as well as the current prosecution structure, which did not maintain vertical prosecution, was not working. Because domestic violence cases were not concentrated in one docket, the specialized prosecutors would not be present when a domestic violence case was ready to be heard because they might be in other courtrooms. This reduces judicial efficiency. Of even more concern, however, was that judges, who were impatient with waiting for the specialized prosecutor, would simply have the general prosecutor in the courtroom handle the case. I also observed the converse situation – if a specialized prosecutor happened to be present in the courtroom when a non-specialized case was ready and the general prosecutor was not available, the judge would have the specialized prosecutor handle the appearance. Of course, this dilutes the value of the specialized prosecution unit.

This dilution was also made possible by the lack of vertical prosecution – the specialized prosecutors did not have particular ownership or investment in the domestic violence cases, because they had not been involved with them previously, and were often seeing the case files for the first time when they appeared in court. This traditional method of prosecution case processing, where any prosecutor is presumed to be able to pick up a case file in court and handle the court appearance, is completely ineffective in domestic violence cases. Not only is it

an ineffective prosecution technique, where case preparation and understanding of the individual dynamics is key, but it also can be very damaging and alienating to victims who are ill-served when they are examined at a hearing by a prosecutor who has not worked with them previously.

During my observation of one preliminary hearing courtroom, in eight of the nine domestic violence cases called on the calendar, the specialized prosecutor answered, “not ready,” because the correct case files were not present, or witnesses were not in court. There are likely several explanations for this situation, but if a specialized prosecutor has a specific assigned caseload, he or she will be familiar with the cases on the calendar, and be more likely to ensure that case files and witnesses are present and prepared.

Probation officers also felt that changes in prosecution case assignments caused delays in probation revocation case processing, and affected the quality and effectiveness in case presentation. For example, the probation officer may meet with a specialized domestic violence prosecutor to review and prepare the cases, which might also include preparation of witnesses, including the victim. However, on the day of the hearing, a different district attorney may be handling the case, frequently not even from the specialized domestic violence prosecution unit. This prosecutor would proceed with the hearing, but could not present the case effectively. Moreover, all of the time and effort spent in preparing the case would be lost.

Probation officers also noted that the attitude of the non-specialized prosecutors toward these cases often was not appropriate and they may not be interested in the prosecution of the revocation. As one officer put it, sometimes it seemed like there were “two defense attorneys” in the courtroom, because the prosecutor was so supportive of the defendant, and did not back up the probation officer’s position.

While there was not complete consensus, many individuals interviewed, from a variety of perspectives, including victims participating in the focus group, stated that the specialized prosecutors were more sensitive, more knowledgeable and more effective in prosecuting domestic violence cases than their non-specialized counterparts. It is therefore particularly critical that the prosecutor's office be able to build on this foundation, augment their specialized staff, and institute vertical prosecution. No domestic violence prosecution unit can be effective without adequate resources to devote to these difficult cases.

Police Reports, Arrests and Charging Decisions: The Sharp Decline in Case Numbers

Though it is the arresting police officer that appears in the Rule 6 probable cause hearing, in order to get to that stage, the officer must present the arrest charges to a prosecutor and a prosecutor must decide whether to write up a criminal complaint and formally charge the case.

Existing statistics appear to demonstrate that there is a large drop-off of cases between the arrest and the formal charging stage. Police statistics for 2004 and 2005 indicate that there are approximately 20,000 domestic violence calls throughout Puerto Rico annually. Department of Justice statistics for the 12 months between July 2004 and June 2005 indicate that a total of 8,338 cases were charged under Law 54. Because they come from different sources, the comparison of these two figures is not exact by any means. But it does indicate generally that more than 58% of the incidents that begin with police intervention are never charged as domestic violence crimes. Some drop-off is appropriate and routine, such as where police arriving on the

scene do not believe that a crime has occurred or prosecutors believe there is not adequate probable cause.¹⁵

However, a key statistic does not appear to be routinely captured – a measure of how many of the police calls actually result in arrests, as well as a breakdown of the reasons for any of these arrests not proceeding to charging. For example, police statistics state that there are approximately 20,000 domestic violence calls to police annually. Statistics from the Department of Justice indicate that 11,959 new domestic violence cases came into the office during the July 2004-June 2005 period. Because of differences in terminology and gaps in data, we cannot determine what the meaning of the large difference between these two figures is. For example, did the 20,000 domestic violence calls result in only 11,959 arrests? Are there some arrests that the police drop themselves and do not bring to the prosecutors' attention? Or is the number of arrests close to 20,000, but prosecutors are bringing charges in only 11,959 cases? It is critical to understanding the processing of criminal domestic violence cases for us to understand where in the criminal case process the large drop in cases occurs.

However, even utilizing only the data from the Department of Justice, it is clear that prosecutors do not go forward on a significant number (though a lower percentage) of cases that come into the office. As stated above, during the July 2004-June 2005 period, 11,959 new domestic violence cases came into the prosecutors' office. In addition, 233 cases were pending at the beginning of the period, so that there was a total pool of 12,192 cases that were available for action during this period. Of that number, 8338 cases, or 68.4%, were filed with the court for an

¹⁵ Department of Justice statistics indicate that for the same period, the prosecutor's office had "contact" with 23,203 persons relating to a domestic violence crime. The statistics do not explain what this "contact" means, and how this number relates to the number of cases charged or pending during this period.

initial probable cause hearing. The prosecutor did not proceed on 3,035 of the 12,192 cases, or 24.9%. Six percent were pending at the end of the year and .7% of the cases were transferred. Therefore, using only Department of Justice data, almost a quarter of domestic violence cases were not charged by the prosecutor's office during this period.

There are many possible explanations for this. It is routine and appropriate in any criminal justice system, for there to be some arrests not to result in formal charges; a prosecutor may determine that the officer did not have the probable cause necessary to make the arrest and that the case should not go forward. However, when there is a significant drop, it is clear that there exist one or more problems in the processing between police and prosecutors.

From the police officers' perspective, the prosecutors at this stage often refuse to file charges on valid cases. The prosecutors making this decision are often not from the prosecutor's specialized domestic violence unit, and have no specific training in domestic violence dynamics. According to some police officers, though the prosecutor is supposed to go forward on a case in which there is probable cause with or without victim participation, in reality most prosecutors refuse to go forward if the victim does not want to participate at that point. Police acknowledged that there were legitimate reasons for not proceeding in some cases, such as lack of sufficient evidence or some citizens using the law to have someone arrested inappropriately, but maintained that most often in domestic violence cases, failure to file charges resulted from prosecutor's refusal to proceed without victim testimony. As one officer stated, referring to the prosecutors, "they have us tied down."

Police officers raised other concerns with this stage of the process. Officers reported that prosecutors often were reluctant to apply for arrest warrants for alleged assailants who had fled

the scene of a domestic violence incident. Particularly if the incident occurred after business hours when there were no domestic violence specialized prosecutors on duty, the prosecutor on call would be likely to hold the warrant application until the next day when a domestic violence prosecutor could handle it. Police stated that this could handicap their pursuit of the suspect, because the victim might know the suspect's whereabouts shortly after the incident, but by the next day, the suspect was difficult to find. Police also maintained that though there is supposed to be a prosecutor on call during the evening, it can be difficult to find any prosecutor who will draw up charges after 5 pm, and particularly late at night after 10 pm, in areas outside metropolitan regions.

Prosecutors maintained that they charged all legitimate cases. Their concern was that in many of the cases brought to them by police, there was not adequate evidence to sustain the charge or successfully prosecute the case. Though they wanted to proceed without victim participation, they acknowledged that this was difficult in most situations because of lack of other sufficient evidence. Interviews with representatives from different agencies confirmed that lack of adequate evidence collection by police at the scene of a domestic violence incident is a problem. Some reported that regular police officers would at times defer investigating an incident until a domestic violence police officer was available, losing time in such critical tasks as gathering witness statements while the incident was fresh. In addition, there were reports that police officers may not be charging all domestic violence incidents and bringing them to the prosecutor's office. Instead, officers would direct victims to municipal court to obtain an order of protection.

Collaboration between police and prosecutors, both on evidence collection and on the consultation and charging process is necessary to address these problems. Moreover, the sources of the decline in cases from police reports to formal case complaints need to be determined and then addressed. Notably, the relationship between domestic violence prosecutors and domestic violence police officers seemed to be more positive from both perspectives, than when non-specialized prosecutors and/or police officers were involved. This again suggests that specialization of staff to handle these cases can benefit this relationship, which is critical to successful case prosecution.

Rule 6 Hearing

If a complaint is written in the case, the police officer appears before a Municipal Court judge for a probable cause determination. The defendant is present and is entitled to legal counsel at this stage. Prosecutors may sign complaints when the facts constituting the offense are known to them by information and belief (CPL § 5). Moreover, under Rule 6 of the Criminal Procedure Law, the judge may find probable cause “totally or partially on a statement due to information or belief with sufficient circumstantial guaranteed of reliability.” (CPL § 6). Put another way, the presence or involvement of the victim is not necessary for this determination.

Department of Justice statistics from July 2004 through June 2005 show that a strong majority of domestic violence cases charged and brought before the court for an initial hearing do result in a finding of probable cause. These figures demonstrate that of 12,305 charges

brought under Law 54, probable cause was found in 10,403, or 84.5% of these charges.¹⁶ The substantial drop in cases processed in the system does not appear then to occur at this stage of the process.

Bail and Release Conditions

In Puerto Rico, there is a constitutional right to bail for every person charged with a crime. The Office of Pretrial Services (OSAJ) was created by the legislature in 1995, as an independent agency, attached to the Department of Correction. OSAJ is responsible for obtaining and confirming information on the defendant that will guide the court in determining release conditions. This includes interviewing the defendant, and accessing local police data through Puerto Rico's Criminal Justice Information System (SUC), as well as the federal National Crime Information Center (NCIC) database for criminal history.

OSAJ interviews defendants when they are detained after arrest, before their first appearances in court. OSAJ prepares a written report for the judge regarding the information it has obtained, and makes a bail recommendation based on the following criteria: family support/community ties; employment history; financial resources; criminal history; history of prior failures to appear in court; the circumstances of the current charge; and other relevant information, such as substance abuse history, as well as history of mental illness and current mental status. A copy of the criminal history printout is attached to the bail interview report that

¹⁶ Please note that these numbers reflect the number of *charges* filed, and that multiple charges could be joined in one *case*. The Department of Justice statistics provide the number of cases filed during this time period – 8,338 - but do not show the number of percentage of cases filed for which probable cause was found for at least one of the charges (i.e., so that the case went forward). Such statistics would be helpful, as they would provide a more meaningful measurement of the number of cases moving forward in the system.

is provided to the judge. The OSAJ report and recommendation is designed to help the judge discern the risk that the defendant will fail to appear, that the defendant will commit new crimes, or that the defendant will interfere with public safety.

Those defendants who have submitted voluntarily to an interview by OSAJ are eligible for additional options, beyond just the setting of bail, including freedom under their own recognizance, free in the custody of a third party, or under deferred bail. The judge may also impose other conditions he or she deems appropriate, either in lieu of, or in addition to, bail. The OSAJ report's recommendations may include a variety of release conditions: not to commit any offense or associate with individuals who plan to or do commit an offense; to maintain a job or make efforts to obtain one; participation in substance abuse treatment programs, medical or psychiatric treatment; abstaining from alcohol or drugs and submitting to drug testing; an order barring possession of firearms, barring communication with a specific person and prohibiting contact with a specific area or place; and requiring attendance at meetings with an OSAJ officer. According to judges and OSAJ personnel interviewed, judges almost always accept OSAJ's recommendation regarding release.

OSAJ representatives noted, however, that despite the courts' broad authority in imposing release conditions, they did not routinely mandate domestic violence defendants to participate in batterers' intervention programs. In addition, participation in a batterers' intervention program at this stage, unlike participation in substance abuse treatment programs, did not "count" if defendants were later sentenced to attend such a program. They would not receive credit for the time they had participated in batterers' program sessions.

OSAJ also has a Specialized Arrests and Investigations Unit that is responsible for monitoring defendant compliance with any release conditions and informing the court of any failures to comply. Officers in this Unit carry weapons, and have the power to arrest defendants who fail to comply with their release conditions. The officers then bring these defendants to court so that a judicial officer may determine whether detention or a revision to the release conditions is warranted.

The existence of OSAJ provides a basis for pre-disposition monitoring of domestic violence defendants. Particularly in the current system, where a large number of cases are ultimately dismissed, this monitoring of conditions at early stages of the proceeding offers an important opportunity for state intervention with a large number of defendants through program conditions and compliance monitoring. Judges have extremely broad discretion when imposing bail and release conditions, and there appears to be no legal barrier to mandating attendance at batterers' intervention programs. Such conditions, and review hearings to monitor defendant compliance, should be seriously considered. Currently, the largest barrier may be the lack of staffing for this agency, which is very small, and is spread thin throughout the country and in both the major tasks of pre-appearance interviewing and post-release monitoring. However, unlike many jurisdictions, Puerto Rico has an agency already in place and responsible for the kind of screening and monitoring that is so critical in domestic violence cases. This foundation should be strengthened and utilized to monitor defendant compliance in conjunction with the court.

The Preliminary Hearing

If probable cause is found at the Rule 6 hearing, the case moves to a Superior Court judge for a preliminary hearing. At this stage the defendant may plead not guilty and proceed to trial or may plead guilty and proceed to the sentencing phase. As all domestic violence offenses are felonies under Law 54, a preliminary hearing must be held in all cases, which includes the calling of witnesses and introduction of new evidence. The defendant has the right to counsel, the right to cross-examination of prosecution witnesses and the right to introduce witnesses and evidence on the defendant's behalf (CPL § 23). If the judge finds that probable cause exists, she or he may modify any existing bail conditions and refer the defendant for trial.

The preliminary hearing is the stage at which the processing of domestic violence criminal cases needs the most serious attention. In particular, three practices are harming the successful prosecution of domestic violence cases: diversion sentencing; dismissals under *People v. Castellón*; and prosecution only when victims participate in the case. Further, these practices are damaging the credibility of the court system.

Sentencing Diversion and Section 3.6 of Law 54

Under Section 3.6,¹⁷ an offender convicted under Law 54 may receive a deferred sentence in certain circumstances, upon motion by either the prosecutor or defense attorney, or on the court's own initiative. The statute requires the court to take the victim's opinion into consideration before granting a deferment. Under this deferred sentence, an offender is sentenced

¹⁷ This section has been codified at 8 L.P.R.A. § 636.

to probation, and the offender must participate in a batterers' intervention program for a period of one to three years.

According to the statute, the diversion option is available only where: (a) this is the first time the offender has been convicted of an offense under Law 54; (b) the offender has not violated an order of protection; and (c) an agreement has been made between the prosecutor, the defense and the program to which the offender will be referred.

If the offender fails to comply with the probation conditions, after a hearing, the court may withdraw the probation and impose sentence with the penalties enunciated under Law 54. If the offender successfully completes the offender's probation conditions, the court, after a hearing and upon the recommendation of the program that the offender attended, may supersede (dismiss) the case. If the case is superseded, the case file is confidential, and can be used by the courts only for the purpose of determining if the person is a first time offender under Law 54, if he is ever considered for a deferred sentence under this section again.

The Department of Probation has had specialized domestic violence units in each judicial region for the past eight or nine years. The officers in the specialized unit are responsible for preparing pre-sentence reports for the judge and for supervising the conduct of offenders who are referred to probation, as part of the diversion sentencing option under Law 54. The Department of Probation estimates that the specialized officers have a caseload of somewhere between 22 and 45 cases, which is considered a normal caseload throughout the Department. Probation also follows-up with the victims in the cases they are handling. They coordinate with victim advocates to obtain information on victim status.

As part of a pre-sentence report, probation officers screen the defendant to see if he is eligible for diversion sentencing and appropriate for participation in a batterers' intervention program and other necessary treatment, such as substance abuse or mental illness. Probation maintains close contact with the batterers' intervention programs, as well as any other treatment, to monitor defendant compliance. The link with the government-sponsored program is facilitated by the fact that it is run by the Department of Correction, of which Probation is also a part. However, Probation works with the community-based private programs as well. The probation officers interviewed did not feel that they had problems in communicating with the treatment programs, and estimated that they were in contact approximately once a week. In addition, probation officers require Law 54 offenders to meet with them at least once a month, and also perform home visits approximately once a month.

Probation officers are responsible for identifying any condition violations by the offenders and in determining if they merit a motion to revoke probation. Officers stated that there are some general conditions applicable to all probationers as well as special conditions, such as participation in a particular type of program. Violations of a special condition were more likely to result in revocation. Termination from a batterers' intervention program could result in a revocation motion, but a probation officer may instead mandate a new program for the defendant, and thus modify the defendant conditions, without filing a revocation motion.

To initiate a revocation proceeding, Probation will file a complaint and report with the prosecutor. There is an ex parte appearance before a judge who will set a hearing date and order arrest of the offender. At the initial review hearing, the judge will determine if there is cause to revoke. If the judge finds such cause, there is a final revocation hearing. At this time, the judge

may revoke probation and restore the defendant's sentence for incarceration. The revocation proceeding is not before the same judge who sentenced the defendant. If an officer does not want to initiate revocation proceedings, but wants to bring some concerns to the court's attention, the officer may file a "situation and report" directly with the Court. The Judge will schedule a hearing to determine the issue and hear alternatives from the probation officer.

The Department of Probation offers a strong resource for monitoring of defendants and holding them accountable for failures to comply with conditions of the deferred sentencing. However, as discussed below, in practice it can be difficult to hold batterers accountable under this sentencing option.

Use of the Diversion Option in Practice

Many of those interviewed from diverse organizations noted serious concerns with the operation of the diverted sentencing option as actually practiced in the justice system. These concerns include: quality of batterers' intervention programs; court imposition of participation in batterers' program for far less than the one year (or 9 months with extenuating circumstances requirement); inadequate back up from probation or court when offenders violate terms of the program.

Batterers' Intervention Programs

Virtually everyone interviewed regarding batterers' intervention programs raised a number of serious concerns regarding both the programs' operation, and how the programs were utilized by the court system.

Certification Board for Batterers' Programs

Recently, a Batterers Intervention Programs Certification Board (the Board) has been formed to regulate batterers' intervention programs. The Board's first task has been to evaluate existing programs and to promulgate a list of those programs that meet, at least provisionally, the Board's operating requirements. This list has been distributed to OAT, which is distributing it to judges throughout the country. One concern is that the Board currently does not have the authority to actually close a program – i.e., the law does not state that a program cannot operate without certification from the Board. Secondly, while the Board can recommend programs to the Courts, it cannot prevent a Judge from making a referral to a non-recommended program.

Based on anecdotal evidence obtained during interviews, it is apparent that the work of the Board is critical. Several of those interviewed told stories of programs that did not actually hold sessions, but simply signed proof of attendance forms, and took offenders' money. Other programs did not follow recognized curricula for effective batterers' intervention. Victims participating in the focus group also expressed skepticism about diversion sentencing and batterers' program participation for defendants. One of the participants noted that her abuser had completed the diversion program for a domestic violence case he had which involved a prior partner. In her opinion, the program "helps him out . . . it's like a little school [on how] to abuse women more." Another participant agreed, saying, "that's where they learn how to mistreat [women]." The uneven quality of existing programs was demonstrated when the Board's provisional list included only a handful of programs.

Batterers' program representatives that were interviewed commented that there was no communication among the programs, to discuss best practices, consistency in procedures, and

common challenges. It is anticipated that the involvement of the Certification Board will promote consistency, and may facilitate better communication among the programs.

Batterers' Intervention Program Operation

There is one government-run batterers' intervention program, which is designed for defendants who are indigent and cannot afford to pay the fees of the private programs. This program, Living Without Violence, is approved by the Certification Board. It is coordinated by the Department of Correction. Living Without Violence offers sessions in Aguadilla, Bayamón, Caguas, Ponce and San Juan. The program is a 52-week curriculum. The groups are closed, meaning that participants must start at the beginning of the curriculum, and newly referred defendants must wait until a new session is beginning to enter the Program; they cannot join a group already underway. This can mean that there is a waiting list at times in some regions.

The numbers of clients served appears to be quite small: based on numbers provided by the Department of Correction, a total of 1,240 clients have been referred to the program from 1998 through 2005. Of those referred, 219 are currently in the program. If that number is deducted from the referrals, 1,021 are eligible to have completed the program. However, only 348, or 34% have in fact successfully completed. Of the 1,021 eligible participants, 139 or 13.6% were terminated from the program; 48, or 4.7% had their probation revoked; 16.7% completed their court sentence without having completed the program. A large number, 237 of the 1,021, or 23.2% were referred to private batterers' programs. Unfortunately, however, the statistics do not break down this number into those referred after initial screening because they are not indigent or otherwise do not meet the program criteria, and how many were referred to a private program by probation or the court after termination by the government program. Even

without this information, however, the numbers show that there are far fewer revocations of probation than would seem appropriate, given the percent of participants terminated from the program, and those which completed their sentence without completing the program.

The Department of Corrections also runs various programs within the prison system, in which components of the Living Without Violence program are included. Court planners may want to institute a full Living Without Violence program within the prison and to make it a mandatory component of a domestic violence offender's incarceration.

Representatives from a private batterers' intervention program that has received provisional approval from the Board stated that their curriculum is adapted from the Duluth model and groups are open to new participants, so that there is less of a problem in admitting participants into the program without delay. The clients are charged a fee under a sliding scale, which ranges from \$20 to \$50 a session, which lasts 1 ½ to 2 hours. Based on experience with numerous batterers' programs throughout the United States, these fees, particularly amounts over \$30 dollars, are higher than those charged at most programs.

The Board's evaluation of currently operating programs was clearly necessary. The ongoing work of the Board indicates that there may be few quality programs available for referrals of domestic violence offenders, and it is not clear that there will be adequate spaces at reputable programs in each region. Moreover, the government program has limited space, and due to its closed program philosophy, can have significant waiting lists. Private programs may be very costly, and space will be limited there as well. This issue is undoubtedly one that the Examining Board, as well as the court and its partners must address in the imminent future.

Moreover, it is important to keep in mind that existing research on batterers' programs has yielded mixed results on these programs' effectiveness in reducing offender recidivism. While it is better to have quality programs in place, there is truly no guarantee that they will actually change offender behavior. In my interviews, it was apparent that many in the system, including judges and prosecutors, had high expectations for the ability of these programs to impact behavior. The research simply does not bear this out, and so it is important that everyone in the system refrain from placing too much weight on this option. Any time batterers' programs are mandated as a condition, they should be accompanied by court and agency monitoring of defendant compliance. Participation in these programs is best used as a monitoring tool, rather than relied upon as a therapeutic intervention with a likelihood of success.

Accountability of Domestic Violence Offenders in Diversion Program

Program staff from both the government and the private batterers' intervention program emphasized the importance of accountability of their participants to the Department of Probation and to the courts, and expressed concern that the necessary back-up was not always present to ensure this consistent accountability. The Department of Probation, in turn, also expressed concern about lack of adequate accountability by the court at times.

➤ **Lack of consistent adherence to program and legal requirements**

Program staff raised a concern that sometimes judges ignored the requirements of particular programs or the mandates of Law 54 regarding eligibility criteria, length of participation, and termination practices. Under Law 54, only first-time offenders of this law are eligible for a diversion sentence and participation in a batterers' intervention program, instead of

incarceration. In addition, to be eligible, offenders cannot have violated a domestic violence protection order.

However, according to program representatives and others interviewed, some judges routinely authorize diversion sentences for defendants who do not meet these criteria, and refer defendants to a batterers' intervention program.

Quality programs will resist accepting these legally ineligible defendants, but it is difficult to oppose a direct order by a judge, particularly when programs are dependent upon referrals from the Court. Therefore, these programs feel pressured to accept ineligible participants. There are programs of lesser quality, which do not appear seriously concerned with actual curriculum or eligibility requirements, and will accommodate any defendant. Therefore, this practice by some judges benefits the less qualified and less scrupulous programs. The Examining Board is aware of this issue and is considering alternatives to address it.

Offenders themselves indicated that judges did not always follow program requirements, or prosecution and probation officer recommendations regarding sentencing and the appropriateness of the diversion option. As one batterer in the focus group stated, "I am grateful to the judge because he was considerate with me because the person who investigated my case did not want them to give me probation; he wanted me sent to jail. The same thing happened with the prosecutor. But the judge considered me and said, "the young man wants to rehabilitate himself, and has admitted his guilt, find another alternative." Another batterer commented, "the prosecutor was against me, but the judge gave me a chance, and the prosecutor didn't want him to, but since the judge has the last word . . ."

➤ Court-ordered participation for less than the legally mandated period of one year

Many of those interviewed stated that some courts will authorize a deferred sentence, but require participation in a program for eight sessions, 60 days or less, before dismissing the case. While it is not clear why this is happening, some of those interviewed speculated that this may be due to pressure to make plea arrangements that will dispose of cases, as well as due to a perception that the one year requirement is not necessary.

➤ Deference to Defense in Choice of Program

There were many reports that the court did not identify a specific program that would meet the conditions the court imposed. Rather, the court would defer to defense suggestions of particular programs, whether or not the court was aware of the program's operations, procedures or quality. Though the court had a list of programs available to it, it did not seem to reference that in imposing conditions. The court must take responsibility for assignment of program, to ensure that defendants are participating in quality programs that impose requirements, as well as sanctions for failures to comply. It is hoped that the work of the Certification Board will change this dynamic, by providing a short list to judges of programs meeting the Board standards.

➤ Motions for Revocation by Probation

Both program staff and Department of Probation personnel felt that they had good communication with each other about participant compliance. However, the program raised some concern that Probation officers will not move to revoke probation when the program has terminated a defendant, is concerned about potential violence, and recommends revocation.

➤ Back-up by Court and Prosecutors

Program staff and Probation officers agreed that frequently prosecutors or judges did not take violations seriously. They noted that, though Law 54 states that a diversion sentence should be revoked if a defendant violates the terms of the defendant's program participation, judges often do not grant revocation motions and routinely refer defendants to another program if the original program will not take them back.

Those interviewed provided the following examples of these problems:

- Though the BIP run by the Department of Corrections is for indigent clients, at least one judge has ordered the program to accept a wealthy defendant, because the judge felt that the Corrections' program would monitor the defendant more closely.
- Despite a defendant's failure to comply with program requirements, and against the recommendation of the program, a judge permitted the defendant to travel outside Puerto Rico.
- When a program rejected a convicted offender as too dangerous to participate in a community-based program and recommended incarceration, and the victim expressed fear if he was able to stay in the community, the judge permitted the offender to remain in the community, without permitting the Probation Officer who was present in court to be heard on the issue.

This conduct both fails to back-up the program and probation officers that are trying to instill clear and consistent requirements for offenders. Some personnel report that program participants recognize this situation and when warned about failures to comply, the participants will not take the warnings seriously. The program participants will comment that when they get before the judge, the warnings or failures will not be a problem.

Dismissals and *People v. Castellón*

Perhaps no issue raised more controversy during my interviews than the interpretation of a case from the Puerto Rico Supreme Court, *People v. Castellón Calderon*, 2000 TSPR 72 (2000), which involved judicial dismissal of a domestic violence case at the preliminary hearing stage in the context of a domestic violence matter. In the courtroom, I observed several instances where the judge would state that under *Castellón*, the court was required to dismiss a domestic violence case if the victim did not want to go forward with the proceeding, and the prosecutor agreed with this disposition. Other judges interviewed interpreted *Castellón* to be discretionary rather than mandatory, permitting them to continue with a case, whether or not the prosecutor and the victim did not want to proceed. However, many judges exercised that discretion broadly. For example, one judge stated that she would dismiss a case that involved verbal abuse or minor pushing. Under Law 54, however, these acts are criminal conduct. The different treatment that judges give to these cases creates inconsistency, and reduces respect for the judiciary. The law needs to be applied in the same way to all defendants. While judges obviously have discretion in certain areas, an issue as important as the judicial dismissal of domestic violence cases cannot be interpreted in dramatically different ways.

Due to the conflicting interpretations of *Castellón* and the great impact that the case has had on the processing of domestic violence criminal cases, I believe it is important to examine the case and its holding in greater detail. In *Castellón*, the defendant was charged with violating Article 3.1 of Law 54. At the preliminary hearing, the defense attorney informed the court that the victim did not want to pursue the case. The judge questioned the victim and required her to sign a form stating her lack of interest. The court, over the prosecutor's opposition, then

dismissed the case pursuant to Rule 247 (b) of the Rules of Criminal Procedure. The Circuit Court of Appeals affirmed the lower court's dismissal.

The Supreme Court discussed the standards that a judge must follow when considering a dismissal under Rule 247(b), as well as the specific application of those standards in domestic violence cases. The Court first examined the scope of the hearing that must be held prior to such a dismissal, and the factors that a judge must consider when making such a decision. The Court noted that while the judge had discretion to dismiss a case under this Rule, such discretion was neither absolute nor unlimited. The Court listed several factors that a court must take into consideration: the evidence possessed by the prosecutor to make his or her case; the nature of the crime; whether the accused is imprisoned or has been convicted for a related or similar crime; the time that the accused has been imprisoned, the possibility of threat or harassment; the likelihood that new or additional information may be brought in the trial; and whether it is in the best interests of society to continue the proceedings.

In addition, the Court noted that the court should examine the nature of the accusation, the type of crime in question, its seriousness, the frequency with which such cases are shelved; and the impact of the dismiss on the administration of justice and the rights of the accused. Not all of these factors must be present to justify a dismissal, and the judge may consider other relevant factors. Finally, the Court stated that both the defense and the prosecution must have a right to be heard on the issue. The Court's discussion emphasized that a judge's decision to dismiss under Rule 247(b) is a serious one, that cannot be made without real consideration of several relevant factors, and which must take into account the state's interest in protecting society.

The Court then considered in the special context of domestic violence, whether an alleged lack of interest by a domestic violence “constitutes a determining factor to be considered by the court” in deciding whether to dismiss the case. The Court’s answer was an unequivocal “no.” The duty to implement penal law rests on the prosecutor, and this duty cannot be usurped or relinquished. Victims, no matter how valued they are in the legal system, are not parties to a criminal proceeding and “do not have the right to veto the action or course the prosecutor may deem applicable in the case.” While private individual’s interests are injured during the commission of the crime, such conduct is considered to be a crime against society, and “fundamental social and communal principles are also affected.”¹⁸ As a result, even if a victim has forgiven her or his victimizer, the decision to proceed lies with the public prosecutor, who is charged with enforcing the penal law, and protecting the interests of the community as a whole. Therefore, the Court stated, “we determine that when the Public Prosecutor opposes the dismissal of a case, we cannot automatically shelve or dismiss the case, with the consequences this implies, because the victim of the crime has stated his or her lack of interest in pursuing the case.”

In addition to the hearing discussed above, in order for a judge to grant a dismissal under Rule 247(b), the dismissal must be “convenient for the furtherance of justice.” The Court considered whether a dismissal due to a victim’s stated interest in not pursuing the case, in the context of a domestic violence prosecution under Law 54, would meet this standard. Again, the Court answered with a clear “no.” The Court noted that there is a clear public policy against

¹⁸ This is why criminal matters are captioned “*Pueblo v. Jose Smith*,” as opposed to “*Mary Smith v. Jose Smith*,” to make explicit that it is the interests of society, and not only the interest of the harmed individual, that are being vindicated through this criminal prosecution.

domestic violence in Puerto Rico, which has been explicitly stated by the legislature in Law 54.¹⁹ Moreover, as the Court pointed out at length, a victim’s alleged “lack of interest” may be due to a number of factors that have nothing to do with the merits of the case, and may result from threats, harassment, fear, financial dependence, lack of shelter, religious beliefs, lack of family or institutional support, or promises that the violence will never happen again.

For several paragraphs in its opinion, the Court discussed how the psychological dynamics of domestic violence, the practical obstacles to leaving a domestic violence relationship, as well as pressures to drop charges from a variety of sources, including the defendant and the defendant’s attorney, as well as the victim’s family and respected community figures such as religious counselors, can all contribute to a victim’s decision to return to an abusive relationship and to decline to participate in a prosecution: “[i]t is due to these factors and the particular characteristics of the abusive conduct that in no few occasions, the victim of this serious crime finds herself or himself in the unwonted situation of coming before the Court to withdraw the charges.” As a result, it cannot be “convenient for the furtherance of justice” in a domestic violence case for the court to automatically dismiss the case in the face of opposition by the prosecutor when the victim states that she or he is no longer interested in the case.

Therefore, the Court first made clear that a judge’s decision to dismiss a domestic violence case under 247(b) cannot be made without careful consideration of several factors, and cannot be based solely on a victim’s stated desire not to proceed. The Court then emphasized all

¹⁹ See Domestic Abuse Prevention and Intervention Act, 8 L.P.R. A. § 601 [Public Policy] (“The Government of Puerto Rico recognizes that domestic abuse is one of the gravest and most complex problems of our society . . . As public policy, the Government of Puerto Rico assertively repudiates domestic abuse as contravening the values of peace, dignity and respect that the People should maintain for individuals, families, and the community in general.”).

of the reasons that a victim's alleged desires cannot be taken at face value in any event, and pointed out that "a number of jurisdictions have discovered that the [victim] withdrawal rate is significantly lower when victims are relieved of the burden of the decision to prosecute" since they are no longer subject to the same pressure from a defendant who knows that a case will proceed whether or not the victim participates. The Court concluded that all of these factors, together with the Commonwealth's strong public policy against domestic violence, make clear that dismissal under 247(b) due to victim's statement does not meet the "convenience for the furtherance of justice" standard required under the Rule.

Finally, because the lower court judge's decision under Rule 247(b) is discretionary, an appellate court must review that decision under a highly deferential "abuse of discretion" standard. Even under this deferential standard of review, the Supreme Court held that the dismissal of case under Rule 247(b) by taking into consideration only the victim's stated lack of interest in moving forward with the case, constitutes "an abuse of discretion." The Court then reversed the lower court's dismissal and remanded the case back to the preliminary hearing stage for a Rule 247(b) hearing based on the standards enunciated in the decision.

Read in its entirety, *Castellón* is a strong statement against the summary dismissal of domestic violence cases, providing extensive knowledge of the dynamics of domestic violence that may lead a victim to state in court that victim does not want to proceed, when in fact this statement is made in fear, or due to economic obstacles, or because of pressures from outside parties. Moreover, the case also sends a strong message emphasizing the broader responsibility of the court and the prosecution in our system of government to proceed with cases for the good of the public welfare, whether or not private parties want to participate.

It is therefore ironic that the *Castellón* case is being used in some courtrooms to summarily dismiss cases based on victim statements of their desire not to proceed – in other words, in a manner precisely opposite to the meaning of the case. To get to this interpretation, clearly counter to the case’s holding, some prosecutors and some judges have read the case’s holding very narrowly and emphasized a few isolated statements in the opinion.

After discussing the role of the prosecutor to protect the public, the *Castellón* Court states “[g]iven the above, we determine that when the Public Prosecutor opposes the dismissal of a case, we cannot automatically shelve or dismiss the case . . . because the victim of the crime has stated his or her lack of interest in pursuing the case.” Those using *Castellón* to support summary dismissals, seem to argue that because the prosecutor’s opposition is included in this statement, that the converse must be true: when a prosecutor *does not oppose* the dismissal of a case, a court *can* automatically shelve or dismiss a case on the basis of a victim’s statement. Therefore, according to supporters of this interpretation, as long as a prosecutor agrees, there is no obstacle to dismissing once the victim has stated her or his disinterest in court.

However, this conclusion neither follows logically from the Court’s holding, nor is it consistent with the entire opinion. The case at bar concerned a situation where a prosecutor opposed the dismissal, so the Court naturally considered this state of affairs when making its determination. However, it did not state or imply that a prosecutor’s support of a dismissal motion would change the Court’s holding. Rather, the opinion speaks strongly of a prosecutor’s responsibility to protect the public as a whole, so that a prosecutor’s support of a dismissal based solely on the statement of a private individual would not be appropriate. And, as discussed above, the Court takes great pains to express its concern that victims’ statements of interest

cannot be taken at face value because of all the external pressures on them. This concern exists with or without the prosecutor's support of the dismissal. Therefore, it would fail to take account of the pressures on a victim to automatically dismiss a case based on her or his statement just because a prosecutor did not oppose the dismissal. Further, Court's emphasis in the first part of the decision on the limitations of a judge's discretion under Rule 247(b) and his or her responsibility to consider several factors in making the dismissal decision runs counter to the endorsement of any type of summary dismissal.

Two other statements in *Castellón*, however, provide at first glance some support for the summary dismissal interpretation. In discussing the range of factors that can be considered by the judge at a dismissal hearing, the court states that “[i]n the hearing the court may consider the lack of interest in the case *in the context of the analysis of one of the factors which we stated that the court must consider prior to dismissing a charge or accusation. This is, to analyze whether the Public Prosecutor possesses the necessary evidence to make his or her case.*” (emphasis added). This statement indicates that a victim's lack of interest can be a relevant factor, but not in and of itself. It should only be considered as part of a determination of whether or not the prosecutor has adequate evidence to proceed in the case. If a prosecutor's has other sufficient evidence, this lack of interest itself is not a reason not to proceed. The Court's comment merely states the uncontroversial point that a prosecutor must have adequate evidence to proceed in a case, and if he or she does not, the Court may dismiss the case.

After reiterating the importance of considering a number of factors, the opinion states that “[t]he court may also consider whether the victim's lack of interest is based on a genuine plan to establish a good family cohabitation, for example when the victim and the abuser show that they

are receiving professional help for modifying the abuser’s conduct.” The statement first indicates that the Court must determine whether or not the victim’s lack of interest is “genuine,” and not a result of the many pressures the opinion discusses at length. If this is true, the Court does state that a court may consider the victim and abuser’s situation as one factor. However, the court emphasized again that this is only one factor of many to be reviewed before a dismissal is appropriate.

The tenor of the *Castellón* decision – focus on the responsibility of the court and prosecution to protect the public welfare; concern for the pressures on victims caused by reliance on their statements; and emphasis on the rigor of a dismissal under Rule 247(b) – demonstrates that it was not designed to permit prosecutors and judges to abdicate their responsibilities and dispose of cases on the basis of a victim’s public statement.

Puerto Rico’s Criminal Procedure Law is based on the Penal Code of California, and § 247 (b) is analogous to Cal. Penal Code § 1385.²⁰ Of course, this does not mean that the interpretation of the Puerto Rico statute must be bound by case law interpreting the California provision. However, as the Puerto Rico Supreme Court noted in *Castellón*, due to the relationship between the two provisions, the interpretation that the courts have given to the California statute can be quite instructive for analysis of Section 247(b).

A review of California case law demonstrates that the judicial dismissal provision is used largely when there is a procedural or substantive defect in the prosecutor’s case that creates unfairness to the defendant. In these situations, the provision is used as a safety valve, for the

²⁰ California Penal Code § 1385 provides, in pertinent part: “The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes.”

court to step in and dismiss the case to avoid this prejudice to the defendant. Section 1385 is not used routinely and the courts have interpreted its requirements strictly.

For example, in *People v. Ferguson*,²¹ the trial court dismissed a drug case against the defendant because the prosecution was not ready to proceed. However, the appellate court reversed the dismissal, holding that the trial judge had abused his discretion because there was neither showing of detriment to the defendant nor any indication that dismissal was necessary to protect his right to a fair trial.²² The defendant was not in detention, and the dismissal was made well before the expiration of a statutorily- mandated 10 court day period. The court stated that:

Permitting trial judges to make liberal use of section 1385 to avoid criminal prosecutions where probable cause exists to believe conviction is warranted would be contrary to the adversary nature of our criminal procedure as prescribed by the Legislature. Under the statutory scheme which has been established for the prosecution of crimes, the district attorney is required to ‘institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when he has information that such offenses have been committed. The committing magistrate *must* hold the defendant to answer ‘if there is some rational ground for assuming the possibility that an offense has been committed and the accused is guilty of it.’ Under ordinary circumstances, it would frustrate the orderly and effective operation of our criminal procedure as envisioned by the Legislature if without proper and adequate reason section 1385 were used to terminate the prosecution of defendants for crimes properly charged in accordance with legal procedure.²³

The appellate court then reversed the trial court’s dismissal.

²¹ 218 Cal. App. 3d 1173, 1176 - 8 (Cal. Ct. App.1990).

²² *Id.* at 1183.

²³ *Id.* at 1182-83 (quoting *People v. Orin*, 13 Cal.3d 937, 945-47 (Cal. 1975)(emphasis in original).

In *People v. Orin*,²⁴ the California Supreme Court noted that “Courts have recognized that society, represented by the People, has a legitimate interest in ‘the fair prosecution of crimes properly alleged.’ A dismissal which arbitrarily cuts those rights without a showing of detriment to the defendant is an abuse of discretion.”²⁵

Some California courts have utilized section 1385 in sentencing decisions to avoid the results of the states’ “three strikes” law,²⁶ in which a defendant with two prior felonies, may receive an extremely long sentence when he is convicted of a third felony, no matter what its circumstances. For example, in *People v. Carter*,²⁷ the defendant was charged with possession of .10 grams of cocaine, five dollars worth of rock cocaine. Four and a half years earlier, he had been convicted of two robberies, and one count of residential burglary, all of which involved the same incident. These prior felonies qualified as “strikes” under the three strikes law, and under the statute, if convicted of drug possession, the defendant would face 25 years to life in prison. The trial judge stated that the current charge did not allege that the defendant was selling drugs or involved in any other crime of violence, and was instead intending the rock cocaine for her own use. He then struck two of the prior felonies and sentenced her to 32 months, which included an enhancement as a “two strike” offender.

However, the appellate court reversed the dismissal, both because the trial judge failed to state his reasons for the dismissal in the minutes, and because the dismissal was an abuse of

²⁴ 13 Cal. 3d (Cal. 1975).

²⁵ *Id.* at 947 (citations omitted).

²⁶ Cal. Penal Code § 667 (b) - (i).

²⁷ 49 Cal. App. 4th 567 (Ct. Cal. App. 1996).

discretion.²⁸ The appellate court found that the trial court was concerned with the effect that application of the three strikes law would have on the defendant based on what the court considered to be a relatively minor offense, and that the court wanted to facilitate a plea. These were not proper grounds for a dismissal - “personal antipathy” for the three strikes law or desire to speed cases through the system does not serve the interests of society in prosecuting offenders for crimes that have been properly charged.²⁹

The California Supreme Court has also emphasized that dismissal under section 1385 is not to be taken lightly, or done merely for administrative reasons: “A court abused its discretion under section 1385 if it dismisses an action for judicial convenience, because of court congestion, to avoid the cost of incarceration, or simply because a defendant pleads guilty.”³⁰ Moreover, the court may not use section 1385, if it is “guided solely by its personal belief regarding the effect a particular sentencing law may have on a defendant, while ignoring defendant’s background, the nature of a defendant’s present offenses, and other individualized considerations.”³¹

Further, the statute’s requirement that the judge must state his reasons for dismissal in the minutes has been interpreted strictly. Citing previous cases, the *Orin* Court stated:

“The statement of reasons is not merely directory, and neither trial nor appellate courts have authority to disregard the requirement. It is not enough that on review the reporter’s transcript may show the trial court’s motivation; the *minutes* must reflect the reason ‘so that all may know why this great power was exercised.’”

²⁸ *Id.* at 572-73.

²⁹ *Id.* at 573-74.

³⁰ *People v. Superior Court (Romero)*, 13 Cal. 4th 497, 531 (Cal.1996).

³¹ *Id.* at 531.

The underlying purpose of this statutory requirement is “to protect the public interest against improper or corrupt dismissals” and to impose a purposeful restraint upon the exercise of judicial power “lest magisterial discretion sweep away the government of laws.”³²

The California courts have also stated that a dismissal under Section 1385, even where a defendant’s due process rights may have been violated, is a disfavored remedy, “where less drastic remedies exist.”³³ In *People v. Thornburg*, the trial court believed that defendant’s due process rights may have been violated when the prosecutor failed to present exculpatory evidence of which it was aware to the grand jury.³⁴ The appellate court held however, that even if this amounted to a due process violation, the trial judge had other alternatives than dismissing the case under section § 1385, such as ordering the case resubmitted to the grand jury.³⁵

California case law indicates that judicial dismissals are not intended to be utilized routinely, and they should not be used to move cases through the system, or to avoid particular sentences with which a judge may not agree. In *Castellón*, the Puerto Rico Supreme Court held that in the specific context of domestic violence, the judicial dismissal should not be used to dispose of cases when victims state a disinterest in proceeding. As both the California case law and the *Castellón* opinion indicate, to dismiss cases in this way would ignore the strong interest that society as a whole has in controlling crime and ensuring that defendants who have been properly charged are prosecuted.

³² *People v. Orin*, 13 Cal. 3d 937, 944 (Cal. 1975) (citations omitted) (emphasis in original).

³³ *People v. Thorbourn*, 121 Cal. App. 4th 1083, 1090 (Cal. Ct. App. 2004). *See also* *People v. Ferguson*, 218 Cal. App. 3d 1173 (Cal. Ct. App. 1990) (noting that other alternatives to dismissal were available, including a slight delay in proceeding to trial of one half day, when assigned counsel was expected to be available).

³⁴ *Id.* at 1088-89.

Presence of the Victim

There is a debate among domestic violence policy-makers and practitioners about whether or not it is fruitful to proceed in a domestic violence case when the victim who is involved does not want the case prosecuted. There is the perspective, particularly among some victim advocates, that to proceed against the victim's wishes disempowers and re-victimizes the victim. The question then arises whether the Puerto Rico Prosecutor's Office may have adopted this policy perspective, which could serve to explain why cases rarely go forward without victim involvement.

While this perspective is certainly legitimate and worth debating, it is only valid as a basis not to proceed when it is clear that it is against the victim's wishes. In addition, there must be a distinction between proceeding by using coercion to obtain victim participation, and proceeding without requiring victim involvement.

It does not appear that the small number of cases that go forward without victims is the result of a deliberate policy by the Prosecutor's Office. First, both their official policy, as well as their stated position during the interviews, was that they would proceed without victims as long as there was sufficient evidence. Second, because neither the prosecutors nor the court followed up consistently with victims who did not appear at court proceedings, there was no way to ascertain whether they were frightened, intimidated or truly unwilling to be involved. By questioning the victim in open court, with the defendant present about whether the victim wanted the case dismissed, the court could not be sure of the victim's true wishes. And finally, because there has been no widespread implementation of evidence-based prosecution, it is also difficult

³⁵ *Id.* at 1090.

to ascertain whether victims do not want the case to go forward at all, or rather just do not want to have to testify in the case. While the impact of domestic violence prosecution policy on victims is an important subject, it cannot be discussed in a meaningful way until it is clear how victims actually would be impacted were more comprehensive prosecution procedures, as well as access to services, were in place.

The prosecutors do have an official policy promoting domestic violence prosecution with or without the victim. In 1998, the Secretary of Justice issued an Administrative Order which stated that prosecutors cannot drop charges in domestic violence cases simply because victims do not want to participate in the prosecution. If there is any other evidence besides victim testimony that can support a prosecution, the prosecutor must proceed with the case.

In reality, however, as reported by several different partners, including prosecutors themselves, many if not most, cases without victim involvement do not go forward. Interviews and personal observation both demonstrated that victims are expected to be present at the preliminary hearing if the case is to go forward. Victims are routinely summoned to be in court, and when a case is called, they are required to come into the well, and stand before the judge. This practice raises a number of concerns. First, it puts victims through both inconvenience and trauma that may be unnecessary. They often must wait for a long period for their case to be called, during which time their abuser may be either in the same seating area, or if incarcerated, may be sitting in a direct eye line to the victim. Because there was no security officer monitoring this, victims are placed at risk by the proximity of their abusers, or their abusers ability to glare at them from the bench where they are seated if incarcerated. They then must

stand before the judge, often next to the defendant and be questioned in open court about their willingness to go forward, and about the facts of the case.

Second, it is highly likely that many victims do not want to appear in this situation. Under the current system, it appears that cases are routinely dismissed at this stage if the prosecutor cannot present the victim in court at the preliminary hearing.

The trauma faced by the victim during this appearance is exacerbated when the prosecutor in the case has never spoken with the victim, and is not familiar with the case. In my observation, the victim was standing near the police officer and was virtually never consulted or even spoken to by the prosecutor. Not only is this very difficult for a victim already in an intimidating situation, it is not an effective method of case prosecution. The prosecutor cannot examine the victim as effectively on the stand, and an intimidated witness is far less likely to provide comprehensive testimony. Again, vertical prosecution can help in this regard.

Of most importance, however, is the institution of evidence-based prosecution. At the preliminary hearing, the prosecutor must present enough evidence to establish probable cause, in order for the case to go forward to trial. The prosecutor is not, however, required to present her or his complete case at the preliminary hearing stage. If the prosecutor can establish probable cause through evidence other than victim testimony, this will satisfy her or his burden at this stage. Therefore, prosecutors must develop crime collection strategies in collaboration with police, and prosecution techniques (e.g., including use of third party witnesses, police officer testimony, use of hearsay exceptions to admit evidence such as 911 calls) that will enable a far greater number of prosecutions without victim involvement.

This will create several benefits. Most important, a victim will not have to be present at the hearing. Further, even if the prosecutor plans to use the victim at trial, this will preserve the victim's testimony until that time. The defense will not know exactly what the victim will say and the victim cannot be impeached due to any inconsistencies between preliminary hearing testimony and her or his testimony at trial. And, of course, if the victim does not want to participate at further stages, the prosecutor's emphasis on other evidence collection will make it more likely that she or he will be able to proceed with the case without victim participation. A final benefit is that without the victim's presence, the *Castellón* dismissals will not be obtained by questioning a victim in open court, in the presence of the defendant, about the victim's interest in the case.

A prosecutor will not be able to proceed in all cases without victim testimony. However, the prosecutors and the police, as well as the court, should become accustomed to proof of probable cause without the victim. This should be the first alternative pursued; only if it is not possible, will the prosecutor rely on victim testimony. From my knowledge of jurisdictions throughout the country, as well as from conversations with prosecutors on this specific issue, I do not know of any reason for a victim to be present in open court during a preliminary hearing to establish probable cause, where other evidence is available. This is an undesirable practice, which must be examined and revised in order to improve the criminal justice system's response to domestic violence.

Explanations for the Drop in Domestic Violence Cases From Reports to Convictions

The dramatic drop in cases from the police report stage to conviction is the most significant issue faced by the Puerto Rico court system and its partners. Searching for an explanation for this phenomenon raises the fundamental question about domestic violence response – is it the result of self-correction by the system of a domestic violence law that does not provide enough options that meet the realities of the cases, or is it the result of a deep attitudinal problem on the part of court and partner personnel that neither recognize the seriousness of domestic violence crime, nor understand the danger in which victims are placed?

Based both on my experience in other jurisdictions and my work in Puerto Rico, I believe that Law 54 does raise some concerns that may lead to “self-correction” in some cases, but that this does not explain the major drop in domestic violence cases. It is a significant attitudinal problem that leads justice system partners to evade and in some cases actually disregard the Law’s requirements.

Law 54 is an ambitious law that treats domestic violence as the serious crime that it is. However, though there are some distinctions made in the law between levels of abuse, by treating all domestic violence crimes as felonies, the Law leaves few alternatives for conduct that may deserve lesser penalties. There is are many types of behavior that is domestic violence, and the law must recognize and make distinctions between conduct that ranges from attempted murder to verbal abuse without any physical contact. Several judges interviewed or participating in the focus groups expressed this concern. While all judges want violent and dangerous conduct to be treated seriously, some of those interviewed were concerned that far less serious cases were not screened from entering the system. As a result, the courts were flooded both with petitions

for protection orders and criminal cases, without any differentiation as to their seriousness or their merit from a legal standpoint. Without this screening or differentiation, lots of cases that could be resolved through other means are passed through the justice system, due to what one judge termed a “chain of fear.” At each stage of the process, the state actors are fearful that a lack of doing something could result in a victim being harmed, and so decide to err on the side of moving the case through the system – a police officer makes an arrest and refers the case to the prosecutor; the prosecutor in turn brings charges and submits the case to the court; the judge in the Investigations Room feels the pressure to find probable cause.

Without this differentiation in cases and without an option for misdemeanor sentencing for conduct on the lower end of the range, there may be a backlash that harms the serious treatment of all levels of domestic violence crime. This backlash exists today in Puerto Rico. Prosecutors and judges are frustrated because Law 54 does not provide them charging and sentencing options that can result in convictions for behavior at the lower end of the range. They may not be able to gain sufficient evidence if for example, victims do not want their partners to receive a felony conviction. Prosecutors and judges may also believe that a felony conviction is not appropriate for some of this conduct, which may lead to the diversion sentences or dismissals discussed in this Report.

Unfortunately, however, it is not likely that the diversion or dismissals are limited to these “lower end” cases. Once these particular procedures are developed, and there is general resentment about Law 54, the justice system does not make fine distinctions, and behavior that clearly deserves felony charges and sentences, receives the same treatment. There is a general dilution of all domestic violence crimes.

Because if this concern, I think it is worth exploring whether a misdemeanor option for some of the “lower end” cases would be beneficial. There is the danger of course, that such an option would become a depository for all domestic violence cases and therefore will undermine efforts to strengthen domestic violence prosecutions and sentences. A misdemeanor option would function correctly only if the attitudinal problem discussed below is addressed.

While I do believe that the limits of the Law may be causing some legitimate concern by judges and prosecutors, I also suggest that this concern does not explain the small number of cases that move forward through the system, and the diversion and dismissal procedures that exist. The recent study of Men and Women Convicts Under Law 54 found that the courts sentence 47% of domestic violence offenders as if there were extenuating circumstances, which reduces the one-year minimum incarceration to nine months. In addition, 62% of domestic violence offenders who were convicted of aggravated abuse were sentenced with extenuating circumstances, and a full 70% of domestic violence offenders are given the sentencing diversion and probation.

Moreover, despite some judges’ concern about the “chain of fear” which leads all in the system to move every case forward, in reality a very small number of cases make it through the criminal process. Unfortunately, the procedures for dismissals and diversion sentencing require a significant misreading of the requirements of 247 (b), and at times, evasion, or outright disregard for the legal requirements of diversion sentencing. This can only be explained by an attitude about domestic violence cases, which contends that much of the behavior does not merit criminal treatment, that defendants can be better helped by treatment, and that victims have problems that contribute to the dysfunction in the relationship. That these beliefs can persist in the face of

abundant evidence of the escalation of domestic violence, of the pain suffered by victims and their children, and of the fatalities which are regular committed by defendants who did not have previous “serious” criminal records, demonstrates how ingrained these attitudes are.

Attitudes are difficult to change, and yet this is a fundamental challenge for the Puerto Rico court system and its partners. While this may be a long process, it is already beginning to be addressed, and this must continue to be a focus of efforts to improve domestic violence response. Comprehensive training programs and exposure to peers in jurisdictions where significant efforts have been made in this area would be very helpful. The leadership of members of the justice system in Puerto Rico who understand the critical nature of addressing domestic violence is also important. And, the successful operation of a pilot specialized court project can demonstrate to others how significant new procedures, new collaborations and new attitudes can be to a community.

III. SERVICES AND ADVOCACY FOR VICTIMS OF DOMESTIC VIOLENCE

Puerto Rico has a well-organized infrastructure of shelters and community-based victim advocacy organizations. In addition, the presence of the Office of the Women’s Advocate provides a strong voice for victims of domestic violence in the public and with government agencies. This foundation provides a good base from which to work on improved domestic violence response.

Many of those interviewed, including victims in the focus group, however, expressed the tremendous need for additional victim services. Their concerns centered on the following areas.

Shelters and Transitional Housing for Domestic Violence Victims

There are currently 10 residential shelters for domestic violence victims in Puerto Rico. There is a constant need for additional residential space, and though shelters do not like to refuse entry to any victim in need, they do have to turn down some due to space limitations. In addition to physical space, both police and shelter staff noted that transportation of victims to court appearances from the shelter, as well as for other needs, was a problem. Shelter staff also reported that financial resources for purchase of necessary medication for victims and their children was also a priority.

Economic Alternatives and Independence

Many of those interviewed stated that the lack of economic alternatives for domestic violence victims was a major concern, which affected their ability to leave their abusers. Without independent resources, victims often stayed with abusers due to economic dependency. As one judge noted, victims often seek to have the protection order dismissed because they need “milk, food, and money” and without support, they return to the abusers. Victims’ organizations do work with victims to obtain economic assistance, as well as provide support in obtaining education and jobs. However, there remains a large gap in services in this area.

Civil Legal Assistance

Victims and victim advocates repeatedly listed civil legal assistance as one of the greatest needs for domestic violence victims. The attorneys based in the victims’ unit at the courthouse handle only contested final protection order hearings and there were not enough resources for

them to address other civil legal issues important to the victim, such as alimony, child support and child custody. While the court-based victims' attorneys did make referrals to some civil legal assistance organizations and provide a resource list to victims, there were not adequate free legal services for victims with these concerns. Some private attorneys handled these cases through a *pro bono* project of the Bar Association.

Early Victim Advocacy

As described above, the project placing victim advocates at the courthouse has been very useful and has begun to fill a significant gap in service provision. Closer location of the advocates to the Investigations Room, and full staffing of the courthouse advocate office's is necessary. In addition, the courthouse advocacy program should be expanded to enable an advocate to be located full-time at the satellite Municipal Courts.

Moreover, links to the criminal justice system by the community-based advocates can access more victims at early stages of a criminal case to provide victims with assistance and services. Police and victim advocacy organizations should consider linking to develop a protocol for calling advocates to the home or hospital immediately after an incident. Given that there is an overlap between protection order and criminal cases, it is important for community-based advocates to work with prosecutors and the victim-witness advocates in the prosecutor's office to ensure that victims are receiving appropriate services.

Victim's Needs in the Criminal System

Victims in the focus group expressed several priority needs in terms of criminal justice case processing. They were clear that more accountability of the batterers was needed. Victims in the focus group listed as priorities: a more proactive justice system, such as more arrests; faster response and intervention; holding the abuser responsible for the abuser's criminal actions; more sentences that result in jail, rather than in the diversion program. Victims also discussed the need for the judges to have access to all the necessary information for them to make the right decision, and their ability to really listen to the parties.

IV. THE ENVIRONMENT OF THE COURTHOUSE

A courthouse can be an intimidating environment for any litigant attempting to navigate an unfamiliar and complicated system. For a victim of domestic violence, who is almost always experiencing this environment without an attorney, and whose case involves the most personal of all issues, the courthouse and the justice system can be overwhelming. Most often, the victim is coming to court at a moment of personal crisis, fear and emotional upheaval. It is likely the victim's first contact with a judge and court personnel. The victim's experience in court can define the victim's entire perspective on the situation, the options available, and the ability to leave a relationship that is placing the victim and the victim's children at risk. It is therefore critical that any effective response to domestic violence consider carefully the environment in which a victim's contact with the system takes place, and that the court and its partners

understand how important the victim's experience is in the system's efforts to address the victim's needs, and to engage the victim in a process which can provide independence as well as protection. In addition, as the locale for litigating domestic violence matters, the courthouse holds the potential for dangerous encounters with the victim's abuser. Therefore, physical security in the court environment must be of the highest priority.

Direct observations on-site at the court, as well as interviews suggested several areas for examination and improvement in the Puerto Rico court system: access to victim court advocacy and other social services at the courthouse; physical security in and around the courthouse; delays in court appearances and hearings; courtroom protocols and treatment by judges and court personnel; and opportunities for child care at the courthouse.

Victim Advocacy and Social Services at the Courthouse

In my observations at several different courthouses, I never saw a victim advocate in the Investigations Room. I did see a lawyer from the advocate's office on one occasion, who was representing a client and was speaking with her in the Investigations Room before her case was called. In one Rule 6 hearing, there was an advocate from the prosecutor's office accompanying the victim in the courtroom. However, there was no one present, either from the private advocates' office or from the prosecutor's unit that was simply observing individuals in the Room, noting anyone who may need assistance, as well as noting any potential security problem. As discussed above in Part I, there are several reasons for this, including the distant location of the advocate offices and the lack of adequate staffing. These issues impact the environment for victims who are experiencing the court system at an extremely difficult point in their lives.

In addition to victim advocates, the court system should consider placing some other critical agencies on-site at the courthouse. While a complete “one-stop shopping” area for comprehensive victim services may be a more long-term ideal, the court system and its partners can identify some services that victims access most frequently and co-locating them at the courthouse. Some critical services include: the full-time presence of civil attorneys that handle not only protection order hearings, but family law matters; a government attorney charged with child support enforcement; and a housing and public assistance specialist, that can assist victims in obtaining adequate housing if they are fleeing their abusers, and enroll them in any public entitlement programs to which they are entitled.

Physical Security In and Around the Courthouse

Victims participating in the focus group listed safety as a priority concern both in and out of the court. One victim in the focus group said that immediately after her former husband was convicted for a violation of a protection order, he harassed her at the courthouse parking lot. In addition, there has been at least one domestic violence fatality inside a courthouse. In San Juan, a respondent in a protection order hearing, who was a police officer, entered the court in uniform and was not stopped and searched for weapons. He fatally shot the victim in the court.

Several of those interviewed, including marshals, raised concerns about security. For example, not all judicial centers provide metal detector screening at all times, due to lack of available security personnel. There is a particular concern about local municipal satellite courts, which do not have any security personnel. A judge in a small municipal court can be alone and handling domestic violence cases, with only a maintenance person and a clerk.

From my experience in several jurisdictions throughout the United States, the level of security at the courthouses in Puerto Rico generally was quite low. For purposes of domestic violence cases, this was most noticeable in the Investigations Room, in the courtrooms where preliminary hearings and trials take place, and in general waiting areas. It must be noted that there are marshals present in all of these areas. Though they are usually in civilian dress, they are well trained to handle any security concerns. The marshals are certainly well qualified and experienced at handling security. The challenge, however, is that while the marshals are not responsible for administrative tasks, in practice they often do assist court clerks with these tasks, such as managing the court calendar. They are often handling multiple tasks in a fast-paced environment, and frequently move about the courthouse to perform these responsibilities. Therefore, it may be most effective to clearly delineate responsibilities among court personnel, and ensure that the marshals can be fully dedicated to security at the court. Marshals should be responsible for security, while court clerks should handle administrative responsibilities. If there is a need for more administrative personnel, more clerks should be designated for this purpose. The marshals would also create more deterrence if they were immediately recognizable as security officers and so dressed in uniform.

The Investigations Room

The Investigations Room is the starting point both for obtaining protection orders and for all criminal cases in the court system. In all of the courts I observed, the Investigations Room was frequently crowded and noisy. Domestic violence victims seeking protection orders were mixed in with criminal arrestees, as well as a number of police officers waiting to present their

cases. Many children were present as well, including toddlers running, and infants in strollers crying. In each courthouse, the Room was furnished with long wooden benches set in rows, with a desk or counter at the front for marshals who were responsible for distributing petitions for protection orders, tracking cases ready for presentation to judges, and monitoring activity in the judges' courtrooms.

Each of the courthouses that I observed required screening through a metal detector upon entry. However, there were no additional security checkpoints for entry into the Investigations Room, and there did not appear to be officers whose job was to provide security at any of the Investigations Rooms that I visited. The marshals located at the front of the Room were busy providing forms, keeping track of cases, hearings and availability of judges. While some court employees interviewed expressed the belief that these marshals could also keep an eye on things, from my observation, they were too busy with these other tasks to provide effective security. Moreover, they often were not in the room, as they were traveling back and forth to hearing rooms, and locating parties and judges.

There were a number of law enforcement officers present; however, they were responsible for the criminal case on which they were appearing and were not designed to provide security in the Room. In addition, the set up of the Room, particularly in a larger jurisdiction such as San Juan, makes it difficult to observe the activities of individuals who were sitting within one of the long rows.

In each courthouse, I observed women who appeared to be in some state of distress. I saw several women crying, and one woman with a black eye. These women were mixed in a group of people that included people charged with crimes. In addition, I observed one person who

appeared to be mentally ill. It is in this intimidating and somewhat chaotic environment that domestic violence victims were attempting to fill out protection order petitions, and were waiting to appear before a judge.

The Courtrooms for Preliminary Hearings and Trials

There appeared to be no priority given to domestic violence cases at the preliminary hearing courtrooms. As a result, victims often had to wait all morning for their cases to be heard. They might have children with them, and the defendant, if not incarcerated, was often seated in the same rows in the courtroom during this period. There was no segregation of defendants from victims. There were no security officers present in the courtroom seating area. A marshal in dress clothes was in the well of the courtroom doing paperwork and interacting with the judge and other court personnel. As in the Investigations Room, the marshal appeared to be busy with several other tasks and it was not possible for him to monitor the safety of audience members. In any event, it could not have been very effective at this, given his or her distance from the seating area. While several police officers were often present waiting to testify in a case, they were usually seated in the first row of the seating area together, where they could not observe other audience members. Further, it was also not their responsibility to monitor the safety of victims in the courtroom.

There is no requirement that a victim sit in the open courtroom while other cases are called, providing the abuser or the abuser's family with the opportunity to approach the victim, and placing the victim at risk. Victims who will be testifying in a case, should wait either in a special area designated for this purpose, or in the victim advocate's office. When the case is

called, the prosecutor can alert the advocate, who can accompany the victim into the courtroom.³⁶

Postponements and Other Delays in Legal Process

Those interviewed from a number of different agencies noted delay in case processing at several stages as a large concern. Several partners mentioned their concern with the length of time it took in many jurisdictions for a victim to appear before a judge and to obtain paperwork from the court in protection order cases. Depending both on the jurisdiction and the day and time, victims could wait for several hours in the Investigations Room for their case to be called. Partners also raised this same concern when victims were asked to attend preliminary hearings.

Moreover, as already noted, there are frequent adjournments in protection order hearings. And, the problem is worse at the preliminary hearing stage. One judge termed first-time adjournments at preliminary hearings as “practically automatic.” Multiple adjournments are not uncommon and may be due to failure of witnesses to appear, or because the prosecutor or defense is not ready to go forward. These adjournments seemed tolerated and accepted by judges as part of the court culture. However, each delay in court processing impacts a domestic violence victim’s safety, financial and emotional status.

³⁶ If there is more evidence-based prosecution, it is hoped that the need for victims to be in court at this stage of the case will decline.

Judicial Temperament and Sensitivity to Victims of Domestic Violence

A chief complaint of victims participating in the focus group was the lack of sensitivity by some police officers, prosecutors and judges. Victims states that the personnel who showed a genuine commitment to provide them with guidance and who followed up to make sure the law was enforced made all the difference to them. One of the victims said that the second prosecutor assigned to her case “was really interested in seeing justice being served,” as opposed to the first prosecutor who, according to the victim, “tried to have the charges dropped so as not to damage the defendant’s record.” Another participant expressed gratitude to a municipal court judge who was “really sensitive,” and she was grateful to the judge for being diligent and referring her to resources, such as the court’s victim advocacy services.

However, other victims expressed frustration that judges were not able to understand the impact and seriousness of the battering. As participant stated, “sensitive judges are in the minority . . . the ones whose gowns have not made them forget how to see that that could be my daughter, my niece, and those who can see each case on an individual basis.” Another victim agreed and added, “you are a victim of the batterer and of the system.” She continued to say, “they don’t stop [the batterer] . . . we are always in the court, and that affects us not only emotionally but also financially.”

Several partners reported that some judges did not seem sensitive to the risk to victim safety caused by disclosing location information when the abuser was present. Partners recounted instances when, for example, the judge would state out loud in the presence of the abuser the name of the shelter where the victim was staying.

In another report, the Judge in Rule 6 had granted a victim an emergency ex parte protection order. However, when she received the paperwork from the Clerk's Office, she saw that the name of the respondent on the protection order was a different man, not the one against whom she had sought the order. When the victim, who was accompanied by a police officer, asked if the order could be changed before they left the Court, the police officer, the marshal and the clerk, all told her just to wait until the next hearing on the full order. Of course, this mistake had several consequences: 1) the order did not protect her against the person from whom she was at risk; 2) this person would not be served with an order of protection, so that if he did attack her again, he would not be guilty of a protection order violation; 3) since he was not served, he would not appear in court for hearing on the final order, and there would be a delay while the mistake was corrected and he was notified of the order and hearing; 4) it is likely that the name of the man who was listed on this victim's order was actually the alleged abuser of a different victim who had appeared at the court that day, and the names had been switched, so that she would be subject to all of the same safety risks herself as the first victim. The victims in this situation would actually be worse off than if they had never appeared in court, because they would be under the false impression that they were protected by the orders.

Marshal Responsibility

The marshals play an important role in the court system, and currently, they are frequently the first contact a victim of domestic violence has with the court when the victim arrives to file a petition for an order of protection. The victim may also have contact with marshals at other stages when the victim is seeking information, while in waiting areas, or

waiting in courtrooms. It is of concern then that some of those interviewed expressed the belief that some marshals were not trained in domestic violence dynamics and did not treat domestic violence victims with sensitivity.

During my time on-site at the various courts, I did not observe any discourtesy by marshals. However, there is no doubt that the marshals currently attempt to accomplish quite a few tasks at the same time. For example, while they are responsible for security in the Investigations Room, they also in practice manage the paperwork and the calling of cases in that area. It is clear that they often do not have the ability to focus attention on any individual, and I also remain concerned about the lack of any officers specifically assigned to provide security. If additional clerks are needed to fulfill various administrative responsibilities, they should be assigned to these tasks. Marshals need to focus exclusively on providing security.

Child Care at the Courthouse

None of the courthouses I visited had accommodations for children to be cared for while their parent was in court. During my interviews with court personnel, no one was aware of any such child care centers in any of the courts throughout the country. The lack of child care facilities was noted by many partners, including advocates, attorneys, judges and police officers, as a major gap in services needed by domestic violence victims.

The presence of children was very noticeable in every court and in every type of proceeding, including both infants and older children who had more understanding of the proceedings. Judges would often ask the victim if there was a relative or friend with the victim who could watch the children, and sometimes the marshal would remove children and watch

them until the proceeding was complete, but this was not possible in most of the settings I observed. In one Rule 6 hearing, a girl of about 5 years old was present in the courtroom, where her father was under arrest and her mother was showing the judge bruises on her arms and describing the assault. The judge asked if the girl could be taken from the courtroom, but there was no one available to watch her. This assault had apparently taken place in front of the child, and she was there when her father threatened to burn their house down. In describing the incident, the mother used swear words when quoting the statements that the father had made.

The lack of child care at the courthouse, and therefore the presence of young children at every stage of the court process are disturbing for a number of reasons. It is difficult for a victim to complete the petition form, speak to an advocate, or concentrate on a court proceeding, when she is attending to one or more children. Victims who had to bring their children with them to court and then had to wait with them for hours before a court appearance, were themselves exhausted and had to watch or entertain their children, who also grew tired and increasingly uncomfortable. The presence of children, often crying, can also be distracting to other petitioners, as well as the judge.

As demonstrated at the hearing I observed, it is harmful to expose children to the court proceedings, which may include allegations against their other parent, pictures of their mother with injuries, and testimony about the incident that can be traumatic. At its best, a courthouse and court proceeding is not a pleasant environment for a child, left without toys, cheerful colors and room to play. In the context of domestic violence, this experience can be traumatic. Whatever their age, children are likely aware of the incident that has occurred and their anxiety is exacerbated in this environment.

While the issue of children at the courthouse is a concern generally for parties involved in any type of case, it is of particular concern in domestic violence cases, where there is a very high percentage of female petitioners or witnesses to the criminal case. Child care should be provided at the courthouse, ideally by personnel experienced in working with children exposed to trauma. Many court systems have been able to create pleasant areas that provide child-appropriate activities and toys, and which are monitored by well-trained staff, so that victims can feel comfortable that their children are being well taken care of while they appear in court. The best child care centers serving children of domestic violence victims at the courthouse have developed strict security procedures, so that a parent without the right to custody or contact cannot have access to or abscond with a child.

V. ACCESS AND COORDINATION OF INFORMATION

The ability for the court to obtain relevant, accurate and up-to-date information concerning respondent/defendants, their criminal history, order of protection history and their compliance with any court-ordered conditions of bail or probation, is central to any effective response to domestic violence.

OAT has taken an important step by creating a Registry for Orders of Protection (OPA), which will eventually be utilized throughout Puerto Rico. OPA is currently being piloted in San Juan and Bayamón. The development of OPA has also spurred the revision of Order of Protection forms, so that they are compatible with the federal national protection order database

that is run by the FBI as part of its NCIC data system. The upload of Puerto Rico's orders to the NCIC is crucial, for several reasons. First, it permits law enforcement throughout the United States to verify that a valid out of state order exists, if an incident occurs in another jurisdiction and the victim does not have access to a copy of the victim's order. Second, a person against whom a valid final protection order exists is barred from possession of firearms. Under federal law, the identifying information of all prospective gun purchasers is submitted to the NCIC database run by the FBI in order to determine if they possess any criteria that bans them from weapon possession (called a "Brady check"). When protection orders are uploaded into the NCIC system, they will cause a "hit" in the system should anyone who against whom such an order exists attempt to purchase a weapon.

It is important that OPA be accessible at critical stages in the justice system. While clearly this will be helpful to the Municipal Court clerks, the order of protection history involving respondents in new cases should be printed out and accompany the file when the court is hearing petitions for ex parte orders as well as hearings on full protection orders.

The method for collecting basic court case information appears antiquated. Several judges reported that they were literally counting the number of protections orders granted by hand, and that if they failed to do that, there was no mechanism in place to capture that information. There were only a few basis court case reports generated, and given the hand counting of at least some of this information, these reports may not be accurate. The court needs to investigate these issues, and implement electronic databases and procedures for information collection where they do not currently exist.

Currently, there is no link made between criminal domestic violence cases and protection order cases involving the same parties. OPA should be checked for every defendant in a criminal domestic violence case and any order of protection history should be presented to the judge in the criminal case. This should be done at the Rule 6 stage, particularly during a bail or release determination, as well as at later stages in the criminal process.

Moreover, information regarding victim status and determining the reasons for any failure to appear between the ex parte and final protection order stages is important to protect victim safety. A protocol needs to be developed for provision of this information, which should only be given voluntarily by victims, to the court – a good practice is to utilize victim advocates who have a confidential relationship with their clients. These advocates can reach out to victims and where the victim desires, convey to the court any issues that may be impeding the victim's ability to appear for the final protection order hearing, as well as any violations of protection orders.

Information regarding defendant compliance is necessary for any effective judicial response. The system has agencies in place that can collect this information, such as pre-trial services and probation. They must be utilized effectively, and the court should develop procedures for review hearings that will enable the court to gain comprehensive information, which will promote more responsive judicial decision-making.

Partnership Building for a Coordinated Response

During my interviews and observations, it was apparent that there was little communication between agencies that should naturally collaborate on developing procedures to

make both their jobs more productive. In addition, there was no formalized structure for bringing together all of the agencies involved in the justice system to work on improving their response to domestic violence cases. The Office of Women's Advocate has regular meetings, but these are focuses on victim advocacy issues and are limited to partners directly involved with those concerns. The court system needs to develop a regularized partnership meeting that can address challenges, and will be essential to any specialized domestic violence court.

VI. DOMESTIC VIOLENCE TRAINING NEEDS AND METHODS

Several of those interviewed believed that more domestic violence training was required, particularly in specific areas of domestic violence law, case processing and prosecution techniques, research on batterers' intervention program best practices, as well as the dynamics of domestic violence. It is important to note that domestic violence training is an ongoing process and one is not "done" with training. There are multiple topics and issues to explore, areas of growing knowledge and research, and new insights to gain. The court and partners should explore some of the following types of domestic violence training, which may garner heightened interest and prove effective. These are also not substitutes for training within each individual agency; each organization must require internal domestic violence training on an ongoing basis to address issues that are relevant to its own responsibilities in the system.

It is also crucial that all members of court and partner staff that have any involvement with domestic violence cases or litigants be included in the domestic violence trainings. This

includes staff in the Domestic Violence Clerk's Office, marshals, receptionists and clerical staff at agencies and attorneys' offices. These personnel are often overlooked when trainings are developed, and yet they have frequent contact with domestic violence litigants and may be the first contact these litigants have with the justice system.

Based on my observations, interviews and review of written documents, I believe that there are four particularly critical areas where training is needed: 1) best practices in domestic violence criminal case processing (including review hearings, sanctioning, and sentencing options); 2) prosecution techniques for domestic violence cases (including evidence-based prosecution; treatment of a reluctant victim; and use of hearsay exceptions after *Crawford v. Washington*); 3) coordinated response to domestic violence (including the development of a partnership group focused on court and judicial system response); and 4) basic dynamics of domestic violence to address myths and falsehoods about both victims and batterers.

Interactive Training

While lectures and speakers can be informative and inspiring, participants may gain more in their understanding of domestic violence through intensive exercises which require them to engage more directly in the training. One helpful method is to provide some general information through lecture on a topic and then break down into small groups, which are provided hypothetical situations involving the topic and required to work through the hypotheticals and problem-solve. This is particularly helpful when different justice system partners are represented so the group has a diversity of viewpoints on how to handle a given situation.

Cross-Training

A justice system's response can be improved dramatically when each partner in the system understands what other partners do, what their pressures are, and the goals of other agencies. Cross-training can start with simple presentations by representatives of particular agencies to all other partners, and can evolve to the role-playing and hypotheticals described above. Representatives from the various agencies can play the role of another agency, in order to more clearly understand the decisions they face. It is also particularly helpful to provide cross-training for groups that require frequent interaction and may have conflicting goals - for example, law enforcement and prosecutors, probation officers and batterers' program representatives. Cross training becomes helpful not just to increase understanding, but also to move coordination among community partners forward.

Advanced Topics and Targeted Trainings

Sometimes partners can become disaffected by trainings if they feel that the information is repetitive or too general. While general domestic violence training is necessary on a periodic basis to address staff turnover, it is also important to have more specific and targeted trainings to hold the interest of partners. Examples of topics can include: latest research in batterers intervention program effectiveness; fatality review studies; protocols for child protection/domestic violence advocacy collaboration; and full faith and credit law.

It is important that all members of the community partnership attend these trainings, including judges, court personnel, as well as criminal justice and community-based partners.

Specialized Judicial Training

There is also a need for judges-only training. All judges handling domestic violence cases, including other matters in which domestic violence issues arise, must receive intensive training in areas of particular interest to judges, including current federal and state law; best practices among judges handling domestic violence cases across the country; and courtroom protocols that will promote victim safety, as well as the safety of court personnel. While judges can benefit greatly from the types of trainings described above, it is also necessary for them to participate in trainings designed specifically for them, and ideally in trainings conducted in large part by their peers from other jurisdictions. OAT has already begun training judges throughout Puerto Rico using this model.

Effective training for judges involves highly interactive learning, with large opportunities for participation through role-playing, sharing of problems they have encountered and solutions they have developed. Perhaps more than any other segment of the justice system, judges learn best when actively engaged in the process and are not simply “talked to.” Though judges may have attended general trainings on domestic violence, they require ongoing specialized training in several of the particular issues they face.

For the court system to make progress in its response to domestic violence, it must recognize that domestic violence cases cannot be treated like other matters. No matter how experienced a judge may be, specialized training in this area is imperative. Several of those interviewed cited examples where judges failed to recognize the necessity of monitoring domestic violence defendants and holding them accountable for failures. In addition, unfortunately, several interviewed also noted instances where some in the judiciary failed to

follow current law - for example, in failing to follow Law 54's sentencing requirements. Some of those interviewed felt that a portion of the judiciary has not been convinced that there really is a problem in the system's response to domestic violence.

The judiciary must recognize that as leaders in the community, with tremendous authority and respect, their policies and actions have great impact on the system as a whole. They set the tone for the system's response to domestic violence, and becoming educated in best practices in policies and procedures in this area is part of the responsibility that their position entails.

Intensive Frequent Short Trainings

One concern judges frequently have is that it is difficult to take days away from court to attend training programs. While some programs do require a day or multi-day commitment, there can also be effective trainings for short periods that can occur on-site at the court. It may be easy to incorporate an hour-long training at a lunch meeting for judges or at any regular administrative meeting they hold. Like the brief "roll call" trainings held for police officers in many jurisdictions throughout the country, this ensures attendance by the judges. And, while not comprehensive, these brief programs can be effective in addressing a narrowly focused topic, and ensure training on a more frequent basis.

VII. GENERAL RECOMMENDATIONS

Many recommendations on specific topics are provided throughout the body of this report. This section highlights particular recommendations that I believe should be given the highest priority.

1. **Conduct a Comprehensive Sample Data Collection Project and Institutionalize Ongoing Data Collection Procedures.** In order to address problems, the court and its partners must have accurate up-to-date numbers on multiple issues. While several agencies currently have some data available, they are often not captured, categorized or clearly defined in a way that yields the most useful information to understand case processing and other issues. In addition, it appears likely that different agencies are defining various categories differently. Some specific examples that have been discussed in this Report are: court order of protection statistics which currently do not make clear what proportion of cases where ex parte orders are granted also result in a final order of protection; prosecution data that track by charges, rather than cases; police statistics that do not make clear how many police reported incidents result in arrests and how many of those arrests are presented to prosecutors; prosecutor statistics that do not define whether cases “brought in” to the office are all of the arrests presented to prosecutors or whether they have already been screened. Interviews and reports and the data themselves also suggest that data is not always being collected reliably. Dramatic fluctuations in numbers

over a short time period, the non-automated capturing of data and other problems demonstrate that data collection must be a focus of the court and its partners.

The court and its partners should plan to collect information for the same time frame of a few months, and confer on definitions, so that the information collected is consistent. In collaboration, they should determine who would be responsible for which pieces of information. It is critical that the responsibility for this task within each agency be made explicit and be delegated to personnel who have the time and resources to accomplish this. This will be a starting point from which to address system concerns. In addition, in the process of conducting this sample, each agency should determine the best method for institutionalizing data collection. This is essential not just for diagnosing problems, but for evaluating any changes that are implemented and monitoring ongoing process.

2. **Address the Legal Issues Raised by Dismissals under *Castellón* and Diversion Sentences Imposed Outside the Requirements of Law 54.** As discussed at length in this Report, both of these issues are central problems in current domestic violence case processing. A system where actual case handling differs dramatically from the expectations of the written law breeds disrespect for the law, low morale among system players, strengthens batterers' sense that they can manipulate the system, and places victims at risk. OAT needs to undertake an examination of these problems in more detail to determine how widespread they are, if there are particular patterns to their use, and then address these issues through judicial education or other appropriate measures.

3. **Expand the Court's role in Monitoring Both Civil and Criminal Domestic Violence**

Cases. Utilizing the authority of the court to compel compliance and provide consequences for failures is central to effective domestic violence response. This compliance monitoring is effective when done on an ongoing basis, and the court does not wait to hear only cases where violations of protection order have been charged, bail violations have been brought to court, or petitions to revoke have been filed. In the current system, defendants receive court contact only after they have failed; while this is certainly important, it can be highly effective for defendants to receive feedback on an ongoing basis, in order to prevent serious failures to comply. This serves the ultimate goal of protecting victims, and demonstrates to defendants that there are consequences for actions.

4. **Expand and Relocate Advocacy for Domestic Violence Victims at the Courthouse.**

There is also a lack of coordination in providing victims with needed services, legal information and access to providers and the court process. Victim advocates need to be located where the victims are, and need to have the resources available to provide services.

5. **Expand Independent Victim Advocacy to Include Follow Up From Ex Parte**

Hearings and to Access Victims in Criminal Cases. Victim advocacy is crucial in assisting victims of domestic violence. In addition to providing comprehensive services as described above, advocates need to become more fully integrated into the court

process. This includes follow-up with victims between the ex parte order and the final hearing, presence at court appearances, and more consistent integration into the criminal case process. This integration provides multiple opportunities for victims to access advocacy services, and permits continuity of service. Integration of this type requires expanded resources to enable advocates to staff courtrooms whenever they are open and follow-up with victims, and this expansion may not happen all at one time or immediately. However, this is a goal for the court and its partners – this type of “wraparound” advocacy both provides much-needed assistance to victims and their children, and promotes their safety. And, though not its focus, it is also likely to encourage victims to remain engaged in the court process. Additional advocacy in the court process should be a focus of additional funding efforts by both the advocacy groups and the court.

6. **Identify Key Gaps in Victim Service Needs and Focus on Augmenting Resources in Those Areas.** Interviews for this report identified several areas in which victims lacked adequate services. For example, one area on which there was widespread agreement was civil legal assistance for victims not only in protection order hearings, but also in divorce, custody and child support hearings. Though the court and its partners cannot resolve all gaps, they can develop an organized plan to augment resources in key areas. First, the court and partners must review the system and agree on top service priorities. Then, all relevant partners and the court can develop a focused funding plan, where grants and other funding sources that support the identified priorities are targeted. In addition, the

partners and court and identify existing resources and examine whether any resources or staff may be redeployed to address the top service needs in this area. Through coordinated grant applications, funding strategies and system review, the court and partners can work to meet some of the most pressing needs for domestic violence victims and their children.

7. **Develop a regular formalized partnership meeting to focus on justice system response to domestic violence, including issues in implementing a specialized domestic violence court.** Many of the other recommendations require coordination among the court and agencies involved in the justice system. It is simply not possible to develop an effective response to domestic violence without the involvement of a multitude of government and community-based agencies. The court should initiate this partnership meeting and maintain it on an ongoing basis in order to track current needs, determine if a problem exists and if so, the scope of the problem, and identify potential solutions.

8. **Consider the Development of a Fatality Review Team.** It is my understanding that the Office of the Women's Advocates has commissioned researchers in the past to analyze domestic violence fatalities. The partnership should consider expanding this activity by instituting a Fatality Review Team, composed of all agencies with which a domestic violence victim may have had contact. The Team then undertakes a comprehensive review of each case to understand what happened, and what could have been done to

prevent the fatality. The focus of such a Team is not to assign blame, but to learn from past fatalities to improve current response.

9. **Review Current Domestic Violence Training Programs and Strategize to Develop More Focused and Advanced Trainings, More Innovative Programs, and Trainings that Include All Personnel Involved with Domestic Violence Cases and Litigants.**

As discussed above, there is a strong need for comprehensive and engaging training for both the court system and its partners. This includes both the addition of new groups to participate in training, the development of new methods of training, and the development of programs on advanced topics to keep practitioners experienced in the field engaged. There should also be specialized training for judges that covers topics of specific interest to them, and is designed to engage their attention most effectively.

10. **Review Security Protocols at the Courthouse.** The report identifies several security concerns at the courthouse. These issues should be reviewed by OAT, including the Marshal Service, to determine staffing and other strategies to improve security. At a specialized domestic violence court, this need will become paramount, as domestic violence cases, victims and abusers, will be concentrated in one area.

11. **Coordinate Information From Different Courts.** Lack of knowledge about the status of other pending cases or a respondent/defendant's case history, impedes accurate judicial decision-making. The OPA project will help to address this concern. Additional

possibilities include: the use of technology to allow information system interface; the consolidation of files in the clerk's office so that they are available to each judge hearing a related case; and the development of a specialized court, in which one or a few judges hear domestic violence cases and a set of related matters.

12. **Explore use of a Resource Coordinator or Case Manager in Cases Involving**

Domestic Violence and Related Matters. If accurate information is to be gathered reliably from a multitude of source and presented to the judge on a timely basis, the court requires a person who is responsible for obtaining this information. A court-employed resource coordinator or case manager for domestic violence cases can greatly improve the efficiency and the effectiveness of court handling of domestic violence cases. In addition, the resource coordinator can assist with the placement of defendants in programs, as part of bail, protection order or sentencing would enable the judge to make better-informed decisions and promote victim safety.

13. **Improve Consistency Among Judges Handling Domestic Violence and Related**

Matters. The system needs to address improving the consistency in court procedures and protocols. These can be developed and implemented among all judges handling domestic violence cases. A specialized court would facilitate this process and enable much greater consistency in the court's handling of domestic violence cases. This is not simply because only one or a few judges would be hearing these cases; in addition, court specialization, if developed, should also include dedication of specific agency staff to the courtroom. With

a staff dedicated to these cases, the court is able to develop clear protocols in a variety of matters and ensure that each agency will follow them consistently.

VIII. RECOMMENDATIONS FOR A SPECIALIZED DOMESTIC VIOLENCE COURT

Several of the predominant gaps in the current justice system – inadequate coordination between the court system and its partners, lack of relevant information to improve decision-making, failure to monitor and follow up on court orders, both in protection order cases and in criminal matters, and inconsistent judicial handling of domestic violence cases – would be greatly ameliorated by a specialized domestic violence court. While it is not the only alternative to addressing these problems, it is an obvious method and should be seriously considered. A specialized domestic violence court offers an excellent way to pilot critical protocols that ultimately should be implemented throughout the court system. More than that, however, a specialized domestic violence court provides the dedicated staff from a variety of agencies, the intensive focus on a particular case type, and the concentrate of cases to create an environment that is best suited to addressing the complexity, safety concerns, social service needs and the multitude of issues that arise in domestic violence cases.

The Core Values and Best Practices of a Domestic Violence Court³⁷

Domestic violence courts can vary by caseload, and should be designed to meet the needs of the particular jurisdiction where it is located. However, to be effective, there are certain overarching values that any domestic violence court must adopt, as well as some key best practices that the court must follow. These values identify the primary goals and principles of a domestic violence court, while the best practices delineate how to adhere most effectively to these values. These components serve as a guidepost in the development of any successful domestic violence court. They have also provided the fundamental measures for this Report's evaluation of current court handling of domestic violence cases in Puerto Rico.

Core Values of a Domestic Violence Court

- Victim and Child Safety – the primary goal of promoting victim and child safety must be actively considered at all times.
- Keeping the Victim Informed –victims are most empowered when they are aware of case status, services available, and defendant information, such as whether the defendant has been released from jail.
- Offender Accountability – domestic violence offenders must be held accountable for their actions, including both the conduct that brought them to court, as well as their activities while the case is pending.
- Information Sharing and Informed Decision-Making – a judge making decisions on bail, protection orders and case disposition must have accurate and comprehensive

³⁷ This section is based on Emily J. Sack, *Creating a Domestic Violence Court: Guidelines and Best*

information on defendant/respondent compliance with court conditions, as well as prior criminal and protection order history. In turn, court partners must get timely information from the court on bail or probation conditions and case status in order to hold an abuser accountable.

- Institutionalized Coordination of Procedures and Services– domestic violence court procedures must be institutionalized in written protocols, job descriptions, as well as memoranda of understanding between partners, so that court practice will remain consistent and will endure beyond the departure of founding personnel.
- Training and Education – all court personnel and partners must be trained extensively on a wide range of issues relating to domestic violence in order to bring knowledge and sensitivity to the domestic violence caseload.
- Judicial Leadership – the judge in a domestic violence court plays a central role in conveying to parties in the court and the public as a whole that domestic violence will not be tolerated in the community, and that the court is making serious efforts to address this conduct. The authority of the judge can be utilized to bring partners to the table to cooperate in a domestic violence community response, and to bring about progressive change.
- Effective Use of the Justice System – while community-based advocacy remains critical, the domestic violence court can be an access point for victims to receive services for themselves and their children, and can intervene to hold defendants/respondents accountable through monitoring and sanctions for failures to comply.

- Accountability of Courts and Programs – because the domestic violence court project requires designated partners to perform important tasks, the partners' quality of performance becomes apparent. The domestic violence court can utilize the focus of the court and its partners to ensure that protocols and practices are followed. In addition, the project must ensure system accountability by developing clear data collection procedures and outcome measures, to evaluate operation strengths and weaknesses.

Best Practices of a Domestic Violence Court

A successful domestic violence court must develop detailed procedures for a number of stages in court operations and project activities. These procedures are informed by some essential best practices that will ensure adherence to the domestic violence court's values. The following best practices provide critical guidance for the creation of specific procedures.

- Early access to victim advocacy and services
- Coordination of community partners
- Victim and child-friendly court
- Specialized staff and judges
- Even-handed treatment in the courtroom
- Leveraging the role of the judge
- Integrated information system
- Evaluation and accountability
- Develop protocols for evaluating dangerousness

- Ongoing training and education
- Compliance monitoring
- Sentencing models that promote consistency and serious treatment of domestic violence.

The Domestic Violence Court Caseload

There are a variety of domestic violence court models, and caseloads can be exclusively criminal, exclusively civil, or provide some integration of different case types. In choosing the most appropriate caseload for a pilot domestic violence court project, it is important to consider where the challenges in the current system are most urgent, while also taking into account feasibility and ease of implementation. It is also important to remember that caseloads can expand both in volume and by case type over a period of time. The most effective pilot projects gradually phase in a caseload, so that there is time to implement protocols properly, assess and correct problems, and based on this experience, review expansion plans.

The greatest challenge regarding domestic violence cases in the Puerto Rico court system lies in the processing of criminal cases, in the charging through preliminary hearing stages. In addition, however, there are important gaps in the order of protection process, and it is in this civil arena that victims have the most direct needs. Therefore, I believe that the most appropriate place to begin pilot operations is with a combined criminal/protection order caseload. However, in order to limit the case volume initially, I suggest that the caseload should consist of criminal domestic violence cases, and protection order cases where there is also a criminal case pending. There may need to be further limitations initially to keep case volume low, such as limiting the criminal caseload to one or two specific charges under Law 54.

Of course, caseload volume is also a function of the jurisdiction in which the court is implemented. In selecting a location for the court, it is important to balance the desire for a manageable caseload with the importance of locating the specialized court where numbers of domestic violence incidents indicate that there is a real need. It is also necessary to have an adequate infrastructure of services (e.g., victim advocacy organizations, batterers intervention programs), but where that infrastructure is not completely overwhelmed due to the high volume of cases. Therefore, I would suggest selection of a jurisdiction that does not necessarily have the highest volume of domestic violence, but which is not so small or dispersed that the pilot project would not adequately test court operations in a busy jurisdiction. A region with a moderately sized city, which has an adequate services infrastructure, would be ideal.

The pilot project should aim for a target caseload in the range of 50 to 75 criminal cases pending at any one time, with approximately an equal number of related protection order cases. While this number certainly can grow, this range allows adequate time and staff resources to be dedicated to the cases, but also offers a high enough volume to use court and partner resources efficiently. This case volume should be implemented gradually, and the volume can expand as protocols become institutionalized and as seems appropriate after assessing operations.

Hours of Operation

In the initial phases of implementation, the Domestic Violence Court should operate during regular business hours. Since all necessary agency and court staff will be on duty during those hours, the Court will have all resources available to them, preventing additional barriers to implementation of an already complex project.

Because many domestic violence incidents occur in the evening, in subsequent phases, court planners should consider extending the Domestic Violence Court's hours of operation through the evening, to handle ex parte protection order cases and Rule 6 hearings. It is important to recognize, however, that to be effective and achieve its goals, the Court must follow the same protocols in both its daytime and evening hours. This includes on-site availability of victim advocates, child care, victim services, judges, clerks, marshals, police and prosecutors, all of whom are dedicated to the Domestic Violence Court. The extension of hours will require additional resources from all partners. It is an important goal for the Court, but it must be implemented with care and adequate staffing. As court planners assess the initial phases of the Court's development, they should consider when such expansion will be feasible.

Judicial Staffing

There are different options for judicial staffing of a specialized domestic violence court with this caseload, which should be explored. Under the current system, a Municipal Court judge would handle both protection order cases and the initial criminal probable cause hearing, while a Superior Court judge would handle criminal cases at the preliminary hearing stage, including violations of protection orders. One alternative would be to designate a team of two judges, one from Municipal Court and one from Superior Court, to staff the specialized domestic violence court. In addition, in a domestic violence court, a judge would handle both pre- and post-disposition review hearings to monitor compliance with protection order conditions, bail and release conditions, and sentencing and probation conditions. This monitoring could be divided between the Municipal and Superior Court judges.

Another option would be to designate one judge to handle all stages of both types of cases. This may involve expanding the authority of a Municipal Court judge or having a Superior Court judge handle cases that are currently handled by a Municipal Court judge. Because all judges in Puerto Rico have general jurisdiction, the Chief Justice has flexibility in terms of assigning personnel to a specialized court, as well as determining the most appropriate caseload.

Of course, the political and legal feasibility of these options needs to be considered. There may be a benefit to assigning a single judge to the Domestic Violence Court; the judge may be more likely to take ownership of the project and feel invested in the implementation process. On the other hand, it may be helpful to have a team of judges designated to the project, both to share in the work and in the planning process. Whichever option is selected, it would be helpful to identify "back-up judges" who are trained and familiar with the specialized court, so that they can substitute if ever necessary.

The Specialized Domestic Violence Court Process

The Order of Protection Process

1. Entry Into the Courthouse

Victims entering the Courthouse, who are seeking an ex parte protection orders would be directed to the Specialized Domestic Violence Court (DVC) area by the Security Personnel at the Entrance. The DVC area will be a separate group of rooms with a separate door that closes it off from the general courtroom space. Ideally, the DVC area would be located close to the main courthouse entrance on the entry floor, or close to the elevator on another floor. This minimizes

the chance that victims will have difficulty finding the DVC area, and also reduces the risk of security problems. There should also be well-placed, clear signs with directions to the DVC area. It may be possible in some buildings to design the DVC area so that it is accessible to the outside from a separate courthouse entrance. Any courthouse that is housing the DVC must have metal detectors and thorough searches that every one must pass through in order to enter the courthouse.

2. Reception at the DVC area

There would be one entry behind a closed door to the DVC area. A uniformed security officer will be present at all times in the DVC area, near its entry. A receptionist would greet each victim who arrives, and ask why she has come to court. The area itself, which will have comfortable seating, will function as a separate waiting room for victims who are seeking protection orders, waiting to speak to a service provider, or waiting to appear in criminal cases. There will be written materials available on various services. The area should offer basic information regarding the protection order process so victims know what to expect. This can be accomplished through a short videotape that would play periodically in the reception area. Alternatively, if the flow of petitioners is such that there is a group of petitioners in the area in a reasonable period of time, an advocate may make a live presentation regarding the process to the group.

Off of this reception area would be several separate rooms, which would include, the child care center; the victim advocates' office; other services, which may include a housing specialist, a civil lawyer, or a health care provider. The receptionist would notify the victim

advocate's office that there is a client in need of assistance; each petitioner seeking a protection order would automatically be assigned a victim advocate. Victims who do not want to speak to an advocate, will receive petition forms from the receptionist and complete them in the waiting area.

3. Child Care Center

If victims have children with them, the receptionist can direct them to the child care center, which is located just off the reception area. The Child Care Center should be staffed with trained personnel, and ideally would include staff that has training or experience in working with children exposed to trauma. The Child Care Center should be a cheerful place with toys, books, and snacks of children of different ages. There also should be a specific security procedure, so that only victims may pick up the children from the Center. Victims may keep their children with them if they prefer, though with older children, it is particularly desirable that they not be present when victims are describing battering experiences with the advocate, for example.

4. Meeting with the Victim Advocate/Completion of the Protection Order Petition

A victim advocate would bring the victim back to the private victim advocate's office. The advocate will explain the advocate's role, including the confidential relationship with clients, and describe the protection order process, as well as the services that are available on-site, and those to whom the advocate can make referrals. The advocate will have copies of the protection order petition forms. If victims do not want to speak further with the advocate, the advocate will provide them with petition forms and direct them to the main seating area. Any contact and services provided by the victim advocate are entirely voluntary for the victim.

If the victim wants to continue speaking with the advocate, the advocate conduct an interview to gain information for the protection order petition, as well as conditions that the victim might want to request in the order, and to make an assessment of the victim's service needs, as well as safety planning. The victim advocate will assist the victim in completing the petition, and will submit the petition to the Domestic Violence Clerk (see below). After the petition has been submitted, the advocate can continue working with the victim in making referrals, etc. while the victim is waiting for the case to be called. If the case is called, the victim can complete the interview process with the advocate after the appearance in court. Victim advocates will work with petitioners whether or not the judge granted the ex parte order.

5. Services Available at the DVC Services Center

In addition to referrals to community-based agencies that will be made by the victim advocates, some key victims services can be located on-site in the DVC Services Center. One important service is civil legal assistance, both for protection order hearings and for family matters. This office could also include a representative from the Pro Se Office. Some other important services include: Child Support Enforcement legal unit, and a housing and public assistance specialist. The victim may access these services, including when waiting for the court appearance, after the appearance, or at other times. In addition, some services may be present on-site on certain days, and so multiple agencies may be able to share an office on a rotating basis.

6. Processing the Protection Order by the Domestic Violence Clerk

The Court Clerk's Office will designate at least one clerk to be the specialized Domestic Violence Clerk, who will be responsible for the processing of both civil and criminal cases at the DVC. The DV Clerk will have access to the Order of Protection Registry (OPA), as well as (if this is legally possible), the Criminal History Database.

Ideally, the DVC space would be designed physically near enough to the Court Clerk's Office, so that a special window could open directly onto the DVC reception area. If this is not possible, the court should consider placing the specialized DV Clerk in his or her own area in the DVC space. The DV Clerk will receive petitions either directly from the victim advocates, from victims who did not wish to meet with an advocate, or from the receptionist (this would depend on where the DV Clerk was – if he or she was on-site the victim and the victim advocate could submit the petitions directly to the DV Clerk).

The first step in the DV Clerk's process will depend upon the caseload that is ultimately selected for the Domestic Violence Court. If the caseload will be composed of criminal domestic violence cases brought under particular Law 54 charges, and orders of protection cases where those criminal charges are pending, the Clerk will first check the court database to determine if this protection order petition meets the criteria for handling by the Domestic Violence Court. If the case does not meet these criteria, the DV Clerk will perform regular petition processing. The victim will still be able to access any of the services available at the Services Area. However, the case will be heard in a regular Municipal Courtroom, and the advocates will not conduct the ongoing follow-up with these victims that will be required for victims with cases being heard in the Domestic Violence Court. Of course, ultimately it is hoped that the Domestic Violence Court

can expand to handle all protection order cases. However, initially, depending on the caseload as determined by court planners, the Court will have the capacity only to handle a subset of these cases. All victims will have access to advocates and services; however, in order for the advocates and the court personnel to provide focused attention on the Domestic Violence Court cases, and to enable the success of the specialized court operations to be measured accurately, cases not meeting the criteria for entry into the Domestic Violence Court will not be able to receive all of the specialized services dedicated to the Domestic Violence Court.

For cases that are eligible for the Domestic Violence Court, the DV Clerk will search the OPA database to see if there is an order of protection history, in addition to his or her regular processing duties with the petition. There will also be a check on the respondent in the Criminal History Database. If possible, the Clerk will also check in the case database to see if there are any other pending cases involving these parties.³⁸ The Clerk will include any records from these databases with the petition in the file provided to the judge for the appearance.

7. Court Appearance

The DVC Protection Order Calendar should be located in a courtroom that is on the same floor at the DVC area, but is not directly accessible from it. Since this courtroom will also be used for Rule 6 Hearings in Criminal Cases and in contested Protection Order Hearings, Respondents/Defendants will be present. They should not have access to the DVC area.

³⁸ I am not certain if there is currently technology at the courthouse that permits this type of search. If this is not available, this search should be done to the extent feasible.

The victim advocate will accompany the victim to the Ex Parte Protection Order Hearing. The Judge will have the file that includes any case history and information on pending cases. The Judge should also have a computer on the bench that permits him or her to access the OPA.³⁹ Appearances on ex parte protection orders will take priority in the DV Court calendar.

8. Follow-up with Victim for Services and Subsequent Court Appearance

Whether or not the ex parte order has been granted, the advocate will work with the victim to complete any service referrals, and safety planning. If the order has been granted, the petitioner will receive a copy of the order either directly in court, or return to the DVC Services Area where the DV Clerk will provide it.

The Victim Advocate initially assigned will maintain all victims on a client list for the duration of the case. The advocate is responsible for following-up with the victim and the service providers to ensure that any service referrals or placements were completed. The advocate is also responsible for following up with victims to remind them of the hearing dates for the final order, to check on safety and find out if there have been any violations of the ex parte order. A victim is free at any time to refuse services, or to decide not to return to court for the final hearing. However, it remains the advocate's responsibility to try to contact the victim and determine whether or not she or he has been intimidated or threatened not to proceed with the hearing. Ideally, the advocate will follow up with the victim at least twice between the initial appearance and the hearing – once a few days after the appearance to check in, and once the day

³⁹ If further court technology were developed, the laptop would also permit the Judge to access other databases, and perhaps to fill out the protection order directly on the computer.

or so before the hearing date to remind the victim of the hearing, and ensure that she or he has transportation to get to court.

9. Processing and Service of the Protection Order and Hearing Notice

If a temporary protection order has been issued, it will be submitted to the DV Clerk for regular processing, as well as entry into OPA. A copy of the protection order will be placed in the related pending criminal case, so that the Rule 6 or Preliminary Hearing Judge will see the order whenever there is an appearance in the criminal case.⁴⁰ Service protocols are currently being developed between the marshals and the Police Department. Whoever is determined to be responsible for this service should develop a consistent plan for retrieving the orders from the DV Clerk, making service, and returning proof of service to the Clerk.

10. The Responsibilities of the Domestic Violence Resource Coordinator

The Resource Coordinator is a court employee who ideally possesses some social work and/or administrative experience. The Resource Coordinator functions as a conduit of information for the Court and will be responsible for tracking case information in both the protection order and the criminal calendars.

The Resource Coordinator should have a desk near the judge in the DV Protection Order/Rule 6 Courtroom, as well as an office. Behind or close to the DV Courtroom, there

⁴⁰ Court planners may want to consider the feasibility of combining the protection order case file and the criminal case file into one consolidated file, so that all information will be available to all judges handling either of the cases. The planners should discuss the benefits as well as the concerns generated by this type of consolidation of files.

should be some office space dedicated to the DV Court. This will include Chambers for the DV Judge(s) and an office for the Resource Coordinator. The Resource Coordinator will be responsible for reviewing case files that will be called in the next day or two for hearings on the final protection order. The Coordinator will check to see if service has been made on the defendant and, if not, the Coordinator will follow up with the agency responsible for service to ascertain the reasons why service has not been made.

The Coordinator will not have access to any information regarding victims and the services or referrals they have received. However, if a victim has conveyed any information to the advocate that the victim wants the court to know, with the victim's permission, the advocate will communicate this to the Court. For example, if there have been any violations of the ex parte order, with the victim's permission, the advocate can alert the Coordinator, who after consultation with the Judge, can expedite the hearing, to hold the respondent accountable. (The advocate, again with the victim's permission, can also alert the police so that the respondent can be arrested on a criminal charge for the violation). The Coordinator will also be responsible for obtaining information on respondent compliance with any conditions (see below).

11. Hearing on the Final Protection Order

Upon arrival for the hearing on the final order, the victim will proceed to the DVC services area. The receptionist would notify the advocate that the victim has arrived. The advocate would bring the victim back to his or her office, where they will review the status of any services, and any conditions that the victim will request in court. If the victim is being

represented by an attorney, the victim will also meet with the attorney in the DVC area, to review the case.

The victim will wait in the DVC reception area, until the case is called. The victim will proceed to the DV Courtroom with the attorney, and/or advocate, who will be present at the hearing. As with the Ex Parte Order process, the victim can continue to access services and meet with the advocate whether or not the final order is issued. The victim will receive a copy of the final order, either in court or from the DV Clerk in the DV reception waiting area. The court will develop a security protocol at the end of each hearing. For example, the judge will order the defendant to stay seated in the courtroom for several minutes, or in a place designated by security personnel, for several minutes after the victim is able to leave. This will help to ensure that the respondent cannot follow the victim upon leaving the courthouse.

12. Follow-up With Victim After the Hearing

If the victim receives a final order, the advocate will continue to be responsible for checking in on the victim periodically during the period that the order is in effect. With victim permission, the advocate will convey to police and the court any alleged violations of the order, so that the respondent can be arrested and/or brought back before the judge. If the final order is not granted to the victim, the advocate will explain clearly that the victim is able to petition for another order whenever necessary, and that the victim may access the services in the DV area.

13. Movement of Respondents Through the Order of Protection Process

There will be a separate waiting area for respondents who have hearings scheduled on final protection orders. This area, which should be on the same floor at the DV Courtroom, but not adjacent to the DVC services area, will also be used for defendants and police officers waiting for Rule 6 appearances in criminal cases. There should be a security officer present in this area, and respondents will check in with a marshal upon arrival for their hearing. When a respondent's case is called, he and his attorney will proceed to the DV Courtroom.

If a final order is granted, the judge may impose a variety of conditions on the respondent, including participation in a batterers' intervention program. Though some of the Judges interviewed disputed their authority to impose this type of condition in a protection order setting, Law 54 has a catchall provision that plainly encompasses such conditions: "issue any order needed to enforce the purposes and public policy of this chapter."⁴¹ Clearly, the participation in a batterers' program of a respondent in a domestic violence protection order case is within the purpose and public policy of Law 54. Confusion has been generated because apparently the condition of participation in a batterers' program is not listed specifically on the protection order form. While that makes no difference legally, it is more likely that judges will exercise this option if they can simply check off a box, rather than write in an additional condition. Therefore, it is recommended that mandated participation in a batterers intervention program be printed on the form as a possible condition to be imposed. The Resource Coordinator will be responsible for linking the respondent to the program, and for obtaining

⁴¹ See 8 L.P.R.A. § 621 (k).

information from the program on respondent status. The DV Clerk will place a copy of the final order, with all conditions imposed, in the related criminal case file.

14. Monitoring of Respondent and Review Hearings

Ideally, the DV Judge will conduct follow-up hearings on all respondents to protection orders, while the order is in effect. The frequency of these hearings will depend on the respondent's conduct. Before each hearing, the Resource Coordinator will be responsible for obtaining information on any conditions, from various agencies and programs. At the victim's request, the victim advocate also can report to the Coordinator any relevant information on respondent status. All of this information will be provided to the DV Judge before the review hearing.

The Domestic Violence Criminal Case Process

1. Filing of the Domestic Violence Criminal Complaint

As discussed in this Report, there are several issues that will need to be addressed in the arrest/consultation with prosecutor/charging stage of a domestic violence criminal case. These issues require further discussion with the Prosecutor's Office, and I will not describe this part of the process here. However, once a complaint has been drawn up, a DV Prosecutor will file it with the DV Clerk. The DV Clerk will first review the complaint to determine whether or not it is composed of charges meeting the criteria for entry to the Domestic Violence Court. The eligible charges will be determined by court planners, and can be expanded as the Court develops. Initially, however, the Domestic Violence Court will handle only one or two of the

charges under Law 54. Where the case is not eligible for the specialized court, the case will be processed as usual, and handled by a regular Rule 6 judge and Preliminary Hearing judge. This is necessary in order to focus resources and ensure that there is adequate capacity to handle the cases in the Domestic Violence Court and to enable court planners to evaluate the success of operations at the Court with a clear delineation of cases eligible for handling there.

When the case is eligible for the Domestic Violence Court, in addition to the Clerk's regular processing tasks, the DV Clerk will search the OPA database to determine if the defendant has pending protection order or a protection order history. The DV Clerk will also check the court database to see if there are any pending cases in the system, such as in family court. Any information that is gathered will be provided to the judge before the Rule 6 hearing.

2. Pre-Trial Interview, Rule 6 Hearing, Bail, Conditions of Release

The officer will bring defendants with criminal cases that are eligible for the DV COURT to the Respondent/Defendant Waiting Area. Located near to this area will be offices for the following personnel: a Specialized DV Pre-Trial Services Interviewing Officer and a Specialized Pre-Trial Service Investigations and Arrest Officer; a Specialized DV Probation Officer, the DV Prosecutors' office. The defendant will be interviewed by the specialized Pre-Trial Services Officer, who will make recommendations for bail and any specific conditions, such as participation in a batterers' intervention program. The Pre-Trials Services officer will search the criminal history databases, as they currently do, and attach any criminal history to the file presented to the Rule 6 judge.

When the respondent's case is called, he or she will proceed with the police officer to the DV Courtroom. The court will make the Rule 6 probable cause determination, and if probable cause is found, the judge will consider bail and release conditions. Both the Resource Coordinator and a DV Pre-Trial Services Investigations and Arrest Officer will be present in the courtroom. The judge may impose pre-trial conditions on the defendant, such as participation in a batterers intervention program, and drug testing. The judge will set both a first appearance date for the Preliminary Hearing in the DV Superior Court, and a return date for a status review hearing in the DV Municipal Court, prior to the Preliminary Hearing appearance.]

Under Law 54, a police officer may request an order of protection against the defendant and on behalf of the victim in the case.⁴² The victim does not need to be present for this motion. At each Rule 6 hearing, the judge should have a protection order history in the case file and can determine whether or not the victim has obtained a protection order in the present case. If there is no record of an order, the judge can confirm this with the police officer, and the officer should then make a motion for an order. Of course any order of protection obtained in this case will automatically be eligible for the Domestic Violence Court, since it will be related to a pending criminal case at the specialized court.

3. Monitoring of Bail and Release Conditions

The Pre-Trial Services Investigations and Arrest Officer will be responsible for ensuring that the defendant is complying with these conditions. If there is any violation prior to the status review hearing date, the Pre-Trial Services Investigations and Arrest Officer will bring it to the

⁴² See 8 L.P.R.A. § 621.

immediate attention of the Resource Coordinator, who upon consultation with the judge, can expedite the hearing date and require the defendant to come back to court earlier to address the alleged violation. This can be done through a formal bail violation motion, but also may be done whenever the Investigations and Arrest Officer is concerned about defendant conduct, even if it doesn't rise to the level of a formal violation. The Resource Coordinator will alert the victim advocate assigned to the victim in the case of any violation, so that the advocate may inform the victim.

Prior to the status review hearing date, the Resource Coordinator will be responsible for obtaining a report from the Pre-Trial Services Investigations and Arrest Officer on the defendant's status. This report will be included in the judge's file and provided to the judge prior to the review hearing. If there is any cause for concern or the Pre-Trial Services Officer is recommending a change in release conditions, the Pre-Trial Services Officer will also be present in court during the hearing. The Judge will hold the hearing and make any changes to release conditions that are appropriate. All of this information will be included in the court case file that will be provided to the Preliminary Hearing judge.

4. The Preliminary Hearing and Continued Pre-Disposition Monitoring

The Preliminary Hearing Judge will be responsible both for holding the hearing, but also for continued monitoring of any release conditions. Before the initial preliminary hearing date, the Resource Coordinator will obtain from the Pre-Trial Services Investigations and Arrest Officer a report on the defendant's compliance with release conditions. This report will be part of the file that the Preliminary Hearing Judge reviews at the initial appearance. As with the Rule

6 judge, the court will review the status and make any changes as appropriate. The Resource Coordinator will also check OPA to ensure that the victim has a protection order. If for any reason this is not true, the judge will inquire of the prosecutor, and the prosecutor should move for such an order.

Once the preliminary hearing has been held, and if the judge has found cause to go forward, the Court can revisit bail and release conditions. The Pre-Trial Services Investigations and Arrest Officer will continue to be responsible for monitoring defendant status and reporting to the Resource Coordinator any concerns or violations. As in the Rule 6 court, the Resource Coordinator will notify the victim advocate assigned to the case immediately of any concerns with defendant compliance, which the advocate will relate to the victim.

The judge will set review status hearings for as long as the defendant is in the Preliminary Hearing courtroom. Before each appearance, the Resource Coordinator is responsible for obtaining information on defendant status, and will also check OPA before each appearance to ensure that there have not be any changes in the defendant's protection order record since the last appearance. In addition, the victim advocates will report in any information regarding defendant conduct and/or victim status that the victim wants the court to know prior to the appearance.

5. Plea Dispositions and Post-Disposition Monitoring

If the defendant decides to take a plea in the Preliminary Hearing courtroom, the judge will order a pre-sentence investigation by the DV Probation Officer. After the review of this report, the judge will determine sentence and sentencing conditions, and if the defendant is not incarcerated, set a status review hearing date. These will routinely be held monthly, but may be

made more frequent if necessitated by the defendant's conduct. The hearing dates may be held less frequently if the defendant's conduct merits it.

As with the pre-disposition monitoring, the Resource Coordinator will ensure that the DV Probation Unit is notified of all conditions and hearing dates, and will obtain information prior to each review hearing date from all sources, which will be made available to the judge. The Resource Coordinator will continue to check on OPA before each appearance. The DV Probation Officer will appear at each review hearing to report on defendant conduct. If there is any conduct that the Officer believes necessitates some intervention by the court, even if not a formal violation, the Resource Coordinator can expedite a review hearing date so that the judge may warn the defendant about the consequences of his continued conduct. All formal violation motions brought by the prosecutor and probation will be scheduled on an expedited basis. Any findings of violations should bring immediate sanctions by the judge, such as incarceration, or more restrictive conditions. A defendant that has been terminated from a program due to poor attendance or conduct will not simply be re-sentenced to another program.

6. Trials and Post-Disposition Monitoring

I suggest that the trial stage of the criminal process be omitted from the specialized domestic violence court in its initial stages. Trial judges should receive domestic violence training, and the court may attempt to channel domestic violence cases to a smaller subset of trial judges. However, because at this point, there is such a small number of domestic violence cases going to trial, I believe it makes most sense to concentrate on the earlier stages until they are

functioning well and are institutionalized. Therefore, under the initial model, if a domestic violence case proceeds to trial, it will be processed in the regular way.

However, even in this regular process, there will be some changes due to the specialized DV personnel that have been involved earlier in the case. For example, the victim will have a victim advocate assigned who will be able to work with her and accompany her to trial, if she is testifying. If the DV Prosecutors are able to adopt a vertical prosecution structure, the assigned prosecutor will be very familiar with the case and the victim prior to trial.

Ultimately the Domestic Violence Court will expand to the trial stage. This will necessitate an additional courtroom, and physical design of the Domestic Violence Court area should have the ability to expand to another courtroom, and judge's chambers. It is anticipated that as the court and its partners work on many of the issues addressed in this Report, particularly at the Preliminary Hearing stage, a greater number of domestic violence cases will proceed to trial. Depending on the trial caseload, the Domestic Violence Court may require a full-time dedicated trial judge. If the caseload does not require this, the court should designate one or two judges as the Domestic Violence Trial Judges, who will handle all domestic violence trials and post-disposition monitoring of convicted defendants. As in the Preliminary Hearing courtroom, the Resource Coordinator, Pre-Trial Services, and Probation, will be responsible for monitoring of the defendant's release conditions during the trial, and if convicted, the defendant's sentencing conditions.

7. Movement of the Victim Through the Criminal Case Process: Initial Stages and Link to a Victim Advocate

A victim's first contact with the justice system in a domestic violence criminal case is likely the police officer that arrives at the scene of the incident. Police are currently responsible for bringing the victim to the prosecutor's office during the charging process, and for transporting a victim to a shelter if necessary. As discussed in this Report, the specialized domestic violence police officers will now be taking on criminal investigations duties that will require a focus on the crime itself, in addition to working with the victim. Though this involvement with the victim should be maintained, an institutionalized connection with a victim advocate at this stage of the process can both help the officer and provide more immediate access to victim counseling services and referrals.

Currently, the community-based victim advocates at the courthouse work primarily with victims in the civil protection order process, while the Victim-Witness Advocate Unit from the prosecutor's office works with victims in the criminal process. Under current staffing levels, the community-based advocates could not take on a criminal court caseload. Meanwhile, the Victim-Witness Advocate Unit also has limited staff and it is not responsible solely for domestic violence victims. In addition, different confidentiality rules apply with the government advocates, so that information provided by the victim to the prosecutor, would not be protected by the confidentiality privilege. The advocates from the prosecution unit may be more focused on encouraging victims to participate in the prosecution. For all these reasons, the victim advocate organizations, the prosecutor's office and the Domestic Violence Court planners need to discuss how best to divide responsibilities among advocates. The Court can utilize both governmental and non-governmental advocates, as has been done in the Brooklyn Domestic

Violence Court for several years. However, procedures for assigning advocates, making clear to victims about different confidentiality rules, and ensuring that there is adequate advocate staffing, are all essential. What is most important is that a victim should be assigned to a victim advocate in every criminal case, as in the civil process described above. The Victim-Witness Advocate Unit of the Prosecutor's Office will have an office in the DV Court Services Area at the courthouse.

Ideally, there will be adequate victim staffing so that there can be an advocate on call on a 24-hour basis. If there is a domestic violence incident, the advocate will be beeped by the officer and can come to scene, to the hospital, or to the prosecutor's office where the victim is being brought. In this way, a victim will have access to an advocate from the earliest stages of a criminal case. The advocate can assist the officer in obtaining emergency services such as shelter placement. Of course, there must be enough advocates to enable them to undertake these additional responsibilities.

If the victim has not been linked to an advocate during the initial arrest and charging stages of a case, the police officer or prosecutor will be responsible for bringing the victim to the DV Court Services Area, where an advocate will be assigned. As in the civil process, the advocate will interview the victim regarding service needs, and make referrals both on-site and to community-based agencies. The advocate will also make sure that the victim is aware of the protection order process and will assist the victim in preparing the petition and getting that process underway. As in the civil process, the advocate will be responsible throughout the case for following up with the victim, though a victim may always refuse services.

8. Link to the Victim Throughout the Criminal Case

The advocate will accompany the victim to all court proceedings at which the victim wants to be present. When waiting to testify at any stage of the case, the victim will wait in the Domestic Violence Court Services Area until needed. If the victim does not want to attend a court appearance, when possible, the advocate may attend in order to monitor the proceedings and report back to the victim on case status and any change in the defendant conditions. The Resource Coordinator is also responsible for communicating this information to the assigned advocate after each appearance.

The advocate will contact the victim to explain the status of the proceedings, and to ensure that the victim is safety and is obtaining desired services. If the victim reports any information regarding defendant compliance that the victim wants the prosecutor and court to know, the advocate will report this to the prosecutor and to the Resource Coordinator. Of course, the victim may work directly with the prosecutor as well.

The advocate will continue these responsibilities through the post-disposition stage of the case, while the defendant continues to be monitored by the court. In addition, the services of the advocate will not be linked to the victim's participation in the prosecution. Victims will be able to consult and work with advocates whether not they decide to be involved in the criminal case.

Dedicated Staffing from Multiple Agencies at the Domestic Violence Court

Whenever possible, staff from the court and its partners should be dedicated to domestic violence cases, and assigned to the Domestic Violence Court. With specialized staffing, the Domestic Violence Court can implement and institutionalize procedures specific to the court and

ensure consistency in operations. The specialized staff will develop expertise in the handling of the domestic violence cases, and will become invested in further training in the field. In addition, because challenges will always arise, the stable specialized staff will develop relationships and will promote better communication and coordination among partners.

As is evident in the Process section above, I have assumed that specialized staff from many different organizations will be available in developing Domestic Violence Court operations. Of course, this ideal may not be feasible for all agencies, at least initially, in practice. Below I list the specialized roles, and the numbers of each position that would be ideal for the Court initially, with the understanding that this must be flexible. It is dependent not only upon resources, but also upon the caseload of the Court. The responsibilities of each of the positions are described more fully in the Process section; here I briefly summarize the tasks for each position.

Court Employees

- Judge – 1 or 2: At least one judge would be dedicated full time to the Domestic Violence Court. This judge could handle the entire caseload, including the order of protection process, and all stages of the criminal process through the preliminary hearing. If possible, it may be more feasible to have one Municipal Judge handling protection orders and Rule 6 hearings, and one Superior Court Judge handling preliminary hearings and post-disposition monitoring. Initially, the DV Court will not include the trial phase. At a later phase of implementation, the Court will want to

expand to include at least one additional Judge to handle domestic violence trials. The number of judges and whether or not they will be needed full time for domestic violence trials, will depend on the numbers of cases proceeding to trial at that time.

- Resource Coordinator – 1 or 2: The Resource Coordinator is a court employee who is responsible for gathering information from a number of sources and ensuring that it is provided to the judge before each court appearance. Because the Domestic Violence Court will include compliance monitoring appearances, at the protection order calendar, at the criminal pre-disposition stage and at the criminal post-disposition stage, the Resource Coordinator will have a heavy workload. The Coordinator is also expected to be present in court most of the time in order to be able to assist the judge with any necessary information and to track case status. It will likely be necessary then to have two Resource Coordinators, with in the Municipal Court courtroom and handling protection order and Rule 6 cases, and the other in the Superior Court courtroom handling preliminary hearings and pre- and post-disposition hearings there. These two positions can be equal, or one position could report to the other, with the second position being called a Defendant Monitor.
- Marshals -- 4: There should be a marshal stationed at the Domestic Violence Court Services Area, the Respondent/Defendant Waiting Area, the Municipal Court Courtroom and the Superior Court Courtroom. All of these marshals would be

dedicated to security responsibilities. If it is possible, it is preferable if these officers dress in uniform and be immediately recognizable as security.

- Domestic Violence Clerk Unit – 5 or 6: Two clerks in the Clerk’s Office should be dedicated to handling domestic violence cases. They will be responsible for checking for Domestic Violence Court eligibility; processing protection order petitions and orders; returns of service; criminal complaints. They will be responsible for checking the OPA and court databases as discussed in the Process section, and for entry of new orders and other information into these databases. If the location of the Clerk’s Office is not next to the Domestic Violence Services Area, one of the Domestic Violence Clerks should be posted in a location adjacent to that area to handle filing of petitions and processing of protection orders. A clerk should be located in the Defendant/Respondent Waiting Area, to coordinate the criminal case calendar. Each courtroom should have a clerk to perform the regular functions in the courtroom. The Superior Courtroom may require a second clerk to handle additional record-keeping functions necessary to that court.
- Domestic Violence Services Area Receptionist – 1: The receptionist will greet all victims, link victims to advocates, provide petition forms when necessary, and will be the person informed by the court when a case is ready to be heard.

- Pro-Se Staff-person – 1: One employee of the Pro Se Unit will be based in the Domestic Violence Services Area in order to provide information to victims on Family Court matters, such as divorce and custody of children.

Partner Employees

- Domestic Violence Pre-Trial Officers – 2 or 3: There will be 1 Pre-Trial Services Officer dedicated to domestic violence case pre-appearance interviews. This officer will be located at the Domestic Violence Court and will handle all interviews and bail recommendations. There will be 1 or 2 additional Pre-Trial Services Investigations and Arrest Officers dedicated to domestic violence pre-trial monitoring. As described in the Process section, these officers will monitor defendant compliance with all pre-trial conditions imposed either by the Rule 6 judge or the Preliminary Hearing judge.
- Domestic Violence Probation Officers – 2 or 3: One Probation Officer will be dedicated to handling all pre-sentence investigations and recommendations for defendants at the Domestic Violence Court. There will be 1 or 2 Probation Officers dedicated to post-disposition monitoring of defendants.
- Domestic Violence Prosecutors — 3 or 4: This number will vary, depending on the size of the caseload, as well as the number of cases that go to trial. There must be an adequate number of prosecutors to handle vertical prosecution from initial intake to

trial. In addition, if feasible, one DV prosecutor should be on call 24 hours a day to assist in charging and drawing up complaints. This requires an adequate number of prosecutors so that this responsibility is not too frequent for any individual prosecutor.

- Court-Based Victim Advocates – 4 (Non-Governmental – 2; Prosecution Victim-Witness Advocates – 2): Depending on the division of responsibilities developed between the two victim advocacy groups (see Process section above), the distribution of personnel may change. However there should be at least 4 advocates on-site at the court. This will be necessary to assign each victim to an advocate, and to address the expanded responsibilities of the advocates (regular accompaniment of victims to court appearances; follow-ups with victims).

On-Site Service Agencies -- 4 to 6: The service agencies based on-site at the Domestic Violence Services Area should include 2 full-time Civil Legal Attorneys, and at least one staff-person from each other agency that is based there full-time, such as a Child Support Enforcement government attorney, and a Housing and Public Assistance Specialist. In addition to this full-time staff, the Court may want to host other agencies to locate personnel at the Services Area on specific days to address the needs of domestic violence victims. If possible, there would be an office space available in the Services Area to accommodate these personnel.

- Child Care Center Personnel – 1 to 2: The Child Care Center should be open and staffed whenever the Domestic Violence Court is open. The staff should include at least one paid employee experienced in child care and ideally, experienced in working with children exposed to trauma. This staff person would be employed by a community-based agency that provides such services (such as a YWCA, for example). The paid staff could be supplemented by some volunteers, screened for experience in this area.

Addressing Concerns and Expectations Raised by a Domestic Violence Court

There was a lot of support expressed for a specialized domestic court from those interviewed, representing diverse parts of the justice system. However, there were also some concerns raised that should be addressed.

There was a general concern expressed that is common to all specialized courts – the selection of the judge or judges handling domestic violence cases becomes crucial. If only one or two judges are handling these cases, a “bad” judge can have a widespread negative impact. There is also concern that judges will “burn out” if handling only domestic-violence related matters.

There is no question that selection of the domestic violence court judge(s) is an important matter. In my experience, the most effective domestic violence court judges share a few important qualities – an open-mindedness to understanding domestic violence dynamics, to trying new procedures, and to working closely with a number of court partners; a dedication to fairness and the appearance of fairness at all times; a temperament that is respectful to all parties, and is patient in dealing with pro se litigants.

It is not necessary that the judge already be highly knowledgeable about domestic violence, and it is not beneficial to select someone who believes that they “know it all” about this field. It is most critical that the judge have a willingness to learn about the complexities of domestic violence and the humility to recognize that one can never stop gaining knowledge in this field. In addition, the most effective judge will have credibility with both prosecutors and defense attorneys, and will not be perceived as a “prosecutor’s judge,” for example. Finally, the judge best suited for a domestic violence court has good people skills both in and outside of the courtroom, because he or she will be handling difficult personal issues in court and will need to work closely and in new ways with court and partner personnel.

The defense bar also expressed concern that a domestic violence court will label defendants. Simply by being assigned to a specialized court, they will be stigmatized as batterers and will be less likely to get a fair adjudication in a court that is targeting this specific offense. To have long-term success, a domestic violence court must have credibility with the defense bar. It is understandable that defense attorneys may not be pleased with domestic violence court procedures. The domestic violence court is designed to close a number of gaps that have benefited defendants in the traditional court system. However, the court can have a good working relationship with the defense bar. To do this, the adjudication process must be scrupulously fair and the judge and all court personnel must treat both defense attorneys and defendants with courtesy and respect.

As discussed above, the selection of the proper judge can be very important in setting the correct tone for the entire project in this regard. In addition, the defense bar must be included in partnership meetings and sessions designed to address operations at the court. Their concerns

must be heard and considered. This does not mean that the court will not treat domestic violence seriously, and hold offenders accountable for their actions. However, the court must also ensure that the process is fair and that defendants' due process rights are protected.

It is natural for supporters of a domestic violence court to have high hopes for its implementation. Certainly in order to be successful, the court must make a difference in case handling, victim satisfaction and safety, and in the public's perception of the court system's treatment of domestic violence. However, it is also important that these supporters and the court itself have realistic expectations. A domestic violence court will not eliminate domestic violence in a community, and will not solve all problems associated with a response to domestic violence. The court must be careful to set reasonable goals, and to clearly define for the public what those goals are.

However, given the current specific needs in the Puerto Rico court system, it is situated to benefit greatly from a specialized court process. The court and its partners should heighten their review of the potential of a specialized domestic violence court, including a review of "best practices" around the country that have addressed many of the same concerns raised in Puerto Rico.

CONCLUSION

The Puerto Rico community is faced with a severe domestic violence problem. Unfortunately, the occurrence of three domestic violence fatalities in the past several weeks demonstrate that there is an urgent need to examine the current response of the justice system, and to attempt to implement changes that can have an impact on the lives of domestic violence victims.

This Report has attempted to highlight some central challenges to effective domestic violence response that need to be addressed by the court system and its partners. However, Puerto Rico has much strength in this area as well. Several key agencies already have specialized domestic violence units in place, such as Probation, Police and the Prosecutor's Office. There is a strong and dedicated group of victim advocate organizations, which meet regularly through the Office of the Women's Advocate. There are many in the court system that are committed to improving the way that domestic violence cases are handled.

Moreover, many partners have already identified some important system gaps, and have begun to address them, such as improving the quality and consistency of batterers' intervention programs, and the development of the protection order electronic registry. The court already has experience in the development of a specialized court, the drug courts that exist in various judicial regions. The drug court model is very different in philosophy and operations from a domestic violence court. However, some components are similar, such as the existence of a court-employed resource coordinator, to gather information for the court, and the concentration of services and cases focused on one body of defendants. By all reports, these drug courts have

been quite successful. While the problems encountered in development of a domestic violence court will be different, both the court and its partners have seen how this type of focus in a specialized court can greatly improve the system.

At this moment, the community is well situated to undertake the substantial effort that this improvement will require. The foundational steps described above, together with several community resources and assets identified in this report, have positioned the community to make real progress. This progress can only occur when the court and justice system partners work together on the many challenges they face. One long-time domestic violence court judge likes to say that while we may not “solve” domestic violence, we can “surround the problem,” by ensuring that all components in the system are focused and coordinated. The development of this court and partner coordination is a critical initial step, which clearly can be achieved in this community. This is the time for Puerto Rico to achieve its goals of improving court and partner response, and increasing safety for victims of domestic violence.