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HONEY, I'M HOME: ADDRESSING THE PROBLEM OF OFFICER DOMESTIC VIOLENCE

JACQUELINE M. MAZZOLA*

INTRODUCTION

“Kristin—don’t worry. We’re all over this. We were on it as soon as you called.”¹ This was not the first time a supervisor at the Utica Police Department reassured Kristin.² Kristin received this response sometime in the late summer of 2009.³ A few weeks later, on September 28, Kristin’s eight-year-old son returned home from school, walked into his home, and found his mother dead and his father near death.⁴ Joseph A. Longo, a thirteen-year veteran of the Utica Police Department, had taken a kitchen knife and brutally stabbed Kristin thirteen times in her back and upper chest, killing her and then turning the knife on himself.⁵

Kristin suffered extensive verbal, physical, and mental abuse by Longo throughout their marriage.⁶ Longo also physically, verbally, and emotionally abused his four children.⁷ On August 13, 2009, Longo stood in front of his children and wife, held his service revolver, and told them, “[t]oday is the day I go postal on all of you.”⁸ Before this incident, supervisors at the Utica Police Department discouraged Kristin from seeking an order of protection against Longo and from reporting anything serious to the police because Longo could be suspended or he could lose

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¹ *Pearce v. Estate of Longo*, 766 F. Supp. 2d 367, 372 (N.D.N.Y. 2011).

² *Id.*

³ *Id.*

⁴ *Id.* at 373; Rocco LaDuca, *Attorney: Longo’s Wife Feared For Her Safety*, OBSERVER-DISPATCH (Sept. 29, 2009), <http://www.uticaod.com/news/x576527296/Officials-Longo-s-wife-filed-divorce-papers-before-stabbing>.

⁵ *Pearce*, 766 F. Supp. 2d at 373; LaDuca, *supra* note 4.

⁶ *Pearce*, 766 F. Supp. 2d at 372.

⁷ *Id.*; LaDuca, *supra* note 4.

⁸ *Pearce*, 766 F. Supp. 2d at 372.

his job.⁹ One day after this incident, Kristin reported what had happened to the Utica Police Department and told the supervisor that she feared for her life and her children's lives.¹⁰ She also notified Longo's supervisor that Longo was emotionally unstable and needed counseling.¹¹ The supervisor's response was, "I know he is not ok."¹²

While Longo's supervisors did meet with Longo shortly after this incident, it was to no avail.¹³ The same day as that meeting, Longo returned home while still on police duty with his service revolver and forced Kristin to flee her own home.¹⁴ Once again, she reported this incident, and Longo's supervisor reassured her that Longo's gun would be confiscated.¹⁵ However, the gun was not confiscated.¹⁶

On September 14, 2009, in front of his youngest child and Kristin, Longo put the barrel of his service revolver in his mouth and threatened again to kill himself.¹⁷ Kristin relayed her fears to Longo's supervisor, who in turn reassured her that the police department was aware of the situation and would protect her and her children.¹⁸ Longo was disciplined, however it was for an unrelated incident where he pointed his gun at a woman while working as a high school security guard.¹⁹ Fellow officers were concerned about Longo's behavior, and one officer even urged the police chief to confiscate Longo's weapons.²⁰ Contrarily, the police chief, who was one of Longo's close friends and Longo's ex-partner, affirmatively ordered Longo to keep his weapons and remain on duty.²¹ One of the chief's subordinates overrode the chief's order and took away Longo's weapons.²² On September 28, 2009, Kristin and Longo were in court together for their divorce.²³ Kristin was awarded exclusive possession of the family home.²⁴

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Pearce*, 776 F. Supp. 2d at 372.

¹⁵ *Id.*

¹⁶ *See id.* at 372–73 (inferring that it was not confiscated because he had the service revolver subsequently on September 14, 2009).

¹⁷ *Id.* at 372.

¹⁸ *Id.* at 373.

¹⁹ *Id.*

²⁰ *Pearce*, 776 F. Supp. 2d at 373.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

Less than four hours later, Kristin was found dead in that home.²⁵

This Note focuses on the particular problem of officer domestic violence. With officer domestic violence, victims face special obstacles in seeking help because the abuser is part of the system set up to end the abuse. As such, the abuser is issued and trained in how to use weapons and restraints, and the abuser has access to information that the general public does not. New York State police departments should adopt new policies regarding officer domestic violence because officer domestic violence is a prevalent problem, victims are underrepresented and face obstacles in obtaining necessary help, and precincts must be held accountable for failing to respond adequately to officer domestic violence. This Note urges New York to pass new legislation that would require police precincts to adopt specific procedures that must be followed when there are allegations of officer domestic violence.

This Note is divided into four main parts. Part I of this Note will discuss the prevalence and the problem of officer domestic violence. This part will also focus on the special problems those victims of officer domestic violence face. Part II of this Note will explore the current laws and policies that already govern officer domestic violence, and will address the obstacles that a victim or a victim's family may face when suing an officer or an entire police precinct for police misconduct. Part III of this Note will explore the self-help option for victims. Part IV of this Note will propose the adoption of legislation requiring New York police departments to institute policies addressing officer domestic violence.

I. OFFICER DOMESTIC VIOLENCE

This part will explore the problem of officer domestic violence. Section A will discuss the prevalence of officer domestic violence. Section A will also explore factors that may contribute to officers becoming domestic violence abusers, and will explain the special obstacles that victims of officer domestic violence must face. Section B will discuss the "code of silence" and the problem of underreporting, especially in police families.

A. Double the Trouble for Victims of Officer Domestic Violence

Domestic violence crosses all socioeconomic classifications and professions, including doctors, lawyers, and even police officers.²⁶

²⁵ *Id.*; LaDuca, *supra* note 4.

²⁶ SHIHO YAMAMOTO & HARVEY WALLACE, *Domestic Violence By Law Enforcement Officers*, in

However, victims of officer domestic violence face numerous dangers that victims in the general population do not face.²⁷ For example, “[f]ear dominates a victim of domestic violence; when the abuser is a police officer, that fear is compounded.”²⁸ Officer abusers are tougher and more dangerous, and “[t]hey have training, a badge, a gun and the weight of the police culture behind them.”²⁹ In fact, domestic violence in police officer families may be as much as four times as prevalent when compared to the ten percent of families in the general population who experience domestic violence.³⁰ Even assuming that domestic violence occurs in police families at the same rate as it does in the general population, approximately 60,000 to 180,000 police families are affected.³¹

Officer domestic violence is not only devastating for the direct victims of the abuse, but it also has an indirect devastating effect on the entire community. Domestic violence by just one officer questions the credibility and effectiveness of the entire police precinct.³² If officers are supposed to protect the community and stop acts of domestic violence, officers must first respond to the domestic violence present within the precinct.³³ If an officer is not responding to domestic violence within the precinct, that officer’s ability to perform his police duties may be compromised because that officer may be unable to think rationally on the scene.³⁴ For example, if an officer abuser goes on a domestic violence call, he may not adequately protect the victim for various reasons; he may think that she is lying, or he

ENCYCLOPEDIA OF DOMESTIC VIOLENCE 255 (Nicky Ali Jackson ed., 2007) [hereinafter *Encyclopedia*]; Suzanne Laurent, *Domestic Violence Crosses All Socioeconomic Lines*, DERRYNEWS.COM (Nov. 5, 2009), <http://www.derrynews.com/local/x546140143/Domestic-violence-crosses-all-socioeconomic-lines/print>.

²⁷ *Encyclopedia*, *supra* note 26, at 256.

²⁸ Maureen O’Hagan & Cheryl Phillips, *The Brame Case: When a wife’s abuser is a cop, who can help?*, THE SEATTLE TIMES (May 9, 2003), <http://community.seattletimes.nwsourc.com/archive/?date=20030509&slug=dv09m0>.

²⁹ Diane Wetendorf, *The Impact of Police-Perpetrated Domestic Violence 2* (2000), http://www.dwetendorf.com/Wetendorf_ImpactPoliceDV_FBI.pdf [hereinafter *Impact*].

³⁰ See *Encyclopedia*, *supra* note 26, at 255–56 (stating that one study found approximately 40%, but noting that no agreement on the prevalence rate of domestic violence by officers exists); see also *Police Family Violence Fact Sheet*, NATIONAL CENTER FOR WOMEN & POLICING (2005), <http://www.womenandpolicing.org/violenceFS.asp> (finding that at least 40% of police officer families experience domestic violence).

³¹ ELLEN KIRSCHMAN, I LOVE A COP: WHAT POLICE FAMILIES NEED TO KNOW 164 (2007).

³² Karen J. Kruger & Nicholas G. Valltos, *Dealing with Domestic Violence in Law Enforcement Relationships*, FBI LAW ENFORCEMENT BULLETIN, July 2002, at 1, available at [http://findarticles.com/p/articles/mi_m2194/is_7_71/ai_89973552/?tag=content;coll; Gina Barton, Police Department Ignores National Standards for Officers Accused of Domestic Violence, JSONLINE.COM \(Oct. 30, 2011\), http://www.jsonline.com/watchdog/watchdogreports/police-department-ignores-national-standards-for-officers-accused-of-domestic-violence-132868198.html](http://findarticles.com/p/articles/mi_m2194/is_7_71/ai_89973552/?tag=content;coll; Gina Barton, Police Department Ignores National Standards for Officers Accused of Domestic Violence, JSONLINE.COM (Oct. 30, 2011), http://www.jsonline.com/watchdog/watchdogreports/police-department-ignores-national-standards-for-officers-accused-of-domestic-violence-132868198.html).

³³ See Kruger, *supra* note 32, at 1.

³⁴ See *id.* at 4.

may believe that the restraining order should not be enforced.³⁵ Also, if the officer abuser is called to testify in a case of domestic violence, that testimony may be filled with personal bias.³⁶

The discrepancy between the number of families in the general population affected by domestic violence and the number of police families affected by domestic violence may be attributed to the very nature of being a police officer.³⁷ When some civilians become police officers, they change and develop a “command presence.”³⁸ At work, officers need to be in control.³⁹ They give and take orders daily.⁴⁰ When these orders are not complied with, officers are taught to use physical force and verbal intimidation.⁴¹ Officers are issued handguns, batons, and handcuffs and receive special training on how to use these, and their own fists, as weapons. Officers are also trained to use certain techniques to incapacitate someone.⁴² Most injuries caused by these techniques are not easily observable.⁴³ These same control tactics are often incorporated into an officer’s home life. For example, officer abusers know how and where to hit a domestic violence victim so that bruises are not visible.⁴⁴ Thus, when a victim complains of injury, she often will not have any physical evidence of injury to support her claim.⁴⁵

Officers also have privileges that civilians do not have. For example, officers can legitimately access records of confidential and personal information.⁴⁶ Officers have access to information including locations of shelters and community support groups, and officers receive training in surveillance and investigation.⁴⁷ Officers can use these privileges for

³⁵ See *Impact of Police-Perpetrated Domestic Violence in DOMESTIC VIOLENCE BY POLICE OFFICERS* 375, 381 (Donald C. Sheehan ed., 2000), available at http://www.dwetendorf.com/Wetendorf_ImpactPoliceDV_FBI.pdf; see also Leigh Goodmark, Symposium, *Ethics of Family Representation: Going Underground: The Ethics of Advising a Battered Woman Fleeing an Abusive Relationship*, 75 UMKC L. REV. 999, 1014 (2007) (questioning whether police officers would enforce a court order against a fellow officer who committed domestic violence).

³⁶ See *Impact*, *supra* note 29, at 381–82.

³⁷ See KIRSCHMAN, *supra* note 31, at 164.

³⁸ See DIANE WETENDORF, WHEN THE BATTERER IS A LAW ENFORCEMENT OFFICER: A GUIDE FOR ADVOCATES, BATTERED WOMEN’S JUSTICE PROJECT 14 (Feb. 2004), http://www.bwjp.org/files/bwjp/articles/Batterer_LE_Advocate_Guide2009.pdf [hereinafter *Guide*].

³⁹ See KIRSCHMAN, *supra* note 31, at 165.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Guide*, *supra* note 38, at 17.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*; O’Hagan & Phillips, *supra* note 28.

⁴⁶ *Guide*, *supra* note 38.

⁴⁷ *Encyclopedia*, *supra* note 26, at 256.

personal reasons, such as tracking the victim and identifying any visitors the victim may have over, including fellow officers who may stop by to take a statement, therapists who are needed to develop safety plans with the victim, and lawyers who may visit with the victim to discuss divorce or other legal courses of actions.⁴⁸ Thus, hiding from an officer is nearly impossible.⁴⁹ Advocates from a battered women's shelter state that when a victim of officer domestic violence seeks help, "[i]t's a frightening feeling, even for the domestic violence advocates. That's because officers know the locations of confidential shelters, or can easily find out, posing a risk to everyone."⁵⁰

B. Hush Hush: The Code of Silence and Underreporting

The "code of silence" that pervades police precincts is another significant factor that contributes to the higher incidents of domestic violence seen in police families.⁵¹ The code of silence "is an unofficial acknowledgment that no officer blames or implicates another officer who is accused of a wrongdoing."⁵² The code of silence severely limits a victim's access to helpful networks. Because officers face daily life-or-death situations together, a culture of solidarity and loyalty is fostered among the officers.⁵³ This solidarity leads to the unspoken code of silence.⁵⁴

The officers that maintain a conspiracy of silence may persuade the victim that the loss of her abuser's job would devastate her family.⁵⁵ Officers may also fear that they will be ostracized or will be abandoned by other officers if they break this code of silence.⁵⁶ As a result, at trial some officers may cover up for another officer and may commit perjury instead of telling the truth about a fellow officer.⁵⁷ The code of silence applies to all wrongdoings, including domestic violence allegations and may be "the greatest single barrier to the effective investigation and adjudication of

⁴⁸ *Guide*, *supra* note 38.

⁴⁹ *Encyclopedia*, *supra* note 26, at 257.

⁵⁰ *Guide*, *supra* note 38, at 28 (internal quotation marks omitted).

⁵¹ Karen Oehme et al., *Protecting Lives, Careers, and Public Confidence: Florida's Efforts to Prevent Officer-Involved Domestic Violence*, 49 FAM. CT. REV. 84, 85 (2011).

⁵² *Encyclopedia*, *supra* note 26, at 258.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ LAURENCE MILLER, *PRACTICAL POLICE PSYCHOLOGY: STRESS MANAGEMENT AND CRISIS INTERVENTION FOR LAW ENFORCEMENT* 273 (2006).

⁵⁶ MILLER, *supra* note 55, at 273.

⁵⁷ Alison L. Patton, *The Endless Cycle of Abuse: Why 42 U.S.C. § 1983 Is Ineffective in Deterring Police Brutality*, 44 HASTINGS L.J. 753, 763 (1993).

complaints against police officers.”⁵⁸

This “code of silence” may even extend beyond the police precinct because officers work with and form relationships with members of the criminal justice system, such as dispatchers, victim advocates, fellow officers, attorneys, judges, and corrections personnel.⁵⁹ Officers can exploit these relationships to manipulate the system.⁶⁰ This exploitation in turn severely limits the victim’s ability to seek help. This close relationship with other professionals may also leave a victim, or a victim’s family, weary of proceeding against an officer abuser because a victim may fear that the officer has special insight into how the criminal justice system works.⁶¹ As one survivor put it, “I knew they’d cover up for him like they did for each other.”⁶² Not only does a victim fear that if she presses charges against the officer abuser those charges will be dropped, but a victim also fears that the officer will find a way to fabricate charges against her.⁶³ For example, a victim may fear that the officer may plant drugs or stolen property on her, or even worse, “she may know that he is capable of rigging her car to cause an auto ‘accident’ or running her off the road.”⁶⁴

Compounding all of these factors is yet another obstacle: victims of officer domestic violence are not only unlikely to receive help, but are also unlikely to report domestic violence. Between 1998 and 2002, approximately sixty percent of domestic violence in the general population was reported to the police.⁶⁵ The most common reason victims of domestic violence cited for not reporting the abuse was that the incident was a “private/personal matter.”⁶⁶ Another reason for the non-reporting was to “protect the offender.”⁶⁷ For victims of officer domestic violence, this fear is even greater because in order to report an incident of domestic violence, the victim would have to open up to her abuser’s colleagues. Those who do report incidents of officer domestic violence have seen very few results because the abusers were supported by a system that gave the officer

⁵⁸ John Joseph Powers, Jr., *Eroding the Blue Wall of Silence: The Need for an Internal Affairs Privilege of Confidentiality*, 5 SUFFOLK J. TRIAL & APP. ADVOC. 19, 27 (2000).

⁵⁹ *Guide*, *supra* note 38, at 17–18.

⁶⁰ *Encyclopedia*, *supra* note 26, at 256; *Guide*, *supra* note 38, at 17–18.

⁶¹ *Encyclopedia*, *supra* note 26, at 256–57 (suggesting that officers also know which judges are hard and which are lenient regarding domestic violence cases and when to ask for continuances because courts are busy).

⁶² KIRSCHMAN, *supra* note 31, at 160.

⁶³ *Guide*, *supra* note 38, at 18.

⁶⁴ *Id.*

⁶⁵ D. KELLY WEISBERG & SUSAN FRELICH APPLETON, *MODERN FAMILY LAW* 305 (4th ed. 2010).

⁶⁶ *Id.*

⁶⁷ *Id.*

abusers more credibility than the victims, that failed to fully investigate officer domestic violence allegations, and that may have even supported the officer abusers.⁶⁸ Thus, there is a hushing effect on both sides – the reporting of the abuse and the following through with an allegation against a fellow officer.

II. INADEQUACIES OF CURRENT LAWS AND POLICIES

This part will explore whether the law can address the special challenges posed by officer domestic violence. This part will discuss the current laws and policies that have an effect on officer domestic violence. Section A will explain the current policies that are aimed at encouraging police precincts to curb officer domestic violence. Section B will discuss the ways in which victims, or families of victims, can turn to the judicial system for compensation when a police officer, or an entire police precinct, fails to protect a victim of officer domestic violence.

A. Policies and Laws Aimed at Preventing Officer Domestic Violence

In 2003, the International Association of Chiefs of Police (IACP) updated its model policy on officer domestic violence.⁶⁹ This model policy advises precincts to reach out to spouses of officers periodically and to take a zero-tolerance stance regarding domestic violence.⁷⁰ This policy calls for the training of all officers in domestic violence issues.⁷¹ Disappointingly, in 2006, three years after the updated policy was issued, a random sample of one hundred large agencies found that fewer than twenty-nine percent of these agencies had an officer domestic violence policy.⁷² While some departments encourage spouses to come forward,⁷³ this is simply not enough.

Instead, in many precincts an internal affairs division investigates citizen complaints about an officer, including domestic violence allegations.⁷⁴ However, an internal investigation may actually put the victim at further risk.⁷⁵ The problem with an internal affairs investigation is that the internal

⁶⁸ O'Hagan & Phillips, *supra* note 28; Oehme *et al.*, *supra* note 51, at 85.

⁶⁹ *Guide*, *supra* note 38, at 20.

⁷⁰ *Id.*

⁷¹ JOHN S. DEMPSEY & LINDA S. FORST, AN INTRODUCTION TO POLICING 224 (2008).

⁷² *Id.*

⁷³ *Guide*, *supra* note 38, at 20.

⁷⁴ Patton, *supra* note 57, at 787.

⁷⁵ See *Guide*, *supra* note 38, at 22 (noting “an internal investigation is extremely threatening to an officer and is a dangerous period for the victim” because the chief cannot keep the investigation

affairs departments are located within the police precincts, and the investigations, except the final outcome, are hidden from the public.⁷⁶ Thus, the code of silence may also have an effect on an internal affairs investigation because the camaraderie and loyalty to officers may lead to biased and untruthful findings.⁷⁷ Even if the internal affairs department decided that there had been problematic officer domestic violence, the decision to discipline the officer abuser rests with the chief in most cases.⁷⁸ If the chief refuses to punish an officer abuser, as the chief of the Utica Police Department did regarding Officer Longo, this sends a message that the chief agrees with the officer's domestic violence conduct.⁷⁹

The federal government has also become involved by developing a federal prohibition on firearms. Passed in 1996, the Lautenberg Amendment prohibits any individual who is convicted of domestic violence from owning a gun.⁸⁰ Specifically, this law prohibits any officer from possessing a gun if that officer is convicted of a domestic violence misdemeanor.⁸¹ While this law is laudable on paper, as discussed earlier many allegations of officer abuse are handled informally, many allegations are plea-bargained into noncriminal dispositions, and many precincts do not maintain records of these incidents, making it hard to get a conviction against an officer abuser.⁸² The Lautenberg Amendment did block over 150,000 attempted gun purchases by abusers convicted of domestic violence crimes during the first ten years of its enactment.⁸³ On the other hand, the Lautenberg Amendment may only increase a victim's fear to report an officer domestic violence incident.⁸⁴ If the officer loses his gun under the Lautenberg Amendment, he will most likely lose his job, unless

confidential from the entire precinct).

⁷⁶ Patton, *supra* note 57, at 787.

⁷⁷ *Id.* at 791; Oehme *et al.*, *supra* note 51, at 85.

⁷⁸ Patton, *supra* note 57, at 792.

⁷⁹ *See id.* at 792 (finding that the chief has an enormous role in setting the overall tone of the precinct).

⁸⁰ 18 U.S.C. § 922(g)(9) (2012).

⁸¹ *Encyclopedia*, *supra* note 26, at 258.

⁸² *See, e.g., Encyclopedia*, *supra* note 26, at 258–59 (finding that between 1990 and 1997, there were 227 alleged cases of domestic violence by officers in the Los Angeles Police Department, but only four of these allegations resulted in a conviction of criminal charges. Of the four, one officer was suspended for fifteen days and another officer's conviction was expunged).

⁸³ SENATOR FRANK R. LAUTENBERG, THE DOMESTIC VIOLENCE GUN BAN TEN YEARS LATER: LIVES SAVED, ABUSERS DENIED 2, 3, *available at* <http://lautenberg.senate.gov/documents/domestic/THE%20DOMESTIC%20VIOLENCE%20GUN%20BAN.pdf>.

⁸⁴ Eileen K. McCluskey, *Police Who Hit*, 7 NO. 3 QUINLAN, POLICE DEP'T DISCIPLINARY BULL. ART. 2 (Mar. 1999).

he can find a desk job.⁸⁵ This fear, that the officer will almost certainly lose his job if he is found guilty of domestic violence, may actually lead to a decrease in the number of reports of officer domestic violence.⁸⁶

B. Police Failed to Protect: Now What?

This section will explain the current legal remedies that exist if the police do nothing to protect victims or if the police exacerbate a situation. This section will discuss the difficulty in establishing the elements necessary to sustain a 42 U.S.C. § 1983 claim. Then, this section will move on to discuss the potential for maintaining a suit under New York State tort law. Lastly, this section will conclude that even if an action is sustained, the behavior and attitudes present in the police precinct may not change, and thus officer domestic violence will not be deterred.

To begin, separation-of-powers principles assert that police officers should be free to exercise their discretion without courts interfering with their decision-making abilities.⁸⁷ For this reason, courts do not like to hold the state accountable for an officer's action or inaction.⁸⁸ In other words, courts and society generally believe that police officers should not have to second-guess their decisions out of fear that they may be sued for that decision.⁸⁹

Yet, many families of victims of police violence, like Kristin's family, will sue police precincts for civil rights violations under 42 U.S.C. § 1983. This statute creates no substantive rights.⁹⁰ Rather, it provides a remedy for a deprivation of a right that is already established in the Constitution. Thus, to prevail on a § 1983 claim, the plaintiff must show a deprivation of a constitutional right.⁹¹ State liability does not extend beyond the boundaries of the substantive constitutional rights that were deprived.⁹² Generally, no right to police protection exists for private acts of violence, and police

⁸⁵ *Id.*

⁸⁶ *Id.*; see generally Jennifer Ammons, *Batterers with Badges: Officer-Involved Domestic Violence*, 29 WOMEN LAW. J. 29 (2005).

⁸⁷ *Valdez v. City of N.Y.*, 960 N.E.2d 356, 361–62 (N.Y. 2011); *Galka v. Cooper*, No. 11-13089, 2012 WL 4341059, at *5 (E.D. Mich. Aug. 20, 2012).

⁸⁸ G. Kristian Miccio, *Exiled from the Province of Care: Domestic Violence, Duty and Conceptions of State Accountability*, 37 RUTGERS L.J. 111, 190 (2005).

⁸⁹ *Denis v. Town of Haverstraw*, 852 F. Supp. 2d 405, 411 (S.D.N.Y. 2012); *Valdez*, 960 N.E.2d at 361–62.

⁹⁰ Susanna M. Kim, *Section 1983 Liability in the Public Schools After DeShaney: The "Special Relationship" Between School and Student*, 41 UCLA L. REV. 1101, 1106 (1994).

⁹¹ WEISBERG & APPLETON, *supra* note 65, at 321.

⁹² Kim, *supra* note 90, at 1106.

inaction has not been read to mean a deprivation of a right.⁹³ Courts have been unwilling to impose upon states widespread duties to affirmatively act on behalf of an individual.⁹⁴

§ 1983 claims also have a high threshold standard of liability.⁹⁵ Even if a court recognizes an affirmative duty to protect a particular plaintiff's constitutional interest, the state will not be found liable "unless the plaintiff can show that the government was at least reckless or deliberately indifferent to the plaintiff's constitutional rights."⁹⁶ Furthermore, the Supreme Court has limited the scope of § 1983 claims by refusing to impose a duty upon the state to protect an individual unless a "special relationship" exists between that state and that individual.⁹⁷ A "special relationship" is recognized "when the state incarcerates or institutionalizes individuals, because the state has taken custody of the individuals and rendered them incapable of controlling their environment and protecting themselves."⁹⁸

This special relationship doctrine was examined in *DeShaney v. Winnebago County Department of Social Services*,⁹⁹ where the mother of an abused child sued the state of Wisconsin alleging that the state welfare officers failed to protect her child from repeated beatings by the child's father.¹⁰⁰ The mother claimed that this failure to protect breached her child's constitutionally protected due process rights under the Fourteenth Amendment.¹⁰¹ The Supreme Court found that the Due Process Clause conferred "no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual."¹⁰² The Supreme Court held that Wisconsin's failure to protect against a private act of violence did not violate the Due Process Clause.¹⁰³ However, if the state officers had acted to protect the child and had failed to protect, then the child's due process rights would have been violated.¹⁰⁴ This distinction can be stated as

⁹³ WEISBERG & APPLETON, *supra* note 65, at 321.

⁹⁴ *DeShaney v. Winnebago Cnty. Dept. of Soc. Servs.*, 489 U.S. 189, 196 (1989); Kim, *supra* note 90, at 1107.

⁹⁵ *City of Canton v. Harris*, 489 U.S. 378, 388 (1989); Kim, *supra* note 90, at 1107.

⁹⁶ Kim, *supra* note 90, at 1107.

⁹⁷ *Id.* at 1108.

⁹⁸ *Id.*

⁹⁹ 489 U.S. 189 (1989).

¹⁰⁰ *Id.* at 191.

¹⁰¹ *Id.*

¹⁰² *Id.* at 196.

¹⁰³ *Id.* at 197.

¹⁰⁴ VICTOR E. SCHWARTZ ET AL., PROSSER, WADE, AND SCHWARTZ'S TORTS 440 (12th ed. 2010).

“whether the state is the doer of harm rather than merely an inept rescuer.”¹⁰⁵ Therefore, the special relationship doctrine is only invoked when “the state assumes custody of a person” and thus, “owes him a rudimentary duty of safekeeping no matter how perilous his circumstances when he was free.”¹⁰⁶

Absent a special relationship, the state has no constitutional duty to protect citizens against deprivations of life, liberty, or property committed by individuals.¹⁰⁷ Hence, domestic violence victims are restricted to bringing procedural, rather than substantive, due process claims.¹⁰⁸ In most cases where plaintiffs have claimed that their procedural due process rights were violated, the relevant state law provides for mandatory enforcement of legally issued restraining orders.¹⁰⁹

However, in 2005 the Supreme Court virtually eliminated the possibility of sustaining a procedural due process violation in a domestic violence case. In *Castle Rock v. Gonzales*,¹¹⁰ the plaintiff, a domestic violence victim, sued the state under § 1983.¹¹¹ The Supreme Court held that the wrongful failure by the police to arrest her husband, who had violated a restraining order, did not amount to a violation of a constitutional due process right under the Fourteenth Amendment, and therefore, did not result in civil liability under § 1983.¹¹² Interestingly, the Court relied on the traditional argument that the police had discretion, even in handling domestic violence incidents.¹¹³ Because the Supreme Court has severely limited the reach of § 1983 actions by eliminating the right to sue for a failure to arrest when a restraining order has been violated, § 1983 actions may not be an effective tool for deterring police misconduct.

Instead of suing under federal law, a plaintiff can try to sue under state tort law. Victims of domestic violence must sue under the same negligence theory as any other individual who seeks to bring a suit against a police precinct because there is no domestic violence cause of action in New

¹⁰⁵ *Id.* (citation omitted).

¹⁰⁶ *Id.* (citation omitted).

¹⁰⁷ *DeShaney v. Winnebago Cnty. Dept. of Soc. Servs.*, 489 U.S. 189, 194; *See WEISBERG & APPLETON, supra* note 65, at 322 (explaining that in *DeShaney* the Supreme Court refused to find that state social workers violated a child’s substantive due process rights by failing to intervene to protect the child from the father’s abuse).

¹⁰⁸ WEISBERG & APPLETON, *supra* note 65, at 322.

¹⁰⁹ *Gonzales v. City of Castle Rock*, 366 F.3d 1093, 1102 (10th Cir. 2004), *rev’d*, 545 U.S. 748 (2005); WEISBERG & APPLETON, *supra* note 65, at 322.

¹¹⁰ 545 U.S. 748 (2005).

¹¹¹ *Id.* at 754.

¹¹² *Id.* at 768 (“We conclude, therefore, that respondent did not, for purposes of the Due Process Clause, have a property interest in police enforcement of the restraining order against her husband.”).

¹¹³ *Id.* at 760.

York.¹¹⁴ In New York, the success of a negligence suit by a domestic violence victim against the police relies on the finding of a “special relationship”¹¹⁵ between the victim and the police.¹¹⁶

A plaintiff must overcome the threshold burden of demonstrating that the police owed a duty of care to the plaintiff.¹¹⁷ To determine whether a special relationship exists, New York uses a four-factor test including:

- (1) an assumption by the municipality, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on the part of the municipality’s agents that inaction could lead to harm; (3) some form of direct contact between the municipality’s agents and the injured party; and (4) that party’s justifiable reliance on the municipality’s affirmative undertaking.¹¹⁸

This fourth element is rarely met in court, making it nearly impossible to sustain a tort action in New York.¹¹⁹ For example, in October 2011, the New York Court of Appeals held in *Valdez v. New York*¹²⁰ that even though Valdez, the plaintiff, had a telephone conversation with an officer assigned to her case, the police did not have a special relationship with Valdez.¹²¹ In *Valdez*, after a prior order of protection expired, Valdez obtained a second order of protection against her former boyfriend.¹²² She delivered the order of protection and met two Domestic Violence Unit officers assigned to her case.¹²³ About a week later, Valdez’s boyfriend called her and threatened to kill her.¹²⁴ Valdez called one of the officers and that officer told her that the police would arrest her boyfriend

¹¹⁴ See *Sorichetti v. City of New York*, 482 N.E.2d 70, 74-75 (N.Y. 1985) (requiring domestic violence victims to establish the same special relationship exception that applies to all citizens who are alleging police misconduct).

¹¹⁵ This “special relationship” differs from a § 1983 “special relationship.” A § 1983 claim asks whether a constitutional right is being deprived. A state tort action asks whether a defendant voluntarily undertook an action, and the plaintiff detrimentally relied upon this undertaking. A § 1983 action is a higher threshold to cross, however, Valdez would not have been able to sustain a claim under either “special relationship” doctrine.

¹¹⁶ Miccio, *supra* note 88, at 160.

¹¹⁷ *Valdez v. City of New York*, 960 N.E.2d 356, 365 (N.Y. 2011).

¹¹⁸ *Cuffy v. City of New York*, 505 N.E.2d 937, 940 (N.Y. 1987).

¹¹⁹ See, e.g., *Valdez*, 18 N.Y.3d at 73 (finding although an officer said the department would handle the problem “immediately” and that the victim should return home, the victim did not reasonably rely on this statement); Brian J. Shoot, *Overruling By Implication and the Consequent Burden Upon Bench and Bar*, 75 ALB. L. REV. 841, 888 (2012).

¹²⁰ *Valdez*, 18 N.Y.3d at 84.

¹²¹ *Id.* at 74.

¹²² *Id.* at 72.

¹²³ *Id.*

¹²⁴ *Id.*

immediately.¹²⁵ The next day, Valdez took the garbage out of her apartment and was shot by her boyfriend.¹²⁶ The court of appeals concluded that “[i]t was not reasonable for Valdez to conclude, based on nothing more than the officer’s statement that the police were going to arrest Perez ‘immediately,’ that she could relax her vigilance indefinitely.”¹²⁷ The difficulty in establishing this special relationship demonstrates the judiciary’s effort to diminish the number of successful suits.¹²⁸

It is nearly impossible to bring a successful § 1983 or state negligence action. Even if a federal or state action is sustained, individual officers have little incentive to change their behavior.¹²⁹ One reason why individual officers have little incentive to change their behavior is because officers are “fully insulated from the financial effects of a lawsuit.”¹³⁰ The city pays for the attorneys in addition to any settlement or judgment against a police precinct or officer.¹³¹ In addition, there is very little pressure from external sources, such as politicians, to regulate misconduct within the police precinct.¹³²

III. ARE VICTIMS OF OFFICER DOMESTIC VIOLENCE LEFT TO FEND FOR THEMSELVES?

Given the lack of interest in effective and preventive practices and the absence of any legal remedies, victims of officer domestic violence are left with very few options. What were Kristin’s options? Should she have taken the children and ran away, hoping that her police officer husband would not find her? Should she have called the police precinct again and demanded that the police show up at her home and arrest her husband? Should she have hired a bodyguard to protect her twenty-four hours a day? Maybe she should have taken matters into her own hands and engaged in a self-help remedy. This section will focus on the option of engaging in self-help instead of waiting for police protection.

¹²⁵ *Id.* at 73.

¹²⁶ *Id.*

¹²⁷ *Id.* at 81.

¹²⁸ See *Cuffy v. City of New York*, 69 N.Y.2d 255, 260 (1987) (explaining that courts do not want to subject government entities including police departments to liability).

¹²⁹ Patton, *supra* note 57, at 767–68; Irving Joyner, *Litigating Police Misconduct Claims in North Carolina*, 19 N.C. CENT. L.J. 113, 113-14 (1991).

¹³⁰ Patton, *supra* note 57, at 772.

¹³¹ *Id.* at 771.

¹³² *Id.* at 772.

A. Self-Help: Should the Domestic Violence Victim Grab the Gun First?

Reasonably fearing for their lives, victims of officer domestic violence may be driven to take matters into their own hands by murdering their abusers in self-defense.¹³³ “He said he was going to kill me, that he was going to go down in glory,” explained Barbara Sheehan, a victim of officer domestic violence.¹³⁴ Throughout their marriage, Barbara’s husband, a former police sergeant, threatened her with a loaded semiautomatic pistol, smashed her head against a cinder-block wall during a vacation, and threw boiling pasta sauce at her.¹³⁵ The evening before turning the gun on her husband, Barbara told her husband that she would not accompany him on another family trip.¹³⁶ Her husband responded by punching her in the face, giving her a bloody nose.¹³⁷ Barbara feared that if she went away with him, she would never return home alive.¹³⁸

As a former police sergeant, Barbara’s husband taunted her, saying that he could murder her and then cover it up because he learned how to do so during his police training.¹³⁹ The former police sergeant would show Barbara photographs of dead bodies and threaten that he would do the same to her if she called the police.¹⁴⁰ Friends of Barbara explained the problem of officer domestic violence by saying that Barbara “was too afraid to report her abuse to the police since her husband had worked in law enforcement.”¹⁴¹ Simply put, Barbara’s husband was the police.¹⁴²

After turning the gun on her husband, Barbara was acquitted of second-degree murder by a jury.¹⁴³ New York’s self-defense law justifies murder

¹³³ See, e.g., Dan Bilefsky, *Murder Trial Hinges on Questions of Domestic Abuse*, N.Y. TIMES (Sept. 18, 2011), <http://www.nytimes.com/2011/09/19/nyregion/barbara-sheehan-accused-of-murdering-husband-cites-abuse.html?ref=domesticviolence> (finding that in 2010, Shanique Simmons, a Bronx woman who had faced years of abuse, was acquitted on the grounds of self-defense because she reasonably feared for her life) [hereinafter *Murder Trial Hinges*].

¹³⁴ Dan Bilefsky, *Queens Woman Testifies She Killed Her Husband in Self-Defense*, N.Y. TIMES (Sept. 19, 2011), <http://www.nytimes.com/2011/09/20/nyregion/at-murder-trial-barbara-sheehan-testifies-she-killed-her-husband-in-self-defense.html?ref=domesticviolence> [hereinafter *Queens Woman Testifies*].

¹³⁵ *Murder Trial Hinges*, *supra* note 133.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Queens Woman Testifies*, *supra* note 134.

¹⁴¹ *Murder Trial Hinges*, *supra* note 133.

¹⁴² *Queens Woman Testifies*, *supra* note 134.

¹⁴³ Dan Bilefsky, *Wife Who Fired 11 Shots is Acquitted of Murder*, N.Y. TIMES (Oct. 6, 2011), <http://www.nytimes.com/2011/10/07/nyregion/barbara-sheehan-who-killed-husband-is-found-not-guilty-of-murder.html?ref=domesticviolence> [hereinafter *Wife Who Fired*].

when there is an immediate threat to a person's life.¹⁴⁴ Barbara explained to the jury that as a battered woman, she reasonably feared for her life because of her abuser's past behavior.¹⁴⁵ Barbara was convicted of gun possession, which carries a sentence of three-and-a-half to fifteen years.¹⁴⁶ Although the Queens District Attorney said that Barbara's case "was a cautionary tale that those claiming domestic abuse should not take the law into their own hands,"¹⁴⁷ Barbara is still alive and her children still have a mother, which may not be the case if she waited for the police to protect her.

"On average, more than three women and one man are murdered by their intimate partners in this country every day."¹⁴⁸ The ways in which the laws are constructed today do not benefit the victim, the community, or the police precinct.¹⁴⁹ If legislative action is not taken soon, a victim's best option may be to grab the gun or pull the knife before her abuser reaches that breaking point. By engaging in self-help, victims may be put in jail, but they will still be alive and their children will be safe. Most importantly, the fear, the worry, and the abuser will be buried forever.

IV. ADOPTING A NEW APPROACH BY IMPLEMENTING A DEPARTMENTAL POLICY FOR HANDLING OFFICER DOMESTIC VIOLENCE

Self-help is far from ideal from a societal perspective. Since current laws and policies do not alleviate the problem of officer domestic violence, a new policy should be adopted. This part calls for the New York State legislature to adopt legislation that requires police departments to adopt a strict policy laying out the specific procedures to be followed if an officer is suspected of domestic violence. This legislation would be similar to the Senate Bill adopted by the state of Washington, which mandates that police precincts "develop a written model policy on domestic violence committed or allegedly committed by sworn employees of agencies."¹⁵⁰ Washington's

¹⁴⁴ *Id.*; N.Y. Penal Law § 35.15 (McKinney 2004).

¹⁴⁵ *Wife Who Fired*, *supra* note 143.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* (internal quotation marks omitted) (explaining that Richard A. Brown, the Queens district attorney, said that this was a "terribly sad and tragic case" and that the "children will have to pick up the pieces.").

¹⁴⁸ *Domestic Violence Statistics*, DOMESTIC VIOLENCE RESOURCE CENTER, <http://www.dvrc-or.org/domestic/violence/resources/C61/#hom> (last visited Apr. 4, 2014)

¹⁴⁹ Miccio, *supra* note 88, at 183–84.

¹⁵⁰ H.R. 6161, 58th Leg. (Wash. 2004), available at http://www.lanejudson.com/doc_SENATE_BILL_6161.htm.

bill focuses on the minimum standards that must be met by the policy.¹⁵¹ However, Washington's bill is written in general terms and does not include penalties if the policy is not followed.¹⁵²

This part suggests that New York should use Washington's Senate Bill as a building block and add to Washington's bill by including specific policies that would be used as a minimum standard for police precincts throughout the state. New York should also expand Washington's bill by including a liability clause if the policies are not followed by a police officer or by an entire police precinct. Section A explores what this policy should look like and what procedures should be used to protect victims, rehabilitate abusers, and improve the safety of the overall community. Section B calls for the exposure of police precincts to tort liability if officers, or an entire precinct, do not strictly adhere to this policy.

A. New York State Must Adopt an Officer Domestic Violence Policy

New York police precincts must adopt a forward-looking approach, similar to IACP's model policy and Washington's Senate Bill, which would address the problem of officer domestic violence. Specifically, this policy should focus on four areas: examining applicants prior to hiring, discovering early warning signs of abusive behaviors, dealing with domestic violence allegations, and counseling officer domestic violence abusers.

First, before a civilian even becomes an officer, pre-hiring screening should be conducted. Background investigations should focus on whether the candidate for employment has any history of domestic violence, sexual abuse, or stalking.¹⁵³ These candidates must be screened out immediately. The next step would be to require each candidate to take a psychological examination to determine whether any candidate has a tendency for abuse. Initial screening would address the issue of officers who use their training to further abuse at home. After candidates become officers, they should

¹⁵¹ See *id.* ("The model policy shall provide due process for employees and, at a minimum, meet the following standards.").

¹⁵² See, e.g., *id.* ("Provide for the mandatory, immediate response to acts or allegations of domestic violence committed or allegedly committed by a sworn employee of an agency.").

¹⁵³ See, e.g., NEW JERSEY DOMESTIC VIOLENCE FATALITY AND NEAR FATALITY BOARD, DEP'T OF CHILDREN AND FAMILIES, MODEL POLICY ON DOMESTIC VIOLENCE IN THE LAW ENFORCEMENT COMMUNITY 6 (2006), available at <http://www.nj.gov/dca/divisions/dow/publications/pdfs/finalmodelofdvinlecpolicy.pdf> ("This Department will conduct thorough background investigations of all potential new employees to determine if there is a criminal history . . . to acts of domestic violence, sexual abuse, stalking, elder abuse or child abuse.").

also be required to participate in continued domestic violence training.

Second, the entire precinct must look for early warning signs of domestic violence abuse, instead of waiting for a victim of officer domestic violence to muster up the courage to call the precinct. Supervisors shall document any behavior that may be indicative of domestic violence, such as excessive use of force on the job, inappropriate surveillance activities, citizen and fellow officer complaints, and on or off-duty officer injuries.¹⁵⁴ Officers who do not report information regarding domestic violence, or who attempt to discourage a victim from seeking help, will be subject to criminal charges and disciplined.¹⁵⁵ Officers must not interfere with domestic violence cases, intimidate, or coerce witnesses or victims.¹⁵⁶

Third, a detailed policy regarding what happens when an accusation of officer domestic violence is made must be clearly communicated to each officer and each member of an officer's family. This policy should mandate that when a call is received from a victim of officer domestic violence, an Internal Affairs representative will be automatically sent to the scene.¹⁵⁷ At the scene, the Internal Affairs representative must make it clear to the officer that this is a criminal investigation and not just an administrative proceeding.¹⁵⁸ Then the officer must either be placed on administrative work or be sent home from the job, but not to where the victim resides.¹⁵⁹ Prosecution should only be deferred if the abuser begins and completes professional counseling.¹⁶⁰

Fourth, police departments will refer an officer accused of domestic violence to state qualified professional counselors. The goal of this counseling is either to ensure that the officer does not commit an act of domestic violence again or to establish that the officer cannot be rehabilitated.¹⁶¹ When sending an officer to counseling for domestic violence, the name and type of program should be specifically stated to make sure that the officer is attending the appropriate program for his

¹⁵⁴ See *id.* at 8 (stating that supervisors shall be aware of and document any pattern of abusive behavior "potentially indicative of domestic violence").

¹⁵⁵ See *id.* at 23 ("[T]he department shall investigate those officers and take disciplinary action and file criminal charges if probable cause exists.").

¹⁵⁶ See *id.* at 10 ("Officers who engage in [interference with cases involving themselves or fellow officers] will be subject to severe discipline up to and including dismissal.").

¹⁵⁷ See Bu Susan Paisner, *When the Officer Is the Batterer*, 4 POLICE DEPARTMENT DISCIPLINARY BULLETIN 1, 3-4 (Jan. 1996).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ See Joanne L. Belasco, *Treatment Programs in Settlement Agreements*, 6 POLICE DEPARTMENT DISCIPLINARY BULLETIN 2 (July 1998) (advising to carefully name the program that the officer should attend).

problem.¹⁶² Since each officer will respond to the treatment differently, a specific length of attendance should not be agreed upon beforehand.¹⁶³ Instead, a minimum number of sessions shall be established to guarantee that the officer attends the counseling sessions for that time period.¹⁶⁴ A psychological examination will determine if and when the counseling should end.¹⁶⁵ To make sure that the officer is regularly attending the counseling sessions, a representative from the program must provide documentation stating that the officer attended and participated in the counseling.¹⁶⁶

If the officer is not complying with his counseling, a noncompliance notification should be sent immediately from the representative of the counseling program to the Internal Affairs representative handling the officer's case.¹⁶⁷ This noncompliance letter is the green light, allowing the Internal Affairs representative to pursue the prosecution of the officer since he is unwilling to comply with the policy. A zero-tolerance policy must be adopted, and this policy must be clearly communicated to the entire precinct.

This policy relies on counseling because counseling has led to a reduction in domestic violence recidivism rates. One study of a domestic violence program found that completing the counseling program reduced the odds of being re-arrested for domestic violence by sixty-three percent.¹⁶⁸ Violations of orders of protections were also reduced by sixty-one percent for those who completed the counseling.¹⁶⁹ However, the recidivism rate for abusers who dropped out of the program was twice as high as the recidivism rate for abusers who completed the program.¹⁷⁰ Similarly, another study found that abusers who had attended at least seventy-five percent of the counseling sessions were less likely to recidivate than those who had attended fewer sessions.¹⁷¹

¹⁶² *Id.* at 1.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 3 (suggesting that the officer should be psychologically evaluated to determine whether he is fit for duty).

¹⁶⁶ *Id.* at 2.

¹⁶⁷ *Id.* at 3 (stating that notification of noncompliance should be written and sent quickly).

¹⁶⁸ ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY, RESEARCH AT A GLANCE, DOMESTIC VIOLENCE PROGRAMS REDUCE RECIDIVISM ODDS BY MORE THAN 60 PERCENT 1 (2006), <http://www.icjia.state.il.us/public/pdf/AtAGlance/BIPRAAG.pdf> (publishing a study of 899 offenders who completed a minimum of twenty-four weeks of counseling in Cook County, Illinois between December 1, 2000 and January 24, 2004).

¹⁶⁹ *Id.* at 2.

¹⁷⁰ *Id.*

¹⁷¹ Robert M. Sartin et al., *Domestic Violence Treatment Response and Recidivism: A Review and*

Therefore, officer abusers must attend counseling sessions on a regular basis to receive the full benefits of the counseling and to reduce future domestic violence abuse. While these statistics are based on recidivism rates for domestic violence in the general population, counseling officer abusers adds another dimension to the motivation to want to change. Specifically, without the counseling, the officer abusers will immediately lose their jobs. However, it is a mystery as to whether an abuser actually needs the heart to want to change or whether the counseling works regardless of what the officer's real motivation is for attending the counseling sessions.

B. What if an Officer or the Police Precinct Violates the Officer Domestic Violence Policy?

If an officer or the precinct does not strictly adhere to this policy and a tragedy descends upon a victim of officer domestic violence, a "special relationship" will automatically be found between the victim and the police precinct for failing to investigate and protect the victim. The police precinct will be per se accountable, and the only way to rebut this presumption would be to show that the police precinct followed the officer domestic violence policy step-by-step. In other words, the burden would be on the police precinct to present detailed documentation that the precinct complied with all of the officer domestic violence procedures.

Placing the burden on the police, instead of on the victim, is logical because the power party should have the burden, especially when the victim of officer domestic violence lacks access to records and the precinct in general. This presumption is also warranted because victims of officer domestic violence face special challenges that victims of domestic violence in the general population do not face. Victims of officer domestic violence are a part of the very network of police protection that is supposed to be protecting them, but that at the same time is abusing them. In essence, these victims are trapped and isolated from society, having no one to turn to for protection. For this reason, a special relationship should be found between these victims and the police precincts. In Kristin's case, the supervisors who affirmatively warned her about the ramifications of obtaining an order

Implications for the Study of Family Violence, 11 *Aggression and Violent Behavior* 425, 429 (2006), available at http://ac.els-cdn.com/S1359178906000255/1-s2.0-S1359178906000255-main.pdf?_tid=a02bdd72-8236-11e3-b047-00000aabb0f27&acdnat=1390265867_77585b28940e1a0635e80aca4aef54e7 (evaluating the effectiveness of a population of abusers who were mandated by the court to attend counseling sessions over the course of an eight-week period).

of protection would have violated the officer domestic violence policy. This communication was not a favorable message that police should be sending to officer domestic violence victims. In doing so, the police were protecting a fellow officer and not Kristin. The police arguably increased the risk of harm to Kristin by instructing her that the situation was under control, when it was not.

The goal of implementing a strict policy regarding officer domestic violence is to eliminate officer discretion when handling allegations of officer domestic violence. This policy would eliminate discretion in a similar manner as mandatory arrest laws in New York, which eliminated officer discretion when on the scene of a domestic violence incident. With this new policy in place, officers must adhere to the policy and must not be allowed to treat officer domestic violence victims different than other domestic violence victims or other victims in general. This policy would also make it easier for all members of the police precinct to do their job without the fear of being “a rat.” By adopting this policy, the prevalence of the code of silence will be diminished because officers must perform specific duties enumerated in this new policy or else the entire precinct will be subject to tort liability.

To ensure that police precincts are fully accountable for their shortcomings in dealing with officer domestic violence, victims should be encouraged to sue the entire police precinct for the misconduct of their officers, even if it is just one officer.¹⁷² By suing the entire precinct, instead of just an individual chief or officer, the inappropriate behavior cannot just be blamed on one “bad apple” in the precinct.¹⁷³ If just one officer is sued, the problem will not be fully addressed and institutional change will not be required. Also, when officers are made aware that they can be personally sued, they will be more likely to second-guess their decisions and may not act. This inaction would only reinforce the problem of inadequate procedures in regards to officer domestic violence incidents.¹⁷⁴

A balancing must take place between the loyalty to the officer and the concern for the safety of the community. By implementing this policy, the

¹⁷² See *Government Tort Liability*, 111 HARV. L. REV. 2009, 2017 (1998) (“The goal of providing compensation for victims of tortious conduct is enhanced under a system of governmental, not individual, liability.”).

¹⁷³ See Myriam E. Gilles, *Breaking the Code of Silence: Rediscovering “Custom” in Section 1983 Municipal Liability*, 80 B.U. L. REV. 17, 31 (2000) (describing the “bad apple theory” which explains that municipalities are less likely to make significant changes to correct improper behavior because municipalities can just fault that one officer).

¹⁷⁴ See PETER H. SCHUCK, *SUING GOVERNMENT: CITIZEN REMEDIES FOR OFFICIAL WRONGS* 71–73, 75 (1983) (explaining that public employees use inaction to avoid liability and some employees may use a less risky kind of action).

department will benefit by having a capable officer.¹⁷⁵ The officer will benefit because his quality of life will be substantially better.¹⁷⁶ The community will benefit by having another officer who is capable of protecting them from the “bad guys.”¹⁷⁷ Most importantly, the victim will benefit by avoiding further abuse and receiving effective help.

CONCLUSION

Police officers still inadequately respond to domestic disturbances and under-enforce the laws regarding domestic violence.¹⁷⁸ When the domestic violence abuser is an officer, this response may be even worse. Victims of officer domestic violence face heightened risks and inadequate remedies. To protect the victims, police precincts must adopt strict policies regarding officer domestic violence. If these policies are not followed, the entire police precinct will be subject to tort liability to compensate victims for a police precinct’s failure to protect and respond properly to officer domestic violence. Legislation must be passed to encourage officers to work with officer domestic violence victims and to prevent future harms to the victim, the abuser, and the community. As one survivor points out, “[a]s a victim of police abuse, the last place I would have gone to report [the abuse] was to an advocate who worked in the same building as my husband.”¹⁷⁹ This fear to report must be changed through legislation.

¹⁷⁵ See Belasco, *supra* note 161.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Miccio, *supra* note 88, at 157–58.

¹⁷⁹ See *Guide*, *supra* note 38, at 21.