Punishment or Rehabilitation? The Case for State-Mandated Guidelines for Batterer Intervention Programs in Domestic Violence Cases

Amanda Dekki

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NOTES

PUNISHMENT OR REHABILITATION? THE CASE FOR STATE-MANDATED GUIDELINES FOR BATTERER INTERVENTION PROGRAMS IN DOMESTIC VIOLENCE CASES

AMANDA DEKKI*

ANOTHER WOMAN

Today another woman died
and not on a foreign field
and not with a rifle strapped to her back,

* Amanda Dekki graduated with a B.A. in English from St. John's University, summa cum laude, and from St. John's University Law School in 2003, with honors, and is now a tax attorney at Berdon, LLP, in New York. At St. John's she was a Notes & Comments editor for the Journal of Legal Commentary. I want to thank Judge Matthew D'Emic for giving me the opportunity to intern in the Domestic Violence Unit of Brooklyn Supreme Court, which greatly influenced my ideas on this very important topic. I also want to thank my parents, brother, and grandmother whose love and support have helped me through all of my endeavors. This article is dedicated to the memory of my grandfather and my grandmother, who are always with me.
and not with a large defense of tanks
rumbling and rolling behind her.

She died without CNN covering her war.
She died without talk of intelligent bombs
and strategic targets.
The target was simply her face, her back
her pregnant belly.

The target was her precious flesh
that was once composed like music
in her mother's body and sung
in the anthem of birth.

The target was this life
that had lived its own dear wildness,
had been loved and not loved,
had danced and not danced.

A life like yours or mine that had stumbled up
from a beginning
and had learned to walk
and had learned to read
and had learned to sing.

Another woman died today
Not far from where you live;
Just there, next door where the tall light
falls across the pavement.

Just there, a few steps away
where you've often heard shouting,
Another woman died today.

She was the same girl
her mother used to kiss;
the same child you dreamed
beside in school.
The same baby her parents
walked in the night with
and listened and listened and listened
For her cries even while they slept.

And someone has confused his rage
with this woman's only life.¹

I. INTRODUCTION

In the United States, approximately 1.5 million women are
raped and/or physically assaulted by an intimate partner every
year.² In New York State, "one person is victimized by physical
violence in the home every 3 minutes, 20 every hour, 480 every
day and 175,200 every year."³ In 1999, the New York State
Division of Criminal Justice Services received 55,558 police
reports of family offenses involving adult intimate partners, and
in 84 percent of the cases, an adult female was reported as the
victim.⁴ Although men have also been victims of physical violence
by intimates, women are much more likely to be victims of

¹ Carol Geneya Kaplan, Another Woman, Oakland County Coordinating Council
² See Patricia Tjaden & Nancy Thoennes, Full Report of the Prevalence, Incidence,
and Consequences of Violence Against Women, NAT'L INST. OF JUST. (Nov. 2000)
(presenting findings from the National Violence Against Women Survey on domestic
violence in the U.S.), available at http://www.ncjrs.org/pdffiles1/nij/183781.pdf; see also
Rob Fernas, Laker's Star Now a Statistic; Athlete's Violence Against Women Highly
Visible, CHI. TRIB., July 20, 2003, at 1, Zone C (stating domestic violence is the leading
cause of serious injury to women from 18 to 49 in the U.S.); 1 In 3 Were Repeat Victims;
Study: Attacks Often by Intimate Partners, NEWSDAY (N.Y.), June 25, 2001 at A15
(explaining there are more domestic violence attacks with intimate partners who tend to
corner their victims in relation to non-domestic violence attacks which often occur in
public, leaving the victim the chance to run).
³ Victoria T. Croce, An Analysis of “Batterers” on Probation 1 (May 1, 1998)
(unpublished M.A. thesis, State University of New York at Stony Brook) (on file with
author).
⁴ See Domestic Violence Data Sheet, New York State Office For The Prevention of
Domestic Violence (compiling domestic violence statistics), available at http://www.opdv
.state.ny.us/about _dv/dataweb2003.html (last visited Nov. 9, 2003); see also Toni
Johnson, Kiwanis Doubles Support for Link to Life the Club Donated Thousands to the
Program that Helps Women and Senior Citizens Get Help When They Need It, POST-
STANDARD (Syracuse, NY), Feb. 18, 1999, at § Neighbors Cayuga (stating four women
statewide are killed each week as a result of domestic violence). See generally Gore
Announces Grants to Help New York Combat Domestic Violence, U.S. NEWSWIRE, Feb. 26,
1999, at § City and State Desks (explaining that the Violence Against Women Act is
aimed at fighting domestic violence and discussing penalties and programs to prosecute
offenders).
domestic violence. In spite of these horrifying figures, which prove the prevalence of domestic violence, many Americans still regard domestic violence as a private crime, and still some do not even perceive it as a crime at all, just a private matter between intimate individuals. This note will seek to outline the legal approach to domestic violence, and then focus on the role of Batterer Intervention Programs as a means to eradicate the problem of domestic violence. Further, this note will examine the arguments in favor of and against Batterer Intervention Programs, followed by an analysis of state-mandated guidelines for such programs. This note will also explore the current trends in the United States in the enactment of state-mandated guidelines for Batterer Intervention Programs. Finally, this note will focus on New York State's lack of state-mandated guidelines for Batterer Intervention Programs, and argue for the implementation of such guidelines.

A. History of the Legal Approach to Domestic Violence

Domestic violence involves the physical, emotional, verbal, or sexual abuse of individuals by intimates, namely, significant others or spouses. Usually physical violence is accompanied by

5 The results of the survey found that 7.6% of surveyed men were raped or physically beaten by partner. See Tjaden & Thoennes, supra note 2, at iii. The survey found that women experience significantly more domestic violence than their male counterparts. See id. However, the survey found that women are more likely than men to report domestic violence incidences, which could attribute to the seemingly low percentage of men who experience domestic violence. See id. Although women are more likely than men to report domestic violence, it must be remembered that not all intimate violence is reported, either by women or by men. See generally EVE S. BUZAWA & CARL G. BUZAWA, DOMESTIC VIOLENCE: THE CRIMINAL JUSTICE RESPONSE 44-45 (James A Inciardi, ed., Sage Publications 1996) (1990). Often, marital peace and privacy have been the reasons asserted for leaving domestic violence alone and for victims not testifying. See Kalyani Robbins, No-Drop Prosecution of Domestic Violence: Just Good Policy, or Equal Protection Mandate?, 52 STAN. L. REV. 205, 206 (1999).

6 See UNITED STATES COMMISSION ON CIVIL RIGHTS, UNDER THE RULE OF THUMB: BATTERED WOMEN AND THE ADMINISTRATION OF JUSTICE 5-11 (1982) (asserting that law officials have traditionally viewed domestic violence as a private, familial matter not to be interfered with); see also Emma Pinsch, Helpers Will Bridge Gap for Victims of Violence; Recent Figures Show That 20 Per Cent of Violent Assaults Occur Within, BIRMINGHAM POST, Mar. 11, 2003, at 2 (expressing the old fashioned view that one should not interfere in another's private life in domestic violence affairs); Kathleen Waits, The Criminal Justice System's Response to Battering: Understanding the Problem, Forging the Solutions, 60 WASH. L. REV. 267, 299-302 (1985) (citing "deference to family privacy" as society's justification for the policy of "non-intervention" in domestic violence incidences).

7 See BUZAWA & BUZAWA, supra note 5, at 4 (acknowledging that domestic violence occurs to both men and women, and in both homosexual and heterosexual relationships, but for purposes of the book (and for this paper), the definition of domestic violence was
"emotionally abusive and controlling behavior." However, where the abusive behavior consists solely of emotional or verbal abuse it is very seldom reported because it is not considered a crime unless accompanied by physical violence, and also, perhaps, because of proof problems. Historically, "a man's right to use domestic violence to manage his household was legally protected and socially condoned." The courts, while condemning violence per se, viewed domestic violence as a necessary evil. Domestic violence was not even considered a crime until very recently. It was not until the late 19th century that courts hesitantly began entertaining domestic violence cases, but even then, the Courts were reluctant to interfere in the private matters of families, thus the problem of domestic violence was often overlooked. Further, because both society and the courts discouraged separation and divorce, many women were forced to remain in
abusive relationships. The feminist movement of the 1960s and 1970s drew much needed attention to the problem of domestic violence, and brought the issue to the forefront of national affairs. In the 1970s, efforts were made to get the government involved to end domestic violence by assisting individual victims with legal aid, counseling, jobs, and even shelters when needed.

Finally, in the 1980s, the legal response to domestic violence changed with the advent of specialized domestic violence courts, batterer intervention programs, stalking statutes, better arrest policies, while also focusing on aiding the victim, both psychologically and financially. The criminal justice system also began to recognize that although domestic violence is a crime, and should be handled as such; it nevertheless should be treated both separately and differently from other crimes because of its nature and ramifications. Domestic violence is a recurring

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14 See Straus, supra note 9, at 25 (arguing that even today it is very difficult to leave a marriage, as divorce is still shamefully regarded); see also BUZAWA & BUZAWA, supra note 5, at 44 (citing that even today "societal norms" play a large role in the victimization of women); Sewell, supra note 9, at 994 (discussing the social condemnation of divorce).


17 See Tsai, supra note 7, at 1290-91 (proposing that it was not until the 1980s that the criminal justice system acknowledged the importance of reform within the realm of domestic violence); see also Linda L. Ammons, Special Issue Feminism and the Criminal Law: Dealing With the Nastiness: Mixing Feminism and Criminal Law in the Review of Cases of Battered Incarcerated Women - A Tenth-Year Reflection, 4 BUFF. CRIM. L.R. 891, 893-96 (2001) (reflecting on Governor Richard Celeste's 1989 program for reviewing incarcerated battered women for clemency); Fagan, supra note 15, at 9 (discussing more stringent legal remedies that were developed in the 1980s and 1990s).

18 See Bruce J. Winick, Applying the Law Therapeutically in Domestic Violence Cases, 69 UMKC L. REV. 33, 71-72 (2000) (arguing that domestic violence is a different type of crime than stranger violence, and should be treated with that difference in mind); see also Jennice Vilhauer, Understanding the Victim: A Guide to Aid in the Prosecution of Domestic Violence, 27 FORDHAM URB. L.J. 953, 953-56 (1998) (explaining the cycle of
course of behavior, "unlike stranger violence, which tends to be a one time incident from the victim's perspective." Further, domestic violence has a more serious and long-lasting psychological impact on the victim than stranger violence does. However, even today, as society has begun to recognize the severity and prevalence of domestic violence, the criminal justice system has failed to effectively eradicate the problem. Yet, it is not always the criminal justice system that fails the victim. Often the victim fails to come forward out of fear. The most


19 Winick, supra note 18, at 37. The problem that people fail to perceive is that domestic violence is a crime between intimates, which makes it very hard to leave the situation. See id. Further, domestic violence often involves a cycle that begins with the violent incident, and is followed by a stage in which the batterer is remorseful and seeks the victim's forgiveness. See id. The next stage is what is termed the "honeymoon stage" where things are peaceful and happy between the victim and the batterer, until the battering cycle begins again. See Vilhauer, supra note 18, at 953–55. There are numerous theories as to what causes domestic violence. See generally BUZAWA & BUZAWA, supra note 5, at 13–24 (identifying the problem of domestic violence).

20 Domestic violence victims suffer from what has become known as the "battered woman syndrome," which involves "learned helplessness," and symptoms of post-traumatic stress disorder. See Winick, supra note 18, at 61. Some psychologists believe that "battered women syndrome" should be treated as a subgroup of Post-Traumatic Stress disorder, rather than a separate mental illness. See John W. Roberts, *Between the Heat of Passion and Cold Blood: Battered Women's Syndrome as an Excuse for Self-Defense in the Non-Confrontational Homicides Introduction*, 27 LAW & PSYCHOL. REV. 135, 139 (2003). Many battered women experience diminished self-esteem and anxiety, depression, and despair. See id. Moreover, intimate violence can often produce a shattering of the victim's ability to have future trusting relationships. See Winick, supra note 18, at 38–39. See also Beth Bjerregaard & Anita Blowers, *The Appropriateness of the Frye Test in Determining the Admissibility of the Battered Women Syndrome in the Courtroom*, 35 U. OF LOUISVILLE J. OF FAM. L. 1, 3–5 (1996), for a general discussion on the characteristics of "battered women syndrome."


22 See Brenda V. Smith, Symposium, *Battering, Forgiveness and Redemption*, 11 AM. U.J. GENDER SOC. POLY & L. 921, 933 (2003) (stating that women may not want the batterer arrested or prosecuted because they fear for their safety, which may not be an unreasonable fear); A Mother With Bruising and a Black Eye, PRACTITIONER, Aug. 1999, at 593 (explaining that battered women have to pluck up a great deal of courage to come forward and express their predicament, as they often fear reprisals from their partners); see also Daniel Goldman, *Do Arrests Increase the Rates of Repeated Domestic Violence?*, N.Y. TIMES, Nov. 27, 1991, at C8 (discussing a study by Dr. Lawrence Sherman that
"common reasons for not reporting domestic violence to police are that victims view the incident as a personal or private matter, they fear retaliation from their abuser, and they do not believe that police will do anything about the incident."23 A recent survey conducted by the National Institute of Justice and the Center for Disease Control and Prevention found that "the majority of their victims who did not report their victimization to the police thought the police would not or could not do anything on their behalf."24 Women fear that ineffective legal responses may cause their abusers to become even more enraged after learning of the reporting, and become even more violent.25 Further, many women are economically dependent on their spouses, and hence do not come forward for fear that they will be left homeless and/or hungry.26

found an increased incidence of violence in cases of men who were arrested, rather than issued a warning).

23 Domestic Violence Facts, Feminist Majority Foundation, at www.feminist.org/other/dv/dvfacts.html (last visited Nov. 9, 2003). See Lawrence A. Greenfeld, et al., Violence By Intimates: Analysis of Data on Crimes By Current or Former Spouses, Boyfriends, and Girlfriends, U.S. DEP'T OF JUST., (1998) at www.ojp.usdoj.gov/bjs/pub/pdf/vi.pdf; Janet Gemignani, Missed Opportunities in the Fight Against Domestic Violence, BUS. & HEALTH, Oct. 1, 2000, at 29 (explaining that the women say it is a private matter, fear reprisal or do not want to get the offender in trouble with the law, also quoting Donna Norton of the National Workplace Resource Center: "What's more, they often feel shame and often are blamed.").

24 Tjaden & Thoennes, supra note 2, at v (stating, “most intimate partner victimizations are not reported to the police. Out of those surveyed, approximately one fifth of all rapes, one-quarter of all physical assaults, and one-half of all stalkings perpetrated against male respondents by intimates were reported.”); see also Richard Tewksbury & Elizabeth Ehrhardt Mustaine, Lifestyle Factors Associated with the Sexual Assault of Men: A Routine Activity Theory Analysis, J. OF MEN'S STUD., Jan. 1, 2001, at 153 (pointing out that women report 90% and men 10% of all rapes/sexual assaults that are handled by law enforcement agencies); Findings From the National Violence Against Women Survey July 2000 (for additional statistics on the reporting of incidents of rape and domestic violence), at http://www.infoplease.com/ipa/A0875303.html (last visited Nov. 9, 2003).

25 See BUZAWA & BUZAWA, supra note 5, at 45 (posing that because of poor or failed police and court action, many times batterers return after a couple of nights away from the home, and retaliate in the “form of further beatings, stalkings, threats of loss of income or even of losing one’s children due to retaliatory reporting of child abuse, neglect, or substance abuse”); see also Erica Goode, et al., Till Death Do Them Part?, U.S. NEWS & WORLD REP., Jul. 4, 1994, at 24 (pointing to inadequacies in state and federal laws, to systematic neglect by police, prosecutors and judges, to meager funding for overburdened hot lines and shelters, to the absence of protection for women in mortal danger); Tsai, supra note 7, at 1292 (announcing that even women who obtain orders of protection against their abusers are not fully protected from future violence at the hands of the abuser, as these orders are often violated).

26 See BUZAWA & BUZAWA, supra note 5, at 45 (citing economic dependence as a reason that many women stay in abusive relationships); Straus, supra note 9, at 26 (proposing that it is inequality of the sexes, namely that men make more money than women, that creates the economic dependency of women); cf. Michael J. Cruz, "Why Doesn’t He Just Leave?": Gay Male Domestic Violence and the Reasons Victims Stay, J. OF
psychologically dependent on their abusers, believing that
without the batterer they are worthless. Another reason women
do not come forward is that they fear losing their children.
Abusers often threaten to kidnap the children to stop the victim
from reporting the abuse, or even worse, sometimes the courts
step in and take the children away because the victim has
endangered the children by keeping them in a violent
household. These reasons are additional evidence of the
difference between domestic violence and stranger violence,
which proves the need for a system-wide, community-based
approach to domestic violence, as opposed to the individualized
response the criminal justice system takes to stranger violence.

Consequently, in order to cure the social evil of domestic
violence, the legal response has been to try and implement a
system that touches all aspects of a victim's life in order to
effectively rid her of the cycle of domestic violence. Today the
coordinated community response, which includes pro-arrest or
mandatory arrest policies; follow-up support and advocacy for
victims; aggressive and prompt prosecution; active monitoring of

MEN'S STUD., Mar. 22, 2003, at 309 (pointing out that it is often economically not feasible
for a woman to leave a two-earner household. "This financial dependence should be
considered as one of the ramifications of a sexist labor market. In a very direct way, this
social structural factor contributes to keeping victims in an abusive home.").

27 See BUZAWA & BUZAWA, supra note 5, at 45 (stating that some women "especially
those raised in families who have experienced domestic violence, may not perceive being
beaten as a crime or even abusive."). But see Maria Roy, Four Thousand Partners in
Violence: A Trend Analysis, in THE ABUSIVE PARTNER: AN ANALYSIS OF DOMESTIC
BATTERING 29 (Maria Roy, ed., 1989) (finding that although quite a few victims come from
abusive families, it is more likely for batterers to come from abusive families). See
generally Waits, supra note 6, at 286-91(discussing the characteristics of the batterer).

28 See BUZAWA & BUZAWA, supra note 5, at 45 (stating that the fear of losing one's
children is very realistic); see also Nina W. Tarr, Promoting Justice Through
Interdisciplinary Teaching, Practice, and Scholarship Civil Orders for Protection: Freedom
consequences of obtaining an Order for Protection, including the risks of losing children in
custody battles with family members or the State). See generally Ruth Jones,
Guardianship for Coercively Controlled Battered Women: Breaking the Control of the
Abuser, 88 GEO. L.J. 605, 638-641 (2000) (pointing out that some courts have denied
battered women custody or terminated their parental rights when they were unwilling to
end abusive relationships).

29 See generally Conservatives Want Women At Risk Register, YORKSHIRE POST, Dec.
26, 2002 (noting that domestic violence victims need advice on legal issues as well a wide
variety of other concerns); Program Seeks to Smooth The Scars of Domestic Violence,
_dom.htm (explaining how dermatologists offer plastic surgery to domestic violence
victims to remove abuse-related scars to assist the psychological healing process) (last
visited Nov. 9, 2003); Domestic Abuse Demands Tough Public Response, TIMES HERALD
(Port Huron), Apr. 23, 2003, at A7 (suggesting that "aggressive support" from legal and
community institutions is vital in breaking the domestic abuse cycle).
offender compliance with probation conditions; court-mandated participation in batterer rehabilitation programs; and monitoring of the system-wide response to domestic violence cases, sends the message that domestic violence is an important governmental issue.\textsuperscript{30} A coordinated community response leads to the development and implementation of “policies and procedures that improve interagency coordination and lead to more uniform responses to domestic violence cases.”\textsuperscript{31} The goals of coordinated community response are: “1) to provide for the safety of the victim; 2) to hold the offender accountable, creating a specific deterrent to his repeated use of violence; and 3) to change the climate in the community, creating a general deterrence to the use of violence as an acceptable practice in the home.”\textsuperscript{32} This note will briefly outline the different components of the coordinated community response and then focus on Batterer Intervention Programs as a means of rehabilitating batterers.

II. ARREST POLICIES

Most domestic violence cases are usually classified as a simple assault and battery, which is a misdemeanor.\textsuperscript{33} Prior to the mid-

\textsuperscript{30} See Melanie Shepard, Evaluating Coordinated Community Responses to Domestic Violence, Violence Against Women Online Resources (Apr. 1999) (remarking that the coordinated community response requires all agencies within the criminal justice system to “coordinate their policies, procedures and protocols” in order to effectively intervene in domestic violence cases), at www.vaw.umn.edu/Vawnet/ccr.htm; see also Rose Thelan, Advocacy in a Coordinated Community Response: Overview and Highlights of Three Programs, Violence Against Women Online Resources (June 2000) (noting that the most important goal of the coordinated response is to create a safe environment for the victim), at www.vaw.umn.edu/BWJP/communityV.htm. See generally Government Response to Framework for Action Against Family Violence (recommending stronger coordination between community and government resources to bolster effectiveness of domestic violence response network), at http://www.gov.ns.ca/just/Publications/russell/govtresponse.htm (last visited Nov. 9, 2003).

\textsuperscript{31} Shepard, supra note 30. See $163,400 Awarded For Domestic Abuse Programs, MONTGOMERY ADVERTISER, Sept. 10, 2003, at A3 (explaining that a state grant to probation officers, court officials and health educators, working in conjunction, will help streamline the statewide response to domestic abuse cases); Mike Ramsey, Lisa Madigan Wants Better Training For 911 Operators, COPLEYS NEWS SERV. (Chicago), June 6, 2002 (specifying the necessity of a uniform network response to domestic violence cases).

\textsuperscript{32} Thelan, supra note 30 (outlining objectives of coordinated community response). See also Shepard, supra note 30 (stating “reform efforts have focused on reducing cultural supports for battering and shifting the responsibility for holding batters accountable for their use of violence from the victim to the community”). See generally Weber, supra note 21, at 26 (announcing the goals of advocates of batterer intervention).

\textsuperscript{33} See Swanson v. Allison, 617 So. 2d 1100, 1100 (5th Cir. 1993) (pointing out that the crime of domestic violence battery is statutorily equivalent to simple battery); Nancy Blodgett, Violence in the Home, 73 A.B.A.J. 66, 68 (May 1987) (noting that even serious
1980s, police in most states could not make warrant-less arrests for misdemeanors, unless the act occurred in the officer's presence. Therefore, arrests were rarely made in domestic violence cases. Not only did this approach fail to protect the victim from abuse, but it also served to shield the batterer from criminal responsibility for his actions. This approach also sent a societal message that domestic violence is only a private matter, and not a criminal one. Many states have now enacted

incidents of domestic violence are generally not charged as felonies); see also Statistics on Domestic Violence in Longview (1999) (analyzing study which revealed that misdemeanors in one jurisdiction outweighed felony cases of domestic abuse), at http://www.ci.longview.wa.us/police/Investigations/domestic_facts.htm (last visited Nov. 9, 2003).

See Mike Kaszuba, Ticket Scalping Up, But Police Are Moving In, STAR TRIB. (Minn.), Apr. 24, 2003, at A1 (noting that police must witness the crime to arrest for misdemeanor ticket scalping). See generally James R. Langford, New Law Widens Arrest Abilities, FLA. TODAY, May 19, 2002, at A1 (chronicling new law which in effect allowed police officers to determine probable cause in lieu of judges and eliminated the need for a warrant).

See Developments in the Law - Legal Responses to Domestic Violence: III. New State and Federal Responses to Domestic Violence, supra note 10, at 1535-36 (explaining that prior to the 1980s, police officers were trained to mediate between the parties, upon responding to a domestic violence complaint). Prior to the 80's, police officers would separate and counsel each of the parties, in order to clear up the "dispute." Id. This would typically consist of taking the batterer outside for a talk, and allow him to return to the house either that night or the following night, trivializing the domestic violence complaint. Id. The police's duty was to reconcile the parties; arrest was only a last resort, and used mainly in egregious cases, as where there was use of a weapon, or if there was intent to commit murder or serious bodily harm. See generally Blodgett, supra note 33 (recognizing that there are states that still do not permit arrest unless an officer witnessed the assault); Mark Hansen, New Strategy In Battering Cases, 81 A.B.A.J. 14 (Aug. 1995) (noting that in the 1980's, a series of successful lawsuits were launches against police officers for failing to protect victims of domestic abuse).

See Winick, supra note 18, at 71-72 (arguing that victims are more prone to additional violence where police fail to arrest the perpetrator and stating that a failure to make an arrest after a domestic violence complaint is made leaves victims feeling powerless at the hands of the batterer because the police have in effect condoned the batterer's behavior); see also Evan Stark, MANDATORY ARREST OF BATTERERS: A REPLY TO ITS CRITICS, IN DO ARREST AND RESTRAINING ORDERS WORK? 115-149 (Eve S. Buzawa & Carl G. Buzawa, eds., 1996) (announcing that mandatory arrest policies have been proven to be a deterrent both to the arrested batterer and to other men prone to battering). See generally Carol Wright, Immediate Arrest in Domestic Violence Situations: Mandate or Alternative, 14 CAP. U. L. REV. 243 (1985) (discussing the effects of arrests in domestic violence cases).

See Developments in the Law - Legal Responses to Domestic Violence: III. New State and Federal Responses to Domestic Violence, supra note 10, at 1535-36 (positing that the mediation approach "trivializes the seriousness of domestic violence in individual cases and throughout society"). See generally Dianna R. Stallone, Decriminalization of Violence in the Home: Mediation in Wife Battering Cases, 2 LAW & INEQ. J. 493, 505-06 (1984) (arguing that the mediation approach de-emphasized the gravity of domestic violence by failing to punish batterers, conveying the idea that domestic violence was not a criminal matter); Amnesty International USA, A Fact Sheet on Domestic Violence as Torture (2003) (noting the once-prevalent view that domestic violence was a private matter, and "not the subject of civil or political rights" and international efforts to recognize domestic violence as an issue of state concern), at http://www.amnestyusa.org/
mandatory arrest statutes "under which a police officer must arrest an abuser when the officer has probable cause to believe that a domestic assault has occurred or that a protection order has been violated." The more stringent arrest policies provide some, if only brief, protection for the victim; however, the brief period the batterer is away from the home, may allow the victim time to plan a course of action, because unlike violence between strangers, in most domestic violence cases, the victim lives with the perpetrator and can never get away from the abuser. It also strives to give the batterer a sense of the severity of the situation. However, stricter police procedures are not sufficient to achieve deterrence of domestic violence. In order to end the

women/fact_sheets/domestic_violence.pdf.

38 Developments in the Law – Legal Responses to Domestic Violence: III. New State and Federal Responses to Domestic Violence, supra note 10, at 1537. A study conducted in Minneapolis in 1984 “compared the deterrent effects of three different police responses to domestic violence incidents: arrest plus a night in jail, mediation, and requiring the batterer to leave the house for at least eight hours. The researchers concluded that the arrest option was the most effective in deterring subsequent violence.” See id. at 1536. See generally State v. Murray, 1997 Wash. App. LEXIS 1081, at *4 (Wash Ct. App. 1997) (applying Wash. Rev. Code § 10.31.100(2)(b), under which “a police officer must arrest anyone who they have probable cause to believe committed an assault against a household or family member within the last four hours”).

39 See Developments in the Law – Legal Responses to Domestic Violence: III. New State and Federal Responses to Domestic Violence, supra note 10, at 1538 (positing that arrest of the batterer may prompt the victim to attempt to rectify her situation by giving her time to act); see also Stark, supra note 36, at 115-49 (arguing that mandatory arrest is an essential component in the fight against domestic violence); Winick, supra note 18, at 71-80 (setting forth the arguments surrounding mandatory arrest policies).

40 See Dennis P. Saccuzzo, How Should the Police Respond to Domestic Violence: A Therapeutic Jurisprudence Analysis of Mandatory Arrest, 39 SANTA CLARA L. REV. 765, 780-84 (1999) (arguing that because most batterers justify their abusive behavior by blaming the victim for “provoking” the violence, mandatory arrest statutes are required to force batterers to take responsibility for their actions); see also Gena L. Durham, The Domestic Violence Dilemma: How Our Ineffective And Varied Responses Reflect Our Conflicted Views Of The Problem, 71 S. CAL. L. REV. 641, 648 (1998) (noting infrequency of arrest and prosecution in domestic abuse cases and the dangerous effects when authorities fail to arrest and prosecute domestic abusers); David A. Ford, Preventing and Provoking Wife Battery through Criminal Sanctioning: A Look at the Risks, ABUSED AND BATTERED SOC. AND LEGAL RESPONSES TO FAM. VIOLENCE 207 (Dean D. Knudsen & Joann L. Miller, eds., 1991) (concluding that mandatory arrest statutes are beneficial).

41 Sometimes arrest may lead to increased violence, as where the angered batterer returns to the home seeking retaliation. See Ford, supra note 40, at 191. Some studies conducted in Omaha, Charlotte, and Milwaukee found that arrest actually increased the reoccurrence of domestic violence – employed batterers were less likely to retaliate after their arrest because they feel that they had more to lose if arrested again. See LAWRENCE W. SHERMAN, POLICING DOMESTIC VIOLENCE: EXPERIMENTS AND DILEMMAS 17 (1992). It has also been argued that since mandatory arrest takes the decision to press charges out of the victim’s hands, it reinforces the antiquated notion that women are incapable of handling their own problems. See Linda G. Mills, Killing Her Softly: Intimate Abuse and the Violence of State Intervention, 113 HARV. L. REV. 550, 565-70 (1999). On the other hand, even opponents of
problem, the entire criminal justice system must play a role in the eradication of domestic violence.

III. PROSECUTORIAL POLICIES

Traditionally, few domestic violence cases were fully prosecuted.\(^\text{42}\) Oftentimes the victim would drop the charges,\(^\text{43}\) and even if not, prosecutors would not rigorously pursue domestic violence cases. The limited time and resources were devoted to cases that would more likely result in a prosecution, unlike domestic violence cases in which many victims failed to cooperate.\(^\text{44}\) Today many states have implemented “no-drop” policies in domestic violence cases, where requests to drop charges are rejected, and the prosecution proceeds with the case

mandatory arrest concede that the state should intervene in extreme cases. \(\text{Id. at 612.}\) Also worth noting is the success achieved by programs that integrate non-judicial rehabilitation programs with traditional criminal sentencing. \(\text{See generally Minnesota Program Development, Inc., Domestic Abuse Intervention Project (2003), at http://www.duluth-model.org. (last visited Nov. 9, 2003).}\)

\(^{42}\) See Durham, \textit{supra} note 40, at 648-49 (noting the frequency of dropped charges as against domestic abusers, the reluctance of juries to convict accused abusers, and the danger of acquittal creating a sense of validation in the mind of the abuser); see also Robbins, \textit{supra} note 5, at 216 (recognizing the under-prosecution of domestic abusers at the request of the victim and arguing for state “no-drop” policies, which would limit a prosecutor’s discretion to drop charges after a formal complaint has been filed against an abuser). \(\text{See generally George Wattendorf, Focus on Domestic Violence Prosecuting Cases Without Victim Cooperation (1996) (discussing techniques for prosecuting domestic abuse cases after request of victim to drop charges and victim’s refusal to testify against abuser), at http://www.fbi.gov/publications/leb/1996/aprl964.txt (last visited Nov. 9, 2003).}\)

\(^{43}\) See Sharon D. Herzberger & Noreen L. Channels, \textit{Criminal-Justice Processing of Violent and Nonviolent Offenders: The Effects of Familial Relationship to the Victim, ABUSED AND BATTERED SOC. AND LEGAL RESPONSES TO FAM. VIOLENCE} 63 (Dean D. Knudsen & Joann L. Miller, eds., 1991) (opining that the low prosecution rates in domestic violence cases are directly attributable to the familial relationship between the offender and the victim); \(\text{see also Constance Frisby Fain, Conjugal Violence: Legal and Psychosociological Remedies, 32 SYRACUSE L. REV. 497, 556 (1981) (specifying ninety-nine percent of all domestic violence victims drop charges); Developments in the Law – Legal Responses to Domestic Violence: III. New State and Federal Responses to Domestic Violence, \textit{supra} note 10, at 1540 (citing the reasons for dropping charges as including “fear of reprisal, economic and emotional dependence on the batterer, mistrust or lack of information about the judicial system, or the desire to reconcile with the abuser”).}\)

\(^{44}\) See \textit{BUZAWA & BUZAWA, \textit{supra} note 5, at 82-84 (citing case difficulty because of problems with victim cooperation, lack of financial resources devoted to domestic violence cases, and the perception that the prosecution of domestic violence cases is less important than the prosecution of other cases, such as drug trafficking, as reasons for low prosecution rates in domestic violence cases); see also Sue E. Eisenberg & Patricia L. Micklow, The Assaulted Wife: “Catch 22” Revisited, 3 WOMEN’S RTS. L. REP. 138, 158 (1977) (noting that prosecutors often did not give domestic violence cases priority). \(\text{See generally LISA G. LERMAN, PROSECUTION OF SPOUSE ABUSE: INNOVATIONS IN CRIMINAL JUSTICE RESPONSE 13 (1981) (clarifying that the lack of victim cooperation led to the prosecutorial disinterest in pursuing domestic violence cases).}\)
with or without victim cooperation.\textsuperscript{45} The "no-drop" policy ensures that batterers will not evade penalization for their actions.\textsuperscript{46} However, mandatory arrests and "no-drop" policies are not sufficient to deter domestic violence.\textsuperscript{47} Prosecutors need the aid of specialized domestic violence courts to ensure full attention to the problem.

IV. JUDICIAL POLICIES - SPECIALIZED DOMESTIC VIOLENCE COURTS

Historically, domestic violence cases did not receive specialized attention or resources, and instead were combined together with other criminal cases.\textsuperscript{48} Today, many states, like New York, have developed special domestic violence departments in the court system. The departments are staffed with prosecutors who work solely on domestic violence cases, which are tried before judges

\textsuperscript{45} See Angela Corsilles, No-Drop Policies in the Prosecution of Domestic Violence Cases: Guarantee to Action of Dangerous Solution?, 63 FORDHAM L. REV. 853, 858 (1994) (defining no-drop policies as a "statement declaring that the state will not drop a domestic violence case due to victim nonparticipation and as a practice and protocol for enforcing that statement"); see also Developments in the Law - Legal Responses to Domestic Violence: III. New State and Federal Responses to Domestic Violence, supra note 10, at 1541 (stating various techniques the judicial system implements to assist the victim of domestic violence, including, using indirect evidence to prove the case when the victim refuses to testify). But see Robbins, supra note 5, at 216-17 (clarifying the difference between dropping charges because domestic violence cases are viewed as unimportant and dropping charges in the rare case to save the victim's life).

\textsuperscript{46} See BUZAWA & BUZAWA, supra note 5, at 178 (stating that advantage of "no-drop" policy is that it allows the criminal justice system to identify batterers and punish them accordingly, which can help to prevent future battering); see also Stephen B. Reed, The Demise of Ozzie and Harriet: Effective Punishment of Domestic Abuse, 17 CRIM. & CIV. CONFINEMENT 337, 357 (positing that effective prosecution of batterers ensures the proper punishment of abusers, which can effectively rid the victim of the abuser). See generally Sonja K. Hardenbrook, The Good, Bad, and Unintended: American Lessons for Cambodia's Effort Against Domestic Violence, 12 PAC. RIM. L. & POL'Y 722, 739 (2003) (positing no drop policies provide strong message that domestic violence will not be tolerated).

\textsuperscript{47} See BUZAWA & BUZAWA, supra note 5, at 179-80 (explaining that no-drop policies have been criticized because they fail to take the victim's needs and desires into account, which can further exacerbate the victim's feelings powerlessness, as once a victim reports a crime they lose all control over the situation); see also Corsilles, supra note 45, at 853 (suggesting that there are cases where prosecution could cause retaliation against the victim). But see Hardenbrook, supra note 46, at 737 (stating the effect of no-drop policies has been decreased recidivism and homicides).

\textsuperscript{48} See generally Douglas A. Orr, Weiand v. State, and Battered Spouse Syndrome: The Toothless Tigress Can Now Roar, 2 FLA. COASTAL L.J. 125, 133-34 (2000) (stating Florida judiciary has eight domestic violence courts and "more than half of the 20 judicial circuits have domestic violence task forces); Sewell, supra note 9, at 1011-13 (explaining the judiciary's role in domestic violence cases); Weber, supra note 21, at 23 (commenting that California released a legislatively mandated descriptive study of the state's domestic violence courts as there is no specific model of court procedure).
that hear solely domestic violence cases. In 1997, New York City implemented specialized domestic violence parts in both Brooklyn and Bronx County Supreme Courts, which are "staffed by specially trained judges, prosecution teams, and a team of domestic violence personnel consisting of a resource coordinator, a victim advocate, and a defendant monitor." The victim advocate provides many services to the victim, including counseling and social service referrals, and also assists the victim in the court proceedings. The defendant monitor oversees the defendant's compliance with "court-ordered conditions, such as orders of protection and participation in counseling programs." The resource coordinator monitors the status of both the victim and the batterer. Further, many courts divert batterers to

49 A specialized domestic violence court is unique in that it is "an integrated system that can handle both civil protection orders and criminal domestic violence cases." Winick, supra note 18, at 39. Judges that hear one-type of case are more competent to deal with that type of case because they become accustomed to that area of the law. Further, the domestic violence judge hears the case for start to finish, as opposed to other parts were judges float from case to case. This enables judges to become more familiar with both victims and batterers to allow for proper assessment of individual cases. See Tsai, supra note 7, at 1300-01. As of the year 2000, there were over 200 specialized domestic violence courts. See Winick, supra note 18, at 39. Specialized domestic violence courts provide domestic violence cases with "increased continuity, more effective monitoring, and a range of more flexible responses that can more effectively contain the risk of violence." Id. The interest in developing specialized courts has been increasing due to the increased desire to improve treatment of domestic violence cases. See Weber, supra, note 21, at 23.

50 Tsai, supra note 7, at 1300. See Jorge Fitz-Gibbon, Bronx Court to Focus on Domestic Abuse, DAILY NEWS (N.Y.), June 26, 1998, at 39 (reporting that the specialized domestic violence courts provide more serious attention to domestic violence cases); see also Fagan, supra note 15, at 21-23 (discussing the approach taken in Dade County, Florida to domestic violence, which like New York includes specialized domestic violence court parts and judges that all serve to create an all-encompassing interdisciplinary approach to domestic violence cases).

51 See The Criminal Court of the City of New York, Domestic Violence Intervention Plan 8-9 (1997) [hereinafter Domestic Violence Intervention Plan] (explaining that victim advocates not only aid victims in becoming financially stable by helping them secure both employment and housing, but they also help victims become more mentally and emotionally stable, so further victimization will cease); see also Tsai, supra note 7, at 1300-01 (discussing the role of the Victim Advocate in New York's domestic violence program); Reviving the Sheriff's Office Victim Advocate Program Fills a Critical Need, ORLANDO SENTINEL, Aug. 4, 2002, at K6 (discussing the responsibilities of a victim advocate).

52 Tsai, supra note 7, at 1300-01. See Domestic Violence Intervention Plan, supra note 51, at 9 (stating that the defendant monitor assesses the batterer's cooperation with the court). See generally Claudia Linsley, Collaboration Needed to Stop Violence, BATTLE CREEK ENQUIRER, Oct. 11, 2002, at 3A (explaining that communities need to coordinate between different offices to better facilitate treatment and prevention).

53 See Domestic Violence Intervention Plan, supra note 51, at 7 (stating that the resource coordinator compiles the information gathered about the victim and the batterer and reports the progress of each to the court); Tsai, supra note 7, at 1301 (positing that the network of people working in collaboration on a domestic violence case guarantees that the judge is kept abreast of the situation, which is needed in emergency situations,
Batterer Intervention Programs, in order to reform the behavior of abusers.54

V. THE NEED FOR BATTERER INTERVENTION PROGRAMS – GENERALLY

Although Batterer Intervention Programs should not be seen as a panacea for the problem of domestic violence, it has been proven that many men have been reformed through such programs.55 Some experts believe that most batterers can be “successfully treated.”56 A clear reason to support Batterer Intervention Programs, particularly court-mandated programs,57

as where an order of protection is violated). See generally Brooklyn Domestic Violence Court (detailing Brooklyn’s response to domestic violence), at http://www.courtinnovation.org/demo_04bdvc.html (last visited Nov. 9, 2003).

54 See, e.g., Alaska Stat. § 18.66.120 (2003) (providing the method for which protective orders are granted); Ill. Rev. Stat. Ch. 40, ¶ 2312-14(b)(4) (1991) (providing statutorily for the option of diversion to counseling programs); see also Healey & Smith, supra note 15, at 1 (explaining that Batterer Intervention Programs were created as a way to reform both batterers and society as a whole by educating people about the problem in order to destroy the ever-enduring societal disregard of domestic violence).

55 See Sheila Anne Feeney, Can We Cure Violent Men? Some Experts Believe Even Batterers Deserve a Second Chance, DAILY NEWS (N.Y.), Aug. 7, 1997, at 61 (detailing a recent article on Don Hays, “a recovering batterer,” who was arrested for beating his girlfriend). After extensive counseling, Hays emerged from an intervention program a success, and reportedly has not hit a woman since the incident with his ex-girlfriend. Id. He is but one success story, and if some men have proven to be reformed, then perhaps others can be reformed as well. Id. See also Teri Greene, Can the Cycle Be Broken?, THE MONTGOMERY ADVERTISER, Apr. 24, 2003, at 8 (detailing another success story about a man who went through a batterer intervention program and is now the director of that program). But see Milton H. Raphaelson, Law Should Not Bar Treatment for Batterers, WORCESTER TELEGRAM & GAZETTE, Dec. 18, 2002, at A17 (stating that treatment for batterers should focus on drug and alcohol prevention rather than a batterer’s intervention programs because most abuse is caused by drug or alcohol abuse).

56 Feeney, supra note 55, at 61 (setting forth the president and founder of the Family Violence and Sexual Assault Institute in Tyler, Texas, Dr. Robert Geffner’s comments on the success rates of Batterer Intervention Programs). See generally Green, supra note 55, at 8 (detailing a success story from therapy); Joan Treadway, Batterers Find Ways to Quiet Demons; Jefferson Man Wants to Inspire Others, TIMES – PICAYUNE, July 21, 2003, at 1 (illustrating another success story of a male seeking therapy and ultimately being successfully treated for his batterer pattern of behavior).

57 Very few batterers ever complete voluntary Batterer Intervention Programs. Court-mandated programs have higher rates of completion than those for voluntary participants, probably because the defendants are made aware of the severity of their behavior, through mandatory arrest policies, and no-drop prosecution policies, along with the gravity of appearing in court. See BUZAWA & BUZAWA, supra note 5, at 217-18 (discussing the intervention programs). See generally Amy B. Levin, Child Witnesses of Domestic Violence: How Should Judges Apply the Best Interests of the Child Standard in Custody and Visitation Cases Involving Domestic Violence?, 47 UCLA L. REV. 813, 850-51 (2000) (noting that researchers have found court-mandated programs for batterers to have highest completion rates); Tsai, supra note 7, at 1319-20 (stressing intervention of court system as one influential factor of success of batterer programs).
is that there are presently no adequate alternatives. If a batterer is arrested, prosecuted, and consequently sentenced, he is sent to jail. He will eventually be released without having learned any reformed behavior and may become even more violent than he was before serving jail time.\(^{58}\) At least, if a defendant is given the option to attend a Batterer Intervention Program he may actually learn that violence is not the answer.\(^{59}\) Court-mandated participation in a program coupled with court monitoring force the batterer to be responsible for his behavior.\(^{60}\)

\section*{A. Batterer Intervention Programs – What are they?}

Real progress in the struggle to end domestic violence began to be made when steps were taken to reform perpetrators through re-education.\(^{61}\) Batterer Intervention Programs were established

\(^{58}\) Often, the batterer emerges from confinement eager for retaliation, angry with the victim for sending him to jail, as opposed to realizing that he is the only one responsible for his sentence. See Winick, supra note 18, at 37-38. Further, the abuser may emerge from jail being more violent after being surrounded by violent men while in jail. See Buzawa & Buzawa, supra note 5, at 217. Often, violence increases after a batterer is arrested if attempts are not made at reformation because of the intimate nature of the crime. See Mills, supra note 41, at 565. Even if a restraining order is issued after the batterer is released from jail, without having participated in a Batterer Intervention Program, there is still a great possibility of retaliation and continued violence. See andrew r. klein, re-abuse in a population of court restrained male batterers: why restraining orders don’t work, do arrests and restraining orders work? 207-09 (Eve S. Buzawa & Carl G. Buzawa, eds. 1996).

\(^{59}\) See Tsai, supra note 7, at 1291 (stressing the need to focus on perpetrator’s violent behavior rather than victim); see also Virginia Standards for Batterer Intervention Programs § 5 (Coalition for the Treatment of Abusive Behavior & Virginians Against Domestic Violence 1998) (outlining state standards that programs must focus on limiting the violence and have perpetrators account for their behavior); Ileana Arias, Juergen Dankwort, et al., Violence Against Women: The State of Batterer Prevention Programs, J.L. Med. & Ethics (2002) (commenting that violence against women as unacceptable is becoming rooted in various cultures), available at http://www.findarticles.com/cf_0/m0dpe3_30/95843952/p4/article.jhtml?term=%2Bviolence+%2Bprevention.

\(^{60}\) See Bruce J. Winick, The Right to Refuse Mental Health Treatment 39-40 (1996) (proving that attempts to rehabilitate any behavior is ineffective if it is forced); see also Tsai, supra note 7, at 1301-02 (providing example of successful New York City court-mandated program where court strictly monitors attendance); Winick, supra note 18, at 43 (proposing that “judicial participation in the monitoring of the offender’s rehabilitative efforts, including the application of judicial praise and encouragement for positive compliance and sanctions for failure to comply, can foster continued motivation on the part of the offender to succeed in the program”).

\(^{61}\) See Tsai, supra note 7, at 1290-91 (stating that policy reforms to teach perpetrators the consequences of domestic violence included increased implementation of batterer intervention programs). See generally Greg Berman & Anne Gulick, Problem Solving Courts and Therapeutic Jurisprudence: Just The (Unwieldly, Hard To Gather But Nonetheless Essential) Facts, Ma’am: What We Know And Don’t Know About Problem-Solving Courts, 30 Fordham Urb. L.J. 1027, 1042 (2003) (describing batterer intervention programs as “re-education” programs for the perpetrator); Healey & Smith, supra note 15,
in the late 1970s and early 1980s in order to aid in the elimination of domestic violence. Batterer Intervention Programs focus on changing the perpetrators' behavior towards, and attitudes about, women. Batterer Intervention Programs are often “court-mandated as alternatives to incarceration.” Such counseling programs usually “defer trial, conviction or sentencing of a criminal defendant pending his voluntary participation in a treatment program designed to prevent further violence.” Many different kinds of Batterer Intervention Programs have emerged in accordance with three competing approaches to domestic violence: the psychotherapeutic approach, the family systems model, and the feminist approach at 1 (explaining how reforms were intended to change perpetrators' behavior towards domestic violence situations).

62 See Tsai, supra note 7, at 1290 (citing the emergence of Batterer Intervention Programs as a result of the feminist movement); see also Healey & Smith, supra note 15, at 1 (explaining purpose of establishing Batterer Intervention Programs in 1970s); Pleck, supra note 13, at 192 (stating that feminist movement pushed to define domestic violence as the batterer’s problem, as opposed to a familial problem, as was traditionally accepted).

63 See Healey & Smith, supra note 15, at 1 (commenting that the only way to help fight domestic violence is to change perpetrators' attitudes towards women). See generally Teresa W. Carns, Michael G. Hotchkin, et al., Therapeutic Justice In Alaska’s Courts, 19 ALASKA L. REV. 1, 15 (2002) (explaining how programs that focus on changing actor's behavior are extremely successful); Tsai, supra note 7, at 1320 (emphasizing that programs which focus on perpetrator's behavior tend to be more successful).

64 Tsai, supra note 7, at 1318 (defining batterer intervention programs as those involving mainstream group treatment modalities with varying duration and curriculum content for discussion in sessions). See Violence Against Women Online Resources, Controversies and Recent Studies of Batterer Intervention Program Effectiveness (stating that programs usually consist of educational classes or treatment groups, but may include other intervention elements such as extensive evaluation individual counseling, or case management), at http://www.vaw.umn.edu/documents/vawnet/ar_bip/ar_bip.html?id=2633229 (last modified Sept. 15, 2003). But see Family Violence Prevention Fund Newsflash (2003) (proposing that despite increased use of Batterer Intervention, recent studies have cast doubt on their effectiveness of decreasing the incidence of domestic violence), at http://endabuse.org/newsflash/index.php3?Search=Article&NewsFlashID=449.

65 Developments in the Law – Legal Responses to Domestic Violence: III. New State and Federal Responses to Domestic Violence, supra note 10, at 1541-42 (noting that successful completion of such programs can lead to dismissal of charges). See Edward W. Gondolf, Batterer Programs What We Know and Need to Know, J. OF INTERPERSONAL VIOLENCE, Feb. 1997, at 84 (stating “[t]he system of court mandate or referral ranges from pretrial diversion, plea bargain, and condition of bond to conviction and sentence or probation,” depending on the jurisdiction). See generally Healey & Smith, supra note 15, at 1 (discussing the increasing use of batterer intervention programs by the legal system as conditions to probation or diversion to deter future violence).

66 The psychotherapeutic approach focuses on the abuser and holds that “personality disorders or early traumatic life experiences predispose some people to violence.” Healey & Smith, supra note 15, at 4. This approach views abusive behavior as a sort of “disease” endemic to the batterer, which can be cured through therapy. See id. However, many feminists criticize the psychotherapeutic approach “for failing to explain why many batterers are not violent in other relationships.” Id. In considering what batterer intervention programs should encompass, New York concludes that domestic violence should be defined as a pattern of “socially learned and culturally condoned behaviors that
The feminist approach attempts to rectify the socially indoctrinated belief of male dominance of women. The feminist approach has influenced many Batterer Intervention Programs, and is fast becoming the most-widely-used approach includes physical, emotional, sexual and economic abuse—not as a pathology or mental disorder—used by offenders to control the life of and maintain power over an intimate partner," a definition contrary to the psychotherapeutic approach. New York State Office for the Prevention of Domestic Violence, Information and Resources: Batterers Intervention Programs Checklist, at http://www.opdv.state.ny.us/criminal_justice/corrections/bip/bipchklist.html (last updated Sept. 30, 2003). See generally Linda E. Offner, Power & Control-Dispelling the Myths Surrounding Domestic Violence, 34 ARIZ. ATT'Y 16, 33 (Apr. 1998) (expressing doubts that psychotherapeutic approach can solve the problem of domestic violence).

67 The family systems approach "regards the problem behaviors of individuals as a manifestation of a dysfunctional family," and faults both members of the couple. Healey & Smith, supra note 15, at 4. Programs based on this method involve couples counseling focusing on communication skills and conflict resolution. Id. Feminists fault this approach because it puts at least some of the blame for the violence on the victims. The family systems approach is prohibited in many states' guidelines for Batterer Intervention Programs. Id. Power or control is not at issue in the family systems approach, and it focuses mainly on physical abuse. See Evan Stark, Symposium on Reconceptualizing Violence Against Women by Intimate Partners: Critical Issues: Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control, 58 ALB. L. REV. 973, 1004 n. 151 (1995). This type of approach also explains abuse outside of husband-wife spousal abuse, and may also explain why some women batter men. See generally Erin Smith, 18 BERKELEY WOMEN'S L.J. 304, 316 (2003) (reviewing SUSAN HAWTHORNE AND BRONWYN WINTER, SEPT. 11, 2001: FEMINIST PERSPECTIVES).

68 The feminist approach focuses on the societal conditioning of behavior of male dominance. See Healey & Smith, supra note 15, at 4. This approach is applauded for its failure to blame victims. Id. It also does not excuse the behavior of abusers because it does not treat domestic violence as an effect of emotional or familial problems caused when the abuser was a child. Id. However, the approach is criticized because it overemphasizes "socio-cultural factors to the exclusion of traits in the individual, such as growing up abused." Id. Although all American men are brought up in essentially the same society, not all men batter, and this is not taken into consideration. Id. Examples of character traits demonstrating male dominance behavior are a belief in male supremacy, possessiveness, and jealousy, which may lead to a batterer using violence to control his wife. See Malinda L. Seymore, Isn't It a Crime: Feminist Perspectives on Spousal Immunity and Spousal Violence 90 NW. U.L. REV. 1032, 1039 (1996). A criticism of the feminist approach is that mandatory criminal justice responses to domestic violence such as mandatory arrest and no drop policies increase the prevalence of racial disparities in the system. See generally Ann Shalleck, Feminist Inquiry and Action: Inquiry and Action: Introduction to a Symposium on Confronting Domestic Violence and Achieving Gender Equality: Evaluating Battered Women & Feminist Lawmaking By Elizabeth Schneider, 11 AM. U.J. GENDER SOC. POLY & L. 237, 241 (2003) (for approach to domestic violence problem).

69 See Healey & Smith, supra note 15, at 4 ("A gender analysis of power holds that domestic violence mirrors patriarchal society"). It is noted in the feminist legal community that batterers in treatment groups manifested power issues through frequent mention of "their need to control or dominate the female, their belief that female independence meant loss of male control, and their attempt to persuade or coerce the female into adopting their definition of how the relationship should be structured and how it should function." See Seymore, supra note 68, at 1039. In general, three characteristics are looked at in evaluating a batterer intervention program: (1) Are the batterers being held accountable? (2) Are the victims safe? (3) Has the batterer changed his attitudes and behavior? See generally Violence Against Women Online Resources, supra note 30.
in many states. The argument that most abusive men are only violent towards their wives or girlfriends, and not in other situations, lends support to the feminist approach.

B. Program Content

Many batterer intervention programs follow the Duluth Model, which is a “psycho-educational and skills-building curriculum that is a component of the Duluth model developed in the early 1980s by the Domestic Abuse Intervention Project of Duluth, Minnesota.” The programs normally consist of a classroom-type forum that focuses on reprogramming the batterer’s ideology on power and control. The programs also focus on discussions

70 See Healey & Smith, supra note 15, at 4 (noting the feminist approach began in the 1970’s with grassroots organizations bringing public attention to domestic violence); see also Erin Smith, supra note 67, at 315 (criticizing “research showing that female-to-male violence and ‘mutual’ abuse is a common occurrence, arguing that a gender-neutral tally of incidents of violence assumes gender equality and fails to acknowledge ‘the very real physical, social, and power differences between women and men’”). See generally New York State Office for the Prevention of Domestic Violence, supra note 66 (defining domestic abuse as “pattern of socially learned and culturally condoned behaviors that includes physical, emotional, sexual and economic abuse”).

71 See Edward W. Gondolf & J. Hanneken, The Gender Warrior: Reformed Batterers on Abuse, Treatment and Change, J. OF FAM. VIOLENCE, 177-91 (1987) (commenting that studies have also proven that batterers feel the need to control their partners, lending further support to the feminist approach). But see Naomi R. Cahn, Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions, 44 VAND. L. REV. 1041, 1053 (1991) (stating that the pathology of some batterers makes them likely to be violent toward those “outside the family” as well); Leonore M. J. Simon, A Therapeutic Jurisprudence Approach to the Legal Processing of Domestic Violence Cases, 1 PSYCHOL. PUB. POLY. & L. 43, 55-56 (1995) (noting that “a sizable proportion of domestic violence offenders are also violent outside the home”).


73 In 1977, David Adams founded Emerge, one of the first Batterer Intervention Programs in the nation modeled on the feminist approach. See Emerge - Counseling & Education to Stop Violence, at http://www.emergedv.com/ (last visited Nov. 9, 2003). Emerge was founded on the premise that men who use violence against their partners do so for three reasons. The first of these reasons is “the socialization of boys to be aggressive and dominant in their social relations.” David C. Adams & Andrew J. McCormick, Men Unlearning Violence: A Group Approach Based on the Collective Model, THE ABUSIVE PARTNER AN ANALYSIS OF DOMESTIC BATTERING 176 (Maria Roy, ed., 1982). The second reason articulated is “the reinforcement of these values by parents, teachers, and social forces such as the media, television, films, and the use of violence by the police and military.” Id. Finally, the third, and last, reason is that “the social norms of patriarchal society which dictate that men are the dominant gender and are free to exercise this power in family life, social relationships, and in the institutions which direct our lives. The learning continues throughout the life of men and these values are conveyed to future generations as proper for men.” Id. Emerge, and other programs like it that are based on the feminist approach which strive to “change the [societal] rules which support the abuse
about relationships between men and women. Although different programs vary in duration, “most are relatively short-term, ranging from 6 to 32 weeks,” with “two or three sessions ... spent on each theme.” The programs are generally structured around classes “that emphasize the development of critical thinking skills around several themes, including nonviolence, respect, support, trust, partnership, and negotiation.” Sessions begin with a video demonstration of the specific theme of the day, followed by a group discussion of the video, which continues as the discussion is turned to focus on each group member's own behavior relative to the theme. Then counselors lead the group toward discussion of alternative behaviors. Many of these programs are taught by two of women.” Id. at 196. Treatment programs across the country are based on the Duluth Model. See Alexander Detschelt, Recognizing Domestic Violence Towards Men: Overcoming Societal Perceptions, Conducting Accurate Studies, and Enacting Responsible Legislation, 12 KAN. J.L. & PUB. POLY 249, 251 (2003).

See Richard M. Tolman & Gauri Bhosley, The Outcome of Participation in a Shelter-Sponsored Program for Men Who Batter, in ABUSED AND BATTERED: SOCIAL AND LEGAL RESPONSES TO FAMILY VIOLENCE 114-115 (Dean D. Knudsen & JoAnn L. Miller, eds., 1991) (explaining that batterer intervention programs aim to re-socialize men to train them not to deal violently with women); see also Healey & Smith, supra note 15, at 6 (announcing that Batterer Intervention Programs based on the feminist approach attempt to change the way batterers behave towards their partners); Tsai, supra note 7, at 1290 (observing that batterer intervention programs in the 1970s for the first time dealt with domestic violence as a problem with the man in the domestic relationship).


See generally Tsai, supra note 7, at 1312-13 (branding batterer intervention programs as varying in overall length and content of the sessions); J. Nealy Brown, Critics Say Program for Batterers Slighted, ST. PETERSBURG TIMES (Fla.), May 7, 2001, at 5B (highlighting the series of sessions over the twenty-six week program that is aimed at the causes of domestic violence as a way to change the beliefs and behaviors of the abuser).

See generally Mary Ann Dutton, Understanding Women's Responses to Domestic Violence:
counselors, usually one male and one female, who offer an example of a healthy relationship by their behavior towards one another and interaction with each other. All mainstream programs use similar program procedures, which "consist of intake and assessment, victim contact, orientation, group treatment, leaving the program, and completion." If a court refers a batterer to an intervention program, the referred program first assesses them. The assessment consists of an interview, which seeks to ascertain the batterer's susceptibility to change. If a batterer is unwilling to change or denies his violent behavior he is usually denied access to the program. Batterer assessment often also involves victim contact to obtain additional information about the batterer's behavior. Victim contact also

A Redefinition of Battered Woman Syndrome, 21 HOFSTRA L. REV. 1191, 1226-27 (1993) (noting that it is the batterer that should be considering alternative behaviors); Tolman & Bhosley, supra note 74, at 115 (discussing benefits of group sessions for batterers).

See Tolman & Bhosley, supra note 66, at 114 (explaining that batterer intervention programs typically employ both male and female counselors in order provide a model of functional male-female interactions). See generally Ammons, supra note 17 (discussing different subsections of batterer intervention programs with respect to gender); Waits, supra note 6 (discussing the role of gender in batterer intervention).

See generally Healey et al., supra note 78 (discussing the goals of client assessment, including obtaining client agreement to program terms, allowing program officials to evaluate the nature and extent of the client's abusive behaviors, and to screen for other problems such as substance abuse, mental illness, and illiteracy).

See Healey & Smith, supra note 15, at 5 (describing the first contact with the batterer as an intake interview, which is designed to convince the batterer to agree to the terms of the intervention, begin the behavior assessment, and screen for other problems).


Batterer Intervention Programs are unsuccessful where a batterer is unwilling to change his behavior, which evidences the need for proper intake assessment of batterers. See BUZAWA & BUZAWA, supra note 5, at 214-16. Defendants who have previously attended and completed or failed a similar batterer intervention program are denied diversion to another batterer intervention program. See Developments in the Law – Legal Responses to Domestic Violence: III. New State and Federal Responses to Domestic Violence, supra note 10, at 1542. Diversion is also unavailable to the more serious offenders. See id. It is important to note that not all batterers are accepted to the intake and it may be inappropriate to accept them for treatment if they deny having committed violence. See Healey & Smith, supra note 15, at 5.

See Healey & Smith, supra note 15, at 5 (discussing how multiple States require partners to be notified at various points throughout the intervention, and that programs with a strong advocacy policy will contact partners every 2-3 months); see also Healey, et al., supra note 78, at 37 (describing how the program utilizes a trained victim liaison to interview the victim and assure the victim of absolute confidentiality). See generally
ensures that the victim will be kept informed on the abuser's developments in the program.\textsuperscript{86} It also raises victim consciousness of the goals, methods, and evaluation of the potential success rate of the individual batterer.\textsuperscript{87} Orientation sessions begin the process of reeducating the victims, while also allowing for further counselor assessment of the magnitude of the batterer's problem and the batterers' willingness to change.\textsuperscript{88} Successful completion of a program entails both the completion of the program along with a demonstration of the accomplishment of the goals of the program.\textsuperscript{89} For example, the batterer can demonstrate his reeducation by the writing of a "responsibility letter," in which the batterer acknowledges his behavior, the

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Juliet Austin & Juergen Dankwort, \textit{A Review of Standards for Batterer Intervention Programs}, Violence Against Women Online Resources (Sept. 1997) (discussing how different state's standards apply victim contact for multiple reasons including informing of program start and completion dates, updating progress, and checking the victim's safety), available at http://www.vaw.umn.edu/documents/vawnet/standard/standard.html.\textsuperscript{86} Victim contact is important because it takes into consideration that oftentimes the abuser and the victim are in a relationship that they hope to resume. For various reasons, including having children in common, victims want to know about the batterer's progress. Further, the program can ensure victim safety in the event a problem is perceived. See Healey & Smith, supra note 15, at 5. It is important in victim contact to clarify that not all abusers will change. One liaison often explains, "Well, you know we can't guarantee he's going to change... So what are you going to do just in case he doesn't change?" Healey, et al., supra note 78, at 39. \textit{But see Austin & Dankwort, supra note 85}, which explains that some states, such as Indiana and New York, discourage victim contact and suggest that it further endangers the victim.\textsuperscript{87} See Healey & Smith, supra note 15, at 5-6 (explaining that victim contact can also help to apprise victims of program failure, which guards the victim "against the false hope that the program can guarantee her partner will change"); see also Healey et al., supra note 78, at 38 (noting that contacting the victim offers an opportunity to raise the victim's awareness of her situation and help her think about her own and her children's safety); see also Lisa G. Lerman, \textit{A Model State Act: Remedies For Domestic Abuse}, 21 HARV. J. ON LEGIS. 61, 135 (1984) (noting that Batterer Intervention Programs that work closely with victim advocates are generally sensitive to needs and wants of the victim, which can help to give the victim a feeling of control over her situation).\textsuperscript{88} See Healey & Smith, supra note 15, at 6 (explaining that during orientation, the abusers are made aware of the rules and goals of the program); see also Jane C. Murphy, \textit{Legal Images of Motherhood: Conflicting Definitions from Welfare "Reform," Family, and Criminal Law}, 83 CORNELL L. REV. 688, 692 (1998) (noting that expression of willingness to change is an encouraged emotion in batterers); Jean Peters-Baker, \textit{Punishing the Passive Parent: Ending a Cycle of Violence}, 65 UMKC L. REV. 1003, 1026 (1997) (positing that intervention should be allowed only for parents expressing a willingness to change).\textsuperscript{89} See Healey & Smith, supra note 15, at 6 (noting that program completion depends on specific exit criteria that differentiates between mere attendance and accomplishment of intervention goals); see also Kenner, \textit{Dealing with Spousal Abuse and 'Serial Batterers'}, TIMES-PICAYUNE (New Orleans, L.A.), Feb. 28, 1997, at B06 (stating that individual assessments within various programs try to differentiate between batterers who feel a sense of responsibility for what they have done from those who are without conscience). See generally \textit{The Next Step for a Batterer}, BOSTON GLOBE, Nov. 5, 1997, at A22 (positing that courts have more impact when sending batterers to jail for failing to attend and complete programs).\textsuperscript{89}
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reasons why the abusive behavior is wrong, and that such behavior will not continue. The courts assign a probation officer to the defendant to monitor compliance with the Batterer Intervention Program. These officers report to the court on a scheduled basis as to the defendant's success. If a batterer successfully completes the program, the charges will be dropped, pending continued good behavior, which is usually monitored by the courts for a specified time period after the dismissal of the case.

C. Effectiveness of Batterer Intervention Programs

The goal of Batterer Intervention Programs is to stop domestic violence. Research shows that Batterer Intervention Programs have reeducated some batterers. Although there is still much

90 See Healey & Smith, supra note 15, at 6 (proposing that successful completion rates tend to be low, as those batterers who are perceived as failing the program are asked to leave); see also Buzawa & Buzawa, supra note 5, at 218-19 (stating that completion rates for court-mandated programs are higher than for voluntary programs, but are still low). See generally The Next Step for a Batterer, supra note 89, at A22 (examining research that shows longer programs are more effective in reducing repeat domestic violence incidents).

91 See Healey & Smith, supra note 15, at 6 (discussing roles of probation officers in domestic violence cases); see also Winick, supra note 18, at 42-44 (stating that judicial involvement in a defendant's rehabilitation may spark deeper motivation in batterers to complete programs). See generally Winick, supra note 60, at 327-44 (explaining that judges should not make batterers feel that they are forced to attend intervention programs because people generally respond better to counseling if they have voluntarily chosen to participate).

92 See Developments in the Law – Legal Responses to Domestic Violence: III. New State and Federal Responses to Domestic Violence, supra note 10, at 1542 (noting charges will be reinstated if batterers fail to complete the program for any reason). See, e.g., CAL. PENAL CODE § 1000.9 (stating that “if the court finds that the divertee is not performing satisfactorily in the assigned program, or that the divertee is not benefiting from diversion, or the court finds that the divertee has been convicted of a crime... the criminal case shall be referred back to the court for resumption of the criminal proceedings”). See generally Can Batterers Change? Treatment is Debatable, SEATTLE TIMES, May 8, 1991, at A6 (explaining that treatment is most effective for batterers threatened with jail if they fail to complete programs).

93 See Jeffrey L. Edleson, Do Batterer’s Programs Work?, Minnesota Center Against Violence and Abuse (1995) (citing goals of Batterer Intervention Programs), at http://www.mincava.umn.edu/papers/battrx.htm. See generally Susan Forrest, Tempering Tough Guys, NEWSDAY (N.Y.), June 23, 1994, at A06 (saying that goals of batterer intervention programs include changing how batterers think and act); Franci Richardson, Past May Predict Abuser’s Future, BOSTON HERALD, Dec. 15, 1999, at O19 (noting that in Massachusetts, convicted batterers are sentenced to attend mandatory 40-week intervention programs which promote changing aggressive behavior).

94 See Adams & McCormick, supra note 73, at 194-96 (examining studies conducted by David Adams proving that men that completed his program, Emerge, had ceased being violent towards their partners. Reports from former victims have shown that former abusers had reformed their ways); see also Developments in the Law – Legal Responses to Domestic Violence: III. New State and Federal Responses to Domestic Violence, supra note
uncertainty as to the effectiveness of Batterer Intervention Programs, some studies have begun to emerge.95 Some reviews have found that "in varying programs, using various methods of intervention, a large proportion of men stopped their physically abusive behavior subsequent to involvement in programs."96 In one set of studies, "follow-up ranged from 4 months to 26 months"97 and found that direct physical abuse stopped in 53% to 85% of cases.98 Yet another study found that 60-75% of treated batterers stopped abusing their partners.99 Another study found...
that long-term court-mandated Batterer Intervention Programs are more effective in ending physical abuse than their short-term counterparts.\textsuperscript{100} Studies on groups using the feminist model, which focus on sex-roles, proved to have been successful.\textsuperscript{101} It is clear that some sort of Batterer Intervention Programs work,\textsuperscript{102} however, research is scarce on which aspects of Batterer Intervention Programs are more effective than others, namely, program duration, format, and stages. Clearly, these aspects of Batterer Intervention Programs need to be researched as well, in order to get a clearer picture of the effectiveness of such programs.\textsuperscript{103} Of course, Batterer Intervention Programs alone
generally Alison Bass, \textit{Results Vary Widely on Orders}, \textit{BOSTON GLOBE}, Sept. 25, 1994, at 29 (conveying that sometimes restraining orders are effective in curbing the abusive behavior of batterers); Michele Ingrassia, \textit{Men Helping Other Men}, \textit{NEWSDAY (N.Y.)}, Mar. 24, 1993, at 86 (describing a batterer's program that attempts to teach abusers to reign in furies they have never been able to control).

\textsuperscript{100} See Tolman & Edleson, \textit{supra} note 75 (stating that short-term groups reviewed revealed that batterers who completed short-term intervention programs had the same likelihood to return to batterers who were not diverted to treatment programs); \textit{Southern California Voices/A Forum for Community Issues: Today's Topic: Can Domestic Batterers Be "Cured" by Therapy?}, \textit{L. A. TIMES}, Nov. 28, 1994, at 4 (stating that court-mandated therapy sends a message that abusive behavior will not be tolerated); see also Julie Bennett, \textit{No More Violence; Male Batterers Learn about Empathy and Equality}, \textit{CHI. TRIB.}, Oct. 16, 1994, at 3 (describing a program in which abusers were taught the language of empathy and equality).

\textsuperscript{101} See Tolman & Edleson, \textit{supra} note 75 (positing that Batterer Intervention Programs based on the feminist approach are more effective because only 10% of batterers studied that were sent to Batterer Intervention Programs that were based on feminist theories were considered recidivists). See \textit{generally} Ira Hutchinson, \textit{Alcohol, Fear, and Woman Abuse (Statistical Data Included)}, \textit{Sex Roles: A Journal of Research} (June 1999) (indicating that some researchers have found that a need for power is at the root of the abuse); \textit{MINNESOTA COALITION FOR MEN WHO BATTER, Understanding Men Who Batter} (showing that battering is an extreme expression of the belief that men dominate women), at http://www.mcbw.org/pdf/menwhobatter.pdf (last visited Nov. 9, 2003).

\textsuperscript{102} See \textit{The Next Step for a Batterer}, \textit{BOSTON GLOBE}, Nov. 5, 1997, at A22 (stating that in these programs batterers are challenged to humanize their partners and children); Ines Davis Parish, \textit{Prevention May be Key to Abuse; One Researcher Concentrates on the Batterer, in Attempting to Develop Methods to Halt Domestic Violence}, \textit{ORLANDO SENTINEL TRIB.}, July 13, 1995, at 11 (purporting that the best intervention stops abuse before it happens); see also Debbie Cenziper, \textit{Time Therapy Help Break Cycle of Abuse; Courses Can Help Teach Batterers to Control Anger}, \textit{SUN-SENTINEL (Fort Lauderdale, Fla.)}, June 26, 1994, at 7B (explaining that some intervention programs attempt to teach batterers alternatives to violent emotions).

\textsuperscript{103} It is recommended that more research be done to find out exactly what aspects of Batterer Intervention Programs are the most effective, particularly because of the number of court referrals throughout the states. See Gondolf, \textit{supra} note 65, at 88. Although extensive research has not been done to ascertain what factors, like program duration, format, and stages, should be used, it has been proven that the feminist model is the best approach, as the couples counseling methods do not appear to have much success, because they generally make the victim feel as accountable as the abuser is for the violence. See \textit{BUZAWA & BUZAWA, supra} note 5, at 211-12. Still, there is little evidence showing the effectiveness of one intervention program approach over another. See
cannot end domestic violence. Yet, Batterer Intervention Programs are an integral part of the Coordinated Community Response to ending domestic violence. Unfortunately, not everyone is sold on this argument.

D. Arguments against the use of Batterer Intervention Programs

On the other hand, there has been much concern and controversy surrounding Batterer Intervention Programs. Critics of Batterer Intervention Programs argue that Batterer Intervention Programs give victims a false sense of security.

Berman & Gulick, supra note 61, at 1042 (explaining the need for more researched programs).

The Coordinated Community Response offers increased awareness and quicker reactions to domestic violence cases. See Winick, supra note 18, at 40. Batterer Intervention Programs are just one facet of the entire Coordinated Community Response, and it is the entire effort as a whole that has proven to be successful, no one part can be effective on its own. See Weber, supra note 21, at 25. Before the Coordinated Community Response evolved, it was the lack of “communication, coordination, cooperation, and understanding among [the] various agencies” which led to “few standards, little consistency, and even less institutional accountability to the community.” Id. In order to fight domestic violence effectively “courts need batterer intervention programs, probation departments, shelters, counseling services for victims, and supervised visitation programs.” Id. The Coordinated Community Response also has a positive impact on changing society and the criminal justice system’s views on domestic violence. See Cris Sullivan & Mary Keefe, Evaluations of Advocacy Efforts to End Intimate Violence Against Women, Violence Against Women Online Resources (Apr. 1999), at www.vaw.umn.edu/finaldocuments/Vawnet/advocacy.htm.

See Tsai, supra note 7, at 1312–13 (positing that uncertainty exists as to effectiveness of batterer intervention programs and there is not much evidence proving effectiveness); Rose Garrity, On Batterers’ Programs, New York State Coalition Against Domestic Violence (1994) (expressing the many concerns and fears that surround Batterer Intervention programs), at http://comnet.org/bisc/standards/nyposi.html. See generally Jan Hoffman, When Men Hit Women, N.Y. TIMES MAG., Feb. 16, 1992, § 6, at 23 (comparing stories of six individuals placed in batterer intervention program in Duluth, MN).

One of the biggest concerns surrounding Batterer’s Intervention Programs is that they give victims false hope, and cause the victim to remain in the abusive relationship because she believes that by participating in a Batterer Intervention Program the abuser will change his ways. Or worse, he may use his participation in the program to prove that he is trying to “fix” their relationship, which may lead the victim to believe that there is a problem with the relationship itself, and not with the batterer. See OPDV Bulletin: Programs for Men Who Batter: What Have We Learned?, New York State Office for the Prevention of Domestic Violence (2000), at http://www.opdv.state.ny.us/publications/bulletins/fall2000/batterers.html. Research shows that women whose partners are mandated to batterer treatment feel safer and are more likely to resume their relationship with the batterer. This potentially false feeling of security may itself be a risk factor, as it may lead some women to become less vigilant about promoting their own safety. See Deborah Epstein et al., Transforming Aggressive Prosecution Policies: Prioritizing Long-Term Safety in the Prosecution of Domestic Violence Cases, 11 AM. U. J. GENDER SOC. POLY & L. 465, 467 n.3 (2003). Indeed, even some judges note that the program may actually have negative results in preventing abuse since women feel falsely that their abuser has been cured. See Deborah Sontag, Fierce Entanglements, N.Y. TIMES MAG., Nov. 17, 2002, § 6, at 52.
by making the victim believe that the batterer is "cured," even when the reality is he is not. The counter-argument is that statistics show that many women return to their abusers whether they have participated in a Batterer Intervention Program or not, and attendance in a Batterer Intervention Program ensures that at least some percentage of these women who return to their abusers may not be harmed. Further, opponents of Batterer Intervention Programs are concerned that the proliferation of Batterer Intervention Programs take the focus away from the victims, and believe that states should fund services geared towards victims, as opposed to those geared towards batterers. On the contrary, Batterer Intervention Programs do not take the focus away from victims. The implementation of such programs recognizes that domestic violence is a larger problem that can only be curtailed if both the victim and the batterer are helped.

Another concern is that Batterer Intervention Programs tend to decriminalize domestic violence.

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107 See Epstein, et al., supra note 106, at 467 n.3 (warning that women feel false sense of security because of believing in a "cure"); Sontag, supra note 106, at 52 (pointing to cases where women return to abusers believing falsely that their abuser has been "cured"); Garrity, supra note 105 (cautioning that domestic violence is not a disease to be "cured", and that the danger of an abusive man can not be gauged).

108 See Herzberger & Channels, supra note 37, at 63 (positing the many reasons that victims remain in abusive relationships, namely the familial relationship between the offender and the victim); see also Franci Richardson, Past May Predict Abuser's Future, BOSTON HERALD, Dec. 15, 1999, at 19 (showing studies finding abuser's are habitual and have drug and alcohol problems); Controversies and Recent Studies of Batterer Intervention Program Effectiveness, Violence Against Women Online Resources (2000) (opining that Batterer Intervention Programs may safeguard other women from being harmed, for example, even if the original victim does not return to the batterer, the next woman he becomes intimate with may not be harmed), at www.vawnet.org/VNL/library/general/ARBatterer Intervention Program.html.

109 See OPDV Bulletin: Programs for Men Who Batter: What Have We Learned?, supra note 106 (stating that aiding the victim should take priority over reforming batterers); see also Garrity, supra note 105 (cautioning against the use of funneling of funds away from victim services and towards Batterer Intervention Programs); David Polochanin, Programs to Treat Men Who Batter Fall Short of Need, BOSTON GLOBE, July 30, 1994, at 14 (claiming Boston needed more batterer intervention programs geared toward victims).

110 It would be unrealistic to think that domestic violence will stop as long as only victims are helped. As long as batterers are not changed, there will continue to be women that are abused. Even if batterers are punished to the full extent of the law, they will eventually get out of jail without having learned to reform their ways. See Winick, supra note 18, at 89-91. See also Controversies and Recent Studies of Batterer Intervention Program Effectiveness, supra note 108 (indicating that the goals of batterer intervention programs include justice, accountability, and victim safety); Report on Domestic Violence Released, WASH. POST, Aug. 7, 2003, at T14 (determining that prevention of domestic violence is based on proactive initiatives of assisting the victim and holding the abuser accountable).
PUNISHMENT OR REHABILITATION?

On the other hand, it is proven that punishment is not always a deterrent, and if ending domestic violence is the goal, then alternatives that work should be explored. Lastly, critics propose that there are so many different types of programs that are continuously appearing that it is difficult to ascertain which ones are actually effective. While it is clear that some types of Batterer Intervention Programs are much more effective than others, such as the feminist model, there is still an abundance of programs that do not follow this model. The

111 See OPDV Bulletin: Programs for Men Who Batter: What Have We Learned?, supra note 106 (proposing that diverting abusers to Batterer Intervention Programs fails to hold them accountable for their behavior); see also Cheryl Hanna, The Paradox of Hope: The Crime and Punishment of Domestic Violence, 39 WM. & MARY L. REV. 1505, 1507 (1998) (reasoning that some states require domestic violence convictions instead of pretrial treatment programs because the programs fail to require that the batterer acknowledge any criminal wrongdoing). See generally Weber, supra note 21, at 27 (addressing the possibility of the minimization of the need for a strong law enforcement response in domestic violence cases).


113 It should be noted that not all batterers are sent to Batterer Intervention Programs; the more violent batterers are sent to prison without the option of attending such a program. Further, such programs are geared towards first-time offenders and not batterers who are continuously charged with domestic violence. Lastly, only those men that are receptive to change are given the option. These and other safeguards ensure that domestic violence is not decriminalized. See Developments in the Law – Legal Responses to Domestic Violence: III. New State and Federal Responses to Domestic Violence, supra note 10, at 1541-43. See generally Martha R. Mahoney, Legal Images of Battered Women: Redefining the Issue of Separation, 90 MICH. L. REV. 1, 60-61 (1991) (suggesting that more creative approaches that expose the complicity of the state and society should be explored to end domestic violence); Joan S. Meier, Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice, 21 HOFSTRA L. REV. 1295, 1297 (1993) (suggesting that the appropriate remedy for domestic violence is an interdisciplinary approach including coordination of legal, psychological, and emotional factors of domestic violence).

114 See Garrity, supra note 105 (proposing that more research be done to ascertain which Batterer Intervention Program is most effective before diverting batterers to such programs); Tsai, supra note 7, at 1313-15 (asserting that the effectiveness of using batterer intervention programs is uncertain absent conclusive research on the most effective model of for batterer intervention programs); see also The Efficacy of Batterer Intervention Programs, supra note 112 (concluding that more research on batterer intervention programs must be done to measure the effectiveness of the programs).

115 See Hanna, supra note 111, at 1510 (evaluating different types of batterer intervention programs and indicating that the feminist model is the model used in many jurisdictions). See generally Healey & Smith, supra note 15, at 4-7 (discussing the many formats different Batterer Intervention Programs follow, but emphasizing that the
solution to this problem is, as the New York State Coalition Against Domestic Violence has suggested, that guidelines should be implemented for all court-mandated Batterer Intervention Programs to follow. Many states have recently enacted legislation making it mandatory for all Batterer Intervention Programs within the state to follow certain state-sanctioned guidelines that govern all aspects of the program from certification to program methods and procedures. Other states are in the midst of proposing such legislation. Finally, some states have drafted voluntary guidelines for Batterer Intervention Programs within the state to follow. Unfortunately, New York has not implemented such mandatory

feminist approach seems to be the best approach); Controversies and Recent Studies of Batterer Intervention Program Effectiveness, supra note 108 (evaluating the numerous types of Batterer Intervention Programs).

See Garrity, supra note 105 (suggesting that Batterer Intervention Programs should follow guidelines to ensure both batterer accountability and victim safety); Tsai, supra note 7, at 1323-24 (establishing that guidelines and certification procedures to ensure that courts are referring batterers to qualified intervention programs should be implemented); see also Austin & Dankworth, supra note 85 (analyzing different standards for batterer intervention programs and concluding that standards should include intervention goals of victim safety and batterer accountability).

See, e.g., Donna Renfroe, Victim Teaches Others Warning Signs of Domestic Violence, TAMPA TRIB., Nov. 28, 1996, at 1 (showing Florida is one state that, through legislation, established mandatory state standards for Batterer Intervention programs); Jayne Noble Suhler, Terror at Home: Domestic Violence in Dallas County, DALLAS MORNING NEWS, Mar. 15, 1998, at 1A (illustrating Texas as one state that, through legislation, set standards and guidelines for Batterer Intervention Programs). See generally Austin & Dankworth, supra note 85 (reviewing state standards for Batterer Intervention Programs).

See, e.g., Kelly King, Panel to Wage 2-Stage Attack on Violence, TIMES-PICAYUNE (New Orleans, LA), Apr. 11, 1999, at 1H2 (demonstrating Louisiana as one state researching other Batterer Intervention programs because it has not yet adopted minimum standards for such programs); Judith VandeWater, Agencies Developing Treatment Program for Abusive Men, ST. LOUIS POST-DISPATCH, July 24, 1995, at 10 (showing how two mental-health agencies developed Batter Intervention programs because Missouri is one state without state standards for such programs). See generally Austin & Dankworth, supra note 85 (listing states drafting Batterer Intervention program guidelines).

See, e.g., Gwendolyn R. Keyes, Solicitor General: Help End Violence, ATLANTA J. & CONST., Feb. 13, 2003, at 4JA (showing how one Georgia county formed teams in accordance with national standards to begin coordinated campaigns to end domestic violence, since Georgia is one state with only voluntary Batterer Intervention guidelines); Joseph Morton, Activists Ask Judges to Require Program Target Batterers; Behavior: About Half Get Order, OMAHA WORLD-HERALD, Feb. 15, 2003, at 1b (verifying that, since Nebraska is one state with voluntary Batterer Intervention programs, judges seem hesitant to order more than half of domestic violence probationers to participate). See generally Austin & Dankworth, supra note 85 (affirming that, even though voluntary guidelines are not just suggestions for in-state programs to follow, even that is better than not having guidelines at all).
The Office for the Prevention of Domestic Violence, an arm of the state, refuses to recognize the importance of such programs, citing the same reasons that critics of such programs entertain. Yet, greater danger lies in not having such guidelines, because in reality, these programs continue to exist in New York. Furthermore, New York courts continue to refer batterers to such programs, but because there are no mandatory state guidelines, these programs are not being properly monitored.

For many years, judges hearing domestic violence cases referred convicted batterers to the New York City Alternative Assistance Program (NYCAAP), which was the second-largest

120 See Elsa Brenner, *Electronic Devices and Domestic Violence*, N. Y. TIMES, Dec. 3, 1995, § 13WC, at 1 (showing how Westchester equipped women, who were in imminent danger of being battered and who had restraining orders, with preprogrammed cellular phones to call police); *Silent Scream for Help: Pendants Allow Battered Women Security*, NEWSDAY (N.Y.), Aug. 19, 1996, at A18 (stating that, instead of making Batterer Intervention programs mandatory, New York partnered with ADT Security Systems to issue women, who were in imminent danger of being battered and who had restraining orders, mere necklaces to emit alarms). But see Mitch Gelman, *Group Therapy Gets Experts' Nod; Experts Say Group Therapy Best*, NEWSDAY (N.Y.), Aug. 1, 1994, at A07 (showing group therapy is effective at helping batterers).

121 See Sheila Anne Feeney, *Stop in the Name of Love for Victims of Domestic Violence, Help Can Be Just a Phone Call Away*, DAILY NEWS (N.Y.), at 2 (showing how New York has hotlines, albeit swamped ones, for batterers to receive counseling, to substitute for Batterer Intervention programs); Sarah Goodyear, *Rehab Madness*, VILL. VOICE (N.Y.), Feb. 20, 2001, at 53 (asserting an opinion that it seems unlikely there will be swells of support for Batterer Intervention programs because proof such programs work is missing); Pamela Mendels, *Welcome Voices Behind the Hot Lines: Ever-busy Counselors Balance Despair, Hope*, NEWSDAY (N.Y.), July 3, 1994, at A68 (showing that, although it will not make Batterer Intervention programs mandatory, New York's Office for the Prevention of Domestic Violence feels domestic violence hotlines are crucial in saving lives).

122 See, e.g., Jackie Coley, *Event for Vera House Raises $110,000*, POST-STANDARD (Syracuse, N.Y.), Dec. 18, 1996, at C2 (averring that one Batterer Intervention Program holds annual dinner dance benefits in order to stay in existence and work to end domestic violence); Donna Jackel, *Program that Helps Batterers Wins Time*, ROCHESTER DEMOCRAT & CHRON. (N.Y.), Apr. 18, 2003, at 3B (showing how one New York Batterer Intervention Program almost had to close due to lack of funding); Joe Picchi, *Domestic Abusers Get Weekly Class Time*, TIMES UNION (Albany, N.Y.), June 26, 1996, at B4 (stating that, in Batterer Intervention programs in Troy, New York, domestic violence offenders must attend classes weekly, or violate probation).

123 See John Marzulli, *Home Violence Swells, Rise in Homicide, Rape, & Assault – NYPD*, DAILY NEWS (N.Y.), Dec. 30, 1997, at 10 (asserting how New York's legal system is not geared to treat domestic violence with equal levels of seriousness as stranger-related violence); see also Donn Esmonde, *Attitudes May Be Changing Towards Domestic Violence*, BUFFALO NEWS (N.Y.), June 21, 1994, at 4 (asserting that batterers take things more seriously when prosecuted and sentenced by judges); Dan Fagin, *Avoiding Aid for Violent Spouses; Judges' Referrals Lag: Nassau Cases at 50%*, NEWSDAY (N.Y.), July 5, 1989, at 6 (avowing how New York is making steps toward establishing mandatory Batterer Intervention programs by giving judges authority to make attendance at such programs probation conditions).
court-mandated batterer intervention program in New York.  

Like other Batterer Intervention Programs, the NYCAAP was established to help reform perpetrators in the hopes of deterring further domestic violence. Then, in early 2001, the program was forced to close its doors, following the horrific events of December 15, 2001. A long-time employee of the NYCAAP, Daniel Sanders, a counselor for men convicted of domestic violence, tragically murdered his ex-girlfriend and her new boyfriend on the streets of Manhattan, while Christmas shoppers and tourists witnessed the tragic murders.

It was lunchtime, and Sanders' ex-girlfriend, Doris Coleman, and her new boyfriend, Lawrence Feaster, had just met outside Coleman's midtown office for lunch. Unfortunately, Sanders was waiting for them with a loaded gun. Sanders first shot Feaster in the chest, who was left to die outside Coleman's office building. Then he shot Coleman in the leg and face "before chasing her through the holiday crowds out into an alleyway just

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124 See Goodyear, supra note 121, at 53 (stating that NYCAAP was the second largest batterer's intervention program in New York); Amy Waldman, Striking Back, N.Y. TIMES, June 28, 1998, at 1 (stating how judges refer batterers to the NYCAAP for reform); Waging War Against Domestic Violence, N.Y. ST. JURY POOL NEWS, Summer/Fall 1998, at 4-6 (stating that referrals to the NYCAAP are made by judges), available at http://www.courts.state.ny.us/jpn/issue4.pdf.

125 See Goodyear, supra note 121, at 53 (stating that the goal of the program is rehabilitation); Waging War Against Domestic Violence, supra note 124, at 4-6 (proposing that goal of the program is to teach the batterers respect). See generally Rona Marech, When Help Fails, SAN FRANC. CHRON., Aug. 24, 2003, at 12 (stating that the goal of batterer intervention programs is to rehabilitate abusers).

126 See Sean Gardiner & Patrice O'Shaughnessy, Manhunt's Over Slay Suspect Shoots Himself, NEWSDAY (N.Y.), Dec. 17, 2001, at A03 (reporting on Sanders' horrific story); Goodyear, supra note 124, at 53 (recounting the tragic events surrounding the NYCAAP incident); Sarah Kershaw, Suspect in Midtown Killings Shoots Himself in the Head, N.Y. TIMES, Dec. 17, 2000, at 57 (stating the events surrounding the shooting).

127 See Gardiner & O'Shaughnessy, supra note 126, at A03 (recounting how the murders happened in front of holiday shoppers); Goodyear, supra note 121, at 53 (stating how Sanders murdered his ex-girlfriend and her new boyfriend); Kershaw, supra note 126, at 57 (reporting that Sanders, a domestic abuse counselor, committed the murders).

128 See Gardiner & O'Shaughnessy, supra note 126, at A03 (recounting how the murders occurred at lunchtime); Goodyear, supra note 121, at 53 (stating how Coleman and her new boyfriend had just met for lunch before being murdered); Kershaw, supra note 126, at 57 (noting that the murders occurred outside of Coleman's midtown office).

129 See Gardiner & O'Shaughnessy, supra note 126, at A03 (stating how Sanders used a .38 caliber handgun); Goodyear, supra note 121, at 53 (stating that Sanders was waiting outside Coleman's office); Kershaw, supra note 126, at 57 (recounting how Sanders ambushed his victims outside an office building).

130 See Gardiner & O'Shaughnessy, supra note 126, at A03 (describing how Sanders shot Coleman's boyfriend first); Goodyear, supra note 121, at 53 (pronouncing that Coleman's boyfriend was shot in the chest and left to die); Kershaw, supra note 126, at 57 (stating how Coleman's boyfriend collapsed inside her office building).
around the corner from Lord & Taylor’s windows. As she begged for her life, he killed her with a bullet to the forehead.”

After a 12-hour manhunt, Sanders shot himself outside the 52nd precinct station house in the Bronx. He died later that day after being taken to the hospital.

Although crimes like the two Sanders committed are common, what set Sanders’ crime apart from other domestic violence is the nature of Sanders’ employment. But why was a man who served time for robbery, attempted murder, and was arrested on a domestic violence charge working for a Batterer Intervention Program? The answer is that NY simply does not have supervision mechanisms in place to monitor such Batterer Intervention Programs. In New York, “there are no standards for court-mandated Batterer Intervention Programs, any agency can set up shop and try to get a district attorney to recommend its program to judges as a sentencing alternative.” New York has voluntary standards, which Batterer Intervention Programs can choose to follow. However, such programs are not as closely monitored as they would be if New York had mandatory guidelines and an accompanying oversight mechanism that would ensure that such programs are adhering to the state guidelines. Although NYCAAP has closed its doors, there is no guarantee that New York does not have other such programs

131 Goodyear, supra note 121, at 53 (reporting the details of this crime).
132 Id. (recounting Daniel Sanders’ last words before he shot himself in the police station).
133 See Goodyear, supra note 121, at 53 (explaining that there is no guarantee that counselors in Batterer Intervention Programs are not abusive in their own relationships, other states have oversight mechanisms that are lacking in New York). See generally Nina Bernstein, New York City Removes Staff at Women’s Shelter, N.Y. TIMES, Feb. 12, 1997, at A1 (explaining the lack of supervision at a home for abused women); Garrity, supra note 105 (advocating for improvement in the New York Batterers’ Programs).
134 Goodyear, supra note 121, at 53 (discussing New York State Office for the Prevention of Domestic Violence does not set restrictions on the batterers’ programs and there is no screening for the staff at these agencies).
135 See Austin & Dankwort, supra note 85. Among the various advantages of standards for Batterer Intervention Programs are the facts that “standards promote consistency amongst programs and help hold programs accountable to the battered women’s movement and other within the community.” Further, “standards help to legitimate the need for specialized knowledge, training, and intervention approaches in domestic violence work.” See Garrity, supra note 105. There are many concerns in developing a Batterer Intervention Program because it deals with the delicate issue of domestic violence. See generally Meghan Mandsager, A Review of Mandatory State Standards for Batterers Intervention Programs (2001) (unpublished draft for the Center for Court Innovation, N.Y.) (recognizing that it is of utmost importance that the state regulate Batterer Intervention Programs).
within its borders. As the Sanders incident clearly proves, without mandatory state guidelines and proper monitoring, there will continue to be disreputable Batterer Intervention Programs to which courts will refer cases.

VI. STATES WITH GUIDELINES: CURRENT TRENDS IN THE UNITED STATES

As of July 2001, there were 24 states in the United States that had implemented mandatory guidelines for intrastate Batterer Intervention Programs to follow, and 12 more were in the process of developing these mandatory guidelines. These mandatory guidelines regulate the programs' philosophy, purposes, terms, certification, duration, format, intake/assessment criteria, victim/batterer contact, and staff qualifications. Currently, there are 20 states that have voluntary guidelines for intrastate Batterer Intervention Programs to follow. In 1996, the New York State Office For The Prevention of Domestic Violence, drafted mandatory standards for Batterer Intervention Programs; however these standards were soon withdrawn.

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136 See Austin & Dankwort, supra note 85 (describing the trend in the United States for state-mandated guidelines for Batterer Intervention Programs); see also Mandsager, supra note 135 (reviewing the standards that the different states have implemented as an attempt to create uniform intrastate Batterer Intervention Programs). See generally Madelynn Herman, Domestic Violence, Batterer Intervention Services Coalition of Michigan (reporting on the status of U.S. Batterer Program Standards as of the year 2000), at http://www.ncsc.dni.us/KMO/Projects/Trends/9900/Documents/DVtrends.htm (last visited Nov. 9, 2003).

137 See Mandsager, supra note 135 (stating standards require all programs within the state to operate under the same methods, ensuring that all intra-state Batterer Intervention Programs will operate effectively for maximum batterer accountability); see also Austin & Dankwort, supra note 85 (explaining the aspects of Batterer Intervention Programs that standards strive to regulate). See generally Herman, supra note 136 (providing these mandatory Batterer Program standards are significantly related to reducing violence).

138 The voluntary standards are adhered to by many of the in-state Batterer Intervention Programs, but they are only suggestions. See Austin & Dankwort, supra note 85. Some states have voluntary standards that, in those jurisdictions, maintain some official capacity in the criminal justice system, but only give referrals to complaint programs. Id. Other jurisdictions give the offender a choice between referral programs. See KERRY HEALEY ET AL., BATTERER INTERVENTION: PROGRAM APPROACHES AND CRIMINAL JUSTICE STRATEGIES 86, Nat'l Inst. of Just., Issues and Pracs. in Crim. Just. (Feb. 1998), available at http://www.ncjrs.org/pdffiles/168638.pdf. See generally Other State's Standards, Batterer Intervention Servs. of Mich. (reporting on the status with the state-mandated guidelines), at http://www.biscmi.org/other_resources/state_standards.html (last visited Nov. 9, 2003).
It has been speculated that nervousness about the effectiveness of such programs was the major thrust behind the withdrawal of the standards. Although it is very hard to know the effectiveness of state-sanctioned guidelines, it is better to have such guidelines in place for accountability, oversight, and evaluation purposes.

Many states that have mandatory guidelines for Batterer Intervention Programs use some variation of the Minnesota Duluth Model, along with a coordinated community response approach to make the entire community aware and involved in ending the problem. Although the standards vary amongst the

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140 See Programs for Men Who Batter: What Have We Learned?, supra note 139, at 8-9 (evaluating concerns about effectiveness of Batterer Intervention Programs); see also Batterers Intervention Programs: Issues and Challenges, N.Y. St. Off. for the Prevention of Domestic Violence (indicating that "jury is still out" on effectiveness of Batterer Intervention Programs), available at http://www.opdv.state.ny.us/criminal_justice/corrections/bip/bipintro.html (last visited Nov. 9, 2003); Larry Bennett & Oliver Williams, Controversies and Recent Studies of Batterer Intervention Program Effectiveness (2001) (assessing issues surrounding effectiveness of Batterer Intervention Programs), available at http://www.vaw.umn.edu/documents/vawnet/ar_bip/ar_bip.html.

141 See Bennett & Williams, supra note 140 (discussing accountability as among key issues in Batterer Intervention Programs); Dankwort & Austin, supra note 116 (outlining positive aspects of Batterer Intervention Programs, including accountability and oversight); Do Batterer Intervention Programs Work? Two Studies, Nat'1 Inst. of Just. (Sept. 2003) (describing importance of evaluation of current Batterer Intervention Programs), available at http://www.ncjrs.org/pdffiles/nij/200331.pdf.

142 The Minnesota Duluth Model, developed in the early 1980's, emphasizes the connection between "domestic violence and the concept of power and control, which describes control tactics used by batterers to influence their partners, such as intimidation, isolation, and coercion." Winick, supra note 18, at 41 n.42. Remedying the "power imbalance" between assailant and victim is one guiding principles of intervention under the Duluth Model. Domestic Abuse Intervention Project, at http://www.duluthmodel.org/documents/daipccr3.htm (last visited Nov. 9, 2003). The model utilizes a Power and Control Wheel as a teaching tool to illustrate batterers' abusive behavior. Wheel Gallery, Domestic Abuse Intervention Project, at http://www.duluth-model.org/ (last visited Nov. 9, 2003).

143 It has been proven that the best way to combat domestic violence is through a Coordinated Community Response, which stresses the severity of the problem. See Shepard, supra note 30. The Coordinated Community Response can also help guarantee that police, prosecutors, court officials, victim advocates, and counselors for batterers are given the training required to effectively aid domestic violence victims. See Winick, supra note 18, at 90. Some programs place special emphasis on public awareness and community-based education initiatives. See, e.g., A Coordinated Community Response in
states, most are very similar. The following is a brief synopsis of the major elements of these guidelines, compiled after a review of many of these guidelines.

A. Philosophy of Standards

Victim safety is the main focus of most state-mandated guidelines for Batterer Intervention Programs. Many of the standards define domestic violence and its causes. These are usually defined as physical, sexual and psychological abuse caused by the control and degradation of women. Many of these standards caution that Batterer Intervention Programs do not guarantee that batterers will stop their abusive behavior,


144 See Austin & Dankwort, supra note 85 (explaining that state standards are surprisingly similar because standards developed in one state often serve as an example for another state). See generally BUZAWA & BUZAWA, supra note 5, at 182 (noting that the Duluth model is a psychoeducational model upon which many other batterer intervention programs are based); Tsai, supra note 7, at 1290, 1309-10 (stating that innovation in batterer intervention programs has grown in the last thirty years and although unique in many states are similar in many of their central aspects).

145 For example, in California, Santa Clara County's guidelines for Batterer Intervention Programs state "the entire program, as reflected in the program application, group process, administrative operations, and any activity with or about the batterer, must hold the victim's safety and well-being as the primary concern. The interests of victim safety and autonomy supersede the rehabilitative interests of the batterer and the batterers program." See, e.g., Standards for Batterers Programs and Certification, Santa Clara County Probation Dep't, available at http://www.growing.com/nonviolent /worker/BattererInterventionProgram_stan.htm#S3_0 (Adopted Mar. 1997). Legislation, litigation, activism, and other programs designed for the protection of battered women have grown dramatically in the last twenty years. See generally Naomi Cahn & Joan Meier, New Approaches to Poverty Law, Teaching, and Practice: Domestic Violence and Feminist Jurisprudence: Toward a New Agenda, 4 B.U. PUB. INT. L.J. 339, 339-40 (1995).

Victim safety is listed as the primary purpose in roughly 84% of state mandated batterers' intervention programs. See Austin & Dankwort, supra note 85.

146 Domestic violence as defined in the California civil statutes is abuse perpetrated against the following persons: spouse or former spouse, cohabitant or former cohabitant, person with whom one is having or has had a dating relationship, person with whom one has had a child, any person related by consanguinity (blood relative or close relationship) or affinity (relationship by marriage or a close relationship) with the second degree. Standards for Batterers Programs and Certification, supra note 145. "Patriarchy," or the belief that men are dominant over women, is cited as the cause of domestic violence by many of the states. It is also the reason for making the eradication of domestic violence much more difficult. This approach follows the feminist models for Batterer Intervention Programs. See generally Austin & Dankwort, supra note 85. Battered women's advocates define domestic violence as encompassing any one of physical, sexual, verbal, emotional, financial, and psychological abuses. See generally Joyce Klemperer, Symposium on Reconceptualizing Violence Against Women by Intimate Partners: Critical Issues: Programs for Battered Women - What Works?, 58 ALB. L. REV. 1171, 1171 (1995) (for an account of the issue).
which address the concern that Batterer Intervention Programs will be regarded as a cure-all for domestic violence.147

B. Program Protocol

The protocol section of most states' guidelines sets out the principles and purposes of the in-state programs.148 Most state guidelines list victim safety and batterer accountability as the chief purposes of the guidelines.149 Many of the states also focus

California states:

There is not yet conclusive evidence that intervention programs for batterers are effective in ending violence and abuse, on either an individual or societal level. What research has been done demonstrates that only a small number of batterers who complete batterer intervention programs are committed to lives free of violence. Therefore, the requirement of a program's adherence to these Standards is to not only safeguard victims and the batterer's current partner, but to assure, at the very least, that batterers gain no further power to abuse through participation in a batterers program.

Standards for Batterers Programs and Certification, supra note 122. Rhode Island's standards state that programs should:

Clearly articulate to batterers and victims that becoming non-abusive requires long-term work on the part of the batterer and completion of a batterers program is not a guarantee that the abuse will stop. Indicating that a batterer is cured sends him and his partner a message that there is no more risk of abuse.

Batterer Intervention Program Comprehensive Standards, Rhode Island Coalition Against Domestic Violence, at http://www.biscmi.org/other_resources/docs/rhode_island.html (Effective Aug. 4, 1998). Though some critics claim that state intervention is ineffectual and does not stop battering, Waits asserts that because the law has not eliminated battering, it does not mean that we should stop. See Waits, supra note 6, at 299-302. Waits illustrates her point by drawing an analogy to the fact that though murder has not been eliminated, the law must still combat it. Id.

See, e.g., MINN. STAT. § 611A.32 (2002) (stating that grants shall be awarded to programs that provide emergency shelter, protection, and support to battered women and their children); N.J. STAT. § 52:4B-43.1 (2003) (directing that the Victim and Witness Advocacy Fund shall grant awards to shelters, support centers, intervention or emergency service providers, and abuse centers specifically designed to help battered or abused women). See generally A Review of Standards for Batterer Intervention Programs, supra note 117 (noting that states espouse similar principals, purposes, and goals in the protocol section of their batterer intervention programs).

For example, Alabama lists the following as some of the goals of the state's Batterer Intervention Programs: "To encourage the perpetrator to become accountable to those he has abused, to take whatever actions are necessary to comply with the safety needs of his partner and to make restitution for the effects of the abuse." Alabama Certification Standards for Domestic Violence Perpetrator Intervention Programs, at http://www.biscmi.org/other_resources/docs/alabama.doc (Revised May 2001). Like Alabama, the states that stress batterer accountability address the concerns that Batterer Intervention Programs will decriminalize domestic violence while drawing attention away from the victims. The guidelines make the programs accountable to the battered women's advocates that deal directly with the victims. The primary goal of police intervention is to provide victim safety and to send a message of social condemnation to the batterer. See generally Waits, supra note 6, at 309. "Victim safety is explicitly stated in 84% of the standards to be the primary concern for batterers' programs, and holding the batterer
on community education and awareness of domestic violence.150 Further, many guidelines require program evaluations to ensure that the programs are operating properly.

C. Victim Contact

The states differ as to their position on victim/batterer contact during participation in Batterer Intervention Programs.151 Many of the states' guidelines aim to keep the victim informed of the batterer's progression in the program.152 Other states' guidelines state that victims should be allowed information about the batterer only if the victim wishes,153 while other programs strongly discourage contact with the victim.154

accountable for abusive behavior is indicated as a priority in 81% of them." Austin & Dankwort, supra note 85.

150 60% of such programs address this issue, and almost all such programs (97%) emphasize the need for a Coordinated Community Response in order to maximize the effectiveness of Batterer Intervention Programs. See Developments in the Law — Legal Responses to Domestic Violence: III. New State and Federal Responses to Domestic Violence, supra note 10, at 1518 (discussing how local government domestic violence unit programs serve to foster community awareness and how criminal prosecution and punishment promotes public awareness); see also Margaret Martin Barry, 38 HOW. L.J 135, 157 (1994) (highlighting how court organized group that includes public officials who work in the domestic violence area works with students at domestic violations clinic that focuses on increasing public awareness); Florida's Batterers' Intervention Program Purpose Statement (2003) (discussing program goal of informing victim of batterer's status in intervention group); see also Illinois Protocol for Domestic Abuse Batterer Programs, § 5.4c (1994) (requiring batterer treatment program to inform victim of batterer’s status in intervention group), available at http://www.bisemi.org/other_resources/docs/illinois.html.

151 See Austin & Dankwort, supra note 85 (reviewing state standards for Batterer Intervention Programs); see also Andrea Williams, Advocating for Victims of Domestic Violence, 20 WOMEN'S RIGHTS L. REP. 73, 83 (1999) (asserting how state laws often vary and do not provide sufficient remedies for women facing domestic violence). See generally Linda Dakis & Lauren Lazarus, Attacking the Crime of Domestic Violence: How Dade County is Protecting the Victim and Punishing the Perpetrator, 19 FAM. ADVOC. 46, 49-50 (1997) (reviewing cases with victim contact).

152 Alabama's guidelines state “the intervention programs shall notify victims of any change in the status of the perpetrator within the program, including the denial of admission or termination of the perpetrator from the program. Perpetrator Intervention Programs shall also notify victims of the perpetrator's completion of the program and any recommendations.” Alabama Certification Standards for Domestic Violence Perpetrator Intervention Programs, supra note 149. See Florida's Batterers' Intervention Program Policy Statement, supra note 150 (discussing program goal of informing victim of batterer's status in intervention group); see also Illinois Protocol for Domestic Abuse Batterer Programs, § 5.4c (1994) (requiring batterer treatment program to inform victim of batterer's attendance, progress, and also of any threats batterer made while participating in the program), available at http://www.bisemi.org/other_resources/docs/illinois.html.

D. Staff Ethics and Qualifications

Many state guidelines require that staff of in-state Batterer Intervention Programs should be "(a) violence-free in their personal lives (65% of the standards), (b) must not abuse alcohol or drugs (45%), and (c) must seek to rid themselves of sexist attitudes (55%)." Many of these standards also require a degree or license to work with batterers, but even those that do not require a degree or license require some training in domestic violence.


154 See Austin & Dankwort, supra note 85 (referring to programs, such as those in Indiana and New York, that discourage batterer intervention program from directly contacting and unnecessarily endangering victim). See, e.g., Indiana Coalition Against Domestic Violence Standards For Batterers Intervention Programs (Effective Jan. 1, 2002) (emphasizing importance of having non-batterer intervention program staff contact victims to preserve their confidentiality and safety), available at http://www.biscmi.org/other_resources/docs/indiana.doc; State of New York Standards for Intervention with Men Who Batter (Oct. 4, 1996) (discussing how victim contact risks putting victim in danger and is appropriate only to inform victim when batterer has made threats), available at http://www.biscmi.org/other_resources/state_standards.html.

155 Austin & Dankwort, supra note 85. See also Alabama Certification Standards for Domestic Violence Perpetrator Intervention Programs, supra note 149, (stating that batterer intervention program facilitators must examine personal issues concerning abusive and violent behavior, sexuality, gender roles and attitudes towards these roles); State of New York Standards for Intervention With Men Who Batter, supra note 155 (requiring batterer intervention program staff to examine themselves and be open to feedback on power, control, and sexism issues in their own lives); Illinois Protocol for Domestic Abuse Battering Programs, § 5.2 (1994) (requiring batterer treatment program facilitators to lead violence-free lives and not perpetuate sexist attitudes), available at http://www.biscmi.org/other_resources/docs/illinois.html.

156 See Duff Wilson, Law Passed to Fill Needs on Domestic Violence, SEATTLE TIMES, May 21, 1991, at B1 (Seattle signed legislation in 1991 requiring licensing and quality standards for programs treating domestic-violence batterers); see also Tanya Bonner, Domestic Violence to Face Challenge, ORLANDO SENTINEL TRIB., Dec. 31, 1997, at 1 (Florida established minimum standards for treatment programs). See generally Dankwort & Austin, supra note 116 (comparing Batterer Intervention Program standards amongst the various United States and those of Canada).

157 See Austin & Dankwort, supra note 85. Most states suggest from 24-80 hours of training.

For example, Indiana’s guidelines provide:

To qualify to facilitate a Batterer Intervention Program an individual must show:

a. 100 hours of formal training approved by the Indiana Coalition Against Domestic Violence. A minimum of 60 hours of this training must be specific to domestic violence.


See generally Parish, supra note 102, at I1 (discussing imposition of minimum standards for batterers treatment programs and establishment of guidelines to unify programs); Batterer Intervention Services and Standards, Michigan Domestic Violence Prevention
E. Fees

Many programs require the batterers themselves pay for attendance in the intervention programs.\textsuperscript{158} However, many states also provide that indigent clients should not have to pay for services, so participation is not contingent on financial ability.\textsuperscript{159}

F. Intake procedures

Most of the states' guidelines require the batterers to sign a contract upon entering the Batterer Intervention Program, which includes a statement of the batterer's responsibilities in attending the program.\textsuperscript{160} These programs then assess the individual batterers to discern whether intervention can be effective and beneficial to the abusers.\textsuperscript{161} If it is determined that


\textsuperscript{159} See Ausin & Dankworth, supra note 116 (stating that 71\% of the states provide that batterers should pay to attend a Batterer Intervention Programs as another way to hold them accountable for their actions); see also Alabama Certification Standards for Domestic Violence Perpetrator Intervention Programs, supra note 149 (stating that “payment is an indicator of responsibility,” however “programs shall make provisions for indigent perpetrators”). See generally Certified Batterer Intervention Programs and Services, Mass. Dept. of Public Health, supra note 158 (listing fees as low as $5 per session).

\textsuperscript{160} See Alabama Certification Standards for Domestic Violence Perpetrator Intervention Programs, supra note 146 (listing the batterer information required during the intake process); Standards for Batterer Intervention Programs, Indiana Coalition Against Domestic Violence, supra note 154 (replicating the contract to be signed by batterers upon entering a Batterer Intervention Program). See generally Larry Bennett, Controversies and Recent Studies of Batterer Intervention Program Effectiveness, Violence Against Women Online Resources (analyzing various BIP programs and what makes them effective), at http://www.vaw.umn.edu/documents/vawnet/ar_bip.html (last visited Nov. 9, 2003).

\textsuperscript{161} See Alabama Certification Standards for Domestic Violence Perpetrator Intervention Programs, supra note 146 (discussing the process of batterer assessment before entering the Batterer Intervention Program). See generally Bennett, supra note 160 (analyzing various BIP programs and what makes them effective); Subcommittees of the Participating Members of the People Who Work With People Who Batter, Guidelines For Men Who Batter Programs (1997) (discussing guidelines for BIP's and how to assess the value of the program on individual batterers), at http://www.mincava.umn.edu/documents/pwwmb2/pwwmb2.shtml.
the batterers cannot be helped by participation in the Batterer Intervention Program, they will be reverted back to the criminal justice system.\textsuperscript{162}

\textbf{G. Intervention Format}

The most-widely-approved format is group intervention based on the feminist model, or the cognitive-behavioral method, or a combination of the methods.\textsuperscript{163} Often the guidelines provide that the “groups should be co-facilitated and preferably by a male/female team.”\textsuperscript{164} Generally, the programs’ curriculum revolves around issues of power and control.\textsuperscript{165} Many also include classes based on the “socio-cultural basis for men’s violence towards women, types of abuse, methods men use to have power and control over women, the effect of violence on women and children, attitudes and beliefs that support violence, and taking responsibility for one’s abusive actions.”\textsuperscript{166} Most standards also provide for programs to last between 24-26

\textsuperscript{162} See Austin & Dankwort, supra note 85 (discussing the procedure of the intervention). See generally Healey & Smith, supra note 15, at 6 (stating that violation of crucial program rules by court-mandated clients can result in a final report indicating a failure to complete the program); Healey, et al., supra note 78, at 43 (noting that program violations by court-ordered clients result in reports to the client’s probation officer).

\textsuperscript{163} See Alabama Certification Standards for Domestic Violence Perpetrator Intervention Programs, supra note 146 (stressing that couple intervention is largely discouraged as inappropriate and ineffective); see also Healey, et al., supra note 78 (noting that most programs were established “based on a feminist educational model”); Shelly Jackson, Batterer Intervention Programs, BATTERER INTERVENTION PROGRAMS: WHERE DO WE GO FROM HERE? (June 2003) (stating that the earliest program models used the feminist theory as their basis), available at http://www.ncjrs.org/pdffiles1/nij/195079.pdf.

\textsuperscript{164} Austin & Dankwort, supra note 85.

\textsuperscript{165} See Austin & Dankwort, supra note 85 (stating that programs challenge the batterer’s viewpoint on power and control); see also Healey & Smith, supra note 15, at 6 (stating that one of the conventional program models focuses on power and control issues); Healey, et al., supra note 78, at 3 (noting that programs adopting a feminist perspective aim at the batterer’s outlook on power and control in their relationship).

\textsuperscript{166} Austin & Dankwort, supra note 85.
weeks, whereas others provide for follow-up services after program completion.

H. Discharge Criteria

There are many grounds that warrant discharge from Batterer Intervention Programs. The typical grounds include recurrence of violence, lack of attendance or participation in the program, and non-payment of fees. Many programs also include a lack of enthusiasm or desire to change as a reason for discharge.

See Austin & Dankwort, supra note 85 (noting that various standards range from a minimum of 12 weeks to a maximum of 52, while most specify at least 24-26 weeks); see also Jackson, supra note 163, at 3 (noting that a study of the effectiveness of Batterer Intervention Programs in Brooklyn, New York showed that a 26-week program produced better results than those programs of a shorter duration); Batterer Intervention Services Standards: Batterer Intervention Services Coalition Region 3, Allegan, Kent, Ionia, and Montcalm Counties, ¶ 9 (stating that it’s program’s optimal treatment length is one year), at http://www.biscmi.org/other_resources/docs/grand_rapids.html (last visited Nov. 9, 2003).

See Austin & Dankwort, supra note 85. Cf. Controversies and Recent Studies of Batterer Intervention Program Effectiveness, Minn. Ctr. Against Violence and Abuse (concluding that there is no proof that longer intervention programs are more effective than shorter ones; however, longer programs may be preferred where the goal is that of accountability or closer vigilance of an individual), at http://www.vaw.umn.edu/documents/vawnet/ar_bip/ar_bip.html#id2634850 (last visited Nov. 9, 2003). See generally Nat’l Inst. of Just. Special Rep., U.S. Dep’t of Just. (June 2003) (reporting study findings that men who had completed a 26 week program had fewer complaints later filed against them than those completing only an 8 week program; however, overall there was no difference in the way the men, no matter how long their specific program was for, viewed domestic violence), at http://www.ncjrs.org/pdffiles1/nij/195079.pdf.

See, e.g., Standards for Batterer Intervention Programs, Indiana Coalition Against Domestic Violence, supra note 154 (listing the reasons that will force a batterer to be discharged from the Batterer Intervention Program). Cf. Dan de Carbonel, Domestic Violence Remains Common, Deadly Crime in Salem, STATESMAN J., Nov. 9, 2003, at 1A. (adding that behavior such as failure to attend or missing more than two sessions may lead to judge’s order to start the program all over again). See generally Marech, supra note 125, at 12. (stating the findings performed between 1997 and 2002, where 25% of those sent to classes never show up and of those who do show up, 33% complete the programs while 55% do not; in addition, for those who don’t show up, a report is forwarded to probation and eventually a warrant is created for the absentee’s arrest).

See Austin & Dankwort, supra note 85. But see Ileana Arias, et al., Violence Against Women: The State of Batterer Prevention Programs, AM. SOCY OF LAW, MED., AND ETHICS (Fall 2002) (noting that such discharge due to lack of enthusiasm has negative consequences, as when one male was dismissed from the group and later was found to hold his family hostage during an eight-hour stand-off with the police), available at http://www.findarticles.com/cf_0/m0DPE/3_30/95543952/p1/article.jhtml?term=%2Bviolence+%2Bprevention. Cf. Nat’l Inst. of Just. Special Rep., U.S. Dep’t of Just., supra note 168 (expressing that discharge of batterers due to certain behaviors throughout the program "seems to miss the point" and goal of the overall treatment of the individual).
I. Oversight Mechanisms

Perhaps the single most important aspect of state-sanctioned guidelines for Batterers Intervention Programs is the provision for the oversight of such intra-state programs. Oversight mechanisms require such programs to be accountable to the criminal justice system, thereby forcing programs to operate uniformly according to the guidelines in order avoid being shutdown.

The above-summarized standards are those most commonly found in state guidelines for Batterer Intervention Programs. These common standards are have also been proven to be the most effective in reforming the actions of abusers.

VII. CONCLUSION

Although the full extent of the effectiveness of Batterer Intervention Programs is yet to be determined, it has been proven that requiring participation in such programs has some effect on ending domestic violence. Due to the intimate nature of domestic violence, which makes it different from stranger

171 Rhode Island's guidelines provide: "Batterer's programs are to be responsive and accountable to the criminal justice system, including but not limited to reporting each batterer's compliance with program requirements." Batterer Intervention Program Comprehensive Standards, Rhode Island Coalition Against Domestic Violence, supra note 147. See generally de Carbonel, supra note 169 (explaining that critics argue that lack of uniformity among programs makes general impact of intervention programs hard to determine; however, such lack of uniformity is to change, as Oregon state attorney general's office is to soon implement statewide programs to encourage consistency).

172 See generally Austin & Dankwort, supra note 85; Batterers Intervention Programs: Issues and Challenges, N.Y. St. Office For The Prevention of Domestic Violence (discussing the concerns associated with batterer intervention programs (BIPs), especially the concern of having such programs be consistent with New York State's efforts to treat domestic violence as a crime; under this premise, BIPs should hold abusers accountable for the abuse and such programs should be used in conjunction with other court-mandated actions, including incarceration, restitution, or probation), at http://www.opdv.state.ny.us/criminal_justice/corrections/bip/bipintro.html (last visited Nov. 9, 2003). Cf. Arias, supra note 170 (identifying the 2 general standards, mandatory and voluntary standards used by states, whereby programs under mandatory standards are required to adhere in order to continue being funded and licensed to operate).

173 See Joseph Morton, Activists Ask Judges to Require Program, Program Targets Batterers' Behavior, OMAHA WORLD HERALD, Feb. 15, 2003, at 1b (explaining that a Domestic Violence Coordinating Council's data collector, Court Watch, reports that batterer intervention programs are more effective than anger-control programs in altering the behavior of domestic violence offenders). See generally, Controversies and Recent Studies of Batterer Intervention Program Effectiveness, supra note 108 (evaluating the effectiveness of the different aspects of Batterer Intervention Programs); Marech, supra note 125 (noting that unverified programs may be a risky situation to place a violent male).
violence, the criminal justice system should continue to take steps to improve the Coordinated Community Response and similar efforts in order to end domestic violence. Batterer Intervention Programs are only one step in the full Coordinated Community Response to domestic violence, and such a one step process is ineffective without others. I strongly believe that New York and other states that do not have state-mandated guidelines for Batterer Intervention Programs should implement such guidelines. These guidelines provide mechanisms for oversight and evaluation of the intra-state Batterer Intervention Programs. The standards also promote consistency among the programs, which fosters the use of the methods and procedures found to be most effective in batterer intervention. Batterer Intervention Programs also assist in the education of society about domestic violence in hopes of changing the attitudes surrounding the problem. Finally, the implementation of state standardized guidelines will bring an end to illegitimate Batterer Intervention Programs, such as NYCAAP, and foster the training and education of the programs' counselors. Without proper Batterer Intervention Programs, domestic violence will continue. Without proper education as the goal of every Battery Intervention Program, abusers, even if punished for their behavior, will never learn that violence is not the answer.