

# Strengthening Protections for Survivors of Domestic Violence:

## The Case of Washington, D.C.

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### INTRODUCTION

Domestic violence is a serious problem. One in three women, and one in four men, suffer abuse from their intimate partners.<sup>1</sup> As in cities across the United States, Washington, D.C. is a hotbed for crimes of domestic violence. In 2012, the Washington, D.C. Metropolitan Police Department (MPD) received over 29,000 domestic-violence related calls;<sup>2</sup> in 2013,

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1. SURVIVORS AND ADVOCATES FOR EMPOWERMENT, INC., DOMESTIC VIOLENCE IN DC 2014, at 3 (2014). Because intimate partner violence is generally a crime against women, and for the sake of consistency, I will use “she” and “her” to describe survivors of domestic violence throughout this Comment. Because men commit the majority of domestic assaults, I will use “he” and “him” to refer to abusers. See, e.g., *Domestic Violence Facts*, DC COALITION AGAINST DOMESTIC VIOLENCE, [http://www.dccadv.org/img/fck/file/Resources/DCCADV\\_DomesticViolenceFacts\\_Sheet.pdf](http://www.dccadv.org/img/fck/file/Resources/DCCADV_DomesticViolenceFacts_Sheet.pdf) (last visited Apr. 24, 2016) [hereinafter *Domestic Violence Facts*, DC COALITION]. The use of these terms, however, is not an attempt to downplay the frequency and seriousness of domestic violence perpetrated against men. For more information about and statistics related to men who are survivors of domestic violence, see generally NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, <http://www.ncadv.org> (last visited June 28, 2016). Additionally, the term “petitioners” refers to those survivors of violence who have pursued legal protection through the D.C. domestic violence system.

2. SURVIVORS AND ADVOCATES FOR EMPOWERMENT, INC., *supra* note 1, at 3.

MPD received over 32,000 calls.<sup>3</sup> This means that there is one domestic violence-related call every sixteen minutes.<sup>4</sup> In fact, even with chronic under-reporting of domestic abuse, almost half of all violent crime calls to MPD in 2000 stemmed from domestic violence-related issues.<sup>5</sup> In 2012, the D.C. Superior Court<sup>6</sup> helped 3890 survivors of domestic violence who sought legal assistance and protection against their abusers.<sup>7</sup> In 2013, over 5000 petitions for civil protection orders against domestic violence perpetrators were filed, which reflects a 7% increase from 2012 and further shows a steady rise as years pass.<sup>8</sup>

Across the United States and particularly in Washington, D.C., protection orders issued for survivors of domestic violence have successfully decreased levels of violence. At the same time, abusers against whom protective orders have been granted repeatedly and regularly violate those orders' provisions and continue to harm petitioners. Though D.C. maintains a progressive and moderately effective framework of legal and social services to survivors of domestic violence, routine and severe violations of protective orders, reluctance by petitioners to pursue civil and criminal enforcement of orders, and lackluster judicial and law enforcement responses to violations all indicate failures in the system to adequately protect and empower victims.

This Comment proposes an application of a rights- and performance- based accountability system to remedy abuses promulgated in the D.C. domestic violence system. Such a

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3. *Domestic Violence in the District of Columbia: 2013 Statistical Snapshot*, DC COALITION AGAINST DOMESTIC VIOLENCE, <http://www.dccadv.org/img/fck/file/2013%20DC%20DV%20Statistics%20One%20Page.pdf> (last visited Apr. 24, 2016).

4. *See id.*; *Domestic Violence Facts*, MY SISTER'S PLACE, <http://www.mysistersplacedc.org/press/domestic-violence-fact-sheet> (last visited Dec. 15, 2014).

5. *Domestic Violence Facts*, DC COALITION, *supra* note 1.

6. The D.C. Superior Court is the trial court of general jurisdiction in the District of Columbia. *About the Superior Court*, D.C. CTS., <http://www.dccourts.gov/internet/superior/main.jsf> (last visited Jan. 9, 2015).

7. SURVIVORS AND ADVOCATES FOR EMPOWERMENT, INC., *supra* note 1, at 3.

8. *Domestic Violence in the District of Columbia: 2013 Statistical Snapshot*, *supra* note 3.

performance-based monitoring system would strive to increase transparency in the D.C. Superior Court's Domestic Violence Unit, to more effectively enforce civil protection orders, to expand opportunities to improve judicial training about and understanding of survivors' experiences, and ideally, to strengthen protections for survivors of domestic violence. Indeed, accountability systems have been used in a variety of other arenas, including the human rights field, to improve protections against rights abuses. Though such a system will not end all abuses, it will apply an important framework to track current conduct in the D.C. domestic violence system and will highlight areas of particular concern. It will also build on approaches that D.C. domestic violence advocacy groups currently use and will create an improved space for survivors to engage with issues they have experienced, and still face, and to participate directly in the D.C. protection framework. Finally, a performance-based monitoring system will increase accountability of those responsible for providing comprehensive protections for survivors of domestic violence but fail to do so.

In Part I, this Comment outlines the structure of the D.C. domestic violence protection system and how it is intended to function. In Part II, this Comment describes how this system actually functions and how implementation of this system has failed from the perspective of academics and domestic violence advocates and practitioners. In Part III, this Comment explains current efforts to improve functioning of that system and to impose increased accountability for the Domestic Violence Unit. In Part IV, this Comment proposes a comprehensive performance-based monitoring accountability system for implementation in Washington, D.C. The development of this oversight model includes recognizing articulated goals, identifying indicators to track conduct in areas of concern, setting benchmarks to follow progress and development of the D.C. protection framework, as well as creating an oversight system with a complaints mechanism.

I. THE GOALS, STRUCTURE, AND SUCCESSES OF THE D.C.  
DOMESTIC VIOLENCE SYSTEM

A. *Overarching Goals of Domestic Violence Systems*

Domestic violence systems across the United States are intended to allow survivors of violence to access protection from abusers through police assistance, judicial means, and comprehensive support from governmental and non-governmental organizations. Within those systems, survivors of domestic violence may pursue criminal and civil remedies against abusers. Historically, domestic violence fell exclusively into the criminal domain and resulted only in criminal penalties. But crimes of domestic violence continued to occur, and prosecution was limited; survivors were, and still remain, reluctant to participate in the criminal prosecution of their abusers, who were often their loved ones.<sup>9</sup> Survivors also feared retaliation by abusers and judgment from their communities for turning over a community member to the police.<sup>10</sup>

As a result, states began to favor civil remedies for domestic violence cases; a primary goal of the civil system is to allow survivors to bring civil claims and entirely avoid the criminal system. The key remedies in this system are the civil protection order, which is described below in detail, and protection order enforcement by various actors.<sup>11</sup>

There are several goals in the protection-order-focused civil system. The civil system intends to hold abusers accountable through formal sanction.<sup>12</sup> It also seeks to help survivors plan for and attempt to secure their safety.<sup>13</sup> In addition to providing protection to survivors of domestic abuse, the civil system strives to protect the autonomy of

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9. Jaime Kay Dahlstedt, *Notification and Risk Management for Victims of Domestic Violence*, 28 WIS. J.L. GENDER & SOC'Y 1, 6 (2013).

10. *Id.*

11. See Jane K. Stoeber, *Freedom from Violence*, 72 OHIO ST. L.J. 303, 318, 377 (2011).

12. SURVIVORS AND ADVOCATES FOR EMPOWERMENT, INC., *supra* note 1, at 26.

13. *Id.*

survivors by allowing them to decide how they would like to pursue their case.<sup>14</sup> One particularly important aspect to this decision is the maintenance and protection of the family unit; wielding this power over the course of her case, a survivor may decide whether she would like to file a claim against her husband, the father of her children, or her domestic partner. Such a decision has enormous consequences on her family and their future, and the civil system allows the survivor to exercise some control over that future.

B. *The Structure of the Domestic Violence System in Washington, D.C.*

In Washington, D.C., survivors of domestic violence may pursue civil and criminal remedies. An individual who has endured domestic abuse may secure legal protection under D.C.'s Intrafamily Offenses Act;<sup>15</sup> she may do so through a civil protection order (CPO), a court order that a judge issues that provides protection from an abuser for up to one year.<sup>16</sup> A person who has been "physically hurt, sexually assaulted, threatened, stalked, or had property destroyed" may seek such an order.<sup>17</sup> Most D.C. domestic violence service providers split domestic violence crimes into two different categories.<sup>18</sup> Intimate partner violence occurs between partners of any gender who are married, cohabiting, dating, or sexually active.<sup>19</sup> Intrafamily offenses include violence between intimate partners as well as violence to siblings, parents, children, infants, and other non-romantic family relations.<sup>20</sup> The respondent in a protection order case may be:

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14. *Id.*

15. D.C. CODE § 16-1005 (2005).

16. *Keeping Yourself Safe with Protective Orders*, METRO. POLICE DEP'T, <http://mpdc.dc.gov/page/keeping-yourself-safe-protection-orders> (last visited Oct. 23, 2014).

17. *Id.*

18. *Are Domestic Violence Homicides on the Rise in DC?*, DC SAFE, <http://dcsafe.org/2014/07/are-domestic-violence-homicides-on-the-rise-in-dc> (last visited Dec. 15, 2014).

19. *Id.*

20. *Id.*

a person to whom [the petitioner is] related by blood, adoption, marriage, domestic partnership, have a child in common, share or have shared the same home, have or previously had a dating relationship or . . . a person who had one of the above relationships with [her] current domestic partner.<sup>21</sup>

To qualify for a CPO in D.C., a petitioner must either live in D.C., or the offense must have occurred there.<sup>22</sup>

A person may file a petition for a CPO in the Domestic Violence Unit of D.C. Superior Court against someone who has committed or threatened to commit a criminal offense against her.<sup>23</sup> If there is an emergency situation or if an offense occurs outside of court hours, an individual may secure an emergency temporary protection order (ETPO), which lasts for five days.<sup>24</sup>

After an individual files a petition in the Domestic Violence Unit, a judge considers it, and if he finds that the petitioner or her family member faces immediate danger from the respondent, he will issue a temporary protection order, which remains in place for fourteen days.<sup>25</sup> The respondent then must be served with notice of the protection order, either in person by the petitioner's agent who is over 18 years old or by MPD.<sup>26</sup> Service must include notice of the

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21. *Keeping Yourself Safe with Protective Orders*, *supra* note 16; *see also* D.C. CODE § 16-1001 (2005).

22. *Shewarega v. Yegzaw*, 947 A.2d 47, 49 (D.C. 2008).

23. D.C. CODE § 16-1003 (2005).

24. *Keeping Yourself Safe with Protective Orders*, *supra* note 16. An ETPO is secured through a process involving the police and an advocate from the Survivors and Advocates for Empowerment (DC SAFE). *Id.*

25. D.C. CODE §§ 16-1003, 16-1004 (2016). However, "the court may extend a temporary protection order in additional fourteen-day increments, or longer increments with the consent of the parties, as necessary until a hearing on the petition is completed." § 16-1004(b)(2). Additionally, if the temporary protection order is set to expire on a weekend or any other day on which the court is closed, it stays in effect until the end of the next day that the court is open. § 16-1004(c)(1).

26. *Id.*; *see also* *A SAFE Client's Guide to Civil Protection Orders in D.C.*, DC SAFE 9, <http://dcsafe.org/wp-content/uploads/2010/10/SAFEProSeGuide.pdf> (last visited Apr. 24, 2016).

CPO hearing, an order to appear, a copy of the CPO petition, and the temporary protection order.<sup>27</sup>

Within two weeks of the temporary protection order's issuance, the petitioner will have a CPO hearing before a judge in D.C. Superior Court. At the hearing, the judge will hear testimony from the petitioner, the respondent, and any available witnesses, and will consider relevant evidence.<sup>28</sup> If the judge finds there is good cause to believe that the respondent has committed or threatened to commit an intrafamily offense against the petitioner, the judge will issue a CPO.<sup>29</sup>

A CPO is tailored to fit the individual needs of a petitioner. It may order the respondent to refrain from abusing, threatening, contacting, and coming near a petitioner and any others she identifies in the order.<sup>30</sup> It may also require the respondent to attend psychiatric, parenting, anger management, and therapy programs and classes.<sup>31</sup> Additionally, it may call for the respondent to leave and stay away from a shared dwelling, return any possessions belonging to petitioner or named individuals, and relinquish firearms.<sup>32</sup> It may also award temporary custody of children to the petitioner and arrange for child visitation with respondent.<sup>33</sup> A petitioner may change any part of a CPO by filing a motion to modify and may extend a CPO beyond one year through a motion to extend.<sup>34</sup>

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27. *A SAFE Client's Guide to Civil Protection Orders in D.C.*, *supra* note 26, at 9.

28. D.C. CODE § 16-1005 (2016).

29. §16-1005(c); *see also* *Shewarega v. Yegzaw*, 947 A.2d 47, 49 (D.C. 2008).

30. *Keeping Yourself Safe with Protective Orders*, *supra* note 16.

31. D.C. CODE § 16-1005(c) (2005).

32. *Id.*

33. *Id.*

34. *A SAFE Client's Guide to Civil Protection Orders in D.C.*, *supra* note 26, at 26.

C. *Violation of Protection Orders*

Although protection orders have been shown to reduce incidents of violence, about half of orders that survivors obtain against their abusers are violated.<sup>35</sup> Domestic violence offenders frequently ignore court orders and violate no-contact and stay-away provisions in protection orders.<sup>36</sup> According to a two-week survey in a 2013 report by the non-profit domestic violence organization DC SAFE, about one-third of domestic violence survivors who approached SAFE for help experienced a violent reassault within one year of initially asking for assistance.<sup>37</sup> Because crimes of domestic abuse are generally under-reported, statistics likely underrepresent the number of order violations that actually occur.<sup>38</sup>

If a respondent violates a temporary or civil protection order, a petitioner has several options. She may call the police, for it is a criminal offense to violate any part of a protection order, and the respondent may be arrested for doing so.<sup>39</sup> Violation of a civil order is also punishable by contempt.<sup>40</sup> A petitioner may file for contempt at the Domestic Violence Intake Center at D.C. Superior Court.<sup>41</sup> Contempt proceedings may be civil or criminal.<sup>42</sup> If a petitioner files for contempt, she will receive a new court date, must serve respondent before that date, and then must

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35. Dahlstedt, *supra* note 9, at 8.

36. *Id.* at 9-10.

37. SURVIVORS AND ADVOCATES FOR EMPOWERMENT, *supra* note 1, at 31.

38. *Id.* at 23. Only about one in five victims of domestic violence who have suffered physical injuries seek professional medical treatment. *See Domestic Violence Facts*, *supra* note 4.

39. *A SAFE Client's Guide to Civil Protection Orders in D.C.*, *supra* note 26, at 25.

40. D.C. CODE § 16-1005(f) (2005).

41. *A SAFE CLIENT'S GUIDE TO CIVIL PROTECTION ORDERS IN D.C.*, *supra* note 26, at 25.

42. The goal of a civil contempt proceeding is to enforce compliance with the protection order. Criminal contempt seeks punishment for intentional violation of an order.



appear before a judge on that date to testify about the order violation.<sup>43</sup>

Additionally, a respondent may be found in contempt of court if he has been properly served and does not appear at any sort of hearing before the court without special permission from the judge; if the respondent does not appear, a judge may issue a bench warrant for his arrest.<sup>44</sup> If a respondent is found in criminal contempt of court, his punishment may include a fine of up to \$1000 or imprisonment of less than 180 days, or both.<sup>45</sup> Similar punishments may also be entered for violation of a protection order.<sup>46</sup> An abuser may be jailed only if criminal charges are filed against him or if he violates a CPO already entered against him.

#### D. *Successes in the D.C. System*

The current D.C. system confronts domestic abuse and protects survivors; it has also successfully addressed several different challenges that often arise in domestic violence frameworks.

First, most jurisdictions do not have domestic violence advocates to provide safety planning and counseling services, and even when jurisdictions do have such advocates, they are usually not located in courthouses.<sup>47</sup> By contrast, in D.C., survivors of domestic violence may seek legal protection and guidance from a variety of different sources, including several non-profit organizations in the D.C.-metropolitan area. Most importantly, D.C. Superior Court's Domestic

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43. *A SAFE Client's Guide to Civil Protection Orders in D.C.*, *supra* note 26, at 25.

44. D.C. CODE § 16-1005 (2016); *Domestic Violence Case Management Plan*, D.C. COURTS 9, <http://www.dccourts.gov/internet/documents/Domestic-Violence-Case-Management-Plan.pdf> (last visited June 22, 2016).

45. §16-1005(f).

46. §16-1005(g).

47. Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & Feminism 3, 28 (1999); Stoeber, *supra* note 11, at 348.

Violence Unit, a “one-stop” intake center for victims,<sup>48</sup> contains a Domestic Violence Intake Center (DVIC)<sup>49</sup> and domestic violence advocates, so survivors may obtain a variety of services right inside the court building.<sup>50</sup> The DVIC is composed of both governmental and non-governmental agencies that focus on “conducting intake evaluations, providing counseling, safety planning, [and] assisting victims in drafting pleadings and other documents necessary for acquisition of protective orders and free legal representation.”<sup>51</sup> For example, DC SAFE provides a variety of vital services to survivors of violence and is housed in the D.C. Superior Court.<sup>52</sup>

Furthermore, the structure of the judicial calendar in D.C. encourages judicial responsibility for cases and maximizes information available to judges about cases.<sup>53</sup> Unlike other jurisdictions, judges who hear domestic violence cases in D.C. undergo special domestic violence training and receive assignments to the domestic violence court on a one-year rotation.<sup>54</sup> The judicial setup allows a judge to hear a variety of issues in one proceeding, which theoretically reduces the number of hearings that survivors must attend. For instance, at one judicial hearing, a judge hears both criminal and civil domestic violence cases; he also may issue paternity and child support orders in the same proceeding as a CPO.<sup>55</sup>

In addition, CPOs give survivors of violence the ability to choose whether to hold abusers accountable for their actions

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48. *Superior Court of the District of Columbia: Overview*, D.C. CTS. 26, <http://www.dccourts.gov/internet/documents/Superior-Court.pdf>.

49. In 2013, the Domestic Violence Intake Center provided services to over 5800 individuals. See *Domestic Violence in the District of Columbia: 2013 Statistical Snapshot*, *supra* note 3.

50. *Domestic Violence Intake Center*, DC.GOV, <http://mpdc.dc.gov/page/domestic-violence-intake-center> (last visited Nov. 8, 2014).

51. *Id.*

52. *Contact Us*, DC SAFE, <http://dcsafe.org/contact> (last visited Dec. 16, 2014).

53. Epstein, *supra* note 47, at 32.

54. *Id.* at 33.

55. *Superior Court of the District of Columbia: Overview*, *supra* note 48, at 26.

outside of the criminal justice system.<sup>56</sup> Frequently robbed of control over their safety by offenders, survivors of domestic abuse may pursue protection orders as a way of regaining control of the abusive situation.<sup>57</sup> In this situation, survivors may direct how they prosecute the case and what types of relief they seek in the CPO.<sup>58</sup> Studies show a clear decrease in violence in cases where survivors pursue protection orders.<sup>59</sup> According to the 2013 DC SAFE report, sixty-four out of seventy survivors of domestic violence pursued protection orders against offenders.<sup>60</sup> Furthermore, the DC SAFE survey indicated that granting a protection order in a case resulted in a lower reassault rate by the offender.<sup>61</sup> Indeed, where a judge dismissed or denied a protection order, offenders attacked survivors again at a statistically higher rate than even those who did not pursue an order at all.<sup>62</sup> Thus, evidence shows that CPOs have been effective tools in combatting reassaults and empowering survivors of violence; access to and use of such orders have been available and have encouraged survivors of violence in D.C.

Moreover, D.C. supervises respondents in an effort to maintain effectiveness of protection orders; this helps the judicial system and law enforcement enforce protective orders. Many jurisdictions have implemented compliance reviews and judicial review dockets during the duration of a protection order to determine whether an abuser has followed the order's provisions.<sup>63</sup> In D.C., the Court Services and Offender Supervision Agency (CSOSA), a federal agency that provides supervision of adults who are on probation, parole, and supervised release, facilitates this review.<sup>64</sup>

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56. SURVIVORS AND ADVOCATES FOR EMPOWERMENT, INC., *supra* note 1, at 26.

57. *Id.*

58. *Id.*

59. Stoever, *supra* note 11, at 375.

60. SURVIVORS AND ADVOCATES FOR EMPOWERMENT, INC., *supra* note 1, at 27.

61. *Id.* at 28.

62. *Id.*

63. Stoever, *supra* note 11, at 376.

64. *Mission and Goals*, CSOSA, <http://www.csosa.gov/about/mission.aspx> (last visited June 6, 2016).

CSOSA maintains three main goals: improving public safety by increasing the number of offenders who complete mandatory supervision, supporting reintegration into society through support services, and advancing the fair administration of justice by giving criminal justice decision-makers information and recommendations regarding those offenders.<sup>65</sup>

Since its creation in 1997, CSOSA has held responsibility for community supervision of domestic violence abusers.<sup>66</sup> CSOSA runs a Domestic Violence Unit that provides supervision and treatment services connected to domestic violence convictions; this unit also maintains electronic monitoring of court-mandated curfews and stay-away orders.<sup>67</sup> The unit receives referrals from D.C. Superior Court in criminal, deferred sentencing, and CPO cases, and provides crisis-management services for offenders.<sup>68</sup> For those abusers who receive special court-ordered conditions, CSOSA offers psycho-educational and direct-treatment aid and also oversees treatment services that offenders obtain from private organizations.<sup>69</sup> Domestic violence community supervision officers regularly oversee offenders to verify their compliance with supervision conditions and stay-away protection orders.<sup>70</sup> These officers also meet with collateral contacts, such as offenders' family, friends, employers, and counselors, to establish offenders' adjustment to supervision.<sup>71</sup> Based on court orders, CSOSA places domestic abusers in a family violence intervention program or a domestic violence intervention program in which they are

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65. *Id.*

66. Leonard J. Sipes, *Domestic Violence Prevention in Washington, D.C.: The Domestic Violence Branch of the Court Services and Offender Supervision Agency*, SHERIFF MAG., Jan.–Feb. 2007, at 15.

67. *Domestic Violence*, CSOSA, [http://www.csosa.gov/supervision/branches/domestic\\_violence.aspx](http://www.csosa.gov/supervision/branches/domestic_violence.aspx) (last visited Dec. 17, 2014).

68. *Id.*

69. *Id.*

70. Sipes, *supra* note 66, at 16.

71. *Id.*

exposed to the Duluth Model.<sup>72</sup> As part of a large community in the D.C. area, Latino offenders, in particular, may receive special counseling from a Latino community supervision officer.<sup>73</sup> In addition, community supervision officers contact survivors to provide them with CSOSA contact information, confirm that offenders receiving domestic violence treatment are in compliance with any stay-away orders, inform them if offenders have ended treatment services, and share information about victims' services.<sup>74</sup>

CSOSA receives about 2000 domestic violence referrals each year, which come from CPOs, deferred sentence agreements, adult probation, and parole or supervised release, and its domestic violence programs experience an approximately sixty percent completion rate.<sup>75</sup> CSOSA has also estimated that within two years of release from CSOSA supervision, twenty-nine percent of all offenders are rearrested for all crimes whereas only twenty-six percent of those offenders are rearrested after going through the domestic violence programs.<sup>76</sup>

In sum, CSOSA provides comprehensive educational and treatment courses and counseling to abusers in the court system. Officers share the attendance record and behavior of domestic violence offenders with judges who then determine whether this course of action has been effective in preventing violence against a survivor and potentially rehabilitating the abuser.

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72. *Id.* at 17. The Duluth Power and Control Wheel shows the pattern of actions that an abuser uses to control another person. Physical and sexual violence are in the center of the wheel, surrounded by an abuser's tactics as spokes, such as threats, intimidation, coercion, and manipulation. *Wheel Model, DOMESTIC ABUSE INTERVENTION PROGRAMS*, <http://www.theduluthmodel.org/training/wheels.html> (last accessed on May 20, 2016).

73. Sipes, *supra* note 66, at 17, 19.

74. *Chapter XI: Domestic Violence Supervision and Treatment, Community Supervision Services Operation Manual*, CSOSA 10, <http://www.csosa.gov/about/policies/css/manual/11ChapXI-DomViolSpvrTreatment-030108.pdf> (last visited Apr. 1, 2016) [hereinafter *Chapter XI Manual*, CSOSA].

75. Sipes, *supra* note 66, at 19.

76. *Id.*

Another success in the D.C. system is the requirement in CPOs that respondents automatically relinquish to the court any firearms they possess.<sup>77</sup> In contrast, despite a similar federal law that requires respondents to surrender such weapons upon the issuance of a protection order, very few judges actually grant petitioners' requests for this confiscation.<sup>78</sup> But in D.C., a respondent's relinquishing of firearms is an integral part of a protection order and domestic violence survivor protection and is codified in D.C. statute.<sup>79</sup> Furthermore, the District of Columbia will not issue a firearm registration certificate to an individual who is or has been a respondent in an intrafamily proceeding where a protection order has been entered against him.<sup>80</sup>

Other successful aspects of the D.C. domestic violence framework include mandatory arrest laws and mandatory law enforcement training on domestic violence issues. In general, a survivor of domestic violence may seek assistance and protection by calling 911. The legal framework of some jurisdictions includes a mandatory arrest policy. Under mandatory arrest laws, a police officer who responds to a report of domestic violence must make an arrest if he reasonably believes abuse may continue or if there is evidence of physical injury to the victim.<sup>81</sup> Such laws require police to arrest an abuser rather than just allow him to cool down.<sup>82</sup> The D.C. law takes this legal framework one step further; there, a police officer must make an arrest if he has probable cause to believe that a person committed an intrafamily offense that caused physical injury or that caused or was intended to cause reasonable fear of imminent physical injury or death.<sup>83</sup> Once an officer makes an arrest, he must present that person to the U.S. Attorney for

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77. D.C. CODE § 16-1005(c)(10) (2005).

78. Stoeber, *supra* note 11, at 365.

79. See D.C. CODE § 22-4503(a)(5)–(6) (2016).

80. D.C. CODE § 7-2502.03(a)(12)(A) (2016).

81. Meghan Condon, *Bruise of a Different Color*, 17 GEO. J. ON POVERTY L. & POL'Y 487, 491 (2010).

82. *Id.* at 491-92.

83. D.C. CODE § 16-1031 (2005).

charging.<sup>84</sup> The investigating officer must also file a written report on the intrafamily offense, including his disposition of the case, and record it with the police.<sup>85</sup> The 2013 DC SAFE report highlighted that only twenty percent of survey participants who contacted police and received a police report, or later filed a police report, for an incident of domestic violence were later attacked in a domestic violence incident.<sup>86</sup>

Finally, mandatory law enforcement training also falls into the protection framework. Educational training for officers includes explanation of the nature of intrafamily offenses, legal rights and remedies for survivors of intrafamily offenses, legal duties that officers must carry out and enforce, and effective means for addressing such offenses to promote survivor and officer safety.<sup>87</sup>

## II. PROBLEMS IN THE D.C. DOMESTIC VIOLENCE FRAMEWORK

### A. *Failures in the D.C. System*

Despite the successes of the D.C. framework, ineffectual implementation of and serious issues embedded in that system still plague survivors of violence and result in decreased effectiveness of the existing system. Failures in the D.C. system include victimization of survivors who seek help in courts by judges and clerks, lack of procedural flexibility that hurts petitioners, and abuse of discretion by judges and law enforcement officers in determining efficacy of protection-order-mandated courses and other punishments for offenders. General issues that survivors encounter are loss of autonomy, repeat offenses by respondents, and exhaustion in the process. Finally, survivors' demographics uniquely affect their experience navigating the domestic violence protection system; these include socioeconomic status, physical and mental health issues, immigration status, and sexual identity.

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84. *Id.*

85. D.C. CODE § 16-1032 (2016).

86. SURVIVORS AND ADVOCATES FOR EMPOWERMENT, INC., *supra* note 1, at 25.

87. D.C. CODE § 16-1034(a) (2005).

Though myriad issues plague the current D.C. domestic violence system, these problems need not be viewed as a permanent impasse in providing effective protections to survivors of domestic violence. Rather, they may instead be viewed as factors to remedy in a performance-based monitoring system that will set related goals to analyze and accomplish; these issues highlight the areas that require improvement through implementation and maintenance of such an accountability system. In outlining the many problems in the D.C. framework, rather than merely critique a troubled system, I seek to identify the performance goals that an effective monitoring and accountability system should be designed to achieve. The following issues will be particularly targeted and addressed by this new accountability system.

The first problem in the D.C. domestic violence system centers on survivors' treatment in court. A significant reason why many survivors of domestic violence do not receive final protection orders is due to treatment they receive during the judicial process.<sup>88</sup> Negative impressions about and doubts related to the court's efficacy in addressing survivors' problems may dissuade those survivors from initially accessing judicial help or from pursuing compliance of a protection order. Despite improvements in creating more robust domestic violence law and in reducing stigma associated with reporting abuse, attorneys and domestic violence advocates still report that judges in domestic violence courts do not take seriously allegations of abuse, do not sincerely consider protection order cases, and do not adequately portray abusive treatment as problematic.<sup>89</sup> Judges' behavior impacts petitioners, for petitioners who sense that judges listen to their story, treat them fairly and respectfully, and consider their rights and goals in the protection order are more likely to rely on the judicial system for protection and to return to the court if future abuses occur.<sup>90</sup> Evidence also shows that judges' treatment of respondents may significantly impact respondents' future

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88. Stoever, *supra* note 11, at 359.

89. *Id.*

90. *Id.* at 360.



behavior; judges' warnings about consequences of future violence may diminish the likelihood of a protection order violation, whereas judges who do not seem to take the violence seriously may actually embolden respondents.<sup>91</sup>

Blaming a survivor for domestic abuse she suffered remains an issue in D.C. courts, as shown, for example, in the important case *Murphy v. Okeke*.<sup>92</sup> There, the judge determined that the petitioner was partially to blame for the beating she suffered at the hands of the respondent, her former boyfriend.<sup>93</sup> During a fight with the respondent, the petitioner cried and yelled, and the respondent dragged her by her arms and legs, repeatedly hit her in the face, kicked her, and pushed her against the wall.<sup>94</sup> Because the petitioner had "trigger[ed] violence" and had "brought [the attack] upon herself" by not immediately leaving the house and the emotional situation, the judge entered mutual protection orders against both the petitioner and the respondent.<sup>95</sup> Victim blaming by judges is not uncommon, and such attitudes cause re-victimization among survivors and foster increased reluctance to pursue domestic violence protection through the court.<sup>96</sup>

Moreover, lack of procedural flexibility in court negatively impacts petitioners. As previously discussed, access to protection orders and the choice to pursue this method allow survivors of abuse to exercise autonomy in abusive relationships. As a result, a judicial system must be flexible and permit petitioners to access its protections over time and at their own pace.<sup>97</sup> But in certain jurisdictions, including D.C., procedural rules adopted based on the Federal Rules of Civil Procedure<sup>98</sup> prevent a petitioner from raising incidents she previously alleged that were dismissed

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91. *Id.*

92. 951 A.2d 783, 786 (D.C. 2008).

93. *Id.* at 786, 790.

94. *Id.* at 786.

95. *Id.* at 787, 790 (emphasis omitted).

96. Stoever, *supra* note 11, at 360-61.

97. *See id.* at 334.

98. FED. R. CIV. P. 41(a)(1)(B).

before they were litigated.<sup>99</sup> In D.C. Superior Court, a petitioner may dismiss an action at any time as long as there is no prejudice to respondent.<sup>100</sup> The court, however, may “consider and decide whether the petition should be dismissed with prejudice” if “the petition has been dismissed more than once.”<sup>101</sup> When an action is dismissed with prejudice, the abused petitioner cannot raise those same allegations in the future and must therefore wait for a new threat or attack before regaining the ability to seek a protection order.<sup>102</sup>

Such a rule punishes petitioners for seeking help from the court on multiple occasions and does not address the complicated nature of domestic abuse and patterns of domestic control.<sup>103</sup> Evidence shows that on average, a woman who experiences intimate partner violence leaves the offender five to seven times before terminating that relationship.<sup>104</sup> Often, she will suffer years of violence before pursuing a protection order.<sup>105</sup> Along with the frequently lengthy process of leaving her abuser, a survivor of violence may go through a similar process of pursuing and using a CPO in court.<sup>106</sup> She may pursue but then abandon a request for an order due to fear of retaliation by her aggressor, confusion and anxiety in using the judicial system, or a desire to reconcile with her abuser.<sup>107</sup> Though she may later regain her resolve and return to the court to continue her attempts to obtain a protection order, a judge in D.C. may have elected to permanently dismiss her petition, which effectively closes off her ability to access the judicial system until she is abused again. This procedural rule gives judges discretion to rob survivors of badly needed protection and to ignore the

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99. Stoever, *supra* note 11, at 341.

100. D.C. Super. Ct. Domestic Violence R. 10.

101. R. 10 cmt.

102. Stoever, *supra* note 11, at 341-42.

103. *Id.* at 341.

104. *Id.* at 333.

105. *Id.* at 333-34.

106. *Id.* at 334.

107. *Id.* at 334-35.

violence that domestic violence courts are intended to address in the first place.<sup>108</sup>

Another problem in the D.C. system lies in the discretion that judges and law enforcement possess in the domestic violence framework. The effectiveness of protection orders depends hugely on the response by law enforcement and the judicial system to violence and to violations of those orders.<sup>109</sup> In D.C., there is significant judicial discretion in molding protection orders, and judges often do not award comprehensive relief, preferring instead to approve orders granting less relief than petitioners requested.<sup>110</sup> For example, judges have been found to more frequently refuse to grant CPO provisions addressing financial support, child support, housing assistance, and temporary property possession.<sup>111</sup>

In addition, judges hold great discretion in assessing CSOSA officers' reports on effectiveness of punishment for offenders. The CSOSA officer may request early termination of programs for offenders who comply with supervision requirements, which may be granted by the court.<sup>112</sup> Early termination of a course or sanctions may also occur, however, if an offender is disruptive or under the influence of alcohol or drugs during classes.<sup>113</sup> Anecdotally, some offenders who elect not to comply with court-ordered counseling and courses through CSOSA are not required to complete these courses when judges decide they are not effective. As a result, apart from the continuing obligation to obey provisions in the CPO, offenders do not have to face any other punishment for their abuse of petitioners. A major incentive for an offender under domestic violence supervision to complete mandatory coursework is that his case will be dismissed, and he will not have a conviction for his offense; if, however, he deliberately behaves in such a way as to be thrown out of domestic

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108. *See id.* at 342.

109. *Id.* at 375.

110. *Id.* at 363-64.

111. *Id.* at 365.

112. *Chapter XI Manual, CSOSA, supra* note 74, at 5.

113. *Id.* at 12.

violence classes, he will probably not suffer any additional punishment from the justice system.<sup>114</sup> Furthermore, another issue with the CSOSA arrangement is that abusers who suffer from untreated psychological, psychiatric, and emotional disorders, for example drug or alcohol problems, are not eligible to receive Domestic Violence Intervention Program services; the stated rationale is that offenders must address these primary issues before they can adequately confront and eliminate domestic violence activity.<sup>115</sup>

Other problems that petitioners face in D.C. are similar to those of survivors of domestic violence in other jurisdictions. For example, seeking relief from violence in the civil court system may be burdensome.<sup>116</sup> This stems from a variety of factors, such as the length of time required to request and file a CPO; the delay of hearings; the embarrassment and pain of airing a personal case in front of a judge, clerks, and the general public present in court; physical proximity to an abuser; and reluctance to bring a case against respondents whom survivors love or with whom they have children.<sup>117</sup>

In the DC SAFE 2013 survey, only forty-five percent of cases in the survey resulted in permanent one-year CPOs, fifty-two percent of the CPO requests were dismissed at the hearing, and two requests were denied.<sup>118</sup> For those individuals who did not attend their hearing or chose to have their cases dismissed, survivors reported that they did not pursue their case for several reasons; for example, the abuser stopped harassing petitioner; the abuser filed his own CPO case, and petitioner dropped her case in response for fear of having a CPO in the system against her; the offender was incarcerated; or the survivor preferred to reconcile with the offender.<sup>119</sup>

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114. *Id.* at 5, 12.

115. *Id.* at 6.

116. SURVIVORS AND ADVOCATES FOR EMPOWERMENT, INC., *supra* note 1, at 22.

117. *Id.* at 31.

118. *Id.* at 27.

119. *Id.*

Similar issues arise for a survivor when an abuser violates a protection order and the survivor must choose whether to pursue a civil or criminal contempt case. To make matters more difficult, a survivor may file for contempt only when the protective order contains clear and definite conditions that the court has expressly noted and that the abuser has violated.<sup>120</sup> A survivor may choose to call the police when the order is violated; afterward, though, the U.S. Attorney's Office has discretion to decide whether to bring charges for criminal contempt against the abuser.<sup>121</sup> If a survivor prefers to file a motion for criminal contempt or for civil contempt herself in the Domestic Violence Intake Center or the Superior Court Clerk's Office, she must go through the process of service, a contempt or status hearing, a trial or settlement, and a potential appeal by respondent.<sup>122</sup> Such an exhausting, lengthy process naturally discourages survivors from repeatedly approaching the court system for assistance.

Furthermore, though there have been reports of use of global positioning system (GPS) technology in special cases where CSOSA officers have requested it,<sup>123</sup> enforcement in D.C. has not included any widespread effort to use such technology to protect survivors of violence. Studies have shown that abusers on GPS monitoring are ninety-one percent less likely to commit another domestic violence offense than those abusers who are not electronically monitored.<sup>124</sup> Requiring abusers to wear GPS chips would provide notification to survivors, law enforcement, and the abusers themselves that they entered the exclusionary zone imposed by protection orders.<sup>125</sup> Such a program would allow survivors to protect themselves and to access assistance.<sup>126</sup>

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120. See *Pincus v. Pincus*, 197 A.2d 854, 856 (D.C. 1964).

121. *What Happens When a Protection Order is Violated?*, D.C. COALITION AGAINST DOMESTIC VIOLENCE, <http://www.dccadv.org/img/fck/Contempt%20Process.pdf> (last visited Dec. 17, 2014).

122. *Id.*

123. See Sipes, *supra* note 66, at 19.

124. Dahlstedt, *supra* note 9, at 3.

125. *Id.* at 10.

126. *Id.*

Though consideration of a GPS tracking bill is in progress,<sup>127</sup> D.C. still has not passed such legislation or implemented any similar technology usage, which has the potential to greatly benefit survivors of violence by decreasing rates of protection order violations.

*B. Particular Difficulties for LGBT and Immigrant Survivors*

Washington, D.C. contains significant immigrant and lesbian, gay, bisexual, and transgender (LGBT) populations. According to demographics data, about fourteen percent of the D.C. population is foreign born.<sup>128</sup> One in seven people in Washington, D.C. is Hispanic or Asian.<sup>129</sup> In 2010, about nine percent of the city's population self-identified as Hispanic or Latino, but because this population is "chronically undercounted in the Census," it is probably much larger.<sup>130</sup> Additionally, in 2012, ten percent of the D.C. population identified as LGBT; the national average is 3.5%.<sup>131</sup> Indeed, gay marriage became legal in D.C. in March 2010, which made D.C. the first jurisdiction below the Mason-Dixon line

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127. *National Progress by State*, CYNTHIA L. BISCHOF MEMORIAL FOUND., <http://www.cindysmemorial.org/progress.php#.VJHddodN3zI> (last visited Dec. 17, 2014).

128. See *QuickFacts District of Columbia*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/11000.html> (last updated Feb. 5, 2015) (noting that from 2009-2013, 13.8% of the D.C. population was foreign born); *Washington, DC*, CENSUS REP., <http://censusreporter.org/profiles/16000US1150000-washington-dc> (last visited Mar. 15, 2015) (highlighting that 14.4% of the D.C. population was foreign born in 2013).

129. *New Americans in Washington D.C.*, AM. IMMIGR. COUNCIL, <http://www.immigrationpolicy.org/just-facts/new-americans-washington-dc> (last updated June, 2015).

130. *Latinos in the District of Columbia*, MAYOR'S OFF. ON LATINO AFF., [http://ola.dc.gov/sites/default/files/dc/sites/ola/publication/attachments/fy11\\_12\\_agencyperformance\\_officeoflatinoaffairs\\_responses\\_indices2011.pdf](http://ola.dc.gov/sites/default/files/dc/sites/ola/publication/attachments/fy11_12_agencyperformance_officeoflatinoaffairs_responses_indices2011.pdf) (last updated Apr. 10, 2013).

131. Gary J. Gates & Frank Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, GALLUP, (Feb. 15, 2013) <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>.

and the sixth in the nation to legalize gay marriage.<sup>132</sup> Finally, in the United States, there are many LGBT immigrants. There are an estimated 637,000 documented immigrants who identify as LGBT in addition to 267,000 undocumented LGBT-identified immigrants.<sup>133</sup> Of the group of documented LGBT immigrants, thirty percent are Hispanic, and, of the undocumented LGBT immigrants, seventy-one percent are Hispanic.<sup>134</sup>

Consequently, there are many survivors of domestic violence who belong to LGBT, immigrant, and combined LGBT immigrant communities in the United States and in D.C. The rate of domestic violence in heterosexual couples is the same for homosexual couples; twenty-five to thirty-three percent encounter domestic abuse in their lifetimes.<sup>135</sup> In the immigrant community, women suffer even more domestic violence than women born in the United States.<sup>136</sup> Undocumented immigrants in particular experience higher rates of violence.<sup>137</sup>

To combat these problems, all D.C. intimate partner violence laws that apply to heterosexual relationships equally apply to LGBT survivors of violence.<sup>138</sup> Domestic violence laws apply equally to immigrants as well. But LGBT survivors of violence are notably less likely to seek help and protection from abusers. Forty-five percent of LGBT survivors experience rejection by domestic violence crisis

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132. Ian Urbina, *Gay Marriage Is Legal in U.S. Capital*, N.Y. TIMES (Mar. 3, 2010), <http://www.nytimes.com/2010/03/04/us/04marriage.html>.

133. GARY J. GATES, *LGBT ADULT IMMIGRANTS IN THE UNITED STATES* 1 (2013).

134. *Id.*

135. Suzy Khimm, *Why the Violence Against Women Act is a LGBT Issue*, WASH. POST (Apr. 30, 2012), [http://www.washingtonpost.com/blogs/wonkblog/post/why-the-violence-against-women-act-is-a-lgbt-issue/2012/04/30/gIQAe34qrT\\_blog.html](http://www.washingtonpost.com/blogs/wonkblog/post/why-the-violence-against-women-act-is-a-lgbt-issue/2012/04/30/gIQAe34qrT_blog.html).

136. Susan Girardo Roy, *Restoring Hope or Tolerating Abuse? Responses to Domestic Violence Against Immigrant Women*, 9 GEO. IMMIGR. L.J. 263, 267 (1995).

137. *See id.*

138. Rainbow Response, *Preliminary Survey Findings: Intimate Partner Violence* (2013), <https://docs.google.com/file/d/0B7Q0jotIW6q0YIE3MmRFU0NyX0E/edit>.

shelters, and a paltry seven percent of survivors seek help from police.<sup>139</sup> It is also difficult for immigrant survivors to effectively receive protection, as further explored below.

The experience of abuse may be quite different for LGBT immigrant survivors of domestic violence. LGBT abusers may threaten to “out” their victim to family, friends, and coworkers, which may cause severe emotional and psychological trauma and enhance a feeling of isolation already experienced by members of the LGBT community.<sup>140</sup> LGBT survivors of abuse may also feel reluctant to report incidents of violence because they do not want to display a lack of solidarity with their LGBT community; they do not want to portray LGBT relationships as dysfunctional or dangerous.<sup>141</sup> Furthermore, LGBT survivors tend to fight back against their abusers at higher rates than those in heterosexual couples.<sup>142</sup> As a result, police, generally less familiar with incidents of LGBT partner violence due to lower violence reporting, encounter greater difficulty in determining who is the primary aggressor when they are called to the crime scene.<sup>143</sup> Anecdotally, this issue can result in officers’ arresting both individuals in the relationship and even placing them together in a holding cell, which allows for continued abuse and no respite for the victim. Another issue with law enforcement arises when, because both parties in a relationship identify as the same gender, police do not report any incident of domestic violence because the involved individuals are loath to reveal their relationship status.<sup>144</sup>

Along with LGBT survivors of domestic violence, immigrant survivors of abuse encounter unique challenges in accessing and securing protection from abusers. They experience difficulties due to “[l]anguage barriers, cultural

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139. Khimm, *supra* note 135.

140. *Domestic Violence in the LGBT Community: A Fact Sheet*, CTR. AM. PROGRESS, <https://www.americanprogress.org/issues/lgbt/news/2011/06/14/9850/domestic-violence-in-the-lgbt-community> (last updated June 14, 2011).

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*



differences, [lack of familiarity with] American law, fear of authority figures, societal and cultural taboos, economic dependency, and fear of deportation.”<sup>145</sup> Other problems are lack of knowledge of how to access protective services and of how to work with police or aid organizations once they have connected with them.<sup>146</sup> Abusers also may deliberately misinform survivors of violence about immigration and violence laws.<sup>147</sup> Like LGBT survivors of violence, many immigrant survivors also worry about reporting incidents of violence out of fear of shaming their communities.<sup>148</sup> In situations where abusers are immigrants, fear of inferiority and feelings of isolation in their new country may contribute to violence, for abusers may lash out against family members in response to their perceived lack of agency and control as part of their immigrant experience.<sup>149</sup> Undocumented immigrants may be particularly reluctant to seek protection from police and courts due to fear of harsh immigration consequences, including eventual deportation and splitting up their family.<sup>150</sup> Abusers may keep important immigration documents away from survivors and threaten them with deportation or loss of access to their children if they report the violence.<sup>151</sup>

Given that both LGBT and immigrant survivors of violence suffer from increased domestic violence and encounter different and often more severe difficulties in accessing protection, survivors of violence who belong to both the LGBT and immigrant communities in D.C. are uniquely vulnerable to continued abuse with more limited opportunities for relief.

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145. Roy, *supra* note 136, at 267.

146. *Who is Affected by Domestic Violence*, DEL. COALITION AGAINST DOMESTIC VIOLENCE, <http://www.dcadv.org/who-affected-domestic-violence#affected-lgbt> (last visited Mar. 15, 2015).

147. *Id.*

148. Roy, *supra* note 136, at 269.

149. *Id.* at 273-74.

150. Devin Sanchez, *Undocumented Immigrants Protected Under the Violence Against Women Act*, NBC LATINO (Mar. 12, 2013, 10:27 AM), <http://nbc-latino.com/2013/03/12/undocumented-immigrants-protected-under-the-violence-against-women-act>.

151. *Who is Affected by Domestic Violence*, *supra* note 146.

### III. RECENT EFFORTS TO IMPROVE THE D.C. DOMESTIC VIOLENCE FRAMEWORK

Recognizing these grave shortcomings in the D.C. system, various organizations have implemented strategies to draw attention to these problems and improve domestic violence framework efficacy. Despite these attempts to tackle the many problems in the system, such limited efforts are uncoordinated, limited, and largely problematic.

DC SAFE, a nonprofit organization, runs the Court Watch Project, in which volunteers monitor court proceedings in D.C. Superior Court's Domestic Violence Unit.<sup>152</sup> Volunteers receive training on domestic violence and related cases and how to aggregate relevant data.<sup>153</sup> They then visit the Domestic Violence Unit to observe protection order cases and record their outcomes.<sup>154</sup> This information is organized and compiled into a report.<sup>155</sup> According to its website, SAFE has compiled court watch reports in December 2007, April 2007, and 2012.<sup>156</sup> The 2012 report offers helpful information about demographics of parties, outcomes of protection order cases, and the effect of attorney representation.<sup>157</sup> It also includes relevant factors such as judges' behavior; presence of marshals in the courtroom; instructions given in the courtroom, such as where parties should sit; judges' training; and service of process.<sup>158</sup>

Though DC SAFE's admirable efforts to monitor proceedings reflect a concerted effort on the part of D.C. organizations to improve protections for survivors of domestic abuse, certain aspects of the program remain

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152. *Court Watch Project Volunteer*, DC SAFE, <http://dcsafe.org/about-2/volunteer/court-watch-project> (last visited Oct. 23, 2014).

153. *Reporting Back*, DC SAFE, <http://dcsafe.org/help/resources-publications/reporting-back> (last visited June 11, 2016).

154. *Court Watch Project Volunteer*, *supra* note 152.

155. *Id.*

156. *Reporting Back*, *supra* note 153.

157. DC SAFE, 2012 REPORT DC DOMESTIC VIOLENCE COURT WATCH PROJECT 7-20 (2012) [hereinafter DC SAFE, 2012 REPORT].

158. *Id.* at 16-20.

problematic. First, the volunteers who attend and report back on proceedings receive only one day of SAFE training and do not necessarily have academic or professional background in the legal system generally or in the domestic violence field specifically.<sup>159</sup> In certain situations, the volunteer in court was required to opine as to the gender, race, and relationship of the involved parties in the case, as well as to judicial behavior, which could result in incorrect or incomplete data collection.<sup>160</sup> Additionally, due to volunteers' availability, certain times of the year were over- and under-represented; this would have a particularly strong effect on numbers during the summer when many student volunteers are on break.<sup>161</sup> Due to a variety of difficulties, volunteers had trouble filling out all relevant details about a case.<sup>162</sup> Another problem with the monitoring system arose due to circumstances of domestic violence proceedings. Not infrequently, one or both parties to a case would not appear in court, which resulted in that information not being recorded.<sup>163</sup> Volunteers were also unable to note significant information about judicial behavior when there were no notable interactions between judges and parties.<sup>164</sup> Furthermore, Court Watch focused on intimate partner violence rather than on parties related by blood, legal custody, or through sharing a living space.<sup>165</sup> Finally, as of spring 2016, DC SAFE has published no additional data, so the available information is several years old. Though information gathered in this report highlights successes and failures in D.C. Superior Court, certain aspects of its process reveal a need for more organized, centralized, and routine studies and reports on more aspects of the current legal framework.

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159. *See id.* at 4; *Reporting Back*, *supra* note 153.

160. DC SAFE, 2012 REPORT, *supra* note 157, at 4-5.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.* at 6.

Another effort to address issues in the D.C. domestic violence system is DC SAFE's Domestic Violence in DC Reports. SAFE began this project in 2013 to examine characteristics of clients SAFE served during the previous year and the difficulties survivors of domestic violence face in D.C.<sup>166</sup> In its 2014 report, SAFE studied the same group of survivors from the 2013 report and also indicated interest in pursuing studies of new groups of survivors and mapping their experiences and challenges in the future.<sup>167</sup> Despite the insight into the demographics and experiences of domestic violence survivors in D.C., this report only focused on 175 clients served by SAFE over a two-week period in July 2013.<sup>168</sup> Such a specific focus on one particular group of survivors served by one organization does not necessarily reflect the characteristics and experiences of survivors across a large, diverse metropolitan area. In its 2014 report, SAFE recognized this issue and specifically asked for other organizations to partner with them to learn more about survivors' experiences.<sup>169</sup> Though evidently a pilot project, this mapping of survivors' experiences working through the D.C. domestic violence legal framework may serve as a template for, or smaller component of, a larger oversight mechanism.

Furthermore, the Lethality Assessment Project (LAP) is used by a variety of organizations to aid survivors at particularly high risk of violence.<sup>170</sup> Service providers and other agencies use the LAP to help survivors at high risk of lethal or violent assault receive expedited and streamlined access to aid and intervention.<sup>171</sup> This assessment, which includes detailed questions about survivors and their experiences, improves survivors' access to services in that it emphasizes the importance of safety planning, encourages deeper conversations between survivors and advocates, and

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166. SURVIVORS AND ADVOCATES FOR EMPOWERMENT, INC., *supra* note 1, at 4.

167. *Id.*

168. *Id.* at 5.

169. *Id.* at 4.

170. *Id.* at 24.

171. *Id.*

allows for expedited access to services.<sup>172</sup> Organizations such as DC SAFE use an assessment tool with multiple questions to assess a survivor's danger in her case-specific circumstances.<sup>173</sup> For survivors of violence who receive a LAP assessment and related expedited services, despite their particularly high risk of danger, the LAP results in lower rates of domestic re-assault.<sup>174</sup>

The DC Coalition Against Domestic Violence (DCCADV) is another organization that seeks to improve the existing domestic violence framework. A grassroots organization composed of domestic violence programs and organizations dedicated to eliminating domestic violence in D.C., DCCADV identifies and explores a variety of factors involved in violence and discrimination.<sup>175</sup> Along with many other involved groups,<sup>176</sup> it focuses its efforts on engaging in community activism, raising awareness of violence issues, identifying problems in the domestic violence framework, and suggesting policy changes.<sup>177</sup> It also provides statistics related to domestic abuse, a wide variety of informational resources on relevant topics, and important information for domestic violence survivors.<sup>178</sup>

For LGBT and immigrant survivors of violence, organizations such as Ayuda and Casa Ruby offer comprehensive domestic violence services that cater to the

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172. *Id.*

173. *Id.*

174. *Id.* at 25, 32.

175. *Who We Are*, DC COALITION AGAINST DOMESTIC VIOLENCE, <http://www.dccadv.org> (last visited Dec. 17, 2014).

176. Members of DCCADV include Ayuda, Break the Cycle, the District Alliance for Safe Housing, the Deaf Abused Women's Network, the Asian/Pacific Islander Domestic Violence Resource Project, the Domestic Violence Legal Empowerment and Appeals Project, the House of Ruth, My Sister's Place, Ramona's Way, Survivors and Advocates for Empowerment, and the D.C. Volunteer Lawyers Project. *Member Programs*, DC COALITION AGAINST DOMESTIC VIOLENCE, <http://www.dccadv.org/%22http://www.dccadv.org/index.php?pid=36> (last visited May 22, 2016).

177. *Who We Are*, *supra* note 175.

178. *See generally Resources*, DC COALITION AGAINST DOMESTIC VIOLENCE, <http://www.dccadv.org/index.php?pid=60> (last visited Dec. 17, 2014).

significant immigrant and Hispanic populations<sup>179</sup> in D.C. Ayuda caters particularly to low-income, immigrant survivors of violence,<sup>180</sup> and Casa Ruby operates a drop-in center, multicultural safe space, and referral service predominantly for individuals who identify as LGBT and transgender.<sup>181</sup> In 2015, Casa Ruby opened one of the few shelters in the United States specifically for gay and transgender youth.<sup>182</sup> Unlike many non-profits across the country,<sup>183</sup> these organizations strive to eliminate cultural and linguistic bias in service provision and seriously consider cultural norms and issues related to working with immigrant and LGBT survivors of violence.

In sum, though there are several attempts to monitor the efficacy of domestic violence protections and to improve those protections for survivors, a wider, more coordinated effort on the part of a comprehensive oversight system is required to successfully oversee and report on the many factors that affect domestic violence and the effectiveness of the current D.C. framework.

#### IV. PROPOSAL FOR A PERFORMANCE-BASED MONITORING SYSTEM IN D.C.

Many articles have addressed the issues plaguing domestic violence legal frameworks, the civil protection system, and existing methodologies to combat domestic violence. But a comprehensive, performance-based monitoring system geared toward the D.C. domestic violence framework has not yet been proposed. Though targeted

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179. *See supra* notes 128–29 and accompanying text.

180. *About Ayuda*, AYUDA, <http://ayuda.com/wp/about-ayuda/.php> (last visited Mar. 15, 2015).

181. *Drop In–Safe Center*, CASA RUBY, <http://www.casaruby.org/drop.html> (last visited Mar. 15, 2015).

182. Petula Dvorak, *A Shelter Specifically for Transgender Youth to Open in the District*, WASH. POST (Mar. 9, 2015), [http://www.washingtonpost.com/local/a-shelter-specifically-for-transgender-youth-to-open-in-the-district/2015/03/09/33e71a36-c68d-11e4-a199-6cb5e63819d2\\_story.html](http://www.washingtonpost.com/local/a-shelter-specifically-for-transgender-youth-to-open-in-the-district/2015/03/09/33e71a36-c68d-11e4-a199-6cb5e63819d2_story.html); Pam Fessler, *Casa Ruby is a ‘Chosen Family’ for Trans People Who Need a Home*, NPR (May 27, 2015, 3:31 AM), <http://www.npr.org/2015/05/27/409796173/casa-ruby-is-a-chosen-family-for-trans-people-who-need-a-home>.

183. Roy, *supra* note 136, at 286.

toward D.C., such an oversight and accountability mechanism could be implemented in other jurisdictions. Many efforts have been made to gather relevant statistics and information about the D.C. domestic violence system, yet few coordinated efforts present reliable, consistent, and authoritative information; additionally, the Superior Court and D.C. government appear to be largely absent from these efforts, despite some demonstrated commitments to reduce domestic violence and improve survivor access to protection.

A performance-based monitoring system will improve transparency of the D.C. domestic violence system, increase accountability of implicated and responsible actors, and will allow for heightened compliance with and improvement of the current framework, particularly regarding protection orders. Such a system includes a variety of moving parts, including issue and goal identification; an indicator system; and establishment of an oversight organization, with benchmarks to track progress and a complaints mechanism. Such a model is based on systems used across various fields. Through a performance-based monitoring system, survivors of violence and stakeholders will hold accountable those actors related to the domestic violence field who are responsible for survivor protection and empowerment.

#### A. *What are Performance Monitoring Systems?*

Performance-based monitoring systems have been developed and implemented across fields, including particularized systems in the area of human rights protection.<sup>184</sup> Indeed, performance monitoring to gather relevant information and hold responsible parties

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184. See AnnJanette Rosga & Margaret L. Satterthwaite, *The Trust in Indicators: Measuring Human Rights*, 27 BERKELEY J. INT'L L. 253, 304 (2009) (noting that statistical reporting and analysis to track implementation of global standards has occurred in various fields, including human rights, anthropology, critical development studies, and political science); see also Tara J. Melish, *Maximum Feasible Participation of the Poor: New Governance, New Accountability, and a 21st Century War on the Sources of Poverty*, 13 YALE HUM. RTS. & DEV. L.J. 1, 9-10, 31, 43 (2010) (exploring the principle of new governance, used in U.S. regulatory agencies, and particularly its use of performance monitoring through indicators, governmental responses to tracked information, and related grassroots outreach and training).

accountable for failures in protection systems is viewed as an integral process in promoting public policy goals and is an “operational priority . . . of human rights” initiatives.<sup>185</sup> Performance monitoring closely parallels periodic reporting, which is used in the international human rights treaty context. “[T]o ensure that protected rights [in binding international treaties] have domestic legal effect through the adoption of ‘appropriate’ or ‘necessary’ measures, determined in context,” periodic reporting requires that states track progress and setbacks in implementing and maintaining rights’ protection frameworks.<sup>186</sup> States must then submit those conclusions to international oversight bodies for review and recommendations on how those policies might be improved.<sup>187</sup>

Similarly, the goal of an effective performance-based monitoring system is to turn identified problems into targets of monitoring and accountability.<sup>188</sup> To do this, a system must operate based on a clear understanding of problems that local, affected communities experience on the ground. Once those problems are identified, a system prioritizes those issues, for, to be most effective, a system must initially focus its efforts on limited, concrete problems.<sup>189</sup> The most serious problems highlight the goals that a performance-monitoring system will target for problem-solving and protection framework improvements.<sup>190</sup> For example, in the context of domestic violence in D.C., one major problem with the existing framework is judges’ poor treatment of petitioners who bring protection order claims.<sup>191</sup> To remedy this issue, in a performance-monitoring system, the goal is to improve and guarantee respect toward petitioners in all of their encounters with judicial staff at D.C. Superior Court. Thus,

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185. Melish, *supra* note 184, at 93.

186. Tara J. Melish, *From Paradox to Subsidiarity: The United States and Human Rights Treaty Bodies*, 34 *YALE J. INT’L L.* 389, 405 (2009).

187. *Id.* at 407.

188. See Rosga & Satterthwaite, *supra* note 185, at 311.

189. Melish, *supra* note 184, at 94.

190. *Id.* at 94, 95.

191. See *supra* Part II.



the major problem reveals a goal to achieve through a performance-monitoring system.

For an accountability system to reach its goals, dignity-based indicators must be identified.<sup>192</sup> Human rights indicators arise from attempts to change and improve governments' conduct toward protecting citizens' human rights.<sup>193</sup> "An especially powerful intersection of law and social science," indicators "require the identification, creation, collection, analysis, and dissemination of quantitative data;"<sup>194</sup> this allows for aggregation of information to measure "the extent to which a legal right is being fulfilled in a certain situation."<sup>195</sup> They include both statistical data and opinions of stakeholders.<sup>196</sup> Stakeholders' perceptions and testimonials may be aggregated through questionnaires, interviews, and public testimonies; more traditional performance-monitoring processes may also be included, such as censuses or surveys.<sup>197</sup>

Performance-monitoring systems use indicators to accomplish three main goals: to monitor compliance with human rights commitments, to measure the progress of human development, and to gauge the impact and success of human rights-based development.<sup>198</sup> Consequently, use of the data provided by indicators creates a way to hold individuals and governments accountable for human rights violations.<sup>199</sup> Gathering and assessing relevant data and information about successes and failures of human rights protections

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192. Melish, *supra* note 184, at 74.

193. Rosga & Satterthwaite, *supra* note 185, at 310-11.

194. *Id.* at 255.

195. *Id.* at 254 (quoting Maria Green, *What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement*, 23 HUM. RTS. Q. 1062, 1065 (2001) (internal quotation marks omitted)).

196. Melish, *supra* note 184, at 97.

197. *Id.*

198. Rosga & Satterthwaite, *supra* note 184, at 256-57.

199. *Id.* at 256.

plays a vital role in the performance-monitoring process, as in traditional study of human rights issues across the globe.<sup>200</sup>

Local organizations, national governments, and international institutions may select relevant indicators to track. According to some theories, however, it is best for indicator selection to occur outside of a governmental body and instead be conducted by local community members.<sup>201</sup> Effective performance monitoring stresses the decentralization of the indicator-selection process in which the affected local community chooses appropriate indicators to monitor performance; these parties are best positioned to identify local concerns and priorities.<sup>202</sup>

Experts have identified three types of indicators: structural, process, and outcome.<sup>203</sup> Structural indicators reflect a government's commitment to adopt measures to implement protections for a certain human right; this is shown through adoption of legal instruments and institutional mechanisms required for realization of that right.<sup>204</sup> Process indicators quantify efforts to implement and enforce a human right; this includes funds spent on programs to fulfill that right and the number of complaints that authorities process about alleged violations of that right.<sup>205</sup> Outcome indicators measure the enjoyment of the human right by the concerned population; this generally includes measurement of socioeconomic factors.<sup>206</sup> Outcome indicators are intended to measure programs' impacts, for example, unemployment rates and HIV prevalence.<sup>207</sup> A variety of these different indicators should be used to create a comprehensive accountability system.

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200. See, e.g., Kenneth Cmiel, *The Emergence of Human Rights Politics in the United States*, 86. J. AM. HIST. 1231, 1239 (1999).

201. Melish, *supra* note 184, at 96 (detailing the new accountability theory's approach to performance monitoring).

202. *Id.*

203. Rosga & Satterthwaite, *supra* note 184, at 295.

204. *Id.* at 295-96; see also Melish, *supra* note 184, at 99.

205. Rosga & Satterthwaite, *supra* note 184, at 296.

206. *Id.*

207. Melish, *supra* note 184, at 99.

In a performance-based monitoring system, indicators and the information aggregated through them are organized and analyzed by an oversight system. The entity charged with running the system creates a baseline survey to determine the current situations in targeted problem areas.<sup>208</sup> It also maps out benchmarks over time to determine progress and improved performance related to the system's goals.<sup>209</sup> Additionally, an oversight system facilitates a follow-up process to focus on targeted action plans as the performance-monitoring system reveals whether goals are being met; the entity overseeing the system must constantly reevaluate what relevant actors are doing and how to improve action plans to better achieve enumerated goals. An oversight mechanism makes accumulated information transparent and accessible to community members and stakeholders, and it also helps implement training and outreach programs to encourage behavior changes across society.<sup>210</sup> Across the board, research based on evidence compiled through indicator identification at the local level allows for negotiation and plans of action to address community problems and concerns.<sup>211</sup>

Above all, performance monitoring allows stakeholders to hold actors accountable for taking, or failing to take, certain actions to improve their access to rights.<sup>212</sup> Such an accountability system reflects an aim of human rights law in that it seeks "to protect and enhance the participatory agency of individuals to stand up and defend their own rights when threatened by external actors, whether public or private."<sup>213</sup> If their rights are not being upheld, as evidenced through a formal performance-monitoring system, stakeholders will demand formal explanations for that failure; if rights are being upheld, they will seek to ensure that goals of a

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208. *Id.* at 94.

209. *Id.*

210. *Id.*

211. *Id.* at 100.

212. *Id.* at 100-01.

213. *Id.* at 88 (emphasis omitted).

monitoring system are being achieved to realize rights-based improvements in performance.<sup>214</sup>

B. *Application to the D.C. Domestic Violence Context*

1. Framing a Performance-Based Monitoring System in D.C.

In D.C., the current framework of protection for domestic violence survivors focuses on providing legal remedies for survivors, guaranteeing comprehensive social services support, and diminishing rates of repeat domestic violence offenses. These mechanisms focus on “ensuring that all individuals have adequate and reliable access to a core set of social rights,” which arguably includes the right to safety and security in intimate relationships and in society.<sup>215</sup> These same ideas will surface in a performance-monitoring system, but the actual functioning of the mechanisms will be improved.

A comprehensive performance-based monitoring system in D.C. will help identify problems and corresponding goals, accumulate relevant data, and facilitate implementation of improvements to enhance protection of survivors of violence. Here, to describe implementation of a D.C. domestic violence performance-monitoring system, I will turn several identified problems into targeted areas and goals that may be used in a pilot program. I will identify indicators to monitor progress in these areas and set concrete benchmarks. My focus on these issues is not intended to exclude or diminish the importance of other problems but rather to illustrate through a few examples how a performance-monitoring system would apply to the D.C. domestic violence context. A more comprehensive system will cover expanded problems in a larger project, and in practice, affected service users will

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214. *Id.* at 100-01.

215. *Id.* at 94-95. This idea is reflected in new accountability theory, a framework of action used in U.S. social movement approaches that champions accountability and performance monitoring. *See id.* at 74-75. “This model insists that a rights perspective be directly incorporated into the design, implementation, and monitoring of the full range of policies and practices that proliferate in the larger marketplace.” *Id.* at 74.

identify the issues they would like to address and the appropriate human rights indicators for the oversight mechanism.<sup>216</sup>

I will focus on three issues that may be addressed in a pilot performance-monitoring system. These issues are judges' mistreatment of petitioners while in D.C. Superior Court, discretion in domestic violence case remedies, and particular vulnerability of immigrant LGBT survivors of violence.<sup>217</sup>

After identifying relevant indicators to gather data about highlighted problems, the D.C. domestic violence performance-based monitoring mechanism must include a baseline and benchmarks. To set a baseline of information about the current situation in each of the problem areas, surveys and questionnaires of survivors and stakeholders in domestic violence service organizations and the court may be crafted, distributed, and analyzed; this will allow for basic evidence collection to assess the more precise nature of the current problems and the starting point for performance monitoring. From there, the performance-based monitoring system requires benchmark identification to gauge progress related to each of the issues. In the D.C. context, ultimate achievement of goals in the articulated problem areas may be set for two years with six-month interval assessments of progress and failures regarding each issue. Routine surveys, interviews, court monitoring, statistical analysis, and review of complaints mechanisms may provide evidence of improvements or stagnation in the domestic violence framework.

**Goal 1:** Providing dignity and respect to parties in domestic violence cases

The first problem to address is the treatment petitioners receive in court while seeking protection in the D.C. judicial system. The corresponding goal is guaranteeing the respect and dignity of all parties to a domestic violence action throughout each step of the judicial process. There are

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216. See Frank V. McMillan et al., *A Card Before You Leave: Participation and Mental Health in Northern Ireland*, 11 HEALTH & HUM. RTS. 61, 61-62 (2009).

217. For detailed descriptions of these issues, see *supra* Part II.

several possible indicators that would track whether petitioners' rights to respect and dignity are met in court,<sup>218</sup> but I will focus specifically on parties' reactions to their experiences in the courtroom. The following indicators may be tracked. Did survivors seeking protection in the Domestic Violence Unit feel as if the presiding judge listened attentively to their case? Were they satisfied with the contents of their CPO and/or the adjudication of their case? Did the behavior of individuals present in the courtroom and judicial response to any misconduct affect the parties' experience in their hearing? If the survivors were dissatisfied with the judicial process or did not understand part of the proceedings, were they able to make a complaint or ask for clarification?

Such information may be gleaned from parties' responses to surveys and questionnaires, interviews with court employees, and court statistics. For example, an exit survey about satisfaction with the procedure may be given to parties after their cases are resolved; such a survey's responses must, of course, be tempered by the inherently emotional nature of domestic disputes and assaults. Domestic violence organizations across D.C. may implement routine surveys to gauge whether petitioners were satisfied with the treatment they received from judges, clerks, mediators, and staff while in D.C. Superior Court. An initial aggregation of information through an exit survey administered at the Domestic Violence Unit may be used to set a baseline; re-administration of such surveys and interviews every six

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218. Each indicator must be broken down further according to sex, race, ethnicity, and social status to highlight impacts of public policies on specific groups. See Melish, *supra* note 184, at 99. DC SAFE used this method in its Domestic Violence in DC Report, where it studied its clients based on gender, race and ethnicity, age, sexual identification, immigration status, physical and mental disabilities, and whether their clients had children. SURVIVORS AND ADVOCATES FOR EMPOWERMENT, INC., *supra* note 1, at 9-17. Furthermore, incidents of substance abuse and psychological, psychiatric, and emotional disorders must also be studied, particularly in relation to offenders, for an offender's issues in any of those areas will affect his eligibility for important CSOSA classes that may improve long-term protection of survivors and others. *Chapter XI Manual*, CSOSA, *supra* note 74, at 6.

months both at the court and service provider organizations will reveal improvement or deterioration.

By tracking these indicators, a performance-based monitoring system will highlight issues related to the protection of respect and dignity in the judicial system. Such factors are extremely relevant to help a survivor effectively work to end the violence committed against her through concrete legal protection, and courts must seek to avoid blaming, judging, or re-victimizing a survivor.<sup>219</sup>

**Goal 2: Providing fair judicial process in the Domestic Violence Unit**

The second issue that may be studied in a performance-based monitoring system is excessive discretion by judicial staff in determining CPO terms, presiding over the cases, and assessing violent perpetrators' punishments. The corresponding goal is to ensure survivors' right to a fair judicial process. To uphold this right, the judicial system must take into increased consideration petitioners' desires in crafting the order and ensure that all perpetrators of violence are sufficiently punished and rehabilitated within reason and in accordance with fairness.

Many indicators may be tracked to examine judges' abuse of discretion, and here I will focus on the abuse of discretion relating to the judicial decision to halt mandatory treatment and training about domestic violence issues when offenders shirk these responsibilities. Several questions must be answered: How frequently does an offender violate the terms of a CPO when it includes mandatory treatment or training? How often does a judge allow an offender to stop attending CSOSA or other treatment programs based on tardiness and/or refusal to attend? What kind of consequences does an offender face when he refuses CSOSA classes? These issues would be best addressed through comprehensive court monitoring and interviews with advocates and CSOSA officers. Experts in trauma and psychology may also be able to address effectiveness of such classes and possible alternatives to them. Again, the baseline information may be established through a specific period of court observation, and the benchmarks may be set at six-

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219. See Stoever, *supra* note 11, at 360.

month intervals for a two-year period to analyze changes in results.

**Goal 3:** Ensuring equal protections to LGBT and immigrant survivors of domestic abuse

The third issue relates to specific challenges that immigrant LGBT survivors of domestic violence face. The corresponding goal is to ensure that immigrant LGBT survivors receive the same treatment and protection as all other survivors of violence. Because they encounter unique issues in securing protection against their abusers and are at particular risk for violence and for a breakdown in effective legal services, specific indicators are required to track and measure the efficacy of existing protections. For the limited purpose of describing a pilot program, I will focus on one part of that larger goal, namely on indicators to assess the efficacy of available protection options for LGBT immigrant survivors.

In a pilot version of the performance-based monitoring system, I recommend focusing on gathering evidence about concrete reasons why LGBT immigrant survivors of domestic abuse are loath to turn to police and the court system for protection. Many survivors in jurisdictions that do not recognize domestic violence remedies' application to LGBT individuals have clear reasons for not turning to authorities' for help;<sup>220</sup> but D.C. survivors do have equal legal access to protection under D.C. law.<sup>221</sup> Moreover, unlike statutes in other jurisdictions,<sup>222</sup> the D.C. protection order statute is gender neutral and does not facially prevent same-sex partners from accessing legal protection.<sup>223</sup> It also does not prevent immigrants from accessing this protection, regardless of their immigration status.<sup>224</sup>

A variety of indicators will help assess how well current domestic violence protections work for LGBT immigrant communities, but I will focus on survivors' own assessments

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220. Natalie E. Serra, *Queering International Human Rights: LGBT Access to Domestic Violence Remedies*, 21 AM. U. J. GENDER SOC. POL'Y & L. 583, 599 (2013).

221. Rainbow Response, *supra* note 138.

222. *See* Serra, *supra* note 220.

223. *See* D.C. CODE § 16-1005 (2005).

224. *See id.*



of the protection available to them. Many questions are relevant. If the survivor called the police, was MPD responsive to the particular issue at hand, or did they arrest both the survivor and the abuser? Did the survivor approach the Domestic Violence Unit or a nonprofit to help with accessing a CPO? Did the survivor feel that she received adequate, clear information during court proceedings at the Domestic Violence Unit? These indicators may be examined through court exit surveys, as well as surveys and interviews with LGBT immigrant survivors at nonprofit organizations or other safe spaces. Data received over a short period of one or two months may be used to institute a baseline, and six-month benchmarks may be observed to track any changes. By tracing these different aspects of survivors' access to protection, a performance-based monitoring system can further target the particular needs of this community to finally achieve the overarching goal, namely allowing for equal protection for LGBT immigrant survivors of abuse.

## 2. Establishing a Performance-Monitoring Oversight Mechanism

Domestic violence is a complex problem that cannot be solved by merely improving the provisions in and increasing the number of CPOs that survivors are able to obtain.<sup>225</sup> As a result, an organization or entity in D.C. must be entrusted with a mandate to implement, facilitate, and review the domestic violence performance-based monitoring oversight system. This supervisory system will foster mechanisms of participation and engagement by affected populations, stakeholders, and other involved actors. The oversight system may operate in conjunction with the comprehensive network of D.C. non-profit organizations and service providers that already work in tandem with the court system; it will serve as a focal point for gathering and reviewing aggregated information.

a. *Entities that may oversee the performance monitoring oversight mechanism.* Several different entities may assume control of and responsibility for the performance-monitoring

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225. See Melish, *supra* note 184, at 90-92, for a discussion of this issue as it relates to poverty in the United States.

oversight mechanism and may serve as the focal point of gathering, reviewing, and assessing relevant information. First, the District of Columbia Office of Human Rights (OHR) may be charged with maintaining the system; because the OHR was established to “protect human rights for persons who live in or visit” D.C., such a human rights focused system naturally falls within its jurisdiction.<sup>226</sup> The D.C. Council may amend the D.C. Human Rights Act of 1977<sup>227</sup> to include a provision allowing for the creation of an advisory body or subcommittee dedicated to protecting survivors of domestic violence through a performance-monitoring oversight mechanism. The D.C. Commission on Human Rights, which falls under the OHR and “adjudicates private sector complaints” of human rights violations, may assume responsibility for creating such an advisory body or subcommittee comprised of survivors and advocates from local domestic violence organizations;<sup>228</sup> these individuals may oversee the performance-based monitoring system while still acting under the Commission’s jurisdiction. The Commission on Human Rights may obtain responsibility for the oversight system only with significant participation from, and close relationships with, domestic violence survivors and advocates, who are arguably best positioned to understand issues related to eliminating domestic violence and improving services. This collaboration would allow non-governmental and governmental actors to work together to track, address, and ultimately solve issues related to domestic violence.

Furthermore, the D.C. government may become involved in performance monitoring of domestic violence through its potential adoption of the Convention on the Elimination of

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226. *About OHR*, OFFICE OF HUMAN RIGHTS, <http://ohr.dc.gov/page/about-ohr> (last visited May 15, 2015).

227. *See* Human Rights Act of 1977, D.C. CODE § 2-1401 (1977) (amended 2007). The Council’s intent in this statute was to eliminate discrimination for any reason, including discrimination based on “status as a victim of an intrafamily offense.” D.C. CODE § 2-1401.01 (2005).

228. *DC Commission on Human Rights*, OFFICE OF HUMAN RIGHTS, <http://ohr.dc.gov/commission> (last visited Mar. 22, 2016).

All Forms of Discrimination Against Women (CEDAW)<sup>229</sup>; specifically, the proposed D.C. CEDAW ordinance may be amended to include an oversight system geared toward domestic violence performance-based monitoring. Though the United States has not ratified CEDAW, an international human rights treaty that aims to promote and protect women's rights,<sup>230</sup> members of the D.C. government, like others in local governments around the country, support introduction of local CEDAW ordinances.<sup>231</sup> A D.C. CEDAW initiative would focus on the "need to protect women and girls from physical harm, unfair treatment, and structural violence."<sup>232</sup> The initiative would require analyses of gender equity in all D.C. government bodies, reporting by the OHR with recommendations to improve gender equality, and improved training in human rights with a gender focus for all local government groups.<sup>233</sup> The proposed ordinance emphasizes the importance of information collection and analysis.<sup>234</sup> The legislation would also include timelines for completion of that gender analysis and development and implementation of a citywide action plan.<sup>235</sup> D.C. implementation of CEDAW on a local level would complement the efforts of a domestic violence performance-based monitoring system and perhaps would even use that system to achieve its own goals. The performance-based system may be adapted to be part of the CEDAW monitoring mandated by D.C. legislation; it may track both domestic

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229. Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

230. *Id.*

231. Stephanie Moore, *D.C. City Council Pushes Forward Local CEDAW Initiative*, UNFINISHED BUS. (Mar. 6, 2015), <http://www.unfinishedbusiness.org/20150306-d-c-city-council-pushes-forward-local-cedaw-initiative>. The proposed D.C. ordinance is available on the Cities for CEDAW website. *Resources*, CITIES FOR CEDAW, <http://citiesforcedaw.org/resources-2> (last visited May 22, 2016).

232. Moore, *supra* note 231.

233. *Id.*

234. D.C. COUNCIL BILL B21-0114 (D.C. 2015), <http://lims.dccouncil.us/Download/33497/B21-0114-Introduction.pdf>.

235. *UNA-NCA's Cities for CEDAW Initiative*, UNITED NATIONS ASS'N OF THE U.S.: NAT'L CAPITAL AREA (Feb. 26, 2015), <http://www.unanca.org/news-events/news/385-una-nca-for-cedaw>.

violence related issues and gender equity issues throughout the District.

Another possible entity that may assume control over the performance monitoring oversight mechanism is an advisory coalition of domestic violence survivors, advocates, attorneys, and social workers from the greater Washington, D.C. area. This may require the creation of a new non-governmental organization or may be implemented through a special program in an existing domestic violence services organization; it could also constitute a program under the auspices of a D.C.-area university with demonstrated interest in, and commitment to, domestic violence issues. The individuals involved in such an entity may come from agencies and groups from within the D.C. government and local non-profits and non-governmental organizations. This entity may create and proceed under its own mandate to hold authority over data aggregation and review, education, policy development, and reform recommendations. Though this advisory body may exist apart from the D.C. government, it may nevertheless forge an open relationship with the OHR and the Commission on Human Rights. For example, the advisory body and the D.C. government may host an annual conference reviewing the results of the performance monitoring pilot program.

b. *Activities and duties of the entity running the oversight system.* The entity responsible for the oversight system will engage in a variety of activities to carry out its duties in addition to information gathering.<sup>236</sup> One feature of the entity in charge of the oversight system is to make publicly available the information garnered from performance monitoring and the process by which that information was compiled.<sup>237</sup> That way, affected individuals and concerned members of the public may learn about the extent to which rights are being protected in their community, particularly those rights related to domestic violence, and may engage in discussion and debate over effectiveness of current public policies related to the issue.<sup>238</sup> In conjunction with public

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236. For a discussion of the specific information an oversight system must monitor and track, see *supra* Part IV.B.1.

237. Melish, *supra* note 184, at 100.

238. *Id.* at 99-100.

dissemination of monitoring results, the advisory body or sub-committee in charge of the oversight system should also encourage and improve education through training programs to survivors of violence, perpetrators of domestic abuse, judges, attorneys, social workers, non-profit organizations, law enforcement, and other individuals involved in the domestic violence framework.<sup>239</sup> Additionally, an oversight system may engage in community campaigns about domestic violence to educate the public and help promote the voices of survivors of violence who have often been robbed of their voices.<sup>240</sup> Furthermore, it should facilitate community interaction with public officials to meet determined policy goals and offer recommendations for best practices and ways to effect desired outcomes.<sup>241</sup> This entity may also develop training for judges on how to enter individually focused and comprehensive relief in protection orders; this practice would increase a survivor's confidence in the system and would also effectively put respondents on notice of prohibited and dangerous conduct.<sup>242</sup>

The entity responsible for the oversight mechanism must also maintain a comprehensive complaint mechanism for survivors of violence, advocates, and stakeholders. Members of the affected community require an institutional entity to lodge a complaint; they should not have to rely entirely on surveys, civil society "report cards," shadow reports, and interviews to uncover their critiques of the framework.<sup>243</sup> In such a complaint mechanism, individuals would be able to voice their concerns over the existing domestic violence protection framework, the functioning of the performance-based monitoring system, and any other relevant issues. The oversight system can then take these critiques and recommendations into account during benchmark reviews and general running of the monitoring system;<sup>244</sup> patterns in complaints will be particularly relevant in identifying

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239. *See id.* at 102.

240. *Id.*

241. *Id.* at 97.

242. *See* Stoever, *supra* note 11, at 365.

243. *Id.* at 89, 105.

244. *See* Melish, *supra* note 184, at 97.

successes and failures in current indicators and in selecting new and improved indicators as monitoring progresses. Such a complaint mechanism will allow the oversight system to further encourage stakeholders' participation in the review process. In the D.C. context, opinions of domestic violence survivors on all relevant issues must be taken into consideration in all stages of the performance-monitoring system. A widespread, concentrated effort to implement surveys, questionnaires, interviews, and a complaints body will allow more accurate measurement of victim satisfaction with the developing D.C. framework.<sup>245</sup>

Along with revealing survivors' issues with the current framework, an oversight system with a complaints mechanism will help reveal survivors' unmet needs. Survivors may bring up other problems they encounter as they attempt to definitively separate from abusers and to end the cycle of violence. For example, one particularly important issue frequently overlooked in the current protection framework involves financial needs of survivors attempting to distance themselves from abusers. Studies show that when a survivor of violence leaves her abuser, "there is a fifty-percent likelihood that her standard of living will fall below the poverty level."<sup>246</sup> In D.C., the protection order statute discretely enumerates that only "costs and attorney's fees" may be included as a provision in a protection order,<sup>247</sup> so petitioners must seek monetary relief under the "other" category.<sup>248</sup> This clearly shows that the protection order statute does not expressly recognize pressing needs of survivors to best position themselves to effectively address and overcome domestic abuse. Such a problem must also be tracked in a performance-based system, and similar problems must also be brought to the forefront through survivors who openly bring these issues to the attention of

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245. *But see* Carolyn N. Ko, *Civil Restraining Orders for Domestic Violence*, 11 S. CAL. INTERDISC. L.J. 361, 371-72 (2002) (highlighting issues in gauging survivor opinions accumulated through questionnaires and recommending the use of long follow-up periods to improve reliability of reported information).

246. Stoever, *supra* note 11, at 370.

247. D.C. CODE § 16-1005(c)(8) (2005).

248. Stoever, *supra* note 11, at 372.

the monitoring system through the complaints procedure. A similar problem that might have only arisen in the context of survivors' complaints is the importance of access to emergency housing as part of necessary supportive services from severe violent situations;<sup>249</sup> statistics show that the most urgent unmet need of survivors is generally related to housing.<sup>250</sup>

*c. Forging a productive alliance with the D.C. government.* When creating the oversight system, advocates should consider certain safeguards to protect undue governmental influence on the system. Performance monitoring should maintain a certain distance from local and federal government control for several reasons. First, due to the intrinsic lack of reliability of data from survivors of violence, the collection of experiences and information from survivors must be very carefully and categorically tracked. Thus, domestic violence advocates with many years of experience working with affected populations are arguably best positioned to work closely with survivors without the encumbrances of governmental rules and obligations. As a result, members of the advisory body or committee in charge of the performance monitoring system should work pursuant to a specific mandate or rules that place the responsibility for tracking information solely in their hands.

A second issue centers on reliability of information reporting. Particularly in reference to establishing and following relevant indicators, there exists a tension between a government meeting the standards it has laid out for itself, and any real incentive to substantively improve enjoyment of human rights in its jurisdiction.<sup>251</sup> Indicators lose value as a government modifies its conduct and policies to satisfy indicators' inquiry without necessarily improving human rights enjoyment at the same time.<sup>252</sup> Thus, even when a

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249. SURVIVORS AND ADVOCATES FOR EMPOWERMENT, INC., *supra* note 1, at 28.

250. See *Domestic Violence in the District of Columbia: 2013 Statistical Snapshot*, *supra* note 3.

251. Rosga & Satterthwaite, *supra* note 184, at 286.

252. *Id.* For example, in monitoring a state's compliance with the right to gender equality in education, a state may focus on an indicator such as the ratio of boys to girls enrolled in elementary school. *Id.* Consequently, that state will want to

government improves its infrastructure to more successfully protect rights, its reports of data reflecting this improvement will probably be accompanied by increasing adeptness at manipulating information to reflect greater technical compliance with its human rights obligations.<sup>253</sup> Political manipulation is inevitably involved in a government's responses to information demands, particularly where those responses will impact its reputation in local, national, and international spheres.<sup>254</sup> As a result, it would be best to keep the performance-based monitoring system in the purview of an advisory body with independent authority or with certain procedures in place to reduce untoward government influence. One way to resolve this issue is to include a safeguard that ensures members of this advisory body cannot be haphazardly removed by elected D.C. officials.

The D.C. government can still, however, be involved in performance monitoring. First, as previously discussed, the pre-existing governmental structure may be modified to include this oversight system, specifically the DC Commission on Human Rights. And if the D.C. Council adopts CEDAW on the local level, the oversight system may enter the scene under CEDAW's auspices. The federal government may also help fund the oversight system. The Office on Violence Against Women (OVW) under the Department of Justice (DOJ) "provide[s] federal leadership in developing the national capacity to reduce violence against women and administer justice for and strengthen services to victims of domestic violence, dating violence, sexual assault, and stalking."<sup>255</sup> The OVW administers grant programs under the Violence Against Women Act that are "designed to develop the nation's capacity to reduce domestic violence, dating violence, sexual assault, and stalking by

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show a reduction in that ratio; but such figures prevent substantive rights from being assessed that contextual information would provide, such as use of equitable curricula, the prevalence of gender discrimination in schools, and actual school attendance of genders. *Id.*

253. *Id.* at 287, 308.

254. *Id.*

255. *About the Office*, U.S. DEP'T JUST., <http://www.justice.gov/ovw/about-office> (last updated Dec. 16, 2014).



strengthening services to victims and holding offenders accountable.”<sup>256</sup> The OVW grant programs seek to enhance law enforcement and prosecution strategies in local communities, support rape crisis centers and other domestic violence services nonprofits, and improve services to culturally specific populations, such as LGBT and immigrant communities.<sup>257</sup> For example, in December 2015, Attorney General Loretta Lynch granted \$2.7 million to seven pilot sites under the OVW’s Sexual Assault Justice Initiative.<sup>258</sup> This funding is geared toward improving community services to survivors of domestic and sexual violence and encouraging improved cooperation between service providers and law enforcement.<sup>259</sup> Given that a D.C. domestic violence performance-based monitoring system seeks to enhance accountability and monitoring to improve services to different types of survivors, the entity implementing the oversight system may apply for and receive OVW grant funding. Other potential federal funding sources are programs under the Family Violence Prevention and Services Act and the Victims of Crime Act.<sup>260</sup>

Other federal funding sources may arise through additional efforts by the DOJ. For example, in September 2014, former Attorney General Eric Holder announced grant funding for four sites around the country to prevent domestic violence homicide.<sup>261</sup> These communities were to “institute screening models and evidence-based strategies that will

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256. *Grant Programs*, U.S. DEP’T JUST., <http://www.justice.gov/ovw/about-office> (last updated July 24, 2014).

257. *See id.*

258. Office of Pub. Affairs, *Attorney General Loretta E. Lynch Announces \$2.7 Million in Grants to Strengthen the Justice System’s Response to Sexual Assault*, U.S. DEP’T JUST. (Dec. 15, 2015), <https://www.justice.gov/opa/pr/attorney-general-loretta-e-lynch-announces-27-million-grants-strengthen-justice-systems>.

259. *Id.*

260. *Funding and Appropriations*, NAT’L NETWORK TO END DOMESTIC VIOLENCE, <http://nnedv.org/policy/issues/funding.html> (last visited Mar. 15, 2015).

261. Office of Pub. Affairs, *Attorney General Holder Announces \$2.6 Million in Grants for Domestic Violence Homicide Prevention*, U.S. DEP’T JUST. (Sep. 22, 2014), <http://www.justice.gov/opa/pr/attorney-general-holder-announces-26-million-grants-domestic-violence-homicide-prevention>.

allow them to anticipate potentially lethal behavior, take steps to stop the escalation of violence, and . . . save lives.”<sup>262</sup> The National Institute of Justice was to then evaluate those sites’ models for possible implementation on a national scale.<sup>263</sup> Similar to the models used in those four sites, the performance-based monitoring system in D.C. would involve evidence-based planning and close monitoring of domestic violence issues to reduce domestic abuse and empower survivors; it can also serve as a pilot project for implementation in other areas around the United States. Due to these overlapping methods and goals, the D.C. monitoring system is an excellent candidate for DOJ funding, which allows the federal government to become involved in empowering survivors of violence and reducing the occurrence of such crimes.

### C. *Critiques and Cautions*

Several critiques of a performance-based monitoring system may appear to endanger its efficacy. Nevertheless, these potential problems may be obviated by participatory engagement by affected populations and constant review of the system by its supervisory body to ensure that the system and its indicators are working.

First, issues may arise with respect to indicators. Despite their widespread use in the human rights field, there are certain limitations to using indicators that may lead to failure in an accountability system.<sup>264</sup> Indicators only serve effective performance monitoring if they are structured in a particular way; if indicators are not carefully chosen to track those issues most relevant to the human rights crisis at hand, the system will not provide reliable information on which to base recommendations for improvements in the protection framework. As a result, it is extremely important that indicators are carefully selected. First, indicators must be

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262. *Id.*

263. *Id.*

264. Rosga & Satterthwaite, *supra* note 184, at 281-82, 303. Potential issues with indicators that may handicap accountability systems include questionable reliability of data, pressure to derive conclusions from limited data, political influence on indicator choice, and difficulty using technical results to answer ordinarily judgment-laden and highly contested political issues. *Id.*

closely linked to agreed-upon goals, which directly relate to identified problems in the existing human rights framework in a particular context. Second, indicators must originate in the opinions and input of survivors of domestic violence and their advocates; the performance-monitoring system must be geared toward the people on the ground whom it is intended to serve.

Another concern connected to indicator selection is myopic attention to inappropriately result-focused performance indicators. For example, a performance-monitoring system focused on domestic violence must include data related to protection orders, including the number of CPOs issued. The presumption is that an increased number of CPOs reflects a positive change that domestic abuse crimes are decreasing. But to ensure that information garnered by the oversight system accurately reflects reality and that the protection framework is improving the number of CPOs issued, an indicator focused on CPO violations is also necessary; even if more CPOs are issued, abusers' routinely violating these orders nevertheless suggests that violence has not abated. Attention must be focused on numbers that reflect the problems demanding attention, specifically violations of CPOs, to ensure the system's focus on client-centered fairness, personal needs of victims, overall domestic violence reduction, and empowerment of survivors.<sup>265</sup> This potential problem may be remedied by encouraging domestic violence survivors and stakeholders to participate in the performance-monitoring process, particularly in choosing indicators that best reflect their own experiences as a whole without a restricted focus on end results.

Another challenge in a performance-monitoring system in the context of domestic violence issues arises due to data reliability. Because indicators are by nature statistical and require some sort of reliable data, the consistent under-reporting of domestic violence, a global phenomenon, results in inherently inaccurate and under-representative data related to domestic violence issues. A lack of reliable data on the local, national, and international scales undermines attempts to effectively compare outcomes of domestic violence protection frameworks in those different regions.

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265. Melish, *supra* note 184, at 38-39.

This issue again reinforces the need to closely involve survivors of domestic violence and practitioners in selecting reliable indicators, sharing experiences, and consistently reporting issues within the system, all within a safe and supportive environment.

#### CONCLUSION

To enhance protections for survivors of domestic violence, a comprehensive performance-based monitoring system must be implemented in Washington, D.C. By focusing survivors of violence, service providers, and stakeholders on identifying issues in the domestic violence framework and achieving goals, this system will allow for development of community plans of action to fill gaps in services to those individuals who need it most. Identifying issues in services and tracking relevant information over time will allow survivors and stakeholders to hold accountable those actors responsible for the breakdown in services. This will result in improved protections and increased empowerment for survivors of abuse.

Such a performance-based monitoring system may be enhanced and implemented on a larger scale in cities across the United States. In pilot programs, local court-watch observers, such as those in the DC SAFE program, would be encouraged to report any judicial misconduct they witness after observing trends in appropriate judicial behavior and to share that information with the public.<sup>266</sup> Additionally, survivors of violence and stakeholders would be encouraged to build a supportive community where they share their knowledge and expertise and also educate the public about domestic violence. Through this performance-monitoring system, cities such as Washington, D.C. may drastically reduce domestic abuses, support survivors who have bravely secured protection and are working to improve their futures, and help survivors who have not yet come forward to claim their own rights to respect and security.

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266. Stoever, *supra* note 11, at 369.