

Executive Director,
Jerome E. McElroy

Director, Research Dept.,
Richard R. Peterson, Ph.D.

Research Brief Editor,
Mary T. Phillips, Ph.D.

Graphics & Production,
Raymond P. Caligiure

Administrative Assistant,
Bernice Linen-Reed

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New York City
Criminal Justice Agency
52 Duane Street
New York, NY 10007
PHONE: 646 213-2500
FAX: 646 213-2650
WEB: www.nycja.org

Combating Domestic Violence in New York City, 2001

By Richard R. Peterson, Ph.D.

Does the criminal justice system treat domestic violence as seriously as any other violent crime?

Domestic violence cases pose special challenges for the criminal justice system. Many victims of domestic violence are reluctant to cooperate in the prosecution of the offender. Also, many domestic violence offenders repeatedly assault their victims over a period of months or years. How should prosecutors proceed when victims are reluctant to cooperate? What kinds of criminal sanctions can deter domestic violence offenders from committing future acts of violence?

Over the last decade, criminal justice practitioners in New York City have developed new approaches to combat domestic violence. New York State's 1994 Family Protection and Domestic Violence Intervention Act instituted mandatory and presumptive arrest policies. District Attorneys in New York City established specialized prosecution bureaus and victim advocacy programs. The court system

established specialized criminal court parts in New York City.

To examine the impact of these efforts we analyzed data from the CJA database on offenders arrested during the first quarter of 2001. (See inset box, next page, for details about the First Quarter 2001 Dataset.) To inform our discussion, we also observed the operation of specialized DV court parts and interviewed judges, assistant district attorneys, defense attorneys, domestic violence resource coordinators, and others. Our research addressed three questions.

- *First, how did case outcomes for DV cases differ from those of comparable Non-DV cases?*
- *Second, what were the effects of prosecutorial policies on DV case outcomes?*
- *Finally, what were the effects of case outcomes and criminal sanctions on recidivism among DV offenders?*

This Research Brief presents new data to update an earlier report: *Combating Domestic Violence in New York City: A Study of DV Cases in the Criminal Courts* (April 2003) by the Director of CJA's Research Department, Richard R. Peterson, Ph.D. For more detailed information, see the full report on the CJA web site: www.nycja.org/research/research.htm

Address comments to the author at rpeterson@nycja.org.

Research project staff: Raymond P. Caligiure.

Systems programming: Barbara Geller Diaz, Wayne Nehwadowich.

CASE OUTCOMES IN DV AND NON-DV CASES

To examine differences in case outcomes, we compared cases identified by the courts as DV cases to those that were not identified as DV cases. The courts' definition of domestic violence is based on the nature of the relationship between the offender and the victim. When the relationship meets the statutory definition of a family (cases where the victim and offender are married, formerly married, related by blood or marriage, or have a child in common) or the courts' definition of an intimate relationship (cases where the victim and defendant are cohabiting or previously lived together, including "common-law" marriages and same-sex relationships) the courts classify the case as a DV case. We defined comparable Non-DV cases as those where the charges involved interpersonal violence, but the relationship between the offender and the victim was not a family or intimate relationship as defined by the courts.

As shown in Fig. 1, there were sharp differences in case outcomes between DV and Non-DV cases. (See inset box for a discussion of criminal court outcomes.) **Only about one third of DV cases resulted in a conviction, compared to over three fifths of the Non-DV cases.** Furthermore, DV cases were more than twice as likely as Non-DV cases to be dismissed. Nearly half of DV cases were dismissed, while only one fifth of Non-DV cases were dismissed. DV and Non-DV cases were about equally likely to have a final disposition of ACD.

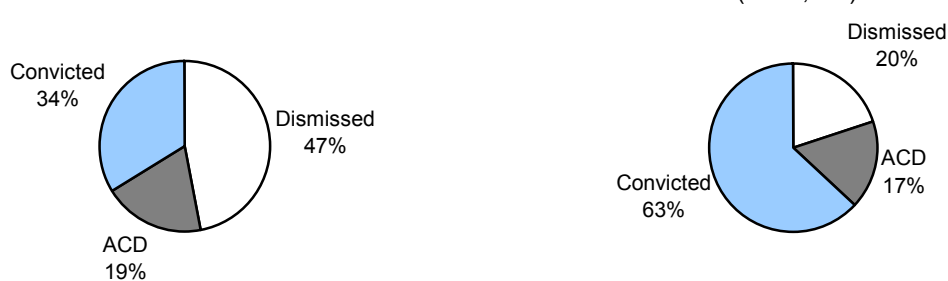
The First Quarter 2001 Dataset

The dataset includes information about arrests in New York City in the first quarter of 2001, the court processing of prosecuted arrests, court outcomes and re-arrests of the offenders. The analyses were limited to cases that were disposed in the lower court (Criminal Court) and excluded felony cases that were disposed in the upper court (Supreme Court). Since few DV cases were disposed in Supreme Court, the analyses provided information about 98% of the DV cases that resulted in criminal prosecution. The analyses were further restricted to cases with the types of charges that typically occur in cases involving interpersonal violence: assault, criminal contempt (for violating an order of protection), harassment, crimes against children, burglary, larceny and weapons charges.

Why was the conviction rate lower in DV cases?

Defendants in DV cases were more likely to be charged with assault, and the conviction rate is lower for assaults whether they are DV or Non-DV cases. Defendants in DV cases also had less serious criminal histories than defendants in Non-DV cases, and defendants with less serious criminal histories were less likely to be convicted. However, most of the difference in conviction rates was apparently due to differences in strength of evidence between the two types of cases. Evidence is generally weaker in DV cases than in Non-DV cases, primarily because victims in DV cases are often reluctant to testify or cooperate.

FIGURE 1
CASE OUTCOMES IN CRIMINAL COURT
Prosecuted Cases in New York City, First Quarter 2001



Case Outcomes in Criminal Court

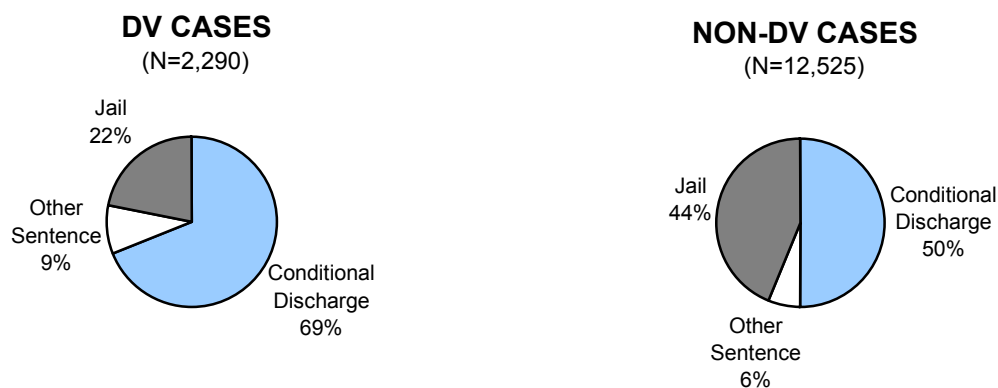
Pleas of guilty and findings of guilty after trial are convictions, while acquittals, dismissals and adjournments in contemplation of dismissal (ACDs) are not convictions. Although ACDs are not convictions, they sometimes have conditions attached (e.g., that the defendant successfully complete a program, such as a batterer intervention program and/or a drug or alcohol treatment program).

SENTENCE OUTCOMES IN DV AND NON-DV CASES

Next, we considered differences in sentence outcomes for those cases that resulted in conviction. Again, there were sharp differences between DV and Non-DV cases (see Fig. 2). Defendants received a conditional discharge in over two thirds of DV cases and only half of Non-DV cases. Defendants were twice as likely to be sentenced to jail in Non-DV cases as in DV cases. Other sentences (probation, fines, restitution) were given in 9% of DV cases and 6% of Non-DV cases. Conditional discharges and probation sentences may include a requirement that the defendant complete a batterer intervention program and/or a drug or alcohol treatment program.

Why were defendants in DV cases much more likely to receive conditional discharges? Criminal history explained a small portion of the difference. Convicted Non-DV offenders had more serious criminal histories than convicted DV offenders. However, the most important reason for the difference is the offender accountability approach used by the courts in DV cases. Under this approach, convicted defendants are usually given a conditional discharge and assigned to a batterer intervention program or drug or alcohol treatment program as a condition of their sentence. This allows the court to monitor defendants' behavior through reports from the program.

FIGURE 2
SENTENCE OUTCOMES IN CRIMINAL COURT
Convicted Defendants in New York City, First Quarter 2001



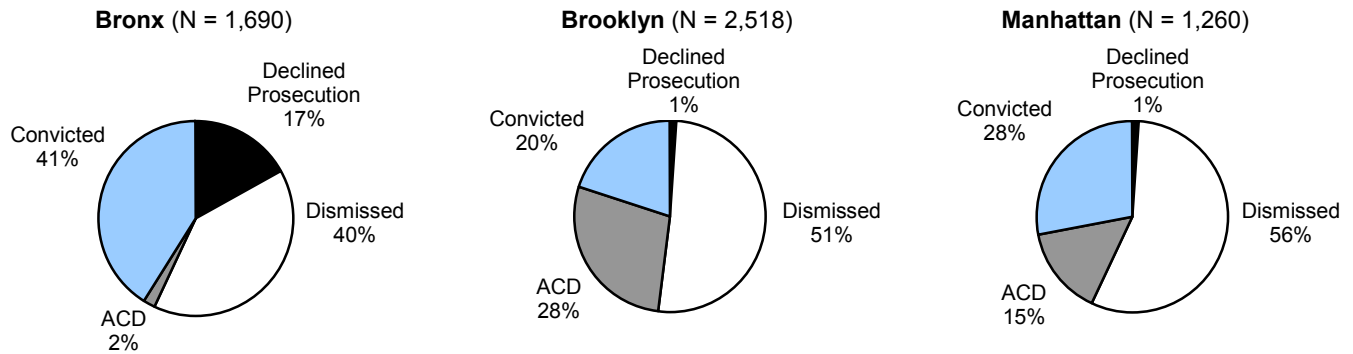
PROSECUTORIAL POLICIES IN DV CASES

Interestingly, the District Attorneys' offices in New York City have taken different approaches to addressing victims' reluctance to cooperate in DV cases. In Brooklyn, Manhattan, Queens and Staten Island, the DA's offices have what is generally described as a **no-drop prosecution policy** in DV cases. In these boroughs, virtually all DV cases are prosecuted, even if the victim does not want the defendant prosecuted. In the Bronx, the DA's office relies primarily on a **first-party complaint policy**, i.e., cases are prosecuted only when the victim signs the complaint, indicating a willingness to go forward with the case.

To examine the impact of prosecutorial case screening policies, we compared cases that were processed in the Bronx, under a first-party com-

plaint policy, to cases in Brooklyn and Manhattan, which used a no-drop policy. (Staten Island had too few cases to be included in this analysis and Queens was excluded because of problems identifying and tracking certain DV cases.) We expanded the analysis to include not only prosecuted cases, but also cases that were declined for prosecution. There was wide variation in case outcomes among the three boroughs (see Fig. 3). Cases in the Bronx were much more likely to be declined for prosecution than cases in Brooklyn or Manhattan. **About 17% of DV cases were declined for prosecution in the Bronx compared to only 1% in Brooklyn and Manhattan.** These findings were consistent with the case screening policies employed in each borough.

FIGURE 3
CASE OUTCOMES IN CRIMINAL COURT BY BOROUGH
DV Cases, First Quarter 2001



One consequence of the first-party complaint policy in the Bronx was to significantly reduce the dismissal rate in DV cases. Two fifths of DV cases were dismissed in the Bronx, compared to half in Brooklyn and nearly three fifths in Manhattan. If the Bronx had prosecuted cases at the same rate as Brooklyn and Manhattan, most of the cases that were classified as declined for prosecution would probably have been dismissed. If we combine the declined and dismissed categories, the differences among the boroughs are narrower. Almost three fifths of DV cases in Manhattan and the Bronx were declined or dismissed compared to about half in Brooklyn. **However, the Bronx was able to obtain convictions in over two fifths of DV cases. In Manhattan, just over one quarter of DV cases ended in conviction, and in Brooklyn, only one fifth did.** The Bronx rarely offered ACDs in DV cases, whereas over one quarter of Brooklyn DV cases and 15% of Manhattan DV cases were disposed with an ACD.

Taken together, these findings suggest that even though the Bronx declined to prosecute sig-

nificant numbers of DV cases, the DA's office was much more successful in obtaining convictions in prosecuted cases than the DA's offices in Brooklyn or Manhattan.

Why was the conviction rate in DV cases higher in the Bronx than in Brooklyn or Manhattan? The key to explaining borough differences in conviction rates is the use of case screening and other prosecution strategies in each borough. Under its first-party complaint policy, the Bronx screened out one sixth of the DV cases. This allowed the DA's office to devote more time and attention to the remaining cases, increasing the likelihood of conviction. Furthermore, unlike Brooklyn and Manhattan, the Bronx DA's office rarely offered ACDs to first-time DV offenders. Instead, first-time DV offenders were offered plea bargains that required them to plead guilty. In Manhattan, and especially in Brooklyn, many cases were disposed with ACDs. Since ACDs are not convictions, the conviction rate in these two boroughs was much lower than in the Bronx.

RE-ARRESTS AMONG DV OFFENDERS

To determine the impact of case outcomes and criminal sanctions on recidivism, we examined the re-arrest rates for new DV offenses over an 18-month period following case disposition. We compared re-arrest rates for defendants whose cases were dismissed, ACD'd, disposed with a conviction without a jail sentence, and disposed with a conviction with a jail sentence.

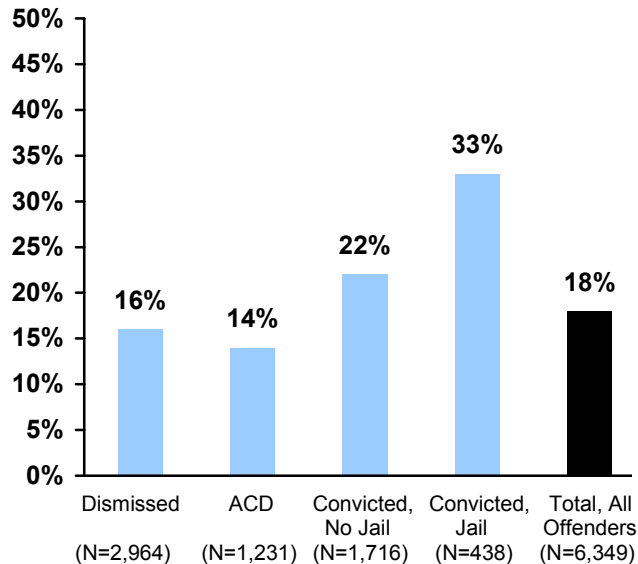
To determine the impact of case screening policies on recidivism, we compared re-arrest rates in the Bronx for cases that were declined for

prosecution with re-arrest rates for cases that were dismissed.

Fig. 4 presents the re-arrest rates for each of the categories of case outcome. The re-arrest rate for DV offenses is defined as the percentage of defendants who were re-arrested at least once for a DV offense within 18 months of case disposition. The case outcomes in Fig. 4 represent the outcome on each defendant's *first* DV arrest during the first quarter of 2001. (The data in Figs. 1 through 3 included *all* DV arrests for each defendant during the first quarter of 2001.)

FIGURE 4
RE-ARREST RATES
BY CASE AND SENTENCE OUTCOMES
DV Offenders in New York City, First Quarter 2001

Percent Re-arrested for a DV Offense Within 18 Months



As shown in Fig. 4, about 18% of all DV offenders were re-arrested for a DV offense within 18 months of the disposition of the first quarter 2001 case (the original case). The re-arrest rate varied depending on the outcome of the original case. About 16% of DV offenders whose original case was dismissed were re-arrested for a DV offense within 18 months of the dismissal. The re-arrest rate was slightly lower for DV offenders who received an ACD (about 14%) and somewhat higher for DV offenders who were convicted but not sentenced to jail (about 22%). **However, re-arrest rates were significantly higher for DV offenders who were convicted and sentenced to jail—one third of these defendants were re-arrested for a new DV offense.**

Why were defendants who were convicted and sentenced to jail more likely to be re-arrested? Chronic offenders were more likely than first-time offenders to be convicted and sentenced to jail on their original case in the first quarter of 2001. Chronic offenders also were more likely to be re-arrested, regardless of the outcome of their original case. Taken together, these findings indicate that

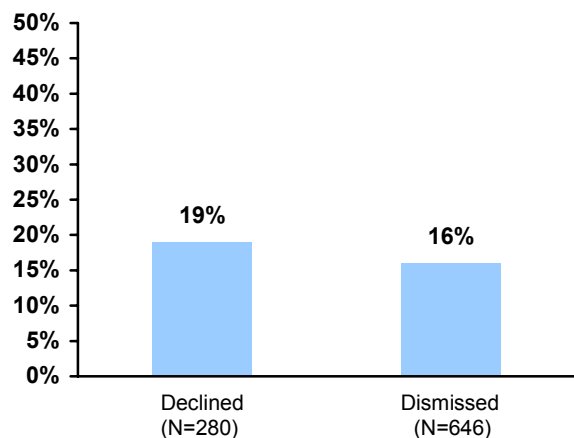
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convictions and jail sentences did not increase re-arrest rates. Instead, convictions and jail sentences were imposed on defendants who were already chronic offenders. Of course, the findings also suggest that convictions and jail sentences did not deter these chronic offenders.

To assess the impact of prosecutorial case screening policies on re-arrest rates, we next compared re-arrest rates in the Bronx for cases that were declined for prosecution (DP'd) to cases that were dismissed. (The number of DP'd cases in the other boroughs is too small for reliable statistical comparisons to dismissed cases.) Dismissal would have been the most likely outcome if cases that were DP'd had been prosecuted, since all victims in DP'd cases were initially uncooperative. **The re-arrest rate for cases that were declined for prosecution in the Bronx was 19%, compared to 16% for cases that were dismissed** (see Fig. 5). This difference in re-arrest rates suggests the possibility that victims in cases that were declined for prosecution were in greater danger than victims in cases that were dismissed. However, the difference was relatively small, and statistical tests indicate that the difference between these two percentages may have been due to chance alone, and not to any real difference in re-arrest rates.

FIGURE 5
RE-ARREST RATES
FOR DECLINED AND DISMISSED CASES
IN THE BRONX
DV Offenders, First Quarter 2001

Percent Re-arrested for a DV Offense Within 18 Months



CONCLUSIONS

How did case outcomes for DV cases differ from those of comparable Non-DV cases?

We found that DV cases were less likely than Non-DV cases to result in conviction or a jail sentence, even after taking into account differences in defendant and case characteristics. Because evidence is generally weak in DV cases, we expected that the conviction rate would be lower than for Non-DV cases. Because courts generally use programs to hold DV offenders accountable, we also expected that convicted DV defendants would be less likely to be sentenced to jail. Since DV cases and Non-DV cases are inherently different, it is inappropriate to interpret these findings as evidence that DV cases are treated more leniently. Nevertheless, the conviction rate in DV cases remains substantially lower than in Non-DV cases in spite of recent efforts to devote more time and resources to strengthen evidence in DV cases.

- *Why was evidence weaker in DV cases than in Non-DV cases?* First, lack of victim cooperation continued to be a major problem. Many victims did not provide a corroborating affidavit in DV cases. Second, New York State's mandatory arrest laws resulted in arrests in DV incidents where the evidence was weak and arrest would not have been mandatory if the victim and defendant had not had an intimate or family relationship. Finally, some prosecutors may have been more willing to pursue weak DV cases than weak Non-DV cases in order to monitor the defendant's behavior during the pendency of the case.

What were the effects of prosecutorial policies on DV case outcomes?

Prosecutorial screening policies affected both the proportion of cases that were prosecuted and the proportion of cases that ended in conviction. Under the first-party complaint policy in the Bronx, where cases were prosecuted only if the victim signed the complaint, one sixth of DV cases were declined for prosecution. Under the no-drop policies used in Brooklyn and Manhattan, almost all DV cases were prosecuted. Screening policies also had a large impact on conviction rates. When the victim signed the complaint (as in the Bronx), the conviction rate was relatively high. When prosecutors pursued virtually all DV cases, the conviction rate was relatively low.

- *Why do District Attorneys in New York City use different screening policies for DV cases?* Those who favor a first-party complaint policy believe that the criminal justice system should pursue only viable DV cases, and therefore should focus primarily on those in which the victim is willing to go forward. This policy produces a higher conviction rate. Those who favor a no-drop prosecution approach believe that the criminal justice system should prosecute virtually all DV cases, regardless of the victim's wishes. This enables the court to monitor a larger number of defendants while their cases are pending. Since the state and not the victim is responsible for deciding to prosecute the case, no-drop prosecution also may prevent victims from being subjected to intimidation or retaliation by the defendant.

What were the effects of case outcomes and criminal sanctions on recidivism?

More severe case outcomes and criminal sanctions did not reduce recidivism among DV offenders. There was no evidence that conviction and jail sentences deterred future acts of domestic violence. After taking criminal history into account, we did not find lower re-arrest rates for those who were convicted, with or without a jail sentence. Nor did we find any indication that there was an "escalation" effect. Sentencing DV offenders to jail did not increase the risk of re-arrest, as some have speculated.

- *Does a first-party complaint policy affect the re-arrest rate for DV offenders?* No. Analyses of the first-party case screening policy in the Bronx did not provide conclusive evidence that declining to prosecute DV cases when the victim refused to sign the complaint increased the risk of re-arrest. Although re-arrest rates were higher for cases that were declined for prosecution than for cases that were dismissed, the difference was relatively small.

POLICY IMPLICATIONS

It is beyond the scope of this study to determine the “best” approach to prosecuting and adjudicating DV cases. Nor is it likely that any one approach would be “best” in all jurisdictions. Our analyses do, however, permit us to offer some recommendations that could be addressed through changes in policy and practice.

Increasing the Conviction Rate

Several policies to address the low conviction rate in DV cases could be considered. Each of the DA’s offices in New York City has already begun to act on one or more of these recommendations, although funding and other limitations may prevent full implementation of all the recommendations.

- **Reduce caseloads to allow prosecutors to spend more time working with victims.** Even with specialized prosecution bureaus for DV cases, ADAs in Criminal Court often struggle to keep up with their caseload and to maintain contact with victims.
- **Expand the use of counseling and advocacy services for victims.** Victim advocates working with the DA’s office can provide support services and counseling to reassure victims and to encourage their cooperation.
- **Use evidence-based prosecution, which relies on “hearsay exceptions” (such as tapes of 911 calls), and physical and medical evidence.** This avoids the need for victim cooperation. However, evidence-based prosecution is already widely used, and there may be little room for improvement in this area.
- **Reduce case-processing time.** Cutting the time between arrest and trial (or a potential trial) may reduce the opportunities for the victim to withdraw from participating in the case.

Screening Domestic Violence Cases

Each of the case screening policies used in New York City had both benefits and costs. To choose between a first-party complaint policy and a no-drop prosecution policy, District Attorneys must decide what their priorities are.

- **To maximize convictions, a first-party complaint policy is preferable.** The first-party complaint policy used in the Bronx concentrates prosecutorial resources on the most viable cases—those where the victim indicates a willingness to go forward by signing the complaint.
- **To maximize the number of DV offenders who are monitored by the court, a no-drop policy is preferable.** Under a no-drop policy, defendants are prosecuted in virtually all cases where an arrest is made, and most defendants are subject to an order of protection. Even if the conviction rate is low and many cases are ultimately dismissed, court oversight may deter defendants from committing new offenses.

Reducing Recidivism

Prosecuting, convicting and sentencing DV offenders to jail did not deter re-arrest. However, a closer examination of the findings provides support for some key elements of current criminal justice interventions and draws attention to the importance of goals other than deterrence. The research results have four important implications for policy and practice.

- First, **imposing criminal sanctions in DV cases does not increase the risk of future violence.** We found no evidence that violence escalates when the criminal justice system “gets tough” with certain DV offenders.
- Second, **jail sentences for chronic DV offenders may be appropriate.** Our findings on re-arrest rates support the current practice of predicating the severity of the criminal justice response on the defendant’s criminal history. Although jail sentences did not deter DV offenders who had more prior convictions from committing new offenses after their release, they were at least temporarily prevented from committing violent DV offenses while they were in jail.
- Third, **arrest, regardless of the subsequent case outcome, may be a deterrent to domestic violence.** Our study did not examine the effect of arrest (vs. failure to arrest) on recidivism among DV offenders. However, other recent studies suggest that arrest may sometimes deter future violence.
- Finally, **goals other than deterrence may be appropriate in DV cases.** Some DA’s offices provide services (e.g., counseling, referrals to shelters, emergency 911 cell phones) to victims in DV cases. Furthermore, prosecuting and sentencing domestic violence offenders sends a message to the batterer, the victim, and the community that the criminal justice system is prepared to intervene to stop the violence.

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by Mary T. Phillips, Ph.D.

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by Jukka Savolainen, Ph.D.

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New York, NY 10007

TO: