

**THE EFFICACY OF IDAHO'S DOMESTIC  
VIOLENCE COURTS: AN OPPORTUNITY  
FOR THE COURT SYSTEM TO EFFECT  
SOCIAL CHANGE**

COMMENT

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## I. INTRODUCTION

Domestic violence is certainly not new. Men<sup>1</sup> have been beating their wives for centuries; however, what *is* relatively new is the societal and judicial response to domestic violence.<sup>2</sup> As this article will detail, for decades, the legal system lacked an effective solution to the problem of domestic violence. Only recently, the judicial system has begun to offer a comprehensive, integrated, and long-needed response to this sweeping social problem through specialized domestic violence courts. Domestic violence (DV) courts began appearing in Idaho in 2002<sup>3</sup> and, today, seven integrated domestic violence courts exist statewide, spanning three judicial districts.<sup>4</sup> Idaho's DV courts have emerged as a potentially powerful tool in finally effecting positive social change.

Through DV courts, offenders are more-frequently monitored, victims are better assisted and informed, and the notion that domestic violence is a serious crime is further reiterated to society. While DV courts present a promising approach to effectively dealing with domestic violence, further research must be conducted with regard to recidivism rates and the usefulness of batterer treatment. With additional science-based research, DV courts nationwide may forever transform how the American legal system contends with domestic violence.

For the reasons discussed below, Idaho's DV courts are successful in the sense that they are superior to the traditional courts' handling of domestic violence cases. However, Idaho DV courts can take additional steps to fully realize their potential. This article will begin by briefly

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1. The author recognizes that men do not have a monopoly on violence, and that too many women, as well as men, abuse their partners. While it has been a subject of controversy in the past, multiple studies indicate it is men that are more often the offenders, and women more often the victims, of serious domestic violence-related crimes. Thus, for the purposes of this article, "offenders" will refer solely to male offenders. *See, e.g., Measuring Intimate Partner (Domestic) Violence*, NAT'L INST. JUST. (May 12, 2010), <http://www.ojp.usdoj.gov/nij/topics/crime/intimate-partner-violence/measuring.htm> (reporting that "30 percent of female homicide victims are murdered by their intimate partners compared with 5 percent of male homicide victims, and that 22 percent of victims of nonfatal intimate partner violence are female but only 3 percent are male"). *See also* PATRICIA TJADEN & NANCY THOENNES, U.S. DEPT OF JUST. FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN iv (2000), *available at* <https://www.ncjrs.gov/pdffiles1/nij/183781.pdf> (finding that 7.4% of the men surveyed had experienced physical assault by a partner, compared to 22.1% of women, and that, each year in the U.S., an estimated 1.3 million women are physically assaulted by an intimate partner, compared to 835,000 men).

2. Domestic violence refers to the physical or psychological assault of an intimate life partner. Lynette Feder & David R. Forde, *A Test of the Efficacy of Court Mandated Counseling for Domestic Violence Offenders: The Broward Experiment*, JUST. Q. 1, 1 (2000), *available at* <https://www.ncjrs.gov/pdffiles1/nij/grants/184631.pdf>. Domestic violence has also been referred to as "intimate partner violence," "domestic abuse," and "spousal abuse." *See* Walter S. DeKeseredy & Martin D. Schwartz, *Definitional Issues*, in *Sourcebook on Violence Against Women* 23, 23-34 (Claire M. Renzetti et al. eds., 2001).

3. Idaho DV Court History, E-mail from Amber Moe, Statewide Domestic Violence Court Coordinator, to author (Feb. 7, 2012) (on file with author).

4. IDAHO SUPREME COURT, DOMESTIC VIOLENCE COURTS: REPORT TO GOVERNOR BUTCH OTTER AND THE 1ST REGULAR SESSION OF THE 60TH IDAHO LEGISLATURE 1 (2010), *available at* <http://www.isc.idaho.gov/links/Domestic%20Violence%20Courts-FINAL.pdf>.

outlining the historical background of domestic violence, and the gradual societal shift toward viewing it as a serious crime. Second, this article will expound upon the nature of, and inherent complexities in, domestic violence cases. These intricacies must be wholly understood by all court professionals if effective procedures, policies, and—ultimately, solutions—are to be put in place. Third, Idaho's DV courts will be examined, with a focus on the courts' goals and minimum standards. Because the most recent and comprehensive research currently existing in Idaho evaluates the Ada County DV Court specifically, special focus will be placed on that court, and important aspects such as case efficiency, case coordination, and victim support will be compared to the traditional courts' handling of these same features. Next, this article will address the efficacy of Idaho's DV courts. Assessing efficacy first requires a vision of what an effective court model looks like, and the outcomes that an effective model produces. Determining this, or, in other words, defining what success looks like in the context of domestic violence cases, is a difficult task that nonetheless must be tackled by program developers, policy makers, and judges. By definition, measuring success requires that the components of success are quantifiable. With that in mind, recidivism, compliance and completion, and levels of victim safety are suggested as possible, albeit imperfect, quantifiable metrics of success. The analysis portion of this article assesses these components, as well as others, in concluding that Idaho DV courts are superior to their traditional court counterparts, but that further improvements can and should be made. Lastly, with the goal of stopping what has been largely thought of as an inevitable cycle of intergenerational violence, alternatives and suggestions for improvement will be offered, with a focus on long-term solutions.

Judging from its historical pervasiveness, the dilemma of domestic violence will not abate until society adequately responds to it. The implementation of DV courts is an encouraging initial step in finally formulating an adequate response.

## II. REFUSING TO GO BEHIND THE CURTAIN: THE JUDICIARY'S HISTORICALLY INADEQUATE RESPONSE TO DOMESTIC VIOLENCE

*[T]he law permits [a husband] to use towards his wife such a degree of force as is necessary to control an unruly temper and make her behave herself; and unless some permanent injury be inflicted, or there be an excess of violence, or such a degree of cruelty as shows that it is inflicted to gratify his own bad passions, the law will not invade the domestic forum or go behind the curtain.*

—North Carolina Supreme Court, 1864<sup>5</sup>

*We will not inflict upon society the greater evil of raising the curtain upon domestic privacy, to punish the lesser evil of trifling violence.*

—North Carolina Supreme Court, 1868<sup>6</sup>

Until recently, the judicial system's response to domestic violence has ranged from non-existent to markedly inadequate. Historically, both the judiciary and society simultaneously condoned and ignored domestic violence, considering it purely a private, familial dilemma. This attitude of indifference stemmed from various English common laws that declared a wife to be nothing more than a chattel of her husband. Women, as mere property, were not afforded any remedial measures by the court system. William Blackstone endorsed the husband's power to restrain his wife, by "domestic chastisement," because after all, a husband was legally responsible for his wife's behavior.<sup>7</sup> This common law view was adopted in the United States, and became so ingrained that it was not until the late nineteenth century that courts began to acknowledge that a husband does not have a right to batter his wife.<sup>8</sup>

These reluctant acknowledgments ended up meaning little; for at least a century after courts began to declare that a husband did not have a right to beat his wife, the legal system nonetheless consistently treated assaults inflicted by husbands on their wives differently than all other cases of assault and battery.<sup>9</sup> For example, one of the judiciary's first attempts to go behind the curtain of domestic privacy resulted in a

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5. *State v. Black*, 60 N.C. 262, 267 (1864).

6. *State v. Rhodes*, 61 N.C. 453, 459 (1868).

7. 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 432 (Univ. of Chi. Press 1979) (1765).

8. *Fulgham v. State*, 46 Ala. 143, 147 (1871) (concluding that a husband does not have a right to beat his wife, stating a "wife is entitled to the same protection of the law that the husband can invoke for himself").

9. Reva B. Siegal, *The Rule of Love: Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2118 (1996).

Hammurabi's Code<sup>10</sup>-type of irony: for beating one's wife, one might receive a similar beating at the whipping post.<sup>11</sup> This trend in corporal punishment did not last long, however, and for the most part, offending husbands were rarely prosecuted.<sup>12</sup> Indeed, domestic violence-related arrests did not regularly result in prosecution until the 1970s, in part because of the blasé attitude of many prosecutors, and because victims routinely refused to cooperate, which would regularly result in a dismissal of the case.<sup>13</sup>

Eventually, as a result of feminist and battered women's movements in the 1970s, the justice system's response to domestic violence began to shift.<sup>14</sup> Domestic violence finally came to be recognized not as a private family matter, but as the crime that it is.<sup>15</sup> Congress and state legislatures passed federal and state laws mandating enforcement and further recognizing the need to protect abused women, while the Violence Against Women Act of 1994 "established federal pro-arrest laws and funding mechanisms for victim services."<sup>16</sup> These legislative reforms, coupled with the societal shift away from the perception of domestic violence as a private family matter, led to the inundation of courts nationwide with domestic violence-related cases.<sup>17</sup> In fact, one study estimated a 178% nationwide increase in criminal domestic violence-related cases from 1989 to 1999.<sup>18</sup>

With significantly more arrests of batterers, feminists and victim advocates eventually agreed that the best approach in attempting to stop the cycle of violence would be to provide assistance to both the victim and the offender.<sup>19</sup> Appearing in the 1970s, early batterer intervention groups focused on educating men and promoting non-sexist attitudes.<sup>20</sup> Early on, group treatment was thought to be superior to individualized treatment on the grounds that a group setting assists in facil-

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10. The Code of Hammurabi famously prescribes punishments for wrongdoers that are of like kind to the wrong that is done, such as death for a builder whose faulty construction causes the death of another. *See, e.g.*, CODE OF HAMMURABI §§ 229, 230.

11. *See* Siegal, *supra* note 9.

12. *Id.*

13. *Id.*

14. MELISSA LABRIOLA ET AL., A NATIONAL PORTRAIT OF DOMESTIC VIOLENCE COURTS: REPORT SUBMITTED TO THE NATIONAL INSTITUTE OF JUSTICE 2 (December 2009), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/229659.pdf>.

15. *Id.*

16. *Id.* (citing Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849 (1996)).

17. *Id.*

18. Samantha Moore, *Two Decades of Specialized Domestic Violence Courts*, CTR. FOR COURT INNOVATION 1 (2009), [http://www.courtinnovation.org/sites/default/files/DV\\_Court\\_Lit\\_Review.pdf](http://www.courtinnovation.org/sites/default/files/DV_Court_Lit_Review.pdf).

19. MELISSA LABRIOLA ET AL., CENTER FOR COURT INNOVATION, TESTING THE EFFECTIVENESS OF BATTERER PROGRAMS AND JUDICIAL MONITORING: RESULTS FROM A RANDOMIZED TRIAL AT THE BRONX MISDEMEANOR DOMESTIC VIOLENCE COURT 6 (2005), available at <http://www.courtinnovation.org/sites/default/files/battererprogramseffectiveness.pdf>.

20. *Id.*

itating cognitive change by offering peer support to batterers, is less expensive than one-on-one counseling, and avoids placing blame on the victim.<sup>21</sup> Even though preliminary research on the efficacy of batter intervention programs has been inconclusive, states have not hesitated to put such programs in place.<sup>22</sup>

Indisputably, in initially attempting to go behind the curtain of domestic privacy, neither the judiciary nor the legislature went far enough—alarmingly, while a husband lost his legal right to beat his wife in the late 1800s, he could still legally rape her in many states up until as late as the early 1990s.<sup>23</sup> Certainly, the American legal system has made significant steps in punishing offenders and offering support to victims, but the judiciary’s historically inadequate response to domestic violence must be kept in mind so that we may evaluate not only how far we have come, but how far we still need to go. At last, the domestic curtain is being peeled back, and while for some victims this is not a welcome intrusion, it is arguably a necessary invasion if we are to formulate judicial and legislative responses that will most effectively mitigate what has traditionally been a perpetual societal problem.

### III. A NATIONWIDE RESPONSE: THE IMPLEMENTATION OF SPECIALTY COURTS

*Unlike drug courts, “[w]e don’t clap when you complete a domestic violence accountability program.”*

—New York City judge<sup>24</sup>

While the implementation of domestic violence courts began as a response to a dramatic increase in caseloads, there was also a gradual recognition within the judicial system that domestic violence often presents complicated family-dynamic-related issues to the court, a realization of the necessity in consistently enforcing new domestic violence-related laws, and a push toward the utilization of specialty courts in general.<sup>25</sup>

Certainly, domestic violence is a pervasive and costly problem nationwide. A 2010 survey indicated that 30.3% of women in the United States, or approximately 36.2 million women, have been “slapped,

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21. *Id.*

22. *Id.* (citing a 2005 estimate of 2,500 batterer intervention programs nationwide).

23. A. Monique Clinton-Sherrod & Jennifer Hardison Walters, *Marital Rape and Sexual Violation by Intimate Partners*, in SURVIVING SEXUAL VIOLENCE: A GUIDE TO RECOVERY AND EMPOWERMENT 49 (Thema Bryant-Davis ed., 2011). In North Carolina, in 1993, the spousal exception that precluded men from being prosecuted for the rape of their wives was finally repealed. Act of July 5, 1993, ch. 274, 1993 N.C. Sess. Laws 540.

24. *How Do Domestic Violence Compare to Other Problem-Solving Courts?*, CTR. FOR COURT INNOVATION, <http://www.courtinnovation.org/research/how-do-domestic-violence-compare-other-problem-solving-courts?url=research%2F7%2Farticle&mode=7&type=article> (last visited April 7, 2012).

25. LABRIOLA ET AL., *supra* note 14, at 2.

pushed or shoved by an intimate partner at some point in her lifetime.”<sup>26</sup> Approximately twenty-four percent, or 29 million women, reported experiencing “severe physical violence” at the hands of a partner.<sup>27</sup> A 2012 Fact Sheet produced by the Centers for Disease Control and Prevention estimated, after adjusting for inflation and taking into account medical expenses, mental health costs, and lost hours at work, that the cost of intimate partner violence nationwide approximated \$8.3 billion in 2003.<sup>28</sup>

Of course, domestic violence-related costs are not simply monetary. Although it is difficult to gauge the psychological and other indirect effects of domestic violence, the following statistics are illustrative. One out of four women reported being fearful of their partner, one in five reported being concerned for her own safety, and one in ten missed at least one day of school or work, each due to domestic violence.<sup>29</sup> This data helps illustrate the commonness of domestic violence, and because of the sheer volume of domestic violence cases and the difficulties in enforcing new laws aimed at victim protection, the utilization of specialized DV courts was a logical next step. Specialty courts in general, of course, should not function interchangeably. DV courts, while in some cases may appear similar to that of other specialized courts, are distinct for several reasons and should continue to be treated as such.

On the surface, DV courts and other specialty courts appear to be structured similarly; however, integral differences exist between each court model. Specialty courts, or problem-solving courts, which include drug, mental health, community, and domestic violence courts, began to appear in the 1990s and 2000s.<sup>30</sup> For judges and policymakers, it is imperative to keep in mind that DV courts vary in important ways from other specialty courts. For example, in contrast to drug court and mental health court offenses, DV court offenses by definition involve violent transgressions and frequently require additional precautions to ensure the safety of the victim. Moreover, in 2003, researchers from the Center for Court Innovation conducted interviews and held focus groups with thirty-five judges from New York and California, all of whom had experience with specialty courts.<sup>31</sup> These judges indicated that DV courts

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26. MICHELE C. BLACK ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, THE NAT'L INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY 43 (2011), available at [http://www.cdc.gov/ViolencePrevention/pdf/NISVS\\_Report2010-a.pdf](http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf).

27. *Id.*

28. NAT'L CTR. FOR INJURY PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, UNDERSTANDING INTIMATE PARTNER VIOLENCE (2012), available at [http://www.cdc.gov/ViolencePrevention/pdf/IPV\\_Factsheet-a.pdf](http://www.cdc.gov/ViolencePrevention/pdf/IPV_Factsheet-a.pdf).

29. Michele C. Black et al., Ctrs. for Disease Control & Prevention, *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report* 54 (2011), available at [http://www.cdc.gov/ViolencePrevention/pdf/NISVS\\_Report2010-a.pdf](http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf).

30. LABRIOLA ET AL., *supra* note 14, at 2.

31. *How Do Domestic Violence Compare to Other Problem-Solving Courts*, CTR. FOR COURT INNOVATION, <http://www.courtinnovation.org/research/how-do-domestic-violence->

were distinct from other specialty courts for several reasons, the primary reason being a more adversarial courtroom environment present in DV courts, which is absent in other specialized courts.<sup>32</sup> Surely, the courtroom environment in DV courts *should* be different—in drug courts, participants who test negative for illegal substances are often applauded at each review hearing by all those present—the judge, prosecutor, defense council, probation officers, treatment providers, the other participants, and family members who choose to attend. Of course, applauding a domestic violence offender for not beating up his wife or girlfriend that week would be absurd. Also, domestic violence is not an addiction, but a learned behavior.<sup>33</sup> While treatment for drug addiction has been proven effective, “no counterpart in the domestic violence area, such as batterers’ programs, has emerged as an intervention with comparable, proven efficacy.”<sup>34</sup> Program developers and other evaluators must consider these differences when formulating guidelines and best practices specifically for DV courts.

Currently, over 200 DV specialty courts exist nationwide,<sup>35</sup> many of which share common objectives. However, various approaches and treatment modalities are used across jurisdictions.<sup>36</sup> Relatively speaking, DV courts are still in their infancy. A survey of 129 DV courts<sup>37</sup> across the country indicated that, of those surveyed, two courts were established in the 1980s, 32% were launched in the 1990s, and 66% were instituted in the 2000s.<sup>38</sup> In part because these courts are relatively new, and because various models exist, comprehensive research as to their efficacy has been inconclusive. For reasons articulated later on, further research, especially on a statewide basis, must be conducted. While nothing is irrefutable at this point, qualitative data collected in the nationwide survey of DV courts showed that “the most important feature of a successful domestic violence court appeared to be engagement of all court and community partners from the planning stage onward.”<sup>39</sup> This cooperation and communication among stakeholders at a DV court’s inception is, at the least, a good place to start.

As discussed above, specialty courts differ in important ways; however, in general, all specialty courts have a common goal: to decrease recidivism by first addressing any underlying issues that may have led to the commencement of the crime in the first place. Thus, all specialty

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compare-other-problem-solving-courts?url=research%2F7%2Farticle&mode=7&type=article (last visited April 7, 2012).

32. *Id.*

33. EMILY SACK, FAMILY VIOLENCE PREVENTION FUND, CREATING A DOMESTIC VIOLENCE COURT GUIDELINES AND BEST PRACTICES 2 (Lindsey Anderson et al. eds., 2002), available at [http://www.futureswithoutviolence.org/userfiles/file/Judicial/FinalCourt\\_Guidelines.pdf](http://www.futureswithoutviolence.org/userfiles/file/Judicial/FinalCourt_Guidelines.pdf).

34. *Id.* at 3.

35. *Id.* at 1.

36. *Id.* at 3.

37. LABRIOLA ET AL., *supra* note 14, at 23.

38. *Id.* at 35.

39. *Id.* at 77.

courts “operate under the assumption that the defendant’s criminal behavior stems from underlying problems that treatment or services can resolve.”<sup>40</sup> As discussed later in this article, making this assumption in the context of domestic violence can be problematic.

#### IV. THE NATURE AND COMPLEXITY OF DOMESTIC VIOLENCE

*I really thought I could fix him, . . . [b]ut I couldn't even fix myself.*

—Kristin Contreras<sup>41</sup>

Domestic violence is very complex compared to other offenses that specialty courts attempt to treat, such as drug-related offenses. It is not infrequent for batterers to also exhibit drug or alcohol dependencies, or to be dealing with mental illnesses. In this regard, domestic violence courts must be equipped to deal with drug abuse and mental health issues, just like specialty drug courts and mental health courts, in addition to myriad other concerns unique to domestic violence. These other concerns include victim behavior that can often be puzzling and frustrating to judges, prosecutors, counselors, and others who may not be specifically trained to assist victims of domestic violence, as well as the difficulty in changing ingrained beliefs about violence and women. The next two sections further elucidate these issues, which must be fully understood by policy makers and program developers if they are to adequately respond to this complex dilemma.

##### A. Understanding Victim Behavior

After Kristin Contreras’s husband ripped out her hair with a knife, beat her senseless, punched out a window, and tore apart the rest of the house, he went to jail for eighteen months.<sup>42</sup> Kristin testified against him at trial.<sup>43</sup> After his release, Kristin took him back.<sup>44</sup> After all, they had a son together, and he was apologetic, saying “all the right things.”<sup>45</sup> Kristin’s story highlights what is an extremely common reality of domestic violence: despite what could be frequent and severe beatings, and the mandatory court dates, sentences, and treatment that may follow, many couples decide that they want to remain together. In fact, an anonymous domestic violence court official estimated that between 90% and 95% of couples attempt to stay together after the batterer is arrest-

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40. *Id.* at 3.

41. Nate Green, *Outreach Born from Tragedy*, IDAHO PRESS TRIBUNE, Dec. 25, 2011, at A9.

42. Telephone Interview with Kristin Contreras (Jan. 4, 2012).

43. *Id.*

44. *Id.*

45. *Id.*

ed and placed in the domestic violence specialty court system.<sup>46</sup> Whether the decision to remain together is one for better or for worse, the judicial system's response must reflect that reality.

Kristin experienced the traditional court system as a victim of domestic violence because DV specialty courts had not yet been implemented in Idaho. Even so, an important commonality between the traditional court system and the DV courts existed in the form of Victim Witness Coordinators (VWCs). As will be discussed further below, a VWC generally provides information and support to victims.<sup>47</sup> The VWC assigned to Kristin's husband's case followed up with Kristin several times, even after her husband's release.<sup>48</sup> Because Kristin did not have a telephone, the VWC would make unannounced trips to Kristin's home to check on her.<sup>49</sup> On one of these visits, the VWC arrived at Kristin's home and found her with a black eye.<sup>50</sup> Kristin denied that her husband had had anything to do with it, but Kristin's four-year-old son told the VWC the truth.<sup>51</sup> Additional domestic violence charges were filed against Kristin's husband, in conjunction with a methamphetamine charge.<sup>52</sup> This time however, Kristin refused to assist state officials in the prosecution of her husband.<sup>53</sup>

Victims like Kristin, who are unwilling to participate in the prosecution of their partner, are also common in cases of domestic violence, and reflect another difficulty in gauging the efficacy of batterer treatment. Throughout their ten-year relationship, Kristin's husband returned to jail several times; but upon each of his releases, Kristin would take him back.<sup>54</sup> While DV courts do provide resources for victims, these resources will only be utilized if the victim chooses to make use of them. When a victim is uncooperative like Kristin was, a judge's hands are tied—no jurisdiction exists over victims, and they cannot be compelled to attend counseling or victim's safety planning workshops that are often suggested and encouraged by the court. The end result of this situation is two-fold. First, even if batterers do experience a change in mentality, they are then often propelled back into the exact same environment as before—back to a partner that has not received much-needed counseling or safety planning information. Second, subsequent violence and abuse will go unreported by uncooperative victims who do not want their partners to return to jail.

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46. Interview with anonymous Idaho DV Court official, in Nampa, Idaho (Dec. 2011).

47. CAROL J. HARPER ET AL., ADA COUNTY DOMESTIC VIOLENCE COURT PROGRAM EVALUATION REPORT ii (2010), available at <http://www.isc.idaho.gov/family/AdaCountyDVCProgramEval2010.pdf>.

48. Telephone Interview with Kristin Contreras (Jan. 4, 2012).

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. Green, *supra* note 41.

Because victims very often return to their batterers or become uncooperative, DV courts need to be equipped to handle both scenarios. DV courts are better equipped than traditional courts to deal with this reality because they provide more victim support than the traditional court system; however, additional resources for victims can, and should, be implemented, and will be discussed later on.

#### B. Changing Offenders' Ingrained Attitudes and Beliefs About Violence and Women

A second concern unique to the offense of domestic violence is the nature of the underlying issue being treated. As mentioned above, specialty courts generally attempt to solve social problems by treating offenders' underlying issues; thus relying on the assumption that these underlying issues can in fact be effectively treated. For drug courts, this assumption makes sense; drug-addiction is now becoming increasingly recognized as a neurological disease that can be successfully combated.<sup>55</sup> The same concept applies to mental illnesses—with the proper diagnoses and medication, treatment is a viable and effective option for many. However, unlike drug addiction and mental illness, battering a loved one is arguably not a treatable ailment because it is not a neurological disorder. According to Judge Jerold Lee, who presides over the Nampa Domestic Violence Court, battering is “not just [about] anger,” but “more about power and control.”<sup>56</sup> Domestic violence courts must then operate on the assumption that deeply ingrained attitudes about women and firmly held beliefs can be treated or changed. The idea that comprehensive treatment can effectively alleviate addiction, and that proper medication can assist in treating those with mental health issues is comprehensible. But battering a loved one does not stem from any addiction to battering, nor is battering an illness that can be medically treated. Rather, addressing underlying issues in domestic violence cases often involves the attempted treatment of entrenched attitudes and beliefs, from the conviction that the subjugation of women is acceptable, to an offender's desire to exert control and domination over his partner. This difference in the nature of what exactly is being treated—whether it is addiction, mental illness, or the battering of intimate life partners—must not be overlooked when formulating future policies and procedures for dealing with batterers specifically. A “one-size-fits-all” approach to specialty courts is like attempting to heal a headache with Hydrocortisone, or treat Tourette's with Tums: woefully ineffective and a waste of time and resources.

Thus, it is imperative that our legal system fully understand the concerns unique to domestic violence, such as victim behavior and the

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55. *Drugs, Brains, and Behavior: The Science of Addiction*, NATIONAL INSTITUTE ON DRUG ABUSE (Aug. 2010), <http://www.drugabuse.gov/sites/default/files/sciofaddiction.pdf>.

56. Kristin Rodine, *Nampa Court Aims to Defuse Domestic Violence*, IDAHO STATESMAN, Feb. 13, 2011.

difficulties inherent in attempting to change deep-seated belief systems, in formulating what must be a multifaceted response to this complex social dilemma.<sup>57</sup>

#### V. IDAHO'S DOMESTIC VIOLENCE SPECIALTY COURTS

According to the Idaho State Police, every eighty-eight minutes, a woman in Idaho becomes a victim of domestic violence.<sup>58</sup> In 2011, there were eighteen domestic violence-related deaths, up from thirteen in 2010.<sup>59</sup> Additionally, in Idaho in 2010, the most common relationship between victims and their offenders was that of an "intimate partner" in both categories of reported murders and reported cases of aggravated assault, with intimate partners committing 33.3% of murders and 24% of aggravated assaults.<sup>60</sup> As the most common relationship designation, an intimate partner is more likely than an acquaintance, stranger, relative, or a person otherwise known to the victim, to be the offender in cases of murder and aggravated assault.<sup>61</sup> Furthermore, in 2010 alone, an estimated 166,000 women in Idaho were victims of physical violence, rape, or stalking, at the hands of an intimate partner.<sup>62</sup> Idaho, then, is no exception to the pervasive nature of domestic violence that also exists nationwide.

In 2002, the Ada County Family Violence Court, which would become the first DV court in Idaho, began as a pilot program and focused on assisting families with various legal issues such as divorce, custody, and child support cases.<sup>63</sup> One judge presided over all pending cases that each family was facing, in an attempt to avoid inconsistent or conflicting orders that could occur when multiple judges preside over a case.<sup>64</sup> In 2003, the Ada County Family Violence Court received a three-year grant, which allowed the court to further provide case management and coordination, as well as treatment for the families who had volunteered to participate in the grant program.<sup>65</sup> In 2005, the U.S. Department of Justice, Office on Violence Against Women, awarded a grant to the Idaho Supreme Court to further expand the state's domestic violence

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57. Common sense also dictates that for the batterers who do not actually want to change their beliefs and behavior, DV courts will have little to no impact on their victims' subsequent safety.

58. Natalie Podgorski, *Groups Seek End to Domestic Violence in Idaho*, KTVB.COM (Oct. 4, 2011, 10:15 AM), <http://www.ktvb.com/news/Domestic-violence-one-is-too-many-130995468.html>.

59. *Id.*

60. IDAHO STATE POLICE, CRIME IN IDAHO 2010 UNIFORM CRIME REPORT 26, 31 (2010), available at <http://www.isp.idaho.gov/BCI/CrimeInIdaho2010/Complete%202010%20Crime%20in%20Idaho%20publication.pdf>.

61. *Id.*

62. BLACK ET AL., *supra* note 29, at 74.

63. Idaho DV Court History, E-mail from Amber Moe, Statewide Domestic Violence Court Coordinator, to author (Feb. 7, 2012) (on file with author).

64. *Id.*

65. *Id.*

courts.<sup>66</sup> As a result of this grant, DV courts were developed in Bannock, Bonneville, Bingham, and Jefferson Counties.<sup>67</sup> In 2010, a domestic violence court was developed in Canyon County, and in 2011, one was implemented to serve both Cassia and Minidoka Counties.<sup>68</sup> In fiscal year 2011 alone, domestic violence courts monitored over 1,575 offenders—an increase of 73% from the last two years.<sup>69</sup>

#### A. Main Components and Objectives

Statewide, there are seven domestic violence courts among the Third, Fourth, Sixth, and Seventh Judicial Districts.<sup>70</sup> The Idaho Council on Domestic Violence and Victim Assistance, or the “Council,” issues minimum standards upon which each DV court in the state abides.<sup>71</sup> In 2010, Idaho Domestic Violence Court Policies and Guidelines were finalized, outlining essential elements that each DV court in the state should strive to fully implement.<sup>72</sup> Importantly, these elements are typically nonexistent or at least present to a far lesser degree in the traditional court setting. These nine elements are:

- Case Assignment,<sup>73</sup>
- Expedited Hearings,<sup>74</sup>
- Case Coordination,<sup>75</sup>
- Supervision of Offender Progress,<sup>76</sup>
- Evaluation of Offenders,<sup>77</sup>

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66. *Id.*

67. *Id.*

68. *Id.*

69. IDAHO STATE JUDICIARY, 2011, ANNUAL REPORT 6 (2011), *available at* <http://www.isc.idaho.gov/links/2011AnnualReport.pdf>.

70. IDAHO SUPREME COURT, DOMESTIC VIOLENCE COURTS: REPORT TO GOVERNOR BUTCH OTTER AND THE 1ST REGULAR SESSION OF THE 60TH IDAHO LEGISLATURE 1 (2010), *available at* <http://www.isc.idaho.gov/links/Domestic%20Violence%20Courts-FINAL.pdf>. Additionally, legislation authorizing the implementation of statewide DV courts, the first of its kind, was adopted in Idaho in 2009. The Legislature determined that “[i]t is in the best interests of the citizens of this state to expand domestic violence courts to each judicial district.” Act of Apr. 1, 2009, ch. 79, sec. 3, 2009 Idaho Sess. Laws 218, 219 (codified at IDAHO CODE ANN. § 32-1408(3) (Supp. 2011)). *See also Idaho DV Court History*, E-mail from Amber Moe, Statewide Domestic Violence Court Coordinator, to author (Feb. 7, 2012) (on file with author). *See also* E-mail from Judge Jerold Lee, Magistrate Judge, Nampa Domestic Violence Court, to author (April 11, 2012) (on file with author).

71. IDAHO COUNCIL ON DOMESTIC VIOLENCE AND VICTIM ASSISTANCE, MINIMUM STANDARDS FOR DOMESTIC VIOLENCE OFFENDER INTERVENTION PROGRAMS (2011), *available at* <http://www.icdv.idaho.gov/docs/StrikeoutFormatofFinalApprovedMinimumStandards-04292011.pdf>. [hereinafter MINIMUM STANDARDS].

72. Idaho DV Court History, E-mail from Amber Moe, Statewide Domestic Violence Court Coordinator to author (Feb. 7, 2012) (on file with author).

73. AMBER MOE, IDAHO DOMESTIC VIOLENCE COURT POLICIES AND GUIDELINES 2 (2010) (on file with author).

74. *Id.* at 3.

75. *Id.*

76. *Id.* at 4.

- Courthouse Safety,<sup>78</sup>
- Collaboration with Key Stakeholders,<sup>79</sup>
- Assessment of Each Domestic Violence Court,<sup>80</sup> and
- Batterer Treatment.<sup>81</sup>

Throughout DV courts across the country, offender accountability and victim safety are the two goals most heavily emphasized.<sup>82</sup> DV courts statewide have also adopted these two main objectives. The Idaho DV Court Policies and Guidelines, which are designed to “provide a sound and consistent foundation for the effective operation and ongoing evaluation of Idaho’s domestic violence courts” list the following desired outcomes: (1) holding offenders accountable, (2) enhancing victim safety, and (3) reducing recidivism.<sup>83</sup> Furthermore, the Idaho Legislature finds that “[d]omestic violence courts hold offenders accountable, increase victim safety, [and] have proven effective in reducing recidivism and increasing victim safety.”<sup>84</sup> For reasons discussed later, whether DV courts in general are successful in reducing recidivism is debatable—whether Idaho’s DV courts are successful in reducing recidivism is currently not cognizable, because no recidivism data exists. However, the Legislature’s other findings, that DV courts increase offender accountability as well as victim safety, are more firmly supported.

To determine whether Idaho DV courts actually result in increased offender accountability and victim safety, exactly what these two criterion entail must first be discussed. Holding offenders accountable typically requires a court to do two things. First, the court must closely monitor offenders in order to ensure that they fully comply with the court’s requirements.<sup>85</sup> Second, the court must swiftly sanction those offenders who choose not to comply with court orders.<sup>86</sup> The Idaho DV Court Policies and Guidelines further recognize the importance of immediate consequences, and, conversely, that “quick recognition of offender progress encourages other positive steps.”<sup>87</sup> Positive steps, however, may immediately cease when they cease to be recognized, or when the offender is no longer enrolled in the program. Accordingly, it is easy to see one of the concerns with emphasizing offender accountability as a primary goal: when the offender leaves the confines of the courtroom after completing the program and must then hold *himself* accountable, the threat

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77. *Id.*

78. *Id.* at 7.

79. *Id.* at 6.

80. *Id.* at 7.

81. *Id.* at 5. See also IDAHO SUPREME COURT, *supra* note 72, at 1.

82. See LABRIOLA ET AL., *supra* note 14, at 30–31.

83. MOE, *supra* note 75, at 2.

84. IDAHO CODE ANN. § 32-1408 (2006).

85. EMILY SACK, FAMILY VIOLENCE PREVENTION FUND, CREATING A DOMESTIC VIOLENCE COURT GUIDELINES AND BEST PRACTICES 6 (2002), available at [http://www.futureswithoutviolence.org/userfiles/file/Judicial/FinalCourt\\_Guidelines.pdf](http://www.futureswithoutviolence.org/userfiles/file/Judicial/FinalCourt_Guidelines.pdf).

86. *Id.* at 6.

87. MOE, *supra* note 75, at 2.

of immediate court-imposed sanctions no longer exists. Without the deterrent effect of impending sanctions for bad behavior, an offender may choose to behave differently than he would with jail time or other sanctions hanging over his head.

The second main goal of Idaho DV courts, advancing victim safety, has several components, perhaps most important of which is keeping the victim informed. Informing the victim of the status of the case and her available resources is imperative in furthering a trusting, candid relationship between the court system and the victim. This relationship promotes victim safety in the sense that a victim who trusts the court system and feels “heard” and involved will naturally feel more comfortable in bringing up safety concerns or further incidences of violence. VVCs generally fill this role, facilitating the relationship between the victim and the court system, and providing information to victims regarding safety planning and other resources. Additionally, promoting victim safety includes providing services to victims and their children, being aware of a victim’s full case history, and understanding why certain victims behave the way they do.<sup>88</sup>

Promoting offender accountability and attempting to ensure victim safety are admirable and realistic goals, but they are objectives largely concerned with the short-term. In addition to these immediate objectives, domestic violence courts should also focus on effecting positive changes that endure beyond the mere one to two year time frame in which the court is closely monitoring the offender. Ultimately, these DV courts, and the stakeholders that are a part of them, should strive to facilitate a culture where the need for these courts ceases to exist altogether. Surely, this is an expansive aim, but with this ambition in mind, domestic violence courts can be sure that the procedures implemented in achieving short-term objectives ultimately further this grander ambition.

#### B. The Ada County DV Court Compared to a Traditional Courtroom Setting

As a victim, Kristin Contreras experienced the traditional court system, because DV specialty courts did not yet exist at the time of her husband’s arrests. Today, Kristin and her husband have been separated for five years,<sup>89</sup> and she currently works at Hope’s Door, a women’s and children’s shelter in Caldwell, Idaho.<sup>90</sup> As a case manager and victim’s advocate, Kristin has witnessed many women’s experiences with DV courts. Because of her own experiences, Kristin has a unique perspective on the differences between the traditional court system and the DV

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88. SACK, *supra* note 87, at 5.

89. Telephone Interview with Kristin Contreras (Jan. 4, 2012).

90. Nate Green, *Outreach Born from Tragedy*, IDAHO PRESS TRIBUNE, Dec. 25, 2011, at A9.

courts. The 2010 Program Evaluation Report of the Ada County DV Court<sup>91</sup> (Evaluation Report) corroborates and expounds upon several of Kristin's observations, namely, that cases are processed faster, and victims tend to have more access to valuable and necessary information. The following section compares and contrasts certain aspects of the Ada County Domestic Violence Court to the traditional court setting, based on the qualitative and quantitative findings outlined in the Evaluation Report.<sup>92</sup>

### 1. Case Efficiency

In general, DV courts are most likely better equipped to deal with the complex nature of domestic violence cases more efficiently than traditional courts. Efficiency refers to how quickly an offender is moved from arrest to treatment; generally it is thought that "faster" equals "better." According to the Idaho Domestic Violence Court Policies and Guidelines, "[a]ccelerated disposition . . . speeds resolution of the case, expedites the offender's entrance into treatment, protects the victim and family members from the trauma of being in limbo, and provides additional judicial contact, increasing the court's ability to monitor the offender and provide safety for the victim."<sup>93</sup> This "fast-track" process employed by DV courts compares very favorably to traditional court timelines. The Evaluation Report compared Ada County DV Court timeframes between arrest and sentencing with traditional court settings, as well as the timeframe between arrest and pretrial conferences. The timeframe for the offenders in the DV court from arrest to sentencing averaged 58.1 days; in contrast, the timeframe for offenders in the traditional court system averaged 131.4 days.<sup>94</sup> This marked difference in the overall time span of the case largely resulted from domestic violence court offenders having earlier pretrial conferences than those in the traditional court system. Specifically, the average timeframe from arrest to pretrial conference in domestic violence court was twelve days, whereas traditional court offenders waited an average of 100 days.<sup>95</sup>

In smaller subgroups of twenty, timeframes were measured from the time of arrest to the beginning of treatment. In the DV court group, the average wait from arrest to treatment was 126 days, while the aver-

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91. This report was prepared for the Idaho Supreme Court by a Consultant Evaluation Team, funded through a grant from the Office on Violence Against Women, and looked exclusively at the Ada County Domestic Violence Court. HARPER ET AL., *supra* note 45, at i.

92. The Evaluation Report sought to evaluate all of the 134 offenders in the Ada County DV Court from the period of April 1, 2008 through March 31, 2009, as well as a sample group of the same size randomly chosen from the traditional courtroom setting. HARPER ET AL., *supra* note 45, at 16. A total of 129 offenders were actually evaluated, along with 133 traditional court offenders. *Id.* at 26. A twelve-month follow-up with some of the offenders was conducted as well. The researchers conducted interviews and focus groups, took surveys, and examined files and other administrative data. *Id.* at 16.

93. MOE, *supra* note 73, at 3.

94. HARPER ET AL., *supra* note 45, at 27.

95. *Id.*

age wait was 259.4 days for the group in the traditional court setting.<sup>96</sup> This comparison shows that the Ada County DV Court adequately speeds up the traditional court's standard time frame; however, it raises the question: what good is a faster timeframe to treatment if the treatment provided is essentially ineffective? The efficacy of treatment will be further discussed below.

Thus, across several categories, the Evaluation Report found that DV court timeframes are shorter than traditional court timeframes by a significant amount. At a minimum, this efficiency will allow offenders, victims, and their children, to know and prepare for court-imposed requirements in a timelier manner, which may facilitate the healing process by allowing victims to move on with their lives more quickly. Efficiency can also be directly tied to increased levels of victim safety, discussed below. For example, DV court judges are able to put no-contact orders in place more-promptly if needed or requested.

## 2. Victim Support

In addition to increased case efficiency, the levels of victim support, as well as reported levels of victim satisfaction, appear to be higher in the DV court setting, as opposed to the traditional courtroom. Increased levels of victim support are thought to increase victim safety, on the premise that an informed victim makes better safety-related decisions. Nationally, out of five studies that have analyzed victims' perceptions of fairness in the handling of their respective cases, four of these studies concluded that victims reported higher levels of satisfaction when their partners' cases were adjudicated in DV courts, as opposed to traditional court.<sup>97</sup>

The Evaluation Report detailed several ways in which DV courts address and facilitate victim safety through increased victim support. First, VWCs noted that offenders would be more rigorously monitored and subjected to more frequent review hearings in DV courts than in the traditional court setting.<sup>98</sup> Second, VWCs serve as ongoing liaisons between the court system and the victim; typically, the coordinator will call or write a letter to the victim before each review hearing.<sup>99</sup> This ongoing interaction and communication leads to more informed victims, which in turn promotes knowledgeable decision-making by victims about their safety or the safety of their children.<sup>100</sup> Third, in the DV court system, prosecutors work directly with VWCs, who, as mentioned above, are frequently in direct contact with victims. This system provides prosecutors with more information than they would have otherwise, and the prosecutor is then in a better position to direct police offic-

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96. *Id.* at 28.

97. LABRIOLA ET AL., *supra* note 14, at 8.

98. HARPER ET AL., *supra* note 45, at 52.

99. *Id.*

100. *Id.*

ers to investigate further, question the victim, or send additional patrols to drive by the victim's home.<sup>101</sup> The Evaluation Report concluded that in large part, victims reported feeling safe for several reasons; namely, because their concerns were not only brought to the court's attention, but actually addressed by the court.<sup>102</sup> With the assistance of a VWC, victims are made aware of when review hearings are. At these hearings, they can personally inform the judge of any concerns they may have. Alternatively, if a victim cannot—or does not desire to—attend a review hearing, the VWC informs the court of any fears or apprehensions a victim is harboring. Along these same lines, victims reported feeling safe because they felt like “they had a voice in court,” that they knew “more about what was happening with the offender,” and that they were more aware of available resources because of interactions with the VWC.<sup>103</sup> All of these considerations compare favorably to the traditional court system in large part because of the tremendous involvement of the Victims Witness Coordinators in DV courts.

Additionally, the Evaluation Report's findings tended to show that DV courts further promoted victim safety because of increased levels of offender monitoring, and because of the ability to impose discretionary jail time. The number of judicial contacts with offenders, and the use of probation and discretionary jail time support “the contention that the DV Court provide[s] significantly more supervision and monitoring of offenders than the traditional court model.”<sup>104</sup> More supervision and monitoring may increase victim safety, at least while the offender is being supervised. Specifically, “offenders seen in the DV court had 9.67 judicial contacts as compared with 2.98 for offenders seen in the traditional court.”<sup>105</sup> Supervised probation was also ordered more frequently for offenders in DV court (81.7%) than those in the traditional court setting (30.3%).<sup>106</sup>

Moreover, the ability to impose discretionary jail time by the DV court judge represents an important difference between DV courts and traditional courts. Discretionary jail time is thought to increase victim safety and promote offender accountability because it is a serious sanction that can be imposed immediately by the judge or probation officer.<sup>107</sup> In the Evaluation Report, the *ability* to impose discretionary jail time was ordered in 75.9% of cases for an average of 88.5 days.<sup>108</sup> In comparison, in traditional court, the ability to impose discretionary jail time was ordered in 4.8% of cases for an average of 50 days.<sup>109</sup> However, the Evaluation Report did not indicate how many days, if any, were *ac-*

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101. *Id.*

102. *Id.* at 62.

103. *Id.*

104. *Id.* at 28.

105. *Id.*

106. *Id.*

107. *Id.* at 29.

108. *Id.*

109. *Id.*

*tually imposed* against offenders in either the DV Court or the traditional court. While the threat of immediately imposed jail time might be enough to coerce compliance, actually imposing it would likely result in more of a deterrent effect.

Last, case coordination, discussed below, can also be connected to the safety of victims and their children in the following sense: when a judge is familiar with an offender's history of violent behavior, the court can then make more well-informed decisions, which in turn enhances the safety of victims and their children.

### 3. Case Coordination

Couples going through domestic violence proceedings in the criminal arena often have concurrent civil cases pending, usually for divorce or child custody issues. In the traditional court system, one judge would hear the civil case, while a separate judge would preside over the criminal charges. This would frequently result in judges giving conflicting orders, or custody orders issued by a judge who was not fully aware of the family's experiences with domestic violence. This less-than-fully-informed decision-making led to the One Judge-One Family concept, where the same judge presides over both the criminal and civil cases that one family may be dealing with.<sup>110</sup> Court officials have expressed concern that this model allows the court to obtain more information about the offender's behavior than it would have if presiding only over the civil case, and that the added information, which is usually negative, results in unfair treatment of the offender in the civil suit.<sup>111</sup> However, the benefits of the One Judge-One Family model likely outweigh any disadvantages. Court officials also noted that in the One Judge-One Family model, not only is the judge more aware of each family's particular situation, but offenders and victims will not be subjected to multiple evaluations that can be both time-consuming and costly.<sup>112</sup> Data was only available for 95 offenders in the Ada County DV Court, and of those, 21 had a concurrent divorce, custody, or custody modification case while in DV Court, yet only nine of the 21 had their civil case resolved in DV Court.<sup>113</sup> So, while the One Judge-One Family approach may lead to more informed decision-making by the court, it should be implemented as consistently as possible.

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110. *See id.* at 42–43.

111. *Id.* at 42.

112. *Id.*

113. *Id.* at 29.

C. Batterer Treatment: Valuable to Victims or a Waste of Valuable Resources?

*You can look at past behavior and personality tests, but you can't predict human behavior. The bottom line is, you don't have control over [the offenders'] environment.*

—Dr. George Langfield<sup>114</sup>

For some offenders, treatment has absolutely no bearing on whether they return home and batter their loved ones, or not. As discussed below, offenders with certain personality types are not only unresponsive to counseling sessions, but also detrimental to the potential progress of other group members.<sup>115</sup> Nonetheless, varying models of batterer programs are one of the most commonly used treatment devices in domestic violence courts. In Idaho, treatment is ordered for all offenders in DV Court.<sup>116</sup> However, “the most recent reviews” conclude that these programs “produce no or extremely modest effects.”<sup>117</sup> Differing opinions on why domestic violence occurs in the first place has led to a variety of treatment modalities, and the majority of existing research explores two in particular. In the first, a cognitive-behavioral therapy (CBT) model, therapists insist that because “violence is a learned behavior, nonviolence can similarly be learned.”<sup>118</sup> In CBT, therapists encourage alternatives to violent decisions by first allowing offenders to recognize certain functional aspects that violence may serve, such as forcing compliance or putting an end to an unwanted situation, and then using training and anger management tactics to assist the offender in making a nonviolent decision.<sup>119</sup> The second approach is a feminist-psychoeducational model, which originated in Duluth, Minnesota, and is commonly referred to as the Duluth Model.<sup>120</sup> The Duluth Model is grounded in the basic concept that domestic violence occurs because society permits patriarchal principles to persist.<sup>121</sup> In reality, however, any distinction between these two modalities can be vague; most CBT groups also tackle societal perceptions of women, while many Duluth Model groups discuss violence as a learned behavior.<sup>122</sup>

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114. Telephone Interview with Dr. George A. Langfield, Certified Domestic Violence Psychologist (Feb. 27, 2012).

115. *Id.*

116. HARPER ET AL, *supra* note 45, at 46.

117. SAMANTHA MOORE, CTR. FOR COURT INNOVATION, TWO DECADES OF SPECIALIZED DOMESTIC VIOLENCE COURTS 1, 8 (2009), [http://www.courtinnovation.org/sites/default/files/DV\\_Court\\_Lit\\_Review.pdf](http://www.courtinnovation.org/sites/default/files/DV_Court_Lit_Review.pdf).

118. Julia C. Babcock, Charles E. Green & Chet Robie, *Does Batterers' Treatment Work? A Meta-Analytic Review of Domestic Violence Treatment*, 23 CLINICAL PSYCHOL. REV. 1023, 1026 (2004).

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

On paper, the Duluth Model's main premises is that "batterers want to control their partners and that changing this dynamic is key to changing their behavior."<sup>123</sup> But in practice, the Duluth Model refers to an increased level of collaboration and communication among the judge, prosecutor, defense counsel, parole or probation officers, and treatment facilitators.<sup>124</sup> Dr. George Langfield, a psychologist who evaluates and treats domestic violence perpetrators, explains that this "integrated response" is extremely valuable because it "keeps everyone [not just the offender] accountable."<sup>125</sup> Another distinguishing feature of the Duluth Model is the "power and control wheel," which illustrates various techniques typically employed by batterers to control their partners.<sup>126</sup> Advocates of the Duluth Model insist that ingrained attitudes and long-held beliefs held by batterers can change through an "educational process."<sup>127</sup> Idaho's Minimum Standards reflect a confidence in the ability to change long-held beliefs as well, stating "[t]he primary goals of domestic violence offender intervention are changed attitudes and behaviors resulting in increased victim safety and cessation of abusive conduct."<sup>128</sup> However, two studies, the first conducted in Broward County, Florida, and the second in Brooklyn, New York, indicate that, in general, batterers' attitudes and behaviors change negligibly, if at all, after court-ordered batterer intervention treatment.<sup>129</sup>

First, the Florida study found that whether the batterer attended the treatment sessions or not made no difference in reoccurring incidences of violence.<sup>130</sup> In both the control group and the treatment group, 24% of batterers were rearrested at least one time during their probationary period.<sup>131</sup> Rather than attendance at treatment sessions, the determinant factor in predicting whether batterers would reoffend post-treatment was whether the offender had anything to lose from future violations.<sup>132</sup> "Anything to lose" primarily included a job, a marriage, or a home.<sup>133</sup> A batterer who had one or more of these was less likely to

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123. U.S. DEP'T OF JUSTICE, NAT'L INST. OF JUSTICE, DO BATTERER INTERVENTION PROGRAMS WORK? TWO STUDIES 2 (2003), *available at* <https://www.ncjrs.gov/pdffiles1/nij/200331.pdf> [hereinafter DO BATTERER INTERVENTION PROGRAMS WORK?] (Report based on: SHELLY JACKSON ET AL., U.S. DEPT. OF JUSTICE, NAT. INSTITUTE OF JUSTICE, BATTERER INTERVENTION PROGRAMS: WHERE DO WE GO FROM HERE? (2003), <https://www.ncjrs.gov/pdffiles1/nij/195079.pdf>).

124. Telephone Interview with Dr. George A. Langfield, Certified Domestic Violence Psychologist (February 27, 2012).

125. *Id.*

126. DO BATTERER INTERVENTION PROGRAMS WORK?, *supra* note 121, at 2.

127. MICHAEL PAYMAR & GRAHAM BARNES, BATTERED WOMEN'S JUSTICE PROJECT, COUNTERING CONFUSION ABOUT THE DULUTH MODEL 7, *available at* [http://www.bwjp.org/files/bwjp/files/Countering\\_Confusion\\_Duluth\\_Model.pdf](http://www.bwjp.org/files/bwjp/files/Countering_Confusion_Duluth_Model.pdf).

128. MINIMUM STANDARDS, *supra* note 70, at 4.

129. DO BATTERER INTERVENTION PROGRAMS WORK?, *supra* note 121, at 1.

130. *Id.* at 2.

131. *Id.*

132. *Id.* at ii.

133. *Id.*

batter in the future.<sup>134</sup> The results of this Florida study suggest that the educational process upon which advocates of the Duluth Model rely has no bearing on recurring incidences of violence. Rather, determining whether the offender has a job, a marriage, or a home, is most important in predicting future incidences of violence.

Second, the New York study consisted of two treatment groups: one group underwent treatment for a twenty-six week period, while the second group's treatment period was only eight weeks.<sup>135</sup> The findings presented in the New York study were slightly more positive than those established in the Florida study. For example, batterers who completed the twenty-six week program "committed fewer new violent acts than those who attended the [eight-week program] or those who had no treatment."<sup>136</sup> However, researchers found that neither the twenty-six week program, nor the eight-week program altered offenders' beliefs about domestic violence.<sup>137</sup> Therefore, the length of the treatment program may have some bearing on future acts of violence. But these results further call into question the efficacy of the Duluth Model because one of the main tenets of the model, that attitudes and beliefs of batterers can be altered through an educational process, is not supported by either study.

Admittedly, the two studies above were subject to certain limitations inherent in studying both the nature of domestic violence and the effectiveness of treatment programs in general. First, in a direct response to the National Institute of Justice's studies of Broward County, Florida, and Brooklyn, New York, advocates of the Duluth Model from the Battered Women's Justice Project insist that the two studies above were flawed.<sup>138</sup> Their main contention is that the National Institute of Justice study concluded that batterer treatment is ineffective, without first establishing that the Duluth Model had been wholly employed.<sup>139</sup>

Regardless, the Florida and New York studies also highlighted issues in evaluating batterer treatment programs in general; dropout rates of offenders are typically high, and follow-up with batterers and victims post-treatment can be difficult, if not impossible. Furthermore, these studies both considered a mere reduction in violence an indication of success, on the theory that a total halting of violence is unrealistic.<sup>140</sup>

Halting violence in Idaho, as mentioned above, is the primary goal of domestic violence offender intervention.<sup>141</sup> A Duluth-based model is the treatment modality of choice in Idaho's domestic violence specialty courts. In the 2010 Evaluation Report, all of the 19 offenders in DV court were ordered to complete treatment, while 11 out of 20 offenders

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134. *Id.*

135. *Id.* at 3.

136. *Id.*

137. *Id.*

138. PAYMAR & BARNES, *supra* note 129, at 3.

139. *Id.*

140. *Id.* at 4.

141. *See* MINIMUM STANDARDS, *supra* note 70, at 4.

in traditional court were ordered to treatment.<sup>142</sup> In regards to treatment specifics, the Council sets statewide requirements and minimum standards.<sup>143</sup> This group of seven governor-appointed members from seven regions within Idaho also works to “fund programs that serve victims of crime and to help victims through legislation, advocacy, training, or however deemed necessary.”<sup>144</sup> The minimum standards set by the Council require that standard offender treatment in Idaho consist of a minimum of 52 counseling and education sessions, in a group setting, for ninety minutes each.<sup>145</sup> According to Idaho’s minimum standards, treatment sessions must cover the following content:

- Personal accountability,
- Various foundations of abuse,
- Family roles in addressing abuse,
- Use of power and control techniques,
- Awareness and application of anger management techniques,
- Impact of abuse,
- Equality and safety in relationships,
- Communication skills,
- Relapse prevention,
- Gender stereotyping, and
- Peaceful conflict resolution.<sup>146</sup>

However, some offenders will not benefit from treatment, regardless of the content. For example, offenders with certain personality disorders such as dependent, anti-social, or narcissistic personalities will not gain anything from treatment, and could be a detriment to the progress of the other members of the treatment group.<sup>147</sup> This is because once offenders with these personality disorders formulate their personal beliefs, those beliefs can be managed, but they do not change.<sup>148</sup> Offenders with dependent personalities often have fear issues, which then manifests in exhibiting power and control over one’s partner, while those with anti-social or narcissistic personalities do not empathize with others.<sup>149</sup> For these individuals, it is imperative that evaluations prior to treatment reflect any personality disorders, and that other alternatives, such as simply serving jail time, be explored. Because “[n]either short-

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142. HARPER ET AL., *supra* note 46, at 46.

143. IDAHO CODE ANN. § 18-918(7)(d) (2004) This statute mandated that the ICDVVA “set standards for counseling and treatment ordered for anyone who pleads guilty to or is found guilty of domestic violence.” MINIMUM STANDARDS, *supra* note 70, at 1–2.

144. *The Council*, IDAHO COUNCIL ON DOMESTIC VIOLENCE & VICTIM ASSISTANCE, <http://icdv.idaho.gov/about/TheCouncil.html> (last visited Apr. 6, 2012).

145. MINIMUM STANDARDS, *supra* note 70, at 4.

146. *Id.* at 5.

147. Telephone Interview with Dr. George A. Langfield, Certified Domestic Violence Psychologist (February 27, 2012).

148. *Id.*

149. *Id.*

term jail sentences nor fines nor community service . . . are likely to change the propensity of the offenders to abuse,” perhaps longer sentences should be imposed to increase the deterrent effect.<sup>150</sup> Even if an extended jail sentence does not successfully deter offenders, it does have one salutary effect: if an offender is in jail, he is not battering his partner. The reality that some offenders are better off in jail as opposed to group counseling should be recognized, not only to save time and resources, but also to avoid jeopardizing the effectiveness of the treatment programs for the participants. Simply put, treatment is not appropriate for all domestic violence offenders and before ordering offenders to attend, it should be assessed whether or not an individual is even amenable to treatment in the first place. After all, “you wouldn’t put Ted Bundy in your domestic violence group.”<sup>151</sup>

The questionable efficacy of treatment and counseling of offenders raises the broader issue of how success in the context of batterer rehabilitation should be measured: Should slightly less frequent beatings really be deemed a success?

## VI. THE EFFICACY OF IDAHO’S DOMESTIC VIOLENCE COURTS

*A batterer could simply give lip service to the judge, technically comply with all of the requirements, and then go home and reoffend. And the only way you would know about it is if it got reported.*

—Judge Jerold Lee<sup>152</sup>

### A. How Should Success in this Context Be Defined and Quantified?

How can domestic violence specialty courts effectively measure success? This, according to Judge Jerold Lee, is “the million-dollar question.”<sup>153</sup> Traditional measures of success include recidivism rates, compliance with court-imposed requirements, completion of the treatment program, and levels of victim safety—all of which are evaluative metrics that can be very difficult to assess.

Even though reducing recidivism rates is a common goal among DV courts nationwide, relatively few studies have been done to determine whether or not this goal is actually being achieved.<sup>154</sup> Assessing recidi-

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150. MELISSA LABRIOLA ET AL., CTR. FOR COURT INNOVATION, TESTING THE EFFECTIVENESS OF BATTERER PROGRAMS AND JUDICIAL MONITORING: RESULTS FROM A RANDOMIZED TRIAL AT THE BRONX MISDEMEANOR DOMESTIC VIOLENCE COURT 65 (2005), available at <http://www.courtinnovation.org/sites/default/files/battererprogramseffectiveness.pdf>.

151. Telephone Interview with Dr. George A. Langfield, Certified Domestic Violence Psychologist (February 27, 2012).

152. Interview with Judge Jerold Lee, Magistrate Judge, Nampa Domestic Violence Court, in Nampa, Idaho (Dec. 23, 2011).

153. *Id.*

154. LABRIOLA ET AL., *supra* note 14, at 9–10. At the time of this report, only “10 domestic violence courts ha[d] been evaluated utilizing quasi-experimental methods.” *Id.* at 9.

vism rates can be misleading because, of course, recidivism simply signifies that a batterer was caught and convicted once before. Usually, this requires that a batterer's violent conduct is reported by the victim; if further violent conduct goes unreported, then recidivism rates will not be an accurate measure of whether treatment was effective. Ideally, the success or efficacy of DV courts should mean stopping the cycle of violence, or at the very least, reducing incidences of domestic violence by putting batterers behind bars. But in many cases, determining whether the violence has actually stopped can be complicated, if not impossible. As Judge Lee explained above, in many cases the only way the court system can learn about further incidences of violence is through reports made by victims. Unreported incidents of domestic violence are likely very common; one study indicated that 40% of victims would not report a subsequent incident of domestic violence simply because they found the court experience embarrassing the first time around.<sup>155</sup> DV courts can facilitate the reporting of violent conduct by ensuring that victims not only know who to contact, but that victims feel "heard" when they do report. Despite problems inherent in assessing recidivism rates, DV courts nonetheless seek to reduce future violence by both rehabilitating the offender, as well as deterring the offender through invoking sanctions. Both of these measures, rehabilitation and deterrence, must be studied more in order to determine the best approach to take.

Thus, while a reduction in recidivism seems like an obvious metric by which the efficacy of DV courts could be measured, these rates can be deceiving because of chronic underreporting by victims. Furthermore, it is yet to be determined whether rehabilitation through treatment is even remotely effective in reducing recidivism at all. However, while recidivism rates may never be perfectly accurate, re-arrest records and subsequent reports made by victims should be evaluated as consistently as possible because they might nonetheless be one of the most effective means of determining whether an offender continues to batter his partner.

Other evaluative metrics, compliance and completion, present additional difficulties in gauging the efficacy of DV courts. Compliance with court-imposed requirements and completion of the treatment program go hand-in-hand, because court orders require offenders to complete the treatment program. Idaho's Minimum Standards allow for compliance discharges of offenders from treatment, which are used when offenders have completed the program or are transferring to another program.<sup>156</sup> To obtain a compliance discharge, offenders must make "measurable progress toward being violence free" by acknowledging responsibility for violent behavior in writing, cooperating in group sessions by openly dis-

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Three of the ten showed reductions in re-arrest rates; five of the studies showed no change in recidivism rates; and the last two studies produced mixed results. *Id.*

155. *Id.* at 8.

156. MINIMUM STANDARDS, *supra* note 70, at 6.

curring personal problems, demonstrating peaceful problem-solving skills, and other requirements related to compliance with any other orders imposed by the court.<sup>157</sup> These requirements for a compliance discharge may be quantifiable on their face; however, these requirements are not necessarily effective in determining whether an offender has actually made measurable progress toward being “violence free,” because any offender could easily meet these requirements without actually changing their behavior at home.

As alluded to above by Judge Lee, the problem with using compliance and completion of treatment as evaluative metrics of success is that offenders can comply with court-ordered requirements, as well as complete treatment, and never actually change. Offenders may emerge from 52 counseling sessions, monthly review hearings, jail time or other sanctions, and still believe that women should be controlled and subjugated. These beliefs will ultimately influence and control behavior,<sup>158</sup> and when compliance and completion merely encourage a change in beliefs, and thus do not ensure a change in behavior, it is difficult to regard mere encouragement a success.

Lastly, domestic violence courts are in a unique position to facilitate victim safety, but assessing actual levels of victim safety can be difficult because often, victims do not want to be involved with the court system and are difficult to reach. In a national survey of DV courts, victim safety was a high priority across the board,<sup>159</sup> but court surveys indicated that the “primary challenge” facing these courts was the difficulty in contacting victims and maintaining victim cooperation.<sup>160</sup> Frustratingly, victims can risk their own safety by refusing to testify, withdrawing orders of protection, or simply identifying with the offender.<sup>161</sup> To combat the renouncement of cooperation by victims, it is suggested that the court system contact the victim as soon as possible once an incident occurs.<sup>162</sup> Prosecutors and judges noted the importance of, and encouraged providing victims with, “options counseling,” which essentially provides the victim with information about how the court system works, and what services are available to her.<sup>163</sup>

Ideally, victim safety should be assessed during both the judicial-monitoring and treatment time period, as well as after, when the offender likely returns home to the victim. DV courts typically employ several devices to increase levels of victim safety, at least while the

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157. *Id.* at 7.

158. See Poco Kernsmith, *Treating Perpetrators of Domestic Violence: Gender Differences in the Applicability of the Theory of Planned Behavior*, 52 *SEX ROLES* 11/12, 757, 758–59 (2005), available at <http://ida.lib.uidaho.edu:3513/content/x1r40p5171185603/fulltext.pdf>. Under the theory of planned behavior, social norms, attitudes toward behavior and whether that behavior will have negative consequences, and behavioral intention are thought to strongly influence violent behavioral choices.

159. LABRIOLA ET AL., *supra* note 14, at 48.

160. *Id.* at 74.

161. *Id.*

162. *Id.*

163. *Id.* at 74–75.

court monitors the offender: the use of a victim's advocate, swift issuance of protection orders, and promotion of courthouse safety.<sup>164</sup> While actual safety can be difficult to measure, the importance of evaluating levels of victim safety cannot be overstated. If victims are not any safer than before, then the main purpose behind DV courts is not being fulfilled.

### B. Analysis

In short, Idaho's DV courts are superior to the traditional court setting in dealing with the complexities of domestic violence; whether these courts are successful is unclear, however, in part because success has yet to be defined.

Several features of Idaho's DV courts demonstrate that DV courts are superior to traditional courts in the domestic violence context. In regards to case efficiency and number of judicial contacts, Idaho DV courts are vastly superior compared to the traditional court system.<sup>165</sup> The level of cooperation and emphasis in open communication among stakeholders, as well as DV court professionals' specialized knowledge also support this contention.<sup>166</sup> In evaluating the efficacy of Idaho's DV courts using recidivism rates, compliance and completion rates, and levels of victim safety, Idaho DV courts are heading in the right direction; however, a renewed effort should be made to collect data regarding these potential evaluative metrics.

No research exists regarding recidivism rates of participants in the DV courts in Idaho.<sup>167</sup> Measuring recidivism was "beyond the scope" of the most comprehensive and recent evaluation of any DV court in Idaho; the researchers behind the Evaluation Report did not measure the effects that the DV court process had on recidivism because the group of offenders studied were still in the midst of the court process at the time of the study.<sup>168</sup> However, this study did briefly assess subsequent calls to law enforcement regarding each offender—law enforcement received later calls concerning 30.4% of the offenders in DV court, and 30.8% of offenders in traditional court.<sup>169</sup> The researchers noted that this negligible difference does not necessarily speak to the efficacy of one court system over the other; rather, it is possible that DV court victims "felt more comfortable making calls," and thus were "more likely to report incidents."<sup>170</sup>

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164. *Id.* at 48–51.

165. *See supra* text accompanying notes 92–94.

166. Each court professional that was interviewed or contacted for this article displayed extensive knowledge and understanding regarding the complexities of domestic violence, as well as an enthusiasm for their involvement in the DV court system.

167. E-mail from Amber Moe, Statewide Domestic Violence Court Coordinator, Idaho Sup. Ct., to author (Feb. 23, 2012) (on file with author).

168. HARPER ET AL., *supra* note 46, at 46.

169. *Id.* at 49.

170. *Id.*

As for compliance and completion rates, the Evaluation Report conveyed nominal differences in both completion of treatment and compliance with court orders when comparing the DV court offenders to the traditional court offenders.<sup>171</sup> Specifically, 79% of DV court offenders had completed, or were currently attending, treatment, compared to 54.5% of offenders in traditional court.<sup>172</sup> Furthermore, “[c]omparisons between randomly selected subsets of offenders from the two courts showed no statistically significant differences in outcomes related to compliance with court ordered treatment, . . . probation, . . . or number of missed or positive drug and alcohol tests.”<sup>173</sup> Admittedly, data regarding compliance and completion was available only for a small number of offenders, which—again—emphasizes the need for further data collection and investigation.

Lastly, Idaho’s DV courts better provide tools and resources to victims than do traditional courts, but further research on whether these tools and resources are being used, and how they affect levels of victim safety should be conducted. Every effort should be made to build a relationship with each victim during the court proceedings, as well as after. Victim Witness Coordinators are the individuals that will help accomplish this. Idaho’s VWCs enhance victim safety by providing victims with more knowledge and resources than they would likely have in a traditional court setting, because DV court protocol requires VWCs to contact victims at certain times, and because there are more instances to interact with victims in DV court than in a traditional court. Specifically, VWCs provide information to victims regarding available services and the criminal case with which they are involved, encourage victims to attend and participate in review hearings, and offer support and a sounding board to victims in order to facilitate their recovery.<sup>174</sup> VWCs will generally call each victim both prior to and after every review hearing, and are present at review hearings to provide in-person assistance to victims that choose to attend.<sup>175</sup> In this regard, Idaho DV courts are successful in providing a valuable liaison between the judicial system and the victim.

In conclusion, Idaho’s DV courts, with their dedicated and knowledgeable staff, are well on their way to effectively combating domestic violence and encouraging the societal view that domestic violence is a serious crime. Superior to the traditional court setting in many regards, Idaho’s DV courts will undoubtedly continue to take additional steps to further social change and victim safety. Before these steps can be taken, however, success in the context of domestic violence courts must be de-

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171. *Id.* at xi. The disparity between 79% and 54.5% may not typically be considered nominal, however, the author referred to it as such because as the researchers noted, perhaps as a “function of the small sample size” this difference in completion rates did not reach “statistical significance.”

172. *Id.*

173. *Id.*

174. *Id.* at ii.

175. *Id.* at 52.

fined. Recidivism levels, compliance and completion rates, and levels of victim safety are the best available means of measuring success because they are logically, if imperfectly, quantifiable. With a clear vision of what success in the DV court setting looks like, Idaho DV courts will be able to achieve that success more rapidly.

## VII. ALTERNATIVES AND SUGGESTIONS FOR IMPROVEMENT

*Action that is not well informed can be less than optimal, ineffective, or worse, counterproductive. Movements for social justice, then, need to use the scientific search for truth as a guide.*

—Daniel Saunders<sup>176</sup>

More than anything, further research needs to be conducted to determine the recidivism rates of offenders who complete the court-ordered requirements and the fifty-two weeks of treatment, as well as recidivism rates for offenders who undergo the traditional court experience. To do this, re-arrest reports should be evaluated, as well as additional police reports filed by victims. Communication with victims should not just be a priority solely while their partners remain in the court system, but afterward as well. This will ensure that victims remain aware that they have support in the court system, and in that way will facilitate further reporting of additional incidences of violence. Further research should also be conducted regarding any link between batterer treatment and behavioral changes in violent offenders. Indeed, without more research, this vital movement for social justice will have less than optimal, ineffective, or even counterproductive results.

Aside from additional research, the following sections briefly outline alternatives to the present system, as well as additional suggestions for how the current system could be improved.

### A. Joint Treatment

Joint counseling, in which the victim and offender attend counseling sessions together either in a group with other couples, or alone with the therapist, should be further explored by Idaho DV courts and made available for select couples. Idaho's Minimum Standards currently prohibit couples counseling, allowing for alternative treatment plans, "provided, however, other interventions shall not include couples/conjoint intervention."<sup>177</sup>

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176. LYNETTE FEDER & DAVID R. FORDE, NAT'L CRIMINAL JUSTICE REFERENCE SERV., A TEST OF THE EFFICACY OF COURT MANDATED COUNSELING FOR DOMESTIC VIOLENCE OFFENDERS: THE BROWARD EXPERIMENT 10 (2002), available at <https://www.ncjrs.gov/pdffile/s1/nij/grants/184631.pdf> (quoting Daniel Saunders).

177. IDAHO COUNCIL ON DOMESTIC VIOLENCE AND VICTIM ASSISTANCE, *supra* note 70, at 4.

The idea of offering joint counseling sessions is controversial. Opponents worry that joint counseling could wrongfully shift the blame, in both the victim's and offender's eyes, to the victim. Furthermore, there is the concern that victims would not be able to speak freely for fear of retribution, or, if victims did speak freely, their partners would punish them later that evening. However, proponents argue that for some select couples, joint counseling would be beneficial to the couple as a unit, because the victim is often in dire need of counseling as well. Treating an offender, and then sending him back into the exact same environment does not make as much sense as giving the victim information and tools as well, especially when the vast majority of couples choose to stay together despite domestic violence.

Again, couples therapy would certainly not be appropriate for every couple, and more research would need to be conducted to ascertain what type of couples therapy is most effective. One study compared multi-couple therapy to individual-couple therapy, and the results indicated that multi-couple therapy was more effective.<sup>178</sup> In this study, recidivism rates were compared among a multi-couple group, an individual-couple group, and a comparison group.<sup>179</sup> Results showed that men in the multi-couple groups were significantly less likely than the men in other two groups to reoffend.<sup>180</sup> Other benefits were discovered as well: in the multi-couple group, but not the other two groups, marital satisfaction increased, while marital aggression and the acceptance of it decreased.<sup>181</sup> Researchers concluded that "[t]he recidivism rate of the couple therapy treatment approach used in the present study calls into question standards that prohibit the use of couple therapy to treat domestic violence" and that "conjoint treatment can be a safe and useful way to help couples that have a history of mild-to-moderate partner violence and that freely choose to stay together."<sup>182</sup>

### B. Treatment of Offenders

Increasingly, it is thought that a one-size-fits-all approach to batterer treatment is ineffective in part because it fails to take into account certain offenders' history and other socio-cultural factors that affect why the battering might occur in the first place.<sup>183</sup> Therefore, more research

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178. Sandra M. Stith et al., *Treating Intimate Partner Violence Within Intact Couple Relationships: Outcomes of Multi-Couple Versus Individual Couple Therapy*, 30 J. OF MARITAL AND FAM. THERAPY 305, 305 (2004), available at <http://ida.lib.uidaho.edu:3278/doi/10.1111/j.1752-0606.2004.tb01242.x/pdf>.

179. *Id.*

180. *Id.* Results showed that sixty-six percent of the men in the comparison group recidivated, forty-three percent in the individual couple group, and twenty-five percent in the multi-couple group. *Id.* The comparison group consisted of nine couples, while the other two groups consisted of fourteen couples each. *Id.* Recidivism rates were based on additional reports filed by victims. *Id.* at 313.

181. *Id.*

182. *Id.* at 316.

183. LABRIOLA ET AL., *supra* note 152, at 6 (2005), available at <http://www.courtinnov>

should be conducted as to the plausibility and effectiveness of differentiating treatment programs based on an offender's personality type, history of violence or substance abuse, poverty levels, race, ethnicity, or sexual orientation.<sup>184</sup>

Furthermore, the court should not order treatment for offenders who, because of personality disorders or attitude, are dead set against change and thus potentially deleterious to others in the group. In these cases, incarceration would be a far better option.

### C. Additional Assistance for Victims and Their Children

Lastly, DV courts provide the legal system with a unique opportunity to assist victims directly, as opposed to indirectly by dealing solely with the offender. First, victims should be informed from the beginning that even if their partner is ordered to attend treatment, they are not necessarily safer. Because it is not clear that batterer treatment reduces recidivism, resources might be better off being devoted to victims' assistance. For example, job training, shelters, and housing relocation assistance would greatly benefit many victims who are financially dependent on their abusers and stay in an abusive relationship because they feel like they have no other option.<sup>185</sup> DV courts are in a position to assist victims in finding other options.

This is not to say that a DV court is or should be a "direct service provider" to victims.<sup>186</sup> Rather, a DV court's structure should contain "avenues for comprehensive service provision and safety planning."<sup>187</sup> This means that ideally, DV courts provide victims with an advocate, a confidential area for the advocate and victims to meet, information in writing and in languages that are spoken in the community, as well as links to emergency and legal services.<sup>188</sup> The Evaluation Report noted that victims desired services such as these; specifically, victims sought more information regarding individual or marriage counseling, and showed interest in attending classes about both domestic violence and the court system in general.<sup>189</sup>

In addition, DV courts ought to assist not only abused intimate partners, but the children who witness and experience domestic violence as well. It is estimated that of the children who witness domestic violence at home, almost half are also physically abused.<sup>190</sup> Furthermore, boys and girls exposed to domestic violence will often exhibit gender-

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ation.org/sites/default/files/battererprogramseffectiveness.pdf.

184. *See id.*

185. *See id.* at 64–65.

186. SACK, *supra* note 33, at 9.

187. *Id.*

188. *Id.*

189. HARPER ET AL., *supra* note 46, at 64.

190. JEFFREY L. EDLESON ET AL., JUDICIAL COUNCIL OF CALIFORNIA ADMINISTRATIVE OFFICE OF THE COURTS, PARENTING IN THE CONTEXT OF DOMESTIC VIOLENCE 2 (2003), *available at* [http://www.courts.ca.gov/documents/ParentingDV\\_fullReport.pdf](http://www.courts.ca.gov/documents/ParentingDV_fullReport.pdf).

specific problems, with boys showing more hostility and aggression, and girls exhibiting evidence of depression.<sup>191</sup> Most batterer programs do not typically include parenting instruction or education,<sup>192</sup> but support and educational programs for children who have witnessed domestic violence, as well as parenting classes for both offenders and victims could be highly beneficial to individual families, and ultimately, society as a whole.

Therefore, additional suggestions include improved assistance for the children who witness domestic violence, including safety planning classes and counseling to help children cope with what they have witnessed.<sup>193</sup> Preliminary assessments of these “child intervention” programs are favorable: education, along with individual or group treatment has been shown “to reduce [children’s] use of aggressive behaviors, lessen anxious and depressive behaviors, and improve both . . . mental health” and how these children interact with their peers.<sup>194</sup> By reaching out to children who have been affected by domestic violence, courts may better accomplish what should be the ultimate goal of domestic specialty courts: to stop the cycle of violence altogether.

#### VIII. CONCLUSION

*[DV Court] is the best thing I have ever done—it is why you went to law school, it is why you went into public service, it is why you went into criminal law, because you wanted to make a difference.*

—Idaho DV Court Judge<sup>195</sup>

Idaho’s DV courts, and DV courts nationwide, provide our legal system with a unique opportunity to effect social change. More research must be conducted in order to fully take advantage of this opportunity. Currently, Idaho DV courts provide benefits to victims, and ultimately to society, by offering more information and resources to victims. Offenders’ cases are processed faster and judicial monitoring of offenders is more extensive. With that being said, the full potential of these courts has yet to be tapped.

Ultimately, Idaho DV courts have the power to positively impact society’s visibility of domestic violence as a serious social problem that is

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191. *Id.*

192. *Id.*

193. See SHERRY HAMBY ET AL., OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEPT. OF JUSTICE, CHILDREN’S EXPOSURE TO INTIMATE PARTNER VIOLENCE AND OTHER FAMILY VIOLENCE (2011), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/232272.pdf>.

194. EDLESON, *supra* note 188.

195. CHARLES J. HARPER ET AL., EXECUTIVE SUMMARY: ADA COUNTY DOMESTIC VIOLENCE COURT, PROGRAM EVALUATION REPORT: QUALITATIVE AND QUANTITATIVE FINDINGS 8 (2010), available at <http://www.isc.idaho.gov/family/AdaCountyDVCProgramEvaIExecSummary2010.pdf>.

deserving of resources, as well as dedicated, knowledgeable, and experienced individuals. Even though the cycle of perpetual domestic violence has historically been bleak, with the continued presence of these devoted court professionals the future of Idaho DV courts looks bright.

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