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TOWARD A COMPREHENSIVE GENDER-BASED VIOLENCE COURT SYSTEM

AARON HORTH*

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I. INTRODUCTION

We need to work together to make a meaningful difference towards ending sexual assault. One in six women and one in 33 men will be sexually assaulted in their lifetime, and our youth are at the greatest risk . . . We need to develop a more comprehensive response to help survivors recover

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*from trauma and get the practical support they need to rebuild their lives.*¹

—Lynn Rosenthal, White House Advisor on Violence Against Women

Many victims of gender-based violence suffer in silence, but those victimized by strangers, acquaintances, or anyone other than their intimate partners are exceedingly vulnerable to silence and isolation.² The recent surge of feminist attention to combatting domestic violence,³ although admirable in its goals, has overlooked the needs of many other victims of gender-based violence. Specifically, the movement against domestic violence neglects victims of gender-based violence who do not fall under the domestic violence umbrella.⁴ Sexual assaults are highly underreported,⁵ infrequently prosecuted,⁶ and have notoriously low conviction rates.⁷ Moreover, the criminal justice system shows structural bias against the credibility of sexual assault victims.⁸ Consider, for example, the evidentiary “fresh complaint rule,” which creates a hearsay exception for rape complaints made promptly.⁹ This law relies on the underlying assumption that complaints made sooner are inherently more truthful than those made later and exemplifies the system’s structural bias against victims.¹⁰ Though unintentionally, the surge of attention and resources to combatting domestic violence has only exacerbated the isolation of victims of non-intimate sexual assault and their corresponding hesitation to report these crimes.¹¹

Though the terms “domestic violence” and “sexual assault” conjure very different images, both offenses are manifestations of a larger public health prob-

¹ Rahim Kanani, *White House Q&A: How We Can End Violence Against Women*, HUFF POST IMPACT, (Apr. 6, 2011, 2:45 PM), http://www.huffingtonpost.com/rahim-kanani/violence-against-women-white-house_b_844990.html.

² Although the terms “victim” and “survivor” may be used interchangeably, this Note will use the term “victim” to refer to persons who have experienced gender-based violence, as “survivor” is usually a term adopted by the victim as a marker of her own journey towards self-empowerment and not one to be thrust upon someone without her consent.

³ See Anat Maytal, *Specialized Domestic Violence Courts: Are They Worth the Trouble in Mass.?*, 18 B.U. PUB. INT. L.J. 197, 203; (2008); Jeffrey Fagan, U.S. DEP’T OF JUSTICE, NAT’L INST. OF JUSTICE, *THE CRIMINALIZATION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS*, 9 (1996), <http://www.ncjrs.gov/txtfiles/crimdom.txt>.

⁴ Fagan, *supra* note 3 at 9.

⁵ RETHINKING RAPE LAW: INTERNATIONAL AND COMPARATIVE PERSPECTIVES 228 (Clare McGlynn & Vanessa E. Munro, eds., 2010) (“It is generally agreed that rape remains the most underreported major offense.”).

⁶ *Id.*

⁷ *Id.* at 229 (discussing hurdles to successful rape prosecutions).

⁸ See *supra* note 4.

⁹ Kathryn M. Stanchi, *The Paradox of the Fresh Complaint Rule*, 37 B.C. L. REV. 441, 443 (1996).

¹⁰ *Id.*

¹¹ *Id.*

lem: the domination and subjugation of victims through sexist oppression.¹² As part of an ongoing effort to address the symptoms of this problem, Congress passed the Violence Against Women Reauthorization Act of 2013 (“VAWA”) on March 19, 2013.¹³ This latest version of the bill replaces the phrases “sexual assault and domestic violence” and “domestic violence and dating violence” with “domestic violence, dating violence, sexual assault, and stalking” across the many statutes it governs.¹⁴ This addition mirrors linguistic changes from the 2005 VAWA Reauthorization and expands the class of victims who receive services in a variety of criminal and civil legal endeavors.¹⁵ This change affects the scope of persons served in all of VAWA’s purpose areas and thus helps to create a more uniform and consolidated movement to serve gender-based violence victims.¹⁶ The 2013 Reauthorization also authorizes new funds for Sexual Assault Response Teams, who coordinate with law enforcement and state attorney personnel to improve rates of investigation, prosecution, and conviction in sexual assault cases.¹⁷ Furthermore, the 2013 Reauthorization explicitly includes victims of “domestic violence, dating violence, sexual assault, and stalking” as the target communities for all stated goals, and adds legal assistance to the list of available victim services.¹⁸ This change represents a conscious Congressional effort to extend the bill’s protection to a broader range of victims and consolidate similar programs with uniform goals.¹⁹

The recent national trend towards a proliferation of specialized domestic violence courts that exclude from their services victims of non-intimate sexual assault, dating violence, and stalking undermines the goals of uniformity underlying the 2013 VAWA Reauthorization.²⁰ In four parts, this Note will assert that statutes setting aside specific court systems for domestic violence proceedings

¹² Although violence perpetrated by males against females is most prevalent, same-sex intimate violence is equally concerning though the gender dynamics may differ.

¹³ Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54, at §101.

¹⁴ *Id.*

¹⁵ Violence Against Women Reauthorization Act of 2005, 42 U.S.C. § 13701 (West 2013).

¹⁶ OFFICE ON VIOLENCE AGAINST WOMEN, *VAWA 2013 Summary: Changes to OVW-Administered Grant Programs*, 2 (2013) [hereinafter VAWA 2013 SUMMARY] available at http://www.ncdsv.org/images/OVW_VAWA+2013+summary+changes+to+OVW-administered+Grant+Programs.pdf.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See LISA N. SACCO, CONG. RESEARCH SERV., R42499, *THE VIOLENCE AGAINST WOMEN ACT: OVERVIEW, LEGISLATION, AND FEDERAL FUNDING* (2013) at 11 (consolidating grant programs), 13 (expanding protected populations).

²⁰ See Melissa Labriola et al., *A National Portrait of Domestic Violence Courts*, CTR. FOR COURT INNOVATION, 5 (2009), http://www.courtinnovation.org/sites/default/files/national_portrait.pdf (discussing goals of domestic violence courts surveyed).

should use the new VAWA language as a model to address the entire class of victims affected by gender-based violence. This Note will also argue that such systems' failure to serve the entire class of victims subverts the goals of VAWA and the movement against gender-based violence as a whole. Part II of this Note will set out the relevant Anglo-American legal history of domestic violence and sexual assault law, its progression toward the present moment, and the proliferation of domestic violence courts since the 1970s. Part II will also discuss the similarities between domestic violence and sexual assault from a psychological perspective, with specific attention to similarities between perpetrators. Finally, Part II will examine the Violence Against Women Act and its evolution since its original passage in 1994. Part III will detail the fragmentation between domestic violence and sexual assault services and explain why such fragmentation is detrimental to the movement. Part III will then propose a two-part solution, first creating a "gender-based violence court system" to replace the less inclusive existing domestic violence court systems and second, adding a new criminal domestic sexual assault offense to existing criminal codes. Finally, this Note will argue that by declining to prioritize domestic violence proceedings over the other types of gender-based violence that VAWA seeks to ameliorate, a gender-based violence court system can help empower victims of sexual assault. By using VAWA as a model, a gender-based violence court system can take action to prevent repeat offending and help bring uniformity to the movement against gender-based violence.

II. LEGAL HISTORY

A. *Domestic Violence*

America's legal history of ambivalence towards domestic violence stems, at least in part, from 17th century puritanical notions of the patriarch's responsibility and "duty to enforce rules of conduct within the family."²¹ Indeed, in 1824, the Supreme Court of Mississippi upheld a husband's right to chastise his wife "because he is answerable for her misbehaviour,"²² reiterating an English common law rule that allowed a man to beat his spouse with a rod, so long as it was thinner than his own thumb.²³ Similarly in 1868, a North Carolina court, while refusing to recognize outright a husband's right to beat his wife, placed the issue beyond the court's jurisdiction, stating that the court would not "inflict upon society the greater evil of raising the curtain on domestic privacy to punish the lesser evil of trifling violence."²⁴ Additionally, at common law, the

²¹ EVE S. BUZAWA & CARL G. BUZAWA, *DOMESTIC VIOLENCE: THE CRIMINAL JUSTICE RESPONSE* 62 (3d ed. 2003).

²² *Bradley v. State*, 1 Miss. 156, 157 (Miss. Sup. Ct. 1824).

²³ *Id.*

²⁴ *State v. Rhodes*, 61 N.C. 453, 459 (N.C. Sup. Ct. 1868).

crime of rape exempted husbands from prosecution for raping their wives.²⁵ These are just a few examples of the Anglo-American law's historical position towards gender-based violence in the home.

Toward the end of the 19th century, the tide finally changed and courts and legislatures began to recognize the harm caused by domestic violence.²⁶ This change was due in part to the fact that domestic relationships were becoming more public and correspondingly less taboo to discuss.²⁷ At the turn of the 20th century, however, the movement's progress again stagnated, as the Great Depression and the women's suffrage movement overshadowed other issues affecting women.²⁸ Both feminists and anti-feminists viewed the push for women's voting rights as the most radical demand of the women's rights movement, and as such women's domestic oppression fell into the movement's background.²⁹ At the same time, the criminal justice system began filtering domestic matters into the newly formed family court system.³⁰ Because one of the family court system's goals was to "assist couples to work out problems . . . and seek reconciliation rather than address crimes committed,"³¹ domestic violence was once more pushed into the private and untouchable realm of the home.³²

With his 1962 article, "The Battered Child Syndrome," pediatrician C. Henry Kempe put family violence back on the nation's radar.³³ In the wake of Kempe's article, national concern about domestic violence against children finally breached the domestic sphere's façade of privacy.³⁴ In turn, gender-based violence in the home became a public issue.³⁵ Though Kempe's research quickly mobilized feminist activists, rape crisis centers, and domestic violence shelters to publicize issues of domestic abuse, legal actors were slower to respond

²⁵ Jill Elaine Hasday, *Contest and Consent: A Legal History of Marital Rape*, 88 CALIF. L. REV. 1373, 1375 (2000).

²⁶ See *Fulgham v. State*, 46 Ala. 143, 147 (Ala. Sup. Ct. 1871) (disclaiming husband's right to beat his wife and declaring that the "wife is entitled to the same protection of the law that the husband can invoke for himself"); BUZAWA & BUZAWA, *supra* note 21, at 64 (detailing the twelve states that considered criminalizing domestic violence before the end of the nineteenth century).

²⁷ Maytal, *supra* note 3, at 201.

²⁸ BUZAWA & BUZAWA, *supra* note 21, at 65.

²⁹ Hasday, *supra* note 25, at 1384; see Ellen DuBois, *The Radicalism of the Woman Suffrage Movement: Notes Toward the Reconstruction of Nineteenth-Century Feminism*, 3 FEMINIST STUDIES 63, 63 (1975).

³⁰ BUZAWA & BUZAWA, *supra* note 21, at 65.

³¹ BUZAWA & BUZAWA, *supra* note 21, at 65.

³² BUZAWA & BUZAWA, *supra* note 21, at 65.

³³ Elizabeth Pleck, *Criminal Approaches to Family Violence, 1640-1980*, 11 CRIME & JUSTICE 19, 47 (1989) (citing C. Henry Kempe et al., *The Battered Child Syndrome*, 181 J. AM. MED. ASS'N 105 (1962)).

³⁴ Fagan, *supra* note 3, at 7.

³⁵ Fagan, *supra* note 3, at 7.

and reform.³⁶ Early changes to the criminal code protected only those married women willing to file both their divorce and a restraining order simultaneously, judges infrequently punished violators, and police enforcement of restraining orders was notoriously inadequate.³⁷

Finally, in the 1970s, feminist activists successfully drew enough attention to the newly termed “domestic violence” issue to spur criminal reforms³⁸ and rehabilitative batterer intervention programs,³⁹ while also seeking Department of Justice funding for rape crisis centers, shelters, and civil services.⁴⁰ As more courts began finding an affirmative police duty to protect the “personal safety” of members of the community⁴¹ and that failing to render such protection violated equal protection,⁴² a number of states instituted reform of their policies and procedures related to domestic violence.⁴³

Nevertheless, the law’s response to issues of gender-based violence remains problematic in many ways. For example, although marital rape is now criminalized in all fifty states, a number of jurisdictions maintain lesser sanctions, fewer punishable offenses, or increase procedural difficulty in marital rape prosecutions as compared to those rapes occurring outside of marriage.⁴⁴ Idaho provides a perfect example, for although nine separate offenses constitute the state’s criminal definition of rape,⁴⁵ only two of these offenses can result in a rape conviction when perpetrated by a man against his wife.⁴⁶ Meanwhile in Mississippi, although the crime of sexual battery has no force requirement when committed outside of a marriage, a sexual battery conviction against one’s spouse still requires forceful penetration beyond the force required to constitute non-consensual sex.⁴⁷ In perhaps the most egregious example, South Carolina requires a marital rape be reported to law enforcement within thirty

³⁶ Fagan, *supra* note 3, at 7–8.

³⁷ Fagan, *supra* note 3, at 8.

³⁸ Betsy Tsai, Note, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 *FORDHAM L. REV.* 1285, 1290 (2000).

³⁹ *HANDBOOK OF DOMESTIC VIOLENCE INTERVENTION STRATEGIES: POLICIES, PROGRAMS, AND LEGAL REMEDIES* 424 (Albert R. Roberts ed., 2002) (discussing Boston’s move to open the nation’s first batterer intervention program in 1977 and subsequent trends across the country).

⁴⁰ Fagan, *supra* note 3, at 7.

⁴¹ *Estate of Bailey by Oare v. York County*, 768 F.2d 503, 510 (3d Cir. 1985) (quoting *Thurman v. City of Torrington*, 595 F. Supp. 1521, 1527 (D. Conn. 1984)).

⁴² *Thurman v. City of Torrington*, 595 F. Supp. 1521 (D. Conn. 1984).

⁴³ *See* Maytal, *supra* note 3, at 203; Fagan, *supra* note 3, at 9.

⁴⁴ Hasday, *supra* note 25, at 1375.

⁴⁵ Idaho Code Ann. § 18-6101 (West 1997). The Idaho statute also only allows for persons with penises to rape females. *Id.*

⁴⁶ *Id.* at § 18-6107 (West 1997).

⁴⁷ Miss. Code Ann. §§ 97-3-95, 99 (West 1994).

days, otherwise investigation and prosecution will not be pursued.⁴⁸ Despite the law's recent progress in its response to domestic violence, there is still much room for improvement.

B. *Sexual Assault*

Arguably the most well known historical definition of the crime of "rape" (now called sexual assault in many jurisdictions) hails from the Anglo-American tradition of Lord Coke: "when a man hath carnal knowledge of a woman by force and against her will."⁴⁹ At common law, the crime of rape required both the woman's non-consent and the perpetrator's use of actual physical force.⁵⁰ For example, in *Mills v. United States*, the court reversed and remanded the defendant's rape conviction for a new trial because of an improper jury instruction.⁵¹ The instruction at issue allowed for conviction with no more force required than the amount of force "incident to the performance of the act itself."⁵² Contrary to this jury instruction, courts at that time took the view that, although a woman "object[ed] verbally, if she ma[de] no outcry and no resistance, she, by her conduct, consent[ed]."⁵³ One of the most appalling definitions of the crime of rape comes from *People v. Dohring*, where the court explained:

[T]here can be the crime of rape . . . only where the act is against her will, that if she is conscious of what is attempted, and has the possession of natural mental and physical powers in usual degree, is not overawed by the number of assailants, nor terrified by threats of death or the like; nor in such place and position as that resistance is less; she must resist until exhausted or overpowered, for a jury to find that it is against her will.⁵⁴

Lord Coke's English precedent guided American law's approach to the crime of rape until the feminist movement spawned reform in the 1970s.⁵⁵ Feminist reformers focused on bringing visibility to once silent issues of the psychological, physical, and sexual abuse of women,⁵⁶ and the criminal justice system's

⁴⁸ S.C. Code Ann. § 16-3-658 (Law Co-op. Supp. 1999).

⁴⁹ 3 Edward Coke, *The First Institute of the Laws of England*, 436 (J.H. Thomas ed., 1836).

⁵⁰ *Id.*

⁵¹ *Mills v. United States*, 164 U.S. 644, 649 (1897).

⁵² *Id.*

⁵³ *Id.* at 648 (citing 2 BISH. CR. LAW, § 1122).

⁵⁴ *People v. Dohring*, 59 N.Y. 374, 386 (1874).

⁵⁵ Thomas A. Mitchell, *We're Only Fooling Ourselves: A Critical Analysis of the Biases Inherent in the Legal System's Treatment of Rape Victims (or Learning from Our Mistakes: Abandoning A Fundamentally Prejudiced System & Moving Toward A Rational Jurisprudence of Rape)*, 18 BUFF. J. GENDER, L. & SOC. POL'Y 73, 96 (2010).

⁵⁶ Lori Heise, et al., Center for Health and Gender Equity, *Ending Violence Against Women*, Population Reports, Series L, No. 11, 3 (1999) available at <http://www.k4health.org/sites/default/files/L%2011.pdf>.

inadequate responses.⁵⁷ Internationally, one in three women experience sexual abuse in their lifetimes.⁵⁸ In the United States, roughly one in five women experience physical violence at the hands of an intimate partner, and in one-third to one-half of those cases, women also suffer sexual abuse.⁵⁹

The increase in common awareness of such facts has slowly led to corresponding changes in laws related to rape, domestic violence, and sexual assault.⁶⁰ Many state legislatures are now moving toward eliminating gendered language in rape statutes, weakening or altogether eliminating statutes' force and resistance requirements, and eliminating the mitigated penalties and procedural hurdles for marital rape prosecutions.⁶¹ Most importantly, many jurisdictions are instituting more holistic approaches to prosecuting sexual assaults by partnering with Sexual Assault Nurse Examiners (SANE) and Sexual Assault Response Teams (SART) and creating specialized police and prosecution units to investigate sexual assaults.⁶²

At the same time, as it currently stands, many jurisdictions no longer have a single rape charge but instead have a hierarchy of sexual offenses graded according to their seriousness with a corresponding hierarchy of penalties based on severity.⁶³ For example, Arkansas's criminal code includes five separate sexual assault offenses: rape,⁶⁴ and sexual assault in the first, second, third and fourth degrees.⁶⁵ Similarly, Kentucky prosecutes separately rapes in the first, second, and third degrees,⁶⁶ sexual abuse in the first, second, and third degrees,⁶⁷ and sexual misconduct.⁶⁸ Thus, although there has certainly been progress, the continued existence of statutory force requirements, increased procedural hurdles to marital rape convictions, and gendered statutory language show just how much ground sexual assault law reform still has to cover.

C. Proliferation of Domestic Violence Courts

In the past three decades, a critical reevaluation of the criminal justice sys-

⁵⁷ BUZAWA & BUZAWA, *supra* note 21, at 89.

⁵⁸ Heise, *supra* note 56, at 1.

⁵⁹ *Id.* at 4–5.

⁶⁰ See, e.g., Ronald J. Berger et al., *The Impact of Rape Law Reform: An Aggregate Analysis of Police Reports and Arrests*, 19 CRIM. JUST. REV. 1, 1–2 (1994) (discussing the various changes to rape law since the 1970s); Cassia Spohn & Katharine Tellis, *The Criminal Justice System's Response to Sexual Violence*, 18 VIOLENCE AGAINST WOMEN 169, 169–70 (2012) (discussing recent rape and sexual assault law reform efforts).

⁶¹ *Id.* at 169–70.

⁶² *Id.*

⁶³ *Id.* at 169.

⁶⁴ ARK. CODE ANN. § 5-14-103 (West 2013).

⁶⁵ ARK. CODE ANN. §§ 5-14-124–5-14-127 (West 2013).

⁶⁶ KY. REV. STAT. ANN. §§ 510.040–510.060 (West 2013).

⁶⁷ KY. REV. STAT. ANN. §§ 510.110–510.130 (West 2013).

⁶⁸ KY. REV. STAT. ANN. § 510.140 (West 2013).

tem's response to gender-based violence has resulted in the establishment of over 300 U.S. courts with some type of specialized structure to address domestic violence.⁶⁹ Some of these domestic violence courts are specialized and train court officers specifically in issues relating to intimate partner violence; some set aside special dockets for domestic violence cases; and others follow the models of other problem-solving courts more broadly.⁷⁰ These other problem-solving courts, e.g., drug courts and mental health courts, show more uniformity in structure from jurisdiction to jurisdiction than do the diverse array of domestic violence courts.⁷¹ Some domestic violence courts are criminal courts, some are civil courts, and some courts are experimenting with a new integrated criminal-civil approach to address parties' overlapping civil and criminal court needs.⁷² Although existing domestic violence courts diverge in methods and jurisdiction, nearly all hear misdemeanor charges, roughly half hear felony charges, and about a third hear civil-restraining order violations.⁷³ About three-quarters of domestic violence courts hear cases from former intimate partners and same-sex couples, and about two-thirds hear abuse cases from non-intimate partners.⁷⁴

In many cases, the domestic violence court system brings together a variety of specialized personnel, including trained intake staff who provide victims with information on all available court-sanctioned and community-based resources, judges trained in the intricacies of domestic violence, and law enforcement officers focused on domestic violence.⁷⁵ These specially trained personnel have increased professional efficacy not only because of their specialized training but also as a result of using the domestic violence court systems' special resources.⁷⁶ These resources include case tracking mechanisms to coordinate various legal proceedings involving the same parties, specialized court calendars for domestic violence cases, and batterer monitoring units to increase of-

⁶⁹ Although there exists some discrepancy among researchers on the minimum criteria necessary to constitute an actual "domestic violence court," that distinction is unimportant to this analysis. Labriola, *supra* note 20, at iv; Susan Keilitz, et al., *Specialization of Domestic Violence Case Management in Courts: A National Survey*, NAT'L CENTER FOR STATE COURTS 3 (2000) available at <https://www.ncjrs.gov/pdffiles1/nij/grants/186192.pdf>.

⁷⁰ Labriola, *supra* note 20, at iv, 7.

⁷¹ Labriola, *supra* note 20, at ix.

⁷² Labriola, *supra* note 20, at 5.

⁷³ Labriola, *supra* note 20, at 40. The percentage of courts hearing civil restraining order hearings is skewed nationally by the twenty-four courts in New York (48% of the state's domestic violence courts) that hear civil restraining orders. Labriola, *supra* note 20, at 40 n.11.

⁷⁴ Labriola, *supra* note 20, at 40. All statistics referenced are from a national survey and do not reflect non-response bias. Labriola, *supra* note 20, at iv.

⁷⁵ Keilitz, *supra* note 69, at 5-7.

⁷⁶ Keilitz, *supra* note 69, at 5-7.

fender compliance.⁷⁷

Although the movement toward establishing domestic violence courts coincided with the broader movement to establish problem-solving courts, domestic violence courts are better viewed as a similar yet separate system because of a few major divergences in methods and goals.⁷⁸ Both models assume that the behaviors they seek to deter result from some larger societal problem that civil services can more effectively address. Broader problem solving courts focus on victimless crimes, however, and are thus substantially different from the largely victim-focused domestic violence court system.⁷⁹

For analytical purposes, this Note will focus on how the domestic violence court systems' purported goals serve to benefit victims of non-intimate sexual assault. Based on the existing systems' congruence, this Note will then outline a proposal to integrate sexual assault victims into one specific domestic violence court model. The proposal will detail consolidation strategies for an integrated civil and criminal court in Dorchester, Massachusetts that focuses on pre- and post-trial criminal matters and contested civil restraining order hearings.⁸⁰ Despite the vast divergence among methods, mechanisms, and implementing actors, surveys of these court systems show that most domestic violence courts share some pervasive goals. The most widely reported goals from the varied jurisdictions are (in order of prevalence): increased victim safety, improved victim advocacy, increased batterer accountability, improved case management, and increased deterrence of future violence.⁸¹ Moreover, the Judicial Guidelines and Best Practices published by the Family Violence and Prevention Fund lists among the program's nine core principles that domestic violence courts should seek to uphold "victim and child safety," "offender accountability," "information sharing and informed decision-making," and "institutionalized coordination of procedures and services."⁸²

D. *Legal Invisibility of Sexual Assault Victims*

In contrast to the legal reforms regarding domestic violence, less enthusiasm drives the effort to improve the criminal justice system's response to sexual assault generally, and thus sexual assault victims remain largely neglected by existing law. Established precedent with regard to criminal sexual assault pros-

⁷⁷ Keilitz, *supra* note 69, at 5–7.

⁷⁸ Labriola, *supra* note 20, at 3.

⁷⁹ Labriola, *supra* note 20, at 3.

⁸⁰ Christy Visher et al., *Urban Inst. Pol'y Ctr., Final Report on the Evaluation of the Judicial Oversight Demonstration: Findings and Lessons on Implementation*, 10 (2007), available at www.urban.org/UploadedPDF/411498_Volume_2_Final.pdf.

⁸¹ Keilitz, *supra* note 69, at 12; Labriola, *supra* note 20, at v–vi.

⁸² Emily Sack, *Family Violence Prevention Fund, Creating a Domestic Violence Court: Guidelines and Best Practices*, 5–6 (2002) available at http://www.futureswithoutviolence.org/userfiles/file/Judicial/FinalCourt_Guidelines.pdf.

ecutions reflects many structural forces silencing sexual assault victims. A systemic hesitance to believe rape victims' allegations and a corresponding tradition of attacking complainants for their character underlies most existing rape law precedent.⁸³ This view of victims' credibility results from a historical legal climate wherein rape victims were frequently interrogated to the point of nearly being "put on trial" themselves.⁸⁴ Until the 1960s, most courts demanded psychiatric assessments of complainants in sex crime prosecutions because:

[P]rominent psychiatrists have explained that a woman or a girl may falsely accuse a person of a sex crime as a result of a mental condition that transforms into fantasy a wishful biological urge . . . [or] an aggressive tendency directed to the person accused or from a childish desire for notoriety.⁸⁵

While the last century has shown an increase in legislators' attempts to restructure the system to better punish rapists for antisocial behavior and serve justice to victims, vestiges of the former system are still painfully present. Examples of rape-related law reforms include the passage of rape shield statutes that protect victims' sexual histories from interrogations and Victim Rights Amendments that give victims affirmative rights to respectful treatment in legal proceedings.⁸⁶ However, even as recently as 1987, one scholar reported that "the law's abhorrence of the rapist . . . has been matched only by its distrust of the victim."⁸⁷ The evidentiary fresh complaint rule, for example, relies on an underlying assumption that rape victims' allegations are inherently suspect and must be subject to extensive corroboration.⁸⁸ The rule allows witnesses to give what would otherwise be inadmissible hearsay testimony about prompt complaints made by victims of sexual assault to corroborate their stories, based on their supposedly enhanced credibility.⁸⁹ This effectively gives juries the false notion that victims who make rape complaints sooner are necessarily more truthful than those who complain later.⁹⁰ All of this combined with a dismal three percent conviction rate for rapes makes victims of rape and sexual assault incredibly hesitant to report crimes to law enforcement, to participate in the criminal justice process, or to seek available civil remedies like restraining orders or tort actions for resultant damages either for their own protection or for

⁸³ Tera Jckowski Peterson, *Distrust and Discovery: The Impending Debacle in Discovery of Rape Victims' Counseling Records in Utah*, 2001 UTAH L. REV. 695, 695 (2001).

⁸⁴ *Id.* at 696.

⁸⁵ *Ballard v. Super. Ct. of San Diego Cnty.*, 410 P.2d 838, 846 (Cal. 1966).

⁸⁶ Jckowski Peterson, *supra* note 83, at 697.

⁸⁷ SUSAN ESTRICH, *REAL RAPE* 4 (1987).

⁸⁸ Stanchi, *supra* note 9, at 444.

⁸⁹ *See* Stanchi, *supra* note 9, at 444.

⁹⁰ Stanchi, *supra* note 9, at 443.

restitution.⁹¹

This silencing of sexual assault victims results not only from the criminal justice system's structural biases, but also from agency discrimination regarding who receives the scarce available social service resources. Because of the larger amount of attention paid to issues of domestic violence, a significantly larger amount of money and resources are funneled toward services for victims of domestic violence than for victims of sexual assault.⁹² Although the Women's Bar Foundation of Massachusetts' largest pro bono program, "Family Law Project for Battered Women,"⁹³ allocates funds to victims of domestic violence, no parallel resource exists for victims of sexual assault.⁹⁴ Similarly, the Family Law division of Greater Boston Legal Services provides civil legal assistance to victims of domestic violence in need of civil restraining orders, but it does not have a program to assist sexual assault victims with parallel restraining order proceedings.⁹⁵ This distinction does not reflect the agency's prejudice, but instead is an inevitable result from the fact that Massachusetts Family and Probate Courts have sole jurisdiction over abuse prevention orders (those available to victims of domestic violence), but not harassment prevention orders (those available to victims of sexual assault outside of the home).⁹⁶ Indeed, until 2010, victims of sexual assault were unable to obtain any sort of restraining order against their rapists in Massachusetts unless they were related, romantically involved, or living together, as abuse prevention orders are only applicable to domestic, romantic, and familial relationships.⁹⁷

⁹¹ *Reporting Rates, RAPE, ABUSE & INCEST NATIONAL NETWORK (RAINN)*, <http://www.rainn.org/get-information/statistics/reporting-rates> (last visited Feb. 2, 2014).

⁹² Judith Berman, *Domestic Sexual Assault: A New Opportunity for Court Response*, 55 JUV. & FAM. CT. J. 23, 27 (2004) ("[D]omestic violence as a phenomenon has grown to receive significantly more . . . dollars for survivor services and increasing visibility on the local, state, and national levels.").

⁹³ *About the WBA*, WOMEN'S BAR FOUNDATION, http://www.womensbar.org/content.aspx?page_id=22&club_id=808000&module_id=72366 (last visited Feb. 2, 2014).

⁹⁴ *Family Law Project for Battered Women*, WOMEN'S BAR FOUNDATION, http://www.womensbar.org/content.aspx?page_id=22&club_id=808000&module_id=73217 (last visited Feb. 2, 2014).

⁹⁵ *Family Law*, GREATER BOSTON LEGAL SERVICES, <http://www.gbls.org/our-work/family-law> (last visited Feb. 2, 2014).

⁹⁶ Memorandum from Chief Justice Lynda M. Connolly, Trial Court of the Commonwealth for District Court Judges, Clerk-Magistrates and Chief Probation Officers I (Apr. 13, 2010) available at http://www.docstoc.com/docs/109551345/Harassment-Prevention-Orders-G.L.-c.-258E_-Trans.-1042_.

⁹⁷ Hayley Jodoin, *Closing the Loophole in Massachusetts Protection Order Legislation to Provide Greater Security for Victims of Sexual Assault: Has Massachusetts General Laws Chapter 258e Closed It Enough?*, 17 SUFFOLK J. TRIAL & APP. ADVOC. 102, 103 (2012); see MASS. GEN. LAWS ch. 209A, §§ 1–10 (2010) (detailing requirements for pre-2010 protection order).

E. *Similarities Between Domestic Violence and Sexual Assault*

Although a false rhetoric makes domestic violence and sexual assaults seem discrete, domestic violence, dating violence, stalking, sexual assault, and harassment are all symptoms of a greater public health problem. This problem, succinctly, is misogyny among those holding power in an ingrained patriarchal system. Although early understandings of rape and domestic violence differentiated between sexual assault and domestic violence because of the added sexual nature of the former, feminist reformers in the 1970s challenged this stance based on a new understanding that rape is fundamentally about power and anger, and that “sexuality is only the vehicle of expression.”⁹⁸ In other words, because both domestic violence and sexual assault are symptoms of unequal power dynamics between genders, the two issues are not truly discrete.

Feminist theorists’ work since the 1970s has changed the landscape of power for victims of gender-based violence. The work done by these activists to increase society’s broader understanding of the ways pornography, mass media images, and institutional sexism perpetuate cultural misogyny changed the way gender-based crimes are viewed. In change, this change made it more feasible for jurists, lawmakers, scholars, and activists to cognize rape not as the aberrant acts of sex-crazed deviants but instead as an exhibition of an existing cultural discourse on the value of women.⁹⁹

Domestic violence is similarly power-based. Historically, domestic violence was conceptualized as a domestic—and thus private—issue, as demonstrated by the previously detailed legal history of the matter.¹⁰⁰ However, when domestic violence emerged from behind the veil of marital secrecy as a pervasive and problematic behavior, psychologists began to cognize domestic violence as a tool used by the perpetrating partner to assert and maintain control within the relationship or family.¹⁰¹

Domestic violence is widely believed to be learned criminal conduct with a high recidivism rate, which is often transmitted trans-generationally from parents to children.¹⁰² Sexual aggression, like domestic violence, also seems to be transmitted inter-generationally. A study focusing on sexual offenders’ impressions of their interpersonal relationships during childhood found not only higher rates of physical and sexual abuse during childhood than among the normative samples, but also high levels of neglect and an almost ubiquitous lack of positive exposure to examples of constructive solutions to conflict.¹⁰³

⁹⁸ David Lisak, *Sexual Aggression, Masculinity, and Fathers*, 16 SIGNS 238, 241 (1991) (citing NICHOLAS GROTH, *MEN WHO RAPE* (1991)).

⁹⁹ *Id.*

¹⁰⁰ See *infra* Part II.

¹⁰¹ Roger S. Dutson, *Domestic Violence*, 7 UTAH B.J., 42, 42 (1994).

¹⁰² *Id.* at 43

¹⁰³ Julie McCormack et al., *Sexual Offenders’ Perceptions of Their Early Interpersonal Relationships: An Attachment Perspective*, 39 J. SEX RES., 85, 91 (2002).

This study also found a number of other similarities in early childhood development between violent non-sexual offenders and rapists.¹⁰⁴ Rapists and violent offenders both proved more likely than the average survey respondent to have experienced childhood physical abuse, unresponsive father figures, and less restrictive boundaries from both parents.¹⁰⁵ Rapists and other violent offenders also showed significantly higher rates of childhood physical abuse than did perpetrators of non-violent offenses and child molesters.¹⁰⁶

Much like perpetrators of domestic violence, research shows high rates of recidivism among other violent sex offenders even after participating in offender treatment programs.¹⁰⁷ Furthermore, research indicates that many incarcerated sex offenders have committed additional sex crimes beyond those for which they were convicted.¹⁰⁸ Intriguingly, this trend is also reflected among undetected rapists. In a study conducted by David Lisak and Paul Miller of 1,882 men on their past sexual behaviors, of the 120 men who described taking actions that would constitute at least one legal rape (though the survey questions never used the word "rape"), 63.3 percent had in fact committed multiple rapes.¹⁰⁹ When factoring out the respondents who described perpetrating only one rape, the seventy-six repeat rapists averaged the commission of 5.8 rapes per person.¹¹⁰ The survey also tracked respondents' levels of non-sexual interpersonal violence.¹¹¹ While the non-rapists surveyed averaged 1.41 acts of interpersonal violence, single act rapists had an average number of 3.98 acts of violence, and repeat rapists averaged 13.75 acts of violence.¹¹² Overall, respondents who perpetrated rapes showed much higher propensities for perpetrating other sorts of power-motivated violence.¹¹³

Although Lisak's research focused only on gender-based violence perpetrated by men upon women, his investigations of the motives behind gender-based crimes provide crucial insight into the interconnected nature of sexual and non-sexual gender-based violence. In two separate but related studies, Lisak and his research partners found the same psychological factors present in perpetrators of relationship violence and sexual aggressors.¹¹⁴ The first study focused on

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ David Lisak & Paul Miller, *Repeat Rape and Multiple Offending Amongst Undetected Rapists*, 17 VIOLENCE & VICTIMS 73, 74 (2002) (citing R. A. Prentky et al., *Recidivism Rates Among Child Molesters and Rapists: A Methodological Analysis*, 21 L. & HUM. BEHAV. 635 (1997)).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Matthew Jakupcak et al., *The Role of Masculine Ideology and Masculine Gender Role*

how gender roles contribute to male-perpetrated relationship violence,¹¹⁵ and the second considered motivational factors in the lives of men deemed sexually aggressive.¹¹⁶ In the first study of gender roles and men's propensity towards relationship violence, men who experienced masculine gender role stress (i.e., perceived challenges to their reputations for masculinity) showed higher levels of anger, aggression, and autonomic arousal (commonly referred to as the "fight or flight syndrome") when arguing with their female partners than men who did not experience gender role stress.¹¹⁷ Similarly, in the second study, sexually aggressive non-incarcerated men paid much more attention to gender relations between men and women and were more likely to feel belittled or put down by women and to respond aggressively to these feelings.¹¹⁸ These psychological studies show that domestic and sexual violence are much more related than once thought, and that both are symptoms of the same societal problem.

F. History of VAWA

1. Original 1994 Legislation, 2000 and 2006 Reauthorizations

The original version of VAWA, enacted in 1994 as Title IV of the Violent Crime Control and Law Enforcement Act,¹¹⁹ reflected feminist activists' pressure on Congressional actors to address the problem of gender-based violence.¹²⁰ The legislation took a threefold response to gender-based violence, seeking simultaneously to increase enforcement and prosecution of crimes, fund community educational programs aimed at preventing gender-based violence, and improve victim services.¹²¹ As part of its educational program, "VAWA authorized grants for education and training for judges and court personnel in state and federal courts on the laws of rape, sexual assault, domestic violence, and other crimes of violence motivated by the victim's gender."¹²²

In order to ensure effective and efficient accomplishment of these goals, a

Stress in Men's Perpetration of Relationship Violence, 3 *PSYCHOL. MEN & MASCULINITY* 97, 97 (2002).

¹¹⁵ David Lisak & Susan Roth, *Motivational Factors in Sexually Aggressive Men*, 55 *J. PERSONALITY & SOC. PSYCHOL.*, 795, 795 (1988); Jakupcak et al., *supra* note 114, at 97.

¹¹⁶ Lisak & Roth, *supra* note 115.

¹¹⁷ Jakupcak et al., *supra* note 114, at 103.

¹¹⁸ Lisak & Roth, *supra* note 115, at 100.

¹¹⁹ Violent Crime Control and Law Enforcement Act, Pub. L. 103-322, 108 Stat. 1796 (1994) (codified as 42 U.S.C. § 13701 (2012)).

¹²⁰ Garrine P. Laney, *Cong. Res. Service, Violence Against Women Act: History, Federal Funding, and Reauthorizing Legislation*, 1 (2005), available at http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1716&context=key_workplace; see SACCO, *supra* note 19; see also Violence Against Women Act, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902 (1994) (codified as amended in scattered sections of 8, 16, 18, 28, and 42 U.S.C.).

¹²¹ Laney, *supra* note 120, at 1-2; see also Violence Against Women Act, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902 (1994).

¹²² SACCO, *supra* note 19, at 3.

new government agency was necessary.¹²³ To administer the newly mandated grants, the Department of Justice created the Office on Violence Against Women (“OVW”) in 1995.¹²⁴ OVW’s original agency mission was to fund services for both male and female victims of domestic violence, sexual assault, dating violence, and stalking for men and women, while recognizing that women are more vulnerable to each form of violence, save stalking.¹²⁵ In 1999, OVW launched a program called the Judicial Oversight Demonstration Initiative (JOD)¹²⁶ to test the efficacy of community based responses and to “improv[e] victim safety and offender accountability in intimate partner violence (IPV) cases . . . through a strong judicial response, combined with coordinated community services and integrated justice system policies.”¹²⁷ The JOD funded three pilot domestic violence court test sites in Dorchester, Massachusetts, Washtenaw County, Michigan, and Milwaukee, Wisconsin.¹²⁸ This Note will take a closer look at the JOD-funded domestic violence court test in Dorchester, Massachusetts and propose a plan to integrate the jurisdiction’s sexual assault victims into the court’s pre-existing systems.

The next iteration of VAWA came five years later when Congress passed the Victims of Trafficking and Violence Prevention Act of 2000, including Division B, the Violence Against Women Act of 2000.¹²⁹ Among other things, the 2000 Reauthorization expanded the group of individuals eligible for services to include victims of dating violence, children with parents accused of domestic violence, and immigrant victims of sexual violence.¹³⁰ The new services offered in the 2000 Reauthorization included transitional housing assistance for victims, aid to non-citizen victims of domestic and sexual violence in leaving abusive partners and participating in prosecution, and enhanced protections for children of abusive partners and elderly women.¹³¹ This version of VAWA made changes to federal criminal law by increasing the penalties for inter-state stalking and repeat sexual offenses.¹³² The law also added a requirement of pre-trial detention for offenders charged with child pornography or other federal

¹²³ 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758, Title IV, (2002) (codified as amended in scattered sections of 5, 15, 18, 27, 28 and 42 U.S.C); SACCO, *supra* note 19, at 4.

¹²⁴ 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758, Title IV, (2002); SACCO, *supra* note 19, at 4.

¹²⁵ See SACCO, *supra* note 19, at 4–5.

¹²⁶ Visher et al., *supra* note 80.

¹²⁷ Visher et al., *supra* note 80, at 1.

¹²⁸ Visher et al., *supra* note 80, at 1.

¹²⁹ Victims of Trafficking and Violence Protection Act, Pub. L. 106-386, 103, 104 Stat. 1464, 1469 (2000) (codified as 22 U.S.C. § 7101).

¹³⁰ Laney, *supra* note 120, at 2.

¹³¹ Laney, *supra* note 120, at 2.

¹³² Laney, *supra* note 120, at 2.

sex offenses, in the interest of victim safety.¹³³

The next VAWA Reauthorization in 2005 was characterized by its increased emphasis on community based holistic responses to issues of “domestic and dating violence, sexual assault, and stalking.”¹³⁴ The 2005 Reauthorization introduced this language, which later reappeared in the 2013 Reauthorization.¹³⁵ The 2005 Reauthorization encouraged collaboration and cooperation among law enforcement, health sector employees, and community actors to promote both enforcement and prevention.¹³⁶

2. 2013 Reauthorization

The 2013 VAWA Reauthorization, in addition to renewing funding for the Act’s previously established programs, contained several important new areas of expansion and consolidation. First, the 2013 Reauthorization merged two separate grant programs into one consolidated effort to improve the experiences of individuals and families victimized by domestic violence, dating violence, sexual assault, or stalking within both the criminal and civil court systems.¹³⁷ This consolidated program’s goals included improving civil and criminal system responses to gender-based violence, educating court officials on gender-based violence, providing legal services to victims, and collecting data in order to better serve victims’ civil litigation needs.¹³⁸

To those ends, this consolidation helped fund programs that educate court officers and personnel on issues of gender-based violence.¹³⁹ These educational topics included the dynamics of domestic violence, dating violence, sexual assault, and stalking; common perpetrator behaviors and warning signs; and victims’ safety, security, privacy, and confidentiality needs.¹⁴⁰ Most importantly, though, this program specifically authorized the use of funds granted to establish or enhance specialized court programs, community based justice initiatives, offender accountability programs, and education and outreach programs like those instituted by the domestic violence court systems.¹⁴¹ The 2013 Reauthorization took important steps to integrate resources available to victims of gender-based violence and should serve as a model for efforts to improve uniformity in the law’s response to various forms of gender-based violence.

¹³³ Laney, *supra* note 120, at 2.

¹³⁴ Laney, *supra* note 120, at 3.

¹³⁵ Laney, *supra* note 120, at 3.

¹³⁶ Laney, *supra* note 120, at 3.

¹³⁷ VAWA 2013 SUMMARY, *supra* note 16, at 6.

¹³⁸ VAWA 2013 SUMMARY, *supra* note 16, at 6.

¹³⁹ Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 at § 1301(b)(3) (2013) (codified as 42 U.S.C. § 10420 (West, 2013)).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

III. BROADER INCLUSION: WHY WE NEED IT AND HOW TO ACHIEVE IT

A. *Fragmentation: Why It's a Problem and How to Solve It*

To combat the disparity in resources between victims of sexual assault and domestic violence, the existing domestic violence court systems should expand its scope to create the newly termed “Gender-Based Violence Court System” which will have jurisdiction over matters relating to sexual assaults as well as domestic violence. By using VAWA as a model, the domestic violence court systems in Massachusetts and across the nation can significantly expand the resources available to victims of sexual assault and strengthen the movement to combat gender-based violence. The broad underlying goals of domestic violence court systems are consistent with VAWA’s stated aims. By simply broadening the demographic that may access pre-existing legal and civil service institutions, the domestic violence court system can extend a crucial lifeline to victims of non-intimate sexual assault.

Both domestic violence and sexual assault systems seek to improve services for victims through collaboration between law enforcement, medical actors, and community members, to increase community awareness of and involvement in the prevention of gender-based violence, and to connect victims with social services to rebuild their lives after victimization.¹⁴² By combining the pre-existing resources in domestic violence court systems with independent sexual-assault-specific resources and agencies, judicial, law enforcement, and social service personnel can better coordinate a response to issues of gender-based violence in a way that does not ignore or discriminate against factions of the victim community.¹⁴³

Because most victims of gender-based violence have similar legal needs, integrating domestic violence and sexual assault response systems should be both reasonable and effective. Both classes of gender violence victims are assigned Victim Witness Advocates to support them through the criminal process, and both deserve access to court personnel with specialized training in gender-based violence.¹⁴⁴ All victims of gender-based violence may require protective orders against their assailants,¹⁴⁵ may desire intervention or treatment programs for the perpetrators,¹⁴⁶ and would benefit from working with police officers

¹⁴² See Laney, *supra* note 120, at 3; Visher et al., *supra* note 80, at 2, 4.

¹⁴³ See Berman, *supra* note 92, at 27 (discussing lack of attention paid to issues of poverty, housing, and employment for sexual assault victims compared with domestic violence victims).

¹⁴⁴ Visher et al., *supra* note 780 at 98; Annie Kerrick, *Justice Is More Than Jail: Civil Legal Needs of Sexual Assault Victims*, 57 *ADVOCATE* 38, 41 (2014).

¹⁴⁵ MASS. GEN. LAWS ANN. ch. 209A (2014, West); MASS. GEN. LAWS ANN. ch. 258E (2010, West).

¹⁴⁶ See Berman, *supra* note 92, at 31 (discussing benefits of cooperation amongst service providers working with domestic abusers and sex offenders).

most familiar with their situations.¹⁴⁷ Finally, all victims of gender-based violence may at some point need assistance obtaining counseling, housing, employment, and education-related social services.¹⁴⁸ These victims do not deserve to experience the sort of victim-status discrimination often faced by victims of sexual assault. The experience of sexual assault victims in the currently fragmented community of service providers only serves to disadvantage those discriminated against and denied services. All victims of gender-based violence would therefore benefit from participating in a judicial system with specific knowledge of the dynamics of gender-based violence and sensitivity to their difficult positions.

B. *Dorchester: A Model for Integration*

To provide a framework for expanding the domestic violence court system to serve victims of all gender-based violence, this Note will pose a hypothetical integration plan for the Dorchester Municipal Court, one of the test sites as well as the hub for the JOD Initiative previously described.¹⁴⁹ The JOD program design seeks to improve protection for domestic violence victims from repeat victimization and increase offender accountability through treatment, community service, and restitution.¹⁵⁰ The JOD program aims to implement these goals through cooperation and specialization of law enforcement personnel, prosecutors, probation officers, victim services personnel, and community agencies.¹⁵¹ In addition to personnel coordination, the JOD program creates specialized domestic violence dockets, mandates targeted training for law enforcement and court personnel, institutes pre-trial monitoring of repeat offenders, and increases the number and scope of available victim services.¹⁵² For organizational purposes, there should be an integration of all victims of gender-based violence within the Dorchester Court's jurisdiction into the existing domestic violence court system. Further, this Note recommends a course of action for integration in each agency by focusing on the specific roles of each involved actor.

1. Boston Police Department

To reduce strain on the respective departments, the sexual assault and domestic violence detective units of the Boston Police Department (BPD) should

¹⁴⁷ Labriola, *supra* note 20, at 71 (discussing survey responses recommending better training for police officers in domestic violence court).

¹⁴⁸ See Berman, *supra* note 92, at 27 (discussing lack of attention paid to issues of poverty, housing, and employment for sexual assault victims compared with domestic violence victims).

¹⁴⁹ Visher et al., *supra* note 80 at 1.

¹⁵⁰ Visher et al., *supra* note 80 at 2.

¹⁵¹ Visher et al., *supra* note 80 at 4.

¹⁵² Visher et al., *supra* note 80 at 4.

be integrated. Three of BPD's twelve districts serve the Dorchester Court, and these three districts have positions specifically allocated for domestic violence detectives.¹⁵³ In integrating the sexual assault and domestic violence units, the combined forces will be able to prioritize domestic violence related restraining orders¹⁵⁴ (called "abuse prevention orders" in Massachusetts¹⁵⁵) and harassment prevention orders (orders available to unrelated, non-domestic parties).¹⁵⁶ This integration will increase safety for victims of gender-based violence across the board by ensuring that protection orders are processed more efficiently.¹⁵⁷ The domestic violence training program for police officers would need only moderate revisions to provide sufficient information for police officers to appropriately serve all victims of gender-based violence.¹⁵⁸ Adding five to ten hours of training on working specifically with rape and sexual assault victims, in addition to the already existing ten hours of training on interpersonal relations, ten hours on crisis intervention, and ten hours on conflict resolution, would sufficiently bring officers up to speed on the intricacies of working with sexual assault victims.¹⁵⁹ The twenty hours of domestic violence training officers already receive would no doubt address some of the same issues relevant to working with victims of sexual assault, and thus would require little or no change.¹⁶⁰ These proposed changes would bring the total training time for police officers to just seventy rather than sixty hours, a worthwhile step toward increasing efficacy and empathy for officers serving victims of gender-based violence.¹⁶¹

As part of the JOD reforms, the BPD and JOD formed a joint task force of prosecutors, probation and parole officers, providers of victim and batterer intervention services, and members of faith-based communities to identify and monitor high-risk domestic violence offenders.¹⁶² The BPD also created a database of domestic violence incidents, which included detailed information on each incident and perpetrators' criminal histories, with the goal of more easily identifying high-risk and/or repeat offenders.¹⁶³ To integrate sexual assault perpetrators into the database, law enforcement would merely need to consolidate data from the pre-existing statewide registry of harassment and abuse prevention orders into one central database.¹⁶⁴ As discussed in Part II,

¹⁵³ Visher et al., *supra* note 80 at 11–12.

¹⁵⁴ Visher et al., *supra* note 80 at 12.

¹⁵⁵ MASS. GEN. LAWS ANN. ch. 209A (2014, West).

¹⁵⁶ MASS. GEN. LAWS ANN. ch. 258E (2010, West).

¹⁵⁷ See Visher et al., *supra* note 80 at 12.

¹⁵⁸ See Visher et al., *supra* note 80 at 12.

¹⁵⁹ See Visher et al., *supra* note 80 at 12.

¹⁶⁰ See Visher et al., *supra* note 80 at 12.

¹⁶¹ See Visher et al., *supra* note 80 at 12.

¹⁶² See Visher et al., *supra* note 80 at 15.

¹⁶³ See Visher et al., *supra* note 80 at 15.

¹⁶⁴ Connolly, *supra* note 96, at 5–6.

perpetrators of sexual assault, like perpetrators of domestic violence, are prone to recidivism.¹⁶⁵ As such, expanding the categories of perpetrators monitored and included in this database would allow law enforcement to more easily identify those perpetrators most likely to commit more future assaults, use specialized law enforcement personnel to monitor their actions, and in turn increase safety for past victims while preventing future victimization.

2. Dorchester Municipal Court

The JOD program made several additions and changes to the Dorchester Municipal Court (formerly the Dorchester District Court) in addition to the specialized court docket used to consolidate the criminal and civil aspects of domestic violence proceedings.¹⁶⁶ These changes included post-conviction compliance hearings to monitor perpetrators' observance of probation terms, the use of incentives to encourage continued obedience to probation terms, expansion of office space for attorneys and students providing legal services to victims (especially victims with translation needs), and education for court officers on effective tactics to increase victim safety in the courthouse.¹⁶⁷ All of these services would benefit victims of sexual assault as well as victims of domestic violence due to their similar legal needs. Improving the relationship between victims and the legal system, along with reducing the frequency of their trips to the courthouse and attorneys' offices, would also make them more likely to continue assisting criminal proceedings.

3. Dorchester Domestic Violence Court

Finally, in September 2000, the Dorchester District Court expanded to create the Dorchester Domestic Violence Court (DDVC), a separate system within the larger Municipal Court to consolidate proceedings regarding intimate partner violence.¹⁶⁸ Though its name indicates otherwise, the court only hears cases between intimate domestic partners and excludes cases relating to non-intimate partner domestic violence.¹⁶⁹ For example, the court will hear a case between spouses, but not a case of child abuse or assault between roommates.¹⁷⁰ Because the court's narrow focus excludes victims of domestic violence who fall outside the gender-based violence umbrella, the DDVC's jurisdiction closely aligns with the VAWA goal of integrating responses to all cases of gender-based violence, while excluding non-gender-based domestic violence.¹⁷¹ The DDVC conducts a variety of hearings including abuse prevention order hear-

¹⁶⁵ Lisak & Miller, *supra* note 107, at 78.

¹⁶⁶ Visher et al., *supra* note 80 at 22.

¹⁶⁷ Visher et al., *supra* note 80 at 22.

¹⁶⁸ Visher et al., *supra* note 80 at 23.

¹⁶⁹ Visher et al., *supra* note 80 at 23.

¹⁷⁰ Visher et al., *supra* note 80 at 23.

¹⁷¹ See SACCO, *supra* note 19, at 4.

ings, dangerousness hearings, and bail hearings.¹⁷² The court also conducts pre-trial hearings, plea hearings, sentencing hearings in cases that do not go trial, and arraignments.¹⁷³ Integration of sexual assault cases into the existing structure of the DDVC (which this Note would rename the Dorchester Gender-Based Violence Court) would simply require expanding jurisdiction to include proceedings related to sexual assaults. As such, the Dorchester Gender-Based Violence Court would hold harassment prevention order hearings in addition to those for abuse prevention orders.¹⁷⁴ Because Massachusetts district courts have jurisdiction over both types of restraining orders, this expansion would pose no jurisdictional issues.¹⁷⁵ Further, although the Guidelines for Judicial Practice: Abuse Prevention Proceedings do not apply¹⁷⁶ to harassment prevention proceedings,¹⁷⁷ “harassment prevention orders are largely parallel to abuse prevention orders” and therefore do not require any further expertise for court officials beyond that required for abuse prevention proceedings.¹⁷⁸

4. Coordination with Victim Service Agencies

In the Dorchester Courthouse, domestic violence victims can access community services from non-court affiliated community based agencies.¹⁷⁹ Among the available resources are *pro bono* legal services from students in Northeastern University Law School’s Restraining Order Clinic (Restraining Order Clinic), which provides victims with assistance in preparing restraining order petitions, information on court proceedings, and accompaniment to related appointments outside the courthouse.¹⁸⁰ In addition to the Restraining Order Clinic, the courthouse dedicates an office to a Community Advocacy Team comprised of representatives from four community agencies:¹⁸¹ Casa Myrna Vazquez, an English/Spanish bilingual provider of shelter, mental health, and legal advocacy services to victims of domestic violence; The Asian Task Force, a similar organization serving Asian and Asian-American families with shelter, safe homes, legal, health care, and case management services; The Association of Haitian Women in Boston, providing Haitian women and children with education and transitional housing resources; and a representative from Northeastern University School of Law’s Domestic Violence Institute, overseeing the

¹⁷² Visher et al., *supra* note 80 at 23.

¹⁷³ Visher et al., *supra* note 80 at 23.

¹⁷⁴ MASS. GEN. LAWS ANN. ch. 258E (2010, West).

¹⁷⁵ Connolly, *supra* note 96, at 5–6.

¹⁷⁶ MASS. GEN. LAWS ANN. ch. 258E (2010, West).

¹⁷⁷ ADMINISTRATIVE OFFICE OF THE TRIAL COURT, COMMONWEALTH OF MASSACHUSETTS TRIAL COURT, JUDICIAL GUIDELINES: ABUSE PREVENTION PROCEEDINGS 9 (2011) available at <http://www.mass.gov/courts/209a/guidelines-2011.pdf>.

¹⁷⁸ *Id.*

¹⁷⁹ Visher et al., *supra* note 80 at 36.

¹⁸⁰ Visher et al., *supra* note 80 at 36.

¹⁸¹ Visher et al., *supra* note 80 at 37.

previously discussed Restraining Order Clinic program.¹⁸²

Expanding the victim services available to encompass victims of other gender-based violence would require very little change to the existing system. Because harassment prevention and abuse prevention proceedings are so similar, little new training would be required for the students and attorney supervisor in the Restraining Order Clinic. Similarly, adding just two members to the Community Advocacy Team could extend services to currently neglected victims of non-intimate partner gender-based violence. One member should be added from the Boston Area Rape Crisis Center, an organization serving sexual assault victims of greater Boston with counseling, case management, and legal advocacy services.¹⁸³ Additionally, one more seat should be added to the task force for an attorney representing the Victim Rights Law Center, the nation's first law center dedicated exclusively to meeting the needs of survivors of sexual assault.¹⁸⁴ The Victim Rights Law Center has a staff of nine attorneys in Boston who are dedicated to serving victims of sexual assault in Massachusetts,¹⁸⁵ and coordinates a network of attorneys who provide legal services to clients pro bono through their Rape Survivors Law Project program.¹⁸⁶

C. *Domestic Sexual Assault Offense*

Another important component to unifying the movement against gender-based violence is a recognition of the frequency with which victims of domestic violence also experience sexual violence at the hands of their intimate partners. Because of the separation in development between the movements against domestic violence and sexual assault, those victims in the cross-section who experience sexual assaults at the hands of domestic partners become invisible and lack ample means for legal recourse.¹⁸⁷ This occurs because both factions of the movement become so focused on their own niche of victims that they neglect the overlap in victims of domestic sexual assaults and fail to fully grasp and address the issues concerning their sister populations.¹⁸⁸ For example, many domestic violence shelters turn away victims who were sexually assaulted by non-intimate partners, and very few rape crisis centers inquire with victims

¹⁸² *Id.*

¹⁸³ *About BARCC*, BOSTON AREA RAPE CRISIS CENTER, <http://barcc.org/join/about> (last visited Feb. 2, 2014).

¹⁸⁴ *About the VRLC*, VICTIM RIGHTS LAW CENTER, <http://www.victimrights.org/about-vrlc> (last visited Feb. 2, 2014).

¹⁸⁵ *Staff Bios*, VICTIM RIGHTS LAW CENTER, <http://www.victimrights.org/about-vrlc/staff-bios> (last visited Feb. 2, 2014). The VRLC also has an office serving Multnomah and Washington counties, Oregon. *Id.*

¹⁸⁶ *Rape Survivors Law Project*, VICTIM RIGHTS LAW CENTER, <http://www.victimrights.org/node/118> (last visited Feb. 2, 2014).

¹⁸⁷ Berman, *supra* note 92, at 23.

¹⁸⁸ Berman, *supra* note 92, at 23. (discussing limitations due to fragmentation in domestic violence and sexual assault service providers).

about incidences of marital or intimate partner rape.¹⁸⁹ Similarly, the Victim Rights Law Center does not have any attorneys on staff who practice family law and thus cannot represent victims in Family and Probate Court on abuse prevention orders.¹⁹⁰

In response to fragmentation where providers serve only discrete classes of gender-based violence victims, states should not only integrate sexual assault victims into a new Gender-Based Violence Court System, but also amend their criminal codes to include a domestic sexual assault offense. This recognition of the often-ignored cross-section of sexual and domestic violence will serve many ends, both practical and discursive. First, creating such an offense will reinforce societal disapproval of the once-legal marital rape. Next, recognizing this new offense will require organizations providing services to victims of sexual assault to reevaluate the efficacy of their existing schema and reconsider what issues they address, what populations they serve, and even what questions they ask during client intakes. This change would likely result in higher rates of disclosure of domestic sexual assaults (currently low on abuse prevention proceedings), and, in turn, higher rates of treatment or punishment of offenders.¹⁹¹ Further, the creation of such an offense would create a legal framework wherein victims of intimate and non-intimate sexual assault are no longer separated by a false divide, but instead are able to access the same services regardless of any prior relationships (or lack thereof) with their assailants. Finally, this rhetoric of unity and solidarity among victims would, through increased coordination and consistency within the movement against gender-based violence, lead to a more holistic approach to the issue from service providers, judicial actors, law enforcement, and community members.

D. *Policy Considerations*

Expanding the domestic violence court system to include all victims of gender-based violence has several important positive policy implications. First and foremost, when resources are divided rather than shared within the community of victim service providers, fewer people are able to access available resources. For example, disparities in funding between agencies working with victims of domestic violence and agencies serving solely victims of sexual assault mean that the quantity and quality of services available to victims of sexual assault are significantly lower than those available to domestic abuse victims.¹⁹² Additionally, surveys of existing domestic violence court personnel show that coordination of services among agencies is key to success, and conversely that a

¹⁸⁹ Berman, *supra* note 92, at 23.

¹⁹⁰ *Staff Bios*, VICTIM RIGHTS LAW CENTER, <http://www.victimrights.org/about-vrlc/staff-bios> (last visited Feb. 2, 2014).

¹⁹¹ Berman, *supra* note 92, at 23.

¹⁹² Berman, *supra* note 92, at 27.

lack of coordination decreases the courts' chances of success.¹⁹³

Expanding the jurisdiction of existing domestic violence courts to cover victims of all types of gender-based violence will allow the pooling of resources within the currently separate domestic violence and sexual assault victim support systems. This change will allow detectives and law enforcement officers assigned to domestic violence courts to coordinate responses with sexual assault detective units. Victim Witness Advocates will likewise be able to coordinate and serve a wider range of victims. Most importantly, community service providers will be able to coordinate all available housing, employment, education, and other social service resources to insure that *all* victims of gender-based violence can access the same services and have the same opportunities to fully utilize the both the civil system and the criminal justice system and, in so doing, rebuild their lives.

IV. CONCLUSION

In an ideal world, domestic violence courts, abuse prevention orders, and rape crisis centers would be wholly unnecessary. But currently, and at least until more effective prevention strategies are created, an efficient response to issues of gender-based violence is all too necessary. As it stands, the system is structured in favor of male perpetrators, and to the disfavor of complainants, regardless of gender. By making a few subtle changes to the existing framework of civil, criminal, and social institutions seeking justice for victims and perpetrators, the legal community has the opportunity to create a system that serves all victims of gender-based violence effectively and uniformly. Reforming the domestic violence court systems to address all forms of gender-based violence broadly will help erode the false distinction between domestic violence and sexual assault. In turn, victims who might have fallen through the cracks of existing legal remedies, specialized courts' jurisdiction, and agencies' policies on clientele will no longer be left alone and silent. Adding a domestic sexual assault offense to state criminal codes is another piece to the puzzle that will help break down the false barrier between victim populations. This new criminal offense and the cooperative efforts of existing satellite service networks will create a stronger and more unified community of actors combatting gender-based violence. All of this cooperation will allow a much greater number of victims to receive services, free up resources for a focus on gender-based violence prevention, and perhaps bring us just one step closer the possibility of a world where no such system is necessary.

¹⁹³ Labriola, *supra* note 20, at 69.

