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# NO DROP PROSECUTION & DOMESTIC VIOLENCE: SCREENING FOR COOPERATION IN THE CITY THAT NEVER SPEAKS

*Alessandra DeCarlo\**

*Throughout history, domestic violence has been infamously kept behind closed doors and outside of our legislature. It was not until the 1960s, due to the efforts of the battered women's movement, that legislatures began to address domestic violence as a social ill and promulgated statutes and policies at both the state and federal level. This Note elaborates on one such policy, known as a "No-Drop" policy, which has been implemented by prosecutors' offices throughout New York City's five boroughs, as a mechanism to aggressively combat domestic violence. "No-Drop" policies allow prosecutors to vigorously prosecute domestic violence cases regardless of victim cooperation. This Note provides a comparison of the policies implemented in the boroughs of the Bronx and Brooklyn, and ultimately argues that the Bronx's failure to implement a "No-Drop" policy and its inordinate reliance on victim cooperation in deciding whether to prosecute a case is ineffective in protecting victims within marginalized communities from domestic violence.*

## INTRODUCTION

On average, a person blinks once every four seconds.<sup>1</sup> Every fifteen times a person blinks, twenty people in the United States are

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\* J.D. Candidate, Brooklyn Law School 2017; B.A., University at Albany 2014. Thank you to my parents, Peter and Rosemary, for their unwavering love, support, and encouragement. I truly owe them all of my accomplishments. Thank you to my *Journal of Law & Policy* editing team for their diligent and thoughtful revisions that helped make this Note possible.

<sup>1</sup> Lisa Olson, *How Often and Why do People's Eyes Blink?*, BOSTON GLOBE (May 14, 2007),

assaulted or beaten by an intimate partner.<sup>2</sup> Even more alarming, “[one] in [three] women . . . and [one] in [four] men . . . in the United States have experienced rape, physical violence, and stalking by an intimate partner during their lifetime.”<sup>3</sup> These chilling statistics are disturbingly indicative of the widespread issue of domestic violence, defined as “the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a systemic pattern of power and control perpetrated by one intimate partner against another.”<sup>4</sup> Domestic violence is a pervasive issue within all communities and affects individuals “regardless of [their] age, socioeconomic status, sexual orientation, gender, race, religion, or nationality.”<sup>5</sup>

For years, domestic violence was viewed as a “private” matter, to be kept within the confines of the home, and beyond the scope of law enforcement.<sup>6</sup> In instances in which the police did in fact become involved, it was “recommended that [they] attempt to quell

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[http://www.boston.com/news/science/articles/2007/05/14/how\\_often\\_and\\_why\\_do\\_peoples\\_eyes\\_blink/](http://www.boston.com/news/science/articles/2007/05/14/how_often_and_why_do_peoples_eyes_blink/).

<sup>2</sup> NAT’L COALITION AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE NATIONAL STATISTICS (2015) [hereinafter DOMESTIC VIOLENCE NATIONAL STATISTICS], <http://ncadv.org/files/National%20Statistics%20Domestic%20Violence%20NCADV.pdf>; see also Sharon Stapel & Virginia M. Goggin, *Lesbian, Gay, Bisexual, Transgender and Queer Victims of Intimate Partner Violence*, in LAWYER’S MANUAL ON DOMESTIC VIOLENCE: REPRESENTING THE VICTIM 241, 242 (Mary Rothwell Davis et al., 6th ed. 2015), <https://www.nycourts.gov/ip/womeninthecourts/pdfs/DV-Lawyers-Manual-Book.pdf> (reporting that “intimate partner violence occurs within the lesbian, gay and bisexual communities at the same, or higher rates, as within non-LGB communities”).

<sup>3</sup> DIV. OF VIOLENCE PREVENTION, NAT’L CTR. FOR INJURY PREVENTION & CONTROL, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 2 (2010), [http://www.cdc.gov/ViolencePrevention/pdf/NISVS\\_Report2010-a.pdf](http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf).

<sup>4</sup> DOMESTIC VIOLENCE NATIONAL STATISTICS, *supra* note 2, at 1 (reporting that every 9 seconds in the U.S. a woman is assaulted or beaten).

<sup>5</sup> *Id.*

<sup>6</sup> Elizabeth Cronin, *Prosecuting a Domestic Violence Case: Looking Beyond the Victim’s Testimony*, in LAWYER’S MANUAL ON DOMESTIC VIOLENCE: REPRESENTING THE VICTIM, *supra* note 2, at 116, 116–17.

domestic ‘disputes’ without resorting to arrest.”<sup>7</sup> Police passivity began to change as victims of domestic violence began to sue police departments pursuant to 42 U.S.C. §1983 for nonperformance of their duties in violation of their constitutional right to equal protection of the laws.<sup>8</sup> In response, police departments began to implement “mandatory arrest” policies, obligating police officers to make an arrest in domestic violence incidents.<sup>9</sup> Prosecutor’s offices began to implement policies as well, known as “No-Drop” policies,<sup>10</sup> designed to compel prosecutors to vigorously prosecute domestic violence cases, even despite a victim’s desire to withdraw the charges.<sup>11</sup> These policies were our criminal justice system’s first steps toward proclaiming that domestic violence was not only a crime against the victim, but against the State as well.<sup>12</sup>

Currently, the Kings County District Attorney’s Office (“the Brooklyn District Attorney’s Office”), similar to most of its borough counterparts, has implemented a “No-Drop” policy, which allows for evidence-based prosecution of abusers absent victim cooperation.<sup>13</sup> The Bronx District Attorney’s Office, however, is an anomaly within New York City, having declined to adopt a “No-Drop” policy.<sup>14</sup> Instead, the Bronx District Attorney’s Office abides

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<sup>7</sup> *Id.* at 117.

<sup>8</sup> *Id.*; see 42 U.S.C. § 1983 (1996); see also *Thurman v. Torrington*, 595 F. Supp. 1521, 1524–28 (D. Conn. 1984) (showing that the plaintiff wife sued the city based on violation of her constitutional rights by nonperformance of duties by police officers).

<sup>9</sup> Cronin, *supra* note 6, at 117.

<sup>10</sup> “No-Drop” policies essentially decline to give deference to a victim’s desire of whether a criminal prosecution shall proceed against his or her abuser. See *id.*

<sup>11</sup> *Id.*

<sup>12</sup> See *id.*

<sup>13</sup> CHRIS S. O’SULLIVAN ET AL., SAFE HORIZON, NAT’L INST. OF JUSTICE, A COMPARISON OF TWO PROSECUTION POLICIES IN CASES OF INTIMATE PARTNER VIOLENCE: MANDATORY CASE FILING VS. FOLLOWING THE VICTIM’S LEAD 4, 7 (2007), [http://www.courtinnovation.org/sites/default/files/Case\\_Processing\\_Report.pdf](http://www.courtinnovation.org/sites/default/files/Case_Processing_Report.pdf).

<sup>14</sup> See RICHARD R. PETERSON ET AL., N.Y. CRIMINAL JUSTICE AGENCY, COMBATING DOMESTIC VIOLENCE IN NEW YORK CITY: A STUDY OF DV CASES IN THE CRIMINAL COURTS 1, 4 (Apr. 2003), [http://biblioteca.cejamerica.org/bitstream/handle/2015/1519/NYCJA\\_Combatin](http://biblioteca.cejamerica.org/bitstream/handle/2015/1519/NYCJA_Combatin)

by a first-party complaint policy, which hinges on a victim's willingness for the case to proceed.<sup>15</sup> Under this policy, the Bronx District Attorney's Office declines to prosecute a striking amount of domestic violence cases without victim involvement.<sup>16</sup> When combined with New York City's diversity of cultures and lifestyles,<sup>17</sup> the Bronx and Brooklyn District Attorney's Offices must effectuate policies that reflect the unique dynamics and experiences of marginalized communities in order to effectively protect and prosecute domestic violence cases involving these populations.

This Note argues that the Bronx District Attorney's Office's failure to implement a zealous "No-Drop" policy when prosecuting domestic violence is not efficacious in protecting our most vulnerable populations and fails to convey a message to victims that an alliance exists between them and our criminal justice system to address and combat their victimization. Part I discusses the ways in which society has responded to domestic violence throughout history, as well as the increased governmental recognition of domestic violence sparked by the battered women's movement. Part II provides a conceptual overview of the mechanics of "No-Drop" policies and emphasizes the deviation of the Bronx's prosecutorial policy. This part assesses the advantages of Brooklyn's policy juxtaposed with the Bronx's and argues that the Bronx's strategy merits reevaluation and renovation to realign itself with the goals and ideals of our criminal justice system. Part III discusses how marginalized populations, such as indigent communities, homosexuals, racial minorities, and immigrants, each have their own unique experiences within society that mold their views of our criminal justice system. This part provides an in-depth analysis of

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g\_Domestic\_Violence\_in\_NYC.pdf?sequence=1&isAllowed=y (showing that every borough except the Bronx has adopted this "No-Drop" policy). *See generally* O'SULLIVAN ET AL., *supra* note 13 (discussing the differences between the Bronx's first-party complaint policy and Brooklyn's "No-Drop" policy).

<sup>15</sup> PETERSON ET AL., *supra* note 14, at 4; O'SULLIVAN ET AL., *supra* note 13, at 6–7.

<sup>16</sup> O'SULLIVAN ET AL., *supra* note 13, at 7.

<sup>17</sup> *See* Sarita Dan, *Around the World in 5 Boroughs: It's the People, Not the Places*, N.Y. NATIVES (June 3, 2013), <http://newyorknatives.com/around-the-world-in-5-boroughs-its-the-people-not-the-places/>.

each population's experiences with victimization and the unique obstacles they face that may impede a victim's willingness to participate in the prosecution of his or her abuser. Finally, Part IV proposes that the Bronx District Attorney's Office should adopt Brooklyn's "No-Drop" policy entirely, or alternatively, implement a policy similar to Brooklyn's that would satisfy the Bronx's goals of allowing a victim to have a voice in the prosecution and promoting judicial efficiency, while simultaneously cultivating a confidence between marginalized communities and law enforcement.

#### I. A HISTORY OF DOMESTIC VIOLENCE AND OUR CRIMINAL JUSTICE SYSTEM

While today there is an increased understanding of the dynamics of violent relationships, this has not always been the case.<sup>18</sup> Throughout history, violence has maintained a constant presence within the context of intimate relationships.<sup>19</sup> In 753 B.C., a husband had absolute authority to physically discipline his wife under the Roman Laws of Chastisement.<sup>20</sup> During a more "civilized" time, in 1824, the Supreme Court of Mississippi held that a husband had a right to moderately chastise his wife in cases of great emergency, as well as use salutary restraints in response to misbehavior, without being subjected to legal repercussions.<sup>21</sup> Society's abominable

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<sup>18</sup> See ELIZABETH M. SCHNEIDER ET AL., DOMESTIC VIOLENCE AND THE LAW: THEORY AND PRACTICE 5 (3d ed. 2013) ("In the middle of the last century, people often thought that the victims of violent relationships were masochists who derived sexual pleasure from being abused. Today we tend to understand violent relationships as the result of one partner's effort to dominate and control the other.").

<sup>19</sup> See *History of the Battered Women's Movement*, SAINT MARTHA'S HALL: BREAKING THE CYCLE OF DOMESTIC VIOLENCE, <http://saintmarthas.org/resources/history-of-battered-womens-movement/> (last visited Oct. 30, 2016).

<sup>20</sup> *Id.*

<sup>21</sup> See *Bradley v. State*, 1 Miss. 156 (1824). *But see* *Harris v. State*, 14 So. 266 (Miss. 1894) (overruling *Bradley v. State*). "By the old common law rule the husband had the right to inflict moderate personal chastisement on his wife, provided he used, as some of the old authorities stated it, a switch no larger than his thumb." Beirne Stedman, *Right of Husband to Chastise Wife*, 3 VA. L. REG.

disregard and overt acceptance of domestic violence was justified by its characterization as a “private matter” between husband and wife.<sup>22</sup>

It was not until the dawn of the battered women’s movement in the 1960s when the pervasiveness of domestic violence was scrutinized.<sup>23</sup> Feminists challenged the absence of domestic violence recognition within the legal system and demanded protections for women against marital violence.<sup>24</sup> The emergence of battered “women’s shelters, . . . domestic abuse hotlines, rape education and prevention programs,” as well as groundbreaking penetration into the legislative and judicial arena, is owed to the battered women’s movement.<sup>25</sup> A major turning point occurred when battered women gained access to civil protective orders, which were not easily obtainable until the 1970s.<sup>26</sup> Civil protective orders serve as an important mechanism for battered women to separate from their abusers and terminate the abusive relationship.<sup>27</sup> Although there was some resistance against this important remedy

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241, 241 (Aug. 1917). Moderate chastisement was legally allowed so long as the husband did not inflict serious bodily harm or permanent injury. *Id.* at 241–48.

<sup>22</sup> See ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING 20 (2000) (“In both England and the United States, the focus of feminist consciousness raising about domestic violence was on intimate violence in the context of heterosexual relationships. The term first used to describe the problem was ‘wife-abuse,’ which revealed that it was viewed primarily through the lens of a marital relationship. Domestic violence was seen as part of the larger problem of patriarchy within the marital relationship.”).

<sup>23</sup> See *id.* at 3.

<sup>24</sup> See *id.* at 20.

<sup>25</sup> *Id.* at 188 (discussing how the Violence against Women Act was a legislative effort that resulted in “funding for women’s shelters, a national domestic abuse hotline, rape education, and prevention programs”).

<sup>26</sup> See SCHNEIDER ET AL., *supra* note 18, at 221 (“The entire body of law governing these protective or restraining orders has grown up since the 1970s. Until then, battered women had to initiate divorce proceedings before requesting an order, and until 1976, only two states had restraining order legislation specifically designed for battered women.”).

<sup>27</sup> *Id.* The implementation of the Violence Against Women Act (“VAWA”) in 1994 strengthened the already existing protections given by statutes, by providing that states must give full faith and credit to protection orders issued from other states, and makes the crossing of state lines to violate an order of protection a federal crime. *Id.*

after the Supreme Court's holding in *Town of Castle Rock, Colorado v. Gonzales*,<sup>28</sup> as well as general issues of process, enforcement, and scope,<sup>29</sup> access to civil protective orders continue to serve as recourse for battered women to reclaim "what abuse has systemically stripped from them: their control over their activities, their bodies, and their lives."<sup>30</sup>

In 1992, the Supreme Court's holding in *Planned Parenthood v. Casey* symbolized society's recognition of domestic violence as a glaring social ill.<sup>31</sup> For the first time, the Court considered the impact of domestic violence on women's abilities to exercise their reproductive rights.<sup>32</sup> In striking down the Pennsylvania Abortion Control Act of 1982 §3209, which compelled a married woman seeking an abortion to indicate that she notified her husband of her intention to abort the fetus before undergoing a procedure,<sup>33</sup> the Court notably provided in-depth treatment of "how domestic violence impacts a woman's sexual

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<sup>28</sup> See *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 772 (2005) (holding that the police's failure to enforce a protective order, resulting in the victim and her children being harmed, did not entitle her to sue under the theory that the police violated her due process rights).

<sup>29</sup> See SCHNEIDER ET AL., *supra* note 18, at 202–300.

<sup>30</sup> Karla Fischer & Mary Rose, *When "Enough is Enough": Battered Women's Decision Making Around Court Orders of Protection*, 41 CRIME & DELINQ. 414, 423 (1995). Unlike criminal protective orders, which are sought entirely by the State as part of a criminal proceeding against an abuser, civil protective orders are solely petitioned for by the victim. See Robert F. Friedman, *Protecting Victims from Themselves, But Not Necessarily from Abusers: Issuing a No-Contact Order Over the Objection of the Victim-Spouse*, 19 WM. & MARY BILL RTS. J. 235, 244 (2010). The ability for a victim to make the choice to utilize this mechanism and escape an abusive relationship may be empowering by having regained control of their decisions and life. See *id.* at 247–48.

<sup>31</sup> *Planned Parenthood v. Casey*, 505 U.S. 833, 889–90 (1992) ("Mere notification of pregnancy is frequently a flashpoint for battering and violence within the family . . . [b]attered husbands threaten their wives or hurt their children . . . [and] a battered woman, therefore, is highly unlikely to disclose the violence against her for fear of retaliation of her abuser.").

<sup>32</sup> SCHNEIDER ET AL., *supra* note 18, at 31.

<sup>33</sup> *Planned Parenthood*, 505 U.S. at 844, 898.



autonomy and . . . how requiring spousal notification would further compromise her safety.”<sup>34</sup>

Another major development in the nation’s fight against domestic violence was the enactment of the Violence Against Women Act (“VAWA”) of 1994, the first federal legislation passed to combat domestic violence.<sup>35</sup> VAWA has been amended several times to improve the criminal justice system’s response to domestic violence,<sup>36</sup> as well as to ensure that victims and their families have access to appropriate victim services.<sup>37</sup> Post-VAWA implementation

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<sup>34</sup> Cheryl Hanna, *Supreme Court Advocacy and Domestic Violence: Lessons from Vermont v. Brillon and Other Cases Before the Court*, 24 CIV. RTS. & ECON. DEV. 567, 599 (2010).

<sup>35</sup> THE WHITE HOUSE, FACTSHEET: THE VIOLENCE AGAINST WOMEN ACT, [https://www.whitehouse.gov/sites/default/files/docs/vawa\\_factsheet.pdf](https://www.whitehouse.gov/sites/default/files/docs/vawa_factsheet.pdf) (last visited Oct. 30, 2016).

<sup>36</sup> See LISA N. SACCO, CONG. RESEARCH SERV., R42499, THE VIOLENCE AGAINST WOMEN ACT: OVERVIEW, LEGISLATION, AND FEDERAL FUNDING (2015); see also THE WHITE HOUSE, *supra* note 35 (“VAWA has improved the criminal justice response to violence against women by: holding rapists accountable for their crimes by strengthening federal penalties for repeat sex offenders and creating a federal ‘rape shield law,’ which is intended to prevent offenders from using victims’ past sexual conduct against them during a rape trial; mandating that victims, no matter their income levels, are not forced to bear the expense of their own rape exams or for service of a protection order; keeping victims safe by requiring that a victim’s protection order will be recognized and enforced in all state, tribal, and territorial jurisdictions within the United States; increasing rates of prosecution, conviction, and sentencing of offenders by helping communities develop dedicated law enforcement and prosecution units and domestic violence dockets; ensuring that police respond to crisis calls and judges understand the realities of domestic and sexual violence by training law enforcement officers, prosecutors, victim advocates and judges.”).

<sup>37</sup> See THE WHITE HOUSE, *supra* note 35 (“VAWA has ensured that victims and their families have access to services they need to achieve safety and rebuild their lives by: responding to urgent calls for help by establishing the National Domestic Violence Hotline, which has answered over three million calls and receives over 22,000 calls every month . . . improving safety and reducing recidivism by developing coordinated community responses that bring together diverse stakeholders to work together to prevent and respond to violence against women . . . focusing attention on the needs of underserved communities, including creating legal relief for battered immigrants so that abusers cannot use the victim’s immigration status to prevent victims from calling the police or seeking safety.”).

has resulted in positive trends in domestic violence statistics.<sup>38</sup> Yet, despite these heartening improvements, domestic violence still remains ubiquitous<sup>39</sup> and goes widely unreported.<sup>40</sup>

Likewise, the criminal justice system's increased attentiveness to domestic violence cases over the last thirty years has demonstrated a major pivot in society's capability to hold abusers accountable for their actions.<sup>41</sup> This commitment to domestic violence accountability has resulted in legislative criminalization of domestic violence,<sup>42</sup> "mandatory arrest" policing policies,<sup>43</sup> and

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<sup>38</sup> See *id.* Since VAWA was passed, the White House website has reported that between 1993 and 2010, the rate of intimate partner violence has declined 67 percent. *Id.* Additionally, between 1993 and 2007, the rate of intimate partner homicides of females decreased 35 percent and the rate of intimate partner homicides of males decreased 46 percent. *Id.*

<sup>39</sup> See DOMESTIC VIOLENCE NATIONAL STATISTICS, *supra* note 2 (reporting that every nine seconds in the United States a woman is assaulted or beaten); see also Alanna Vagianos, *30 Shocking Domestic Violence Statistics That Remind Us It's An Epidemic*, HUFFINGTON POST: WOMEN, [http://www.huffingtonpost.com/2014/10/23/domestic-violence-statistics\\_n\\_5959776.html](http://www.huffingtonpost.com/2014/10/23/domestic-violence-statistics_n_5959776.html) (last updated Feb. 13, 2015) (reporting that nationally three women are murdered every day by a current or former male partner) [hereinafter *30 Shocking Domestic Violence Statistics*].

<sup>40</sup> This harsh reality emphasizes how important it is for the criminal justice system to correctly manage the incidences of domestic violence that do in fact get reported, in a way that reinforces the social unacceptability of domestic violence, as well as magnifies the system's availability as an important and appealing resource for those who have been victimized. See *30 Shocking Domestic Violence Statistics*, *supra* note 39 (reporting that only 25 percent of physical assaults perpetrated against women are reported to the police annually).

<sup>41</sup> See SCHNEIDER ET AL., *supra* note 18, at 301 ("Historically, the criminal justice system has been characterized by its chronic inattention to domestic violence . . . [A]t one time the law allowed a husband to chastise his wife. Crimes committed between spouses were private family matters that dictated against state intervention.").

<sup>42</sup> *Id.* at 301–10. These crimes include assault, assault and battery, assault and battery on an officer, assault or assault and battery with a dangerous weapon, attempt to commit a crime, breaking and entering, criminal trespass, disorderly conduct, disturbing the peace, willful and malicious destruction of property, harassing phone calls, violation of a restraining order, intimidation of a witness, stalking, and most recently, strangulation. *Id.*

<sup>43</sup> See generally *id.* at 301, 326–41 (discussing controversies arising from arrest policies aimed to combat domestic violence).

aggressive prosecutorial strategies.<sup>44</sup> One major innovation in New York is the creation of specialized courts, also known as Domestic Violence (“DV”) courts or Integrated Domestic Violence (“IDV”) courts, which were created to address the intricacies of domestic violence cases.<sup>45</sup> To date, New York State has thirty-three DV courts and forty-two IDV courts, which hear the majority of the domestic violence cases throughout the state.<sup>46</sup> A central function of DV and IDV courts is creating the policies used to conquer the difficulties that domestic violence cases present to prosecutors, including uncooperative complainants.<sup>47</sup>

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<sup>44</sup> *Id.* at 301.

<sup>45</sup> See CHANDRA GAVIN & NORA K. PUFFET, CTR. FOR CT. INNOVATION, CRIMINAL DOMESTIC VIOLENCE CASE PROCESSING: A CASE STUDY OF THE FIVE BOROUGHES OF NEW YORK CITY 1 (2002), <http://www.courtinnovation.org/sites/default/files/Citywide%20Final1.pdf>; see also RICHARD R. PETERSON, N.Y. CRIMINAL JUSTICE AGENCY, THE IMPACT OF THE KINGS COUNTY INTEGRATED DOMESTIC VIOLENCE COURT ON CASE PROCESSING 1 (2014) (“The complexity of DV cases is compounded when a family has multiple cases in the courts, e.g., criminal, family, and/or matrimonial. To address these issues, some jurisdictions also have established integrated domestic violence (IDV) courts, where one judge hears all of a family’s related cases. Each case remains separate and the judge adjudicates each case using the law and procedures of the originating court. This “one family-one judge” model is designed to provide judges and attorneys with more complete information about all the related cases, improve efficiency, ensure consistency of court orders, and enhance victim safety and satisfaction.”).

<sup>46</sup> PETERSON, *supra* note 45, at 1.

<sup>47</sup> See GAVIN & PUFFET, *supra* note 45, at 1; see also Judith S. Kaye & Susan K. Knipps, *Judicial Responses to Domestic Violence: The Case for a Problem Solving Approach*, 27 W. ST. U. L. REV. 1, 4 (2000) (“Unlike participants in a barroom brawl or street skirmish, perpetrators of domestic violence present a particularly high risk for continuing, even escalating violence against the complainant as they seek further control over her choices and actions. Unlike victims of random attacks, battered women often have compelling reasons—like fear, economic dependence or affection—to feel ambivalent about cooperating with the legal process.”).

## II. “NO-DROP” POLICIES IN NEW YORK: THE BRONX VS. BROOKLYN<sup>48</sup>

Following VAWA’s implementation in 1994, the New York State Legislature took its own steps to address and combat domestic violence by passing the Family Violence and Domestic Violence Intervention Act of 1994.<sup>49</sup> The Act amended Criminal Procedure Law §140.10 by mandating arrests for domestic violence crimes.<sup>50</sup> While police were given discretion when making arrests for other crimes, this statute required arrests for crimes involving domestic violence.<sup>51</sup> As a result of mandatory arrest policies,<sup>52</sup> prosecutor’s offices began to adopt “No-Drop” policies.<sup>53</sup> Accordingly, “No-Drop” policies limit prosecutors’ discretion to drop a case solely based on the victim’s unwillingness to cooperate or participate in the prosecution.<sup>54</sup> This policy allows prosecutors to proceed with a domestic violence case absent a victim’s testimony, instead relying on other evidentiary means such as “excited utterances” from 911 calls, photographs of a victim’s injuries, evidence obtained from the

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<sup>48</sup> See O’SULLIVAN ET AL., *supra* note 13, at 10–11 (“‘No-Drop’ prosecution, in the form of an evidence-based policy, was pioneered by the San Diego City Attorney’s Office. In the late 1980s, that office realized that there were other forms of evidence besides the testimony of victims that could be collected and presented in domestic violence cases...Over the course of years and with the passage of key statutes on admissibility of evidence, the City Attorney’s Office prevailed and was able to win convictions in a large percentage of the cases, even without (or in spite of) the testimony of the victim.”).

<sup>49</sup> Cronin, *supra* note 6, at 117.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* (“This mandatory arrest police was unique, especially for its time: for all other crimes in New York, police ‘may’ arrest a person, but this new statute obligated police to make the arrest.”).

<sup>52</sup> See, e.g., N.Y. CRIM. PROC. LAW §140.10 (McKinney 1995) (mandating police officers to make an arrest when a felony is committed against a family or household member, a stay away order of protection has been violated, a family offense has been committed in violation of an order of protection, and a family offense misdemeanor has been committed against a family or household member unless the victim requests otherwise).

<sup>53</sup> Cronin, *supra* note 6, at 117.

<sup>54</sup> *Id.*

crime scene,<sup>55</sup> and expert testimony to build a strong case against an abuser.<sup>56</sup>

At their most extreme, “No-Drop” policies may permit uncooperative victims to be subpoenaed to testify against their abuser in court, and may result in a warrant being issued for their arrest or to be held in contempt if they fail to appear.<sup>57</sup> In a more deferential application of a “No-Drop” policy, charges would be filed although the victim is unwilling to cooperate and prosecutors would be allowed to proceed with an evidence-based prosecution absent victim testimony.<sup>58</sup> However, prosecutors would be afforded discretion to dismiss “the case if [a] victim continue[d] to oppose prosecution.”<sup>59</sup> In the absence of “No-Drop” policies, prosecutors will not file charges absent victim cooperation.<sup>60</sup>

In New York City, the boroughs of Brooklyn, Manhattan, Queens, and Staten Island have all implemented variants of a “No-Drop” policy.<sup>61</sup> In these boroughs, almost all domestic violence

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<sup>55</sup> *Id.* at 118–25. Evidence obtained from a crime scene may include clothing, damage to property, observations by friends and family members of the victim and/or abuser, the abuser’s own statements, social media communications, and electronic evidence, such as text messages and call logs. *See id.*

<sup>56</sup> *See id.* at 116–25.

<sup>57</sup> O’SULLIVAN ET AL., *supra* note 13, at 4.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> At the New York County District Attorney’s Office, cases usually reach the intake department of the prosecutor’s “[o]ffice six to twelve hours [following] an arrest,” at which point an ADA will review the evidence and try to reach out to the complainant. GAVIN & PUFFET, *supra* note 45, at 16. The strength of the evidence is the main factor considered by an ADA in determining whether to pursue prosecution, regardless of whether the victim decides to participate in the case or not. *Id.* If the evidence is insufficient to pursue prosecution without a victim’s participation, an ADA is afforded discretion to proceed with the victim as a “hostile witness.” *Id.* At the Queens District Attorney’s Office, police officers immediately contact the Domestic Violence Bureau upon making a domestic violence arrest and an ADA will be available to come meet a victim in or out of the office to discuss the case, which differs from the other boroughs in that ADAs and complainants will have their first interaction earlier on in a case opposed to other offices. *Id.* at 17. The flexibility of an ADA to become directly involved in a case so early on is a token of the Queens prosecutor’s office and may have positive implications in an ADA’s ability to procure evidence early on when it is

cases are prosecuted, regardless of the victim's cooperation.<sup>62</sup> The Bronx's approach in handling domestic violence cases is an outlier within the boroughs, having adopted a first-party complaint policy.<sup>63</sup> The Bronx's first-party complaint policy and Brooklyn's "No-Drop" policy each reflect different underlying philosophies as to how domestic violence cases should be prosecuted.<sup>64</sup> While both policies have sound arguments in support of their approach, Brooklyn's "No-Drop" policy is arguably advantageous, regardless of whether an abuser is ultimately convicted.

#### *A. The Bronx's First-Party Complaint Process*

The prosecution of a domestic violence case under a first-party complaint policy is contingent on the victim signing the complaint on the day of arrest, thereby indicating that the victim is willing to pursue the case against their abuser.<sup>65</sup> Under this policy, the Bronx District Attorney's office will "usually decline[] to prosecute cases [if] the victim refuses to sign the complaint."<sup>66</sup> The prosecutorial ideal would involve a victim coming into the complaint room, meeting with an advocate to discuss safety options, and ultimately signing a written consent form to essentially authorize a case to proceed.<sup>67</sup> However, this is not always how domestic violence cases

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fresh and untainted. Queens' policy allows for an ADA to pursue a case regardless of victim cooperation and to rely solely on evidence. *See id.* at 17–18. At the Staten Island District Attorney's, a police officer and an ADA will review the case in the complaint room after an arrest is made. *Id.* at 19. Staten Island ADAs will pursue prosecution if there is sufficient evidence, regardless of a victim's willingness to cooperate with the State. *Id.* Collectively, the District Attorney's Offices in Brooklyn, Manhattan, Queens, and Staten Island have all implemented some degree of a "No-Drop" policy, with the Bronx being the outlier. *See generally id.* 15–20 (showing that each New York City borough besides the Bronx has adopted policies that are equivalent to the "No-Drop" policy).

<sup>62</sup> PETERSON ET AL., *supra* note 14, at 4.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* There are exceptions for cases where the victim has "severe physical injury, an extensive history of abuse, or the victim [was] hospitalized." *Id.* at 5.

<sup>67</sup> O'SULLIVAN ET AL., *supra* note 13, at 6.

unfold.<sup>68</sup> In the instances in which a victim wants to drop the charges, the Bronx's first-party complaint policy requires a victim to sign a waiver of prosecution, which specifies that the victim will not receive an order of protection and charges relating to that case will not be filed at a later time, conclusively sealing the file.<sup>69</sup> In cases where the victim is inaccessible or is unresponsive to the prosecution's efforts to reach out, no charges are filed and the case is sealed.<sup>70</sup> The Bronx allows up to twenty-four hours for the victim to be located and speak to a prosecutor before they completely renounce the prosecution.<sup>71</sup>

The Bronx's approach to prosecuting domestic violence cases has been criticized, and rightfully so.<sup>72</sup> Although former Bronx District Attorney Robert Johnson's<sup>73</sup> chief assistant Odalys Alonso defended their policy, stating that before declining to prosecute their office "take[s] great pains to ensure that it is the right decision," city records provided by the New York State Division of Criminal Justice Services show otherwise.<sup>74</sup> While the most common reasons

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<sup>68</sup> *Id.* at 2.

<sup>69</sup> *Id.* at 6.

<sup>70</sup> *Id.*

<sup>71</sup> Defendants in New York must generally be arraigned within 24 hours of arrest, hence the Bronx's limitation of 24 hours for a victim to sign the complaint. PETERSON ET AL., *supra* note 14, at 4; O'SULLIVAN ET AL., *supra* note 13, at 6–7.

<sup>72</sup> See *Bronx DA Declines to Prosecute More Than Other DAs: Report*, NBC (Aug. 21, 2012), <http://www.nbcnewyork.com/news/local/Bronx-DA-Declines-to-Prosecute-Robert-Johnson-WNYC--166885706.html>; Ailsa Chang, *In the Bronx, Victims Get 24 Hours to Talk – Or the DA Lets the Accused Walk*, WNYC NEWS (Aug. 21, 2012), <http://www.wnyc.org/story/231114-bronx-da/>; Kevin Deutsch, *Bronx DA's office declines to prosecute alarming number of cases, probe finds*, DAILY NEWS (Sept. 13, 2011), <http://www.nydailynews.com/news/crime/bronx-da-office-declines-prosecute-alarming-number-cases-probe-finds-article-1.958169>.

<sup>73</sup> Darcel Denise Clark became the 13th District Attorney for Bronx County on January 1, 2016, replacing former District Attorney Robert Johnson. *District Attorney's Biography*, OFF. BRONX DISTRICT ATT'Y, <http://bronxda.nyc.gov/html/units/units.shtml> (last visited Oct. 30, 2016); Eddie Small, *Darcel Clark Wins Bronx District Attorney Seat in Landslide*, DNA INFO (Nov. 4, 2015), <https://www.dnainfo.com/new-york/20151104/concourse/darcel-clark-wins-bronx-district-attorney-seat-landslide>.

<sup>74</sup> Chang, *supra* note 72; see N.Y.S. DIV. OF CRIMINAL JUSTICE SERVS., DATA SOURCE NOTES: BRONX COUNTY ADULT ARRESTS DISPOSED (Apr. 21,

that other District Attorney's offices decline to prosecute criminal cases<sup>75</sup> are insufficient evidence to support arrest or incomplete arrest paperwork, the Bronx is the only borough that mainly declines prosecution due to an uncooperative victim.<sup>76</sup> This policy may account for the fact that the Bronx has the highest decline-to-prosecute rate in the city.<sup>77</sup> Further defending the policy, Alonso stated that their office is "just more careful in the beginning about weeding out cases that don't fly—such as an improper arrest, sloppy police paperwork or weak evidence."<sup>78</sup> This claim was rebutted by internal office data, however, which found that almost half of all the domestic violence cases dropped in the Bronx over a three-month period were dismissed because the victim did not cooperate.<sup>79</sup> Insufficient evidence accounted for only one-tenth of all abandoned cases and only two percent of cases were declined because of incomplete paperwork.<sup>80</sup>

### 1. Weighing the Merits of the Bronx's First-Party Complaint Policy

The Bronx's first-party complaint policy emphasizes the importance of a victim having a voice in the prosecution of their abuser.<sup>81</sup> A victim's narrative of the history of the relationship with their abuser, as well as details about the pertinent incident that may not be included in the police report, can be immensely beneficial to a prosecutor in building a strong case once prosecution is pursued.<sup>82</sup> In 1957, the Supreme Court ruled in *Mallory v. United States* that "[c]ircumstances may justify a brief delay between arrest and arraignment . . . [b]ut the delay must not be of a nature to give

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2016) [hereinafter THE BRONX DATA OF ADULT ARRESTS], <http://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/bronx.pdf>.

<sup>75</sup> The data focuses on all criminal cases and is categorized by misdemeanors and felonies. THE BRONX DATA OF ADULT ARRESTS, *supra* note 74.

<sup>76</sup> Chang, *supra* note 72.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *See id.*

<sup>80</sup> *Id.*

<sup>81</sup> PETERSON ET AL., *supra* note 14, at 4.

<sup>82</sup> *Id.* at 4–5.



opportunity for the extraction of confession.”<sup>83</sup> Subsequently, in 1991, the New York Court of Appeals in *People ex rel. Maxian v. Brown* interpreted “without unnecessary delay” to mean twenty-four hours under normal conditions.<sup>84</sup> Under this precedent, a defendant charged in New York must be arraigned within twenty-four hours after their arrest,<sup>85</sup> meaning that under the Bronx’s first-party complaint policy, a victim has “less than twenty-four hours to sign the complaint” in order for a case to be prosecuted.<sup>86</sup> First, this raises major concerns as to whether twenty-four hours is a realistic amount of time for a victim to come forward, especially when dealing with victims of domestic violence who are likely not ready to discuss the incident immediately after having been victimized. Not only are the hours after a violent incident a vulnerable and emotional time, victims could also be geographically unavailable, having left the jurisdiction to stay with relatives or friends to escape their batterer after an attack. A victim’s initial reluctance to participate in the prosecution of their abuser might also change over time. However, because the Bronx’s first-party complaint policy essentially gives victims a twenty-four-hour ultimatum, it may dispose of a case prematurely, before victims have a chance to be heard.

Second, the Bronx’s first-party complaint policy is rationalized on the basis that prosecutors are encouraged to focus their efforts and resources on feasible cases in which the victim agrees to file a complaint, thereby reducing caseloads and increasing conviction rates.<sup>87</sup> Proponents of this policy believe that a victim’s “initial willingness to cooperate” with the prosecution “may increase the chances of” ultimately having the abuser convicted.<sup>88</sup> This argument does not take into account a prosecutor’s ability to pursue evidence-based prosecution, using evidence *other than* a victim’s testimony

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<sup>83</sup> *Mallory v. United States*, 354 U.S. 449, 455 (1957) (applying the Federal Rules of Criminal Procedure, Rule 5(a), indicating that the arraignments need to occur “without unnecessary delay.” See FED. R. CRIM. P. 5(a)).

<sup>84</sup> *People ex rel. Maxian v. Brown*, 570 N.E.2d 223, 225 (N.Y. 1991).

<sup>85</sup> PETERSON ET AL., *supra* note 14, at 4.

<sup>86</sup> *Id.* at 4–5.

<sup>87</sup> *Id.* at 5; see O’SULLIVAN ET AL., *supra* note 13, at 7 (“Not only is the caseload reduced by 20%, but it is reduced by exactly those cases likely to consume the greatest amount of resources.”).

<sup>88</sup> PETERSON ET AL., *supra* note 14, at 5.

to successfully build a strong case against an abuser.<sup>89</sup> Prosecutors can utilize tools such as photographs of the victim's injuries, crime scene investigation, hearsay exceptions,<sup>90</sup> evidence of prior acts of violence, and expert testimony to strengthen a domestic violence case when the victim's testimony is not procurable.<sup>91</sup> Obtaining such evidence would "require[] enlistment of first line responders such as law enforcement and the medical community."<sup>92</sup> The Bronx's current policy might cause police officers to feel that their domestic violence arrests are meaningless when District Attorney's offices fail to file charges, which could result in police officers feeling disinclined to thoroughly investigate domestic violence reports.<sup>93</sup> However, by espousing an approach where non-victim-testimony-evidence is valued and sought after, a police officer's role in the prosecution becomes more valuable as well.<sup>94</sup> This would further strengthen a prosecutor's ability to build a case and, consequently, increase the likelihood of seeking justice against an abuser.

Third, while it is inarguable that victim participation is conducive to a successful prosecution,<sup>95</sup> convictions should not be the driving force in screening domestic violence cases. Our criminal justice system prides itself on being fair and just, which does not

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<sup>89</sup> *Id.* at 4–5.

<sup>90</sup> Cronin, *supra* note 6, at 122 (“[I]n 2004, the United States Supreme Court decided *Crawford v. Washington* which raised important issues regarding the right of confrontation under the Sixth Amendment. *Crawford* concerned whether a statement given by a witness was ‘testimonial’ and therefore inadmissible unless the defendant had an opportunity to confront the speaker . . . . Statements made by victims at the scene proved especially problematic. Some courts determined that such statements were ‘per se testimonial,’ because police are there to gather evidence and take statements . . . . Then the Supreme Court issued *Davis v. Washington*, 547 [U.S.] 813 (2006), to directly address the question of what testimonial means. The Court determined that statements are non-testimonial when the primary purpose of the interrogation is to enable police to meet an ongoing emergency.”).

<sup>91</sup> See Cronin, *supra* note 6, at 118–25.

<sup>92</sup> *Id.* at 118.

<sup>93</sup> See Kalyani Robbins, Note, *No-Drop Prosecution of Domestic Violence: Just Good Policy, or Equal Protection Mandate?*, 52 STAN. L. REV. 205, 232–33 (1999).

<sup>94</sup> See *id.* at 232–33.

<sup>95</sup> O’SULLIVAN ET AL., *supra* note 13, at 7.

always mean convicting a perpetrator.<sup>96</sup> In some cases, a batterer's intervention program<sup>97</sup> or an order of protection may be more appropriate.<sup>98</sup> Additionally, prosecutors' duty is to protect members of society by enforcing our laws and punishing its violators.<sup>99</sup> By Bronx prosecutors placing substantial meaning on a victim's cooperation in their decision to prosecute, they are in essence resigning from their duty to represent the State by failing to fulfill their obligation to prosecute conduct that society has deemed to be unacceptable. The leniency that the Bronx's policy exudes is similar to police responses to incidences of domestic violence prior to the battered women's movement.<sup>100</sup> The effect of the Bronx's policy is that it places the burden on the victim to come forward, risks further victimization at the hands of the state, and might allow abusers to go unpunished.<sup>101</sup>

Fourth, the Bronx's first-party complaint policy disregards the benefits, such as a protective order and State surveillance, that a victim can receive to ensure their safety *only* while a case is active.<sup>102</sup> Extending the time a case remains active for these

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<sup>96</sup> See CRIMINAL JUSTICE STANDARDS FOR THE PROSECUTION FUNCTION § 3-1.2(b) (AM. BAR ASS'N 4th ed. 2015) ("The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict.").

<sup>97</sup> See JOHN ASHCROFT ET AL., U.S. DEP'T OF JUSTICE, BATTERER INTERVENTION PROGRAMS: WHERE DO WE GO FROM HERE? iii (June 2003), <https://www.ncjrs.gov/pdffiles1/nij/195079.pdf> ("Batterer intervention programs were introduced as a way to hold batterers accountable without incarcerating them.").

<sup>98</sup> See Ashleigh Owens, Note, *Confronting the Challenges of Domestic Violence Sentencing Policy: A Review of the Increasingly Global Use of Batterer Intervention Programs*, 35 FORDHAM INT'L L.J. 565, 595–96 (2012).

<sup>99</sup> Richard Garside, *The Purpose of Our Criminal Justice System*, CTR. FOR CRIME & JUST. STUDIES (Mar. 17, 2008), <http://www.crimeandjustice.org.uk/resources/purpose-criminal-justice-system>.

<sup>100</sup> Joan Zorza, *The Criminal Law of Misdemeanor Domestic Violence, 1970–1990*, 83 J. CRIM. L. & CRIMINOLOGY 46, 47–48 (1992). Historically, the police were notorious for their unresponsiveness to battered women's calls for help and, in turn, their perpetuation of victim blaming. *Id.*

<sup>101</sup> See PETERSON ET AL., *supra* note 14, at 5 ("Victims are primarily responsible for deciding whether a prosecutable case will be pursued in the Bronx, while victims rarely have influence over the prosecutor's decision to file a complaint in the other four boroughs.").

<sup>102</sup> See O'SULLIVAN ET AL., *supra* note 13, at 6.

protective mechanisms may be crucial to victims' immediate safety, even if charges are subsequently dismissed or a defendant is ultimately acquitted.<sup>103</sup>

Lastly, this policy is highly susceptible to batterer manipulation.<sup>104</sup> Batterers who are aware of the Bronx's policy may use the twenty-four-hour window to purposefully restrain their victim from going to the authorities knowing that once the twenty-fourth hour has passed, authorities will no longer pursue the case.

### *B. Brooklyn's "No-Drop" Policy*

Unlike the Bronx, the Brooklyn District Attorney's Office is fueled by the belief that all domestic violence cases should be prosecuted, regardless of the victim's cooperation.<sup>105</sup> Brooklyn's approach differs from the Bronx's due to the underlying belief that there is not enough information available shortly after an arrest for the prosecution to decide whether to move forward with a case.<sup>106</sup> In Brooklyn, all cases are mandatorily filed at the point of case screening, rather than after cases are filed with the court.<sup>107</sup> This is in stark contrast to the Bronx's policy, where cases do not get processed beyond case screening without victim cooperation.<sup>108</sup> Brooklyn's "No-Drop" policy affords prosecutors more time to decide whether a case is meritorious, and therefore worth

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<sup>103</sup> See PETERSON ET AL., *supra* note 14, at 4–5.

<sup>104</sup> See generally Cheryl Hanna, *No Right to Choose: Mandated Victim Participation In Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849 (1996) (arguing in favor of "No-Drop" policies that compel victim participation on the grounds that they reduce the batterer's ability to influence the victim, and consequently, the judicial process); Joan Zorza, *Batterer Manipulation and Retaliation: Denial and Complicity in the Family Courts*, CRISIS FAM. CTS., <https://abatteredmother.wordpress.com/tag/batterer-manipulation-and-retaliation-denial-and-complicity-in-the-family-courts-family-courts-excuse-male-misbehavior/> (discussing how batterers tend to manipulate the court system).

<sup>105</sup> O'SULLIVAN ET AL., *supra* note 13, at 7.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 8 ("Brooklyn does not appear to have a No-Drop policy after cases are filed.").

<sup>108</sup> PETERSON ET AL., *supra* note 14, at 4.

prosecuting, as well as provides victims time to possibly change their mind on whether to participate in their abuser's prosecution.<sup>109</sup>

An additional noteworthy procedural difference in comparison to the Bronx, is that in Brooklyn, victims are not required to meet with the prosecutor prior to arraignment, nor are they asked to sign a criminal complaint.<sup>110</sup> This directly extends Brooklyn prosecutors' discretion to aggressively proceed with a case without victim support.<sup>111</sup> Prior to arraignment, a case is likely to proceed regardless of whether the victim decides to discuss his or her participation in the case or declines and expresses a desire to sign a waiver of prosecution.<sup>112</sup> Brooklyn rationalizes this policy under the beliefs that initially ambivalent victims are susceptible to changing their mind as time progresses, victim protection is highly important, and a mechanism must be in place to monitor defendants in the event of rearrest.<sup>113</sup>

### 1. Weighing the Merits of Brooklyn's "No-Drop" Policy

Since their genesis, "No-Drop" policies have sparked much controversy as to whether such use of State power in fact accomplishes the prosecution's goal of protecting victims of domestic violence, as well as gauging their impact, if any, on victim empowerment.<sup>114</sup> First, opponents of "No-Drop" policies have argued that this practice "has the unintended effect of punishing or 'revictimizing' the victim for the actions of the abuser by forcing the victim into a process [of] which [they have] no control."<sup>115</sup> Although well founded, this criticism does not take into account the

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<sup>109</sup> See O'SULLIVAN ET AL., *supra* note 13, at 7.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 8 ("By New York statute, cases brought on misdemeanor charges will be dismissed by the court after 90 days if the prosecutor cannot move the case forward on an A misdemeanor. The time limit for bringing the case to trial or other conclusion is 60 days for a B misdemeanor, and 30 days for a violation level offense.").

<sup>113</sup> *Id.*

<sup>114</sup> See Hanna, *supra* note 104, at 1865–66.

<sup>115</sup> *Id.*

overarching advantages to victim safety and empowerment while a case is being prosecuted.<sup>116</sup> While a case is active, prosecutors are able to “provide services to the victim, [such as] counseling, housing assistance, and safety planning, that may improve victim safety even if the case is subsequently dismissed.”<sup>117</sup> Such services are beneficial because they provide a victim with tools and resources necessary to gain back their autonomy and control of their life.<sup>118</sup> Brooklyn’s approach also avoids “revictimizing” by not requiring victims to be subpoenaed to testify against their abuser. Instead, prosecutors have the discretion to proceed with an evidence-based prosecution absent victim testimony or participation.<sup>119</sup>

Second, aggressively prosecuting abusers limits a batterer’s ability to thwart the case by intimidating the victim from testifying, in hopes that their lack of cooperation will result in dropped charges.<sup>120</sup> By adopting a “No-Drop” policy that does not rely on victim cooperation, the Brooklyn District Attorney’s Office decreases an abuser’s incentive to retaliate against their victim—and therefore decreases the risk of future danger—by reinforcing that the State is bringing the case, not the victim.<sup>121</sup> By removing the burden from the victim in deciding whether a prosecution against their abuser shall proceed, Brooklyn’s policy may lessen the likelihood of reprisal from their abuser, and more effectively protects victims.

Third, Brooklyn’s “No-Drop” policy enables prosecutors to keep a case active for as long as possible pursuant to N.Y. Criminal Procedure Law §30.30, which codifies a defendant’s right to a speedy trial and affords prosecutors time to decide whether to pursue prosecution and prepare the case for trial.<sup>122</sup> As long as a case is

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<sup>116</sup> See PETERSON ET AL., *supra* note 14, at 4.

<sup>117</sup> *Id.*

<sup>118</sup> See Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*, 37 FLA. ST. U. L. REV. 1, 12–13 (2009).

<sup>119</sup> See GAVIN & PUFFET, *supra* note 45, at 14.

<sup>120</sup> Hanna, *supra* note 104, at 1852.

<sup>121</sup> See *id.* at 1865.

<sup>122</sup> PETERSON ET AL., *supra* note 14, at 4. These time limitations range from ninety days for A misdemeanor charges, sixty days for B misdemeanor charges, and thirty days for violation level offenses. See N.Y. Crim. Proc. Law § 30.30 (McKinney 2006).

active, prosecutors are able to monitor defendants and maintain an order of protection, which are both valuable means in keeping a victim safe.<sup>123</sup> This policy also takes into account the characteristic uncertainty of victims of domestic violence.<sup>124</sup> By filing all cases at the initial proceedings stage, Brooklyn's policy gives victims latitude to change their minds about participating in the prosecution.<sup>125</sup> This is an especially worthwhile approach with respect to victims of homosexual, racial minority, indigent, and immigrant communities, who might be untrusting or uneducated about the criminal justice system.<sup>126</sup> Allowing time for a prosecutor to build a rapport with victims from these communities and convey their role to them as an ally might make a paramount difference in their decision to participate in prosecuting their batterer, as well as to utilize the criminal justice system if future incidences were to occur.<sup>127</sup>

Fourth, scholars have argued that by treating domestic violence victims' reluctance to cooperate similar to that of victims of other crimes, the integrity of the criminal justice system is preserved and the risks of paternalistic and sexist consequences are reduced.<sup>128</sup> When dealing with communities that have an inherent distrust of our government, Brooklyn's "No-Drop" policy conveys a message of

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<sup>123</sup> See PETERSON ET AL., *supra* note 14, at 4.

<sup>124</sup> O'SULLIVAN ET AL., *supra* note 13, at 8.

<sup>125</sup> *Id.*

<sup>126</sup> See *infra* Part III.

<sup>127</sup> See PETERSON ET AL., *supra* note 14, at 21 ("[R]eliance on first-party complaints may also pose a risk for victims who do sign the complaint. DV offenders may intimidate or re-assault victims because the offenders realize that the victim, not the prosecutor, is responsible for the prosecution. Victims may be reluctant to call the police again, since the new arrest will report the cycle of intimidation as the victim is faced again with a decision about whether to sign the complaint.").

<sup>128</sup> See Hanna, *supra* note 104, at 1849, 1857 ("Requiring mandated participation places domestic violence on the same level as all violence crimes and ensures the equal protection of law enforcement for women who are victimized by their intimate partners as well as for women who are victimized by strangers."). *But see generally* G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women's Movement*, 42 HOUS. L. REV. 237 (2005) (arguing that mandatory state intervention conveys a message that all battered women are incapable of rational choice in trauma).

rectitude, which might be key in cultivating a confidence between prosecutors and victims of marginalized communities that incidences of domestic violence will be fervently confronted.

### III. THE BRONX AND BROOKLYN'S POLICIES' IMPACTS WITHIN MARGINALIZED COMMUNITIES

Although it is uncontested that domestic violence affects individuals regardless of their race, sex, age, or socioeconomic status, these same classifications may increase victims' vulnerabilities within certain populations and inhibit their willingness to cooperate within our criminal justice system.<sup>129</sup> Homosexuals, racial minorities, immigrants, and indigent individuals each experience victimization differently in the context of domestic violence,<sup>130</sup> thus raising concerns as to whether the Bronx's first-party complaint policy and Brooklyn's "No-Drop" policy are suitable methods of addressing domestic violence within these communities. But, as cases involving these minority communities illustrate, prosecutorial policies that reflect these victims' unique experiences are an important mechanism to combating domestic violence. Brooklyn's approach is preferential because it affords prosecutors more time to take victims' concerns into consideration.

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<sup>129</sup> 30 *Shocking Domestic Violence Statistics*, *supra* note 39.

<sup>130</sup> See, e.g., Dana Harrington Conner, *Financial Freedom: Women, Money, and Domestic Abuse*, 20 WM. & MARY J. WOMEN & L. 339 (2014) (analyzing the barriers that victims who are financially dependent on their abusers face from escaping domestic violence); Kathleen Finley Duthu, *Why Doesn't Anyone Talk About Gay and Lesbian Domestic Violence?*, 18 T. JEFFERSON L. REV. 23 (1996) (discussing the idiosyncratic characteristics of domestic violence within homosexual relationships in contrast to heterosexual relationships); Meghan Condon, Note, *Bruise of a Different Color: The Possibilities of Restorative Justice for Minority Victims of Domestic Violence*, 17 GEO. J. POVERTY LAW & POL'Y 487 (2010) (discussing the increased vulnerabilities of minority victims of domestic violence in a "white-dominated" legal system); Tien-Li Loke, *Trapped in Domestic Violence: The Impact of United States Immigration Laws on Battered Immigrant Women*, 6 B.U. PUB. INT. L.J. 589 (1997) (discussing the difficulties victims of domestic violence face as a result of their immigration status).



*A. Homosexuals*

Domestic violence occurs within lesbian, gay, bisexual, and transgender (“LGBT”) relationships at the same rate and severity as in heterosexual relationships.<sup>131</sup> Studies show that two in five gay and bisexual men experience abuse in intimate partner relationships,<sup>132</sup> although males in general are less likely to be victimized compared to women.<sup>133</sup> Comparably, it has been reported that fifty percent of lesbian women will experience domestic violence in their lifetimes.<sup>134</sup> Due to society’s long history of homophobia, victims within the LGBT community may be reluctant to seek help from police and court systems for fear of discrimination or bias, though these concerns have lessened in recent years.<sup>135</sup>

Homosexual relationships have distinct characteristics that may make individuals hesitant to seek government involvement or deter them from seeking government involvement entirely.<sup>136</sup> First, although there has been a massive trend in acceptance of homosexuality in the United States,<sup>137</sup> it is undeniable that

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<sup>131</sup> NAT’L COALITION AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE AND LESBIAN, GAY, BISEXUAL, AND TRANSGENDER RELATIONSHIPS, [http://www.uncfsp.org/projects/userfiles/File/DCE-STOP\\_NOW/NCADV\\_LGBT\\_Fact\\_Sheet.pdf](http://www.uncfsp.org/projects/userfiles/File/DCE-STOP_NOW/NCADV_LGBT_Fact_Sheet.pdf) (last visited Oct. 30, 2016) [hereinafter DOMESTIC VIOLENCE AND LGBT].

<sup>132</sup> This rate is comparable to the amount of domestic violence experienced by heterosexual women. *See id.*

<sup>133</sup> *See 30 Shocking Domestic Violence Statistics*, *supra* note 39 (“Women are much more likely to be victims of intimate partner violence with 85 percent of domestic abuse victims being women and 15 percent men.”).

<sup>134</sup> *Id.*

<sup>135</sup> DOMESTIC VIOLENCE AND LGBT, *supra* note 131.

<sup>136</sup> *See generally* DAVID ISLAND & PATRICK LETELLIER, *THE NEIGHBORS CALL THE POLICE, MEN WHO BEAT THE MEN WHO LOVE THEM* (1991) (examining domestic violence and the underlying criminal, mental health, medical, political, and interpersonal issues involved in homosexual male relationships); Duthu, *supra* note 130 (“Gay and lesbian victims often do not have a strong support system, causing them to feel they do not have many options to help them stop the violence...Both gay men and lesbians are less likely than heterosexual women to turn to family members for emotional support.”).

<sup>137</sup> *See Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (holding that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex

homophobia still exists in society.<sup>138</sup> Homophobia can deter reporting domestic violence, causing isolation and increasing the vulnerability of gay men and lesbians to domestic abuse.<sup>139</sup> A same-sex batterer might also exploit their partner's fear of homophobia by "convinc[ing] their partner[] that gays or lesbians are not entitled to legal protection and will be treated badly by the homophobic doctors, shelters, police and court system if he or she seeks help," further deterring them from reporting the abuse.<sup>140</sup>

Second, homophobia also becomes relevant regarding a homosexual couples' lack of support once a violent incident is reported.<sup>141</sup> Homosexuals may fear hostility and failure to take their claims seriously from police, district attorneys, and even their own attorneys due to their sexual orientation.<sup>142</sup> Comments such as, "Why aren't you defending yourself? You're a man. Stand up for yourself" are not uncommon responses from law enforcement once

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when their marriage was lawfully licensed and performed out-of-state); *see also Same-Sex Marriage Laws*, NCSL (June 26, 2015), <http://www.ncsl.org/research/human-services/same-sex-marriage-laws.aspx> (discussing legislation throughout the United States in support of gay marriage).

<sup>138</sup> See Travis Waldron, *Multinational Study Uncovers Widespread Homophobia in Sports*, THINKPROGRESS: SPORTS (May 14, 2015), <http://thinkprogress.org/sports/2015/05/14/3658545/report-finds-positive-signs-gays-lesbians-welcome-sports/>; *see also* Dawn Ennis, *Father Sues School After Antigay Bullies Drove His Son to Suicide*, LGBTQ NATION (July 21, 2016), <http://www.lgbtqnation.com/2016/07/father-sues-school-antigay-bullies-drove-son-suicide/> (discussing homophobia in schools and the repercussions of it); *Presidential Candidate John Kasich: Victims of Homophobia Should 'Just Get Over It'*, LGBTQ NATION (Apr. 18, 2016), <http://www.lgbtqnation.com/2016/04/presidential-candidate-john-kasich-victims-of-homophobia-should-just-get-over-it/> (showing that presidential candidate, John Kasich, acknowledges that homophobia is still a prevalent issue in society today).

<sup>139</sup> See generally Duthu, *supra* note 130 (discussing how homophobia can deter reporting, leading to isolation and vulnerability); ISLAND & LETELLIER, *supra* note 136 (providing accounts of homophobia deterring reporting domestic violence incidents and how it can lead to future abuse).

<sup>140</sup> Duthu, *supra* note 130, at 31–32.

<sup>141</sup> See SCHNEIDER ET AL., *supra* note 18, at 103–04.

<sup>142</sup> See Sandra E. Lundy, *Abuse That Dare Not Speak Its Name: Assisting Victims of Lesbian and Gay Domestic Violence in Massachusetts*, 28 NEW ENG. L. REV. 273, 290 (1993).

an incident is reported.<sup>143</sup> Similarly, reports of domestic violence by lesbians may be viewed as “just a girl-fight” and consequently not be taken seriously, thus perpetuating violence and victimization.<sup>144</sup>

The Bronx first-party complaint policy’s requirement that victims speak with a prosecutor within twenty-four hours following their abuser’s arrest in order for the case to proceed may further alienate homosexual victims of domestic violence from law enforcement and may perpetuate fears that the criminal justice system will not take their victimization seriously. Alternatively, Brooklyn’s “No-Drop” policy may effectively alleviate these fears. By filing *all* cases regardless of victim cooperation, the Brooklyn District Attorney’s Office is sending a message that *everyone’s* victimization will be addressed. For homosexuals that fear mistreatment by possible homophobic law enforcement, Brooklyn’s “No-Drop” policy conveys that all individuals will be protected regardless of any external factors, including their sexual orientation.

Further, fears of reporting may arise due to an individual concealing his or her sexual orientation and the consequence of being “outed.”<sup>145</sup> The exposure that someone who is not openly gay may face by reporting domestic violence could be exacerbated by the publicity that is attributed to our criminal justice system.<sup>146</sup> In instances where the State intervenes and pursues prosecution, a victim’s sexual orientation could be exposed and he or she consequently “may lose child custody, prestigious careers, and valued personal relationships.”<sup>147</sup> The possibility of these adverse consequences occurring as a result of reporting the abuse might limit a homosexual’s willingness to allow the State to intercede.<sup>148</sup>

The Bronx’s first-party complaint policy does not effectively consider a homosexual’s fear of the possible consequences of being “outed.” Similarly, the Bronx’s approach of sealing cases in

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<sup>143</sup> See *id.*

<sup>144</sup> See *id.* at 289.

<sup>145</sup> Duthu, *supra* note 130, at 31 (“[T]he batterer may threaten ‘to out’ the victim to family, friends, co-workers and ex-spouses who are not aware of and will not accept his or her sexuality.”).

<sup>146</sup> See, e.g., U.S. CONST. amend. VI (guaranteeing an accused’s right to a public trial).

<sup>147</sup> Duthu, *supra* note 130, at 31.

<sup>148</sup> See *id.*

instances where a victim does not sign the criminal complaint within the allotted twenty-four-hour time period<sup>149</sup> prevents homosexual victims from receiving services that would address their concerns and fears. Opportunities to offer services such as counseling, referrals to support groups, and overall legal assistance to victims within this population might be reduced if they do not come forward within twenty-four hours and the case is sealed.<sup>150</sup> This approach is ineffective in conveying to the victims within the LGBT community that the District Attorney's Office can do more than just prosecute their abuser.

In contrast, Brooklyn's "No-Drop" policy affords victims more time to decide whether to cooperate with the prosecution, and allows prosecutors more time to cultivate a relationship with them and offer them services if necessary. The Brooklyn District Attorney's Office offers a wide range of support services for victims, such as "counseling, civil legal assistance for immigration and family court matters, housing and HRA assistance, and economic empowerment programs."<sup>151</sup> The Brooklyn District Attorney's Office should partner with community organizations where homosexual victims can be referred to that specialize in providing members of the LGBT community with legal assistance, counseling, and support tailored to their unique needs and experiences.

### *B. Racial Minorities*

Communities of color have their own idiosyncratic experiences in society, which may account for the underreporting of domestic

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<sup>149</sup> PETERSON ET AL., *supra* note 14, at 4; O'SULLIVAN ET AL., *supra* note 13, at 5–6.

<sup>150</sup> *But see* O'SULLIVAN ET AL., *supra* note 13, at 14 (discussing an argument in favor of filing all cases on the grounds that the prosecutors' ongoing contact with victims may increase awareness and utilization of domestic violence services); *Bureaus and Units*, OFF. BRONX DISTRICT ATT'Y, <http://bronxda.nyc.gov/html/units/units.shtml> (last visited Oct. 30, 2016) (showing that in instances where cases are filed, the Domestic Violence provides complainants services such "as legal, emotional and financial support").

<sup>151</sup> *Domestic Violence Bureau*, BROOK. DISTRICT ATT'Y OFF., <http://brooklynda.org/domestic-violence/> (last visited Oct. 30, 2016).

violence and a failure to seek help within these communities.<sup>152</sup> Although factors may vary depending on cultural differences, commonalities do exist.<sup>153</sup> Factors such as familial hierarchies, religion, cultural loyalties and values, and a general distrust of law enforcement might all influence a woman of color's experience with domestic violence.<sup>154</sup> Despite these similarities, however, there are specific issues and distinguishing dynamics that women of different ethnicities confront that merit further analysis and discussion to better understand their victimization.<sup>155</sup>

### 1. African American Women

African American women face race-based barriers in accessing sufficient resources to leave their abuser and continue a life free from domestic violence.<sup>156</sup> Statistics show that 29.1% of African American women are victims of intimate partner violence in their lifetime.<sup>157</sup> Additional statistics show that black women are thirty-five times more likely to experience intimate partner violence compared to white women<sup>158</sup> “and 2.5 times [more likely

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<sup>152</sup> NAT'L ADVOCACY THROUGH ACTION, WOMEN OF COLOR NETWORK FACTS & STATS: DOMESTIC VIOLENCE IN COMMUNITIES OF COLOR 1 (2006), [http://www.doj.state.or.us/victims/pdf/women\\_of\\_color\\_network\\_facts\\_domestic\\_violence\\_2006.pdf](http://www.doj.state.or.us/victims/pdf/women_of_color_network_facts_domestic_violence_2006.pdf).

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* at 2. Although domestic violence is not limited to women, this Note focuses on women in racial minority communities because there are unique characteristics and pressures within these cultures specific to women that directly impact their experiences with domestic violence.

<sup>155</sup> *See id.* at 1–2.

<sup>156</sup> Lisa M. Martinson, Comment, *An Analysis of Racism and Resources for African-American Female Victims of Domestic Violence in Wisconsin*, 16 WIS. WOMEN'S L.J. 259, 263 (2001).

<sup>157</sup> NAT'L ADVOCACY THROUGH ACTION, *supra* note 152, at 2. Intimate partner violence includes rape, physical assault, and stalking. *Id.*

<sup>158</sup> Condon, *supra* note 130, at 488. Interestingly enough, it is reported that intimate partner violence among African Americans is related to economic factors, occurring more frequently among couples with low incomes, those in which the male partner is underemployed or unemployed, particularly when he was not seeking work, and among couples living in low-income neighborhoods regardless of their income. INST. ON DOMESTIC VIOLENCE IN THE AFR. AM. COMMUNITY, FACT SHEET: INTIMATE PARTNER VIOLENCE (IPV) IN THE

than] . . . women of other races.”<sup>159</sup> Also disconcerting is the fact that “they are less likely than white women to use social services, battered women’s programs,” or seek medical attention for injuries due to domestic violence.<sup>160</sup>

The first factor that may contribute to this imbalance is the historical and persisting presence of racism in the United States.<sup>161</sup> African American women may be reluctant to report or seek help for fear of discrimination by State institutions, such as law enforcement agencies.<sup>162</sup> Considering the present day tensions between law enforcement and black communities in the wake of instances such as the deaths of Eric Garner and Mike Brown,<sup>163</sup> an African American woman may feel reluctant to report her victimization, for fear of her batterer being unjustly stereotyped upon entering the criminal justice system.<sup>164</sup>

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AFRICAN AMERICAN COMMUNITY,  
[http://www.idvaac.org/media/publications/FactSheet.IDVAAC\\_AAPCFV-Community%20Insights.pdf](http://www.idvaac.org/media/publications/FactSheet.IDVAAC_AAPCFV-Community%20Insights.pdf) (last visited Oct. 30, 2016).

<sup>159</sup> Condon, *supra* note 130, at 488; NAT’L ADVOCACY THROUGH ACTION, *supra* note 152, at 2.

<sup>160</sup> NAT’L ADVOCACY THROUGH ACTION, *supra* note 152, at 2.

<sup>161</sup> *Id.*; see Catherine E. Shoichet, *Is Racism on the Rise? More in U.S. Say it’s a ‘Big Problem,’ CNN/KFF Poll Finds*, CNN: RACE & REALITY IN AMERICA, <http://www.cnn.com/2015/11/24/us/racism-problem-cnn-kff-poll/> (last updated Nov. 25, 2015).

<sup>162</sup> NAT’L ADVOCACY THROUGH ACTION, *supra* note 152, at 2.

<sup>163</sup> See Deborah E. Bloom & Jareen Imam, *New York man dies after chokehold by police*, CNN (Dec. 8, 2014), <http://www.cnn.com/2014/07/20/justice/ny-chokehold-death/>; Rachel Clarke & Christopher Lett, *What Happened When Michael Brown Met Officer Darren Wilson*, CNN (Nov. 11, 2014, 5:22 PM), <http://www.cnn.com/interactive/2014/08/us/ferguson-brown-timeline/>.

<sup>164</sup> NAT’L ADVOCACY THROUGH ACTION, *supra* note 152, at 2 (“[A] fear that police with exercise an abuse of power have contributed to African American women’s reluctance to involve law enforcement.”); Condon, *supra* note 130, at 501 (“African-American women are hesitant to take any action that would further stereotypes of their community in the outside world: ‘many African-American women feel the need to stay in their relationships, keep their families together, and be unified against outside oppressions and stereotypic representations.’ They have an allegiance not only to their batterer, but also to African-American men in general.” (quoting Zanita E. Fenton, *Domestic Violence in Black and White: Racialized Gender Stereotypes in Gender Violence*, 8 COLUM. J. GENDER & L. 1, 49 (1998))).

A second factor may be stereotypes that deem African American women as “domineering figures that require control” or “exceptionally strong under stress and . . . resilient.”<sup>165</sup> These preconceived notions derive from the hyperincarceration of African American men, forcing African American women to become the head of their household and play both parental roles.<sup>166</sup> While not unfounded, the pressures on African American women to be strong for their family may discourage some from reporting abuse for fear of household disintegration.<sup>167</sup>

As seen with the LGBT community, the Bronx’s first-party complaint policy may convey a message that prosecutors do not take domestic violence within the African American community seriously or that they do not care to address it.<sup>168</sup> By the Bronx emphasizing the importance of victim cooperation for the sake of concentrating prosecutorial resources and efforts on domestic violence cases that are more likely to result in a conviction, the first-party complaint policy may further justify some members of the African American community contending that law enforcement actively seeks to incarcerate African American men.<sup>169</sup> This may exacerbate already strained ties and worsen the present divide between law enforcement and the African American community.<sup>170</sup>

Alternatively, Brooklyn’s “No-Drop” policy communicates to the community that *every* act of domestic violence will be addressed

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<sup>165</sup> NAT’L ADVOCACY THROUGH ACTION, *supra* note 152, at 2; *see also* Martinson, *supra* note 156, at 261–62 (noting that racist stereotypes of African American Women may be another reason why they are hesitant to report domestic abuse).

<sup>166</sup> *See generally* Amy Seamann, *Not Women for the Women’s Movement, Not Black for the Racial Movement: A Critical Race Critique on Mass Incarceration and the External Effects on the Women Left at Home*, DEPAUL J. WOMEN GENDER & L., Spring 2015, at 1 (discussing the consequences of mass incarceration of African American men and its resulting effect on African American women).

<sup>167</sup> *See* NAT’L ADVOCACY THROUGH ACTION, *supra* note 152, at 2.

<sup>168</sup> *See* Martinson, *supra* note 156, at 274.

<sup>169</sup> *See id.* at 265.

<sup>170</sup> *See generally* Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479 (2016) (discussing “broken windows” policing, mass criminalization, and police violence within African American communities).

and taken seriously, regardless of a victim's race.<sup>171</sup> For example, the Brooklyn District Attorney's Office has received a federal grant from the Department of Justice to institute a program called the Domestic Violence Homicide Prevention Demonstration Initiative.<sup>172</sup> This program concentrates its efforts on domestic violence cases within primarily African American communities in Brooklyn, specifically East New York, by "seeking to identify victims who are at highest risk for being in a potentially fatal abusive relationship."<sup>173</sup> By implementing a program that is adapted to work specifically with the African American community, the Brooklyn District Attorney's Office has clearly strived to adopt a system that accounts for the distinct obstacles victims within this community experience.<sup>174</sup>

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<sup>171</sup> See Candace Kruttschnitt, *The Effect of "No-Drop" Prosecution Policies on Perpetrators of Intimate Partner Violence*, 7 CRIMINOLOGY & PUB. POL'Y 629, 629-31 (2008).

<sup>172</sup> *Domestic Violence Bureau*, *supra* note 151.

<sup>173</sup> *Id.*

<sup>174</sup> See, e.g., OFF. ON VIOLENCE AGAINST WOMEN, U.S. DEP'T OF JUSTICE, OVW FISCAL YEAR 2012 DOMESTIC VIOLENCE HOMICIDE PREVENTION DEMONSTRATION INITIATIVE (2012), <http://www.ovw.usdoj.gov/docs/dv-homicide-reduction-initiative-call-for-concept-papers.pdf> (discussing the purpose, scope, and application requirements for local governments applying to receive a federal grant to implement a Domestic Violence Homicide Prevention Demonstration Initiative program in their locality). The Domestic Violence Homicide Prevention Demonstration Initiative seeks to

[i]mprove upon existing cooperative efforts and partnerships with law enforcement, prosecutors, victim advocacy groups, civil and criminal courts, health care providers, housing programs, children's services, community-based organizations, state domestic violence coalitions and other parties related to the prevention and responses to domestic and dating violence incidents; [d]evelop multidisciplinary high risk teams that will fully participate in the implementation and evaluation of assigned intervention. Activities include: (a) Implementing site-specific risk assessment models; (b) Improving screening and management methods of high-risk offenders; (c) Providing ongoing victim advocacy and referrals to comprehensive services including legal, housing, and economic assistance; Receive training on evidence-based risk factors for domestic and dating violence homicide and how to appropriately administer risk assessment instruments; and; [a]dapt risk assessment tools and accompanying interventions to be culturally appropriate.



## 2. Hispanic/Latina Women

In 2014, the National Center for Injury Prevention and Control reported that 29.7 percent of Hispanic and Latina women are victimized by intimate partner violence in their lifetimes.<sup>175</sup> The prevalence of domestic violence plaguing this population, along with cultural and social influences characteristic of Hispanic and Latino communities, may impact the way victims respond to incidences of domestic violence and their inclination to seek out State intervention.<sup>176</sup>

First, in Hispanic and Latino culture, women are encouraged to become wives and mothers and are admonished for divorcing, marrying several times, or remaining single and having children out of wedlock.<sup>177</sup> Because of these cultural influences, battered women are often hesitant to report abuse or leave their partners.<sup>178</sup>

Second, victims within the Hispanic and Latino community's unwillingness to report incidences of violence may be further intensified due to language barriers.<sup>179</sup> A lack of English proficiency can pose a barrier to understanding what resources are available to victims and how to access such resources in order for them to report the abuse and/or leave the relationship.<sup>180</sup>

Third, "machismo" is a hallmark of Hispanic and Latino culture.<sup>181</sup> "Machismo" is defined as excessive masculinity and is attributed to conservative gender roles, which restrain Hispanic and Latina women from becoming employed, playing sports, or

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*Id.* at 6. The efforts and methodology of this initiative are specifically tailored to reflect the needs and interests of the targeted community. *Id.*

<sup>175</sup> Matthew J. Breiding et al., *Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization — National Intimate Partner and Sexual Violence Survey, United States, 2011*, CTR. FOR DISEASE CONTROL & PREVENTION (2014), [http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm?s\\_cid=ss6308a1\\_e](http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm?s_cid=ss6308a1_e).

<sup>176</sup> NAT'L ADVOCACY THROUGH ACTION, *supra* note 152, at 4–5.

<sup>177</sup> *Id.* at 5.

<sup>178</sup> *Id.*

<sup>179</sup> Julieta Barcaglioni, *Domestic Violence in the Hispanic Community*, SAFE HARBOR (Aug. 31, 2010), <http://safeharbor.org/domestic-violence-in-the-hispanic-community/>.

<sup>180</sup> *Id.*

<sup>181</sup> NAT'L ADVOCACY THROUGH ACTION, *supra* note 152, at 5.

partaking in any activities that are deemed to be exclusively for male participation.<sup>182</sup> These rigid and paternalistic gender roles force women within this community to be the “ideal woman” for their husband by being “emotional, kind, instinctive, whimsical, docile, compliant, vulnerable, and unassertive.”<sup>183</sup> Further, a Hispanic and Latina woman receives a higher status within her community if she has children and is a caring mother.<sup>184</sup> These cultural pressures may delay a Hispanic or Latina woman from essentially turning her back against her husband by reporting his abuse.<sup>185</sup>

The Bronx’s first-party complaint policy, because of its twenty-four hour requirement, also fails to consider the concerns victims of domestic violence within Hispanic and Latino communities may have when deciding whether to participate in the prosecution of their abuser.<sup>186</sup> While cultural norms might initially cause Hispanic and Latina women to be reluctant to essentially “betray” their abuser by cooperating with the prosecution, affording time for victims to change their mind and for prosecutors to build a rapport with them to understand and assess the obstacles these victims uniquely face are essential to cultivating a system that effectively combats domestic violence. When dealing with the Hispanic and Latino community, Brooklyn’s “No-Drop” policy is superior in that it grants prosecutors, as well as victims, time after an arrest is made to evaluate these considerations. Additionally, in conjunction with its “No-Drop” policy, the Brooklyn District Attorney’s Office has its own Victim Services Unit that offers specialized programs for victims to receive services tailored to their needs.<sup>187</sup> One program in particular, called Brooklyn Rising Against Violence Everyday (“BRAVE”), provides support to victims of domestic violence and sexual assault within the Hispanic and Latino community, among

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<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *See supra* Section II.A.1.

<sup>187</sup> *See Victim Services Unit*, BROOK. DISTRICT ATT’Y OFF., <http://brooklynda.org/victim-services-unit/> (last visited Oct. 30, 2016). The Victim Services Unit offers counseling services to Brooklyn residents traumatized by crime and also offers specialized services and support for victims of domestic violence and sexual assault. *Id.*

other ethnic groups.<sup>188</sup> Brooklyn's "No-Drop" policy is also superior in instances where a Hispanic or Latina women might feel compelled to continue the relationship with her abuser because of cultural expectations as it allows for a case to be pursued absent victim participation, relieving a victim of becoming embroiled in a prosecution that she does not desire to partake in.<sup>189</sup>

Further, studies show that Hispanic and Latina women are more likely to be employed in a low-paying, semi-skilled job relative to the overall workforce.<sup>190</sup> Financial impediments generally limit a woman's economic freedom to separate themselves from abuse and access resources, such as legal assistance, shelter, and child-care once independent from their abuser.<sup>191</sup> In instances where a victim is dependent on her abuser's income, ensuring economic security for herself, as well as her children, may override her willingness to leave her abuser.<sup>192</sup>

While both the Bronx and Brooklyn District Attorney's Offices' offer victims financial services once a case is filed, the Bronx's first-party complaint policy may not be advantageous when working with a victim who has economic constraints.<sup>193</sup> In instances where financial limitations may be a predominant reason why a victim is hesitant to leave her abuser, the Bronx's policy might result in the disposal of meritorious cases, where originally uncooperative victims may eventually decide to cooperate with the prosecution once understanding the economic services that may be offered, but that they may otherwise have been unaware of. Under these circumstances, Brooklyn's "No-Drop" policy may be better suited

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<sup>188</sup> *See id.*

<sup>189</sup> *See supra* Section II.B.1.

<sup>190</sup> NAT'L ADVOCACY THROUGH ACTION, *supra* note 152, at 5 (citing K.J. WILSON, WHEN VIOLENCE BEGINS AT HOME: A COMPREHENSIVE GUIDE TO UNDERSTANDING AND ENDING DOMESTIC ABUSE 125 (2005)).

<sup>191</sup> *See* Conner, *supra* note 130, at 357 ("[F]or many women it comes down to a choice between ensuring resources for their children and freedom from abuse. The choice is clear for many women – feed, house, and clothe the children, even if it compromises her safety."); *see also* NAT'L ADVOCACY THROUGH ACTION, *supra* note 152, at 5 ("[L]imited financial resources create substantial barriers for [Hispanic women/Latinas] trying to leave the abuse or trying to obtain legal assistance, housing, and child care.").

<sup>192</sup> *See* Conner, *supra* note 130, at 357–58.

<sup>193</sup> *See supra* Section III.A.

for Hispanic and Latina victims because it allows more time for victims to come forward and avail themselves of services to alleviate overriding concerns and possibly leave their abusive relationship.

### *C. Immigrant Communities*

A battered woman's immigration status also raises serious concerns when trying to escape abuse.<sup>194</sup> Factors such as unfamiliarity with U.S. law, language barriers, social isolation, and lack of financial resources may all contribute to an immigrant woman's ability to remove herself from an abusive relationship.<sup>195</sup> Although federal legislation, namely VAWA, has afforded immigrant women legal relief and protection,<sup>196</sup> there are still many difficulties that immigrant women face that may deter them from reporting domestic violence.<sup>197</sup>

First, since domestic violence is often a tool used by a batterer to control his or her victim,<sup>198</sup> a woman's immigration status may be used as a pawn in the cycle of violence.<sup>199</sup> An abuser may use "his partner's immigration status to force her to remain in the relationship."<sup>200</sup> A batterer can exploit an immigrant woman's fear of deportation, especially in cases where her legal status is dependent on his sponsorship, by threatening to cut off support if she leaves him.<sup>201</sup> An immigrant woman who is dependent on her abuser for sponsorship may also be reluctant to report abuse in fear of her *abuser's* deportation.<sup>202</sup> Often, an immigrant woman arrives in the United States with a scant amount of financial resources of

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<sup>194</sup> FUTURES WITHOUT VIOLENCE, THE FACTS ON IMMIGRANT WOMEN AND DOMESTIC VIOLENCE, [https://www.futureswithoutviolence.org/userfiles/file/Children\\_and\\_Families/Immigrant.pdf](https://www.futureswithoutviolence.org/userfiles/file/Children_and_Families/Immigrant.pdf) (last visited Oct. 30, 2016).

<sup>195</sup> *Id.*

<sup>196</sup> See THE WHITE HOUSE, *supra* note 35.

<sup>197</sup> FUTURES WITHOUT VIOLENCE, *supra* note 194.

<sup>198</sup> DOMESTIC VIOLENCE NATIONAL STATISTICS, *supra* note 2.

<sup>199</sup> FUTURES WITHOUT VIOLENCE, *supra* note 194.

<sup>200</sup> *Id.*

<sup>201</sup> Michelle DeCasas, Note, *Protecting Hispanic Women: The Inadequacy of Domestic Violence Policy*, 24 CHICANO-LATINO L. REV. 56, 73 (2003).

<sup>202</sup> *Id.* at 72–73.

her own,<sup>203</sup> therefore her dependence on her partner's support is crucial to her remaining in the country.<sup>204</sup> For this reason, immigrant women may feel compelled to remain in the relationship despite the abuse.<sup>205</sup>

Second, cultural differences, or ignorance thereof, may prevent immigrant women from seeking help.<sup>206</sup> Immigrant women may come from a culture where domestic violence is an accepted norm.<sup>207</sup> Therefore, "immigrant batterers . . . may believe that penalties [in] the [United States] do not apply to them."<sup>208</sup> Immigrant victims may be unaware of the protections that they are afforded in the United States due to the absence of such legal assistance existing in their homeland.<sup>209</sup> For instance, "[i]n Mexico, a law called '*abandono de hogar*' punishes women who leave their homes," even if they are fleeing from their batterers.<sup>210</sup> Being convicted of this crime often results in a woman losing custody of her children.<sup>211</sup> Mexican women who immigrate to the United States may erroneously believe that this law applies to them in the United States, deterring them from reporting abuse for fear of punishment.<sup>212</sup>

These concerns might cause immigrant women to be reluctant to participate in the prosecution of their abusers, so Brooklyn's "No-Drop" policy may be a better fit for combatting domestic violence within immigrant communities. For similar reasons as those experienced by Hispanic and Latina victims, the "No-Drop" policy is favorable because it considers an immigrant victim's unfamiliarity with the criminal justice system, as well as the

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<sup>203</sup> *Id.* at 73; see Loke, *supra* note 130, at 593.

<sup>204</sup> DeCasas, *supra* note 201, at 73.

<sup>205</sup> *Id.*

<sup>206</sup> FUTURES WITHOUT VIOLENCE, *supra* note 194.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> NAT'L ADVOCACY THROUGH ACTION, *supra* note 152, at 5 (quoting *Latinas and Domestic Violence*, MUJERES LATINAS EN ACCION, <http://www.mujereslatinasenaccion.org/index.html>).

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

resources available to her.<sup>213</sup> To this end, the Brooklyn District Attorney's Office has partnered with the Brooklyn Family Justice Center, which has its own immigration law attorney "serving a large number of immigrant domestic violence victims in Brooklyn."<sup>214</sup> Likewise, the Bronx District Attorney's Office has partnered with its own jurisdictional Family Justice Center, which offers victims services such as legal, financial, and housing assistance regardless of their immigration status.<sup>215</sup> However, because the Bronx's first-party complaint policy only provides twenty-four hours for already reluctant victims to be contacted by a prosecutor so that these incredibly valuable resources can effectively be explained to them, Brooklyn's "No-Drop" policy is superior in that it affords both prosecutors and victims significantly more time for this to be achieved.

#### *D. Indigent Communities*

While domestic violence plagues women from all socioeconomic backgrounds, studies show that indigent women are battered at higher rates.<sup>216</sup> Poverty poses a substantial obstacle for battered women to leave abusive relationships for the simple fact that the alternative options may make staying in the relationship seem more practicable.<sup>217</sup> Factors such as homelessness, job loss, financial instability, and overall lack of resources may account for an indigent woman's inability to escape her batterer.<sup>218</sup> In 2013, The

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<sup>213</sup> See *supra* Section III.B.2.

<sup>214</sup> *Brooklyn Family Justice Center*, BROOK. DISTRICT ATT'Y OFF., <http://brooklynda.org/brooklyn-family-justice-centre/> (last visited Oct. 30, 2016).

<sup>215</sup> See *Bureaus and Units*, *supra* note 150; *Family Justice Centers*, SAFE HORIZON, <https://www.safehorizon.org/our-services/legal-and-court-help/family-justice-centers/> (last visited Oct. 30, 2016).

<sup>216</sup> See ACLU: WOMEN'S RIGHTS PROJECT, DOMESTIC VIOLENCE AND HOMELESSNESS, <https://www.aclu.org/sites/default/files/pdfs/dvhomelessness032106.pdf> (last visited Oct. 30, 2016); see also JILL DAVIES, NAT'L RESOURCE CTR. ON DOMESTIC VIOLENCE, POLICY BLUEPRINT ON DOMESTIC VIOLENCE AND POVERTY 6–7 (2002), <http://www.bcsdv.org/wp-content/uploads/2015/09/BCS-Pub15.pdf> ("Studies show that over 50% of women receiving welfare report having experienced physical abuse at some point in their adult lives.").

<sup>217</sup> See ACLU: WOMEN'S RIGHTS PROJECT, *supra* note 216.

<sup>218</sup> See DAVIES, *supra* note 216, at 7–9.

National Center on Family Homelessness published statistics showing that “approximately 50[%] of all women who are homeless reported that domestic violence was the immediate cause of their homelessness.”<sup>219</sup>

Job loss may be a serious concern for battered indigent women when deciding whether to report domestic violence and involve themselves in the criminal justice system.<sup>220</sup> In instances where a battered indigent woman pursues prosecution against her abuser, she may be concerned that having to attend repeated court hearings could result in her losing her job because of the time she has missed from work.<sup>221</sup> This likely consequence of State intervention may be deterrence for a battered indigent woman to report abuse at all.<sup>222</sup>

Women who are economically vulnerable have an increased vulnerability to violence.<sup>223</sup> An absence of financial stability substantially restricts a victim’s ability to separate themselves from their abuser, especially in instances where the victim is dependent on their abuser for their livelihood.<sup>224</sup> Battered indigent women might be reluctant to report incidences of violence for fear that it may result in their batterer’s job loss, which could reduce or eliminate family income and insurance.<sup>225</sup> Although State intervention may provide a victim access to long-term safety options, the risk of losing her ability to provide immediate food, housing, and other basic necessities for herself and her children may keep her complacent.<sup>226</sup>

The aforementioned consequences of a battered indigent women’s involvement with the criminal justice system and her fears that result therefrom necessitate an approach that mitigates the negative perception of state intervention. While the Bronx and Brooklyn District Attorney’s Offices’ offer financial and housing

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<sup>219</sup> *Pressing Issues Facing Families Who Are Homeless*, NAT’L CTR ON FAM. HOMELESSNESS (Mar. 2013), <http://online.fliphtml5.com/xsgw/ijjt/>.

<sup>220</sup> *See* DAVIES, *supra* note 216, at 5–6, 9.

<sup>221</sup> *See id.* at 5, 7.

<sup>222</sup> *See id.* at 5.

<sup>223</sup> Conner, *supra* note 130, at 356.

<sup>224</sup> *See id.* at 340.

<sup>225</sup> *See* DAVIES, *supra* note 216, at 7.

<sup>226</sup> *See id.*

services for victims,<sup>227</sup> the Bronx's first-party complaint policy does not effectively address the factors that may prevent an indigent victim from cooperating with prosecutors immediately. Similar to the other populations discussed above, the Bronx's first-party complaint policy may dispose of meritorious cases prematurely and consequently squander opportunities to provide resources to indigent victims. Brooklyn's "No-Drop" policy is once again superior when dealing with indigent victims because it affords time to both prosecutors and victims to work together and build the support necessary to live a life free of domestic violence.

#### IV. PROPOSED SOLUTION

While both the Bronx and Brooklyn District Attorney's Offices' have programs in place tailored to the needs of domestic violence victims within society's most vulnerable populations,<sup>228</sup> the Bronx's first-party complaint policy limits victims' access to such resources by declining to pursue cases if a victim is not willing to cooperate within twenty-four hours post-arrest. The Bronx's first-party complaint policy is incompatible with victims within marginalized communities who face unique obstacles and concerns that make such an allotted time period unreasonable. It would be prudent for the Bronx District Attorney's Office to adopt an approach comparable to Brooklyn's and conform to the practices adopted by the other boroughs' District Attorney's Offices, ensuring uniformity and consistency in domestic violence prosecutions throughout New York City.

One solution would be for the Bronx District Attorney's Office to outright adopt Brooklyn's "No-Drop" policy. The Bronx's current approach of vast deference to a victim's willingness to cooperate during the initial stages of a prosecution risks prematurely disposing of a meritorious case and fails to adequately protect

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<sup>227</sup> See discussion *supra* Section III.B.2; see also *supra* text accompanying note 174 ("Providing ongoing victim advocacy and referrals to comprehensive services including legal, housing, and economic assistance.").

<sup>228</sup> See *supra* Part III.



victims.<sup>229</sup> Espousing Brooklyn's "No-Drop" policy is advantageous because it ensures that all reported domestic violence incidents are addressed and taken seriously, while still allowing prosecutors to exercise their discretion once a case is investigated further to make an informed decision on whether to prosecute, including whether to proceed with an evidence-based prosecution if the victim adamantly refuses to cooperate.<sup>230</sup> Mandatory filing affirmatively combats domestic violence while providing room for prosecutors to assess marginalized victims' fears and reservations of prosecuting their abusers, as well as affording the opportunity for additional solutions and resources to be discussed.

Alternatively, the Bronx could incorporate Brooklyn's compulsory filing policy while still affording victims deference once charges are filed. Since defendants must be arraigned within twenty-four hours of arrest, more time cannot be afforded prior to arraignment to rely on reluctant victims in deciding whether to file charges.<sup>231</sup> However, if the Bronx implements a compulsory filing policy equivalent to Brooklyn's, the Bronx could then effectuate a docile version of Brooklyn's "No-Drop" policy *post-arraignment* under N.Y. C.P.L. § 30.30, perhaps affording victims a week to come forward after their abuser has been arraigned before disposing of the case. This proposed policy should be premised on prosecutors declining to pursue evidence-based prosecution absent a victim's cooperation and encouraging prosecutors to be deferential to a victim's wishes for charges to be dismissed—all while allowing victims more time to come forward after an arrest is made to voice their opinions and concerns. Although a more aggressive "No-Drop" policy is arguably ideal, this proposed policy furthers the Bronx's objective of giving deference to victims' wishes and focusing on winnable cases, while simultaneously strengthening prosecutors' ties to the community they serve.

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<sup>229</sup> O'SULLIVAN ET AL., *supra* note 13, at 7 ("One of the key pieces of information missing at the stage of complaint filing is the defendant's statewide criminal history.").

<sup>230</sup> See generally *id.* (discussing how Brooklyn's "No-Drop" policy is only present at the point of case screening, and not after cases have been filed with the court).

<sup>231</sup> *Id.*

## CONCLUSION

Although significant efforts have been made to address and combat domestic violence by both State and Federal governments nationwide, domestic violence remains a pervasive issue that effects individuals regardless of their demographic characteristics and continues to be grossly underreported. However, victims of domestic violence within marginalized communities are exposed to cultural, social, economical, and political barriers that affect their response to their victimization, as well as their experience with the criminal justice system. It is crucial that prosecutor's offices implement policies that account for these unique barriers that our most vulnerable populations face. The Bronx's first-party complaint policy and Brooklyn's "No-Drop" policy exemplify the disparity in how domestic violence cases are handled once they reach a prosecutor's office. The Bronx's current policy of disposing of cases in the very early stages if a victim is unwilling to cooperate is ineffective in protecting victims from further violence and fails to adequately protect marginalized populations from continued abusive relationships. To avoid perpetuating a system where domestic violence continues to go unaddressed, the Bronx District Attorney's Office should adopt a policy similar to Brooklyn's "No-Drop" policy and further commit to aggressively combating domestic violence within Bronx County, as well as mend the gap between marginalized communities and the criminal justice system.