



FRAGMENTED AND UNEQUAL

A JUSTICE SYSTEM THAT FAILS SURVIVORS OF INTIMATE PARTNER VIOLENCE IN LOUISIANA, USA

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Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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GLOSSARY

ADA	Assistant District Attorney
DA	District Attorney
FELONY	Louisiana law defines a felony as “any crime for which an offender may be sentenced to death or imprisonment at hard labor”
IACP	International Association of Chiefs of Police
ICE	Immigration and Customs Enforcement
INDIAN COUNTRY	US federal laws defines Indian Country as “All land within the limits of any Indian reservation”, “all dependent Indian communities within the orders of the United States”, and “all Indian allotments, the tiles to which have not been extinguished”.
INTERSECTIONALITY	Structural discrimination based on more than one ground, e.g. sex, race or class, which combines to result in distinct, or additional, harm or disadvantage to an individual.
LCADV	Louisiana Coalition Against Domestic Violence
LCLE	Louisiana Commission on Law Enforcement
LGBTI	Lesbian, Gay, Bisexual, Transgender or Intersex
LPOR	Louisiana Protective Order Registry
MISDEMEANOR	Louisiana law defines a misdemeanor as “any crime other than a felony”
NOPD	New Orleans Police Department
PIB	Public Integrity Bureau
POST	Peace Officer Standards and Training Council
PTSD	Post-Traumatic Stress Disorder
TRO	Temporary Restraining Order
VAWA	Violence Against Women Act
WHO	World Health Organization

EXECUTIVE SUMMARY

“I look up and I’m watching him shoot me. I didn’t know how many times I’d been shot. After he shoots me, the gun is empty now. I said, “you shot me”. And he says, “look what you made me do. You made me shoot you”.”

Angela, whose then partner, and father of two of her children, shot her six times, leaving her permanently paralyzed.

Intimate partner violence – abuse by a person with whom the victim has, or had, a romantic or sexual relationship – is a form of domestic violence. A key feature is the exercise of power and control by one partner over another. Intimate partner violence at its most extreme can result in death. It can cause serious health consequences including physical injuries, and damage to mental health such as anxiety, depression and Post Traumatic Stress Disorder. While people of all genders may experience intimate partner violence, women experience more severe violence with more serious consequences. In the US, one in four women, and one in 10 men, have experienced intimate partner violence with a “negative impact” on them, (including receiving injury, needing help from law enforcement, missing at least one day of work or school, or contacting a crisis hotline). Between 40% and 50% of all murders of women in the US are committed by intimate partners. Between 2001 and 2012, 55% of all women killed by intimate partners in the US were killed with a gun.

This report focuses on Louisiana, a state where there have been recent changes to laws on firearm possession in situations of intimate partner violence, including the introduction, in 2018, of a procedure to ensure people, who are legally prohibited from possessing firearms due to domestic violence, transfer their weapons. The state also has high rates of intimate partner homicide. The research examines how laws, and their implementation, affect the protection of survivors of violence differently, and how discrimination and stereotyping affect the response. This is particularly important in Louisiana, where the state has high rates of poverty and there are distinct gender and racial disparities to poverty. This report uses the term intimate partner violence except when referring to Louisiana laws (which use the terms domestic violence or domestic abuse), and to organizations or institutions which work on domestic violence. Amnesty International strives to use language that respects the wishes of individuals or communities concerned. Recognizing that no single term is universally accepted, this report uses Black and African American and Native American and Indigenous interchangeably. This is in no way intended to minimize or ignore the complexity or the great diversity of ways in which people identify, nor to generalize their experiences.

Amnesty International interviewed around 100 people for this report, including over 30 government officials, representatives of over 20 civil society organizations, 13 individuals directly affected by intimate partner violence involving firearms, two survivors of violence by other family members, and one whose relative was killed by an intimate partner. Amnesty International reviewed state and federal laws related to intimate partner violence and analyzed available policies, protocols, best practices, training information and data from law enforcement, prosecutors and courts. Statistical data on intimate partner violence in Louisiana is not easily available. Amnesty International made public record requests for relevant data and documents and received some, but not all, of the information requested. The organization shared the findings of the report with the authorities before publication.

Intimate partner violence, impacts the enjoyment of a range of human rights including: the right to life, the right to security of the person, the right to non-discrimination, the right to health, and the right to equal protection of the law. This report examines whether the authorities have met their obligations under international human rights law to protect everybody within their jurisdiction from human rights abuses committed by private individuals, including protection from intimate partner violence. The duty to protect requires states to ensure that officials do not violate rights, and that they exercise due diligence to prevent, punish, investigate and redress the harm caused.

LACK OF DATA

Accurate data is important for highlighting trends and problems. Consistent collection of data over time enables the authorities to monitor policies and programs to assess their effectiveness. Ensuring that policies and programs benefit everyone without discrimination requires data to be disaggregated by relevant factors, such as gender, race, type of relationship, and parish. There is no comprehensive government collected data on intimate partner violence in Louisiana. Federal data is incomplete, and state agencies are unable to compile data on numbers of fatal or non-fatal incidents of intimate partner violence with the systems they currently use. In the absence of official data, the Louisiana Coalition Against Domestic Violence (LCADV) tracks intimate partner killings reported in the media. Between 2013 and 2018, the media reported that 236 people were killed by a current or former intimate partner in the state; 191 (81%) of them were women and 45 (19%) were men. All except one fatality involved heterosexual couples. Guns were used in 144 (61%) of the deaths. Of the 144 people killed by guns, 121 (85%) were women. There is no official data on the proportion of survivors whose abusers possess a firearm. Estimates by organizations working with survivors varied from 40% in New Orleans to 90% in rural parishes.

Survivors of intimate partner violence in Louisiana may seek assistance from the authorities in different ways, including by calling the police or by applying for protection via the civil courts. In every interaction, officials can enhance, or undermine, survivor safety and confidence in the system for protection.

CIVIL PROTECTION

“We’re at court and we are sitting next to each other. There’s no protection, there’s no separation, there’s no nothing. And he’s just been giving the look the whole time – like, “you’re going to pay for this”.”

“Emily” whose abusive ex-husband continued trying to intimidate her throughout court proceedings.

Survivors of intimate partner violence can approach the civil courts to request a protective order - a court order which requires the defendant stop all acts of abuse and usually proscribes a set distance for the defendant to stay away from the petitioner. A Temporary Restraining Order (TRO) is a court order to cover the period between the application and a full court hearing to decide on a long term protective order. When a TRO or protective order is issued, the clerk of court must send the details to the Louisiana Protective Order Registry (LPOR), a central database which can be consulted by law enforcement officers. Individuals named as defendant on a protective order are prohibited from possessing firearms. The prohibition does not apply to TROs.

Louisiana does not have a standardized policy on court handling of domestic violence cases, nor any best practice guidelines for court officials. Judges and hearing officers are not required to receive training on intimate partner violence. This means that across Louisiana’s court system, officials interpret the law in different ways often leading to inconsistent application of the law. In some parishes, the courts operate in ways which impede survivors’ access to protection, for example requiring them to report abuse to the police before making a protective order application or empowering clerks to determine what the survivor writes in their application. It also means that there are no consistent measures taken to ensure the safety of survivors of intimate partner violence attending court hearings. Everybody involved in cases scheduled on a particular date must arrive at court in the morning and wait until their case is called. For survivors of intimate partner violence, this often means they have to wait for hours in the same place as their abuser leaving them at risk of further abuse or being denied access to justice by being intimidated into dropping their petition.

BARRIERS TO OBTAINING PROTECTION

There is no right to legal assistance in matters before the civil courts. A small number of organizations, funded mainly through federal grants and voluntary donations, provide limited free legal assistance in the state. Many survivors of intimate partner violence must navigate a complicated legal process on their own. Under human rights law, a key element of ensuring women’s access to justice without discrimination is the availability of free, or low-cost, legal aid. Failure to ensure that survivors of intimate partner violence have access to legal aid, including in civil and family courts, is a violation of the rights to equal protection of the

law and access to justice. There is a real risk that the process of obtaining a protective order adds to the trauma of the survivor. Representatives of organizations working with survivors told Amnesty International that frequently survivors did not have legal representation, but the defendant had hired a lawyer; this increased the power imbalance and led to petitioners without legal knowledge or representation being questioned by an attorney hired by their abuser. A key element in ensuring that access to justice is available for all, irrespective of wealth, is for free, or low-cost legal aid to be available, including for survivors of intimate partner violence in civil and family courts. The gender and racial disparities relating to poverty rates in Louisiana means that women are more likely to be unable to afford legal representation than men, and the women least likely to be able to afford to pay a lawyer belong to minority groups.

After a survivor applies for a protective order, it is the responsibility of the Sheriff to serve the defendant with court papers. How effectively the Sheriff's department does this varies greatly between parishes. Representatives of organizations working with survivors told Amnesty International that, in some parishes they worked in, the Sheriff's department was very good at finding people and quickly serving papers but in other parishes it was very different. In those places, the Sheriff's department did not act quickly to serve the papers leading to hearings for full protective orders having to be postponed multiple times or resulting in the judge dismissing the petition.

The lack of state-wide guidelines and training for court officials means that officials interpret the law in different ways, which affects the level of protection received by survivors of intimate partner violence. Experts working with survivors of intimate partner violence in different parts of Louisiana all told Amnesty International that in this vacuum, there was particularly wide berth for the personalities and personal views of judges and hearing officers to influence the outcomes of cases they decided. For example, a judge telling a protective order applicant who was later killed by the defendant, that she was exaggerating the abuse.

Louisiana introduced a procedure for defendants in protective order cases to transfer any firearms they possess in 2019. A representative of an organization supporting survivors told Amnesty International that since January 2019, judges have, to different extents, increased the level of evidence they require survivors to present before they will grant a protective order. Other representatives of organizations supporting survivors working in some rural parishes with a strong culture of gun ownership and hunting expressed fears that some judges and hearing officers will grant fewer protective orders because they do not want people to lose their firearms.

POLICING

“I heard a policeman say, “oh this is just a domestic violence case”. And he was not five feet from where I’m fighting for my life and my child was dead, so there wasn’t nothing “just” about it. So, when I recovered – I’m still recovering – but I spoke to the Sheriff Department and I asked them if they would consider doing a sensitivity training as part of the training of the police officers because there’s nothing “just” about this.”

Elizabeth, whose husband shot her in the face and shot and killed her 18-year-old daughter, India, in St Bernard Parish.

There is no state-wide policy or set of best practices guiding the way that law enforcement agencies in Louisiana respond to intimate partner violence. The Louisiana legislature has passed some laws which specify when officers are required to make an arrest and when they may use their discretion to decide whether, or not, to make an arrest; however, this is only one element of the response. Without clear policies, how cases of intimate partner violence are handled depends on individual officers. Good practices are not institutionalized and can be lost with changes in personnel at an agency. The only law enforcement agency in Louisiana which is required to have an internal policy on domestic violence policing is the New Orleans Police Department (NOPD); this is due to a Federal Consent Decree. New law enforcement officers must receive a minimum of eight hours training on domestic violence as part of their basic training. In 2018, the Louisiana legislature made training mandatory for all officers on topics including the dynamics of domestic violence, the effects of trauma on victims, and the enforcement of protective orders.

The lack of comprehensive protocols or guidelines for all police officers to follow, differing levels of officer training, and varying priority given to cases of intimate partner violence by different law enforcement agencies means that many agencies are, at best, not using the most up-to-date best practices and, at worst, misunderstanding the law, resulting in them acting in ways that harm survivors. Most of the organizations providing support to survivors work across multiple parishes. Representatives of these organizations told Amnesty International that they see different approaches in the parishes they cover, including widely varying responses in neighboring parishes or between towns and rural areas.

GENDER STEREOTYPES MAY INFLUENCE THE RESPONSE

“There were four male police officers. They treated me like a delusional, hysterical, uncooperative person because I didn’t want to repeat what I had said four times in front of four different males.”

Kirby, who called the police after her ex-husband broke into her house, sexually assaulted her, and tried to strangle her in front of her daughter

Police officers are part of the societies they serve and can hold the same stereotypes and misconceptions about intimate partner violence that are prevalent throughout society. Experts told Amnesty International about some pernicious myths about intimate partner violence – manipulative women lying about abuse to get men into trouble, beliefs that if the abuse was as bad as a woman said, then she would have left the relationship already. They said that these myths, which exist within society and institutions, can contribute to officers failing to respond appropriately to intimate partner violence. Another problem experts described was a lack of understanding by police officers of how fear and trauma can influence the behavior of survivors of intimate partner violence. When officers arrive at the scene, they frequently find the survivor distressed and sometimes behaving erratically as a result of what has happened to them, while the alleged abuser is calm and more prepared to talk to the police. Survivors of intimate partner violence interviewed by Amnesty International frequently described their abusers as “charming” and “manipulative”. Alternatively, fear and/or relief at the violence being interrupted may result in survivors feeling angry rather than distressed and police, expecting a “real victim” to be distressed, may not recognize an angry survivor as someone who requires their help. A US Department of Justice report highlighted that the most traumatized victims behave the least like law enforcement expect them to and may be the least able to cooperate with the police.

ARRESTS OF SURVIVORS OF INTIMATE PARTNER VIOLENCE

“He got arrested a lot of times. But they’d arrest him, and they let him right back out. They didn’t do nothing to this guy until I did something. Why did it take for me to get myself in trouble for my voice to be heard?”

Tamika, experienced years of abuse from ex-partner and was arrested after an incident where she fired a shot in self-defense.

Inadequate policies and training of officers can lead to survivors of violence being arrested along with their abuser or, if police fail to recognize their acts of self-defense, instead of their abuser. Representatives from organizations working with survivors of intimate partner violence consistently told Amnesty International that there is a problem of police officers failing to determine the “predominant aggressor” resulting in a “dual arrest” – when officers arrest both the survivor of violence and the abuser. They said that the extent of the problem varied across the parishes they covered. In some areas, predominantly cities, representatives said that improved training of officers had resulted in fewer dual arrests; however, they told Amnesty International that dual arrests remained a significant problem in some areas. Only NOPD requires officers to obtain approval from a supervisor before making a dual arrest and to document reasons for arrest in the incident report.

Experts working with survivors of intimate partner violence in Louisiana consistently told Amnesty International that, in their experience, errors by police in identifying the “predominant aggressor”, and failures to recognize self-defense by the survivor leading to wrongful, arrests were more likely to occur in cases involving Black women and LGBTI individuals. They said that pernicious stereotypes about “angry Black women” meant that some police officers viewed acts of self-defense by Black women as criminal use of violence, even if the woman had serious injuries inflicted by her partner or ex-partner. Lawyers and representatives of support services told Amnesty International that if Black women had used a “power equalizing weapon” – a firearm or knife – to defend themselves, even if there was a long history of her being abused and she had not caused any injury to her partner or ex-partner, there was a high risk that she would be charged with a more serious offence than her abusive partner or ex-partner.

A lawyer who has represented LGBTI individuals told Amnesty International that, when called to an incident involving a same-sex couple, police are more likely to fail to identify the intimate partner or domestic aspect of the case and, therefore, they are less likely to make an accurate determination of the “predominant aggressor”. This has led to both parties being arrested on a non-domestic “battery” charge and incarcerated in the same jail. Another problem he highlighted was that even when law enforcement recognized it was an intimate partner relationship, there was a tendency for them to follow prevailing gender stereotypes and arrest the most masculine presenting person. In addition, he mentioned instances when police have mis-gendered Trans individuals and therefore, have not identified the violence as being between intimate partners. This means the police did not do a “predominant aggressor” assessment and arrested both parties.

The impact of a dual or wrongful arrest for a survivor of intimate partner violence is serious. Survivors who are arrested may have to spend time in jail, a punishment at exactly the time they most need support. It may be some time before they can arrange bail, or they may not be able to afford bail. Arrest can result in losing their jobs, and depending on how long they spend in jail, losing their homes and having their children removed by social services. Representatives of organizations working with survivors of intimate partner violence told Amnesty International that a survivor who calls the police for help and is arrested, whether on a domestic violence charge or on an unrelated charge, for example possession of drugs, will be deterred from calling the police again.

Three years before she was shot and killed by her ex-partner in 2018, April Charles was arrested on charges of abusing him after calling the police for help when he was violent to her and her sister. April's sister told Amnesty International "she was so scared of him and when she called [the police], she ended up going to jail". It was not the first time April had been arrested after experiencing abuse and these incidents made her unwilling to seek help from the police.

FAILURE TO TAKE INTIMATE PARTNER VIOLENCE SERIOUSLY

Experts on intimate partner violence and representatives of organizations working with survivors told Amnesty International that survivors frequently have multiple dealings with law enforcement. When police are not adequately trained on the power and control exercised by abusers over their victim, they are less likely to recognize when an abuser attempts to use the police to further their intimidation or control of their partner or ex-partner.

Staff of service providers told Amnesty International that, in the rural parishes they cover, everybody knows each other, and this sometimes hinders the police response. When the responding officers know the couple, it is easier for them to minimize seriousness of the situation. Susan, who was abused by her husband for more than 30 years, told Amnesty International that initially police in her small town did not take her seriously when she reported abuse by her then husband because they knew him. She said "They thought they were just settling an argument, a dispute. And some things on the police report are inconsistent. There were some discrepancies, because they know him". A representative of one service provider who works across both rural and urban parishes told Amnesty International that in her experience, survivors from rural areas have been in the violent relationship for a much longer time before they seek help than survivors in urban areas.

BARRIERS FOR NON-ENGLISH SPEAKERS AND UNDOCUMENTED PEOPLE

Survivors of intimate partner violence who speak no, or little, English face the problem of how to communicate with officers. When their abuser speaks English, they are at a greater disadvantage. While not all survivors who do not speak English are undocumented, not having valid documentation to remain in the US compounds their difficulties. Representatives of domestic violence service providers told Amnesty International that when police respond to a domestic violence call where one person does not speak English, officers sometimes speak to the English speaker and accept their version of events without arranging for an interpreter to enable them to speak to the non-English speaker. Another service provider said that police sometimes ask inappropriate people to translate their interview with the survivor, for example, the survivor's child, a neighbor, or the alleged abuser.

Whether officers are likely to inform Immigration and Customs Enforcement (ICE) about undocumented survivors or defendants influences whether a survivor feels safe to call the police. A representative of an organization working with migrants in New Orleans told Amnesty International that an "anti-bias" policy in Orleans parish means that NOPD do not make enquiries about a person's immigration status or transfer undocumented people from jail to ICE for deportation. The representative said that other parishes do not have this policy and make transfers to ICE. This means that undocumented survivors of intimate partner violence in those parishes are less likely to call the police because they do not want their partner, or ex-partner, to be deported, or they fear being deported themselves. A representative of law enforcement in a small town told Amnesty International that they would inform ICE after a case was complete and that it was "very seldom" that they have an undocumented person calling them.

INADEQUATE OVERSIGHT

The lack of statewide policies or best practice guidelines for law enforcement handling of cases of intimate partner violence means that there are no minimum standards for officers to be held accountable for meeting. Ensuring investigations are effective and that officers are held accountable for failing to act appropriately is the responsibility of each individual police department. In 63 out of Louisiana's 64 parishes, if survivors of intimate partner violence receive an inappropriate response from police officers, are left in greater danger from their abuser, or are wrongly arrested, there is no independent body that they can complain to. Many

law enforcement agencies have Internal Affairs, or Public Integrity Units which investigate complaints from citizens. However, it is an internal process with the investigation conducted by officers in the same agency that is the subject of the complaint. Only New Orleans has civilian oversight of police. The Office of the Independent Police Monitor assesses the quality of investigations conducted by the NOPD's Public Integrity Bureau and reports on its findings. While the mandate of the Louisiana Commission on Law Enforcement (LCLE) is to "improve the operations of the criminal justice system", it does not have the authority to ensure all law enforcement agencies comply with Louisiana law. For example, if some Sheriff's offices not set up the processes required by law to remove firearms from individuals convicted of domestic violence offences, or those named as a defendant on a protective order, there is no mechanism to compel them to do so.

PROSECUTION

District Attorneys are responsible for every criminal prosecution in their district. They are empowered with enormous discretion. The DA decides whether to accept or reject charges made by law enforcement agencies and has a role at every stage of court proceedings, including recommending bail, offering plea deals, presenting evidence at trial and recommending sentences. As attorneys, DAs and ADAs must abide by the Louisiana Supreme Court's Rules of Professional Conduct. There are no policies or guidelines on intimate partner violence that DAs in Louisiana are required to follow, nor are prosecutors required to have training on intimate partner violence. The lack of compulsory training means DAs and ADAs without an understanding of the dynamics of intimate partner violence can be responsible for critical decisions which affect survivor safety.

LACK OF EFFECTIVE RISK ASSESSMENTS BEFORE GRANTING BAIL

"While he was in jail, he called me and said that I had two hours to get him out of jail otherwise he would call immigration services to denounce me and get my kids."

Maria, who was undocumented at the time her husband was arrested for violence against her, and threatening her with a gun.

In 2014, the Louisiana legislature passed a law designed to ensure judges conducted risk assessments before granting bail in cases of domestic abuse. Named "Gwen's law", it required a bail hearing for those charged with offenses relating to intimate partner violence where prosecutors could present evidence showing the defendant may pose too much risk to be released on bail. The legislature amended the law in 2015 to make the hearings optional. Many parishes do not hold Gwen's law hearings, others hold them in only a small proportion of cases.

There is no requirement in Louisiana law for victims of intimate partner violence to testify at "Gwen's law" hearings. DAs, ADAs and representatives or organizations supporting survivors all told Amnesty International that survivors testifying at "Gwen's law" hearings often change their testimony due to fear of the abuser. When survivors do testify at the hearing, the defendant is highly likely to be present in the courtroom. Louisiana law allows the possibility for victims and witnesses under the age of 17, or who have certain disabilities to testify via video link, if they "would be likely to suffer serious emotional distress if forced to give testimony in open court" and that without that possibility, they would be unable to communicate their testimony to the court. There are no provisions in Louisiana law to provide similar protection to adult survivors of gender-based violence who are unable, through trauma and emotional distress, to reasonably communicate their testimony to the court.

Defendants who cannot afford bail have to remain in jail regardless of the seriousness of their charge and the risk they pose. "Gwen's law" provides the possibility that defendants who pose a serious danger are not released on bail; however, it is not applied consistently and does not address the issue that wealthy defendants will be able to afford the potentially higher bonds set following "Gwen's law" hearings while poor defendants, unable to afford the bond, and who are likely to be predominantly Black, have no option but to remain in jail.

FORCING SURVIVORS TO TESTIFY

"I always dropped everything because by the time it goes from the incident to actually the DA's office doing something is months later and by that time he's peaceful and I don't want to rock to boat."

Brandie, who suffered years of stalking and harassment from her ex-husband, was initially reluctant to support prosecution.

Justice means different things to different people. When someone experiencing intimate partner violence calls the police, they are unlikely to be thinking ahead to prosecution and court hearings; at that moment, they most likely want someone to intervene and stop the violence. They may want their abuser prosecuted or

may have good reason to not want their abuser prosecuted. A key element of intimate partner violence is the power and control that abusers exercise over their victim. For survivors, taking back control of their lives is a critical part of the healing and recovery process. However, in the criminal justice system, survivors have little control over the process or the decisions that are made about their case.

Prosecutors are often required to balance differing interests when making decisions on taking prosecutions forward. For example, prosecutors need to consider the interests of survivors but not be too quick to drop a case where a survivor, who is afraid to cooperate, may, with the right safeguards and support, achieve a successful prosecution. The way prosecutors utilize these powers, and how they balance the different interests, may result in two different and opposing problems:

- Firstly, that DAs use their discretion to drop cases or reduce charges where there has been serious violence. This failure to hold abusers to account leaves survivors at risk of further, and often escalating, abuse.
- Secondly, that DAs use their discretion to aggressively prosecute cases against the wishes of the survivor and take coercive measures to force cooperation with prosecutors. Coercion can include criminal measures being taken against survivors. This also results in survivors being less willing to involve the authorities if they experience violence in the future which leaves them at greater risk of experiencing more violence.

Under Louisiana law, the DA's office must arrange a conference with a victim of crime "in order to obtain their view" about the "disposition of the criminal case by dismissal, plea, or trial" and about types of sentencing, if victims send them a written request. This means that while DAs frequently take into account the views of survivors of intimate partner violence when deciding whether to go forward with a prosecution, the DA is under no obligation to act in accordance with the survivor's wishes.

DAs and ADAs told Amnesty International that, without testimony from the victim, it was very difficult for them to proceed with a case of intimate partner violence. Although prosecutors can sometimes pursue a case without the victim, they said it is rare to have a victim not available to testify and still have enough other evidence to take the case forward. The need for the victim's testimony means that abusers often threaten or otherwise pressurize survivors to withdraw their cooperation with the prosecution. It also means that there is a tendency for prosecutors to put pressure on reluctant survivors to secure their testimony.

Under Louisiana law, prosecutors have the power to compel witnesses (including victims of crime) to meet with them to discuss the case, and to testify in court. To do so, the DA must submit a written motion to the court and have a judge issue a subpoena to be served on the witness. Failure to comply with the subpoena is contempt of court. Where a witness is considered essential to the prosecution or the defense and "it is shown that it may become impracticable to secure the presence of the person by subpoena", a judge can issue a warrant for the individual's arrest and they can be held in jail until they have given their testimony, the case is otherwise concluded or they are released on a bond. Louisiana courts have ruled that a victim informing the DA they would not testify is sufficient justification to issue a material witness warrant. This means that a DA can have a victim pre-emptively arrested before they have failed to respond to a subpoena. Louisiana law does not set a maximum period that an individual can be incarcerated as a material witness and an individual who is unable to afford the bond would be forced to remain in jail.

Prosecutors view provisions allowing for forcing victims to testify and permitting their arrest to enforce this as a necessary tool in bringing abusers to justice. Organizations working with survivors of intimate partner violence stressed that survivors are often far more scared of the abuser than they are of the threat of arrest if they refuse to testify. They may also have other reasons for not wanting prosecution. Pre-emptive arrest and detention of victims in this manner is a violation of international human rights law and standards: it is arbitrary in that it is inappropriate, unjust, as well as lacking reasonableness, necessity and proportionality. The inappropriateness and unjust nature of such arrests and detention is borne out of the fact that, as complainants in a criminal matter, these are the very victims the criminal justice system should be designed to protect. Placing a victim of intimate partner violence in detention so as to secure their attendance in court proceedings is unlikely ever to meet the test of proportionality; it will always cause more harm to the victim than is proportionate to their refusal to testify.

The Louisiana legislature amended the law on material witness warrants in 2019; however, it falls short of international standards protecting victims from arbitrary detention. While it prohibits judges from ordering a material witness warrant in misdemeanor domestic violence cases, it leaves open the possibility that a victim be pre-emptively arrested on a material witness warrant in felony cases.

PROSECUTION OF SURVIVORS

When survivors of intimate partner violence are wrongly arrested by the police, or subjected to inappropriate charges after acting in self-defense, DAs have the power to prevent further injustice, or to exacerbate the injustice. Whether this happens depends on the extent to which the DA or ADA assessing the case understands the dynamics and power imbalances of intimate partner violence and can identify the possibility that a survivor may have acted in self-defense.

Louisiana's code of evidence contains a provision prohibiting a defendant (here the survivor) from introducing evidence of a victim's bad character. An exception to this is when there is, or has been an intimate relationship between them, and "the accused pleads self-defense and there is a history of assaultive behavior between the victim and the accused". Another clause allows for a defendant in an abusive relationship to introduce expert testimony on "the effects of the prior assaultive acts on the accused's state of mind".

The system for providing free defense to the poor is chronically underfunded in Louisiana, and public defenders have extremely high caseloads. A representative of an organization supporting survivors of intimate partner violence told Amnesty International that, in the experience of the organization, survivors who have been prosecuted for actions taken against their abuser who can afford a good private attorney have a better chance of having mitigating evidence of past violence considered by the DA in a plea offer, or by the court at trial. However, most survivors cannot afford a good private attorney and overworked public defenders often meet the survivor for the first time just before the case is heard and by that time, the survivor has already pled, or decided to plead, guilty. The gender dynamics of poverty in Louisiana means that women are more likely to be unable to afford an attorney. Black women, who are most at risk of being arrested due to police failures to identify predominant aggressor, or recognize self-defense, are least likely to be able to afford an attorney.

ISSUES WITH PLEA BARGAINING

The vast majority of criminal cases, including cases of intimate partner violence, conclude with the defendant pleading guilty as charged or pleading guilty to a lesser offence, and a sentencing agreement made between the DA, the defendant and their defense attorney. Whether to offer a plea deal to a defendant is at the discretion of the DA. Louisiana law requires courts not to accept a guilty plea from a defendant not represented by a lawyer until the court has established that the plea is voluntary, that the defendant understands the charge and that they have the right to counsel.

Organizations supporting survivors told Amnesty International of contrasting situations. In their experience, when survivors of intimate partner violence are prosecuted for crimes against their abusers, they tend to plead guilty as charged. Fear of the prospect of going to jail meant that they accepted plea offers with reduced sentencing, even if that meant they were convicted of a more serious offense. In contrast, organizations all highlighted their concerns that cases involving serious violence against the survivors they were supporting, especially cases involving strangulation, were either charged as a lesser offence or were pled down. This potentially sends a message to survivors that the authorities do not take what happened to them seriously, undermining their trust in the system. Depending on what the lesser offense is, the defendant may not be prohibited from possessing firearms, leaving the survivor at risk. Prohibition of possession of firearms applies to individuals convicted of felonies and to specified misdemeanor domestic abuse charges.

A criminal court judge in New Orleans confirmed to Amnesty International that most strangulation cases in his courtroom result in a plea down to domestic abuse battery, usually because the victim does not want to testify, and the DA wants a conviction. Data provided to Amnesty International by the New Orleans District Attorney showed that in 2017, 69% of "domestic abuse by strangulation" charges resulted in a guilty plea to a lesser offense.

Organizations working on the criminal justice system told Amnesty International that those charged with intimate partner violence often tend to be the working poor and that some survivors complain about lenient sentences for their ex-partners who are well connected or who have hired well connected attorneys. In Louisiana, those who are poor, are disproportionately Black.

SUPPORT SERVICES AND VIOLENCE PREVENTION

“Louisiana’s domestic violence shelters are consistently at capacity. Shelters and outreach offices have had to close in recent years. Meanwhile, the demand for services has increased.”

Mariah Wineski, Executive Director, Louisiana Coalition Against Domestic Violence (LCADV)

Each year the Louisiana Coalition Against Domestic Violence (LCADV) member programs serve approximately 17,000 survivors of domestic violence (including children of survivors accommodated in shelters). LCADV members answer an average of 40,000 crisis calls each year. Services are over-subscribed and LCADV members have to turn away people every day. The state of Louisiana does not allocate any state funding for support services for survivors of domestic abuse. Organizations that receive federal funding are often required to match a certain percentage from non-federal funding sources. The state’s failure to allocate any funds for services to survivors means that organizations in Louisiana often struggle to raise the required match funds, unless they receive a “match waiver” from the federal office in charge of the funding. Service providers in Louisiana are applying for less federal funding because of uncertainty over whether they will receive a waiver and concerns that, without it, they will be unable to find the match funding. Previously, they were able to use state funding to cover the percentage required to match.

LACK OF STATE EFFORTS TO PREVENT VIOLENCE

Under human rights law, the authorities have the obligation to prevent intimate partner violence, as well as to respond when it occurs. Louisiana’s state authorities have undertaken a few measures; however, the state has no comprehensive strategy to prevent intimate partner violence and fails to fund the civil society organizations that are undertaking awareness raising and education campaigns. The prevention work happening in Louisiana are small scale, local initiatives run by dedicated staff and volunteers of under-funded organizations. In 2010, the Legislature introduced a requirement for public schools to provide “age and grade appropriate” education on teen dating violence for students in grades seven through 12. The education should include as a minimum: the definition of teen dating violence and its warning signs, and characteristics of healthy relationships. There are two key problems with the law. Firstly, the state has not provided schools with any funding to undertake this work, and secondly, that there is no enforcement mechanism to ensure that schools do provide the appropriate lessons.

Around half of states in the US have a dedicated domestic violence commission or similar governmental body. In 2014, the Louisiana legislature established a Domestic Violence Prevention Commission. It has 20 members who include representatives of: the LCADV, the New Orleans Family Justice Center, the Louisiana Sheriff’s Association, the Louisiana District Attorney’s Association, the LCLE, the Judiciary, and House and Senate legislative committees. The legislation creating the Commission sets out a broad range of duties, including reviewing programs to identify gaps; making recommendations on prevention and intervention; developing a plan to ensure state laws are implemented; and developing a framework for data collection. The Commission has no budget or staff dedicated to it; Commission members must undertake the work on top of their full-time jobs. Commission members do not receive reimbursement of their travel expenses. To take decisions, 11 of the 20 Commission members must be at a meeting. For the last three Commission meetings, there have not been enough members present to vote on anything.

CONCLUSIONS AND RECOMMENDATIONS

The US and Louisianan authorities have failed to meet their obligations to exercise due diligence to prevent intimate partner violence and to effectively investigate, sanction and provide remedies in cases of violence. Survivors of intimate partner violence in Louisiana face an inconsistent and potentially harmful response from the institutions whose responsibility it is to protect them.

A lack of standardized policies, or guidelines, for courts, law enforcement and prosecutors means that institutions and agencies in different parishes can introduce working practices that do not protect survivors, or act as a barrier to survivors obtaining protection. Inadequate training of professionals who come into contact with survivors of intimate partner violence means that those charged with assisting survivors may lack understanding of the dynamics of that violence and may bring the same myths and stereotypes about intimate partner violence that are prevalent in society into their work. Inadequate oversight of courts, law enforcement and prosecution results in no, or ineffective, remedies for survivors who receive an inappropriate response, or are further harmed by the justice system.

Failure to collect and disaggregate data on the extent and severity of intimate partner violence and on how institutions and agencies respond to the violence undermines efforts to address the issue and allows discrimination to remain hidden and unaddressed. These failures are compounded by failures to provide adequate funding for services to support survivors of violence, and for work to prevent intimate partner violence through addressing the root causes.

Amnesty International therefore calls on the US and state authorities to:

- Require all criminal justice actors who deal with intimate partner violence, including law enforcement agencies, prosecutors and courts, to have specific domestic violence policies or protocols to guide their actions. Policies should comply with human rights standards for protection of survivors' rights; be designed with input from organizations who work with survivors and with reference to best practices on handling cases of intimate partner violence; prioritize survivor safety; and ensure officials do nothing to deter victims from seeking help from the authorities in future.
- Require all criminal justice actors, including law enforcement, District Attorney's, judges and hearing officers who deal with cases of intimate partner violence to receive mandatory training which complies with human rights standards for protection of survivors' rights and meets best practice standards before taking up their posts, and regular refresher training every two or three years after that. The content of training should be designed in collaboration with civil society and include input from survivors.
- Allocate adequate federal and state funds to provide comprehensive and inclusive services for survivors of intimate partner violence, including emergency shelter, transitional housing, legal support, and counselling. Allocate adequate state funds for prevention of intimate partner violence initiatives, including public awareness campaigns, and funding for schools for teen-dating violence prevention work.
- Immediately end the pre-emptive detention of victims of intimate partner violence on material witness warrants. Ensure that survivors of intimate partner violence are not compelled to testify at bail hearings, or trials, and are not punished for refraining to provide testimony.
- Ensure that all Sheriff's departments have introduced the required process for firearm transfer in situations of intimate partner violence. Establish a mechanism to monitor how the process is operated to ensure its effectiveness
- Ensure that the LCLE, law enforcement agencies and prosecutors have the technology and resources to collect and analyze data on intimate partner violence. Require data be collected on intimate partner, and other domestic homicides; on numbers of incidents of intimate partner violence reported to law enforcement agencies; on dual arrests; on numbers of incidents of intimate partner violence received by prosecutors; and on outcomes of the cases. The data should differentiate between intimate partner violence and household/family violence, should identify instances of firearm use, and be disaggregated by gender, race, relationship type and any other relevant factor.

A full list of recommendations can be found at the end of this report.

METHODOLOGY

Amnesty International published “In the Line of Fire: Human Rights and the US Gun Violence Crisis” (*In the line of fire*) in September 2018.¹ This report set out how gun violence in the United States of America (USA) is a human rights crisis. It documented how, in the face of clear evidence of persistent firearm violence, and easy access to firearms for individuals likely to misuse them, the US government is failing to meet its obligation to protect and promote human rights and prevent violations. In a chapter on domestic violence, the report addressed the links between intimate partner violence and firearm violence and highlighted how the US is failing in its duty to take reasonable measures to reduce preventable gun-related domestic violence.

This report builds on this previous work by examining laws relating to firearm possession in situations of intimate partner violence as a component of wider government obligations to protect individuals from abuse by intimate partners. It focuses on one US state, Louisiana. The report examines the laws enacted to combat intimate partner violence, how the laws are implemented and how relevant institutions – civil courts, law enforcement, prosecutors and criminal courts – address intimate partner violence and treat survivors.

TERMINOLOGY USED IN THE REPORT

This report uses the terms “**victim**” and “**survivor**” interchangeably. The term “victim” is customarily used to describe people whose human rights have been violated.² While acknowledging that “victim” is the appropriate legal term, Amnesty International recognizes that the term “survivor” better reflects the strength and resilience of those who have experienced intimate partner violence and is the term preferred by many women and girls themselves, and it is also the term preferred by many human rights activists.³

The focus of this report is on **intimate partner violence** which is a form of **domestic violence**. Domestic violence includes violence by family members and household members as well as violence by intimate partners. This report uses the term intimate partner violence except when referring to Louisiana laws (which use the terms domestic violence or domestic abuse), and organizations or institutions which work on domestic violence.

Amnesty International strives to use language that respects the wishes of the individuals or communities concerned. Recognizing that no single term is universally accepted, Amnesty International has used Black and African American and Native American and Indigenous interchangeably throughout this report, particularly if it has been used in the studies cited. This is in no way intended to minimize or ignore the complexity or the great diversity of ways in which people identify, nor to generalize their experiences.

Amnesty International chose Louisiana because there have been a number of relevant changes to laws on firearm possession and “domestic abuse” (the terminology used in Louisiana law) over the last four years; moreover, the state consistently has one of the highest rates of intimate partner homicide in the US. In

¹ Amnesty International, *In the line of fire: Human rights and the US gun violence crisis*, 2018, https://www.amnestyusa.org/wp-content/uploads/2018/09/Gun-Report-Full_16.pdf

² “Victim” is the term adopted in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Rome Statute of the International Criminal Court. See Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA resolution 40/34 (1985) and UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 1998

³ Rahila Gupta, “‘Victim’ vs. ‘Survivor’: feminism and language”, Open Democracy, June 2014, <https://www.opendemocracy.net/en/5050/victim-vs-survivor-feminism-and-language/>

addition, Louisiana has one of the highest rates of incarceration in the US with a disproportionate impact on Black people, although there have been efforts to begin to reform some criminal justice practices.

Amnesty International has taken a pro-actively intersectional approach to this research. Researchers have consistently tried to identify how laws, and their implementation, affect the protection of survivors of violence differently, depending on aspects of their identity. This is particularly important in Louisiana, where the state has high rates of poverty and there are distinct gender and racial disparities to poverty. All these factors mean that addressing intimate partner violence using an intersectional analysis can contribute to greater understanding of how discrimination and poverty affect the response that survivors receive from the authorities and the extent to which the authorities are upholding their human rights obligations.

Amnesty International researchers conducted interviews for this report in January, May and November 2018 and in July 2019. Researchers visited the cities of New Orleans, Baton Rouge and Lafayette and the parishes of Lafourche, St Bernard, St Mary, and Terrebonne. In total, Amnesty International interviewed around 100 people for this report, including government officials, civil society organizations, and individuals directly affected by intimate partner violence involving firearms.

Louisiana-based organizations that provide support services to survivors of intimate partner violence assisted Amnesty International's research by identifying survivors who were willing to participate in the research. The long-lasting trauma that results from intimate partner violence means that for many survivors, especially those who have recently left abusive situations, reliving their experiences in an interview could cause additional trauma. For this reason, the number of survivors interviewed for this report was not more than necessary to exemplify the patterns of human rights violations identified.

Amnesty International interviewed 16 people with direct experience of intimate partner violence. Researchers conducted 13 in-depth individual interviews with survivors of intimate partner violence about the abuse they suffered and their experiences with the justice system. Three of the survivors had been shot and injured by their abusers and another eight had either been threatened with a firearm or received verbal threats to shoot them. In addition, researchers interviewed the sister of a woman who was killed by her ex-partner and one of 13 the survivors who was shot also witnessed her daughter being shot and killed in the same incident. Researchers also interviewed two survivors of family violence: one had suffered child sexual abuse by her father and witnessed her father's abuse towards her mother; the other had witnessed her father's abuse of her step-mother. Some names of survivors have been changed at their request. All 16 interviewees were women. Ten were Black, five were White and one Hispanic. One interview was held in Spanish with translation by a multilingual community activist. All the survivors of intimate partner violence had abusers who were men. Amnesty International tried, but was unable, to interview any Lesbian, Gay, Bisexual, Transgender or Intersex (LGBTI) survivors or Native American survivors. Due to the widespread prevalence of intimate partner violence, a number of people working for organizations and agencies, who Amnesty International spoke with during the course of the research, disclosed to the organization that they were also survivors of intimate partner violence.

Amnesty International met with representatives of seven law enforcement agencies, the Louisiana Commission on Law Enforcement (LCLE), five prosecutors' offices, six lawyers, one civil court judge who specialized in family law, one criminal court judge, the Louisiana Protective Order Registry (LPOR), the New Orleans Independent Police Monitor, the New Orleans Blueprint for Safety and the Crime Victims Assistance Program in New Orleans.

Researchers met with the Louisiana Coalition Against Domestic Violence (LCADV) and spoke to representatives of nine member-programs of the coalition who work directly with survivors of intimate partner violence. Between them, these organizations provide support services to survivors in 36 of Louisiana's 64 parishes. In some instances where representatives provided examples of problematic local practices, or behavior by officials, they requested that Amnesty International not name the organization or the relevant parish due to concerns about negative repercussions for the organization and survivors.

In addition, Amnesty International spoke to representatives of civil society organizations working on criminal justice system reform, women's rights, LGBTI rights, Indigenous peoples' rights and migrant rights, including Southeast Louisiana Legal Services (SLLS), Court Watch NOLA, Silence is Violence, Women with a Vision, the Butterfly Society, the Congress of Day Laborers, Promise of Justice, the Institute for Indian Development, NOLA Village, BreakOut, the LGBT Community Center of New Orleans, and the United Way of Southeast Louisiana. Most meetings were held in person during researchers' visits to Louisiana; however, some meetings were held via telephone or online. Amnesty International held workshops with representatives of civil society organizations in New Orleans and Baton Rouge in July 2019 to discuss the research findings and the draft recommendations.

Researchers reviewed state and federal laws relating to intimate partner violence and analyzed available policies, protocols, best practices and training information from law enforcement, prosecutors and courts. The organization reviewed relevant court records, government and civil society reports and media articles about incidents of intimate partner violence and the response of the criminal justice system. Statistical data on intimate partner violence in Louisiana is not easily available. Amnesty International requested data from some of the law enforcement agencies and prosecutors' offices the organization met with, and through public records requests with mixed results. These are explained in the relevant chapters of the report. While the available data quoted in the report predominantly comes from New Orleans (because more data is available from there), it does not mean that the situation in New Orleans is better or worse than elsewhere in Louisiana. Without data for other parts of Louisiana, it is difficult to make accurate comparisons.

Amnesty International would like to express its gratitude to the survivors of intimate partner violence who courageously shared their stories for this report. The organization also thanks the civil society organizations who helped arrange researchers' meetings with survivors, and the students and staff of the international human rights clinic at Duke University who provided additional legal research.

If you are experiencing intimate partner violence, domestic violence, or teen dating violence anywhere in the USA, you can call the National Domestic Violence Hotline 24/7 at 1-800-799-SAFE (1-800-799-7233). Deaf/hard of hearing: 1-855-812-1011 (VP), 1-800-787-3224 (TTY). Or visit www.thehotline.org to learn more or chat with someone online confidentially.

In Louisiana, you can call the Louisiana Domestic Violence Hotline at 1-888-411-1333.

1. INTIMATE PARTNER VIOLENCE

“I put my hands up because I’m, again, terrified. As I’m coming up, he shoots me in my face. Point blank range. The doctors tell me that the only reason that it didn’t kill me was that he had the wrong caliber bullet in the gun.”

Tiffany was seven months pregnant when her then partner shot her in the face, leaving her needing multiple surgeries and treatment for Post-Traumatic Stress Disorder (PTSD).⁴

Intimate partner violence is abuse by a person with whom the victim has, or had, a romantic or sexual relationship. This includes spouses, former spouses, current and former dating partners, whether or not the individuals have ever cohabited. Intimate partner violence includes acts of physical violence, sexual violence, verbal abuse, mental and emotional abuse, financial abuse and stalking.⁵

Intimate partner violence is gendered. The World Health Organization (WHO) notes that “Although women can be violent in relationships with men, often in self-defense, and violence sometimes occurs in same-sex partnerships, the most common perpetrators of violence against women are male intimate partners or ex-partners. By contrast, men are far more likely to experience violent acts by strangers or acquaintances than by someone close to them”.⁶

1.1 DYNAMICS OF INTIMATE PARTNER VIOLENCE

“The violence progressed. It became sexual abuse, physical abuse, emotional abuse, isolating me, power and control. No one knew what went on behind closed doors. It was like I was his property, a possession. He was very, very jealous. I never went out with friends. I never did anything. I really stopped talking to everyone other than my sister and one of my close friends, but they didn’t know I was being physically abused. They could see the manipulation but he’s a very charming, charismatic person to the outside world”.

Kirby, describing the abuse she suffered from her husband, whom she had met at high school.⁷

A key feature of intimate partner violence is the exercise of power and control by one partner over another. Every abusive relationship is different but can include: one partner isolating the other by refusing to allow the other to see family and friends; requiring them to seek permission before spending money or refusing to let them work; monitoring their phone calls and use of social media; undermining their self-confidence through

⁴ Interview with Amnesty International, May 2018

⁵ See National Domestic Violence Hotline <https://www.thehotline.org/is-this-abuse/abuse-defined/> and National Institute for Justice, <https://www.nij.gov/topics/crime/intimate-partner-violence/pages/welcome.aspx>

⁶ World Health Organization and Pan American Health Organization, Information Sheet on Intimate Partner Violence, WHO/RHR/12.36, 2012, https://www.who.int/reproductivehealth/publications/violence/rhr12_36/en/

⁷ Interview with Amnesty International, November 2018

constant criticism and belittling; constantly checking where they are; extreme jealousy, possessiveness and persistent accusations of infidelity; controlling whether or not they can use contraception; requiring them to dress in a particular way; frequently changing the unwritten “rules” thereby keeping them always wondering when the next outburst will occur; and blaming them for the violence they experience. This coercive control can exist without acts of physical or sexual violence; however, it is common for threats of physical and/or sexual violence and acts of violence to be used to reinforce the control one partner has over the other. What starts out as controlling behavior can escalate over time to physical and/or sexual violence.⁸

“He used to choke me sometimes and I would blank out. He’d pick up a tool, anything – screw drivers, hammers, guns in the head – I got hit with it. I went through a lot of stuff but the thing that affects people the most is the mental. Words stick to you more than a whipping, I tell you.”

Sandra, who left her abusive partner after a violent incident and needed hospital treatment including blood transfusions.⁹

Abusive partners want to maintain their power and control over their partner. Often, the time when someone leaves an abusive relationship is the most dangerous. The victim in an abusive relationship understands their own situation. There are many reasons for not leaving, including: leaving is more dangerous; fear that the abuser will carry out threats to kill or harm them or other family members; lack of self-worth and confidence that they can survive without the abuser; no support network and do not know where to go for help; financial dependence on their abuser; fear of being homeless or of losing custody of children; love for their partner and hope that the abuse will stop.

“A lot of people say, “oh I wouldn’t have stayed there that long”. But you’re in a situation, you don’t know what you’re going to do. You can say this, and you can say that, but when you’re in it, you don’t know what you’re going to do. I did not want my children split up; I wanted them to grow together. And every day wasn’t a bad day.”

Sandra, who escaped her abusive partner after 14 years of physical violence and having all aspects of her life controlled.¹⁰

“I did leave three times [before]. A lot of the reasons I let him back is the co-dependency and financial dependency, just not knowing what would happen. He threatened this time too – threatened “you’ll be broke”.”

Susan, who left her husband for the fourth time after 37 years of abuse.¹¹

Gender-based violence, including intimate partner violence is under-reported throughout the world. There are a range of reasons that victims of intimate partner violence do not report it to the authorities, including: fear that calling the police will make the abuse worse; fear that the police will not believe them or will not take the abuse seriously; embarrassment at having the police come to their house; and wanting the abuse to stop but not wanting their partner to get in trouble.¹²

“I look up and I watch him. I’m watching him shoot me. I didn’t know how many times I’d been shot. The brain has a way of protecting you from that. After he shoots me, the gun is empty now. I said, “you shot me”. And he says “look what you made me do. You made me shoot you”.”

Angela, whose then partner, and father of two of her children, shot her six times, leaving her permanently paralyzed.¹³

Intimate partner violence at its most extreme can result in death. It can cause serious health consequences including: physical injuries, and sometimes permanent disability; damage to mental health such as anxiety, depression and Post Traumatic Stress Disorder (PTSD); lack of trust in relationships; low self-esteem; substance abuse; unwanted pregnancy; and sexually transmitted infections. The effects of intimate partner violence can interfere with a victim’s ability to work leading to loss of income and potentially to increased poverty. A victim who is forced to leave their home to escape intimate partner violence may end up homeless. Growing up in a household witnessing intimate partner violence can also have physical and mental health consequences for children. This may include experiencing fear and insecurity, blaming themselves for the abuse, developing behavioral problems at home or school or feeling they have to protect the abused parent.¹⁴ Sandra told Amnesty International that her ex-partner sometimes forced their children

⁸ See National Coalition Against Domestic Violence, <https://ncadv.org/dynamics-of-abuse> and National Domestic Violence Hotline, <https://www.thehotline.org/2018/09/28/escalation/>

⁹ Interview with Amnesty International, November 2018

¹⁰ Interview with Amnesty International, November 2018

¹¹ Interview with Amnesty International, November 2018

¹² See National Coalition Against Domestic Violence, <https://ncadv.org/why-do-victims-stay>

¹³ Interview with Amnesty International, May 2018

¹⁴ See US Department of Health and Human Services, Office on Women’s Health, <https://www.womenshealth.gov/relationships-and-safety/domestic-violence/effects-domestic-violence-children>

to take part in the abuse. She described how during one incident when he beat her, “he told my little children to kick me”. The children witnessing his treatment of Sandra has had an ongoing effect. She said “How they’ve seen him talk to me, they talk the same way to me. We’re all going to counselling”.¹⁵

Several of the survivors who spoke to Amnesty International said that their decision to leave was connected to the impact that witnessing the abuse was having on their children. They were especially concerned about the message their daughters would get from seeing them being abused. However, victims of intimate partner violence may stay with their abuser due to fears about losing custody of their children or to a belief that being in a two-parent household is better for their children, despite the abuse.¹⁶ Maria stayed with her abusive husband for a long time because of his threats to take her children and have her deported. She told Amnesty International “The biggest fear that I had was that he was going to take my children”.¹⁷ Veronica told Amnesty International that her father was violent towards her mother for decades, and he sexually abused Veronica from the age of five. Although her mother knew about the abuse, she was unable to leave or protect Veronica. The abuse continued until the night before Veronica got married, 28 years later. Veronica described her father controlling and manipulating the whole family so that none of them were able to stand up to him. She said, “I was very angry at my mom for not protecting us from him, then as I got older, I started feeling sorry for her”. Veronica reported her father to the police when she found out he was abusing her young cousin.¹⁸

Despite suffering ongoing serious physical and mental health challenges, survivors of intimate partner violence are frequently among the strongest advocates demanding improvements be made to the way authorities respond to the abuse. All the survivors who spoke to Amnesty International hoped that by speaking out about their experiences, it would raise awareness about intimate partner violence and help others in similar situations. They were determined to help improve responses to violence and to prevent others suffering in the way they had. Some are doing this by joining survivor networks to support each other and lobby for institutional changes, others speak publicly about their experiences at events in their communities and in the legislature, and some have established their own survivor-led organizations.

1.2 INTIMATE PARTNER VIOLENCE IN THE US

“In hindsight, I’ve talked to women who dated my ex-husband and they mentioned that he was violent with them. Had I known he’d been abusive with other women, I wouldn’t have made him a part of my life.”

Elizabeth, whose then husband shot her in the face and shot and killed her 18-year old daughter, India.¹⁹

The WHO estimates that globally 30% of all “ever-partnered women” have experienced “physical and/or sexual intimate partner violence”. Among high-income countries, including the USA, the WHO estimates 23.2% of women have experienced intimate partner violence.²⁰ In the US, the Centers for Disease Control and Prevention (CDC) estimates that one third of both women and men have experienced intimate partner violence in their lifetime. The same study also found that women experience more severe violence that has more serious consequences: it estimates that one in four women, and one in 10 men, have experienced intimate partner violence that has had a “negative impact” on them during their lifetime. It defines “negative impact” as being fearful or concerned for safety, receiving injury, needing medical care, needing help from law enforcement, missing at least one day of work or school, PTSD symptoms, needing victim services or legal support or contacting a crisis hotline.²¹ Research supported by the National Institute of Justice, an agency of the US Department of Justice (DOJ), has found: significantly more women than men are likely to be injured by an intimate partner; between 40% and 50% of all murders of women in the US are committed by intimate partners; and in 70-80% of intimate partner homicides (involving heterosexual couples), “no matter which partner was killed, the man physically abused the woman before the murder”.²²

¹⁵ Interview with Amnesty International, November 2018

¹⁶ See US Department of Health and Human Services, Office on Women’s Health, <https://www.womenshealth.gov/relationships-and-safety/effects-violence-against-women>

¹⁷ Interview with Amnesty International, May 2018

¹⁸ Interview with Amnesty International, November 2018

¹⁹ Interview with Amnesty International, November 2018

²⁰ WHO, Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence, 2013, p.16-17 https://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf?sequence=1

²¹ Centers for Disease Control and Prevention, National Intimate Partner and Sexual Violence Survey, 2015 Data Brief, November 2018, p.7 <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>

²² National Institute of Justice, Journal No. 250 on Intimate Partner Homicide, 2003, p.18 <https://www.ncjrs.gov/pdffiles1/jr000250.pdf>

The number of men killed by intimate partners has reduced by almost three quarters since 1976 whereas the number of women killed has dropped by only one quarter.²³ The decrease in numbers of men killed by intimate partners coincided with improved provision of shelters for women experiencing abuse meaning that “women are able to secure safety from violence rather than kill an abusive partner”.²⁴ Availability of services has not resulted in a similar decrease in numbers of women killed by intimate partners. In 45% of homicides of women by an intimate partner, her attempting to leave the relationship was a factor in the killing.²⁵

Analysis of 2003-2014 data from the National Violent Death Reporting system shows that, nationally, two women per 100,000 population were victims of homicide; however, the rate for Black women was more than twice the national average at 4.4 per 100,000 and for American Indian/Alaska Native women the rate was 4.3 per 100,000 population. Intimate partner violence was responsible for 51.3% of the homicides of Black women and 55.4% of the homicides of American Indian/Alaska Native women.²⁶

Intimate partner violence occurs in same sex relationships; however, there has been much less research on this than on violence in heterosexual relationships. One review of 119 studies or articles published after 1995 found that rates of severe intimate partner violence were higher for LGB individuals than for heterosexual individuals, with 49% of bisexual women, 29% of lesbian women, and 16% of gay men experiencing severe violence compared to 24% of heterosexual women and 14% of heterosexual men.²⁷ The studies highlighted a number of stereotypes about intimate partner violence among same sex couples which lead to a reluctance to report or seek help. These include fear that discussing violence within same sex relationships will contribute to stigmatization of Lesbian and Gay people; myths that intimate partner violence within a same sex relationship is a “mutual conflict” because of “comparable physical strength” instead of about power and control within the relationship.²⁸ Data on intimate partner violence experienced by trans individuals is limited; most studies do not ask about trans identities. The 2015 US Transgender Survey, an anonymous, online survey of over 27,000 trans adults across the country found that 54% had experienced some form of intimate partner violence, with 24% experiencing severe physical violence. 77% of trans individuals involved in sex work had experience intimate partner violence.²⁹

US Department of Justice data shows that overall 56% of “nonfatal domestic violence victimizations” between 2006 and 2015 were reported to the police. Where the incident involved serious injury, 54% of “female victimizations” were reported to the police compared to 77% of “male victimizations”. Women were four times more likely than men to cite fear of reprisal as a reason for not reporting the incident.³⁰

THE BLUEPRINT FOR SAFETY

Developed in St Paul, Minnesota in 2007, the Blueprint for Safety is a collective policy for addressing domestic violence. It contains chapters for all relevant agencies, including law enforcement, District Attorneys, courts, probation, etc. It encourages collaboration between agencies, and continuous monitoring of implementation of the policy in order to improve safety for victims. The Blueprint is available as a prototype for communities to adopt.³¹

New Orleans adopted the Blueprint for Safety in 2014.³²

²³ Klein, AR. *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges*, National Institute of Justice, June, 2009, p.3 <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf>

²⁴ Roehl, J. et al, *Intimate Partner Violence Risk Assessment Validation Study*, 2005, p.9 <https://www.ncjrs.gov/pdffiles1/nij/grants/209731.pdf>

²⁵ National Institute of Justice, Journal No. 250 on Intimate Partner Homicide, 2003, p.6 <https://www.ncjrs.gov/pdffiles1/jr000250.pdf>

²⁶ Petrosky, E. et al, *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence – United States 2003-2014*, Center for Disease Control and Prevention, Mortality and Morbidity Weekly Report, Vol 66, No 28, July 2017, p.742-743 <https://www.cdc.gov/mmwr/volumes/66/wr/mm6628a1.htm>

²⁷ Rolle, L. et al. *When Intimate Partner Violence Meets Same Sex Couples: A Review of Same Sex Intimate Partner Violence*, in *Frontiers in Psychology*, 2018, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6113571/>

²⁸ Rolle, L. et al. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6113571/>

²⁹ US Transgender Survey, 2015, p.12-13 <https://transequality.org/sites/default/files/docs/usts/USTS-Executive-Summary-Dec17.pdf>

³⁰ US Department of Justice, Bureau of Justice Statistics, *Police Response to Domestic Violence 2006 – 2015*, May 2017, p. 1-5 <https://www.bjs.gov/content/pub/pdf/prdv0615.pdf>

³¹ See <https://praxisinternational.org/blueprint-for-safety/>

³² See <https://www.nola.gov/mayor/press-releases/2014/20141021-blueprint-press-release/>, <https://www.nola.gov/health/domestic-violence-prevention/>

1.2.1 FIREARMS AND INTIMATE PARTNER VIOLENCE

“Three times before I actually left my husband I told him that I had enough, and I couldn’t live how we were living and that I wanted to file for a divorce. The first time that I told him that, he pulled his handgun out of the closet where he hid it and took off the black canvas strap over it and pointed it at me and cocked the gun.”

Brandie, who left her abusive husband after 15 years and then suffered years of stalking and harassment.³³

Analysis of WHO data for 23 high income countries shows that women in the US are four times more likely to be a victim of homicide (using any method) than women in other high-income countries. Although the combined population of the 22 other countries in the study was more twice that of the US, 90% of all women killed by firearms were in the US.³⁴ Between 2001 and 2012, 55% of all women killed by intimate partners in the US were killed with a gun.³⁵ A review of research on non-fatal gun violence shows that in the US nearly one million women have been shot, or shot at, by an intimate partner and around 4.5 million women have been threatened with a gun by an intimate partner.³⁶

TIFFANY: SURVIVED BEING SHOT IN THE FACE BY HER ABUSIVE EX-PARTNER³⁷



Tiffany is an actress, activist and public speaker. She was shot in 2008.

© Tiffany Morgan-Dupas

Tiffany met her first abuser aged 14. He was much older. She got pregnant, married him aged 17 and divorced him soon after, before meeting a man she described as “charming”. Tiffany told Amnesty International:

“I found him intriguing. He carried a gun and I thought it was fun. We ended up moving in together and I got pregnant again. Once, he came in the house and we started arguing. It went from verbal to physical real fast and he beat me until I was on the floor. I was seven months pregnant. I curled up in a ball and waited for it to be over. I got up and, the same gun that I saw him toting, it was on the counter and I reached for the gun and had it in my hand and I couldn’t pull the trigger and he knew that. He took the gun right out of my hand and beat me even more.”

Tiffany moved out, first to a hotel and later found a house to rent. He came to the house one day and they got back together. She said, “A lot of people will be like “you’re so stupid, you should have stayed gone”. [They] don’t understand the hold an abuser has on his victim. Mentally I was broken, and he had told me he would be the only person who would ever love me because I had all these kids and this background.”

The abuse started again soon after. When Tiffany was seven months pregnant with her sixth child, he shot her. She said “we pulled up [at the house]. My kids weren’t there, thank God. We’re in an argument again. And I know it’s getting ready to go south. Accountability is key for me, so I can speak for what I did.

³³ Interview with Amnesty International, November 2018

³⁴ Grinshteyn, E. & Hemenway, D. *Violent Death Rates: the US compared with other high income OECD countries 2010*, American Journal of Medicine, p. 269-271 [https://www.amjmed.com/article/S0002-9343\(15\)01030-X/pdf](https://www.amjmed.com/article/S0002-9343(15)01030-X/pdf)

³⁵ Gerney, A. & Parsons, C. *Women Under the Gun*, Center for American Progress, 2014, p.1 <https://cdn.americanprogress.org/wp-content/uploads/2014/06/GunsDomesticViolencereport.pdf>

³⁶ Sorenson, S & Schut, R. *Non-fatal Gun Violence in Intimate Partner Violence: A Systematic Review of the Literature*, in Trauma, Violence and Abuse, 2016, <https://journals.sagepub.com/doi/10.1177/1524838016668589>

³⁷ Interview with Amnesty International, May 2018

I grabbed a knife. I didn't know he had a gun in his holster. He pulled the gun out, and I knew it was serious. So again, I'm talking him down. I kept telling him that "all you have to do is leave. Just leave". And I put the knife down on the table". As Tiffany put her hands up, he shot her in the face.

"I saw this big flash of light and my jaw swayed and I knew something was wrong, but I didn't feel it right away. I saw my shirt and it was just red and I said "you shot me. You didn't have to shoot me". He didn't apologize. The first thing he did was to try to transfer blame on me. He said, "you hit the gun". I ran into my bathroom and I could see the hole in my face. I grabbed something, and I held it against my face. As I came into my living room I could see him leaving. Out of the door and he got in his car and he backed up and he drove away. And he left me on my step, bleeding."

Tiffany's neighbors called an ambulance and the police. She has had six surgeries to repair her jaw and face and has been left with permanent nerve damage. Although she has been diagnosed with PTSD, Tiffany is an activist raising awareness about domestic violence in her community.

The Violence Policy Center analyzes data from FBI Uniform Crime Reports on homicide cases where one man has killed one woman. Nationally, in 2017 (the year for which the most recent data is available), 57% of women were killed with a gun. In cases where the relationship between victim and offender was known, 92% of female homicide victims were killed by someone they knew. "Wives, common law wives, ex-wives and girlfriends" made up 62% of victims who knew the killer. Of all women killed using a gun, 60% were killed by an intimate partner. (The figures are an undercount because the FBI data reporting does not include a category for ex-boyfriends, so they cannot be included in the numbers of intimate partner homicides.)³⁸

Research on risk factors for intimate partner homicide has found that women who had been threatened or assaulted with a weapon were 20 times more likely to be killed and women whose partner had threatened to kill them were 15 times more likely than other women to be murdered. Abused women living in houses with a gun were six times more likely to be killed than other abused women.³⁹ Just knowing that a violent partner has a firearm can feel threatening.

"He used to tell me he had "hot firearms".⁴⁰ Even though we don't live together anymore, the abuse continues. He sends me messages. He says stuff like "I want to buy you a gun", or "I want to buy my kids a gun". There is always that conversation about guns. He's not directly saying "I'm going to kill you" but knowing that there is this conversation, brings fear to me."

Maria, whose ex-husband threatened her with a gun during their relationship, continued intimidating her after they separated.⁴¹

1.3 THE LOUISIANA CONTEXT

Louisiana, located on the Gulf of Mexico in the southeastern region of the USA, had a population of 4.53 million at the time of the 2010 census.⁴² A predominantly rural state, there are two cities with populations of over 200,000 inhabitants: New Orleans and the state capital, Baton Rouge.⁴³ Louisiana is divided into 64 parishes and, in 2010, 15 of those parishes had fewer than 20,000 inhabitants each.⁴⁴ In 2010, Louisiana's population was 63% White, 33% Black, 5% Hispanic, 1.8% Asian, 0.8% Native American and Alaska Native, and 1.7% mixed.⁴⁵

According to government data from 2017, the poverty rate in Louisiana is 19.6% compared to 13.4% nationally. The state has the second highest poverty rate in the US.⁴⁶ Poverty affects 21.7% of Louisianan women and 17.7% of men.⁴⁷ There is a distinct racial disparity to women's poverty in Louisiana. The percentage of White women living in poverty is 14%. For Hispanic and Native American women, the poverty

³⁸ Violence Policy Center, When Men Murder Women, 2019, p.5, <http://vpc.org/studies/wmmw2019.pdf>

³⁹ National Institute of Justice, Journal No. 250 on Intimate Partner Homicide, 2003, p.16, <https://www.ncjrs.gov/pdffiles1/jr000250e.pdf>

⁴⁰ Stolen guns

⁴¹ Interview with Amnesty International, May 2018

⁴² See <https://www.census.gov/quickfacts/la>

⁴³ See <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

⁴⁴ See http://louisiana.gov/Explore/Demographics_and_Geography/Population_Change_LA_2000to2010.xls

⁴⁵ See <https://www.census.gov/quickfacts/fact/table/LA/POP010210>

⁴⁶ See https://www.census.gov/data-tools/demo/sa/pe/#/?map_geoSelector=aa_c&s_year=2017&s_state=22 In 2017, only Mississippi had a higher poverty rate, at 19.9%

⁴⁷ See https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_1YR_S1701&prodType=table

rate is 26%, and, 31% of Black women live in poverty.⁴⁸ Black women in Louisiana earn just 47.4% of the earnings of White men. Hispanic women earn 52.4% and White women 67% of the earnings of White men.⁴⁹ The state has the largest gap in earnings between Black women and White men in the country.⁵⁰ All Louisiana's Senators and Representatives to the US Congress are men and just 14.6% of representatives in the state legislature in 2018 were women, the third lowest rate in the country.⁵¹

1.3.1 INTIMATE PARTNER VIOLENCE IN LOUISIANA

“Suddenly her eyes got this big because she saw him approaching with the gun. And I have tried and tried and tried to get that image out of my head because she saw him before I did. And when I turned to see what she was seeing, is when, shots rang. And it's just strange that you're that angry, and you loved us, and you could do this.”

Elizabeth, whose then husband shot her in the face, and shot and killed her daughter.⁵²

Louisiana consistently ranks close to the top of the list of states with the highest rates of women killed by men according to the annual reports of the Violence Policy Center which analyze federal homicide data. Homicide data from 2012 – 2017 shows Louisiana had between the second and fourth highest rates in the US.⁵³ According to the 2017 data, the national rate of one woman killed by one man was 1.29 per 100,000 population. The rate in Louisiana was 2.64 per 100,000 population. The study covered 63 homicides in Louisiana; 36 of the victims were Black, 25 were White, 1 was Asian, and one was of unknown race. In 50 of the homicide cases, the authorities reported the relationship between victim and offender. In 47 out of 50 cases, the victim knew the offender. In 28 cases, the victim was an intimate partner (excluding ex-girlfriends). Of the 28 victims killed by intimate partners, 20 were killed with a gun.⁵⁴

The National Network to End Domestic Violence organizes an annual census of the numbers of individuals who seek services from domestic violence organizations across the country over one 24-hour period. In Louisiana, on 13 September 2018, the 15-member organizations of the LCADV provided services to 686 survivors. Of these, 345 individuals were provided with accommodation in emergency shelters or transitional housing. Another 341 individuals received non-residential support such as legal advocacy or counselling. In addition, there were 308 calls to the emergency hotline number. There were 95 requests for services that the organizations did not have the resources to meet, 66% of these requests were for housing.⁵⁵

LACK OF COMPREHENSIVE DATA

Accurate data is important for highlighting trends and problems. It enables policies and programs to be designed to address those problems. Consistent collection of data over time enables the authorities to monitor policies and programs to assess their effectiveness. Ensuring that policies and programs benefit everyone without discrimination requires data to be disaggregated by relevant factors. For example, data on intimate partner violence, disaggregated by factors such as gender, race, type of relationship, and parish enables patterns, inequalities, and potential discrimination to be identified and addressed.

The figures above provide a partial snapshot of the extent of intimate partner violence in Louisiana. However, there is no comprehensive government collected data on the issue. Federal data is incomplete⁵⁶ and the Louisiana state authorities do not even track numbers of intimate partner homicides. The Louisiana Commission on Law Enforcement (LCLE), which is responsible for compiling the state's crime data, cites the

⁴⁸ Institute of Women's Policy Research, Status of Women in the States, p. 3 <https://statusofwomendata.org/wp-content/themes/witsfull/factsheets/economics/factsheet-louisiana.pdf>

⁴⁹ Institute of Women's Policy Research p.3 <https://statusofwomendata.org/wp-content/themes/witsfull/factsheets/economics/factsheet-louisiana.pdf>

⁵⁰ Institute of Women's Policy Research, The Status of Black Women in the United States, p. xviii <https://wpr.org/wp-content/uploads/2017/06/The-Status-of-Black-Women-6.26.17.pdf>

⁵¹ See <http://www.ncsl.org/legislators-staff/legislators/womens-legislative-network/women-in-state-legislatures-for-2018.aspx>

⁵² Interview with Amnesty International, November 2018

⁵³ See annual reports of the Violence Policy Center, <http://vpc.org/revealing-the-impacts-of-gun-violence/female-homicide-victimization-by-males/>

⁵⁴ Violence Policy Center, When Men Murder Women, 2019, p.12 <http://vpc.org/studies/wmmw2019.pdf>

⁵⁵ National Network to End Domestic Violence, Domestic Violence Counts, Louisiana Summary, 2018, <https://nnev.org/mdocs-posts/2018-louisiana/>

⁵⁶ Federal homicide data relies on states submitting data for all law enforcement agencies in a state for the whole year. Where the FBI determines the data is under-reported, it does not include figures from that agency. See for example <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/table-8/table-8-state-cuts/louisiana.xls> The FBI homicide data on the relationship between victim and offender includes same-sex relationships in the “acquaintance” category and does not include categories for ex-boyfriend or ex-girlfriend, therefore, all figures for intimate partner homicides are an undercount. See <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/expanded-homicide-data-table-10.xls>

research organization the Violence Policy Center for figures on intimate partner homicide.⁵⁷ However, the federal data analyzed by the Violence Policy Center does not include every intimate partner homicide. It does not cover cases where there was more than one victim, for example, someone who killed their partner and a child; neither does it cover cases involving same-sex couples or cases of women who kill their male intimate partner.

The LCLE told Amnesty International that it has a program to upgrade its systems for data collection; however, this will not be completed until 2021. The current system is not able to compile data on numbers of fatal or non-fatal incidents of intimate partner violence in Louisiana.⁵⁸ Some parishes in Louisiana collect limited data for their localities. The East Baton Rouge District Attorney's (DA) Office publishes an annual report on domestic homicides in that parish. The DA's office has also commissioned studies into crime in East Baton Rouge which includes data on non-fatal intimate partner violence. The reports of the New Orleans Consent Decree Monitor have data on numbers of arrests and prosecutions for offenses that are categorized as domestic abuse. The New Orleans Police Department (NOPD) and the New Orleans DA's office provided Amnesty International with some data; however, it is incomplete because not all crimes of intimate partner violence are categorized as such. (See chapters four and five for more information about this data.)

DOMESTIC VIOLENCE FATALITY REVIEWS

A domestic violence fatality review is a process for examining homicides and suicides that result from domestic violence and investigating all known prior incidents of domestic violence to identify where interventions by authorities or agencies could have prevented the death. Recommendations for changes in ways of working or development of new prevention initiatives often follow comprehensive fatality reviews.

According to the National Domestic Violence Fatality Review Initiative, 43 states have "active review teams". It lists Louisiana is one of two states with "limited review activity".⁵⁹ The LCADV coordinated a fatality review, published in 2010. It produced an estimate of the numbers of domestic fatalities between 1997 and 2008, stressing that the lack of a state-wide database meant that the figures were likely an undercount. It undertook an in-depth analysis of nine fatalities in six parishes and produced recommendations for law enforcement, courts and organizations supporting survivors. The review also called for the legislature to enact laws to enable state, regional and local reviews to take place, including by ensuring review teams have access to necessary documents. Although there have been limited reviews in a few localities since then, the legislature has not passed the recommended laws, and there has been no further cross parish fatality review.

After two domestic homicides occurred in quick succession in Lafayette, the local organization supporting survivors, coordinated a fatality review in 2014 to examine those two cases. Crystal Scrantz, Assistant Director of Faith House, told Amnesty International that, initially, representatives from some agencies were reluctant to look into the cases because they did not want it to become an exercise in blame. The review showed that each homicide victim had interacted with 14 – 16 agencies before their deaths and that the killers had prior arrests. She said that this opened people's eyes to the problems. The result was improved communication between agencies and identification of the individuals at the highest risk of being killed. Agencies agreed to take additional and more proactive measures for individuals on the "high risk list".⁶⁰

INTIMATE PARTNER KILLINGS

In the absence of official data, the LCADV attempts to track all domestic violence related fatalities in Louisiana, including those involving intimate partners and other family members. Most incidents are homicides; however, a few are found to be accidents or self-defense. LCADV's tracking is based on media reports of cases and, Mariah Wineski, Executive Director of the LCADV, told Amnesty International that the number of fatalities is very likely to be higher because not every death is reported in the media, and, when they are reported, reports do not always contain information about the relationship between the victim and the suspected killer.⁶¹

The LCADV provided Amnesty International with its fatality data from 2013 – 2018. Amnesty International extracted the data for numbers of intimate partner fatalities. Between 2013 and 2018, Louisiana media

⁵⁷ P.28 <http://lcle.la.gov/programs/uploads/2017-2020%20Implementation%20Plan.pdf>

⁵⁸ Amnesty International communication with LCLE, September 2019

⁵⁹ See <https://ndvfri.org/review-teams/>

⁶⁰ Amnesty International meeting with Faith House, Lafayette, November 2018

⁶¹ Amnesty International meetings with LCADV, May and November 2018

covered incidents where 236 people were killed by a current or former intimate partner in the state; 191 (81%) of them were women and 45 (19%) were men. 36% of all fatalities were Black women, 32% White women, 11% Black men, 8% women of unknown race, 5% men of unknown race, 3% White men, 2% Hispanic women, and 2% women of Asian or other race. All except one fatality involved heterosexual couples. Guns were used in 144 (61%) of the deaths. Of the 144 people killed by guns, 121 (85%) were women. Authorities ruled that 57 incidents (24%) were murder-suicide.⁶²

For some deaths there were extensive media reports that included information from family and friends, or court records, highlighting prior abuse. Others had very few media reports and little information beyond the names of the victim and suspected killer and the relationship between them. In some cases, there has been subsequent media coverage of the court process, in other cases there have been no further reports. This means that it is not possible to definitively conclude, from the media reports, how many of the deaths were murders, accidents, ruled justifiable self-defense with no charges pursued, or charged and found not guilty.

The NOPD provided Amnesty International with their data on domestic homicides (including intimate partners and family members) between 2015 and 2017. The figures show 15 domestic homicides in 2015, four in 2016 and eight in 2017. In 2015, 75% of domestic homicides involved firearms. In 2016 and 2017 50% involved firearms.⁶³ As expected, NOPD's list contains cases that the LCADV list does not, because the media does not always report the relationship between the victim and killer. However, the LCADV data contains some deaths where the media reports clearly state the relationship, but the NOPD have not designated them as "domestic".

The East Baton Rouge DA annual reports on domestic violence state that there were seven domestic homicides in 2016, 14 in 2017 (10 involving firearms) and seven in 2018.⁶⁴ The 2016 and 2018 reports do not name all homicide victims so Amnesty International was unable to compare the cases to the LCADV data. The 2017 LCADV list does not contain names not on the DA's 2017 report.

FIREARM POSSESSION BY ABUSERS

The proportion of survivors of intimate partner violence whose abusers possess firearms varies across different parts of the state. There is no official data; however, organizations working with survivors told Amnesty International about the experiences of the survivors they work with. In New Orleans, data collected by the Family Justice Center show that approximately 40% of survivors assisted by the Center report that their abuser has a gun.⁶⁵ Representatives of organizations who work in more rural areas report higher percentages. A representative from Chez Hope, which covers four predominantly rural parishes, estimated 90% of survivors say their abuser or their family have guns, and in about half of those cases, the gun has been used in the abuse.⁶⁶ A representative of Faith House, which covers the city of Lafayette and six mostly rural parishes, also estimated that around 90% of survivors have abusers who possess firearms.⁶⁷

⁶² LCADV fatality data analyzed by Amnesty International

⁶³ Homicide figures provided to Amnesty International at a January 2018 meeting

⁶⁴ East Baton Rouge DA, Domestic Violence Reports, 2016 <http://www.ebrda.org/pdfs/2016%20Overview%20of%20DV%20Cases.pdf>; 2017 <http://www.ebrda.org/pdfs/DVannualreport021518.pdf>; 2018 <http://www.ebrda.org/pdfs/2018%20Annual%20DV%20Report.pdf>

⁶⁵ Amnesty International meeting with the Family Justice Center, January 2018

⁶⁶ Amnesty International meeting with Chez Hope, May 2018

⁶⁷ Amnesty International meeting with Faith House, Lafayette, November 2018

ANGELA: SHOT SIX TIMES, LEFT PARALYZED BY THE FATHER OF HER TWO YOUNGEST CHILDREN AND DETERMINED TO USE HER EXPERIENCE TO HELP OTHERS⁶⁸



Angela with her two youngest children. She was shot in 2017.

© Amnesty International

Angela works in real estate and has four children. She told Amnesty International that although there had been verbal abuse throughout her relationship with her partner, the problems started after his mother died and he lost his job. She said “I can see where life started beating him up. That point was when he started buying the guns. After his mom passed, he bought three guns, and a machete and a shotgun. I’ve always grown up around guns. I was in the army so him having the weapons, it didn’t make me feel any type of fear”.

Angela said that things deteriorated and, when she moved to a new house, he did not move in. They continued to be in touch about the children and during one telephone argument he threatened to kill her. Angela described one incident of physical violence a few weeks later when he was visiting their sons. She said “He grabbed me by my sweatshirt, throws me out my back door, down the steps. And he comes out gets on top of me and starts choking me. I didn’t call the police, didn’t file a report.” Angela cut off contact with him but started talking to him again around the anniversary of his mother’s death. For a while, things seemed better.

The morning he shot her, Angela had seen her children off to the bus stop. Her partner started an argument about a nasal pump for their baby’s nose. Angela went to take a bath and he came in and shot her multiple times while she was in the bathtub. Angela told Amnesty International that she thought she was going to die and she worried that he was going to kill himself. He called the emergency services. Angela said

“I look at him and I say, “please don’t leave me in here by myself” and he looks at me and he says “I can’t look at you that way”. And he left out of the bathroom and left me in there. I had touched my legs and they felt prickly. I did not realize he’d shot my back and I was already paralyzed. I never even looked at my chest area. Never even realized that I couldn’t use my arm.”

Angela still has shrapnel in her chest. She is permanently paralyzed and has had to learn new ways of doing everyday tasks. Her former partner was convicted of attempted murder. Angela has spoken about domestic violence at numerous events and is determined to help raise awareness of the issue and help prevent others going through the same experience as her.

1.3.2 A HISTORY OF INEQUALITY HAS ONGOING IMPACTS

Understanding the poverty and inequality in Louisiana today and how this affects the lives of those experiencing intimate partner violence requires an understanding of Louisiana’s history. Male dominance, control of women and white supremacy were written into the laws of the state and the workings of the justice system. The process of reforming this is still ongoing. Attitudes underpinning this discrimination can still be found among some decision makers and those working for agencies who are charged with protecting

⁶⁸ Interview with Amnesty International, May 2018

survivors of intimate partner violence. The current power dynamics in society and the way the justice system responds to intimate partner violence cannot be understood in isolation from Louisiana's history.

GENDER EQUALITY AND WOMEN'S RIGHTS

“My first husband held a gun in my mouth and raped me. But I was married in the 1980s. I told people about it, but they looked at me like “silly girl, that’s your husband, how can your husband rape you”. But it happened.”

Cheryl, a survivor of two abusive relationships, who is now supporting her daughter who left her abusive husband.⁶⁹

As in many countries, historically, laws and cultural practices limited women's freedom; however, in Louisiana, the early struggle for women's rights was bound up with efforts to maintain white supremacy. White women across the South played little role in public life. One prominent social theorist wrote in 1854, that, “slaves, wives and children” were subjects of “family government” ruled over by the master.⁷⁰ Slave women were at great risk of sexual violence from slave owners. Children of slave women were property of the slave owner and slave traders referred to slave women of childbearing age as “breeders”. Some young Black women were sold specifically for sexual slavery.⁷¹

The first (unsuccessful) efforts to secure voting rights for women in Louisiana involved prominent White women calling for votes for White women only.⁷² Their campaigns were not successful and women did not get the vote in Louisiana until 1920 when the 19th Amendment to the US Constitution came into effect.⁷³ Black women were immediately disenfranchised, as most Black men already were, by discriminatory restrictions.⁷⁴ The Voting Rights Act, 1965, prohibited discriminatory methods of disenfranchisement; however, that did not end efforts to limit Black votes in Louisiana. The US Department of Justice lists 148 objections to Louisiana electoral arrangements from 1965, including 10 made between 2002 and 2011.⁷⁵

The state has been late to reform discriminatory laws, sometimes only doing so in response to legal challenges. For example, Louisiana revised its constitution in 1974 removing a provision which had the impact of excluding almost all women from juries while a Supreme Court case on the issue was pending.⁷⁶

In 1982 Louisiana introduced protective orders in cases of domestic abuse.⁷⁷ Federal law, introduced in 1994 and 1996 prohibited certain domestic abusers from possessing firearms; however, Louisiana did not introduce similar state laws until 2014.⁷⁸ The definition of rape in Louisiana law contained an exception for spouses until 1990 and the Legislature did not remove the spousal exemption for rape of a person who is incapable of giving consent until 2003.⁷⁹

The Louisiana legislature continues to pass draconian measures which violate women's reproductive rights. In 2006, the legislature passed a “trigger law” which would take effect immediately should the US Supreme Court overturn *Roe v Wade*.⁸⁰ Abortion would instantly become unlawful in all circumstances except to save

⁶⁹ Interview with Amnesty International, November 2018

⁷⁰ Fitzhugh, Sociology for the South, or the Failure of Free Society, 1854, p.167 <https://docsouth.unc.edu/southlit/fitzhughsoc/fitzhugh.html>

⁷¹ Davis, David Brion (2014) *“Slavery, Sex, and Dehumanization.”* In Gwyn Campbell and Elizabeth Elbourne's *Sex, Power, and Slavery*. Athens, OH: Ohio University Press, p.51-53 <https://books.google.com/books?id=L7eVBQAAQBAJ&pg=PT17>

⁷² One leader of the group noted the “danger” of enfranchising Black people while deeming White women “qualified” because of “education and patriotism”. These efforts were not successful, and the 1898 Constitution did not grant any women the right to vote in general elections. As the campaign for women's suffrage continued, some prominent leaders continued to link women's suffrage with racial superiority and “states' rights”. They saw the 15th Amendment to the US Constitution prohibiting denial of the right to vote on the grounds of race as a threat to the ability of southern states to maintain their exclusionary social structures. These “States Rights” activists wanted women's suffrage to be introduced by the Louisiana legislature and were against the adoption of any Federal amendment to give women the vote because they feared it would weaken state power and undermine white supremacy. Not all Louisianan women's suffrage activists followed this approach, and a second movement emerged. Splits in the women's movement were exploited by those against women's suffrage. Smith, A. *The History of the Women's Suffrage Movement in Louisiana*, Louisiana Law Review, Vol. 62, No. 2, 2002, p. 542, 547, 550-552. See also <http://www.knowlouisiana.org/entry/woman-suffrage>

⁷³ Efforts in 1918 resulted in a state bill passing the Louisiana House and Senate but, when put to a vote of the (white, male) electorate, was rejected. The Federal 19th Amendment granting women the vote was passed in 1919 and Louisiana's “states' rights suffragists” campaigned against its ratification. https://en.wikipedia.org/wiki/Women%27s_suffrage_in_the_United_States#Nineteenth_Amendment

⁷⁴ Existing literacy tests were augmented by a requirement, introduced in the 1921 Louisiana Constitution, that those registering to vote to give a “reasonable interpretation” of any provision of the state or US constitution. The registrar had unbridled discretion to determine who met the standard until the test was ruled unconstitutional in 1965. <https://supreme.justia.com/cases/federal/us/380/145/>

⁷⁵ <https://www.justice.gov/crt/voting-determination-letters-louisiana>

⁷⁶ Taylor v. Louisiana, 419 U.S. 522 (1975) <https://supreme.justia.com/cases/federal/us/419/522/#T1> The new constitution went into effect in January 1975, three weeks before the Supreme Court decision. In 1979, Louisiana was the last state to repeal 19th Century “Head and Master” property laws that granted a husband the right, without knowledge or consent of his wife, to dispose of jointly owned “community property”. <https://www.jofreeman.com/lawandpolicy/revlaw.htm> <https://supreme.justia.com/cases/federal/us/450/455/>

⁷⁷ Act 782 of 1982

⁷⁸ Act 195 of 2014, <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=908185>

⁷⁹ Act 722 of 1990 and Act 232 of 2003 amending the definition of “simple rape”, now known as “third degree rape”.

⁸⁰ Act 467 of 2006, <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=405723>

a woman's life. Most recently, at its 2019 session, the legislature passed a bill to ban abortions after six weeks, a time when most women are unaware they are pregnant. The only exception is to prevent death or "serious risk of the substantial and irreversible impairment of a major bodily function".⁸¹ It also passed a bill to amend the Louisiana Constitution to read "To protect human life, nothing in this constitution shall be construed to secure or protect a right to abortion or require the funding of abortion". The amendment will be voted on by the Louisiana electorate in 2020.⁸²

RACISM AND THE LEGACY OF SLAVERY, SEGREGATION AND LYNCHING

Laws introduced in the 19th Century for explicitly racist reasons continue to affect how the criminal justice system operates in Louisiana today. For 20 years, until 2018, Louisiana had the highest rate of incarceration in the US.⁸³

Slavery to Mass Incarceration – the justice system as a means of maintaining control

Louisiana's population in 1860 was 47% slaves.⁸⁴ Just under one third of Louisianan families owned slaves.⁸⁵ Louisiana's wealth relied on crops produced by slave labor; plantation owners were hugely wealthy and dominated politics. After the Civil War, in which Louisiana was part of the Confederacy fighting against the US government, and following ratification of the 13th – 15th amendments to the US Constitution, Louisiana was fully restored to the US.⁸⁶ The 13th amendment abolished slavery "except as a punishment for crime whereof the party shall have been duly convicted".⁸⁷ As a result, the proportion of Black people in prison rose rapidly from less than 1% in 1861 to over 90% in some areas of the south by 1865.⁸⁸ By 1877 Southern states, including Louisiana, had established "convict leasing" systems through which prisoners were hired out to plantations and private companies as labor, essentially re-establishing Black slave labor.⁸⁹

From 1880 until January 2019 Louisiana law allowed a defendant in a criminal trial to be convicted without a unanimous guilty verdict. In 1898, this was enshrined in the state constitution, a constitution which the drafters explicitly stated was designed to maintain White supremacy.⁹⁰ Non-unanimous juries facilitated quick trials and assisted in the transfer of freed slaves to the convict leasing system. It ensured that the few Black people eligible to sit on a jury could not block convictions by voting to find someone not-guilty.⁹¹ A 2018 investigation into the discriminatory impact of non-unanimous juries analyzed 3000 felony trials and found that 43% of trials of Black defendants resulted in a conviction by a split jury compared to 33% of trials of White defendants. Of 993 cases where conviction was made by a split jury, three quarters of the defendants were Black.⁹² The Louisiana legislature changed the law in 2018 to require unanimous juries for trials of crimes occurring after 1st January 2019.⁹³

From the 1970s onwards, Louisiana's rates of incarceration increased dramatically. This increase was largely driven by the so-called "war on drugs".⁹⁴ In 1965, Louisiana jailed 109 people per 100,000 population.⁹⁵ By 2005 it had the highest rate of incarceration in the US; 797 per 100,000 people⁹⁶ and in 2018 there were 1052 people per 100,000 population incarcerated in Louisiana.⁹⁷ Black people in Louisiana (as in the rest of the US) are incarcerated at disproportionate rates: 66% of Louisiana prisoners are Black and 30% White, reversing the demographics of the state (60% White and 32% Black).⁹⁸

⁸¹ Act 31 of 2019, <http://www.legis.la.gov/legis/ViewDocument.aspx?d=1140119>

⁸² Act 447 of 2019, <http://www.legis.la.gov/legis/ViewDocument.aspx?d=1145400>

⁸³ See <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/07/10/louisiana-no-longer-leads-nation-in-imprisonment-rate>

⁸⁴ 2.6% were described as "free colored persons" <http://www.civil-war.net/census.asp?census=Louisiana>

⁸⁵ See http://www.civil-war.net/pages/1860_census.html

⁸⁶ https://en.wikipedia.org/wiki/Louisiana_in_the_American_Civil_War#Restoration_to_Union The 14th amendment provided for citizenship for all people born or naturalized in the US and for equal protection of the law, and the 15th amendment prohibited denial of the right to vote on the basis of "race, color or previous condition of servitude". https://en.wikipedia.org/wiki/Reconstruction_Amendments

⁸⁷ See <https://www.loc.gov/rr/program/bib/ourdocs/13thamendment.html>

⁸⁸ Angela Allen-Bell, How The Narrative About Louisiana's Non-Unanimous Criminal Jury System Became a Person of Interest in the Case Against Justice in the Deep South, *Mercer Law Review*, Vol 67, 2015-2016, p.594-595, <https://www.documentcloud.org/documents/3456957-How-The-Narrative-About-Louisiana-s-Non.html>

⁸⁹ Angela Allen-Bell, p.595 <https://www.documentcloud.org/documents/3456957-How-The-Narrative-About-Louisiana-s-Non.html>

⁹⁰ The Chair of the Committee on the Judiciary, Thomas J. Semmes, openly stated that one aim of the convention was "to establish the supremacy of the white race". Smith, A. *The History of the Women's Suffrage Movement in Louisiana*, *Louisiana Law Review*, Vol. 62, No. 2, 2002, p.543 <https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?article=5926&context=lalrev> In 1898 a guilty verdict from nine out of 12 jurors resulted in conviction. The 1974 Louisiana constitution changed the number of jurors required for a conviction from nine to 10.

⁹¹ See <https://www.documentcloud.org/documents/3456957-How-The-Narrative-About-Louisiana-s-Non.html>

⁹² See https://www.nola.com/news/courts/article_8e284de1-9c5c-5d77-bcc5-6e22a3053aa0.html

⁹³ See https://www.theadvocate.com/baton_rouge/news/courts/article_eac5581e-394b-11e9-ae57-4781fbbc475e.html

⁹⁴ See http://law.loyno.edu/sites/law.loyno.edu/files/file_attach/Harper-PEs-2.19.18.pdf

⁹⁵ See https://www.huffingtonpost.com/bill-quigley/louisiana-number-one-in-i_b_9888636.html?guccounter=1

⁹⁶ Bureau of Justice Statistics, <https://www.bjs.gov/content/pub/pdf/p05.pdf>

⁹⁷ Prison Policy Initiative, <https://www.prisonpolicy.org/profiles/LA.html>

⁹⁸ Prison Policy Initiative, <https://www.prisonpolicy.org/profiles/LA.html>

Segregation and violence

In the immediate period following the end of slavery, White politicians quickly introduced laws to reverse measures of equality, enforce segregation, and to disenfranchise Black people – laws that were “essentially intended to criminalize black life”.⁹⁹ At the same time, lynching of Black people – extra judicial executions, often carried out by mobs or with large audiences watching – became a routine “tool of racial control that terrorized and targeted African Americans”.¹⁰⁰ The Equal Justice Initiative (EJI) documented 549 cases of “terror lynching” in Louisiana between 1880 and 1940.¹⁰¹

Violence by white supremacist groups like the Ku Klux Klan was often sexualized as well as racist. Rape of Black women was widespread and committed with impunity. Other forms of sexualized violence inflicted on both male and female victims included forced nudity, whipping of genitals and genital mutilation.¹⁰² Alleged rape of White women by Black men was often used as a justification for the lynching of Black men or widespread violence against Black communities. “Charges of rape, while common, were “routinely fabricated” and often extrapolated from minor violations of the social code, such as “paying a compliment” to a white woman, expressing romantic interest in a white woman, or cohabitating interracially.”¹⁰³

The 1896 US Supreme Court case *Plessy v Ferguson* ruled that Louisiana’s segregated train cars did not violate the US constitution and introduced the concept of “separate but equal” racial segregation that would last for 60 years.¹⁰⁴ A raft of legislation followed that ensured that virtually all aspects of life in Louisiana were segregated. This included segregated transport, schools, bars and bans on marriage or cohabitation between white people and “colored races”.¹⁰⁵

As pressure for reform built through the work of the civil rights movement, Louisiana resisted change. Following the Supreme Court’s ruling in 1954 that segregated schools were inherently unequal,¹⁰⁶ school districts across the South, including Louisiana, delayed taking measures to desegregate.¹⁰⁷ Full integration of public schools in Louisiana took until the mid-1970s.¹⁰⁸ Segregation in Louisiana schools remains a persistent problem: in 2018, 23 of Louisiana’s 69 traditional school districts were under desegregation orders (meaning a court has ordered that the school district must make systemic changes to be considered legally integrated), and 56 of the traditional school districts (81%) are rated at high or medium on the “dissimilarity index,” a formula used to evaluate school district segregation.¹⁰⁹

More recent discrimination

The aftermath of Hurricane Katrina graphically demonstrated to the world the levels of inequality still present in New Orleans.¹¹⁰ A lack of preparation by the authorities meant that the poorest people, predominantly Black, were unable to evacuate the city before the storm and were crowded into two large buildings – the Superdome and Convention Center. With both venues sheltering far more people than provision had been made, food and clean water ran out and conditions quickly deteriorated. An inadequate Federal disaster response meant supplies did not arrive and people were left without emergency assistance for days.¹¹¹ Inmates in Orleans Parish Prison were abandoned in flooded cells with no electricity or food.¹¹² Rumors of a crimewave, including hundreds of murders spread; city authorities repeated the rumors that were then

⁹⁹ Angela Allen-Bell, p.594 <https://assets.documentcloud.org/documents/3456957/How-The-Narrative-About-Louisiana-s-Non.pdf>

¹⁰⁰ Equal Justice Initiative, Lynching in America: Confronting the Lg, <https://lynchinginamerica.eji.org/report/>

¹⁰¹ Equal Justice Initiative, Lynching in America, <https://lynchinginamerica.eji.org/report/> The EJI distinguish “terror lynchings” from “hangings and mob violence that followed some criminal trial process or that were committed against non-minorities without the threat of terror”. They also exclude the few cases of violence where the perpetrators were prosecuted. The EJI reported that “Lynching in this era and region was not used as a tool of crime control, but rather as a tool of racial control wielded almost exclusively by white mobs against African American victims. Many lynching victims were not accused of any criminal act, and lynch mobs regularly displayed complete disregard for the legal system”.

¹⁰² Cardyn, L. *Sexualized Racism/Gendered Violence*, Michigan Law Review, Vol. 100, 2002, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1904&context=mlr>

¹⁰³ Equal Justice Initiative, Lynching in America, <https://lynchinginamerica.eji.org/report/>

¹⁰⁴ See <https://64parishes.org/entry/plessy-v-ferguson/>

¹⁰⁵ See <https://64parishes.org/entry/iim-crowsegregation>

¹⁰⁶ Brown v Board of Education

¹⁰⁷ A federal court order forced New Orleans schools to desegregate in 1960; however, only four young Black girls were placed in the first-grade at two formally all white schools. White mobs harassed and threatened them on their way to school; the girls had to have armed federal marshals to protect them and white parents quickly removed their children from the schools. Desegregation of schools in the rest of the state happened even more slowly. <https://64parishes.org/entry/new-orleans-school-crisis>

¹⁰⁸ See <https://64parishes.org/entry/iim-crowsegregation>

¹⁰⁹ Louisiana Budget Project, <https://www.labudget.org/2019/05/separate-and-unequal-school-segregation-in-louisiana-65-years-after-brown-v-board/>

¹¹⁰ For more information on human rights violations in the aftermath of Hurricane Katrina, see Amnesty International, *Un-natural disaster: Human rights in the Gulf Coast*, 2010, <https://www.amnestyusa.org/files/pdfs/unnaturaldisaster.pdf>

¹¹¹ Committee on Homeland Security and Governmental Affairs, *Hurricane Katrina: A Nation Still Unprepared*, 2006, p.11, <https://www.govinfo.gov/content/pkg/CRPT-109srpt322/pdf/CRPT-109srpt322.pdf>

¹¹² See https://www.aclu.org/sites/default/files/field_document/oppreport20060809.pdf

reported as fact by the media.¹¹³ This led to the stranded population being stereotyped as criminals deserving of their fate. While reports of widespread violence by residents were later found to be untrue, documented cases of violence committed by police officers and “white vigilantes” emerged.¹¹⁴

ONGOING DISCRIMINATION AGAINST INDIGENOUS PEOPLES

According to the 2010 census of Louisiana, 0.8% of Louisiana’s population identified as American Indian and Alaskan Native with another 0.1% identifying as Native Hawaiian or Other Pacific Islander.¹¹⁵ Indigenous Peoples suffered forced displacement from their lands, widespread atrocities and systemic discrimination following the arrival of European colonists, including those whose ancestral lands make up what is now Louisiana. Gender based violence by settlers against Indigenous women was frequent, and an integral part of conquest and colonization. Policies designed to forcibly assimilate Indigenous peoples and destroy their cultures included removing Indigenous children from their families and forcing them to attend boarding schools where they suffered appalling conditions and violence. Between 1972 and 1976, thousands of Indigenous women were forcibly sterilized under a federal government program.¹¹⁶ The legacy of that violence and discrimination continues today with Indigenous women three times more likely than non-Hispanic White women to experience sexual violence by someone of a different race to them.¹¹⁷ Native American and Alaska Native women are also five times more likely to have experienced physical violence by an intimate partner of a different race as non-Hispanic White women.¹¹⁸

In Louisiana, only the Chitimacha tribe still occupy a portion of their original lands although this area is significantly smaller than their ancestral homeland.¹¹⁹ The federal government recognizes four tribes: the Chitimacha, the Coushatta Tribe, the Tunica-Biloxi Tribe, and the Jena Band of Choctaw Indians. The United Houma Nation have been appealing rejection of their application for federal recognition since 1994. They are a state-recognized tribe.¹²⁰

WHY THE HISTORICAL CONTEXT IS IMPORTANT

Understanding the gross structural inequality and discrimination in Louisiana’s history is important to understanding its present because historic inequality and discrimination continues today, sometimes in different forms. The legacy of discriminatory laws and mass incarceration, along with egregious examples of biased policing, affects the level of trust Black people, including survivors of intimate partner violence, have in the justice system. The impact of generations of systemic discrimination does not disappear overnight, neither do deep-seeded cultural biases against Black people and Indigenous people or gender assumptions about Black women and Indigenous women. With political will, discriminatory laws could be changed; however, authorities in Louisiana have tended to resist change unless forced by the courts and have been slow to amend laws that have discriminatory effects on particular individuals or groups. Changing discriminatory attitudes is even more difficult and can take decades or generations.

¹¹³ Committee on Homeland Security and Governmental Affairs, *Hurricane Katrina: A Nation Still Unprepared*, p.440, <https://www.gpo.gov/fdsys/pkg/CRPT-109s rpt322/pdf/CRPT-109s rpt322.pdf> and see <https://www.voanews.com/a/a-13-2005-09-30-voa1-66396247/548807.html>

¹¹⁴ For example, police shot and killed an unarmed Black man and unarmed Black teenager and injured other members of their families on Danziger Bridge before attempting to cover up their actions. A group of armed white men in the Algiers Point neighborhood set up barricades and shot at Black people who came near the area, hitting at least 11 people. It took until 2010 for one of the perpetrators to be charged. Following a series of legal cases, he was sentenced in February 2019 but died five days after sentencing. See for example <https://www.nytimes.com/2010/08/27/us/27racial.html>, <http://nolaipm.gov/wp-content/uploads/2017/09/UN-CAT-Shadow-Report-New-Orleans-.pdf>, https://www.nola.com/crime/index.ssf/2015/09/a_decade_after_shootings_danzi.html, <https://www.npr.org/2015/08/18/432570962/shots-on-the-bridge-unpacks-a-tangled-story-of-deceit-and-tragedy>, <https://www.propublica.org/article/post-katrina-white-vigilantes-shot-african-americans-with-impunity>, <https://www.nola.com/opinions/2019/02/delayed-justice-makes-it-something-other-than-justice.html>

¹¹⁵ See <https://www.census.gov/quickfacts/fact/table/LA/POP010210>

¹¹⁶ Amnesty International, *Maze of Injustice*, 2009, p.15-17, <https://www.amnestyusa.org/pdfs/mazeofinjustice.pdf>

¹¹⁷ National Institute of Justice, *Violence Against American Indian and Alaska Native Women and Men*, 2016, p.18 <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>

¹¹⁸ National Institute of Justice, *Violence Against American Indian and Alaska Native Women and Men*, p.26

¹¹⁹ See <http://www.chitimacha.gov/history-culture/tribal-history>

¹²⁰ See <https://unitedhoumanation.org/about/> and <https://64parishes.org/entry/houma-nation>

FRAGMENTED AND UNEQUAL

A JUSTICE SYSTEM THAT FAILS SURVIVORS OF INTIMATE PARTNER VIOLENCE IN LOUISIANA, USA

Amnesty International

2. INTERNATIONAL, NATIONAL AND STATE LAW

2.1 INTERNATIONAL LAW

The US has ratified some of the main UN human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) and the Convention Against Torture (CAT).¹²¹ These treaties all contain provisions that protect the rights of people experiencing intimate partner violence.

The US is a signatory to, but has not ratified, the International Convention Against all forms of Discrimination against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).¹²² Under international law, states that have signed but not ratified a treaty must “refrain from acts which would defeat the object and purpose” of the treaty.¹²³ The US has not ratified the American Convention on Human Rights,¹²⁴ however, the Inter-American Commission on Human Rights treats the American Declaration on the Rights and Duties of Man (American Declaration) as a legally binding document for member states of the Organization of American States, including the USA.¹²⁵

2.1.1 PROTECTION FROM INTIMATE PARTNER VIOLENCE

Gender-based violence, including intimate partner violence, impacts the enjoyment of a range of human rights including: the right to life, the right to security of the person, the right to non-discrimination, the right to health, the right to equal protection of the law and the right to a remedy.¹²⁶

¹²¹ UN Office of the High Commissioner for Human Rights, *International Covenant on Civil and Political Rights*, GA Res. 2200A (XXI) of 16 Dec. 1966, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>; OHCHR, *International Convention on the Elimination of All Forms of Racial Discrimination*, GA Res. 2106(XX) of 21 Dec. 1965 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>; OHCHR, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, GA Res. 39/46 of 10 Dec. 1984, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

¹²² OHCHR, *Convention on the Elimination of All Forms of Discrimination against Women*, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>; OHCHR, *International Covenant on Economic, Social and Cultural Rights*, GA Res. 2200A (XXI) of 16 Dec. 1966 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>; OHCHR, *Convention on the Rights of the Child*, GA Res. 44/25 of 20 Nov 1989, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

¹²³ Vienna Convention on the law of treaties, UN Treaty Series, vol. 1155, p.331, May 1969, <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>

¹²⁴ OAS, *American Convention on Human Rights “Pact of San Jose, Costa Rica” (B-32)*, http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm

¹²⁵ Jessica Lenahan (Gonzales) v. the United States, Inter-American Commission on Human Rights, Case 12.626, Report No. 80/11, July 2011, para 115 <http://www.oas.org/en/iachr/decisions/2011/USPU12626EN.doc>

¹²⁶ Committee on the Elimination of all forms of Discrimination against Women (CEDAW), General Recommendation 35 on gender-based violence against women, UN Doc. CEDAW/C/GC/35, 2017, para 16, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang=en

States have the obligation to protect everybody within their jurisdiction from human rights abuses committed by private individuals. This includes protection from intimate partner violence. The duty to protect requires states to exercise due diligence to prevent, punish, investigate and redress the harm caused.¹²⁷

“The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, to prosecute and punish perpetrators and to provide reparations to victims/survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations.”

UN CEDAW, General Recommendation 35 on gender-based violence against women¹²⁸

The right to non-discrimination is a key principle contained across international human rights instruments. A state’s human rights obligations, including its due diligence obligations, apply to all individuals within the jurisdiction of the state irrespective of factors including race, ethnicity, gender, nationality or citizenship status, sexual orientation, gender identity, language or disability.¹²⁹

International human rights bodies have consistently held that gender-based violence is a form of discrimination and the due diligence obligation requires states to “prevent, investigate, sanction and offer reparations for acts of violence”.¹³⁰ Components of states’ due diligence obligations which provide a guide for addressing intimate partner violence include:

- States must act to take “reasonable measures that have a real prospect of altering the outcome or mitigating the harm”; merely enacting laws is not sufficient, to meet due diligence obligations. The “formal framework established by the state must be effective in practice”.¹³¹
- Responding once violence has happened is not sufficient; the due diligence obligation requires a focus on prevention and addressing root causes of intimate partner violence, including gender stereotypes and discrimination.¹³²
- States have the obligation to investigate acts of abuse and to “put in place civil and criminal measures to address offender accountability, to ensure victim safety and to provide redress and justice measures that victims can access effectively”.¹³³
- All measures taken by states should be based on “accurate empirical data”, therefore states have the obligation to “establish reliable statistics and indicators” in order to monitor and evaluate the effectiveness of interventions.¹³⁴ Data should be “disaggregated by type of violence, relationship between the victim/survivor and the perpetrator, and in relation to intersecting forms of discrimination

¹²⁷ Human Rights Committee, General Comment 31, para 8, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en; see also UN Declaration on the Elimination of Violence against Women, GA Res. 48/104, 20 Dec 1993, Article 4 (c) https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/48/104 and Report of the UN Special Rapporteur on Violence against Women, its causes and consequences, UN Doc. E/CN.4/2006/61, 2006, para 29, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/103/50/PDF/G0610350.pdf?OpenElement>, *Velásquez-Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct.HR. (ser. C) No.4, para 172, 1988

¹²⁸ CEDAW/C/GC/35, 2017, para 24.2(b)

¹²⁹ ICCPR, art.2-3, Human Rights Committee, General Comment 31, CCPR/C/21/Rev.1/Add.13, para 10, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en CEDAW, General Recommendation 28 on the core obligations of States parties, UN Doc. CEDAW/C/GC/28, paras 12-13, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/472/60/PDF/G1047260.pdf?OpenElement>, CEDAW, General recommendation 33 on women’s access to justice, CEDAW/C/GC/33, paras 7-10, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang=en

¹³⁰ Committee Against Torture, General Comment 2, UN Doc. CAT/C/GC2, 2008, para 18, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f2&Lang=en and Jessica Lenahan (Gonzales) v United States, Inter-American Commission on Human Rights, Case 12.626, Report No. 80/11, July 2011, para 126

¹³¹ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, UN Doc. A/HRC/23/49, para 15, <https://undocs.org/A/HRC/23/49>, see also *Şahide Goekce (deceased) v. Austria*, CEDAW/C/39/D/5/2005 (2007), para 12.1.2 where CEDAW noted the state party “has established a comprehensive model to address domestic violence that includes legislation, criminal and civil-law remedies, awareness-raising, education and training, shelters, counselling for victims of violence and work with perpetrators”; however, to ensure the “practical realization” of equality and human rights, the system “must be supported by State actors, who adhere to the State party’s due diligence obligations.”

¹³² CEDAW, CEDAW/C/GC/35, 2017, para 30, and Report of the Special Rapporteur on violence against women, A/HRC/23/49, paras 19-20

¹³³ Report of the Special Rapporteur on violence against women, A/HRC/23/49, para 21, see also CAT, General Comment 2, UN Doc. CAT/C/GC2, 2008, para 18, CEDAW, General Recommendation 33 on women’s access to justice, CEDAW/C/GC/33, 2015, and CEDAW, CEDAW/C/GC/35, 2017

¹³⁴ Report of the Special Rapporteur on violence against women, The due diligence standard as a tool for the elimination of violence against women, E/CN.4/2006/61, para 37, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/103/50/PDF/G0610350.pdf?OpenElement>

against women and other relevant sociodemographic characteristics”¹³⁵ Measures to address intimate partner violence should be targeted as those most at risk.¹³⁶

- Where governments fail to meet their due diligence obligations, they must provide an effective remedy to victims. Remedies should be just, available and effective. Discriminatory barriers to accessing remedies must be removed. Remedies should be “transformative” and “subvert instead of reinforce pre-existing patterns”.¹³⁷

The UN Human Rights Committee which monitors states’ implementation of the ICCPR, addressed the issue of the USA’s due diligence obligations in 2014. The Committee expressed concern that victims of intimate partner violence “face obstacles to obtain remedies, and that law enforcement authorities are not legally required to act with due diligence to protect victims of domestic violence and often inadequately respond to such cases”.¹³⁸



JESSICA LENAHAN (GONZALES) V. UNITED STATES¹³⁹

Jessica Lenahan had separated from her abusive husband, Simon Gonzales, and been granted a permanent restraining order by a court in her home state of Colorado. In June 1999, her husband abducted their three daughters. Over the course of ten hours, Jessica Lenahan repeatedly pleaded with local police to act to find her daughters and enforce the restraining order. At 3am, Simon Gonzales drove to the local police station and began shooting. Police returned fire, killed Simon Gonzales and then found the dead bodies of Jessica’s and Simon’s daughters, Leslie, Katheryn and Rebecca, in the car.

Jessica Lenahan filed a case against the police alleging a violation of her rights through their failure to protect. The case went to the US Supreme Court, which found, in 2005, that Jessica Lenahan had no constitutional right to police enforcement of her restraining order. She then took her case to the Inter-American Commission on Human Rights. It was the first case brought by survivor of domestic abuse against the US before an international body.¹⁴⁰ In 2011, the Commission found that the US had failed to act with due diligence to protect Jessica Lenahan and her daughters. The Commission recognized that gender-based violence is one of the most severe forms of discrimination against women. It held that the failure to ensure that the state apparatus was organized and coordinated to effectively enforce the restraining order constituted a form of discrimination under Article II of the American Declaration.

The right to equal protection of the law obliges states to take intimate partner violence as seriously as other forms of violence. Obligations states owe individual victims of violence require “flexibility” so that measures taken “reflect the needs and preferences of the individuals harmed”.¹⁴¹ This means that measures must be tailored to individual circumstances, including ensuring access to justice for survivors of violence from marginalized groups and communities. Under the ICCPR, the USA is obliged to ensure non-discrimination in access to justice. Recommendations from CEDAW set out the components of the obligation to ensure women’s equal access to justice. These include:

- **Justiciability:** requires unhindered access to justice and empowerment of women to claim their rights.
- **Availability:** requires courts and other quasi-judicial bodies to be in urban, rural and remote areas, and to be maintained and funded.
- **Accessibility:** all justice systems must be secure, affordable and physically accessible to women. They must be adapted and appropriate including meeting the needs of women who face intersecting forms of discrimination.

¹³⁵ CEDAW, General Comment 33, CEDAW/GC/35, 2017, para 34(b)

¹³⁶ Jessica Lenahan (Gonzales) v. the United States, Inter-American Commission on Human Rights, Case 12.626, Report No. 80/11, July 2011, para 127

¹³⁷ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, UN Doc. A/HRC/14/22, 2010, para 31, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/14/22 See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 21 March 2006, and Amnesty International, *Scars of Survival*, p.20-22

¹³⁸ Human Rights Committee, Concluding Observations on the fourth periodic report of the USA, UN Doc. CCPR/C/USA/CO/4, 2014, para. 16 https://tinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/USA/CO/4&Lang=En

¹³⁹ Jessica Lenahan (Gonzales) v. the United States, Inter-American Commission on Human Rights, Case 12.626, Report No. 80/11, July 2011, <http://www.oas.org/en/iachr/decisions/2011/USPU12626EN.doc>

¹⁴⁰ See <https://www.law.columbia.edu/human-rights-institute/inter-american-human-rights-system/jessica-gonzales-v-us>

¹⁴¹ Report of the Special Rapporteur on violence against women, para 70 <https://undocs.org/A/HRC/23/49>

- Good quality: the justice system must meet international standards of competence, efficiency, independence and impartiality. It must provide timely, appropriate and effective remedies that are enforced. The system must be gender-sensitive, participatory and open to innovative measures.
- Remedies: justice systems must provide viable protection and meaningful redress to women for harm.
- Accountability: justice systems must be monitored to ensure they function in accordance with these standards. The actions of professionals in the justice system must also be monitored and they must be held accountable when they violate the law.¹⁴²

State's obligations to ensure economic, social and cultural rights without discrimination are also relevant to their obligations to act with due diligence to address intimate partner violence. As the UN Special Rapporteur on violence against women has highlighted, "Victims of domestic violence also face grave consequences in terms of economic instability, loss of employment and homelessness".¹⁴³ State obligations to ensure the right to physical and mental health without discrimination are also crucial because of the potential for serious health consequences from intimate partner violence.

Structural discrimination does not operate in isolation; individuals may suffer distinct or additional discrimination due to a combination of different aspects of their identity. For example, survivors of intimate partner violence may face discrimination on the grounds of their gender and disability; their gender and race; their gender, sexual orientation and race, etc. International human rights standards increasingly recognize the need to address these multiple, or intersecting, forms of discrimination.¹⁴⁴

The UN Committee on the Elimination of all forms of Racial Discrimination (CERD) reviewed the US's compliance with the UN Convention of the Elimination of all forms of Racial Discrimination in 2014. The CERD highlighted the "the disproportionate number of women from racial and ethnic minorities, particularly African American women, immigrant women and American Indian and Alaska Native women, who continue to be subjected to violence, including rape and sexual violence" and it urged the US to: "ensure that all cases of violence against women are effectively investigated, perpetrators are prosecuted and sanctioned, and victims are provided with appropriate remedies", to "take measures to guarantee, in law and in practice, the right to access justice and effective remedies for all indigenous women who are victims of violence" and reiterated "its previous recommendation that the State party provide sufficient resources for violence prevention and service programs".¹⁴⁵

2.1.2 INTERNATIONAL LAW AND THE REGULATION OF FIREARMS

Under international human rights law states have the duty to act with due diligence to regulate the acquisition, possession and use of firearms by private individuals. Amnesty International reviewed in detail international standards relating to ownership and use of firearms in its 2018 report *In the line of fire*.¹⁴⁶ This report highlights the key principles most closely related to intimate partner violence.

In relation to firearms, the principle of due diligence "requires positive State action against reasonably foreseeable abuses by private actors".¹⁴⁷ Internationally, there is growing agreement that states are responsible for their failure to regulate "the private ownership of small arms that are likely to be used in homicides, suicides and accidents" and the "failure to protect individuals from a pattern of domestic violence".¹⁴⁸ This means that states should put in place a legal framework to prohibit access to, and possession of, firearms by those with a history of actual or threatened violence towards a current or former intimate partner or family member and that the regulatory framework must be effective in practice.

¹⁴² CEDAW, General Comment 33, CEDAW/C/GC/35, 2017, para 14

¹⁴³ A/HRC/17/26/Add.5 <https://undocs.org/A/HRC/17/26/Add.5>

¹⁴⁴ See Committee on the Elimination of all forms of Racial Discrimination, General Recommendation 25 on gender-related dimensions of racial discrimination, UN Doc. CERD/C/GC/25; CEDAW, General Recommendation 25 on temporary special measures, para 12; CEDAW, General Recommendation 28 on core obligations, CEDAW/C/GC/28, para 18; Convention on the Rights of Persons with Disabilities, Article 6.1, [Convention on the Rights of Persons with Disabilities](#)

¹⁴⁵ Committee on the Elimination of Racial Discrimination, Concluding Observations on the combined seventh to ninth periodic reports of the United States of America, UN Doc. CERD/C/USA/CO/7-9, September 2014, para 19

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/USA/CO/7-9&Lang=En

¹⁴⁶ Amnesty International, *In the line of fire*, 2018

¹⁴⁷ Prevention of human rights violations committed with small arms and light weapons – Final report submitted by Barbara Frey, Special Rapporteur in accordance with Sub-Commission resolution 2002/25. UN Doc. A/HRC/Sub.1/58/27, July 2006, Para 10

¹⁴⁸ Barbara Frey, *The question of the trade, carrying and use of small arms and light Weapons in the context of human rights and humanitarian norms*, Working Paper, UN Doc. E/CN.4/Sub.2/2002/39, 2002, para 46 <http://hrlibrary.umn.edu/demo/FreyPaper.pdf>

In 2011, the UN Special Rapporteur on Violence against Women, recommended that the US:

“Enhance gun control measures, by ensuring an adequate background check system to capture all relevant elements that determine an individual’s suitability for gun ownership... States should have clear gun removal policies when intervening in domestic violence cases, including the possibility of removal of guns after the first notification of domestic disputes.”¹⁴⁹

The UN Human Rights Committee, at its last review of the US, expressed concern at “the continuing high numbers of gun-related deaths and injuries and the disparate impact of gun violence on minorities, women and children” and recommended continued pursuit of legislation to require background checks for all firearm transfers and to ensure strict enforcement of existing domestic violence gun bans.¹⁵⁰

The UN CERD has highlighted its concern at the “high number of gun-related deaths and injuries which disproportionately affect members of racial and ethnic minorities, particularly African Americans” and recommended the US to “take effective legislative and policy measures to fulfil its obligation to protect the right to life and to reduce gun violence, including by adopting legislation expanding background checks for all private firearm transfers” and “increasing transparency concerning gun use in crime”.¹⁵¹

2.2 FEDERAL LAW

Crimes of intimate partner and other family violence are adjudicated by the state. Federal law allows for federal prosecution of domestic violence in certain situations involving travel between states and involving firearms. There are federal laws against Interstate Travel to Commit Domestic Violence,¹⁵² Interstate Stalking,¹⁵³ and Interstate Violation of an Order of Protection.¹⁵⁴ The Victims of Trafficking and Violence Prevention Act of 2000 recognized that undocumented victims of intimate partner violence were unable to access protection due to fears of deportation and included a process for an undocumented victim of crime to regularize their status.¹⁵⁵

The Violence Against Women Act (VAWA), first passed in 1994, was the first federal legislation to recognize domestic and sexual violence as crimes in the US. The act provided federal resources to improve comprehensive, coordinated responses to that violence. Congress reauthorized the Act in 2000, 2005 and 2013 expanding the protection provided. The US Congress allowed VAWA to expire in February 2019. Temporary spending bills passed since then have ensured programs, federally funded by VAWA, have continued to provide services to survivors of violence. However, the failure of Congress to pass legislation to reauthorize VAWA has caused huge uncertainty for organizations supporting survivors that rely on federal funding.

Tribal nations are sovereign and have a government to government relationship with the United States. Tribal governments exercise their sovereignty by determining and enforcing tribal laws; however, the US federal government has steadily eroded tribal authority and resources. The Indian Civil Rights Act of 1968 limited the penalty which can be imposed by tribal courts for any offence – including murder or rape – to a maximum of one year’s imprisonment and a US\$5,000 fine.¹⁵⁶ The US Supreme Court, in the case of *Oliphant v Suquamish*, ruled that tribal courts could not exercise criminal jurisdiction over non-Indian US citizens. The US Congress partially restored tribal authority for cases of intimate partner and domestic violence when it reauthorized the VAWA in 2013, introducing Special Domestic Violence Criminal Jurisdiction (SDVCJ). This granted Tribes increased jurisdiction over crimes of intimate partner violence by non-Native perpetrators, including the ability to arrest and hold non-Native perpetrators and permitting tribes to sentence those convicted of intimate partner violence to up to three years (previously limited to 1 year). However, implementation of this provision has been limited due to lack of funding and training as well as

¹⁴⁹ Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, Addendum Mission to the United States of America, U.N. Doc. A/HRC/17/26/Add.5 and Corr.1, para 115 A(g), <https://undocs.org/A/HRC/17/26/Add.5>

¹⁵⁰ Human Rights Committee, Concluding Observations on the USA, CCPR/C/USA/CO/4, para. 10

¹⁵¹ CERD, Concluding Observations, para 16,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/USA/CO/7-9&Lang=En

¹⁵² Interstate Domestic Violence, 18 U.S.C. § 2261, <https://www.law.cornell.edu/uscode/text/18/2261>

¹⁵³ Interstate Stalking, 18 U.S.C. § 2261A, <https://www.law.cornell.edu/uscode/text/18/2261A>

¹⁵⁴ Interstate violation of protection order, 18 U.S.C. § 2262, <https://www.law.cornell.edu/uscode/text/18/2262>

¹⁵⁵ Trafficking Victims’ Protection, 22 U.S.C. §7101 <https://www.govinfo.gov/content/pkg/PLAW-106publ386/pdf/PLAW-106publ386.pdf>

¹⁵⁶ The Indian Civil Rights Act was included as title II of the Civil Rights Act of 1968, Pub. L. No. 96- 88, 81 Stat. 787 (1968), and is codified as amended at 25 U.S.C. §§ 1301-1303, <https://www.law.cornell.edu/uscode/text/25/1301> Federal courts have concurrent jurisdiction with tribal courts over serious crimes committed in Indian Country; however, few cases of gender-based violence reach federal courts.

continued jurisdictional difficulties and confusion. As of June 2019, 23 tribes across the US implement the SDVCJ.¹⁵⁷

2.2.1 FEDERAL LAW ON FIREARMS AND INTIMATE PARTNER VIOLENCE

The US has enacted some Federal laws designed to prevent the misuse of firearms in situations of intimate partner violence; however, these laws contain loopholes which leaves victims of intimate partner violence at risk of serious harm and do not meet the US's obligations under international human rights law.

Individuals convicted of felony offenses relating to intimate partner violence have been prohibited from purchasing or possessing firearms under Federal law since the enactment of the Gun Control Act of 1968¹⁵⁸ In 1994, Congress included a provision in the VAWA that prohibited some individuals subject to final domestic violence protective orders from possessing firearms and ammunition.¹⁵⁹ In 1996, Congress passed the "Lautenberg Amendment", prohibiting certain individuals convicted of the misdemeanor crime of domestic violence or subject to a final domestic violence protection order from possessing firearms and ammunition.¹⁶⁰

Federal law contains critical loopholes. These include:

- The definition of intimate partner excludes couples or former couples who are/were not married, do not have a child together and do/did not cohabitate. This is commonly known as the "boyfriend loophole".¹⁶¹
- The prohibition on firearm possession for those subject to domestic violence protection orders does not apply to emergency or temporary restraining orders. It only applies to an order made after a hearing at which the person had an opportunity to participate.¹⁶²
- Federal law does not require individuals who are prohibited by law from possessing firearms, for example due to convictions for domestic violence or because they are subject to domestic violence protective orders, to *surrender* their guns to law enforcement or an approved third party.¹⁶³
- Federal law does not require a background check to establish whether someone is legally prohibited from purchasing or possessing firearms to be conducted before sale of a gun by an unlicensed seller, for example sales that take place at a gun show or online.¹⁶⁴

Although federal law applies in all states, unless state law contains provisions mirroring federal law, state officials cannot enforce federal law.¹⁶⁵ Federal gun prohibition laws are enforced by the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); however, it is under-resourced.¹⁶⁶

Since 1996, the "Dickey amendment" has restricted the CDC's ability to conduct research on issues related to gun violence by restricting Federal funds for injury prevention from being "used to advocate or promote gun control".¹⁶⁷ A report, accompanying the March 2018 spending bill, clarified that the amendment does not prohibit federal funding of research on the causes of gun violence; however, it did not allocate any additional funding for this research. For a detailed examination of the second amendment to the US Constitution and Federal laws relating to firearm acquisition and possession, including in situations of intimate partner violence, see Amnesty International 2018 report, *In the line of fire*.

¹⁵⁷ See <http://www.ncai.org/tribal-vaawa/get-started/currently-implementing-tribes>

¹⁵⁸ Gun Control Act of 1968, <https://www.govinfo.gov/content/pkg/STATUTE-82/pdf/STATUTE-82-Pg1213-2.pdf>

¹⁵⁹ Gun Control Act of 1968, 18 U.S. Code § 922 (g)(8), <https://www.law.cornell.edu/uscode/text/18/922>

¹⁶⁰ Gun Control Act of 1968, "Domestic Violence Offender Gun Ban," also known as the "Lautenberg Amendment," 18 U.S.C. §922 (g)(9)

¹⁶¹ Federal law defines intimate partners as "the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person". 18 U.S. Code § 921 (32), <https://www.law.cornell.edu/uscode/text/18/921>

¹⁶² 18 U.S. Code § 922 (g)(8)(A)

¹⁶³ See <https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/disarming-prohibited-people/>

¹⁶⁴ See <https://lawcenter.giffords.org/gun-laws/policy-areas/background-checks/universal-background-checks/> "Around 80% of all firearms acquired for criminal purposes are obtained through transfers from unlicensed sellers".

¹⁶⁵ See <https://everytownresearch.org/navigator/index.html>

¹⁶⁶ Amnesty International, *In the line of fire*, p.109-110

¹⁶⁷ 104th Congress, Public Law 104 – 208, <https://www.govinfo.gov/content/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf>

2.3 LOUISIANA STATE LAW

2.3.1 INTIMATE PARTNER VIOLENCE IN LOUISIANA'S CRIMINAL LAW

State law in Louisiana prohibits “domestic abuse”. This covers intimate partner violence and violence by other family and household members together under the same laws. Until 2017, same-sex couples were excluded from protection because the definition of “household members” only applied to “any person of the opposite sex presently or formerly living in the same residence with the offender as a spouse, whether married or not”.¹⁶⁸ In 2017, the legislature removed this discriminatory provision. Household members protected from abuse now are defined as: “any person presently or formerly living in the same residence with the offender and who is involved or has been involved in a sexual or intimate relationship with the offender”.¹⁶⁹

Intimate partners who did not, or had not, cohabited were not protected by domestic abuse laws until 2017 when the legislature introduced specific provisions applicable to dating partners. Louisiana law defines dating partners as: “any person who is involved or has been involved in a sexual or intimate relationship with the offender characterized by the expectation of affectionate involvement independent of financial considerations, regardless of whether the person presently lives or formerly lived in the same residence with the offender”.¹⁷⁰

Acts of intimate partner violence can also fall under a range of criminal laws, for example laws on murder, attempted murder, rape, abduction, stalking, and property related crimes. Louisiana criminal law contains some specific “domestic abuse” offenses. These are subsets of the offenses of “battery” and “aggravated assault”. Louisiana law defines the offense of “domestic abuse battery” as the “intentional use of force or violence committed by one household member upon the person of another household member”.¹⁷¹ The offense of “battery of a dating partner”, introduced in 2017, is defined as “the intentional use of force or violence committed by one dating partner upon the person of another dating partner”.¹⁷² “Domestic abuse aggravated assault is defined as “an assault with a dangerous weapon committed by one household member or family member upon another household member or family member”.¹⁷³ “Aggravated assault upon a dating partner is defined as “an assault with a dangerous weapon committed by one dating partner upon another dating partner”.¹⁷⁴

2.3.2 POSSESSION OF FIREARMS AND INTIMATE PARTNER VIOLENCE

In 2014, following intensive campaigning by a group of activists, the Louisiana legislature introduced state laws on firearm possession by some domestic abusers which enabled state officials to enforce federal laws and also closed some of the loopholes in federal law. A new state law prohibited possession of a firearm by individuals who were subject to a court mandated protective order following a hearing where both petitioner and defendant had the opportunity to present evidence.¹⁷⁵ The firearm prohibition lasts for the duration of the protection order. Courts were required to send details about protection orders to a central database, the Louisiana Protective Order Registry (LPOR), no later than the end of the next business day following the issuance of the order.¹⁷⁶ The firearm prohibition does not apply to temporary restraining orders.

Another new provision in 2014 prohibited individuals convicted of “domestic abuse battery” from possessing firearms for a period of ten years following the completion of their sentence, probation or parole, regardless of whether the conviction was a misdemeanor or a felony.¹⁷⁷ At that time dating partners were not included under Louisiana’s domestic abuse laws.

In 2017, activists campaigned to have dating partners included in the definition of who was protected under existing domestic abuse laws. Opposition from the National Rifle Association (NRA), a powerful, pro-gun

¹⁶⁸ 2016 definition, La R.S. 14:35.3, <https://law.justia.com/codes/louisiana/2016/code-revisedstatutes/title-14/rs-14-35.3/>

¹⁶⁹ 2017 definition, La R.S. 14:35.3, <https://law.justia.com/codes/louisiana/2017/code-revisedstatutes/title-14/rs-14-35.3/>

¹⁷⁰ La R.S. 14: 34.9 B(3) <https://law.justia.com/codes/louisiana/2017/code-revisedstatutes/title-14/rs-14-34.9/>

¹⁷¹ La R.S. 46:14.35.3 A, <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-14/rs-14-35.3/>

¹⁷² La R.S. 14:34.9 A, <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-14/rs-14-34.9/>

¹⁷³ La R.S. 14:37.7 A, <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-14/rs-14-37.7/>

¹⁷⁴ La R.S. 14:34.9.1 A, <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-14/rs-14-37.7/>

¹⁷⁵ La R.S. 46:2136.3, <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2136.3/>

¹⁷⁶ La R.S. 46: 2136 (H), <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2136/>

¹⁷⁷ La R.S. 14:95.10, <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-14/rs-14-95.10/>

lobby group in the US, led to the introduction instead of a specific law – “battery of a dating partner”. It largely mirrors the domestic abuse battery law with one important exception. Prohibition of possession of a firearm for ten years applies to all first offences of “domestic abuse battery” but only to a second conviction for “battery of a dating partner” unless the offense involved strangulation or burning.¹⁷⁸



APRIL CHARLES: SHOT AND KILLED BY HER EX-BOYFRIEND WHO WAS LEGALLY PROHIBITED FROM POSSESSING FIREARMS IN ST MARY PARISH, 2018¹⁷⁹

April Charles was 36 years old. She worked as a caregiver for a disabled woman and she had three daughters and a son. She applied for a temporary restraining order against her ex-boyfriend, Kenneth Smith Jr on 2 May 2018. In the petition April described how he had kicked in her door the previous day and punched her repeatedly in front of two of her children. Her 10-year old daughter ran for help and Smith was arrested. April’s petition described how Smith had been threatening her for years and had threatened to kill her. She described past incidents of “physical, verbal, mental and sexual abuse”. The court granted a temporary restraining order.

Court papers show that April informed the court that Smith possessed a firearm. A court hearing took place on 1 June 2018 and April was granted a protective order prohibiting Smith from going within 200 feet of April and ordering him to stay away from her residence and place of work. It was valid until 1 June 2019. At that time Smith was legally prohibited from possessing firearms; however, there was no requirement or process for him to give up his firearms.

Just five weeks after the court granted the protective order, Smith shot and killed April outside the house of the woman April was employed to look after. He then killed himself. April’s sister, Kenvonna, told Amnesty International “He beat her before he killed her. There was a man outside, he was a witness. She was hollering, he hit on her face. And the man said, “don’t hit her, that’s a young lady”. He pulled out the gun and pointed at the man and the man ran and that’s who called the police, that guy. Then he shot my sister.”

REMOVING FIREARMS FROM ABUSERS

The first firearm transfer initiative in Louisiana was started by the Lafourche Parish Sheriff’s Office in 2010.¹⁸⁰ In May 2018, the Louisiana legislature passed a bill requiring law enforcement to establish processes throughout the state to ensure that people prohibited from possessing firearms because of domestic abuse convictions or protective orders transfer their weapons. The new law was adapted from the Lafourche process.

Under the new law, when an individual is convicted of a domestic abuse offense that incurs a firearms prohibition, or when a protective order is issued, the judge must order the transfer of firearms. The prohibited person is required to state in open court or in an affidavit how many firearms they possess and their location. They are required to complete a form with details of all the firearms. The court then sends the form to the Sheriff. The prohibited person has 48 hours from the court order, or from when they are released from jail, to transfer their firearms. A proof of transfer form must be completed by the individual and the Sheriff and filed with the court. The options for transfer are: the Sheriff oversees the sale of the firearms to a third party; the Sheriff stores the firearms for the duration of time the individual is prohibited from possession; or the Sheriff oversees the transfer of firearms to a third party chosen by the individual. In this case, the individual receiving the transfer must be legally allowed to possess firearms, they must not live in the same residence as the prohibited individual, and they must sign a form acknowledging that returning the firearms to the prohibited individual is an offense for which they may be charged. When the individual is no longer prohibited, they may retrieve their firearms as long as they pass a Federal background check. The law required Sheriffs, clerk of courts and District Attorneys to develop forms, policies and procedures to put the new process in operation by 1 January 2019.¹⁸¹

In June 2019, the legislature made some amendments to the procedure. It extended the firearm surrender procedure to include other felonies that result in an individual being prohibited from possessing a firearm

¹⁷⁸ La R.S. 14:34.9, <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-14/rs-14-34.9/>

¹⁷⁹ Amnesty International interview with April Charles’ sister, Kenvonna, November 2018

¹⁸⁰ Meeting with the Lafourche Parish Sheriff’s Office, May 2018

¹⁸¹ Act 367, 2018, <http://www.legis.la.gov/legis/ViewDocument.aspx?d=1101118>

where the victim of the crime was a family member, household member or dating partner (for example, aggravated battery). The modified law also exempted records about firearm transfers from being accessed through Louisiana’s public records law.¹⁸²



 ↑ *Firearms for sale in Walmart, Houma, Louisiana. © Amnesty International*

2.3.3 OTHER RELEVANT STATE LAWS

INTIMATE PARTNER VIOLENCE IN LOUISIANA CIVIL LAW

The definition of “domestic abuse” in Louisiana’s civil law is wider than that in the criminal law. It “includes but is not limited to physical or sexual abuse and any offense against the person, physical or non-physical, as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one family member, household member, or dating partner against another”.¹⁸³ The definition of family member, household member and dating partner is substantively the same in civil law as criminal law.

In addition to providing for protective orders (see chapter three), civil laws on divorce exempt someone who has experienced intimate partner violence from the usual 180-day waiting period following separation.¹⁸⁴ The Post-Separation Family Violence Relief Act includes provisions prohibiting mediation, addressing child custody arrangements involving a parent with a history of family violence and on allocation of property.¹⁸⁵

Louisiana law allows for the civil court to award “exemplary damages” to survivors of “domestic abuse resulting in serious bodily injury or severe emotional and mental distress”; however, this only applies to “family or household” members, not to dating partners.¹⁸⁶

¹⁸² Act 427, 2019, <http://www.legis.la.gov/legis/ViewDocument.aspx?d=1144903>

¹⁸³ La R.S. 46 :2132 (3), <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2132/>

¹⁸⁴ La C.C. 103 (4), <https://law.justia.com/codes/louisiana/2018/code-civilcode/cc-103/>

¹⁸⁵ La R.S. 9:361, <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-9/rs-9-361/>

¹⁸⁶ La C.C. Art. 2315.8, <https://law.justia.com/codes/louisiana/2018/code-civilcode/cc-2315.8/>

OTHER RELEVANT FIREARMS LAWS

In 2012, Louisiana amended Article 11 of its constitution on the “right to keep and bear arms”. It provides that “The right of each citizen to keep and bear arms is fundamental and shall not be infringed. Any restriction on this right shall be subject to strict scrutiny”.¹⁸⁷ This is the strongest “right to bear arms” language in any state constitution.¹⁸⁸

Louisiana does not require private firearms sellers to conduct background checks on individuals purchasing firearms.¹⁸⁹ Louisiana law requires individuals carrying concealed firearms to have a permit. There is nothing in Louisiana law which prohibits the open carrying of firearms.¹⁹⁰

Louisiana permits law enforcement to remove evidence, including firearms, from the scene of a crime. This means that police called to an incident of intimate partner violence may remove a firearm if it was used to harm or threaten the survivor. If a firearm was not used in the crime but the survivor knows their abuser possesses a firearm, fears it could be used in future, and the abuser is not legally prohibited from possessing firearms, the police are not permitted to remove the firearm without a warrant. A bill was introduced into the legislature in 2019 to permit police and prosecutors to apply to court for a warrant to search for, and seize, firearms when they believed somebody posed a risk of “imminent personal injury” to themselves or another person.¹⁹¹ The bill was not passed.

In 2018, the legislature introduced a new provision known as a “lie and try” law. It requires licensed firearms dealers to report to the local Sheriff when someone attempts to buy a firearm and the Federal National Instant Criminal Background Check (NICS) system flags that the person is prohibited.¹⁹²

2.3.4 LEGAL FRAMEWORK ON TRIBAL LAND

In its 2007 report *Maze of Injustice*, Amnesty International highlighted complicated issues of jurisdiction that determine which authority is responsible for investigating crimes of sexual violence committed against Indigenous women and which body of law applies.¹⁹³ These issues also apply to intimate partner violence against Indigenous women in Louisiana. The main factors which determine jurisdiction are whether or not the victim is a member of a federally recognized tribe, whether or not the abuser is a member of a federally recognized tribe and whether or not the crime took place on tribal land. The answers to these questions determine whether the crime is investigated by tribal, federal or state police and which type of court the case should be prosecuted in, along with which body of law applies. The confusion over jurisdiction often means that crimes are never investigated or prosecuted. In addition, Tribal police, justice systems, and service centers are under-resourced. Non-Native perpetrators of intimate partner violence against Native women essentially enjoy immunity.¹⁹⁴

In Louisiana, of the four federally recognized tribes, three have their own tribal police departments: the Chitimacha Tribe, the Coushatta Tribe, and the Tunica-Biloxi Tribe. Only the Chitimacha tribe exercises SDVCJ jurisdiction. It started in February 2017.¹⁹⁵ As of August 2019, the Chitimacha tribal court had heard one case of intimate partner violence, involving a non-native perpetrator, under the SDVCJ. The Chitimacha tribal court also issues protective orders.¹⁹⁶

¹⁸⁷ <http://senate.legis.state.la.us/documents/constitution/constitution.pdf> Previously Article 11 had read: “The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person”.

¹⁸⁸ See <https://lawreview.law.lsu.edu/2014/04/04/up-in-smoke-an-update-on-louisianas-right-to-bear-arms/>

¹⁸⁹ See https://everytownresearch.org/navigator/states.html?dataset=background_checks&states=LA

¹⁹⁰ See https://everytownresearch.org/navigator/states.html?dataset=permitting_process&states=LA

¹⁹¹ HB 483, 2019 <http://www.legis.la.gov/legis/ViewDocument.aspx?d=1121899>

¹⁹² La R.S. 14:95.1.3(E), <https://law.justia.com/codes/louisiana/2018/code-revised/statutes/title-14/rs-14-95.1.3/>

¹⁹³ Amnesty International, *Maze of Injustice*, 2007, <https://www.amnestyusa.org/pdfs/mazeofinjustice.pdf>

¹⁹⁴ See Indian Law Resource Center, <https://indianlaw.org/issue/ending-violence-against-native-women>

¹⁹⁵ See <http://www.ncai.org/tribal-vava/sdvcj-today/the-chitimacha-tribe-of-louisiana>

¹⁹⁶ Amnesty International email correspondence with representative of the Inter-Tribal Council of Louisiana, September 2019

3. CIVIL COURTS

3.1 CIVIL PROTECTION

Survivors of intimate partner violence may come into contact with the civil courts for reasons including: applications for protective orders; divorce proceedings; and/or child custody. The main focus of this chapter is on protective orders.

3.1.1 PROCESS FOR OBTAINING A PROTECTIVE ORDER

Survivors of intimate partner violence can approach the civil courts to request a protective order. This is a court order which requires the defendant stop all acts of abuse and usually proscribes a set distance from the defendant to stay away from the petitioner. A protective order may also grant the petitioner sole use of specified property or temporary custody of children.¹⁹⁷ The civil courts can hear an application for a protective order irrespective of whether the abuse has been reported to the police. A protective order is just a piece of paper. It will not stop someone who is determined to injure or kill; however, it sends the message to abusers that a court has ruled their behavior is unacceptable. Sometimes this is sufficient to stop further abuse.

Violation of a protective order is a criminal offense and is also contempt of court.¹⁹⁸ The existence of a protective order means that law enforcement officers frequently take calls for assistance about intimate partner violence more seriously. Under the federal VAWA all law enforcement jurisdictions must enforce valid protective orders issued by other jurisdictions, including all states and tribal lands.¹⁹⁹ The restrictions specified in a protective order apply only to the person named as the defendant.²⁰⁰ A person protected by a protective order cannot be in violation of the order because they are not the defendant.

Any adult experiencing abuse can apply for a protective order and adults may apply on behalf of children experiencing abuse. The first step is to complete a form and submit it to the court. The application must include the personal details of the petitioner and the alleged abuser and a description of the circumstances of the abuse. If the petitioner is also filing for divorce or there is a divorce suit pending, the application for a protective order must be made as part of the divorce proceedings. Under Louisiana law, the petitioner may not be charged a fee for filing the application.²⁰¹

The petitioner may request the court issue a Temporary Restraining Order (TRO) to cover the period between the application and a full court hearing to decide on a long term protective order. After a hearing without the alleged abuser present (an ex parte hearing), the court may issue a TRO where it considers there is an “immediate and present danger of abuse”.²⁰² When a TRO is issued, the clerk of court must send the details, via a Uniform Abuse Prevention Order form, to the Louisiana Protective Order Registry (LPOR).²⁰³ The LPOR is a central database containing the details of all TROs, protective orders and injunctions in

¹⁹⁷ La R.S. 46:2135A <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2135/>

¹⁹⁸ La R.S. 14:79 <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-14/rs-14-79/> and R.S. 13:4611 <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-13/rs-13-4611/>

¹⁹⁹ See <https://www.theiacp.org/sites/default/files/all/p-r/ProtectingVictimsOfDV.pdf>

²⁰⁰ See https://www.lasc.org/court_managed_prog/LPOR/LPOR_forms/LPOR_01.pdf

²⁰¹ La R.S. 46:2134, <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2134/>

²⁰² La R.S. 46:2135 A <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2135/>

²⁰³ La R.S. 46:2135 G, H <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2135/>

Louisiana.²⁰⁴ It can be consulted by law enforcement officers. The time period immediately after a survivor leaves an abuser or applies for a protective order is frequently the most dangerous; however, neither federal, not Louisiana law prohibits possession of firearms for abusers under a TRO.

The court must set a date, within 21 days of the application, for a hearing where the petitioner must “prove the allegations of abuse by a preponderance of the evidence”.²⁰⁵ Louisiana law requires that the defendant be notified about the TRO and the date of the hearing within 24 hours of the TRO being issued.²⁰⁶ The Sheriff of the parish is responsible for serving defendants with court documents.²⁰⁷ Service may be made personally, where an officer in the Sheriff’s department locates the defendant and gives them the papers,²⁰⁸ or domiciliary, where the Sheriff’s officer leaves the papers with an appropriate person who lives at the same address as the defendant.²⁰⁹ Until the defendant has been served with the TRO, police are unable to enforce it. An officer called to what would be a violation of a TRO, if it had been served, is permitted under law to serve the TRO to the defendant at that time.²¹⁰ An amendment passed by the legislature in 2018 requires any officer serving a TRO to send confirmation of that service to the LPOR.²¹¹

On the date set by the court, the petitioner must present evidence to show why the court should grant a protective order. The defendant can choose to attend and present evidence of why the petitioner should not be granted a protective order. Based on the evidence, the court decides whether to grant the protective order and what level of protection to include. The court determines the duration of the protective order which may last up to 18 months.²¹² If, instead of presenting their own evidence to the court, the petitioner and the defendant, or their representatives, reach an agreement over the terms of a protective order, the court can approve that “consent agreement”.²¹³

If the defendant has been served with the TRO and chooses not to attend the hearing, the court decides whether to grant the protective order on the basis of the evidence presented by the petitioner. If the petitioner does not attend the hearing and the defendant does, the court will dismiss the case and the applicant may not re-file using the same evidence.²¹⁴

If the Sheriff’s department has been unable to serve the defendant with the TRO by the date of the hearing, and the petitioner attends the hearing, the court may “continue” the case, i.e. set a new date for the hearing and, again, request the Sheriff to serve the defendant with the papers. The new hearing should be held within 15 days. Courts will usually not continue a TRO more than once, unless there is “good cause”.²¹⁵ If the Sheriff’s department has not served the defendant by the later hearing date, the court will dismiss the case without prejudice, meaning that the applicant may file for protection again in the future using the same evidence.²¹⁶

Once a protective order has been granted by the court, the defendant is prohibited from possessing firearms for the duration of the order.²¹⁷ As with the TRO, the clerk of court must send a Uniform Abuse Prevention Order containing details of the protective order to the LPOR.²¹⁸

Decisions on granting of a TRO or a protection order may be made by a judge or by a court appointed “hearing officer”.²¹⁹ A “hearing officer” considers the evidence and makes a recommendation to the judge. Either party may appeal that recommendation and, if there is an appeal, a judge makes the final decision. If neither party appeals, the recommendation of the hearing officer becomes the decision of the court.²²⁰

²⁰⁴ See https://www.lasc.org/court_managed_prog/lpor.asp

²⁰⁵ La R.S. 46:2135 B <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2135/>

²⁰⁶ La R.S. 46:2135 B <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2135/>

²⁰⁷ La CCP. 321 <https://law.justia.com/codes/louisiana/2018/code-codeofcivilprocedure/ccp-321/>

²⁰⁸ La CCP. 1232, <https://law.justia.com/codes/louisiana/2018/code-codeofcivilprocedure/ccp-1232/>

²⁰⁹ La CCP. 1234 <https://law.justia.com/codes/louisiana/2018/code-codeofcivilprocedure/ccp-1234/>

²¹⁰ La R.S. 14:79 A(1)(b) <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-14/rs-14-79/>

²¹¹ La CCP. 1292, 1293(D) and R.S. 14:79 A(1)(b) <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=1103802>

²¹² La R.S. 46:2136 F(1) <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2136/>

²¹³ La R.S. 46:2136 A <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2136/>

²¹⁴ La CCP. 1672-1673 <https://law.justia.com/codes/louisiana/2018/code-codeofcivilprocedure/ccp-1673/>

²¹⁵ La R.S. 46:2135 E <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2135/>

²¹⁶ La CCP. 1672-1673 <https://law.justia.com/codes/louisiana/2018/code-codeofcivilprocedure/ccp-1673/>

²¹⁷ La R.S. 46:2136.3 <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2136.3/>

²¹⁸ La R.S. 46:2136 G, H <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2136/>

²¹⁹ La R.S. 46: 2135 I <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2135/> In some parishes a Commissioner performs the same role as a hearing officer.

²²⁰ La R.S. 46:236.5 <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-236.5/>

ELIZABETH: SURVIVED BEING SHOT IN THE FACE BY HER HUSBAND, BUT HE SHOT AND KILLED HER 18-YEAR OLD DAUGHTER, INDIA²²¹



Elizabeth with a poster of her and her daughter, India, that is displayed in the domestic violence organization which has supported her since 2008.

© Amnesty International

Elizabeth was married to her husband for 15 years. He was the only father her 18-year old daughter, India, had known. Elizabeth had worked as a social worker for 30 years and thought she understood intimate partner violence. She told Amnesty International:

“All of this happened within a two-month period. His behavior changed. He was possessive. He wanted to be with us all the time. It was like he controlled us. [He] didn’t want her with her friends. I kept telling him, what’s your problem? His behavior had gotten to the point where I should have recognized it. But being involved, I just didn’t see it happening”.

After an incident when her husband threatened India, Elizabeth called the police. She said “They didn’t arrest him, they just took him, or told him that he had to get away. I wasn’t going to have anybody living in my home threatening my child”. The local domestic violence support organization helped Elizabeth apply for a TRO.

“As long as I had the restraining order, he’d be down the street. He never actually came to the house. When I spoke to the attorney who had handled it after about a month, I told her, “This is ridiculous because this man ain’t ever going to hurt me”. He was on dialysis three days a week. And she said to me “Elizabeth, don’t rescind that order because you never know”. Against her advice, I went to the judge and I asked him to rescind the order because I couldn’t imagine this man hurting us. The morning that this happened, he had not been in the house in two days.”

Elizabeth woke up to find her husband in the house arguing with her daughter. While Elizabeth was talking to her daughter, he went into Elizabeth’s bedroom and retrieved a gun from a locked box and shot them both, killing India. Elizabeth said “My last memory of India is the shocked expression on her face. She saw him behind me with the gun. Had I not survived this, none of my friends or family would have believed he’d done it.”

Elizabeth had been shot three times in the face and needed surgery to reconstruct her face. For a while, doctors thought she might not be able to speak again. She has permanent nerve damage. Elizabeth’s husband was convicted of India’s murder. She said “He has never expressed any regret or sorrow for what he has done. Well not to me he hasn’t”.

Elizabeth is using her recovered voice to speak out about domestic violence.

3.1.2 TRAINING OF JUDGES AND COURT OFFICIALS

Judges, as lawyers, in Louisiana are required to attend 12.5 hours of continuing legal education every year, including one hour on legal ethics and one on professional responsibility. Five of the remaining hours

²²¹ Interview with Amnesty International, November 2018

education must be provided by the Louisiana Judicial College which is a branch of the Louisiana Supreme Court.²²²

Twenty-five states have legal provisions that require training for judges and other court officials involved in cases of intimate partner violence.²²³ These include Kentucky, where judges must undergo in-service training on domestic violence every two years, and Tennessee, where the administrative office of the courts is required by law to develop and provide continuing legal education on domestic violence.²²⁴ The Louisiana Judicial College told Amnesty International that while there is no mandate for judges to have training on domestic violence, the College regularly includes programs on domestic violence among the training they offer. In addition, the College holds an annual seminar for City, Family and Juvenile Judges and there is “usually a focus” on domestic violence issues during that seminar.²²⁵

Research supported by the National Institute of Justice concluded that court officials who hear cases involving custody and visitation in situations of domestic violence have different knowledge of domestic violence and ways of assessing risk. The characteristics of the officials (levels of knowledge) influenced the arrangements ordered by the court more than the severity of the domestic violence, leading to a call for mandatory training for court officials, especially on risk factors for ongoing and lethal violence.²²⁶ For judges who are interested in receiving training on issues related to intimate partner violence, the National Judicial Institute on Domestic Violence provides judicial education on handling civil and criminal cases to judges across the US.²²⁷

The 2017 Statewide Needs Assessment report by the LCADV found that only five out of 16 LCADV members provided any training for judges and that the training was sporadic rather than regular.²²⁸ Amnesty International heard from several organizations working with survivors that judges were unwilling to receive, or would not welcome, training on domestic violence from civil society.²²⁹

3.2 PROBLEMS IN PRACTICE

3.2.1 LACK OF POLICIES MEANS VARYING PRACTICE ACROSS LOUISIANA

Across Louisiana’s court system, different court officials interpret the law in different ways often leading to inconsistent application of the law across the state. At least 30 states have regulations, guidelines or best practice recommendations, in the form of a “benchbook”, for courts to follow in cases of intimate partner violence.²³⁰ For example, following a 2007 report which found wide variations on how North Carolina courts handled domestic violence cases, the North Carolina Judicial Branch established a domestic violence program and in 2009, the North Carolina Administrative Office of the Courts issued a comprehensive “Domestic Violence Best Practices Guide for District Court Judges” which covers all aspects of the court process including scheduling of cases, civil protection order hearings, criminal cases and abuser treatment programs.²³¹ Benchbooks in Alabama, Arizona, Ohio, and Texas include provisions to guide how judges should assess a defendant’s access to or possession of firearms as a lethality factor throughout the protection order process.²³²

²²² See <https://lajudicialcollege.org/about-lic/>

²²³ Research for Amnesty International by students of the International Human Rights Clinic, Duke University

²²⁴ KY Rev Stat. 21A. 170 <https://law.justia.com/codes/kentucky/2018/chapter-21a/section-.170/>, TN Code, 38-12-107 & 109 <https://law.justia.com/codes/tennessee/2017/title-38/chapter-12/section-38-12-107/>,

²²⁵ Amnesty International email correspondence with LA Judicial College, July 2019

²²⁶ Research looked at custody arrangement ordered by courts in New York <https://www.nij.gov/topics/crime/intimate-partner-violence/Pages/domestic-violence-training-for-court-appointed-custody-evaluators.aspx>

²²⁷ See <https://nijdv.org/about-us.html>

²²⁸ LCADV, State Needs Assessment, p. 63, <http://lcadv.org/wp-content/uploads/2017-Statewide-Needs-Assessment.pdf>

²²⁹ Amnesty International meetings with organizations working with survivors, May and November 2018

²³⁰ Research for Amnesty International conducted by students of the international human rights clinic, Duke University found that the following 30 states have a benchbook or equivalent guide for judges on domestic violence: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Mexico, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming. The Alaska, Colorado, Illinois, Iowa, and North Dakota benchbooks were not available online.

²³¹ See <https://www.nccourts.gov/programs/domestic-violence-program> and https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/DVBestPracticesGuide.pdf

²³² Research for Amnesty International by Duke University students. See Alabama, <https://web.archive.org/web/20060619092732/http://www.acadv.org/2005benchbook.pdf>; Arizona, <https://www.acesdv.org/wp->

The National Council of Juvenile and Family Court Judges developed a “guide for improving practices” on civil protection orders. This contains information designed to aid judges and others involved in the process including advocates, court officials and attorneys as well as key principles relevant to all those actors.²³³ The American Judges Association has a booklet on domestic violence. It is not a comprehensive guide for judges, but it provides key information on the dynamics of intimate partner violence, types of abuse and contains a checklist for judges on avoiding bias and stereotypes in cases.²³⁴

Louisiana does not have a policy or “benchbook” on court handling of domestic violence cases, nor any best practice guidelines. In its resources for judges the Louisiana Judicial College has a “bench card” on domestic abuse. This is a two-page document which summarizes Louisiana laws on protective orders, contains a list of twelve factors which help assess risk and potential lethality, and outlines laws on prohibition of firearms and the new firearms transfer procedure.²³⁵

The lack of an overall policy or guidelines for courts means that the experience of survivors and enforcement of laws can be very different depending on where they live. Organizations working with survivors of intimate partner violence told Amnesty International how in some parishes they worked in, the courts operate in ways which impede survivors’ access to protection. A representative of one organization described how, in one parish they work in, the court requires victims of intimate partner violence to report the violence to the police before the court will consider an application for a protective order. This is not required by Louisiana law and is not the practice in other parishes. The same parish also requires the survivor to sit with a clerk who does not have legal training, tell the clerk about the abuse, and the clerk decides what the survivor may include in the application. In other parishes, clerks often assist people in completing the forms and give advice; however, they do not assume decision making power over the evidence petitioners submit in their applications.²³⁶

Failure to prevent courts adopting arbitrary barriers preventing survivors accessing protection is a violation of the right to equal access to justice. Human rights law requires the authorities to establish an oversight mechanism to monitor the functioning of the judicial system and address any discrimination by officials.²³⁷

While Louisiana laws on protective orders contain a definition of “domestic abuse”, the wording is vague. It states “Domestic abuse” includes but is not limited to physical or sexual abuse and any offense against the person, physical or non-physical, as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one family member, household member, or dating partner against another”.²³⁸ Lawyers and representatives of organizations supporting survivors of intimate partner violence told Amnesty International that although most courts recognized that controlling behavior, mental abuse and financial abuse all constituted domestic abuse, without at least one act of physical violence, judges felt unable to grant a TRO or protective order.²³⁹ One attorney said that, usually, if there has been a lot of controlling behavior, there has to be one physical incident, even if it is a “low-level” push or shove, to be able to make a case for a protective order. Occasionally she can successfully petition for a protective order for a client on the basis of threats made.²⁴⁰

The lack of comprehensive guidelines for judges and hearing officers means that they can interpret the law in different ways which leads to survivors being granted different levels of protection depending on which judge or hearing officer rules on their case. Failure to ensure that all survivors of coercive control and other non-physical violence have access to legal protection irrespective of which court or judge hears their case violates human rights law. The right of equal access to justice requires the authorities to ensure that the right to live free from all forms of violence is fully incorporated into law, and that justice system professionals handle cases in a gender-sensitive way.²⁴¹

content/uploads/2014/06/2016-Benchbook.pdf; Ohio, https://www.ocjs.ohio.gov/links/ocjs_benchbook.pdf; and Texas, <https://www.txcourts.gov/media/478288/domesticviolencebenchbook.pdf>

²³³ See https://www.ncjfcj.org/sites/default/files/cpo_guide.pdf

²³⁴ See <http://aja.ncsc.dni.us/pdfs/domestic-violence-the-courtroom.pdf>

²³⁵ See <https://lajudicialcollege.org/wp-content/uploads/2019/06/Louisiana-Domestic-Abuse-DV-Bench-Card-FINAL.pdf>

²³⁶ Amnesty International meeting with representative of an organization supporting survivors, May 2018

²³⁷ CEDAW, General Recommendation 33, para 16(d)

²³⁸ La R.S. 46:2132, <https://law.justia.com/codes/louisiana/2017/code-revisedstatutes/title-46/rs-46-2132/>

²³⁹ Amnesty International meetings with attorneys and organizations supporting survivors, May and November 2018

²⁴⁰ Amnesty International meeting with an organization supporting survivors, November 2018

²⁴¹ CEDAW, General Recommendation 33, para 15(a)(c)

3.2.2 SAFETY AND SECURITY ISSUES AT COURT

“What’s really bad is that once we started to have to show up to court together – he is literally under a restraining order – and we’re at court and we are sitting next to each other. When you have to go outside in the halls you have to sit on the same bench together. He’s just staring at me and talking under his breath, all these little things that he knows I see and pick up on. And I couldn’t get past the fact that there’s no protection, there’s no separation, there’s no nothing. And then you expect me to go in there and say something or defend myself. I have to feel confident and he’s just been giving the look the whole time – like, “you’re going to pay for this”.”

“Emily” whose abusive ex-husband continued trying to intimidate her throughout court proceedings²⁴²

Courts in Louisiana are not adequately set up to ensure the safety of survivors of intimate partner violence attending court hearings. The Louisiana Supreme Court issues rules on functioning and processes for courts to follow. The rule relating to security in courts is vague. It states “The sheriff or his or her designated deputies shall provide security for the courtrooms, chambers, judicial offices, and hallways within the courthouse”.²⁴³ Louisiana law states that courts “shall provide, whenever possible”, a waiting area that does not require victims to be “in close proximity” to defendants, and an amendment in 2016 added a provision that “upon request” of a victim, the court “shall also provide, wherever possible” separate seating inside the courtroom.²⁴⁴

There is no specific guidance for courts in Louisiana on the threats faced by survivors of intimate partner violence who often have to attend numerous criminal, civil or family court hearings alongside their abuser. The number of court hearings increases when the couple have children together and there are custody and child support issues in addition to protective order and/or criminal hearings. In contrast, the North Carolina best practices guide has a chapter focusing on safety and security in the courthouse. This includes suggestions on seating arrangements in court, separate waiting areas and measures to ensure safety when entering and leaving courthouses.²⁴⁵

In Louisiana, all people involved in cases scheduled on a particular date must arrive at court in the morning and wait until their case is called. For survivors of intimate partner violence, this often means they have to wait for hours in the same place as their abuser which provides opportunities for intimidation and further abuse to occur. Individual judges may take some measures in particular cases, for example by requesting a defendant wait in the courtroom until after the survivor has left. However, relying on judges to use their discretion instead of implementing comprehensive security protocols does not sufficiently prioritize survivor safety.

Taylor Robison, an advocate who accompanied survivors to court in a small town, told Amnesty International that advocates also face risks. She described how she experienced abusers following her home and threatening her because of her work assisting survivors.²⁴⁶

The consequences of inadequate courtroom safety measures can be fatal. New Orleans judge Bernadette D’Souza described to Amnesty International the events of one day in 2000 when she was an attorney working on cases of intimate partner violence. After representing her client at a civil court hearing, they were outside the courthouse and her client’s estranged husband shot and killed her client before killing himself.²⁴⁷

Three of the survivors who spoke to Amnesty International talked about how their abusers had used court hearings where they had to be in the same place as a way to try to continue exerting power and control over them.

Kirby told Amnesty International how she received increased threats and harassment from her abusive ex-husband after she attempted to get the courts to enforce the \$22,000 in child support payments she was owed. She said that he told her that “if I didn’t go and lie and tell them that he’d been paying me this whole time, that I was going to regret it. Never specifics but I was going to regret it”. Kirby reported these threats to the child support enforcement office in the District Attorney’s office and showed them a copy of her restraining orders. She told Amnesty International that the office told her that the information would be in her file for the hearing. Despite that, there were no safety precautions taken in court. She said:

²⁴² Interview with Amnesty International, May 2018. Name changed

²⁴³ Supreme Court of Louisiana, Rules for Louisiana District Courts and Juvenile Courts and Family Court Proceedings, Title I, Rule 5.2 on Courtroom Security, <http://www.lasc.org/rules/dist.ct/finalrules.pdf>

²⁴⁴ Act 287 of 2016, <http://www.legis.la.gov/legis/ViewDocument.aspx?d=1011126>

²⁴⁵ North Carolina Administrative Office of the Courts, N.C. Domestic Violence Best Practices Guide for District Court Judges, 2012, https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/DVBestPracticesGuide.pdf

²⁴⁶ Meeting with Amnesty International, July 2019

²⁴⁷ Meeting with Amnesty International, January 2018, see also <https://caselaw.findlaw.com/la-court-of-appeal/1252384.html>

*“we waited in the courtroom and of course he sat next to me and continued to repeat the threats of I’d better go in there and lie. And I didn’t realize that this is how the system works because I’d never been to child support court before, but they call you in a room... and they sit you right next to the father of your kids. [My ex-husband] immediately gets angry and starts cursing and saying the ‘F’ word and saying that he had paid me since the beginning, and I just froze. [The hearing officer] said “is this true?” I just stared at him, like have you not read any of my file? I’m sitting right here next to my abuser. The he said “Why are you staring at me like that? It’s a simple question. Have you been threatened or something? Do we need to go in the hall and talk?” And so I simply responded with “no”. They waived \$22,000 in back pay child support”.*²⁴⁸

3.2.3 LACK OF LEGAL REPRESENTATION IN CIVIL CASES

Lawyers, a judge specializing in domestic violence and family cases, and representatives of NGOs working with survivors of intimate partner violence all told Amnesty International that there is no right to legal assistance in matters before the civil courts. Louisiana stopped funding civil legal aid in 2008.²⁴⁹ A small number of organizations, funded mainly through Federal grants and voluntary donations, provide limited free legal assistance in the state. This means that many survivors of intimate partner violence must navigate a complicated legal process on their own. Survivors with sufficient funds can hire a private lawyer to assist them. The Louisiana legislature passed a bill in June 2019 which allocated a total of \$500,000 for legal aid across all types of civil cases for one fiscal year.²⁵⁰ While this is welcome, civil society organizations are concerned that they will have to lobby again for funding next year.

One early barrier that survivors face is completing the complicated legal application form with no knowledge of the law. While organizations supporting survivors of intimate partner violence all have staff who can help guide survivors, many survivors do not know about this support, or are not in contact with the organizations at the time they first apply for protection. Staff of organizations working with survivors told Amnesty International that when they attend court with a client, they will often assist other people with submitting applications while they are waiting for the case to be called.²⁵¹ At many courts, a clerk is available to help people complete the form.

Judge D’Souza who specializes in family law cases in New Orleans told Amnesty International that she heard 10 – 15 protective order cases a week and the majority of applicants have no legal representation. She said that in those cases, she had to ensure she asked the right questions from the bench to elicit the information needed to make a decision.²⁵² Without legal assistance, survivors may not know what supporting documents they need to bring to court. Judge D’Souza described to the media a case where a survivor applied for a protective order and read out threatening text messages she had received and had photos of her injuries on her phone but had not brought the printed copies required for the evidence to be officially recorded.²⁵³

Some organizations working with survivors of intimate partner violence employ lawyers who are able to represent their clients. Other organizations do not have staff lawyers but have advocates to support clients. Advocates are staff who understand the law and court procedures but who are not authorized to represent people in court. One advocate working with survivors of intimate partner violence in central Louisiana told Amnesty International that she estimated 99% of people she saw waiting for hearings had no legal representation and around 50% had no advocate to advise them.²⁵⁴ An attorney providing legal representation in Jefferson parish told Amnesty International that when she went to court with her clients, she was sometimes the only attorney there. If there was another attorney, they were usually only there for one of the 12 – 20 cases heard by the court. She estimated that on a typical day, over half of cases involved petitioners representing themselves. Many defendants also represent themselves.²⁵⁵

IMPACT OF LACK OF REPRESENTATION

The process of going to court is intimidating. Having to discuss intimate details of the abuse they have suffered in open court is especially difficult for people without legal representation or an advocate to support them. For full hearings where both applicant and defendant are in court, the lack of a right to free legal representation means that the petitioner may have to question the defendant directly about the abuse they

²⁴⁸ Interview with Amnesty International, November 2018

²⁴⁹ See <https://www.nola.com/politics/2019/03/in-louisiana-civil-courts-the-poor-are-left-to-defend-themselves.html>

²⁵⁰ Act 50, 2019, p.22, <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=1144609>

²⁵¹ Amnesty International meetings with organizations supporting survivors, May and November 2018

²⁵² Meeting with Amnesty International, January 2018

²⁵³ See <https://www.nola.com/politics/2019/03/in-louisiana-civil-courts-the-poor-are-left-to-defend-themselves.html>

²⁵⁴ Amnesty International meeting with advocate at Faith House, November 2018

²⁵⁵ Amnesty International meeting with an organization supporting survivors, November 2018

suffered or have the defendant question them directly. Representatives of organizations working with survivors told Amnesty International that frequently survivors did not have legal representation, but the defendant had hired a lawyer; this increased the power imbalance and led to petitioners without legal knowledge or representation being questioned by an attorney hired by their abuser.²⁵⁶

There is a real risk that the process of obtaining a protective order adds to the trauma of the survivor. Attorneys and representatives of organizations working with survivors told Amnesty International that frequently survivors who have applied for and been granted a TRO are unable to face going back to court for the hearing on the full protective order.²⁵⁷ This is more likely to happen when the survivor has no legal representation or support. If the petitioner does not attend the hearing, the case is dismissed, leaving the survivor unprotected.

Survivors who spoke to Amnesty International frequently mentioned how having someone knowledgeable about the process accompany them to court hearings was hugely helpful, both in terms of having someone explain what was going on and for the emotional support and reassurance they provided. “Emily” said “I think what helped was I had [a representative from the local support organization] sat at the hearing with me. I can’t tell you that feeling like “what is going on, what’s happening?” and to know that they’re just there. What decision are you [the court] about to make because we’re not messing around, we’re watching you?”²⁵⁸

In contrast, when Nicole applied for her first protective order she did not have legal representation or assistance from an advocate. At the hearing, she and her ex-partner talked and agreed to leave each other alone. Nicole dropped the protective order application and they each had to pay their own court costs. The abuse and stalking continued. Nicole sought help from the local domestic violence organization before she submitted another protective order application.²⁵⁹

The content of protective orders can be agreed between both parties and approved by the court. Without legal representation, or with representation by an attorney who does not specialize in domestic violence and therefore does not fully understand the laws, this can lead to survivors agreeing to provisions that undermine their safety. Representatives of organizations working with survivors told Amnesty International that attorneys sometime suggest that both parties agree to a “mutual stay away order” where each undertakes not to contact the other. A survivor without legal representation, or who is represented by an attorney who does not specialize in intimate partner violence, may agree to this believing it to be the same as a protective order. However, a “mutual stay away order”, even when approved by the court, is not a protective order. It cannot be enforced by the police. The details are not submitted to the Louisiana Protective Order Registry and the prohibition on possession of firearms does not apply. Violation of the terms of a mutual stay away order is not a criminal offense.²⁶⁰

Julie Pellegrin, Executive Director of the Haven which provides support to survivors in two parishes where there was no free legal representation available, told Amnesty International that lack of legal support meant that survivors were unable to obtain a quick divorce under the post-separation family violence relief act because the requirements are complicated and having a lawyer is essential. She said that receipt of a recent grant to provide legal services is a positive step.²⁶¹ Although “Emily” was able to afford a lawyer to help with her divorce and custody case, she told Amnesty International how she struggled to find thousands of dollars she needed to pay for representation. She said “How does someone go through this and they don’t have money to get the help of an attorney? Here I am, from enough means, my family was able to help me out”.²⁶²

A key element in ensuring that access to justice is available for all, irrespective of wealth, is for free, or low-cost legal aid to be available, including for survivors of intimate partner violence in civil and family courts. Under human rights law, in cases of “family conflict” when women do not have “equal access to family income”, their real financial situation should be the basis for determining eligibility for means-tested legal aid.²⁶³ Failure to ensure that survivors of intimate partner violence have access to legal aid is a violation of their rights to equal protection of the law and access to justice.

The gender and racial disparities relating to poverty rates in Louisiana means that women are more likely to be unable to afford legal representation than men, and the women least likely to be able to afford to pay a lawyer belong to minority groups. In 2014 the UN CERD expressed its “concern at the lack of a generally

²⁵⁶ Amnesty International meetings with organizations supporting survivors, January, May and November 2018

²⁵⁷ Amnesty International meetings with organizations supporting survivors, January, May and November 2018

²⁵⁸ Interview with Amnesty International, May 2018. Name changed

²⁵⁹ Interview with Amnesty International, November 2018

²⁶⁰ Amnesty International meeting with organizations supporting survivors, November 2018

²⁶¹ Amnesty International meeting with the Haven, May 2018 and July 2019

²⁶² Interview with Amnesty International, May 2018. Name changed

²⁶³ CEDAW General Recommendation 33, paras 36-37

recognized right to counsel in civil proceedings, which disproportionately affects indigent persons belonging to racial and ethnic minorities, and hinders their seeking an effective remedy” and specified domestic violence as one of the areas affected. The CERD recommended that the US “allocate sufficient resources to ensure effective access to legal representation for indigent persons belonging to racial and ethnic minorities in civil proceedings, particularly with regard to proceedings that have serious consequences for their security and stability, such as evictions, foreclosures, domestic violence, discrimination in employment, termination of subsistence income or medical assistance, loss of child custody and deportation proceedings”.²⁶⁴

3.2.4 FAILURES IN SERVICE OF COURT DOCUMENTS

“My daughter has taken the steps to go down [to court] to have the protective order, but you don’t have an order in place until the person’s been served and he’s not been served. And he’ll run. He’ll skip the parish. The only way, they’ll have to arrest him on something and serve him in jail. So right now, that’s the problem. But since he knows where we live, we’re moving within this week.”

Cheryl, who was forced to move after her daughter’s ex-husband threatened to go to her house and shoot everybody there.²⁶⁵

It is the responsibility of the Sheriff to serve respondents with court papers, including TROs.²⁶⁶ How effectively the Sheriff’s department does this varies greatly between parishes. Representatives of organizations working with survivors told Amnesty International that in some parishes they worked in the Sheriff’s department was very good at finding people and quickly serving them with the papers but in other parishes it was very different. In those places, the Sheriff’s department did not act quickly to find the respondent and serve the papers leading to hearings for full protective orders having to be postponed multiple times. Several representatives said that one advantage of everybody knowing everybody in rural parishes and small towns was that it was usually easier to get people served with legal papers.²⁶⁷

Brandie applied for a protective order after experiencing harassment and stalking from her ex-husband. She reported the abuse to the town police department at the same time as completing the protective order application forms. Brandie lived in a small town and she told Amnesty International: “One of officers that escorted me back to my office and interviewed me that day had lived next door to me and my ex-husband. He said “I’ll call him and get him to come into the station to talk to me and I’ll hold him there and talk to him until you get the protective order. That way we can get him served”.” Brandie went to the Sheriff’s Department, explained the situation and one of the deputies went immediately and served her ex-husband with the papers.²⁶⁸

Representatives working with survivors consistently said that getting papers served when people had changed their address was challenging. The onus is on the petitioner to provide the court with the defendant’s current address. Sometimes defendants “dodge service” by temporarily moving out of the parish so they are no longer under the jurisdiction of the Sheriff’s department trying to serve them, or by moving houses so the court does not have their current address.²⁶⁹ When Kirby’s protective order was renewed by the court, it needed to be served; however, her ex-husband dodged service. Court mandated arrangements for their children included exchanging custody of the children at the local police station. Kirby had to speak to the police officers there and explain the situation in order to have them to serve her ex-husband with the protective order during the custody exchange.²⁷⁰

Representatives of organizations working with survivors of intimate partner violence consistently told Amnesty International that in some places it was common for law enforcement to fail to serve defendants.²⁷¹ Officers would go to the defendant’s home address once or twice during the day when the defendant was at work but would not go to their place of work or return to their address at a time when they would be more likely to be there. A representative of the Baton Rouge police department said that the East Baton Rouge Sheriff’s Department had a policy to only attempt service three times.²⁷²

²⁶⁴ CERD, Concluding Observations, para 23, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/USA/CO/7-9&Lang=En

²⁶⁵ Interview with Amnesty International, November 2018

²⁶⁶ La CCP. 321, <https://law.justia.com/codes/louisiana/2017/code-codeofcivilprocedure/ccp-321/>

²⁶⁷ Amnesty International meetings with organizations supporting survivors, May and November 2018

²⁶⁸ Interview with Amnesty International, November 2018

²⁶⁹ Amnesty International meetings with organizations supporting survivors, May and November 2018

²⁷⁰ Amnesty International email correspondence with Kirby, October 2019

²⁷¹ Amnesty International meeting with organizations supporting survivors, May and November 2018

²⁷² Meeting with Baton Rouge police department, November 2018

While reviewing the civil court files of some of the survivors interviewed for this report, Amnesty International found that information about service of a TRO was not always recorded in the files. Some files contained a copy of a form completed by the law enforcement agency charged with serving the papers, other files had short handwritten notes detailing attempts to serve the papers scribbled on the back of other documents in the file. Some files contained information about whether the law enforcement agency had informed the survivor about the service. Other files had no information about this. It is important that survivors are informed when a TRO has been served and when it has not been served. If survivors are not informed, they may wrongly believe that they are protected by a TRO when, actually, the police are unable to enforce it.

In 2018, the Louisiana legislature amended the Code of Civil Procedure to require that the law enforcement agency serving the papers send confirmation to the LPOR once they have done so.²⁷³ The law took effect in January 2019. It is an important development because, for orders issued after that, police who respond to an incident are able to check the LPOR to confirm that a TRO or protective order has been issued and that it has been served. Before the change in the law, law enforcement agencies from only five out of 64 parishes systematically sent service information to the LPOR.²⁷⁴

3.2.5 CHALLENGES FOR SURVIVORS SEEKING PROTECTION

LACK OF CONFIDENTIALITY AND PRIVACY

Protective order hearings are open to the public; anybody can attend and watch. The petition, which includes names and dates of birth of the petitioner (and their children, if they are included in the application), the petitioner's description of the abuse they suffered, along with supporting evidence such as intimate photographs, the TRO and protective order are court documents which are also public records and may be accessed by anybody. Some parishes have digital court record systems which means court documents are uploaded immediately and are available online. One representative of an organization supporting survivors told Amnesty International that when there is a domestic violence murder, the media often use public record requests to obtain the victim's protective order applications and publish details of the abuse. Where the victim has not spoken about the abuse to their family, this adds to the family's distress.²⁷⁵

It is important that the media be able to report on the existence of a TRO or protective order because these documents demonstrate a history of abuse, and, reporting on intimate partner violence potentially helps uncover systemic failures in protection; however, the amount of personal information about survivors, and the sensitivity of the information publicly available in Louisiana, is excessive. In effect survivors seeking protection through the civil courts are required to forego their privacy. This places an undue burden on survivors and violates their right to privacy. Under human rights law, states have the obligation to protect and assist survivors of gender-based violence during legal proceedings, including through protecting their privacy.²⁷⁶

COSTS OF OBTAINING COPIES OF POLICE REPORTS

When survivors apply to the civil courts for a protective order, submitting evidence to support their allegations of abuse strengthens their case. Although it is not essential that survivors have reported abuse to the police before applying for a protective order, if they have reported incidents of abuse, they can use the police reports as evidence. Different law enforcement agencies have different policies on survivors accessing copies of their police reports and photographs of injuries, and many charge a fee.

In New Orleans, NOPD provide survivors with an initial copy of the police report free of charge and only charges for additional copies.²⁷⁷ In some parishes, survivors are charged for the first copy. A representative of East Baton Rouge police department told Amnesty International that the cost for a copy of a police report was \$10 for the first page and \$1 for each subsequent page. They do not permit survivors to have copies of photographs taken of injuries.²⁷⁸ Representatives of organizations working in Jefferson parish told Amnesty International that law enforcement charged survivors \$25 for a copy of the police report and had additional charges for copies of photographs of injuries taken by officers.²⁷⁹

²⁷³ La CCP.1292, as amended by Act 679 of 2018 <http://legis.la.gov/Legis/ViewDocument.aspx?d=1103802>

²⁷⁴ Amnesty International meeting with the LCADV, November 2018

²⁷⁵ Meeting with Amnesty International, July 2019

²⁷⁶ CEDAW, General Recommendation 35, para 31, CEDAW, General Recommendation 33, para 18(f), UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Res. 40/34, 1985, art 6(d), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/VictimsOfCrimeAndAbuseOfPower.aspx>

²⁷⁷ Amnesty International meeting with organization supporting survivors, November 2018

²⁷⁸ Amnesty International meeting with Baton Rouge police department, November 2018

²⁷⁹ Amnesty International meeting with organization supporting survivors, November 2018

The evidence that a survivor is able to submit in support of their protective order petition should not depend on their financial resources. For many survivors these costs are prohibitively expensive. Intimate partner violence often includes financial control by the abuser, for example, insisting that the victim hand over their wages, monitoring their spending or requiring them to ask for money any time they want to buy something. Where survivors have care responsibilities which mean they are unable to work, they are frequently financially dependent on the abuser and even if they are able to leave the abuser, they do not have the means to pay for copies of police reports or photographs.

Representatives of organizations working with survivors told Amnesty International that sometimes their staff pay for police reports out of their own money. Organizations that employ an attorney are able to issue a subpoena to the police to obtain a copy of the report.²⁸⁰ Organizations working across rural and urban parishes told Amnesty International that in some rural areas their staff were able to build up good working relationships with the small police departments in those areas enabling them to request free copies of police reports on behalf of survivors.²⁸¹ While this is good for survivors who are in contact with those support organizations, the practice of charging for copies of police reports by law enforcement agencies creates barriers to protection for many survivors and the varying rates of charges further disadvantages survivors depending on where they live and their poverty status.

PRACTICAL AND LOGISTICAL BARRIERS TO PROTECTION

Survivors of intimate partner violence applying for protective orders are required to attend every court hearing, whether or not the defendant attends. They have to attend court from early morning and wait until their case is heard, which usually means taking the day off work. Where there are multiple continuations of a TRO, this means repeated time off work. This adds to the burden on survivors and increases the likelihood that they will decide not to pursue the case. An advocate working with survivors told Amnesty International about a woman she had tried to help with a protective order. She applied for and was granted a TRO. The papers were served immediately and the hearing set for the following day. The woman waited all day, getting more nervous as time passed. Eventually she left the court, and the judge dismissed the petition.²⁸²

Courts do not have child care facilities. Often people have to bring their children with them to court because they are unable to find somebody to care for them or they are unable to afford childcare. In some cases, the children are named on the protective order and may have suffered or witnessed abuse. The children must also wait in the presence of the abuser. Children are not allowed inside the courtroom, so a parent has the problem of finding somebody to watch their children while their case is being heard. One attorney told Amnesty International that people often have to ask strangers to look after their children. Attorneys will sometimes watch children while other cases are going on, and some clerks will agree to look after children.²⁸³ Having to find somebody at the court to look after your child increases the stress felt by the parent and having to ask a stranger potentially raises child protection issues.

Representatives of organizations working with survivors in rural areas told Amnesty International that an additional obstacle for survivors in their parishes was a lack of transportation to get them to the court. Many survivors do not have their own car, and there is no public transport. Some survivors fear that their abuser has put a tracking device on their car; others are afraid to use their abuser's car.²⁸⁴ For them, physically getting to the court multiple times can be too great an obstacle resulting in them dropping petitions.

SURVIVORS WRONGLY GIVEN COURT COSTS

Louisiana law states that petitioners for protective orders may not be ordered to pay court costs, unless the court determines that the application was “frivolous”.²⁸⁵ However, officials working within the justice system and representatives of organizations supporting survivors of intimate partner violence told Amnesty International that judges interpreted “frivolous” in different ways and sometimes unfairly ordered survivors to pay court costs. Some judges deem the petition to be “frivolous”, if a survivor does not attend a court hearing for any reason. Survivors who are wrongly ordered to pay court costs are likely to be deterred from approaching the courts for protection in future.

One Victim Assistance Counsellor working for a District Attorney's office told Amnesty International that a survivor she was supporting was unable to attend a court date because of a serious medical condition. Instead of arranging a new court date, the judge dismissed the petition and ordered the survivor to pay the

²⁸⁰ Amnesty International meeting with organization supporting survivors, November 2018

²⁸¹ Amnesty International meetings with organizations supporting survivors, May and November 2018

²⁸² Amnesty International meeting with advocate working for Faith House, November 2018

²⁸³ Amnesty International meeting with family law specialist attorney, January 2019

²⁸⁴ Amnesty International meeting with advocate working for Faith House, November 2018

²⁸⁵ La R.S. 46:2136.1 <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2136.1/>

court costs. In another case she had been involved with, a survivor did not attend the hearing and the judge ordered her to pay the costs of her abuser's attorney.²⁸⁶ A representative of an organization working with survivors told Amnesty International that in one case she worked on, the survivor had to be at a different court on the date set for the hearing on her protective order application. The organization informed the judge about the clash, but the judge refused to reschedule, dismissed the protective order petition and ordered the petitioner to pay the costs.²⁸⁷

Another representative of an organization working with survivors told Amnesty International that the Clerk of Court in one of the parishes they cover sends invoices for court costs to survivors who apply for a protective order and drop the case before the hearing, despite this being contrary to the law. She said that the clerk prohibits a survivor who wants to reapply from doing so until they have paid the costs for the previous application.²⁸⁸

In its survey of coalition members, the LCADV reported that in the experience of 29% of its member programs, judges were sometimes ordering survivors to pay court costs when they failed to appear or testify in court and 13% had experienced judges ordering survivors to pay court costs when they dropped a protective order application.²⁸⁹

3.2.6 PROBLEMS WITH INTERPRETATION FOR NON-ENGLISH SPEAKING SURVIVORS

For survivors who do not speak sufficient English to follow court processes, there is no automatic right to free interpretation in civil courts. Under Louisiana law, someone who does not speak English may request an interpreter and the “judge shall appoint, after consultation with the non-English-speaking person or his attorney, a competent interpreter”.²⁹⁰ In practice this means that judges request an interpreter, if they decide it is necessary.

Representatives of organizations working with survivors told Amnesty International that they had witnessed significant problems in provision of interpretation. One said that one judge asked applicants basic questions such as their name, and, if they could answer those, they refused to request an interpreter. The questions were so basic that many people could answer them even if they do not understand a simple conversation in English let alone complicate court proceedings.²⁹¹ Cristi Rosales Fajardo of community organization NOLA Village, who speaks English, Spanish and Portuguese, told Amnesty International that she has gone to court to support a non-English speaking petitioner and ended up being asked to provide voluntary interpretation for both parties.²⁹² Good practice is for different interpreters to act for each party in a case.²⁹³

In May 2017, following a complaint about failure to provide interpretation in civil proceedings in Jefferson Parish, the US Department of Justice (DOJ) launched an investigation which was expanded, in October 2017, to look into all Louisiana courts. The result was a Memorandum of Agreement signed in May 2019 between the DOJ and the Louisiana Supreme Court which included the Court agreeing to conduct a language access assessment, create a complaints process, provide language access training to judges and court officials and develop a Language Access Plan to address how to provide individuals needing interpretation with information about how to access interpretation services.²⁹⁴ An attorney representing survivors in Jefferson parish told Amnesty International that the situation had greatly improved since the DOJ investigation had started.²⁹⁵

Until mid-2019, under Louisiana law, “reimbursement” of the interpreter “shall be taxed by the court as costs of court”.²⁹⁶ This meant that the costs of interpretation should not be paid by the petitioner and that once a protective order was granted, the interpretation costs would be charged, alongside other court costs

²⁸⁶ Meeting with East Baton Rouge DA's office, November 2018

²⁸⁷ Amnesty International meeting with representative of an organization supporting survivors, November 2018

²⁸⁸ Amnesty International meeting with representative of an organization supporting survivors, May 2018

²⁸⁹ LCADV, State Needs Assessment, p. 65

²⁹⁰ La CCP. 192.2 (A), <https://law.justia.com/codes/louisiana/2018/code-codeofcivilprocedure/ccp-192.2/>

²⁹¹ Amnesty International telephone meeting with organization supporting survivors, October 2018

²⁹² Amnesty International meeting with NOLA Village, January and May 2018

²⁹³ American Bar Association, *ABA Standards for Language Access in Courts*, 2012, p.56,

https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf

²⁹⁴ See <https://www.justice.gov/opa/press-release/file/1161931/download>

²⁹⁵ Amnesty International meeting with organization supporting survivors, July 2019

²⁹⁶ La CCP. 192.2 (B), <https://law.justia.com/codes/louisiana/2018/code-codeofcivilprocedure/ccp-192.2/>

to the defendant. An attorney from the LCADV told Amnesty International that since defendants often are unable to pay court costs, this made judges reluctant to order interpretation in cases.²⁹⁷ Another attorney said that interpreters had to chase defendants to try to get their payment which was especially difficult when the defendant had not attended the protective order hearing. The attorney had also witnessed cases where the interpretation costs were wrongly given to the applicant; however, she also highlighted that since the DOJ investigation, she had not seen problems with provision of interpretation.²⁹⁸

In May 2019, the legislature amended the law to require that interpreters receive a payment out of “the appropriate court fund”. A petitioner may request interpretation in their initial protective order application. “If necessary”, the court “shall” appoint an interpreter before a hearing on a protective order.²⁹⁹ These changes took effect on 20 June 2019.

3.2.7 ABUSERS WHO MAKE COUNTER CLAIMS

Attorneys and representatives of organizations supporting survivors all said that abusers sometimes use civil courts processes to continue pressuring or manipulating the survivor, either by filing their own petition for a protective order or through making allegations against the survivor in divorce or child custody proceedings.

When Maria petitioned for a protective order against her husband after he had been arrested for abusing her, his attorney filed a denial that stated that the events in Maria’s petition were not due to “any fault” on his part but were “caused in whole or in part through the conduct of the plaintiff”.³⁰⁰ The court rejected his claims and granted Maria a protective order. Three months later, he filed a divorce suit, again blaming Maria, and applied for their children to live with him. Maria, with the help of free legal assistance, filed a counter suit under the post separation family violence relief act which allows survivors of intimate partner violence to obtain a fast divorce. Maria’s petition highlighted that the court had already granted her a protective order and her husband was awaiting trial for abusing her. Two months later the court granted the divorce under Maria’s petition and she was granted permanent sole custody of their children with supervised visitation for her ex-husband.³⁰¹

Judges interpret the laws differently. Judge D’Souza, a specialist family court judge in New Orleans told Amnesty International that some abusers will rush to the court house to file for their own protective order. She said that she must hear each case and carefully weigh the evidence to determine who is the “true victim” and grant them protection. She would not grant a protective order to both.³⁰² Another judge would grant both protective orders. In 2015, three years before he killed her, April’s ex-boyfriend filed for a protective order against her. It followed an incident where April had called the police, but the police arrested her (see chapter four). April, once she got out of jail on bail, filed her own application for a protective order. After hearing both applications at the same time, the judge granted each of them a protective order against the other.³⁰³

Kirby’s ex-husband filed for sole custody of their three children and requested that Kirby be given supervised visitation while he was awaiting trial for assaulting her, including a charge of domestic abuse by strangulation in which their daughter was the key witness. The hearing officer decided that the children should continue to live with Kirby but granted her ex-husband unsupervised visitation every other weekend. Kirby told Amnesty International that at the second visit, her ex-husband threatened their then 12-year old daughter. Kirby and her daughter reported the incident to the police and he received an additional charge of witness intimidation. Kirby said “He fought me for custody. He said I was an unfit parent. But it was really because he wanted access to my daughter and he thought he’d be able to sway her from testifying against him”.³⁰⁴

Unless judges have sufficient guidance and training on the dynamics of intimate partner violence and fully understand the ways in which abusers can seek to manipulate survivors using civil court processes, there remains a risk that they will not recognize continuing acts of intimidation or abuse and will fail to effectively protect survivors.

²⁹⁷ Amnesty International email correspondence with Jeremy Woolard, attorney for LCADV

²⁹⁸ Amnesty International meeting with organization supporting survivors, November 2018 and July 2019

²⁹⁹ SB 71, 2019, amending La CCP.192.2, <http://www.legis.la.gov/legis/ViewDocument.aspx?d=1137768>

³⁰⁰ Court records, reviewed by Amnesty International

³⁰¹ Court records, reviewed by Amnesty International

³⁰² Amnesty International meeting, January 2018

³⁰³ Court records reviewed by Amnesty International

³⁰⁴ Interview with Amnesty International, November 2018

BRANDIE: LEFT HER ABUSIVE HUSBAND AFTER 15 YEARS OF MARRIAGE AND THEN PROVIDED SUPPORT TO THE WOMEN HE SUBSEQUENTLY ABUSED³⁰⁵



Brandie is a paralegal and activist.

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Brandie told Amnesty International that during the three years after she left, her ex-husband constantly stalked, harassed and threatened her. She told Amnesty International that she thought her nightmare was at an end when, after their divorce was finalized, his new girlfriend got pregnant. However, her ex-husband was a serial abuser. Brandie said “He has remarried and divorced twice and those women, after leaving the relationship, or even sometimes before, get in touch with me. I become this kind of support system for them.”

He then started another relationship with “A” and was abusive again. When “A” eventually left and filed for a protective order, he filed a petition against her, accusing “A” of abuse. Brandie told Amnesty International:

“She went through some really rough times hiding from him, him finding her. When it was time to go for the hearing, she texted me and asked if I would testify on her behalf documenting, establishing the pattern of past abuse... and she had gone to the 2nd and 3rd ex-wives and one was on board and the other was teeter-tottering but we all decided to come together and take a united stand... He [had] filed a reciprocal order against “A” so he showed up represented by an attorney, but when he saw, or heard, that we were all there, and had two other witnesses, he dropped his [petition].”

Brandie has continued her role of helping other survivors by becoming a founder member of a new survivor network to advocate for change.

3.2.8 INFLUENCE OF JUDGES’ PERSONAL VIEWS AND STEREOTYPES

“To the victim accustomed to living in an environment where a mistake in judgment could be lethal, there is little room for poor judgment in the courtroom”.

American Judges Association education booklet on domestic violence on the importance of judges acting in a manner that promotes the trust of the survivor in the judge and the court process.³⁰⁶

The lack of state-wide guidelines and training for court officials means that officials interpret the law in different ways, which affects the level of protection received by survivors of intimate partner violence. Experts working with survivors of intimate partner violence in different parts of Louisiana all told Amnesty International that the personalities and personal views of judges and hearing officers often influenced the outcomes of cases they decided. Judges, hearing officers and other court officials are members of, and influenced by, the society in which they live. Some hold the same misconceptions and stereotypes about intimate partner violence as are prevalent across Louisiana. Others understand the power dynamics of intimate partner violence and know how to identify attempts by abusers to minimize abuse, discredit survivors or use court process to manipulate survivors.

³⁰⁵ Interview with Amnesty International, November 2018

³⁰⁶ See <http://aja.ncsc.dni.us/domviol/page1.html>

For most judges, cases of intimate partner violence make up a small proportion of the cases they hear. There are a few judges who specialize and hear only domestic violence or family law cases. Courts in different parts of the state organize hearings in different ways. For example, some hold hearings on all cases for protective orders on particular days of the week or rotate the judges hearing protection order cases each month so a petitioner might appear before several different judges during the course of the case. In other places once a judge has been allocated to a case, that judge will rule on every subsequent hearing.

Research for the LCADV Statewide Needs Assessment included “listening sessions” with 18 survivors. The report notes that during discussion about courts, survivors were concerned with how their “lack of economic or social status will impact the outcomes of their cases”. Survivors also noted a “lack of training on domestic violence among judges and how this results in abusers being allowed to use the court system to control survivors.”³⁰⁷

Amnesty international researchers heard examples from representatives of organizations working with survivors about how judges’ personal beliefs and stereotypes sometimes negatively influence their treatment of survivors in court. One representative told Amnesty International about a judge whose personal beliefs resulted in the judge making inappropriate statements about victims who were not married to their abuser and blaming them for the abuse. Amnesty International heard of a case where a judge granted a protective order but told the victim in court that she was exaggerating the abuse. The victim was later killed by the abuser.³⁰⁸

Another advocate working with survivors in a different part of Louisiana told Amnesty International that a hearing officer in one parish was “really judgmental” about survivors based on what they were wearing. She said that this hearing officer liked to be seen as a judge, so he regularly failed to inform survivors that they had the right to appeal his recommendations and have the case decided by the judge.³⁰⁹

An attorney told Amnesty International that a hearing officer in one parish they worked in was highly suspicious of survivors of intimate partner violence and believed that more often than not people tried to manipulate the system and exaggerate the abuse.³¹⁰ Representatives of another organization working with survivors said that in one of the parishes they cover judges had patriarchal ideas that a victim can protect herself if she does everything right. Those judges tended to order survivors of intimate partner violence, not the abuser, to undertake parenting classes or drug treatment or counselling.³¹¹

3.2.9 PROTECTIVE ORDERS AND FIREARM TRANSFERS

Some organization supporting survivors told Amnesty International that they were worried the new procedure to remove firearms from those prohibited due to having a protective order against them would have a negative impact on the willingness of some judges to grant protective orders. They reported that after the legislature introduced state laws prohibiting possession of firearms in 2015, some courts issued fewer protective orders. Organizations working in some rural parishes with a strong culture of gun ownership and hunting expressed fears that defendants now being required to transfer their firearms would have a bigger impact because some judges and hearing officers would grant fewer protective orders because they do not want people to have to surrender their firearms. Some representatives said that courts might start granting more mutual stay-away orders instead of protective orders because these do not have a firearm prohibition.

The firearm procedure is still new, only once LPOR data is available for 2019 will it be possible to see whether courts have issued significantly fewer protective orders. A representative of Faith House told Amnesty International that, since January 2019, judges in the parishes they work in have, to different extents, increased the level of evidence they require survivors to present before they will grant a protective order. She also said that in Lafayette, defendants are telling the court that they do not own firearms. Although the surrender procedure has been set up in those parishes, few firearms have been transferred.³¹² A representative of another organization supporting survivors told Amnesty International that the firearm transfers in Jefferson parish are happening; however, she said that, if the defendant does not attend the protective order hearing, the protective order needs to be served before the transfer process can occur. In cases where the Sheriff is unable to serve the protective order, the firearms are not transferred.³¹³

³⁰⁷ LCADV, State Needs Assessment, p. 65

³⁰⁸ Amnesty International meeting with organization supporting survivors, November 2018

³⁰⁹ Amnesty International meeting with organization supporting survivors, November 2018

³¹⁰ Amnesty International meeting with attorney, January 2018

³¹¹ Amnesty International meeting with organization supporting survivors, May 2018

³¹² Amnesty International meeting with Faith House, July 2019 and follow up correspondence

³¹³ Amnesty International meeting with organization supporting survivors, July 2019

DATA ON PROTECTIVE ORDERS

The Louisiana Protective Order Registry keeps data on the number of TROs, protective orders, and injunctions sent to the registry by each court each year. However, one individual can have two or three TROs before a protective order is issued and the LPOR data counts court orders, so each TRO is counted separately. The LPOR does not track the number of individuals granted a TRO or protective order in each parish.

Individual courts in Louisiana do not systematically keep data on numbers of individuals applying for TROs, numbers of individuals who receive a TRO, numbers of individuals who are granted a protective order and numbers of individuals whose protective order is rejected. Amnesty International contacted the clerk of court in 31 parishes to request information on the number of hearings, held in 2017 to decide protective orders, under legal provisions on domestic abuse. Amnesty International also asked how many of those protective orders were granted and how many were rejected. Eight parishes did not respond. Only one of those who replied was able to provide the requested information. The most common response was that someone would have to manually look through all the files to count the number of cases and this was too time consuming.

3.2.10 INADEQUATE OVERSIGHT AND REMEDIES

Judges have enormous power; an erroneous decision can have serious consequences for a victim's safety. For example, a decision to refuse a protective order may embolden an abuser and make a victim less likely to trust the authorities. A survivor of intimate partner violence has few options to seek a remedy when they believe a case has been handled incorrectly. If a hearing officer recommends a protective order application be rejected, the survivor can appeal to a judge. If a judge refuses to grant a protective order, the survivor has no right of appeal.

There is a process under which individuals can make a complaint against judges or individuals who perform judicial functions such as hearing officers; however, it is limited to considering violations of the Code of Judicial Conduct or the Louisiana constitution. The Judiciary Commission of Louisiana is responsible for this process. The Commission does not have the power to "evaluate a judge's ruling -- even if that ruling is wrong -- if the judge has not engaged in any misconduct". It also warns that not "all violations of the Code of Judicial Conduct are sufficiently serious to warrant discipline". The Judiciary Commission receives and screens complaints. If the Commission decides the complaint meets its criteria, it is sent to the judge for their response. Following receipt of the response the Commission decides whether to close the complaint or conduct an investigation. Sometimes evidence is presented to a hearing officer. The Judiciary Commission then decides whether to provide guidance, a caution or admonishment to a judge in the form of a "counselling letter", make an agreement with the judge to defer recommending disciplinary action on condition that the judge change their behavior, or send its recommendations on disciplinary action to the Supreme Court. The process can take anywhere from 19 months to three years.³¹⁴

The Judiciary Commission received 543 complaints in 2018 and "screened out" 60% of the complaints.³¹⁵ When a complaint is screened out, no action is taken, and the judge is not informed about the complaint.³¹⁶ Of the 216 complaints the Commission reviewed in 2018, it initiated an investigation in 56 cases. Few complaints get to the stage of the Commission holding a hearing. In 2018 the Commission filed six "notices of hearing" against four judges and two justices of the peace. One hearing was held. The Judiciary Commission "did not file any recommendations for judicial discipline" with the Supreme Court in 2018 but it did file three "interim disqualifications".³¹⁷

Complainants are informed if their complaint is screened out. If the complaint is investigated but not sent to the Supreme Court, the complainant is informed that the file has been closed. A complainant may appeal a decision to screen out their complaint; however, there is no right for a complainant to appeal the decision of the Judiciary Commission to close the complaint. Only complaints which are sent to the Supreme Court are made public.³¹⁸ Less than 1% of total complaints submitted in the five years up to 2018 reached the Supreme Court and were made public.³¹⁹

³¹⁴ See https://www.lasc.org/la_judicial_entities/judiciary_commission.asp

³¹⁵ See https://www.lasc.org/press_room/annual_reports/reports/2018_Annual_Report.pdf+&cd=1&hl=en&ct=clnk&gl=uk

³¹⁶ See www.lasc.org/la_judicial_entities/JCL_FAQ.asp+&cd=4&hl=en&ct=clnk&gl=uk

³¹⁷ See https://www.lasc.org/press_room/annual_reports/reports/2018_Annual_Report.pdf+&cd=1&hl=en&ct=clnk&gl=uk

³¹⁸ See www.lasc.org/la_judicial_entities/JCL_FAQ.asp+&cd=11&hl=en&ct=clnk&gl=uk

³¹⁹ See https://www.theadvocate.com/baton_rouge/news/courts/article_56cceb18-b3ad-11e9-9946-e7afe5a9c1a4.html?1565494810539

4. POLICING

“She was so scared of him... And when she called [the police], she ended up going to jail. We didn’t understand why she would always go to jail.”

Kavonna talking about her sister, April, who was shot and killed by her ex-boyfriend in 2018³²⁰

INTIMATE PARTNER VIOLENCE IS UNDER-REPORTED

Organizations and legal advocates working with survivors of domestic violence across Louisiana consistently told Amnesty International there is often a reluctance on the part of people who experience violence to call the police because of a lack of trust that the police will help them.³²¹ Survivors who spoke to Amnesty International mentioned fear of what their abuser would do and embarrassment about what people would think as reasons why they did not call the police.

“There were no recorded or documented police incidents during our marriage, although there could have been. We had these neighbors across the street that always had the police at their house and it’s just such a taboo thing; the neighbors think you’re a mess when the police are at your house.”

Brandie, who was married to her abusive husband for 15 years and called the police about his stalking her after she left.³²²

Representatives of organizations working with survivors said that an additional barrier to Black women and LGBTI individuals calling the police is fear that they will not receive a fair or helpful response: Amnesty International heard repeatedly that Black women only call the police if they think they are going to be killed.³²³ Although they want the violence they are experiencing to stop, frequently Black women do not want their partner to be arrested because it will have a greater negative impact on them, and their family. They may also believe that racist stereotypes among officers will mean the police will fail to take them seriously.

“There are many factors that prevent African-American women from reporting or leaving abusive partners. Because her partner is also a “victim” of a racist system, some African-American women may see their abuser’s behavior as a display of anger stemming from their frustration of living in such a society. African-American women may also feel a sense of racial and cultural “loyalty” to hold their families together, even if it means staying in an abusive relationship”.

UN Special Rapporteur on violence against women after her visit to the US in 2011³²⁴

Representatives of organizations working with LGBTI individuals also told Amnesty International that people in same-sex relationships and Trans individuals are less likely to call the police because of fear of a homophobic response by the police.³²⁵ Undocumented survivors of violence fear calling the police in case it

³²⁰ Interview with Amnesty International, November 2018

³²¹ Amnesty International meetings with organizations working with survivors, January, May and November 2018

³²² Interview with Amnesty International, November 2018

³²³ Amnesty International meetings with Women with a Vision, January 2018, attorney working with LGBTI survivors, January 2018, call with LGBTI organization.

³²⁴ UN Special Rapporteur on Violence against Women, mission to the USA, A/HRC/17/26/Add.5, 2011, para. 54
<https://undocs.org/A/HRC/17/26/Add.5>

³²⁵ Amnesty International meeting with attorney working with LGBTI individuals

results in police referring them or their partner to Immigration and Customs Enforcement (ICE) and their being deported.³²⁶ Organizations working in rural parishes told Amnesty International that in small towns and rural areas survivors are reluctant to call the police because they know the officers who will respond, and they do not want everybody in the community knowing what is happening. Survivors whose abuser is a police officer, or a former police officer, are reluctant to report because they do not believe their complaint will be taken seriously by officers their partner works with and knows well. Likewise, survivors whose abuser is influential in the local area, fear their abuser will use those connections to avoid accountability.³²⁷

4.1 LACK OF COMPREHENSIVE POLICIES

There is no state-wide policy or set of best practices guiding the way that law enforcement agencies in Louisiana respond to intimate partner violence. Law enforcement agencies are not required to have such policies or guidelines.³²⁸ The Louisiana legislature has passed some laws which specify when officers are required to make an arrest and when they may use their discretion to decide whether, or not, to make an arrest; however, this is only one element of the response. Without clear policies, how cases of intimate partner violence are handled depends on individual officers. Good practices are not institutionalized and can be lost with changes in personnel at an agency.

The International Association of Chiefs of Police, a professional association for police leaders which conducts research, advocacy and training, recommends that law enforcement agencies develop policies which are tailored to their communities. The objectives of the policy on responding to intimate partner violence should include: “Identify procedure and practice guidelines for a victim-centered, multidisciplinary response to intimate partner violence cases and thorough investigation of this crime; Articulate the significant role and responsibilities of all department members; Highlight methods to minimize further physical and psychological trauma to victims of intimate partner violence by creating a respectful, objective response; Identify strategies to identify the predominant aggressor and hold suspects accountable by keeping the investigation focused on their behavior and actions”.³²⁹

The Louisiana Commission on Law Enforcement and Administration of Criminal Justice (LCLE) has responsibility to “improve the operations of the criminal justice system” and “promote public safety by providing progressive leadership and coordination”.³³⁰ LCLE is composed of 58 people who hold senior positions within the police, prosecution or courts in Louisiana.³³¹ While the LCLE provides guidance to law enforcement agencies, a representative told Amnesty International that it “does not have any authority to ensure compliance with Louisiana law”.³³² Any additional policies or guidelines are decided at a local level and are specific to that agency.³³³ The only law enforcement agency in Louisiana which is required to have an internal policy on domestic violence policing is the NOPD; this requirement comes from a Federal Consent Decree (see box).

³²⁶ Amnesty International meetings with organizations supporting survivors, January, May and November 2018

³²⁷ Amnesty International meetings with organizations supporting survivors, January, May and November 2018

³²⁸ Amnesty International meetings with the Louisiana Commission on Law Enforcement and the LCADV, November 2018

³²⁹ International Association of Chiefs of Police, Intimate Partner Violence Response Police and Training Content Guidelines, p.2 <https://www.theiacp.org/sites/default/files/all/-j/IACPIntimatePartnerViolenceResponsePolicyandTrainingGuidelines2017.pdf>

³³⁰ See <http://lcle.la.gov/index.asp>

³³¹ See <http://lcle.la.gov/commission.asp>

³³² Amnesty International meeting with the LCLE, November 2018 and follow up correspondence, September 2019.

³³³ Amnesty International meeting with LCLE, November 2018

FEDERAL OVERSIGHT OF THE NEW ORLEANS POLICE DEPARTMENT

Following an investigation by the US Department of Justice (DOJ) into alleged civil rights violations by NOPD, the DOJ issued a report in March 2011 that found “a number of patterns or practices of unconstitutional conduct” and outlined concerns with some NOPD policies and practices. In July 2012, the DOJ, NOPD and the city of New Orleans agreed a “Consent Decree” through which NOPD undertook “to fundamentally change the way it polices throughout the New Orleans Community”, including by implementing new policies, training and practices throughout the department.³³⁴ The Consent Decree means that, unlike any other Parish, NOPD policies are publicly available and they are required to collect and publish some data. The implementation of the Consent Decree is overseen by the Consent Decree Monitor, a team of court-appointed people with experience in law enforcement.³³⁵

In the Consent Decree, NOPD committed to a series of reforms which included ensuring “policing free of gender bias”. In a section on “domestic violence”, NOPD undertook to ensure that it: has policies and procedures providing “clear and detailed guidelines” for every stage of NOPD’s response; works closely with community organizations; provides a range of relevant training to officers; and publishes data on arrests and whether the charges are accepted by prosecutors.³³⁶



LETHALITY ASSESSMENT TOOL FOR LAW ENFORCEMENT OFFICERS

In 2003 the Maryland Network Against Domestic Violence developed the Lethality Assessment Program as a tool for first responders to identify victims of intimate partner violence who were most at risk of being killed. It includes a set of 11 screening questions that officers ask victims when they respond to cases of intimate partner violence. An answer of ‘yes’ to any of the first three questions results in the officer automatically referring the survivor to an organization specializing in domestic violence. Answering ‘yes’ to four of the remaining questions also results in referral by the officer. Officers warn victims with high risk scores and may refer survivors who they believe are in danger even if they did not answer ‘yes’ to the questions.³³⁷ The Lethality Assessment Program is federally VAWA-funded and provides training around the country on lethality assessment.

A 2014 evaluation of the program in Oklahoma found that it appeared to reduce the severity and frequency of the violence experienced by survivors and increased safety planning and seeking help. Women who had participated in the program (i.e. police had conducted the lethality assessment with them at the scene of an incident and offered referral to services) were more likely to remove or hide their partner’s weapons, make safety strategies with friends or family and to obtain formal services for domestic violence.³³⁸

The NOPD Operations Manual chapter on domestic violence is publicly available. It is broadly in line with IACP policy guidelines. The NOPD requires officers to ask victims of domestic violence four specific questions to assess the risk they face.³³⁹ The questions are not the same as those in the Maryland lethality assessment.

Some other law enforcement agencies in Louisiana have developed their own policies or guidelines on aspects of domestic violence policing which go beyond that mandated in Louisiana law. One of these is the Chitimacha tribal police. The policy was developed by an officer in the tribal police who had experienced domestic violence herself and it has been in use since 2015. It includes the 11 risk questions in the Maryland lethality assessment protocol that officers are required to ask the victim and any children in the

³³⁴ US District Court, Eastern District of Louisiana, Amended and Restated Consent Decree Regarding the New Orleans Police Department, p. 1-2 <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/2018-03-15-Amended-and-Restated-NOPD-Consent-Decree-CLEAN.pdf/>

³³⁵ See <http://nopdconsent.azurewebsites.net/about-us>

³³⁶ New Orleans Consent Decree, p.58-60 <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/2018-03-15-Amended-and-Restated-NOPD-Consent-Decree-CLEAN.pdf/>

³³⁷ See <https://mnadv.org/mnadvWeb/wp-content/uploads/2018/04/Lethality-screen.pdf>

³³⁸ Messing et al, Police Departments’ Use of the Lethality Assessment Program: A Quasi-Experimental Evaluation, 2014, <https://nij.gov/topics/crime/intimate-partner-violence/Pages/how-effective-are-lethality-assessment-programs-for-addressing-intimate-partner-violence.aspx>

³³⁹ See <http://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-42-4-Domestic-Violence.pdf/>

house as well as five additional questions. The Chitimacha policy contains guidance for officers on when and how to refer the victim to specialist services and specific information on safety planning for officers to give to victims.³⁴⁰

When asked about the existence of policies, most agencies who spoke to Amnesty International referred to the requirements specified in Louisiana law and said they did not know of any additional policies or guidelines. A representative of the East Baton Rouge police department told Amnesty International that most officers ask questions to assess risk but there is no standard checklist for them to use.³⁴¹

The Louisiana Coalition Against Domestic Violence (LCADV) conducted a survey of law enforcement agencies across Louisiana for its 2017 “Statewide Needs Assessment” report. Out of 283 agencies contacted, only 49 agencies (including city police departments, Sheriff’s offices and university police departments) responded; however, 27 of Louisiana’s 64 parishes had at least one agency that responded and 39 cities or towns were represented.³⁴² The survey asked whether the agency had “domestic violence policies, protocols, and written guidelines” on 19 different themes that are important to effective domestic violence policing. The responses showed that while most responding agencies had some policies, there were important practices for which many agencies lacked policies. The majority of responding agencies reported that they had policies, protocols or written guidelines on conducting investigations (68%), handling incidents when the alleged abuser is an employee of the agency (62%) and on making arrest decisions (61%). The topics on which the lowest percentage of agencies had policies, protocols or guidelines were responding to victims with disabilities (38%) and responding to strangulation (39%).³⁴³

4.2 TRAINING OF OFFICERS

“I heard a policeman say, “oh this is just a domestic violence case”. And he was not five feet from where I’m fighting for my life and my child was dead, so there wasn’t nothing “just” about it. So, when I recovered – I’m still recovering – but I spoke to the Sheriff Department and I asked them if they would consider doing a sensitivity training as part of the training of the police officers because there’s nothing “just” about this.”

Elizabeth, whose husband shot her in the face and shot and killed her 18-year-old daughter, India, in St Bernard Parish in 2009³⁴⁴

The Peace Officer Standards and Training (POST) Council is a body within the Louisiana Commission on Law Enforcement. It is responsible for “developing and evaluating the curriculum of mandatory basic training courses” for officers, establishing minimum requirements for instructors and accrediting training centers.³⁴⁵ The POST Council makes recommendations on the content of training for approval by the LCLE. The Council is made up of twelve members, including Sheriffs, District Attorneys, Chiefs of Police and the Attorney General. The Governor of Louisiana appoints eight of the POST Council members.³⁴⁶ During the period of Amnesty International’s research, all POST council members were men.³⁴⁷

The POST program manager within the LCLE, who is responsible for supporting the POST Council, told Amnesty International that they have a group of “master instructors” to develop the curriculum and training for officers. “Master instructors” have at least two years’ experience as a police officer and two years’ experience as an instructor, as well as expertise on a range of relevant issues. The manager also told Amnesty International that depending on the subject, the “master instructors” bring in other people with law enforcement expertise related to that issue to assist them and they sometimes bring in experts on the issue from outside law enforcement. The “master instructor” group prepare a draft of the curriculum, it is reviewed by LCLE staff, revised by the group and submitted for final approval by the POST Council before being endorsed by the LCLE.³⁴⁸ The IACP has produced detailed recommendations on the content of training on intimate partner violence for officers. These include different suggestions for training tailored to those answering emergency 911 calls, the officers first on the scene, investigators and supervisors.³⁴⁹ Amnesty

³⁴⁰ Amnesty International meeting with Chitimacha Tribal Police, May 2018

³⁴¹ Amnesty International meeting with East Baton Rouge Police Department, November 2018

³⁴² LCADV, Statewide needs assessment, p.16-17

³⁴³ LCADV, Statewide needs assessment, p.47-48

³⁴⁴ Interview with Amnesty International, November 2018

³⁴⁵ See <http://lcle.la.gov/programs/post.asp>

³⁴⁶ Amnesty International meeting with LCLE, November 2018

³⁴⁷ See <http://lcle.la.gov/programs/postcouncil.asp>

³⁴⁸ Amnesty International meeting with LCLE, November 2018

³⁴⁹ See <https://www.theiacp.org/resources/document/intimate-partner-violence-response-policy-and-training-content-guidelines>

International asked LCLE the extent to which the master instructor group refer to IACP documents and was told that “all resources are considered when developing training on domestic violence”.³⁵⁰

The POST Council basic training for new officers requires them to complete a total of 496 hours of training, including 65 hours of “firearms proficiency practice”, eight hours of first aid and 24 hours on a variety of aspects of investigations. Twelve hours training is required on “domestic and family matters”, including eight hours on domestic violence. New officers also receive three hours training on “standards of conduct”, one hour on “legal and moral responsibilities” associated with firearm use, and six hours on “bias policing recognition”.³⁵¹ LCLE staff told Amnesty International that most police training academies in Louisiana provide 600 hours of basic training instead of the minimum and that, under the Consent Decree, new recruits to NOPD must undergo 1500 hours training.³⁵²

The LCLE told Amnesty International that, although tribal police are governed by federal law and are not required to meet state standards, tribal police departments do participate in POST training.³⁵³ The Chief of the Chitimacha tribal police explained that they have a contract with the Bureau of Indian Affairs and to receive that funding, officers in the tribal police must be POST trained. The Chief is also a member of the POST Council responsible for developing training. Tribal officers also participate in training run by the DOJ.³⁵⁴

The LCLE designed curriculum on domestic violence is “scripted” which, the LCLE told Amnesty International, means that all recruits receive the same minimum information.³⁵⁵ Law enforcement agencies have the jurisdiction to require officers to receive additional training above the minimum requirements. For example, the Lafourche Parish Sheriff’s Office told Amnesty International that Lafourche has its own training academy. An officer specializing in domestic violence conducts five days of training, totaling 40 hours, for new recruits.³⁵⁶ NOPD’s specialist domestic violence detectives must receive “no fewer than 32 hours, and ongoing annual in-service training”.³⁵⁷ The supervisor of the NOPD Domestic Violence Unit is responsible for providing the training.³⁵⁸ Academies are required to report the additional training they provide to the POST program.³⁵⁹

Once qualified, officers are required to complete 20 hours of annual in-service training. This is made up of eight hours of firearms training, two hours of legal updates, four hours on “officer survival” and six hours of “electives”. When there have been changes to Louisiana laws on domestic violence, officers receive the information under the legal updates training.

In 2018, the Louisiana legislature passed a bill which enhanced training requirements for all officers. The bill made it mandatory for officers to receive training on the dynamics of domestic violence, identifying the “predominant aggressor”, effects of trauma on victims, strangulation, “evidence-based investigation methods”, enforcement of protection orders, and applicable state and federal domestic violence laws.³⁶⁰ LCLE told Amnesty International that there are five modules that cover topics such as “basic safety techniques, interview skills, evidence collection, responding to calls, making the arrest decision” and that responsibility for ensuring all existing officers receive the required training lies with the training coordinator in each agency.³⁶¹

“Trauma-based interviewing techniques are critical for investigators. Trauma can look like deception if you haven’t had the training to recognize it. Investigators need to be aware of how trauma affects memory and then take straightforward victim reports rather than adding their own perspectives.”

Wendy Keilty-Reyes, Lieutenant, Oakland County (Michigan) Sheriff’s Office at the Police Executive Research Forum Roundtable on Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence³⁶²

³⁵⁰ Amnesty International correspondence with LCLE, September 2019

³⁵¹ Amnesty International meeting with police departments, May and November 2018

³⁵² Amnesty International meeting with LCLE, November 2018

³⁵³ Amnesty International meeting with LCLE, November 2018

³⁵⁴ Amnesty International meeting with Chitimacha Tribal Police, November 2018

³⁵⁵ Amnesty International meeting with LCLE, November 2018

³⁵⁶ Amnesty International meeting with Lafourche Parish Sheriff’s Office, May 2018

³⁵⁷ New Orleans Consent Decree, p.60 <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/2018-03-15-Amended-and-Restated-NOPD-Consent-Decree-CLEAN.pdf/>

³⁵⁸ See <https://www.nola.gov/getattachment/NOPD/Policies/Domestic-Violence-Unit-Standard-Operating-Guidelines.pdf/>

³⁵⁹ Amnesty International meeting with LCLE, November 2018

³⁶⁰ Act 495, 2018, <http://www.legis.la.gov/legis/ViewDocument.aspx?d=1102015>

³⁶¹ Amnesty International correspondence with LCLE, September 2019

³⁶² Police Executive Research Forum, Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence, 2016, p.19, <https://ric-zai-inc.com/Publications/cops-w0796-pub.pdf>

When the LCADV surveyed law enforcement agencies, it asked whether “all or most” officers had received training on a list of topics relevant to responding to intimate partner violence. 87.5% of responding agencies reported that “all or most” officers had received training on “domestic violence dynamics”, with the majority of agencies also reporting “all or most” officers trained on “determining predominant aggressor” (75%), assessing the likelihood that the offender poses a serious threat to the victim” (71%), and “informing victims of their rights” (71%).³⁶³

Fewer than 60% of responding agencies reported that “all or most” of their officers had been trained on “how to effectively communicate with domestic violence victims” and on “the need to document ongoing patterned behavior of the abuse in police reports”. Only 55% reported “all or most” officers had received training on “firearm restrictions in domestic violence cases” and 44% on “how to construct an evidence-based case that does not require victim testimony”.³⁶⁴

Organizations supporting survivors of intimate partner violence told Amnesty International that they are sometimes invited to speak at training events for officers. One said that they were invited to train officers on what services they provide so that officers are able to refer survivors to them for assistance.³⁶⁵ Another said that she had been invited to present at an officer training event, but the officer leading the training undermined her and reinforced victim-blaming attitudes by saying “if you get a call to my house, you know she didn’t listen first time” as he introduced her.³⁶⁶

4.3 PROBLEMS IN PRACTICE

4.3.1 OFFICER LACK OF UNDERSTANDING OF THE LAW

The lack of comprehensive protocols or guidelines for all police officers to follow and differing levels of officer training and of priority given to cases of intimate partner violence by different law enforcement agencies means that many agencies are, at best, not using the most up-to-date best practices and, at worst, misunderstand the law, resulting in them acting in ways that harm survivors.

Most of the organizations providing support to survivors work across multiple parishes. Representatives of these organizations told Amnesty International that they see different approaches in the parishes they cover, including widely varying responses in neighboring parishes or between towns and rural areas. Crystal Scrantz of Faith House said that within several of the parishes they worked on, officer sensitivity towards survivors of intimate partner violence varied between law enforcement agencies; for example the city police department and the Sheriff’s office, so survivors living inside and outside the city could receive significantly different responses.³⁶⁷ The director of another service provider said that the quality of the police response, including the sensitivity of officers when interacting with survivors, in one parish was significantly better than the neighboring parish because of differences in officer training.³⁶⁸ Another said that for small law enforcement agencies with only a few officers, it was a challenge for them to keep up with all the changes in the law.³⁶⁹

“Emily” discovered that her husband had been taking “stalk-ish, weird pictures” of her without her knowledge or consent. Her attorney told her they amounted to video voyeurism and recommended she report it to the police. “Emily” told Amnesty International that, initially, the police did not recognize it as a crime because they were married. She said

“I had printed out every picture and I had the thumb drive and I had a stack of pictures. The police met with me in the hallway. I’m upset, it was in the hallway. They didn’t walk me into a room to speak with me, anything. “[The officer] had my stacks of pictures and she took the pictures and she says “so he’s your husband, right? You’re married to him”. I said “yes, we’re not divorced yet”. She walks down the hall and goes and shows all the male police officers all my pictures and they’re looking at all of them in front of me and I’m in the hallway. I can see them talking and she comes back and she says “yeah, I mean there’s nothing we can do, he’s your husband so you should just ask him to delete the pictures off of his phone”.”

³⁶³ LCADV, Statewide needs assessment, p.43

³⁶⁴ LCADV, Statewide needs assessment, p.43

³⁶⁵ Amnesty International meeting with organization supporting survivors, May 2018

³⁶⁶ Amnesty International meeting with organization supporting survivors, 2019

³⁶⁷ Amnesty International meeting with Faith House, November 2018

³⁶⁸ Amnesty International meeting with organization supporting survivors, May 2018

³⁶⁹ Amnesty International meeting with organization supporting survivors, May 2018

“Emily” had to call her attorney to come to the police station and insist that officers make an official report, so the report could be included in her application for a protective order.³⁷⁰

Officers from one small city police department told Amnesty International that they wanted to be able to arrest survivors of violence for violating their protective orders.³⁷¹ Although they understood that survivors cannot be arrested for contacting or going near the defendant named on their protective order, that officers believe a protective order applies to a survivor as well as the defendant indicates a misunderstanding of the law and a gap in their training. In a protective order, the court instructs the individual named as the defendant to refrain from certain acts; those instructions do not apply to the victim named on the order. This misunderstanding of the law also highlights a lack of understanding of the power and control dynamics of intimate partner violence and the many different reasons why a survivor may have to, or want to, contact the defendant.

4.3.2 GENDER STEREOTYPES MAY INFLUENCE POLICE RESPONSE

“There were four male police officers. They treated me like a delusional, hysterical, uncooperative person because I didn’t want to repeat what I had said four times in front of four different males.”

Kirby, who called the police after her ex-husband broke into her house, sexually assaulted her, and tried to strangle her in front of her daughter³⁷²

Police officers are part of the societies they serve and can hold the same stereotypes and misconceptions about intimate partner violence that are prevalent throughout society. Officers bring their life experiences into their work – both positive and negative – and their conscious and unconscious bias. The Louisiana legislature has recognized the impact of “societal attitudes” on the “policies and practices of law enforcement agencies”.³⁷³

Patriarchal notions of male dominance and women’s subservience remain entrenched across the US, and Louisiana is no exception. The male-dominated Louisiana legislature has been slow to change discriminatory legal provisions. Leadership of law enforcement in Louisiana remains male dominated. The Louisiana Secretary of State has a database of elected officials. This has gender and race information on all officials. Of 64 Sheriffs in Louisiana, no women are listed. 57 are described as White Male, 5 are described as Black Male, two have no demographic information and one is listed as vacant.³⁷⁴

Experts on intimate partner violence consistently told Amnesty International that many police officers do not see intimate partner violence as a serious problem because it is so normalized in society. Several experts said that many male officers do not take intimate partner violence seriously because they treat the women in their lives the same way.³⁷⁵ A database of more than 10,000 arrests of police officers from 2005 – 2014 contains information on 1,440 known cases coded “Domestic/Family Violence” in the US. 41 of those cases (2.85%) were from Louisiana. Louisiana constitutes 1.47% of the US population.³⁷⁶

Experts who spoke to Amnesty International mentioned some pernicious myths about intimate partner violence – manipulative women lying about abuse to get men into trouble, beliefs that if the abuse was as bad as a woman said, then she would have left the relationship already, that it is not “real domestic violence” it is just women having a “mad day”, getting angry and calling the police. These myths, which exist within society and institutions, can contribute to officers failing to respond appropriately to intimate partner violence.

Police failure to take intimate partner violence seriously can lead to fatal consequences for officers as well as harm to the abused partner. In June 2015, an NOPD officer was killed after another officer had failed to take seriously a woman who called for help after her husband had fired a shot at her. NOPD officer Wardell Johnson arrested Travis Boys; however, he failed to conduct a thorough search of him. Another officer, Daryle Holloway, was driving Boys to the police station when Boys pulled the gun he had concealed and shot

³⁷⁰ Interview with Amnesty International, May 2018

³⁷¹ Amnesty International meeting, November 2018

³⁷² Interview with Amnesty International, November 2018

³⁷³ La R.S. 46:2131, the law establishing protective orders states “The legislature further finds that previous societal attitudes have been reflected in the policies and practices of law enforcement agencies and prosecutors which have resulted in different treatment of crimes occurring between family members, household members, or dating partners and those occurring between strangers.”

³⁷⁴ See <https://voterportal.sos.la.gov/electedofficials> Data correct as of October 9th, 2019

³⁷⁵ Amnesty International meetings with organizations working with survivors and organizations working on the criminal justice system, January, May and November 2018

³⁷⁶ See <https://policecrime.bgsu.edu/Home/Crimes#>, population data from <https://www.census.gov/quickfacts/fact/table/LA,US/PST045218>

Holloway who then crashed the vehicle.³⁷⁷ Boys was convicted of Holloway's murder. An investigation into the incident reported that body worn camera footage showed responding officers acted with disregard for the victim of intimate partner violence who made the original call; they failed to make eye contact with her, acted distracted when she was talking, and did not pay attention to her obvious fear.³⁷⁸ In October 2015, Johnson pled guilty to obstruction of justice. During sentencing, the judge noted that he had at least two complaints against him relating to poor handling of evidence in domestic violence cases. In court Johnson had said he thought the incident was a "domestic quarrel" and that "when people get mad, women get mad, and all of a sudden they make up stories saying this happened".³⁷⁹

Susan Hutton, the New Orleans Independent Police Monitor, told Amnesty International that male police officers sometimes identified with male abusers and tended to believe that a woman alleging domestic abuse was just trying to get her partner into trouble. She said the Monitor had seen three or four complaints in a row involving domestic violence cases in which the NOPD officers had failed to ask the four risk questions and had instead put their own answers to the risk questions in the form officers have to complete.³⁸⁰

Another problem experts described was a lack of understanding by police officers of how fear and trauma can influence the behavior of survivors of intimate partner violence. When officers arrive at the scene, they frequently find the survivor distressed and sometimes behaving erratically as a result of what has happened to them, while the alleged abuser is calm and more prepared to talk to the police. Survivors of intimate partner violence interviewed by Amnesty International frequently described their abusers as "charming" and "manipulative". Many survivors said that their abuser had a history of abusing others. Experts on intimate partner violence told researchers that often abusers know what to say to police officers to minimize the seriousness of the incident, especially if they have a history of abusive behavior.³⁸¹ Alternatively, fear and/or relief at the violence being interrupted may result in survivors feeling angry rather than distressed and police, expecting a "real victim" to be distressed, may not recognize an angry survivor as someone who requires their help. A US Department of Justice report summarizing research on domestic violence to provide advice and recommendations to law enforcement notes that research estimates that up to 88% of women staying in domestic violence shelters have PTSD and that 72% of abuse sufferers experience depression. It highlighted that the most traumatized victims behave the least like officers expect them to and may be the least able to cooperate with the police.³⁸²

"Individual bias will operate where there is a vacuum of strong policy, leadership, and accountability."

Kimberly Lonsway, Director of Research, End Violence Against Women International, at the Police Executive Research Forum Roundtable on Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence³⁸³

The US Department of Justice guidance document on preventing gender bias in policing notes that:

"Gender bias, whether explicit or implicit, conscious or unconscious, may include police officers misclassifying or underreporting sexual assault or domestic violence cases, or inappropriately concluding that sexual assault cases are unfounded; failing to test sexual assault kits; interrogating rather than interviewing victims and witnesses; treating domestic violence as a family matter rather than a crime; failing to enforce protection orders; or failing to treat same-sex domestic violence as a crime".³⁸⁴

The guidance sets out principles for avoiding and overcoming gender-bias that the DOJ encourages law enforcement agencies to integrate into clear policies, training and supervision.

Under human rights law, authorities have the obligation to prevent discrimination by state actors, including police officers, and to eliminate discriminatory attitudes and stereotypes among officials and the public.³⁸⁵

³⁷⁷ See https://www.nola.com/crime/2015/06/new_orleans_police_officer_fat.html

³⁷⁸ New Orleans Office of the Independent Police Monitor notes of the Use of Force Review Board hearing relating to the shooting of officer Daryle Holloway, 11 August 2016, provided to Amnesty International through public records request.

³⁷⁹ See https://www.theadvocate.com/new_orleans/news/courts/article_dd6edd0e-3f21-11e8-9c24-c35fbadb2cc9.html

³⁸⁰ Amnesty International meetings with IOPM, November 2018 and July 2019

³⁸¹ Amnesty International meetings with organizations supporting survivors, January, May and November 2018

³⁸² Klein, A. *Practical Implications of Current Domestic Violence Research: for Law Enforcement, Prosecutors and Judges*, p.30-31, <https://www.ncjrs.gov/pdffiles1/nij/grants/222319.pdf>

³⁸³ Police Executive Research Forum, Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence, <https://ric-zai-inc.com/Publications/cops-w0796-pub.pdf>

³⁸⁴ Department of Justice, Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence, 2015, p.3 <https://www.justice.gov/opa/file/799366/download>

³⁸⁵ See for example, ICCPR Articles 3 and 26, and CEDAW, Art. 5

4.3.3 ARRESTS OF SURVIVORS OF INTIMATE PARTNER VIOLENCE

“I got restraining orders. I’m going to the courthouse crying for protection. He got arrested a lot of times. But they’d arrest him for a day or two or three and they let him right back out. That’s it. They didn’t do nothing to this guy until I did something. Why did it have to take for me to get myself in trouble for my voice to be heard?”

Tamika, experienced years of abuse from ex-partner and was arrested after an incident where she fired a shot in self-defense.³⁸⁶

Inadequate policies and training of officers can lead to survivors of violence being arrested at the same time as their abuser or, if police fail to recognize their acts of self-defense, instead of their abuser.

MANDATORY ARRESTS OR ARREST AT THE DISCRETION OF THE OFFICER?

Louisiana law requires an officer responding to domestic violence calls to make an arrest if the “abusing party” is in violation of a temporary restraining order, injunction, or a protection order. If there has been no violation of a temporary restraining order, injunction or protection order but the officer has reason to believe someone has been abused, the officer is required to “immediately use all reasonable means to prevent further abuse” including by making an arrest if there is probable cause to believe a felony has been committed or by arresting the “abusive party in case of any misdemeanor crime which endangers the physical safety of the abused person”. If the officer does not believe there is “impending danger”, arrest is at the officer’s discretion.³⁸⁷

When an officer “receives conflicting accounts of domestic abuse or dating violence, the officer shall evaluate each account separately to determine if one party was the predominant aggressor”. Louisiana law allows the officer to “consider any other relevant factors” but requires them to consider evidence from “complainants and other witnesses”, injuries received by each person, whether anyone acted in self-defense, imminent threat of future injuries, prior complaints of abuse, welfare of children and existence of a temporary restraining order, injunction or protection order.³⁸⁸

If there is a temporary restraining order, injunction or protective order, the officer is required to presume the person against whom the order was issued is the predominant aggressor and arrest them. The officer is required to arrest the person they determine to be the predominant aggressor in a felony offense. The officer is required to arrest the predominant aggressor in a misdemeanor offence, if the officer has reason to believe there is impending danger. If there is no reason to believe there is impending danger, arrest is at the officer’s discretion.³⁸⁹

Louisiana law requires officers to assist survivors of violence to obtain medical treatment and to inform them about available support services.³⁹⁰ Officers are also required to write a report about the incident whether or not they make an arrest. The report must include a “statement of the complainant, and the disposition of the case”.³⁹¹

Representatives from organizations working with survivors of intimate partner violence consistently told Amnesty International that there is a problem of police officers failing to determine the “predominant aggressor” resulting in a “dual arrest” – when officers arrest both the survivor of violence and the alleged abuser.³⁹² They said that the extent of the problem varied across the parishes they covered. In some areas, predominantly cities, representatives said that improved training of officers had resulted in fewer dual arrests; however, they told Amnesty International that dual arrests remained a significant problem in some areas. One representative told Amnesty International that in their interactions with officers across the state, some officers had informed them that the practice in their local areas was to “always arrest both” parties.³⁹³

In some states, officers are required by law to document their reasons for making a dual arrest in the report they prepare about the incident. For example, South Carolina law states “A law enforcement officer who arrests two or more persons for a crime involving domestic or family violence must include the grounds for arresting both parties in the written incident report, and must include a statement in the report that the

³⁸⁶ Interview with Amnesty International, November 2018

³⁸⁷ La R.S. 46:2140 A, and B <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2140/>

³⁸⁸ La R.S. 46:2140 C (1), and (2) (a-g)

³⁸⁹ La R.S. 46:2140 C (2)(g), C (3)(a), and 3 (b)

³⁹⁰ La R.S. 46:2140 B (3), B(4)

³⁹¹ La R.S. 46:2141

³⁹² Amnesty International meetings with organizations supporting survivors, January, May and November 2018

³⁹³ Amnesty International meetings with organizations supporting survivors, January, May and November 2018

officer attempted to determine which party was the primary aggressor pursuant to this section and was unable to make a determination based upon the evidence available at the time of the arrest”.³⁹⁴ In Louisiana, except for NOPD, there is no requirement for officers making dual arrests to document their reasons. NOPD requires officers to obtain approval from a supervisor before making a dual arrest and to document reasons in the incident report.³⁹⁵

In Louisiana, there is no state-wide data on the number of incidents of intimate partner or household violence which result in a dual arrest because there is no requirement for law enforcement agencies to keep records. Only New Orleans has data on dual arrests because, under the Consent Decree, “NOPD agrees to track dual arrests and domestic violence arrests by gender” and publicly report this information.³⁹⁶ Since 2015 the annual reports of the Consent Decree Monitor on “domestic violence” have given the number of incidents which resulted in a dual arrest. The figures in the reports do not distinguish between intimate partners other household members. The data is also not disaggregated by gender or race and ethnicity.

The Consent Decree Monitor reports that out of 2548 domestic violence incidents which resulted in an arrest in 2015, 20 incidents resulted in dual arrests (0.77%). In 2016 there were 2761 incidents that resulted in an arrest with 41 incidents of dual arrests (1.48%). In 2017, there were 2946 incidents which resulted in an arrest, and 45 incidents of dual arrests (1.5%). There were 2938 incidents which resulted in an arrest in 2018, of which 47 (1.6%) were dual arrests.³⁹⁷ The 2018 report notes that the way data is collected in some incidents counted as a dual arrest, the arrest may not have been for a domestic violence crime but for an “unrelated, non-domestic violation”.³⁹⁸ Amnesty International submitted a public records request to NOPD for copies of police reports relating to the incidents that resulted in a dual arrest in an attempt to understand the circumstances in which dual arrests occurred and the demographics of those arrested. NOPD responded that it would cost \$2,300 to access copies of the reports. Amnesty International chose to not pursue this route in light of the costs involved.

NOPD representatives told Amnesty International that numbers of dual arrests have reduced dramatically in the last 10 years and advocates working with survivors of intimate partner violence in New Orleans agreed. However, the only figures Amnesty International saw were the Consent Decree Monitor figures showing a small year on year increase in dual arrests since 2015. Amnesty International asked NOPD for historical dual arrest data; however, as of publication of this report the organization had not received a response.

A 2007 study using data from the National Incident-Based Reporting System (NIBRS) on arrests for assault and intimidation across 19 states (not including Louisiana) found that dual arrests occurred in 1.9% of cases involving intimate partners, a breakdown of the figures showed much higher rates of dual arrests in cases involving same-sex partners. Dual arrests occurred in 0.8% of cases involving a “female victim and male offender”, 3% of cases involving a “male victim and female offender”. In cases involving same-sex intimate partners, dual arrests occurred in 26.1% of cases where the victim and offender were listed as “both female” and 27.3% of cases listed as “both male”.³⁹⁹

Representatives of organizations working with survivors of intimate partner violence told Amnesty International that a survivor who calls the police for help and is arrested, whether on a domestic violence charge or on an unrelated charge, for example possession of drugs, will be deterred from calling the police again.⁴⁰⁰ Similarly, individuals who fear they may be arrested on a charge not related to domestic violence are unlikely to call the police if they experience violence from an intimate partner, for example, Louisiana’s laws criminalizing sex work, mean that sex workers have a real fear of arrest and are unlikely to call the police if they are a victim of intimate partner violence or any other crime.

³⁹⁴ SC Code § 16-25-70 (F), <https://law.justia.com/codes/south-carolina/2018/title-16/chapter-25/section-16-25-70/> See also: p.24-25 <https://www.ncjrs.gov/pdffiles1/nij/grants/218355.pdf>

³⁹⁵ NOPD Operations Manual, Chapter 42.4, Domestic Violence, p.13, <http://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-42-4-Domestic-Violence.pdf/>

³⁹⁶ New Orleans Consent Decree, p.60

³⁹⁷ The Consent Decree Monitor reports calculate the percentage of dual arrests out of all calls for services classified as “domestic”. The reports mention in a footnote that these include “domestic disturbance” calls which, between 2015 and 2018, made up 66%-68% of calls and “may not involve a crime”. By calculating the percentage of all calls for service rather than all calls which resulted in an arrest, the overall percentage of dual arrests appears lower. Domestic violence reports: 2015 <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/2015-DV.pdf/>; 2016 <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/DV-2016.pdf/>; 2017 <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/2017-dv-report.pdf/>; and 2018 <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/2018-Domestic-Violence-Annual-Report-Final.pdf/>

³⁹⁸ See Domestic violence report, 2018, footnote 2, <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/2018-Domestic-Violence-Annual-Report-Final.pdf/>

³⁹⁹ Hirschel et al, Explaining the Prevalence, Context, and Consequences of Dual Arrest in Intimate Partner Cases, 2007, p. 87 <https://www.ncjrs.gov/pdffiles1/nij/grants/218355.pdf>

⁴⁰⁰ Amnesty International meetings with organizations supporting survivors, May and November 2018

While arrests of survivors are sometimes part of a dual arrests, failure by the police to recognize acts of self-defense or to follow state law requirements to identify the “predominant aggressor” can result in police making one arrest – that of the survivor of intimate partner violence. One representative said that police often failed to identify acts of self-defense by victims of abuse. In her experience, women did not explicitly inform police that they had acted in self-defense and the police did not ask the right questions to enquire about self-defense, therefore they missed it.⁴⁰¹

Experts working with survivors of intimate partner violence in Louisiana consistently told Amnesty International that, in their experience, errors by police in identifying the predominant aggressor and failures to recognize self-defense by the survivor leading to wrongful arrests were more likely to occur in cases involving Black women and LGBTI individuals. They said that pernicious stereotypes about “angry Black women” meant that some police officers viewed acts of self-defense by Black women as criminal use of violence, even if the woman had serious injuries inflicted by her partner or ex-partner. Lawyers and representatives of support services told Amnesty International that if Black women had used a “power equalizing weapon” – a firearm or knife – to defend themselves, even if there was a long history of her being abused and she had not caused any injury to her partner or ex-partner, there was a risk that she would be charged with a more serious offence than her abusive partner or ex-partner.⁴⁰²

TAMIKA: ARRESTED AFTER FIRING A SHOT IN SELF DEFENSE NOPD OFFICERS INVESTIGATED FOR “NEGLECT OF DUTY”



Bourbon Street, close to where Tamika was arrested in 2016

© Amnesty International

By October 2016, Tamika had experienced years of stalking and abuse from her ex-boyfriend. She told Amnesty International that he “threatened to pour acid on me. He even kicked me out on the interstate, he choked me several times, bite marks, he’d bite me so hard, two times he bit plugs out of my body. He pulled a knife out on me. I got restraining orders. I called the police, maybe over 100 times. And they would never do nothing about it. I’ve changed my number 20 times and no matter how many times I change my number, he gets it”.

Police records show that they responded on five separate occasions between February and October 2016 to calls about his violating the protective orders Tamika had.⁴⁰³ Court records show that in July 2016 he was charged with offences including domestic abuse battery, domestic abuse battery involving strangulation and violation of protective orders, although the DA dropped the first two charges.⁴⁰⁴ Tamika told Amnesty International that she bought a gun to protect herself, but she did not get a concealed carry permit.

In October 2016, while there was an outstanding warrant on Tamika’s ex-boyfriend for a violation of protective orders that had occurred five days previously, Tamika was arrested and charged with crimes committed against him. Tamika told Amnesty International that she had been on a night out and it ended with him following her into a bathroom. She said:

⁴⁰¹ Amnesty International meetings with organizations supporting survivors, January and May 2018

⁴⁰² Amnesty International meetings with organizations supporting survivors, January May and November 2018

⁴⁰³ NOPD Public Integrity Bureau investigation, #2017-0556-R, provided to Amnesty International following a public records request

⁴⁰⁴ Orleans Criminal District Court docket master http://www.opcso.org/index.php?option=com_wrapper&view=wrapper&Itemid=738

“He punched me, and the blood went gushing and I could hardly see. I knew that I had the weapon that I shouldn’t have had, and I pulled it. I didn’t shoot at him, I shot in air. The Police arrested me without incident. They found the gun in my purse, and they just handcuffed me. They saw the blood and everything, and that’s all I can remember. Because I was pretty much almost blacked out and that’s where I got this scar, from him, across my head”.⁴⁰⁵

NOPD’s Public Integrity Bureau (PIB) investigated a complaint about Tamika’s arrest. It found a catalogue of failures by four officers, including that the officer who arrested Tamika failed to read her Miranda rights, failed to run a background check on Tamika’s ex-boyfriend which would have shown up the outstanding warrants and failed to get the name and contact details of one of the two witnesses. Another officer failed to obtain CCTV footage which an employee of the store told police was available and would show the incident. The incident took place in the cigar shop where Tamika’s ex-boyfriend worked. The PIB report highlighted that the officer who arrested Tamika wrote the wrong address for the shop on the incident report.⁴⁰⁶

The PIB report describes the footage on the body-worn cameras of the responding officers and the interviews the PIB investigator held with the four officers. The PIB report states that camera footage from one officer showed a witness saying that Tamika’s ex-boyfriend took her into the bathroom and when she came out, she had a “busted eye”, then Tamika threw an ashtray at him and he “fought her like a man”. The witness confirmed there was one shot and said after Tamika fired the shot, her ex-boyfriend ran out of the shop. Officers found the bullet embedded in the floor. One officer took Tamika to hospital to have her injuries treated. The PIB report describes body-worn camera footage of Tamika telling this officer she had been with her cousins on Bourbon Street when her ex-boyfriend approached her, swore at her and forced her to sit on a chair outside the cigar shop where he worked. She said that she’d told him she was going to use the bathroom and leave but he followed her to the bathroom, started beating her and she shot at him. The report also describes Tamika crying and saying that he had been following her, she had reported him and that nobody would listen to her.

Officers initially also arrested Tamika’s ex-boyfriend. The PIB report describes that, when interviewed by officers, he said Tamika came to his work demanding money he had won at the casino. He acknowledged being on probation for domestic abuse against Tamika. He said that she went to use the restroom and so did he. He said that when he left the restroom Tamika hit him with a metal object and shot at him twice. At the end of the interview, the first officer, who had arrested Tamika, told him that he would not go to jail and that he acted in self-defense.⁴⁰⁷

The PIB investigator interviewed the four officers involved in the incident. The investigator asked the officer who arrested Tamika and interviewed her ex-boyfriend why, when Tamika had told him that she was the victim of “a battery” by her ex-boyfriend, had he arrested her. The officer initially replied, “because the witness told me what happened”. The investigator reminded the officer that he had described in his written report events happening as he had been told them by Tamika’s ex-boyfriend and asked how he knew his statement was true. The officer did not have an answer. He also could not explain the discrepancy between the witness statement recorded on the body worn camera – that Tamika had a “busted eye” before she threw the ashtray – and what he wrote in the incident report – that the witness confirmed that Tamika had instigated the incident and struck first. The investigator noted that the police incident report written by the officer did not indicate whether the officer asked Tamika the four domestic violence “risk questions”. He could not remember whether he had asked the questions.

In an interview with both Sergeants, the investigator questioned them about the dual arrest. The PIB report states that each Sergeant said that the officers decided that Tamika violated her restraining order by going to her ex-boyfriend’s work and demanding money and that he told officers he walked away then she hit him with an ashtray. The report of the PIB interview does not contain information on whether the Sergeants were reminded that under Louisiana law, only individuals named as defendants on a restraining order can violate it, therefore Tamika, as a protected person cannot violate her own restraining order.

While the PIB investigation sustained five allegations of “neglect of duty” and “false or inaccurate reports” against the officer who arrested Tamika, four allegations of “neglect of duty” against a Sergeant and one allegation each against another officer and Sergeant, the PIB report noted that “there were no training, tactical and/or policy recommendations associated with this investigation at this time”.⁴⁰⁸

⁴⁰⁵ Interview with Amnesty International, November 2018

⁴⁰⁶ NOPD Public Integrity Bureau investigation, #2017-0556-R

⁴⁰⁷ NOPD Public Integrity Bureau investigation, #2017-0556-R

⁴⁰⁸ NOPD Public Integrity Bureau investigation, #2017-0556-R

The New Orleans Independent Police Monitor (IPM) reviewed the portion of the PIB investigation relating to the officer who arrested Tamika. The IPM recommended the officer receive training on domestic violence, and that NOPD revise its policies to ensure collection of evidence, such as photographs of injuries and surveillance footage, in domestic violence cases. They also highlighted concerns over confusion among officers about NOPD's dual arrest policy, and the importance of supervisors reviewing domestic violence reports, noting that, had the supervisor properly reviewed the report of Tamika's arrest, evidence might have been collected and mistakes corrected.⁴⁰⁹

Amnesty International asked NOPD what the agency had done to learn from the investigation. As of publication of the report, the organizations had not received a reply.

ARREST OF LGBTI SURVIVORS

Following the US Supreme Court decision in 2015 requiring all states to grant and recognize same-sex marriages the law on domestic abuse battery applied to same-sex spouses and former spouses. However, Louisiana's domestic violence laws have only applied to unmarried same-sex couples since 2017, when the legislature removed the discriminatory specification that couples be of the opposite sex from the definition of "household members" and introduced the law on battery of a dating partner.

Despite now being covered by the laws, problems remain with implementation of the laws. Officers responding to a domestic violence call involving a same sex couple may not be aware of the legal changes. Even when police are aware that legal protection from domestic abuse includes same sex couples, a lawyer with extensive experience of intimate partner violence cases who has represented LGBTI individuals told Amnesty International about common problems with the police response. He said that, when called to an incident involving a same-sex couple, police are more likely to fail to identify the intimate partner or domestic aspect of the case and, therefore, they are less likely to make an accurate determination of the predominant aggressor. This has led to both parties being arrested on a non-domestic "battery" charge and incarcerated in the same jail. Another problem he highlighted was that even when law enforcement recognized it was an intimate partner relationship, there was a tendency for them to fail to identify the predominant aggressor, and, for example, to follow prevailing gender stereotypes and arrest the most masculine presenting person in a Lesbian couple. In addition, he mentioned instances when police have mis-gendered Trans individuals and, as a result of mis-gendering, have not identified the violence as being between intimate partners. This means the police did not do a "predominant aggressor" assessment and arrested both parties.⁴¹⁰

THE IMPACT OF ARRESTS OF SURVIVORS

"Arresting the wrong party or both parties increases the likelihood that the offender will act again, and discourages the victim from reporting future incidents. Further, dual arrests often result in children being taken into the custody of child protective services and may diminish children's trust in law enforcement."

US Department of Justice, Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence⁴¹¹

⁴⁰⁹ OIPM letter to NOPD regarding PIB #2017-0556-R, April 2019, provided to Amnesty International through public records request

⁴¹⁰ Amnesty International meeting with attorney, January 2018

⁴¹¹ US Department of Justice, Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence, p.20, <https://www.justice.gov/opa/file/799366/download>

APRIL CHARLES: ARRESTED AFTER CALLING THE POLICE FOR HELP, RELUCTANT TO SEEK HELP FROM THE POLICE WHEN ABUSED SUBSEQUENTLY, AND WAS LATER KILLED⁴¹²



Purple silhouettes represent victims of intimate partner homicide. April has a silhouette in the office of domestic violence organization Chez Hope, alongside that of another victim who was also shot and killed just two weeks later.

© Amnesty International

In the years before April Charles was killed by her ex-partner, Kenneth Smith Jr, she was arrested and threatened with arrest after calling the police for help. April's sister, Kenvonna, told Amnesty International what happened the last time she was arrested. She said:

“One time I was [at April's house], and he was cursing. I [said] “please just stop, the kids are here”. And he said it wasn't my business. But then he [Smith] grabbed [April] and he started choking her. And I started hollering asking him to stop and he turned around and hit me. Then she called his Daddy to come and get him because she didn't want the police to come because she'd end up going to jail again. When his Daddy walked in, me and him were still fighting and his Daddy started hollering but he didn't stop hitting me, so she called the police. The police got there, and they ended up taking me outside because I was having a seizure. My mom brought me to the hospital and when we got back from the hospital after they checked me out, April was in jail. We didn't know why.

“The next day, we found out he cut himself up and went to the hospital and lied and said she did it. And that's why she ended up in jail. We tried to get her out. She tried to get out. She stayed in jail for a weekend, I think. It was a felony charge. I don't understand if he says she did it, but me and him were fighting, how she cut him up? And we were fighting. And that's what I don't understand because she never hit back. She was always scared; she'd never hit him back. She would always duck in a corner and that's how he was choking her. He was choking her in the corner, and I went to go grab him to try to stop him and he turns around and hit me. And all she did was call his Daddy for help because she was scared she'd go to jail. And she didn't want to go to jail and she still ended up going to jail for that.”

Court records show that April was arrested on 15 April 2015 and charged with domestic abuse battery and aggravated assault. In October 2015, April changed her not guilty plea to the original charges and pled guilty to an amended charge of simple battery. She was sentenced to 10 days in jail. Kenvonna also told Amnesty International that April had been threatened with arrest on a previous occasion she had called for help. She said, “one time she called, and they told her if she called again, both of them were gonna be arrested”.

Two months before Smith shot April, he was arrested. Kenvonna told Amnesty International:

“He kicked in her door. He took her cellphone and he beat her. He kicked my sister in the head with steel toe boots. My niece came running to my house because we stay right next to each other and she was hollering “he beat my mom”. So I ran over there and I called the police. When they got there, he was running. The only reason why he was arrested was because it was a new officer on the force that did not know him. Then he went to jail.”

Court records show that Smith was charged on 1 May 2018 with unauthorized entry of a dwelling and simple battery. Despite April being his ex-partner and them having a child together, he was not charged with a specific domestic abuse offense. Smith shot and killed April and killed himself before the trial date.

⁴¹² Amnesty International interview with April's sister, November 2018

The impact of a dual or wrongful arrest for a survivor of intimate partner violence is serious. Survivors who are arrested may have to spend time in jail, a punishment at exactly the time they most need support. It may be some time before they can arrange bail, or they may not be able to afford bail. This can result in losing their jobs, and depending on how long they spend in jail, losing their homes and having their children removed by social services. As well as making it less likely that those survivors will call the police in future, it also undermines wider trust in law enforcement since hearing about the experience of those survivors may affect how their family and friends view the police.

Trans survivors who are arrested may face additional harms. Individuals are jailed according to the gender that appears on their official documentation. If police mis-gender a trans person whose official documentation reflects the sex they were assigned at birth, and both parties have the same legal sex, when arrested, both individuals will be incarcerated in the same jail. Not only could the trans individual face continued danger from their abusive partner, they could be in great danger of transphobic abuse from other inmates. Trans individuals who are mis-gendered by police officers are also at risk of being arrested for impersonating someone else, if the name they tell police does not match their ID card.⁴¹³

Arrests of survivors of intimate partner violence on domestic abuse charges limits their access to support services. Regulations governing domestic violence service providers state that no perpetrator of domestic violence may receive services.⁴¹⁴ This means that someone who has suffered abuse at the hands of their partner or ex-partner but is arrested because the police failed to recognize the abuse or that they acted in self-defense may be deemed to be ineligible to stay in a shelter or receive counselling services or legal support from support organizations, thereby leaving them at risk of further abuse. Representatives of organizations told Amnesty International that when they were convinced that someone was a victim of violence and had been wrongly arrested, they were able to provide support. For example, where an organization had been working with a survivor for a period of time before they were arrested, the organization had already documented that they were a victim, or where they had not had previous contact, the organization would conduct a “predominant aggressor” assessment to make their own determination whether someone was a survivor, independently of the assessment done by law enforcement. Under these circumstances the organization would be able to support survivors who had been arrested.⁴¹⁵

The compensation scheme which provides redress to victims of crime had regulations up until 2019 which meant that survivors of violence who had a criminal conviction were excluded from receiving compensation.⁴¹⁶ However, Louisiana law maintains eligibility criteria which, depending on interpretation by board members adjudicating claims, may result in survivors of intimate partner violence being denied reparations. One states that a claim may be denied or reduced, if the board considers that the behavior of the claimant contributed to the crime that caused their injury. Another provides that although a claim will not be denied solely “because he or she is a relative of the offender or was living with the offender at the time of the injury or death”; however, reparations will only be awarded “if it can be reasonably determined that the offender will receive no substantial economic benefit”.⁴¹⁷ For more information on crime victim compensation, see Amnesty International, *Scars of Survival*.⁴¹⁸

DISPARITIES IN ARRESTS

Scholars have long warned that the increasing reliance on the criminal justice system to respond to intimate partner violence, especially the use of mandatory arrest laws, pro-arrest policies, and predominant aggressor policies have had a detrimental impact on Black women, resulting in higher rates of arrest.⁴¹⁹ Amnesty International attempted to examine the extent of this in Louisiana; however, there is a lack of data, disaggregated by gender and race in most of the state.

⁴¹³ Amnesty International meeting with attorney, January 2018

⁴¹⁴ Until 2016, the federal Office for Victims of Crime had a rule which was interpreted to mean that no recipient of VOCA funding (see chapter six) could serve perpetrators of crime. This meant that incarcerated survivors of intimate partner violence could not receive any support from domestic violence service providers. In 2016, the rule was removed and replaced with a provision that states and organizations receiving funding may set eligibility criteria. In Louisiana, the legislature requires organizations receiving funding as part of the Family Violence Prevention and Intervention Program to “ensure that the person requesting services is the survivor and not the perpetrator”. §6929 C. 2d,

http://www.dcfv.louisiana.gov/assets/docs/searchable/Rulemaking/2017/FamilyViolencePreventionandIntervention_Program.pdf, p.27

⁴¹⁵ Amnesty International meetings with LCADV, May and November 2018

⁴¹⁶ Act 418, 2019 added a provision to the criteria for making reparations to crime victims stating that claimants shall not be denied reparations on the basis of previous criminal convictions, <http://www.legis.la.gov/legis/ViewDocument.aspx?d=1144891>

⁴¹⁷ La R.S. 46:1809, <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-1809/>

⁴¹⁸ Amnesty International, *Scars of Survival: Gun violence and barriers to reparation in the US*, 2019, <https://www.amnestyusa.org/wp-content/uploads/2019/07/Scars-of-survival.pdf>

⁴¹⁹ Jacobs, M., “The Violent State: Black Women’s Invisible Struggle Against Police Violence”, *William & Mary Journal of Race, Gender, and Social Justice*, Vol 4, Issue 1, 2017, p.87-91, <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1462&context=wmjowl> and Richie, B. *Arrested Justice: Black women, violence, and America’s prison nation*, 2012

There are no state-wide statistics on numbers of reported incidents of domestic violence or the number of people arrested on domestic violence charges. The East Baton Rouge DA's office reported that the office saw 1800 victims of intimate partner violence in 2018, of which 88% were women and 12% were men. It does not publish data on domestic violence offenders.⁴²⁰ In New Orleans, the 2018 Consent Decree Monitor report on domestic violence states that 70% of victims were women and 28% were men.⁴²¹

The Consent Decree Monitor has published data on NOPD arrests on domestic violence charges since 2015. From 2015-2017 the data was limited to numbers of men and women arrested. NOPD provided figures on the numbers of arrests, disaggregated by both gender and race, in 2015 – 2017 in response to an Amnesty International request. The 2018 Consent Decree Monitor report included figures disaggregated by both race and gender.

Between 2015 and 2017, 75% of people arrested on domestic violence charges in New Orleans were men and 25% were women. In 2018, the proportion of women arrested increased to 29%.⁴²² Between 2015 and 2017, 84% of all men arrested were Black, 12-13% were White, 2-3% were Hispanic, 0.2-0.3% were Asian, and 0-0.3% were Native American. Of women arrested, 85-86% were Black, 11-13% were White, 2-3% were Hispanic, 0.1% were Asian and 0% were Native American. At the last census in 2010, the population of New Orleans was 60% Black, 33% White, 5% Hispanic, 3% Asian, and less than 1% Native American.⁴²³

Amnesty International compared the NOPD figures on arrests in 2017 with New Orleans demographic data to calculate the rate of arrest per 100,000 population for each group. Black women were arrested on domestic violence charges at a rate 4.2 times higher than White women (691 per 100,000 population compared to 164). Black women were also arrested at a rate 1.4 times higher than White men (691 per 100,000 population compared to 510). Black men were arrested at a rate 3.8 times higher than White men (1935 per 100,000 population compared to 510).⁴²⁴

Amnesty International was unable to obtain data on arrests for all crimes disaggregated by gender and race. The closest available disaggregated data was from the Orleans Parish Sheriff's Office on numbers of people booked into the jail for any crime. While not a like-for-like comparison, the rates calculated from the Sheriff's Office figures (all bookings into jail) were very different to those calculated from the NOPD figures (all arrests on domestic violence charges). While Black women were booked at a higher rate than White women on any charge the difference was much less than for domestic violence charges. Black women were booked for all crimes at a rate 1.9 times higher than White women (3020 per 100,000 population compared to 1539). White men were booked for all crimes at a rate 1.9 times higher than Black women (5808 per 100,000 population compared to 3020). Black men were booked at a rate 1.9 times higher than White men (10,984 per 100,000 population compared to 5808).⁴²⁵

Amnesty International wrote to NOPD to ask about the high proportion of arrests of Black women. As of publication of this report, the organization had not received a reply.

⁴²⁰ East Baton Rouge DA's Office, 2018 Annual Domestic Violence Report, p.11-12
<http://ebrda.org/pdfs/2018%20Annual%20DV%20Report.pdf>

⁴²¹ See <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/2018-Domestic-Violence-Annual-Report-Final-2-18-19.pdf/>

⁴²² <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/2018-Domestic-Violence-Annual-Report-Final.pdf/> p.2

⁴²³ Data for 2017-2017 provided to Amnesty International by NOPD, data for 2018, <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/2018-Domestic-Violence-Annual-Report-Final.pdf/>

⁴²⁴ NOPD arrest data for 2017 provided by NOPD. Amnesty International used demographic data from the 2010 census for the calculations. The organization used the overall gender data (51.6% female, 48.4% male) to calculate the male and female population for each racial group. Amnesty International recognizes that the sex ratio may not be the same for all groups; however, census data disaggregated by both gender and race was not available. Rates of arrest on domestic violence charges per 100,000 population were: White men 510, Black men 1935, Native American men 197, Asian men 103, Hispanic men 904; White women 164, Black women 691, Native American women 0, Asian women 39, Hispanic women 118.

⁴²⁵ Orleans parish Sheriff's office data on bookings into the jail provided to Amnesty International by the Office of the New Orleans Police Monitor. The data is not the same as arrest data because it does not include arrests of juveniles or those on marijuana charges; however, NOPD arrest data on all crimes published by the Consent Decree Monitor is disaggregated by gender and by race separately and not together. The data on bookings into the jail is the closest comparator Amnesty International could find. Rates of arrest for all crimes per 100,000 population were: White men 5808, Black men 10894, Native American men 394, Asian men 1077, Hispanic men 1190; White women 1539, Black women 3020, Native American women 0, Asian women 291, Hispanic women 139.

4.3.4 FAILURE TO TAKE INTIMATE PARTNER VIOLENCE SERIOUSLY

“I’ve called the police so much that I am embarrassed. Because I look like I am crazy.”

Maria, who continued experiencing threats and intimidation after she left her abusive husband and had to call the police repeatedly⁴²⁶



“SHAY”: THREATENED WITH A FIREARM POLICE FAILED TO TAKE HER REPORTS SERIOUSLY⁴²⁷

“Shay” told Amnesty International that she had to call the police three times over a short period of time when her ex-boyfriend was abusive. She said they failed to take quick actions to arrest him even though he had threatened her with a gun. Of the first time she said:

“He got super mad, kicked everybody out the house, locks me in a room, comes, gets a gun, sticks it in my mouth, tells me to shut the fuck up and that if I say anything or go anywhere, he’s gonna kill me and my son. He pulled the trigger and it clicked. He knew no bullets were in there. That night when we went to sleep, I packed my bag and I went to his mom’s house. I had called the police but then when they got there, I told them that I didn’t need them”.

Days later he saw her car on the highway and chased her. “Shay” told Amnesty International that to get away from him, she got out of the car, ran across a busy road with her son and ran to the police station. She said “[There] was a police officer, sitting in his car outside of the police station. I am beyond unable to speak, think, I just thought they would help me. I ran up to the car because his door was open. I’m frantic, with my baby in my arms, and saying “someone is chasing me, I’m so scared”. He closes his door on me and tells me I need to go and talk to the lady at the front desk”.

“Shay” said that she had to wait seven hours before an officer eventually came to speak to her. She said: “I told [the officer] everything and he gives me a piece of paper and sends me on my way. The guy is still out. He chased me in his car. He has a gun, I’ve told all that, I have my little baby here. He’s threatening me. I’ve showed [the officer] the text messages, and he writes a report.”

“Shay” said that another incident happened soon after. “He was beating on the door, of course he had the key, but I had the little chain on, so he breaks the door and the chain. He comes in yelling and screaming at me, breaks my phone, takes my car keys, steals my car. I called the police again. This time they take it very seriously. The guy took all the information down and put out a warrant again.”

“Shay” told Amnesty International that later that day she saw her ex-boyfriend had returned her car and left a threatening note on it. At the time she didn’t think to call the police and inform them she had the car back, so she was driving with her two children when she was surrounded by police cars.

“They hop out of their cars and draw their guns. They told me to get out and put my hands on the hood. It was so horrible. They said, “you should have told us [about the car]”. I said “I’m sorry I’ve only dealt with this once. It’s no reason for you guys to pull a gun on me”. My son at that time was 5 or 6 months old but my daughter is definitely old enough to remember and be traumatized. After that happened, he still hadn’t been locked up. Nothing happened after that. I have a friend that lets me come stay with her, and I keep getting these harassing calls.”

Court records show that “Shay’s” ex-boyfriend was not arrested for another seven weeks. She told Amnesty International “He sells dope. He was on Canal [Street] for a big event and he got picked up because of that. It wasn’t because they went looking for him because I could have died”.

Experts on intimate partner violence and representatives of organizations working with survivors told Amnesty International that survivors frequently have multiple dealings with law enforcement. Each of these interactions is important and, as the US DOJ acknowledges about cases of intimate partner violence, “if gender bias influences the initial response to or investigation of the alleged crime, it may compromise law

⁴²⁶ Interview with Amnesty International, May 2018

⁴²⁷ Interview with Amnesty International, May 2018, Name changed.

enforcement’s ability to ascertain the facts, determine whether the incident is a crime, and develop a case that supports effective prosecution and holds the perpetrator accountable”.⁴²⁸

KIRBY: DISBELIEVED BY THE POLICE UNTIL THEY SPOKE TO HER 12-YEAR-OLD DAUGHTER⁴²⁹



Kirby works on land and property and is a founder member of a survivor network advocating for change

© Connie Daigle

Kirby told Amnesty International that the police officers who responded to her call when her ex-husband broke into her house, sexually assaulted and strangled her did not take what she was saying seriously and treated her as hysterical and uncooperative. She said:

“[My daughter] is actually the reason he got arrested and that charges were even pressed against him. [The police] took me off to the side, talked to me. He was in the front yard. I don’t know if he was in handcuffs or not, or if they were just talking to him. They were obviously frustrated with me. He told them nothing happened – there was no altercation, there was nothing, not even an argument. [The police] told me I needed to decide if I wanted to press charges of breaking and entering or if I wanted them to call whoever does rape kits. There wasn’t an option for the strangulation or anything like that.

“And the main police officer of the four went and talked to my daughter. After leaving me for about 30 minutes of trying to decide what charges I wanted to press, if I wanted to have a rape kit done and all this stuff, they came out and told me “I need you to sign this paper. He’s being arrested for domestic abuse battery by strangulation based on your daughter’s statement”. And I said, “But I thought you were waiting for me to make a decision” and he said “Just sign the paper. Ma’am, I’m done handling you with kid gloves.” And I started crying.”

Officers should prioritize safety of survivors of intimate partner violence at all times. Kirby said that the police left her ex-husband’s car at her house. She said that she asked them ““what am I supposed to do with his truck?” and they said, “you can have it towed or he can come back and pick it up whenever he gets out”. I said, “so he can come back over here and get his vehicle?” and they said “yes” .”

4.3.5 ABUSERS USE POLICE AS A MEANS OF SHOWING THEIR POWER

When police are not adequately trained on the power and control exercised by abusers over their victim, they are less likely to recognize when an abuser attempts to use the police to further their intimidation or control of their partner or ex-partner. Four of the survivors who spoke to Amnesty International said that their partner or ex-partner had called the police to report them, or, had used threats to call the police as part of their abuse.

Maria’s husband, a US citizen, threatened to have her deported during the six years he abused her. At the time, Maria was undocumented. Maria told Amnesty International that after one incident where he physically abused Maria, tried to rape her and threatened to kill her and her children, Maria’s daughter called the

⁴²⁸ Department of Justice, Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence , 2015, p.3, <https://www.justice.gov/opa/file/799366/download>

⁴²⁹ Interview with Amnesty International, November 2018

police. At the same time Maria’s husband called the police and reported himself, in order to show Maria that, as on previous occasions when the police were involved, they would not do anything to him. She said:

“When he called 911, he said “I just raped my wife and I tried to kill her. Come get me, come arrest me”. He kept repeating this, including when the police arrived – he asked them to arrest him. They told him to calm down, that they would talk this through, and he said to me “See what I told you? They are going to take you away. You are the one who is undocumented, I am a citizen, so they won’t touch me”. That put a lot of fear in me because I saw for myself that what he was saying was right. They were not doing anything. They did not come and question me”.

Maria told Amnesty International that in the past when the police were involved, she was too scared to tell them what was going on and that the abuse was continuous. On this occasion, when she saw the police start to write their report, she decided to tell them everything. Maria’s daughter translated, the police listened and then arrested her husband.⁴³⁰



 ↑ *New Orleans Police Department Vehicles. © Amnesty International*



“EMILY”: THE FIRST TIME SHE CALLED THE POLICE, HER ABUSIVE HUSBAND IMMEDIATELY ALSO CALLED THE POLICE AND MADE A REPORT AGAINST HER⁴³¹

“Emily” told Amnesty International about the first time she called the police. She said that her husband was drunk.

“He started just screaming, got mad over something he saw on Facebook, really possessive crazy stuff. And I was like, I’m not doing this, so I turned my phone on and I was able to record what ended up transpiring. I was like “please stop, you’re scaring me, you’re gonna wake up the kids, please leave”. He took his cell phone and he threw it at my head, and it missed me by an inch and put a huge hole in the wall. I said “I’m calling the police” because my attorney had said, if you don’t call the police, this never happened. But what he did, was right after I called the police, he picked up the phone and he called the

⁴³⁰ Interview with Amnesty International, May 2018

⁴³¹ Interview with Amnesty International, May 2018

police and created a false report and said that I tried to stab him with a knife. Luckily for me, I had all of this being recorded [on my phone]”.

While the recording meant that officers did not pursue her husband’s report against her, “Emily” told Amnesty International that the officers spoke patronizingly to her and told her to decide whether to press charges.

“The police show up and they tell me to “Calm down ma’am, settle down ma’am, honey, sweetie, settle down”. His Dad shows up. [The police] didn’t take him, they didn’t book him. They said they went outside and talked to him. [They told me] “his dad’s going to take him, he’s going to go and stay at his Dad’s and he’s not going to come back, he’s not allowed to come back, we told him. Do you want to press charges?” And here I am, in my frightened state. I’d got the guts to call the police this time. I made this huge commotion outside of my house, my children are asleep upstairs. Do I want to press charges.? And I start [thinking], ok if I press charges, then he’s booked and in jail, then he loses his job, then he... all these things. And in that moment, I just said no”.

Nicole’s ex-boyfriend called the police on two separate occasions to report that she would not give back items he said were his. The first time the item was a phone that he had given Nicole after she changed her number to avoid his calls. She told the officer who responded to give him his phone back and tell him to leave her alone. The second time, he reported that she refused to return a gift he had bought her 11-year old daughter. Nicole had already given back the gift before the police arrived. After explaining the situation to the officer, he asked Nicole whether she had thought about getting a restraining order. The officer’s advice was a factor in her decision later that week to go to the local support organization and apply for a TRO.⁴³²

4.3.6 CHALLENGES FOR SURVIVORS IN RURAL AREAS AND SMALL TOWNS

Louisiana is a predominantly rural state, and staff of service providers told Amnesty International that, in the rural parishes they cover, everybody knows each other, and this sometimes hinders the police response. When the responding officers know the couple, it is easier for them to minimize seriousness of the situation.⁴³³



SUSAN: POLICE INITIALLY DID NOT TAKE HER REPORTS SERIOUSLY BECAUSE, IN HER SMALL TOWN, THE OFFICERS KNEW HER HUSBAND⁴³⁴

Susan was finally able to leave her husband after 37 years of abuse. She told Amnesty International that in the two weeks before she left, she experienced constant abuse and harassment from her husband. She said, “I had been scared many, many times, afraid for me to be hurt but this was at a different level”. Susan left and stayed with a friend. She returned to their house to collect some clothes and called the police when her husband returned while she was there. She said

“We’re a very small town and everybody knows everybody, so I think that they thought it was just a squabble and they didn’t know what I had been through the last week and a half to two weeks. I tried to explain but they really didn’t want to hear any of that. They thought they were just settling an argument, a dispute. And some things on the police report are inconsistent. [The report says I] just left to blow off steam or to cool off. That’s not what happened. There were some discrepancies, because they know him”.

After Susan left, her husband continued to threaten and harass her. She said “He posted things on Facebook, slanderous things to demean me and to shame me but never saying my name. He harassed my neighbor. He threatened “you’ll be broke”. He threatened to kill himself, he threatened to kill me. He told two of my neighbors that if he found out I had anybody, he was going to shoot the person, shoot me and shoot himself”.

Susan went to court and got a protective order. Her husband violated the protective order by sitting in his car near her house and going to a church service when he knew she would be there. Susan called the

⁴³² Interview with Amnesty International, November 2018

⁴³³ Amnesty International meetings with organizations supporting survivors, May and November 2018

⁴³⁴ Interview with Amnesty International, November 2018

police on both occasions and told Amnesty International that the police started to take the situation more seriously then. She said “once they realized that he was not going to stop, that he was going to have to be held accountable, they got more serious. So, when I would call and report anything like the stalking, coming to church, they took that very seriously. Because he wouldn’t stop”.

A representative of one service provider who works across both rural and urban parishes told Amnesty International that in her experience, survivors from rural areas have been in the violent relationship for a much longer time before they seek help than survivors in urban areas. She said that police in rural areas frequently do not understand that when a survivor calls the police, this is not the first time they have been threatened or hurt; they have been suffering for days before finally calling for help.⁴³⁵

4.3.7 DIFFICULTIES FOR NON-ENGLISH SPEAKERS AND UNDOCUMENTED PEOPLE

“[The police] only spoke English but my eldest daughter talked to them and they had also brought a translating device”,

Maria, whose 15-year-old daughter called the police after witnessing Maria’s husband abusing her.⁴³⁶

Survivors of intimate partner violence who speak no, or little, English face the problem of how to communicate with officers. When their abuser speaks English, they are at a greater disadvantage. While not all survivors who do not speak English are undocumented, not having valid documentation to remain in the US compounds their difficulties.

Representatives of domestic violence service providers told Amnesty International that when police respond to a domestic violence call where one person does not speak English, officers sometimes speak to the English speaker and accept their version of events without arranging for an interpreter to enable them to speak to the non-English speaker. Another service provider said that police sometimes ask inappropriate people to translate their interview with the survivor, for example, the survivor’s child, a neighbor or the alleged abuser.⁴³⁷

“To ensure independence and accuracy in law enforcement investigations, law enforcement agencies should not use victims’ family members and friends as interpreters. Moreover, it is critical that children never be used as interpreters: this undermines effective language access for victims, can traumatize children exposed to these situations and may inhibit a victim from fully revealing important details about the assault.”

US Department of Justice, Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence⁴³⁸

The IACP guidelines for officer training say that officers should conduct interviews in the victim’s native language and where necessary seek assistance from another officer, support services or technology. It notes that in some cases officers may need ask the victim if there is someone who can facilitate the interview. The guidelines state that this person should be trusted and selected by the victim and should not be a child.⁴³⁹

An attorney told Amnesty International about a client who did not speak English, but her abuser did. She had serious injuries. The police requested an officer who spoke her language to attend the scene, but the police then arrested her before the bilingual officer arrived.⁴⁴⁰

A representative of an organization working with migrants in New Orleans told Amnesty International about differing police policies in operation in Orleans and other parishes. An “anti-bias” policy in Orleans parish means that NOPD do not make enquiries about a person’s immigration status or transfer undocumented

⁴³⁵ Amnesty International telephone meeting with organization supporting survivors, October 2018

⁴³⁶ Interview with Amnesty International, May 2018

⁴³⁷ Amnesty International telephone meeting with organization supporting survivors, October 2018

⁴³⁸ US Department of Justice, Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence, p.15 <https://www.justice.gov/opa/file/799366/download>

⁴³⁹ IACP, Intimate Partner Violence Response, Policy and Training Content Guidelines, p.14 <https://www.theiacp.org/sites/default/files/all/i-j/iACPIntimatePartnerViolenceResponsePolicyandTrainingGuidelines2017.pdf>

⁴⁴⁰ Amnesty International meeting with organizations supporting survivors, November 2018

people from jail to Immigration and Customs Enforcement (ICE) for deportation.⁴⁴¹ The representative said that other parishes do not have this policy and make transfers to ICE. This means that undocumented survivors of intimate partner violence in those parishes are less likely to call the police because they do not want their partner, or ex-partner, to be deported or because they fear deportation themselves.⁴⁴²

Officers from one law enforcement department in a small town told Amnesty International that they would provide services to an undocumented survivor and when the case was completed, they would inform ICE. They also said that it was “very seldom” that they have cases when an undocumented person calls them.⁴⁴³ The organization supporting survivors in that town told Amnesty International that if there is police involvement and either the survivor or abuser are undocumented, survivors want police to drop any charges in order to avoid ICE being informed.⁴⁴⁴

4.4 INADEQUATE OVERSIGHT AND REMEDIES

The lack of statewide policies, protocols or best practice guidelines for law enforcement handling of cases of intimate partner violence means that there are no minimum standards for officers to be held accountable for meeting. Ensuring investigations are effective and that officers are held accountable for failing to act appropriately is the responsibility of each individual police department and is highly dependent on the actions and attitude of the most senior officer.

In 63 out of Louisiana’s 64 parishes, if survivors of intimate partner violence receive an inappropriate response from police officers, are left in greater danger from their abuser, or are wrongly arrested, there is no independent body that they can complain to. Many law enforcement agencies have Internal Affairs, or Public Integrity Units which investigate complaints from citizens.⁴⁴⁵ However, these investigatory processes are internal to that agency.

New Orleans is different because there is an independent mechanism to exercise oversight of the police. Civilian oversight of the NOPD was introduced in 2008 with the establishment of the Office of the Orleans Independent Police Monitor (OIPM) by a resolution of the city council and approved by the New Orleans electorate in a referendum. The OIPM receives complaints from the public and refers them to the Public Integrity Bureau within NOPD for investigation. Individuals can also submit complaints directly to NOPD. For complaints submitted through the OIPM, the OIPM first reviews how the Public Integrity Bureau (PIB) has classified the complaint because the classification given determines how thoroughly the complaint will be investigated. OIPM may recommend that NOPD change the classification. Once the Public Integrity Bureau has completed its investigation, OIPM assesses it to see whether it was fair, thorough and timely. If OIPM determines the investigation was not fair, thorough and timely, it informs NOPD and makes a public report.⁴⁴⁶ Susan Hutton, the Independent Monitor told Amnesty International that a complainant has no right to appeal the decision of the PIB. When the PIB finds against an officer, the officer is entitled to appeal against disciplinary measures imposed on them.⁴⁴⁷

The LCLE told Amnesty International that they do not have the authority to ensure all law enforcement agencies comply with Louisiana law.⁴⁴⁸ Mariah Wineski of the LCADV told Amnesty International that representatives of several Sheriff’s offices told her that they will not set up the processes required by law to remove firearms from individuals convicted of domestic violence related offences or those named as a defendant on a protective order. She is worried that it will take someone being killed in that parish by an offender whose weapons should have been removed, and a lawsuit by their family against the Sheriff’s office, before they will be forced to act. Taking legal action against a law enforcement agency over non-implementation of the procedure before someone is killed would require resources that organizations working on intimate partner violence in Louisiana do not have.⁴⁴⁹

⁴⁴¹ See [https://www.nola.gov/getattachment/NOPD/Policies/Chapter-41-6-1-Immigration-Status-approval-\(1\)-\(003\).pdf/](https://www.nola.gov/getattachment/NOPD/Policies/Chapter-41-6-1-Immigration-Status-approval-(1)-(003).pdf/)

⁴⁴² Amnesty International meeting with migrants’ rights organization, January 2018

⁴⁴³ Amnesty International meeting with law enforcement agency, November 2018

⁴⁴⁴ Amnesty International meeting with organization supporting survivors, November 2018

⁴⁴⁵ Amnesty International correspondence with LCLE, September 2019

⁴⁴⁶ See <http://nolaipm.gov/ask-questions/>

⁴⁴⁷ Amnesty International meeting with OIPM, November 2018

⁴⁴⁸ Amnesty International correspondence with LCLE, September 2019

⁴⁴⁹ Amnesty International meeting with LCADV, November 2018

5. PROSECUTION

5.1 LACK OF COMPREHENSIVE POLICIES

The District Attorney (DA) is the chief prosecutor of the Judicial District. DAs are elected for six years and must have been “admitted to the practice of law in the state for at least five years” before election.⁴⁵⁰ Louisiana has 42 Judicial Districts; some districts cover more than one parish. Gender and race information about Louisiana’s DAs on the state database of elected officials shows that 36 are described as “White Male”, two “Black Male”, three “White Female” and one “Black Female”.⁴⁵¹

DAs have “entire charge and control of every criminal prosecution instituted or pending in his district, and determines whom, when, and how he shall prosecute”.⁴⁵² DAs are empowered with enormous discretion. The DA decides whether to accept or reject charges made by law enforcement agencies. The DA can amend or add to the charges. The DA has a role at every stage of court proceedings, including recommending bail, offering plea deals, presenting evidence at trial and recommending sentences. DAs delegate work to Assistant District Attorneys (ADA).⁴⁵³ The DA decides how cases of intimate partner violence are distributed among ADAs. In some Judicial Districts one ADA is responsible for all cases of intimate partner violence. In other places cases may be allocated to any ADA.

As attorneys, DAs and ADAs must abide by the Louisiana Supreme Court’s Rules of Professional Conduct. These include provisions covering an attorney’s duty to the client, avoiding conflicts of interest and fairness to the opposing party. One rule addresses special responsibilities for prosecutors. These require prosecutors to “refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause”; to “make reasonable efforts” to ensure a defendant has had reasonable opportunity to obtain representation; not to seek waiver of rights from someone unrepresented by an attorney; and to make timely disclosure to the defense all information or evidence that “tends to negate the guilt of the accused or mitigates the offense”.⁴⁵⁴ Rule 8.4 states that it is professional misconduct for an attorney to violate the Rules of Professional Conduct, including by engaging in “conduct involving dishonesty, fraud, deceit or misrepresentation” and “conduct that is prejudicial to the administration of justice”.⁴⁵⁵

The American Bar Association has non-binding ethical standards and guidelines relating to a range of aspects of the criminal justice system, including for prosecutors. The standards guide professional conduct but are not “intended to be used as criteria for the judicial evaluation of alleged misconduct of the prosecutor”.⁴⁵⁶ The standards state that the “prosecutor is an administrator of justice, an advocate, and an

⁴⁵⁰ Louisiana State Constitution, Article V. 27 <http://senate.legis.state.la.us/documents/constitution/constitution.pdf>

⁴⁵¹ See <https://voterportal.sos.la.gov/electedofficials>, data accurate as of October 2019

⁴⁵² La., CCRP. 61 <https://law.justia.com/codes/louisiana/2018/code-codeofcriminalprocedure/ccrp-61/>

⁴⁵³ Louisiana law provides that the First Assistant District Attorney shall have the same qualifications as the DA. Other ADAs must be qualified to practice law in Louisiana. ADAs “serve at the pleasure of and may be removed at the discretion of the district attorney” and the law specifies the number of ADAs to be appointed in each Judicial District. <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-16/rs-16-51/>

⁴⁵⁴ Louisiana Attorney Disciplinary Board, Louisiana Rules of Professional Conduct, Rule 3.8 <https://www.ladb.org/Material/Publication/ROPC/ROPC.pdf>

⁴⁵⁵ Louisiana Attorney Disciplinary Board, Louisiana Rules of Professional Conduct, Rule 8.4

⁴⁵⁶ American Bar Association, Criminal Justice Section Standards: Prosecution Function, Standard 3-1.1

https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_pfunc_blk/

officer of the court; the prosecutor must exercise sound discretion in the performance of his or her functions” and that “The duty of the prosecutor is to seek justice, not merely to convict”.⁴⁵⁷ The National District Attorneys Association (NDAA) represents the interests of prosecutors. Its National Prosecution Standards state “The primary responsibility of a prosecutor is to seek justice”. It stresses the “representation and presentation of the truth”, ensuring “the guilty are held accountable, that the innocent are protected from unwarranted harm”, and respecting “the rights of all participants, particularly victims of crime”.⁴⁵⁸

There are no policies or guidelines on intimate partner violence that prosecutors in Louisiana are required to follow. The NDAA has a National Domestic Violence Prosecution Best Practices Guide in the form of a “white paper” which discusses key issues and provides recommendations for law enforcement agencies and judges as well as for prosecutors. Issues covered include: understanding why victims might recant testimony, evidence-based prosecution, discouraging dual arrests, and use of plea bargains. The guide states it is “not intended to replace practices and procedures already in operation” and it falls short of recommending that prosecutors receive specific training to enable them to better understand the dynamics of intimate partner violence.⁴⁵⁹

5.2 TRAINING OF PROSECUTORS

Most attorneys in Louisiana are required to complete 12.5 hours of Continuing Legal Education per year.⁴⁶⁰ This includes DAs and ADAs. The 12.5 hours must include one hour on “ethics” and one hour on “professionalism”. There are no requirements on topics for the content of the remainder of the hours. Jeremy Woolard, attorney at the LCADV told Amnesty International that it is rare for non-family law attorneys to receive any training on domestic violence. Seminars on family law often include presentations on domestic abuse laws; however, their quality varies. Attorneys can attend the free training run by the LPOR across the state.⁴⁶¹

Prosecutors in Louisiana are not required to have training on intimate partner violence.⁴⁶² The only exception is New Orleans where the DA’s office agreed, when it signed up to the New Orleans Blueprint for Safety, to provide “training on domestic violence”, annually, to “all attorneys who handle domestic violence cases”.⁴⁶³ Optional training on aspects of intimate partner violence are available for attorneys, including DAs and ADAs, to take; for example, the American Bar Association’s Commission on Domestic and Sexual Violence organizes trainings and webinars which earn credits towards attorneys mandatory continuing legal education.⁴⁶⁴ DAs and ADAs from Louisiana can choose to attend the NDAA’s periodic training courses on domestic violence held across the US, which includes topics such as avoiding victim-blaming, using trauma informed practices and proceeding without victim participation through evidence-based prosecution.⁴⁶⁵ The Alliance for Hope for International, run by former prosecutors, includes training for professionals, including prosecutors, on the investigation, documentation and prosecution of non-fatal strangulation cases.⁴⁶⁶

The lack of compulsory training means DAs and ADAs without an understanding of the dynamics of intimate partner violence can be responsible for critical decisions which affect survivor safety.

5.3 PROBLEMS IN PRACTICE

Justice means different things to different people. When someone experiencing intimate partner violence calls the police, they are unlikely to be thinking ahead to prosecution and court hearings; at that moment, they most likely want someone to intervene and stop the violence. A key element of intimate partner violence is the power and control that abusers exercise over their victim. For survivors, taking back control of their

⁴⁵⁷ American Bar Association, Criminal Justice Section Standards: Prosecution Function, Standards 3-1.2 (b) and (c)

⁴⁵⁸ National District Attorneys Association Standards, Standard 1.1-1. The introduction to the standards describes them as an “aspirational guide” intended to “supplement” existing rules of ethical conduct. It also stresses that they are not intended to be used to determine prosecutorial misconduct. <https://ndaa.org/wp-content/uploads/NDAA-NPS-3rd-Ed.-w-Revised-Commentary.pdf>

⁴⁵⁹ National District Attorneys Association, National Domestic Violence Prosecution Best Practices Guide, 2017, <https://ndaa.org/wp-content/uploads/NDAA-DV-White-Paper-FINAL-revised-July-17-2017-1.pdf>

⁴⁶⁰ Louisiana Supreme Court, Rule XXX. <https://www.lasc.org/rules/supreme/RuleXXX.asp>

⁴⁶¹ Amnesty International email correspondence with Jeremy Woolard, attorney for LCADV

⁴⁶² Amnesty International meetings with DAs and ADAs, November 2018 and July 2019

⁴⁶³ New Orleans Blueprint for Safety, Chapter 5, Prosecution, p.5 <https://www.nola.gov/health-department/domestic-violence-prevention/domestic-violence-documents/blueprint-for-safety-chapter-five/>

⁴⁶⁴ See https://www.americanbar.org/groups/domestic_violence/

⁴⁶⁵ See <https://ndaa.org/training/domestic-violence-course/>

⁴⁶⁶ See <https://www.strangulationtraininginstitute.com/what-we-do/>

lives is a critical part of the healing and recovery process. However, in the criminal justice system, survivors have little control over the process or the decisions that are made about their case. How the various officials that survivors interact with behave and treat them can influence whether the criminal justice process helps survivors to heal or further traumatizes them.

A few of the survivors interviewed by Amnesty International decided early on that they wanted their abuser to be prosecuted and punished by the criminal justice system. Most, however, were initially reluctant, but later reconciled themselves to the idea of their ex-partner being prosecuted, often because the abuse continued long after they had left the relationship. Some survivors who spoke to Amnesty International were just happy to be out of the relationship and even though serious crimes had been committed against them, they did not want their abuser prosecuted. Another wanted her abuser to be held to account but was too scared to cooperate with the prosecution.

“The ADA told me it looks good to have a cooperative victim. And I haven’t done this for this long to not be a cooperative victim. I’m not folding now.”

Kirby, who has been cooperating with prosecutors since her ex-husband was arrested in 2017.⁴⁶⁷

“The DA calls me in and he’s asking me, “what happened? You need to tell me what happened because I know you’re going to lie for him”. And I said “well he didn’t shoot me. I shot myself”. And he says, “if that gun had went off at the angle you’d have been holding it, you would’ve blown your brains out”. And I said, “he wouldn’t harm a fly”. He said “no, but he’d kill you”. And they knew that he did this to me.”

Tiffany, who was too scared to testify against her then boyfriend who shot her in the face.⁴⁶⁸

Survivors can have conflicting feelings about prosecution. Angela, who was shot by her ex-partner, told Amnesty International that “the hardest part, which is going to be the craziest part, was falling out of love with him. You would think that he did this, and I looked at him and hated him. No, I still loved him.” Angela spoke to Amnesty International before his trial and said “unfortunately, he has to pay what he owes. He has to understand that there are consequences to what you did. Do I think he got up that morning wanting to kill me? No. I can really believe that it was a snap moment. However, our DA wants to prosecute him to the fullest extent. I believe they want to make an example out of him because the maximum time is 50 years.” After Angela’s ex-partner was convicted by a jury, she appealed to the judge to give him a lenient sentence and said that she forgave him. Angela told Amnesty International that she was looking at it from a mother’s perspective and she wanted her children to have the opportunity to know their father outside of prison.⁴⁶⁹ The judge sentenced him to 45 years in prison, almost the maximum penalty.⁴⁷⁰

Prosecutors have huge powers within the criminal justice system. They are often required to balance differing interests when making decisions on taking prosecutions forward. For example, prosecutors need to consider the interests of survivors but not be too quick to drop a case where a survivor, who is afraid to cooperate, may, with the right safeguards and support, achieve a successful prosecution. The way prosecutors utilize these powers, and how they balance the different interests, in cases of intimate partner violence may result in two different and opposing problems:

- Firstly, that DAs use their discretion to drop cases or reduce charges where there has been serious violence. This failure to hold abusers to account leaves survivors at risk of further, and often escalating, abuse.
- Secondly, that DAs use their discretion to aggressively prosecute cases against the wishes of the survivor. This results in coercive measures being taken against survivors to force their cooperation with prosecutors. Coercion can include criminal measures being taken against survivors. This also results in survivors being less willing to involve the authorities if they experience violence in the future which leaves them at greater risk of experiencing more violence.

In addition, problems with the functioning of the judicial system that affect all types of cases also affect cases of intimate partner violence, including in relation to high bail costs and problematic plea-bargaining practices.

⁴⁶⁷ Interview with Amnesty International, November 2018

⁴⁶⁸ Interview with Amnesty International, May 2018

⁴⁶⁹ Interview with Amnesty International, May 2018

⁴⁷⁰ See https://www.theadvocate.com/baton_rouge/news/courts/article_bb8c96c4-fcb1-11e8-8ff0-1394cf6369ea.html

5.3.1 LACK OF EFFECTIVE RISK ASSESSMENTS BEFORE GRANTING BAIL

“While he was in jail, he called me and said that I had two hours to get him out of jail otherwise he would call immigration services to denounce me and get my kids.”

Maria, who was undocumented at the time her husband was arrested for violence against her and threatening her with a gun.⁴⁷¹

Under Louisiana law, all individuals who are arrested are entitled to bail, except under certain circumstances.⁴⁷² Individuals arrested on one of a list of charges which include domestic abuse battery and domestic abuse aggravated assault may not be released on a “personal undertaking or with an unsecured personal surety”.⁴⁷³ Anyone arrested must be brought before the court within 72 hours (excluding weekends and holidays). At the first appearance, the court may determine the amount of bail.⁴⁷⁴ In practice, many courts have a “bail schedule” or set amount of bail for a particular charge, and defendants are given bail according to the schedule without risk factors being taken into account.⁴⁷⁵ Organizations supporting survivors of intimate partner violence consistently told Amnesty International that in their opinion, courts were setting low bail amounts in cases of domestic abuse, without adequately taking into account the seriousness of the abuse.⁴⁷⁶

In 2014, the Louisiana legislature passed a law designed to ensure judges conducted risk assessments before granting bail in cases of domestic abuse. “Gwen’s law” was named after Gwen Salley who was shot and killed by her estranged husband less than 24 hours after he bonded out of jail after being arrested for assaulting her. The law required a bail hearing for those charged with offenses relating to intimate partner violence where prosecutors could present evidence showing the defendant may pose too much risk to be released on bail. Judges then assessed the risk before deciding whether to grant bail, and what level to set it at. The law required the hearing to “be held within five days from the date of determination of probable cause, exclusive of weekends and legal holidays”.⁴⁷⁷

In 2015, the legislature amended Gwen’s law to make the hearings optional.⁴⁷⁸ Prosecutors have to request Gwen’s law hearings. Judges may refuse to hold a hearing. When the prosecutor does not request a “Gwen’s law” hearing, the amount of bail is determined in the same way as for any other offense. In 2019, a bill was introduced to the legislature to allow judges or magistrates to authorize a Gwen’s law hearing irrespective of whether the prosecutor requests it. The legislature did not approve the bill.⁴⁷⁹

Irrespective of whether there is a “Gwen’s law” hearing, Louisiana law requires judges to determine whether someone arrested for intimate partner violence “poses a threat or danger to the victim”. If the court finds a threat or danger, it must impose specific conditions before they can be released on bail. The conditions can include that the defendant refrain from going to the victim’s residence, school or place of employment and refrain from contacting the victim. A judge making this determination must complete a Uniform Abuse Prevention Order to be sent to the LPOR. A defendant released on bail under these conditions is legally prohibited from possessing a firearm and required to surrender any firearms they have.⁴⁸⁰ In cases where someone is arrested for intimate partner violence and the judge does not make a determination of threat or danger to the victim, and does not complete a Uniform Abuse Prevention Order, the defendant is not legally prohibited from possessing firearms or required to surrender them.

Many parishes do not hold Gwen’s law hearings.⁴⁸¹ Court Watch NOLA, which monitors proceedings in New Orleans courts, told Amnesty International that it has seen very few “Gwen’s law” hearings in New Orleans, and this could be largely because the DA’s office does not send ADAs to most Magistrate’s court appearances. This means there is often no one to represent the interests of the survivor and request a hearing.⁴⁸² Amnesty International asked the New Orleans DA’s office what percentage of domestic violence cases they handle have a “Gwen’s law” hearing. The office said that they “evaluate each case individually on

⁴⁷¹ Interview with Amnesty International, May 2018

⁴⁷² La CCP. 312, <https://law.justia.com/codes/louisiana/2018/code-codeofcriminalprocedure/ccrp-312/>

⁴⁷³ La CCP. 321, <https://law.justia.com/codes/louisiana/2018/code-codeofcriminalprocedure/ccrp-321/>

⁴⁷⁴ La CCP. 230.1, <https://law.justia.com/codes/louisiana/2018/code-codeofcriminalprocedure/ccrp-230.1/>

⁴⁷⁵ Amnesty International correspondence with Jeremy Woolard, attorney, LCADV

⁴⁷⁶ Amnesty International meetings with organizations supporting survivors, January, May and November 2018

⁴⁷⁷ La CCP.313, <https://law.justia.com/codes/louisiana/2018/code-codeofcriminalprocedure/ccrp-313/>

⁴⁷⁸ ACT 439, 2015, <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=960524>

⁴⁷⁹ Senate Bill 23, 2019, <https://www.legis.la.gov/Legis/BillInfo.aspx?s=19RS&b=SB23&sbi=y>

⁴⁸⁰ La CCP. 320, <https://law.justia.com/codes/louisiana/2018/code-codeofcriminalprocedure/ccrp-320/>

⁴⁸¹ Mariah Wineski of the LCADV estimates that around half of parishes do not hold Gwen’s law hearings but definitive numbers are not available.

⁴⁸² Amnesty International meeting with Court Watch NOLA, July 2019

its own merits and do not keep such running totals”.⁴⁸³ In those parishes that do have “Gwen’s law” hearings, they are not held for all cases of intimate partner violence. In Jefferson parish, the ADA responsible for intimate partner violence cases told Amnesty International that the office handles approximately 150 domestic violence cases in a month and holds “Gwen’s law” hearings for around 100 cases.⁴⁸⁴ In Lafayette parish, representatives of Faith House, who monitor court hearings on domestic violence, observed 70 “Gwen’s law” hearings in 2018. This means that approximately 6% of the 1,105 people booked into Lafayette Parish Correctional Center, in 2018, following arrest on domestic violence charges had a “Gwen’s law” hearing.⁴⁸⁵

Kirby told Amnesty International that after her ex-husband was arrested for breaking into her house, assaulting and strangling her that “He called me twice from jail to bail him out. And I refused”. She said there was no Gwen’s law hearing then; however, there was a Gwen’s law hearing when he was later arrested for violation of protective orders. Kirby was not required to testify at that hearing, but she was also not notified about it taking place.⁴⁸⁶

CHALLENGES FOR SURVIVORS TESTIFYING AT BAIL HEARINGS

There is no requirement in Louisiana law for victims of intimate partner violence to testify at “Gwen’s law” hearings. The law states that the court should consider factors including the criminal history of the defendant; the potential threat or danger posed to the victim or their family; threats of suicide by the defendant; the defendant’s use of force or threats of use of force against any victim; strangulation, forced sex, or controlling the activities of any victim by the defendant; or threats to kill”.⁴⁸⁷ The evidence can include sworn affidavits, police reports or medical records.

Representatives of organizations working with survivors of intimate partner violence told Amnesty International that the “Gwen’s law” hearing should be held quickly to reduce the time an abuser has to contact and intimidate the survivor. The risk of intimidation is highest for arrests made on Saturdays because the abuser has time over the weekend to call and pressurize the survivor.⁴⁸⁸ A representative from one DA’s office said that it is difficult for prosecutors to collect all the relevant information in time for the hearing.⁴⁸⁹ A high volume of cases and lack of readily available background information means some DAs are over-reliant on survivor testimony.⁴⁹⁰

DAs, ADAs and representatives or organizations supporting survivors all told Amnesty International that survivors testifying at “Gwen’s law” hearings often change their testimony due to fear of the abuser. When survivors do testify at the hearing, the defendant is highly likely to be present in the courtroom. There is no law to protect victims from having to testify in front of their partner or ex-partner.

International human rights standards recognize that to ensure equal access to justice, justice systems must be gender-sensitive.⁴⁹¹ This includes taking appropriate measures to protect survivors of gender-based violence during court proceedings, and to ensure they are able to participate and testify without re-traumatization. Measures could include holding court proceedings in private, use of screens in the courtroom so victims do not have to see the defendant, use of technology such as a live video links for victims to testify from a different room, or use of pre-recorded testimony.⁴⁹²

Louisiana law allows the possibility for “protected persons” – victims and witnesses under the age of 17, or who have certain disabilities – to testify via closed circuit television from a different room, if, in the view of an expert, the victim or witness “would be likely to suffer serious emotional distress if forced to give testimony in open court” and that without that possibility, the victim or witness “cannot reasonably communicate his testimony to the court or jury”.⁴⁹³ Louisiana law also allows “protected persons” to record their testimony on video, and the use of such testimony is an exception to rules on hearsay.⁴⁹⁴ There are no provisions in

⁴⁸³ Response from New Orleans District Attorney to correspondence from Amnesty International, October 2019

⁴⁸⁴ Amnesty International meeting with Jefferson parish DA’s office, July 2019

⁴⁸⁵ Data provided to Amnesty International by Faith House. Faith House representatives were unable to attend court on 11 days, so the number of “Gwen’s law” hearings held may have been slightly higher.

⁴⁸⁶ Interview with Amnesty International, November 2018

⁴⁸⁷ La CCP. 313 A (3), <https://law.justia.com/codes/louisiana/2018/code-codeofcriminalprocedure/ccrp-313/>

⁴⁸⁸ Amnesty International meeting with advocate working for Faith House, November 2018

⁴⁸⁹ Amnesty International meeting with ADA, November 2018

⁴⁹⁰ Amnesty International meeting with organization supporting survivors, May and November 2018

⁴⁹¹ ICCPR, Article 26. See also CEDAW, General Recommendation 33, UN Doc. CEDAW/C/GC/33

⁴⁹² CEDAW, General Recommendation 33, UN Doc. CEDAW/C/GC/33, para 17, International Criminal Court, Rules of Procedure and Evidence, Articles 68 and 87-90, https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf, Council of Europe Convention on preventing and combating violence against women and domestic violence, Article 56, <https://www.coe.int/en/web/istanbul-convention/text-of-the-convention>

⁴⁹³ La. R.S. 15:283, <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-15/rs-15-283/>

⁴⁹⁴ La. R.S. 15:440, <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-15/rs-15-440.2/>

Louisiana law to provide similar protection to survivors of gender-based violence who are unable, through trauma and emotional distress, to reasonably communicate their testimony to the court.

In October 2015, Kimberly Nicole Perkins's husband was arrested in Pointe Coupee parish for allegedly strangling her and putting a gun to her head. Kimberly had to testify at the "Gwen's law" hearing with her husband present in the room and her testimony contradicted the statement she had given to responding police officers. The judge set the bond at \$5,000 and reduced the charges from felonies to misdemeanors. Kimberley was found dead in St Landry parish in March 2016, killed by two gunshots to her head.⁴⁹⁵ In September 2018, Kimberly's husband was found guilty of her manslaughter.⁴⁹⁶ At another "Gwen's law" hearing a few weeks after Kimberley's murder, the same judge who had set Kimberley's husband's bail, asked another survivor of domestic violence whether she wanted her husband out of jail. The judge told her "If something happens to you, I want you to know, in my opinion, we've done all we can do for you". The woman's husband was present in court.⁴⁹⁷ The message the judge sent to both was that it was her responsibility to protect herself from her abuser, without the support of the state.

BAIL REQUIREMENTS DISADVANTAGE THE POOR

Under international law, "It shall not be the general rule that persons awaiting trial shall be detained in custody"; anyone detained on a criminal charge is entitled to trial within a reasonable time or release.⁴⁹⁸ Detention pending trial is a preventive measure; and there must be a presumption in favor of granting bail. To withhold bail a court must establish that release would create a substantial risk of flight, harm to others or interference with the evidence or investigation that cannot be allayed by other means.⁴⁹⁹ The state must establish that it is necessary and proportionate to deprive the individual of liberty while awaiting trial.⁵⁰⁰ In cases of intimate partner violence, the authorities must take into account the risk posed to the victim. International standards require "a range of measures proportionate to the risk" to be considered.⁵⁰¹ To ensure non-discrimination, "the individual's financial resources should be taken into consideration in setting an appropriate and proportionate amount of bail".⁵⁰²

A major problem with the bail system across the US is that defendants who cannot afford bail have to remain in jail regardless of the seriousness of their charge and the risk they pose. Under Louisiana law, when the defendant is in custody, the prosecution has to file formal charges within 45 days for a misdemeanor and 60 days for a felony.⁵⁰³ It is possible for defendants to spend that time in jail and have the prosecution drop the charges at the end of that period. The vast majority of detainees in local jails in the six parishes with the largest populations, are awaiting trial.⁵⁰⁴ "Gwen's law" provides the possibility that defendants who pose a serious danger are not released on bail; however, it is not applied consistently and does not address the issue that wealthy defendants will be able to afford the potentially higher bonds set following "Gwen's law" hearings while poor defendants, unable to afford the bond, and who are likely to be predominantly Black, have no option but to remain in jail.

5.3.2 FORCING SURVIVORS TO TESTIFY VERSUS DROPPING THE CASE

When an individual is charged by the police with a crime, it is the DA who decides whether the individual will face prosecution or not. The DA also has the discretion to alter the charges. All DA's offices have a "victim assistance coordinator" (known as a "victim advocate"), and some DA's offices have a specific advocate who specializes in domestic violence cases.⁵⁰⁵ Their role is to liaise between victims of crime and the prosecution. How prosecutors, and victim advocates interact with survivors of intimate partner violence influences

⁴⁹⁵ See <https://www.wafb.com/story/32075704/the-investigators-chilling-body-camera-video-shows-rare-insight-to-domestic-violence/>

⁴⁹⁶ See <https://www.wafb.com/2018/09/26/man-found-guilty-murdering-wife/>

⁴⁹⁷ See <https://www.wafb.com/story/31787391/the-investigators-judge-uses-his-courtroom-to-indirectly-answer-questions/>

⁴⁹⁸ ICCPR Article 9.3 <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁴⁹⁹ *Marinich v Belarus*, HRC, UN Doc. CCPR/C/99/D/1502/2006 (2010) §10.4, *Peirano Basso v Uruguay* (12.533) Inter-American Commission, Report 86/09 (2009) §§68-81

⁵⁰⁰ Human Rights Committee, General Comment 35, UN Doc. CCPR/C/GC/35, para 38, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en

⁵⁰¹ Amnesty Fair Trials Manual, p.62 citing Article 7(b)-(f) of the InterAmerican Convention on Violence against Women, Articles 51-52 of the CoE Convention on violence against women

⁵⁰² Amnesty Fair Trials Manual, p.62 citing CERD General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, UN Doc. A/60/18,

https://www2.ohchr.org/english/bodies/cerd/docs/GC31Rev_En.pdf

⁵⁰³ If the felony is punishable with life imprisonment or death, the prosecution has 120 days. La. CCRP. 701,

<https://law.justia.com/codes/louisiana/2018/code-codeofcriminalprocedure/ccrp-701/>

⁵⁰⁴ See https://www.theadvocate.com/baton_rouge/news/courts/article_aa68a582-c45b-11e9-8439-a7110c42fa80.html

⁵⁰⁵ See <http://fluxconsole.com/files/item/126/25083/VAClist2018.pdf>

survivors' level of trust in the system. Every contact between a survivor and prosecutors is an opportunity to, either, build or undermine, survivor confidence in, and support for, the prosecution process.

Under Louisiana law, the DA's office must arrange a conference with a victim of crime "in order to obtain their view" about the "disposition of the criminal case by dismissal, plea, or trial" and about types of sentencing. However, for victims to exercise this right to be consulted, they must send written notification to the DA's office.⁵⁰⁶ This means that while DAs frequently take into account the views of survivors of intimate partner violence when deciding whether to go forward with a prosecution, the DA is under no obligation to act in accordance with the survivor's wishes.

"I always dropped everything because by the time it goes from the incident to actually the DA's office doing something is months later and by that time he's peaceful and I don't want to rock to boat."

Brandie, who suffered years of stalking and harassment from her ex-husband, was initially reluctant to support prosecution.⁵⁰⁷

DAs and ADAs told Amnesty International that, without testimony from the victim, it was very difficult for them to proceed with a case of intimate partner violence. One ADA described cases of intimate partner violence as "victim driven" and said that although they can still pursue a case without the victim, it is rare to have a victim not available to testify and still have enough other evidence to take the case forward.⁵⁰⁸ The need for the victim's testimony means that abusers often threaten or otherwise pressurize survivors to withdraw their cooperation with the prosecution.⁵⁰⁹

After Tiffany was shot in the face by her then boyfriend, she wanted him prosecuted but she was scared. She told Amnesty International that she believed he would kill her and she thought the DA would prosecute him without her testifying, so she lied and said that he did not shoot her. She said:

"Trial date came. I got in there and the DA was like "she says he didn't do it so we're going to drop all charges". And it was my cry for help. He knew I was lying. So I had to go home that day and feel like, he's coming home and he's going to finish the job. He went to jail for three years because of a probation violation [from a previous offense]. The probation officer knew something was wrong. I wish I could find him and give him a hug and say you were right".⁵¹⁰

Most DAs, ADAs and DA offices' victim advocates who spoke to Amnesty International expressed frustration at survivors who request that prosecutors drop cases, change their testimony or refuse to testify. They also all said that it was very common for victims, in cases of intimate partner violence, to contact them, sometimes the day after the incident, and ask for the case to be dropped. The ADA responsible for domestic violence cases in Jefferson Parish said that she has had survivors come in to the office with the abuser on the phone because they wanted proof the survivor was requesting the charges dropped.⁵¹¹ When prosecutors believe that a survivor is being threatened or pressured to drop the case, they have the responsibility to ensure the survivor receives effective protection and support to enable them to make an informed and voluntary decision about their involvement in the prosecution. They also have the responsibility to give adequate consideration to the view of a survivor who makes an informed and voluntary decision not to cooperate with the prosecution.

Many DA's offices have "no-drop" policies whereby they do not automatically drop charges related to intimate partner violence, if the victim requests them to or refuses to cooperate with the prosecution. In East Baton Rouge, the DA's office received requests to drop charges in around 80% of domestic violence cases.⁵¹² Representatives of several other DA's offices said that they require victims who want charges dropped to complete a form giving their reasons. They inform the defendant that the victim asked that the case be dropped but the DA has decided to proceed.

MATERIAL WITNESS WARRANTS

Under Louisiana law, prosecutors have the power to compel witnesses (including victims of crime) to meet with them to discuss the case, and to testify in court. To do so, the DA must submit a written motion to the court and have a judge issue a subpoena to be served on the witness. Failure to comply with the subpoena

⁵⁰⁶ R.S. 46:1844 D(2) <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-1844/>

⁵⁰⁷ Interview with Amnesty International, November 2018

⁵⁰⁸ Amnesty International meeting with ADA, St Mary Parish, November 2018

⁵⁰⁹ Amnesty International meetings with organizations supporting survivors, May and November 2018

⁵¹⁰ Interview with Amnesty International, May 2018

⁵¹¹ Amnesty International meeting with ADA, Jefferson Parish, July 2019

⁵¹² East Baton Rouge DA's Office, *State of Crime: 2018*, P.27, http://www.ebrda.org/pdfs/STATE%20OF%20CRIME%202018%20FINAL%203_2%20Final%20pdf.pdf

is contempt of court.⁵¹³ Where a witness is considered essential to the prosecution or the defense and “it is shown that it may become impracticable to secure the presence of the person by subpoena”, a judge can issue a warrant for the individual’s arrest and they can be held in jail until they have given their testimony, the case is otherwise concluded, or they are released on a bond.⁵¹⁴

Louisiana courts have ruled that a victim informing the DA they would not testify is sufficient justification to issue a material witness warrant.⁵¹⁵ This means that a DA can have a victim pre-emptively arrested before they have failed to respond to a subpoena. Louisiana law does not set a maximum period that an individual can be incarcerated as a material witness and an individual who is unable to afford the bond would be forced to remain in jail. Individuals incarcerated as a material witnesses do not have a guaranteed right to an attorney.⁵¹⁶

“In almost every case, requesting a warrant to force a victim’s testimony will be counterproductive”.

Blueprint for Safety⁵¹⁷

The original Blueprint for Safety explicitly instructs prosecutors not to “threaten to or place a victim in custody to ensure witness availability” for the reason above. The New Orleans Blueprint for Safety does not include this provision.



 ↑ Orleans Criminal District Court. © Amnesty International

⁵¹³ La CCP. 66, <https://law.justia.com/codes/louisiana/2018/code-codeofcriminalprocedure/ccrp-66/>

⁵¹⁴ <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-15/rs-15-257/>

⁵¹⁵ A material witness warrant was issued to a victim of intimate partner violence following the state informing the judge that an investigator contacted the victim who “was hostile and threatening, advised that she would not appear at trial” and had sent two letters to the DA four months earlier stating that she did not want to pursue criminal charges and would not appear in court”. The court found no error on the part of the State in granting the material witness warrant. Court of Appeal of Louisiana, Fifth Circuit., Oct 30, 2012, 103 So. 3d 627 (La. Ct. App. 2012), <https://casetext.com/case/state-v-gatewood-23>

⁵¹⁶ P. 30 <http://www.courtwatchnola.org/wp-content/uploads/CWN-2017-Annual-Report.pdf>

⁵¹⁷ Blueprint for Safety, Chapter five, Prosecuting Attorney’s Office, p.85 <https://praxisinternational.org/wp-content/uploads/2016/02/BlueprintChapter5.pdf>



“FAKE SUBPOENA” LAWSUIT AGAINST THE NEW ORLEANS DISTRICT ATTORNEY

Court Watch NOLA, a non-profit organization which monitors proceedings in New Orleans courts, highlighted in its 2016 and 2017 annual reports, concerns with the use of material witness warrants for the arrest of victims or witnesses at the request of the office of the New Orleans District Attorney.⁵¹⁸

In April 2017, the Lens, a non-profit investigatory news site, reported that the New Orleans DA’s office had been issuing papers to victims and witnesses which purported to be a subpoena but had not been signed by a judge and were, therefore, legally invalid. These so-called “DA subpoenas” looked like a real subpoena and contained the statement “a fine and imprisonment may be imposed for failure to obey this notice”.⁵¹⁹ The Lens submitted a public records request for copies of these fake subpoenas. After a series of court cases, in July 2018, the DA’s office partially complied with the records request by providing details of 249 “DA subpoenas” issued over three years to the Lens. The office also provided “50 court filings seeking to arrest crime victims and witnesses for allegedly failing to cooperate”.⁵²⁰

In October 2017, the American Civil Liberties Union (ACLU) launched a lawsuit against New Orleans DA Leon Cannizzaro and nine named ADAs on behalf of six individuals (four Black women, one Black man, one girl, race not specified), and the victim advocacy organization Silence is Violence. One of the victims in the ACLU suit, Renata Singleton, experienced violence from her boyfriend in 2014. In April 2015, the DA’s office delivered documents styled as subpoenas to her door. The documents instructed her to attend a meeting at the DA’s office but they had not been presented to or approved by a court so were invalid. Renata’s friend working in law enforcement told her that the documents had not been properly served because they had been left at the door. On that basis, Renata did not attend the meeting. The ADA applied to the court for a material witness warrant and stated that Renata had failed to respond to the documents which he told the court were “subpoenas”. The Judge issued an arrest warrant, setting bail of \$100,000 as requested by the ADA. Renata spent five days in jail because she and her family could not afford the bond. She was brought to court in handcuffs and prison clothing. Renata’s ex-boyfriend, who had been released months earlier on a \$3,500 bond came to court from his home, in his own clothes. He pled guilty to two misdemeanors. Renata was not asked to testify. The lawsuit states that she is worried that the police record of her arrest will make it harder for her to find a job and she is afraid to call the police again.⁵²¹

Responding to the lawsuit in December 2017, a lawyer for the DA’s office argued that “Receiving an allegedly fraudulent subpoena that threatens fines or imprisonment if the recipient does not appear, without more, does not give rise to a constitutionally adequate ‘injury’.”⁵²² The motion to dismiss the case also argued that the DA’s office and its employees are immune from liability under principles of prosecutorial immunity. In February 2019, a Federal court allowed the case to go forward, rejecting the claim of absolute immunity.⁵²³

The Jefferson parish DA’s office also admitted, in April 2017, to sending documents labelled “subpoena” that had not been signed by a judge to victims and witnesses; however, the documents did not threaten jail or fines for non-compliance. Both offices announced they had stopped the practice following publication of the Lens’s first stories about the issue.⁵²⁴

Prosecutors view provisions allowing for forcing victims to testify and permitting their arrest to enforce this as a necessary tool in bringing abusers to justice.⁵²⁵ An ADA described to Amnesty International how her office had looked at obtaining a material witness warrant for a victim. She said that their plan was to execute the warrant on the day of the trial so that the victim was not incarcerated. In the event, the defendant agreed to a plea deal so they did not order the arrest of the victim.⁵²⁶ Organizations working with survivors of intimate

⁵¹⁸ See <http://www.courtwatchnola.org/wp-content/uploads/2016-CDC-Report-3.pdf>

⁵¹⁹ See <https://thelensnola.org/2017/04/26/orleans-parish-prosecutors-are-using-fake-subpoenas-to-pressure-witnesses-to-talk-to-them/>
⁵²⁰ See <https://thelensnola.org/2018/07/09/new-orleans-district-attorney-unearts-249-da-subpoenas-issued-over-three-years/>

⁵²¹ United States District Court for the Eastern District of Louisiana, Singleton et al v. Cannizzaro et al, Preliminary Statement, 2017, p. 33-38
https://www.laaclu.org/sites/default/files/field_documents/singleton_v_cannizzaro_-_complaint.pdf

⁵²² United States District Court for the Eastern District of Louisiana, Singleton et al v. Cannizzaro et al, Memorandum in support of motion to dismiss, p.17 <https://www.documentcloud.org/documents/4317857-DA-response-to-civil-rights-suit.html>

⁵²³ See <https://thelensnola.org/2019/02/28/civil-rights-lawsuit-over-fake-subpoenas-witness-arrests-allowed-to-go-forward-judge-rules/>

⁵²⁴ See <https://thelensnola.org/2017/04/27/prosecutors-in-jefferson-parish-have-used-fake-subpoenas-similar-to-those-in-new-orleans/>

⁵²⁵ See <https://www.nola.com/politics/2019/04/das-oppose-bill-to-stop-jailing-rape-abuse-victims.html>

⁵²⁶ Amnesty International meeting with ADA, November 2018

partner violence stressed that survivors are often far more scared of the abuser than they are of the threat of arrest if they refuse to testify.⁵²⁷ This means a survivor, especially one who lacks support, who fears that the authorities are unable to protect them from their abuser, may feel the safest course of action for them is to refuse to testify and face the consequences of potential arrest as a material witness.

Pre-emptive arrest and detention of victims in this manner is a violation of international human rights law and standards. Pre-emptive detention of victims is arbitrary in that it is inappropriate, unjust, as well as lacking reasonableness, necessity and proportionality.⁵²⁸ The inappropriateness and unjust nature of such arrests and detention is borne out of the fact that, as complainants in a criminal matter, these are the very victims the criminal justice system should be designed to protect. Survivors of intimate partner violence also face a significant risk of re-traumatization or re-victimization. Placing a victim of intimate partner violence in detention so as to secure their attendance in court proceedings is unlikely ever to meet the test of proportionality; that is to say it will always cause more harm than is proportionate to their refusal to testify through the trauma it will cause to the victim of an already significant crime.

Pre-emptive detention will rarely be necessary as there are less draconian measures which can generally achieve the aim pursued, such as providing comprehensive support services to survivors so they feel able to safely testify. The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems call for legal aid to be provided to victims of crime without prejudice to the rights of the accused. This means providing appropriate “advice, assistance, care, facilities and support” throughout the criminal justice process to avoid “repeat victimization”. It specifically calls for legal aid for “female victims of violence in order to ensure access to justice and avoid secondary victimization”.⁵²⁹

In response to the New Orleans DA’s jailing of victims of intimate partner violence and sexual assault, the senator for New Orleans, introduced a bill to the 2019 Louisiana Legislature session to exempt survivors of intimate partner violence and sexual violence from arrest on material witness warrants. The Louisiana District Attorney’s Association opposed the bill. Testifying during consideration of the bill, a representative of the Association said that opposition was unanimous among DAs.⁵³⁰

The bill that was eventually passed falls short of international standards protecting victims from arbitrary detention. While it prohibits judges from ordering a material witness warrant in misdemeanor domestic violence cases, it leaves open the possibility that a victim be pre-emptively arrested on a material witness warrant in felony cases. A judge may order a material witness warrant, if the DA presents evidence of their efforts to “secure the victim’s appearance in court” and that the testimony is essential to the case. The law does not define what efforts a DA must make to “secure the victim’s appearance”. Once the victim has been detained, they must, immediately, be brought before a judge who will “explore all available alternatives to incarceration” to ensure their presence in court. Indigent victims have the right to apply for counsel to represent them.⁵³¹ The law took effect in June 2019. It is too soon to assess the impacts of the change; however, a representative from Court Watch NOLA told Amnesty International that they were concerned that the new law still allows for the incarceration of the crime victim, albeit in fewer circumstances.⁵³²

5.3.3 UNJUST PROSECUTION OF SURVIVORS OF INTIMATE PARTNER VIOLENCE

“Prosecutors should have guidelines for addressing self-defense and battered spouse syndrome to prevent filing cases against victim-defendants”

National District Attorney’s Association, Women Prosecutors Section, National Domestic Violence Prosecution Best Practices Guide.⁵³³

The discretion DAs have to decide whether to prosecute and which charges to pursue means that when survivors of intimate partner violence are wrongly arrested by the police, or subjected to inappropriate charges, DAs have the power to prevent further injustice, or to exacerbate the injustice. Whether this

⁵²⁷ Amnesty International meetings with organizations working with survivors, January, May and November 2018

⁵²⁸ Human Rights Committee, General Comment 35, on Article 9, Liberty and Security of the Person, UN Doc. CCPR/C/GC/35, 2014, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en

⁵²⁹ UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Principals 4 and 5; Guidelines 7, 8 and 9 https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf

⁵³⁰ See <https://www.nola.com/politics/2019/04/das-oppose-bill-to-stop-jailing-rape-abuse-victims.html>

⁵³¹ Act 410, 2019, <http://www.legis.la.gov/legis/ViewDocument.aspx?d=1144797>

⁵³² Amnesty International meeting with Court Watch NOLA, July 2019

⁵³³ P. 19 <https://ndaa.org/wp-content/uploads/NDAA-DV-White-Paper-FINAL-revised-July-17-2017-1.pdf>

happens depends on the extent to which the DA or ADA assessing the case understands the dynamics and power imbalances of intimate partner violence and can identify the possibility that a survivor may have acted in self-defense and request further investigation of the case. As representatives of organizations supporting survivors told Amnesty International, police failure to identify self- defense is more likely in cases involving minority or LGBTI survivors.⁵³⁴ Ensuring survivors who acted in self- defense are not prosecuted, requires DAs and ADAs to identify what the police did not, and to recognize potential bias that led to the arrest.

One ADA told Amnesty International that she has seen cases where survivors of intimate partner violence have been arrested. She said this usually happens when the victim is irate, the abuser is calm, and the police do not spend enough time investigating what happened. When this happens, the DA's office has to call the victim listed on the police report who they know has been a defendant in previous cases. Sometimes the individual will admit what happened and say that their partner was wrongly arrested. The DA's office can also ask detectives to further investigate the case before proceeding with prosecution. The ADA said that sometimes the local organization supporting survivors will call and tell her that a survivor has been arrested. Ultimately, an ADA who thinks charges are not appropriate can request that the DA reviews the case.⁵³⁵

However, another ADA working in a different Judicial District told Amnesty International that they would not take into account someone being a victim of intimate partner violence in previous cases if they were the defendant in a new case. They would only look at the facts of the most recent case where the person was arrested.⁵³⁶ This means that they look at the incident in isolation without any consideration of dynamics of power and control within violent intimate partner relationships.



TAMIKA: PROSECUTED DESPITE A LONG HISTORY OF ABUSE

When Tamika was arrested after firing a shot towards her abusive ex-boyfriend in a cigar shop, prosecutors decided to move forward with the charges against her despite her being known to them as a victim of intimate partner violence in previous cases. The court set her bond at \$15,000 which she could not afford. Court records show it was just over eight weeks before she was able to be released on bond.⁵³⁷ Due to getting bailed out, Tamika did not qualify for a public defender and had to hire a private attorney who, both Tamika and her advocate at the Family Justice Center said, did not provide effective legal advice.⁵³⁸

Tamika had been unable to contact her advocate until after she was released from jail. Tamika's advocate told Amnesty International that when they found out that she had been charged, they tried to help. In early March 2017, ahead of the trial date, the Executive Director of the Family Justice Center, Mary-Claire Landry, telephoned the DA, Leon Cannizarro. She reminded the DA that Tamika had been abused by this person for a number of years and that the DA had clear documentation of this in their files from previous cases against her ex-boyfriend, and from letters the DA had written requesting Tamika get assistance to move to a different house for safety reasons. It did not make any difference.⁵³⁹

The failures of police officers that were highlighted in the Public Integrity Bureau investigation (described in chapter four), including failure to obtain surveillance camera footage, the written police report of the incident contradicting the witness statements on the police body worn cameras, and the police report accepting, without question, the version of events described by Tamika's ex-boyfriend, were compounded by the DA's office which proceeded to charge her with three felonies. Tamika was charged with aggravated battery, aggravated assault with a firearm and illegal carrying of weapons.

The chapter on prosecution in the New Orleans Blueprint for Safety includes in its policy "If the defendant reasonably appears to be the victim of ongoing domestic violence, consider a plea to a lesser offense or an agreement to a stay of imposition with probationary conditions that include support services that will aid in reducing the likelihood of the victim defendant using violence in the future and preventing her/ him from becoming vulnerable to more abuse."⁵⁴⁰ However, prosecutors did not amend any of the charges

⁵³⁴ Amnesty International meetings with attorneys and LGBTI community organizations, January and September 2018

⁵³⁵ Amnesty International meeting with ADA, November 2018

⁵³⁶ Amnesty International meeting ADAs, November 2018

⁵³⁷ Information from the New Orleans Criminal Court Docket Master,

http://www.opcs.org/index.php?option=com_wrapper&view=wrapper&Itemid=738

⁵³⁸ Amnesty International interview with Tamika and meeting with Family Justice Center, November 2018

⁵³⁹ Amnesty International meeting with Family Justice Center, November 2018 and subsequent correspondence, October 2019

⁵⁴⁰ New Orleans Blueprint for Safety, Chapter five, Prosecution, <https://www.nola.gov/health-department/domestic-violence-prevention/domestic-violence-documents/blueprint-for-safety-chapter-five/>

when they offered her a plea deal. Amnesty International wrote to New Orleans DA, Leon Cannizarro, to ask the reason why they decided not to reduce the charges despite the Blueprint for Safety policy and the intervention of the Family Justice Center. The organization also asked to what extent the DA had relied on the written police reports from the incident in making their charging decision. The New Orleans DA replied and said that Tamika:

“was prosecuted because she fired a gun inside a crowded Bourbon Street nightclub. She admitted her actions to police and pleaded guilty as charged to aggravated assault with a firearm. According to statements from the defendant, the man she shot at, and an independent witness, this was not even close to a case of a battered victim acting in self-defense. To the contrary, [Tamika] had been informed that the male had won a significant sum of money the previous night at a New Orleans casino and she went to his place of work demanding a portion of \$10,000. Independent witnesses verified she approached the man, she initiated a physical confrontation first by striking the man with an object, and that she pulled a gun from her purse and shot at the man as he attempted to flee from her out of the nightclub. After reviewing witness statements, surveillance video and police body-worn cameras, our office charged [Tamika] with the gun offense. In our view, the facts of this case fall far afield from the New Orleans Blueprint for Safety passage you have cited. And prosecutor Avery says she has no recollection of the Family Justice Center discussing any objections to this case with her. We stand by our charging decision, particularly given the defendant’s own confirming statements and decision to plead guilty as charged to the offense of discharging a weapon inside this Bourbon Street nightclub.”⁵⁴¹

Amnesty International is concerned about the inconsistencies observed in the investigation and prosecution of Tamika’s case. The PIB investigation stated that police officers failed to collect the CCTV footage, yet the DA said they reviewed the footage. The police report written by the officer who arrested Tamika stated that witnesses said Tamika started the fight, yet the PIB investigation into the police officers describes body worn camera footage of another officer interviewing the witness who said that Tamika already had a “busted” eye when she came out of the bathroom and then threw an ashtray, indicating that she did not start the altercation. The DA’s reply to Amnesty International included that they reviewed police reports and body worn camera footage and witnesses said Tamika instigated the incident, contradicting the PIB investigator’s report into the conduct of the police officers.

Tamika told Amnesty International that she felt she had to take a plea deal. She said:

“I took a plea because they wanted to take me to trial and taking me to trial they were trying to get me 20 years, 25 years. When I notified [my advocate at the Family Justice Center], it was a little bit too late, but she came to a lot of my court procedures. I did a year of weekends [in jail]. I’d go in Friday, come out Monday morning. [I had to] write an essay about guns, get my GED [General Education Development], be on four-year probation, and pay \$64 a month. On top of that [I had to pay] the bond fee.”⁵⁴²

In contrast, police and court records show that Tamika’s ex-boyfriend had been arrested at the end of July 2016 for crimes in which Tamika was listed as the victim.⁵⁴³ He was charged with violation of protective orders, home invasion and theft. Prosecutors dropped two further charges, one of domestic abuse battery and one of domestic abuse battery by strangulation. The case was heard in mid-August 2016. The charge of home invasion was amended to unauthorized entry of an inhabited dwelling. He pled guilty to that and the other two charges and received a two-year suspended sentence each for the unauthorized entry of an inhabited dwelling and theft charges and a six-month suspended sentence for violation of protective orders.⁵⁴⁴

In October, when Tamika was arrested, her ex-boyfriend had two outstanding warrants for crimes with Tamika listed as the victim. He was arrested in December 2016 and charged with three counts of violation of protective orders. His bond was set at \$5,000. Prosecutors dropped one of the charges. In March 2017 he pled guilty to two counts of violation of protective orders and was sentenced to 90 days in Orleans parish prison. The same week the court revoked his probation for the July 2016 charges and he was ordered to serve the two-year sentence.⁵⁴⁵

⁵⁴¹ Reply from New Orleans DA to Amnesty International communication, October 2019

⁵⁴² Interview with Amnesty International, November 2018

⁵⁴³ PIB investigation, 2017-0556-R, provided to Amnesty International following public records request

⁵⁴⁴ Information from the New Orleans Criminal Court Docket Master, http://www.opcs.org/index.php?option=com_wrapper&view=wrapper&Itemid=738

⁵⁴⁵ Information from the New Orleans Criminal Court Docket Master, http://www.opcs.org/index.php?option=com_wrapper&view=wrapper&Itemid=738

In its report on women deprived of liberty, the UN Working Group on the issue of discrimination against women in law and in practice addressed the issue of criminalization of women who responded to violence against them by “taking forceful measures of self-defense”. The Working Group highlighted that the reasons for their criminalization include gender stereotypes which “paint men as those who have the right to stand and fight, while women are expected to retreat” and that assessments of proportionality and immediacy in self-defense ignores differing physical strength between men and women and “the altered perception of immediate harm in the context of long-term domestic violence”. The Working Group recommended that governments “Pass legislation taking into account the experience of gender-based violence as a defense against criminal charges and a mitigation factor in sentencing”.⁵⁴⁶ The Committee of Experts monitoring the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women have stated that assessing requirements that a threat of violence be imminent for self-defense to be justified must include a gender perspective. In contexts of intimate partner violence “it is not unreasonable to believe that women who are the victims of regularly occurring violence, and those who expect it at any moment, believe that their attacker intended to kill them”. The Committee also stated that “Women victims of gender-based domestic violence cannot be obliged to “put up with it” and not defend themselves” and that “the women is not obliged to tolerate abuse or be forced to abandon her home instead of defending herself”. The Committee ruled that courts should assess the context in which the attack and self-defense took place, the impact of gender roles, and “the dynamic of the cycle of violence itself, that deprives women of the emotional tools to react in accordance with the masculine standards presented by traditional criminal law”.⁵⁴⁷

Louisiana’s code of evidence contains a clause prohibiting a defendant (here the survivor) from introducing evidence of a victim’s bad character. An exception to this is when there is, or has been an intimate relationship between them, and “the accused pleads self-defense and there is a history of assaultive behavior between the victim and the accused”.⁵⁴⁸ Another clause allows for a defendant in an abusive relationship to introduce expert testimony on “the effects of the prior assaultive acts on the accused’s state of mind”.⁵⁴⁹ The system for providing free defense to the poor is chronically underfunded in Louisiana, and public defenders have extremely high caseloads. A representative of an organization supporting survivors of intimate partner violence told Amnesty International that, in the experience of the organization, survivors who have been prosecuted for actions taken against their abuser who can afford a private attorney have a better chance of having mitigating evidence of past violence considered by the DA in a plea offer, or by the court at trial. However, the representative said that most survivors cannot afford a private attorney and that overworked public defenders often meet the survivor for the first time just before the case is heard and by that time, the survivor has already pled guilty.⁵⁵⁰ (see section 5.3.4 below for more information on how differentials in sentencing relating to plea bargains combines with inadequate legal advice to provide an incentive for survivors to plead guilty instead of introducing mitigating evidence of intimate partner violence at trial.) However, the case of Tamika demonstrates that having a private attorney does not guarantee the quality of defense provided, or that they will be able to have mitigating evidence considered. The gender dynamics of poverty in Louisiana means that women are more likely to be unable to afford a good attorney. Black women, who are most at risk of being arrested due to police failures to identify predominant aggressor, or recognize self-defense, are least likely to be able to afford a good attorney.

Prosecutors continue to have discretion in how they deal with cases that are challenged after a survivor is convicted. In August 2005, Catina Curley was charged with the premeditated second-degree murder of her husband, Renaldo. Her trial, delayed due to Hurricane Katrina, took place in March 2007. Despite the court hearing testimony, including from the couple’s children that their father was violent towards their mother, from Catina’s former work supervisor that she came to work with black eyes, from a police officer confirming at least six police reports of domestic violence, and from Catina describing the abuse and saying usually she did not call the police, the jury found her guilty.⁵⁵¹ The jury was split 11-1 in its verdict, and, until 2019, in Louisiana law, that meant conviction. Catina was sentenced to life imprisonment.⁵⁵²

After her appeals failed, Catina filed an application for post-conviction relief on the basis of ineffective counsel because her defense attorney had withdrawn her plea of not-guilty by reason of insanity without

⁵⁴⁶ UN Working Group on discrimination against women in law and practice, *Women Deprived of Liberty*, UN Doc. A/HRC/41/33, paras 70 & 80(a), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/139/27/PDF/G1913927.pdf?OpenElement>

⁵⁴⁷ General Recommendation of the Committee of Experts of the MESECVI, Self-defense and gender-based violence, <http://www.oas.org/en/mesecvi/docs/RecomendacionLegitimaDefensa-EN.pdf>, see also *X v Timor Leste*, UN Doc. CEDAW/C/69/D/88/2015,

⁵⁴⁸ La. CEv 404 A(2), <https://law.justia.com/codes/louisiana/2018/code-codeofevidence/ce-404/>

⁵⁴⁹ La. CEv 404 B(2), <https://law.justia.com/codes/louisiana/2018/code-codeofevidence/ce-404/>

⁵⁵⁰ Amnesty International meeting with organization supporting survivors, November 2018 and follow up correspondence

⁵⁵¹ Supreme Court of Louisiana, Jun 27 2018, 250 So. 3d 236 (La. 2018), <https://casetext.com/case/state-v-curley-29?resultsNav=false>

⁵⁵² See https://www.nola.com/news/courts/article_32a884f0-f599-52ae-be70-0804b06ac3af.html

having a psychological evaluation done and had not called experts to testify about the effects of domestic violence and “battered woman’s syndrome”. In May 2016, the district court granted the application and ordered new trial. The New Orleans DA appealed this decision and the court of appeal reinstated her conviction. Catina appealed to the Louisiana Supreme Court which, in a 6-1 decision in June 2018, vacated her conviction and sentence, sending the case back to the district court for a new trial.⁵⁵³

Immediately following the Supreme Court decision, the district court set bail for Catina at \$1000. Family members paid the bond and she was released after 11 years in prison. The DA’s office publicly described the bail decision as “disturbing, disheartening and unprecedented in New Orleans’ criminal courthouse”.⁵⁵⁴ The DA decided to go ahead with a retrial. The new trial, in February 2019, heard testimony from witnesses and from two expert witnesses who testified on the effect of “battered woman’s syndrome” and PTSD on Catina’s state of mind. In its ruling, the court rejected the prosecution’s argument that Catina could not claim self-defense because she was the “aggressor”. Accepting the testimony of the expert witnesses that the history of physical abuse and PTSD meant Catina “would be reasonable in her belief that she was in imminent danger of being killed or receiving great bodily harm”, the court also rejected prosecutors’ claims that the absence of police reports in the years immediately prior to the shooting meant that the abuse had stopped. In a March 2019 ruling, the court found Catina not guilty of second degree murder.⁵⁵⁵

5.3.4 ISSUES WITH PLEA BARGAINING

“I don’t know what his plea is going to be. The ADA did tell me that before she agrees to anything, she will contact me. I don’t want anything less than [the original offer the ADA discussed with me], I’d rather go to trial. I don’t know how they are going to negotiate plea offers. If he gets probation, I’ll be very upset.”

Kirby, who was waiting for her ex-husband’s trial on four felony and four misdemeanor domestic abuse charges.⁵⁵⁶

Plea bargains in the US involve the defendant waiving certain rights, including the rights to silence, against self-incrimination, to trial, to contest the evidence and to many aspects of appeal.⁵⁵⁷ Louisiana law requires courts not to accept a guilty plea from a defendant not represented by a lawyer until the court has established that the plea is voluntary, that the defendant understands the charge and that they have the right to counsel.⁵⁵⁸ If the defendant pleading guilty is the result “prior discussions between the district attorney and the defendant or his attorney”, the court “on the record, shall require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered”.⁵⁵⁹ Louisiana law permits a defendant to withdraw a guilty plea any time before sentencing.⁵⁶⁰

The vast majority of criminal cases, including cases of intimate partner violence, conclude with the defendant pleading guilty as charged or pleading guilty to a lesser offence, and a sentencing agreement made between the DA, the defendant and their defense attorney. If the defendant pleads not guilty to the original charge and does not accept any offered plea deal, the case goes to trial. Whether to offer a plea deal to a defendant is at the discretion of the DA. The DA also decides which lesser offence to offer, for example reducing a felony charge to a misdemeanor, and what sentence to recommend.⁵⁶¹

“The type of violence and its context and severity are central factors in determining the terms of a plea agreement or sentencing recommendation that will best reflect the circumstances of the offense, the danger the defendant poses to the victim, others, and the victim’s safety needs.”

Blueprint for Safety, chapter on prosecution.⁵⁶²

⁵⁵³ Supreme Court of Louisiana, Jun 27 2018, 250 So. 3d 236 (La. 2018), <https://casetext.com/case/state-v-curley-29?resultsNav=false>

⁵⁵⁴ See https://www.nola.com/news/crime_police/article_8f104efe-632c-5da7-bc67-036b7d67f7fb.html

⁵⁵⁵ Criminal District Court, Parish of Orleans, State v. Catina Curley, Case No. 461-907, March 2019, <https://bloximages.newyork1.vip.townnews.com/theadvocate.com/content/tncms/assets/v3/editorial/8/ce/8cefde3e-3c67-11e9-a28c-6fff990c939c/5c79a1e43b55b.pdf.pdf>

⁵⁵⁶ Interview with Amnesty International, November 2018

⁵⁵⁷ Fair Trials, *The Disappearing Trial: Towards a rights-based approach to trial waiver systems*, p.10, https://fairtrials.org/sites/default/files/publication_pdf/Report-The-Disappearing-Trial.pdf

⁵⁵⁸ In addition, in felony cases, before accepting a guilty plea, the court must address the defendant to ensure that “the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement”. <https://law.justia.com/codes/louisiana/2018/code-codeofcriminalprocedure/ccrp-556/>

⁵⁵⁹ La. CCRP. 556 https://law.justia.com/codes/louisiana/2018/code-codeofcriminalprocedure/ccrp-556_1/

⁵⁶⁰ La. CCRP. 559 <https://law.justia.com/codes/louisiana/2018/code-codeofcriminalprocedure/ccrp-559/>

⁵⁶¹ Amnesty International meetings with DAs and ADAs, May and November 2018, and July 2019

⁵⁶² Blueprint for Safety, Prosecuting Attorney’s Office, p.94, <https://praxisinternational.org/wp-content/uploads/2016/02/BlueprintChapter5.pdf>

Representatives of organizations working with survivors of intimate partner violence all told Amnesty International of their concerns that felony cases involving serious violence, especially cases involving strangulation, were either charged as a lesser offence or were pled down to a misdemeanor.⁵⁶³ A criminal court judge in New Orleans confirmed to Amnesty International that most strangulation cases in his courtroom result in a plea down to domestic abuse battery, usually because the victim does not want to testify, and the DA wants a conviction.⁵⁶⁴ Amnesty International analysis of prosecution data provided to the organization by the New Orleans DA's office showed that, in 2017, 69% of charges of domestic abuse battery by strangulation resulted in a plea to a lesser offense.⁵⁶⁵



REDUCED CHARGES AND FIREARM PROHIBITION

Prohibition of possession of firearms applies to individuals convicted of felonies and to specified misdemeanor domestic abuse charges. If prosecutors reduce a felony or specified domestic abuse charge to a lesser offence, the individual may not be prohibited from possessing firearms. For example, a defendant on a charge of “domestic abuse battery” who pleads guilty to a reduced charge of “simple battery” will not be prohibited from possessing firearms under Louisiana law.

An ADA in the East Baton Rouge DA's office told Amnesty International that as cases progress, she will consider the trauma for the victim of testifying in deciding whether to offer a plea deal. She described a case of attempted murder where she decided to make a plea offer to the defendant because having the victim testify would be traumatizing. The defendant declined the offer, so she said her only option was to have the victim testify at trial.⁵⁶⁶ The New Orleans DA told Amnesty International that defense attorneys were responsible for delaying cases until victims lost interest in pursuing the case, were intimidated, or the couple got back together. He said that in cases where the victim was not available to testify, there would be a plea down to a lesser charge.⁵⁶⁷ The ADA responsible for domestic violence cases in Jefferson parish said that the proportion of cases pled down to a lesser charge there is relatively low because they work to ensure the original charge is the most appropriate, and will only reduce it for a good reason.⁵⁶⁸

LACK OF DATA ON WHAT HAPPENS TO CASES OF INTIMATE PARTNER VIOLENCE

There is a lack of data on the outcome of cases of intimate partner violence, and the data that exists in a few parishes is measured differently so makes comparison difficult. This lack of data is a problem in itself. One ADA expressed frustration that the computer system used by many DA's offices was not set up in a way to allow for analysis of data on their cases.⁵⁶⁹ Another problem is that the data that exists is not disaggregated by gender and race. The Consent Decree Monitor report contains data on prosecutions in New Orleans and the East Baton Rouge DA's office publishes some data; however, the way the data is measured does not allow for comparisons.

In New Orleans the Consent Decree Monitor reports on domestic violence include data is on the numbers of charges prosecuted and rejected annually. They show a 24% increase in the number of charges prosecuted between 2015 and 2018. The reports also show an increase in the number of charges refused by the DA's office. According to the data, prosecutors refused 5-6% of total charges in 2015 and 2016, and 35%-38% of total charges in 2017 and 2018. Amnesty International asked the New Orleans DA about these increases. The DA replied that “we cannot speak to the source or methodology of the numbers” in the Consent Decree Monitor reports and that “we also cannot explain for you the drastic shift in their purported statistics, though it would appear that perhaps they included Municipal Court outcomes in some years but not in others. The only change to our prosecution philosophy in this period was that in 2018, we began offering a new domestic violence awareness class for victims”.⁵⁷⁰

⁵⁶³ Amnesty International meetings with organizations supporting survivors, January, May and November 2018

⁵⁶⁴ Amnesty International meeting with Judge Hunter, July 2019

⁵⁶⁵ Data from the New Orleans DA's office provided to Amnesty International. In 2017 prosecutors accepted 173 charges of domestic abuse by strangulation. 119 of those charges resulted in a plea to a lesser offence. The data does not show what that lesser offense was.

⁵⁶⁶ Amnesty International meeting with East Baton Rouge DA, November 2018

⁵⁶⁷ Amnesty International meeting with New Orleans DA, May 2018

⁵⁶⁸ Amnesty International meeting with Jefferson DA's office, July 2019

⁵⁶⁹ Amnesty International meeting with ADA, July 2019

⁵⁷⁰ Response from New Orleans District Attorney to Amnesty International correspondence, October 2019

In East Baton Rouge, the DA's reports describe rejected charges as "no billed". The 2016 report states that 289 out of approximately 1400 (21%) misdemeanor domestic abuse battery cases were "no billed". The report does not include information for other charges relating to intimate partner violence, or felony charges. The 2018 report includes data for both felony and misdemeanor cases. Out of around 1300 domestic violence cases, 311 (24%) were "no billed".

Representatives of all DA's offices told Amnesty International that the vast majority of their cases conclude with a plea rather than going to trial.⁵⁷¹ The limited available data on the outcomes of cases that are prosecuted show different approaches in different parishes.

Data for East Baton Rouge in 2016 shows that of 1400 misdemeanor cases that were prosecuted, 543 resulted in a guilty plea and "503 were dismissed after mitigation such as the 26-week domestic abuse intervention counseling and/or mental health counseling". 2018 shows that there were 192 guilty pleas to a felony charge, 278 guilty pleas to a misdemeanor charge, and 483 cases were dismissed after mitigation. The East Baton Rouge data does not differentiate between pleas of guilty as charged or guilty to a lesser offence.

In contrast, the New Orleans DA informed Amnesty International that "This office does not offer DV [domestic violence] defendants "mitigation" in exchange for case dismissal."⁵⁷² From 2015 – 2018, all cases in New Orleans that did not go to trial resulted in a guilty plea. In 2017, defendants plead guilty as charged to exactly half of charges that ended in a plea and pled guilty to a lesser offense in the other half. The largest difference occurred in 2015 when defendants plead guilty as charged to 68% of charges and pled guilty to a lesser offense to 31% of charges. Of the total number of individuals charged with domestic violence related offenses between 2015 and 2018, 98% – 99% were convicted.⁵⁷³

The East Baton Rouge domestic violence report for 2018 states that only six misdemeanor domestic violence cases and three felony cases resulted in trials.⁵⁷⁴ From 2015 to 2018, only 1% – 2.3% of domestic violence charges in New Orleans were decided by a trial. In 2018, 31 charges were decided at trial. The data does not specify how many individuals the 31 charges related to.⁵⁷⁵

None of the prosecution outcomes data published in the Consent Decree Monitor reports or the East Baton Rouge DA's report are disaggregated by gender or race. Amnesty International requested disaggregated data from the New Orleans DA but was told that they do not track this information. The DA's office did provide Amnesty International with some data on all prosecutions from 2015 – 2017.⁵⁷⁶ It included information on all charges coded "domestic" on their computer system but not charges of murder, attempted murder or manslaughter which, even if they are "domestic", are not coded as such. Amnesty International matched demographic data about defendants from the "docket master", an online database of criminal cases in New Orleans, with the prosecution data provided by the New Orleans DA's office. The docket master only covers cases heard in the criminal district court, therefore demographic data on defendants whose cases were heard in the magistrate court was not available. Sufficient demographic data was available to allow analysis of prosecution data for 2017 only.⁵⁷⁷

Amnesty International calculated the rate, per 100,000 population, of cases received by prosecutors from police. While NOPD data showed that Black women were arrested at 4.2 times the rate of White women, the DA's data showed that prosecutors received cases against Black women at 2.6 times the rate of White women (307 per 100,000 population compared to 120). Likewise, NOPD data showed that Black women were arrested at a higher rate than White men; however, prosecution data shows that prosecutors received cases against White men at a rate 1.4 times higher than Black women (417 per 100,000 population compared to 307). Lack of information about how each institution collects its data means that it is not possible to know whether this difference is due to differences in methodology of data collection (such as one

⁵⁷¹ Amnesty International meetings with DAs and ADAs, May and November 2018, and July 2019

⁵⁷² Response from New Orleans District Attorney to Amnesty International correspondence, October 2019

⁵⁷³ <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/2018-Domestic-Violence-Annual-Report-Final-2-18-19.pdf>/
<https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/2017-dv-report.pdf>/
<https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/2015-DV.pdf>

⁵⁷⁴ East Baton Rouge District Attorney, 2018 Annual Domestic Violence Report, p.3,

<http://ebrda.org/pdfs/2018%20Annual%20DV%20Report.pdf>/
<https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/2018-Domestic-Violence-Annual-Report-Final-2-18-19.pdf>/
<https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/2017-dv-report.pdf>/
<https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/2015-DV.pdf>

⁵⁷⁶ Data sent by New Orleans District Attorney's office to Amnesty International, May 2018

⁵⁷⁷ The New Orleans DA's office provided prosecution data to Amnesty International in May 2018. The 2017 file contained data on 2871 charges against 1984 individuals. Demographic information was available in the docket master for 1954 individuals. (For docket master see http://www.opcs.org/index.php?option=com_wrapper&view=wrapper&Itemid=738)

institution coding more charges as domestic than the other) or to police supervisors deciding there are insufficient reasons to send cases for prosecution after more arrests of Black women.

The 2017 data shows that New Orleans prosecutors accepted (proceeded to prosecute) at least one charge against 52% of Black women and 51% of White women. Prosecutors accepted at least one charge against 71% of Black men and 66% of White men.

UNJUST CONSEQUENCES OF PLEA BARGAINS?

As use of plea bargaining has increased in criminal justice systems across the world,⁵⁷⁸ international bodies have started to highlight potential human rights violations and recommend safeguards, for example noting that trial waiver systems:

*“are open to abuse by both the prosecution and the defense. A prosecutor may threaten a defendant with an inappropriately harsh sentence if he or she does not confess, even in the absence of sufficient evidence; and a defense counsel may persuade an overburdened prosecutor in a complex case to accept a partial confession and a mild sanction while disregarding other, more serious criminal activity. Typically, the first type of abuse victimizes young and poor offenders whereas the second type benefits wealthy white-collar criminals”.*⁵⁷⁹

This reflects the concerns expressed to Amnesty International by organizations supporting survivors of intimate partner violence across Louisiana, and organizations monitoring functioning of the criminal justice system. Court Watch NOLA, told Amnesty International that in their experience of monitoring criminal cases in New Orleans, those charged with intimate partner violence often tend to be the working poor. Court Watch NOLA also mentioned that it has spoken to numerous survivors who complain about much more lenient sentences for their ex-partners who are well connected or who have hired well connected attorneys.⁵⁸⁰ In Louisiana, especially New Orleans, those who are poor, are disproportionately Black. When survivors of intimate partner violence are prosecuted for crimes against their abusers, they tend to plead guilty as charged. Crystal Scrantz of Faith House said that survivors that her organization has supported who were prosecuted were so scared of the prospect of going to jail, that they accepted plea offers with reduced sentencing, even if that meant they were convicted of a more serious offense.

Fair Trials International research into trial waiver systems worldwide noted that “When “incentives” to plead guilty become too extreme, they can persuade innocent people to admit crimes they did not commit”. Its review of practice in the US highlighted that plea deals to secure release from pre-trial detention, and large differentials between potential sentencing at trial and in a proposed plea deal, as factors that have a coercive effect on defendants and may result in innocent people pleading guilty.⁵⁸¹

Recommendations of safeguards to ensure fairness in plea bargaining include: guaranteed involvement of a lawyer before a plea can be agreed; limiting the differential between the sentence offered through a plea bargain and that resulting from a trial; prohibiting the waiver of appeal rights; allowing for the possibility of revoking a plea agreement when new facts arise; minimizing the use of pre-trial detention; and monitoring reductions of sentence following plea bargains for discrimination on the grounds of race, income and other factors and taking measures to counteract any discrimination.⁵⁸² Currently, Louisiana law does not include all these safeguards.

Mercedes Montagnes, Executive Director of The Promise of Justice Initiative, an organization working on criminal justice reform in New Orleans, told Amnesty International that it is impossible to know how many people plead guilty when they are innocent. She said that a lot of defendants cannot afford bail. This means that they are held in jail for a long time waiting for their trial date. DAs take advantage of this and offer a plea deal whereby they can leave jail that day in return for a guilty plea.⁵⁸³ Eva Lesslinger from the New Orleans Family Justice Center told Amnesty International that the number of pleas down are linked to the DA being a political position; across the US, DAs are interested in securing high numbers of convictions, whatever the charge. She said that high levels of criminalization results in survivors being less willing to involve the authorities when they experience violence; in particular, Black women are reluctant to have their partners

⁵⁷⁸ A Fair Trials International study of 90 countries found that 66 had trial waiver systems. In 1990, only 19 countries had them. See https://fairtrials.org/sites/default/files/publication_pdf/Report-The-Disappearing-Trial.pdf

⁵⁷⁹ Council of Europe, Parliamentary Assembly, Deal making in criminal proceedings: the need for minimum standards for trial waiver systems, Resolution 2245, 2018, Article 5.1, <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=25188&lang=EN>

⁵⁸⁰ Amnesty International meeting with Court Watch NOLA, November 2018

⁵⁸¹ Fair Trials International, p. 10, 12 and 56

⁵⁸² Council of Europe, Parliamentary Assembly, Deal making in criminal proceedings: the need for minimum standards for trial waiver systems, Resolution 2245, 2018, Article 8.

⁵⁸³ Amnesty International meeting with the Promise of Justice Initiative, November 2018

further criminalized.⁵⁸⁴ While Amnesty International is not aware of any research on the impact of race in plea deals in cases of intimate partner violence in the US, research by the Vera Institute of Justice on plea deals in drug misdemeanor cases in Manhattan found that Black and Latino defendants were 13% and 5% more likely to receive a plea offer involving a custodial sentence than similarly situated White or Asian defendants.⁵⁸⁵



EXONERATIONS

The National Registry of Exonerations contains information about all known exonerations in the US since 1989. Nationally, of the 2,501 exonerations, 91% of those exonerated are male. 49% of exonerees are Black, 38% are White and 12% are Hispanic. Racial disparities among exonerees in Louisiana are much greater than nationally. Of the 65 exonerations in Louisiana, 82% of those exonerated are Black, 17% are White and 2% Hispanic. 94% of exonerees in Louisiana are men. In 43 of Louisiana's exonerations (66%) "official misconduct" played a part in the wrongful conviction.⁵⁸⁶

Additional data provided to Amnesty International by the National Registry of Exonerations shows that 351 individuals (14.3%) were exonerated after being convicted of a crime committed against an intimate partner or family member. Of the 94 individuals exonerated following conviction of a crime against an intimate partner (a spouse or lover in the NRE categorization), 78% were men and 22% were women. In a reversal of the trend for exonerations for all crimes, exonerees for crimes against intimate partners were 64% White, 28% Black, 6% Hispanic and 1% Asian and Native American. There have been three exonerations in Louisiana for crimes committed against an intimate partner; one is Catina Curley.⁵⁸⁷

"Innocent defendants who plead guilty have an exceptionally hard time convincing anybody of their innocence, or even getting a hearing."

National Registry of Exonerations

The National Registry of Exonerations notes that "innocent defendants who plead guilty almost always get lighter sentences than those who are convicted at trial – that's why they plead guilty – so there is less incentive to pursue exoneration". Data on exonerations in homicide cases show that the more prosecutors offered lower sentences in exchange for a guilty plea, "the higher the proportion of exonerated homicide defendants who pled guilty".⁵⁸⁸ Organizations working on cases of people who say they have been wrongly convicted understandably focus on those who have received the most serious sentences – the death penalty or life imprisonment. For example, the New Orleans Innocence Project works to free innocent prisoners sentenced to life imprisonment; they have 19 active investigations, 17 cases being litigated and 355 in line to be reviewed.⁵⁸⁹ Cases of intimate partner violence are only likely to be investigated by these organizations if it is a case of homicide. Nationally, 488 exonerations (20%) for any crime happened following the defendant pleading guilty, 87% were men and 13% were women. In 51% of cases of exonerations following a guilty plea, the exoneree was Black. 30% of exonerees who pled guilty were White and 15% were Hispanic.

Of the 351 exonerations for a crime committed against an intimate partner or family member, in 39 cases (11%) the individual pled guilty. Six cases involved intimate partners: two White women, one Black woman and three White men. In two cases the individual was convicted of murder and four cases, manslaughter.⁵⁹⁰

⁵⁸⁴ Amnesty International meeting with the Family Justice Center, January and May 2018

⁵⁸⁵ P. 6 <http://archive.vera.org/sites/default/files/resources/downloads/race-and-prosecution-manhattan-research-summary-v2.pdf>

⁵⁸⁶ See <http://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx>, Number of exonerations as of October 8th, 2019

⁵⁸⁷ Data on exonerations by relationship between the exoneree and victim of the crime provided to Amnesty International by the National Registry on Exonerations, May 2019

⁵⁸⁸ National Registry of Exonerations, Innocents who plead guilty, 2015, <http://www.law.umich.edu/special/exoneration/Documents/NRE.Guilty.Plea.Article1.pdf>

⁵⁸⁹ See <https://ip-no.org/what-we-do/free-innocent-prisoners/current-clients/>

⁵⁹⁰ Data on exonerations by relationship between the exoneree and victim of the crime provided to Amnesty International by the National Registry on Exonerations, May 2019

The UN Committee on the Elimination of Racial Discrimination, following its review of the US, expressed concern that “the overrepresentation of racial and ethnic minorities in the criminal justice system is exacerbated by the use of prosecutorial discretion, the application of mandatory minimum drug-offense sentencing policies, and the implementation of repeat offender laws.” The CERD recommended the US to amend “laws and policies leading to racially disparate impacts in the criminal justice system at the federal, state and local levels” and implement “effective national strategies or plans of action aimed at eliminating structural discrimination”.⁵⁹¹

The UN Human Rights Committee also addressed this issue after its review of the US. It stated “the Committee continues to be concerned about racial disparities at different stages in the criminal justice system, as well as sentencing disparities and the overrepresentation of individuals belonging to racial and ethnic minorities in prisons and jails”. It recommended the US to “continue and step up its efforts to robustly address racial disparities in the criminal justice system, including by amending regulations and policies leading to racially disparate impact at the federal, state and local levels”.⁵⁹²

IMPACT OF FIREARM SURRENDER ON OUTCOME OF CASES

Some DAs and ADAs who spoke to Amnesty International expressed concern that the introduction of the mechanism to remove firearms from defendants convicted of specified domestic abuse offenses could lead to fewer defendants being willing to plead guilty to domestic abuse. One ADA said that she thought the number of guilty pleas would go down because of the new procedure and that dismissals of cases would increase because victims would not testify.⁵⁹³ Another ADA in a different judicial district thought the impact on the number of pleas would not be much because people would lie. He said that they expect that defendants will tell the court they do not possess firearms even if they do.⁵⁹⁴

Representatives of an organization working with survivors said that in one of the parishes they cover, where there is a very strong gun culture, there could be more pleas down to lesser offenses, which do not fall under the new gun transfer procedure. They planned to monitor this closely.⁵⁹⁵ The representative of another organization told Amnesty International about a judge who brought his gun to court. She said that this judge might be unwilling to order defendants to transfer their firearms. She also said that she expected defendants to give their guns to a friend before the court hearing and tell the court they do not possess firearms.⁵⁹⁶

⁵⁹¹ CERD Concluding Observations, Para 20

⁵⁹² Human Rights Committee, Concluding Observations, Para 6

⁵⁹³ Amnesty International meeting with ADA, November 2018

⁵⁹⁴ Amnesty International meeting with ADA, November 2018

⁵⁹⁵ Amnesty International meeting with organization supporting survivors, May 2018

⁵⁹⁶ Amnesty International meeting with organization supporting survivors, November 2018

FAMILY VIOLENCE OR “BATTERER’S” INTERVENTION PROGRAMS

It was beyond the scope of this report to investigate in detail how courts deal with divorce and custody of children in cases of intimate partner violence; however, Amnesty International heard from survivors whose children had been harmed by their ex-partners following decisions by judges to allow unsupervised visitation. International human rights law requires that, in all actions of the authorities concerning children, “the best interests of the child shall be a primary consideration”, and that children have the right to express their views in matters concerning them and their views be “given due weight in accordance with the age and maturity of the child”.⁵⁹⁷

Louisiana civil or criminal courts may order abusive partners to attend a 26-week program which aims to challenge abusers’ coercive and controlling behavior and reduce re-offending. These Family Violence – or “Batterer’s” Intervention Programs are often ordered as part of sentencing or probation conditions. Louisiana law states that programs should be designed for perpetrators of domestic abuse and run by people with experience with perpetrators, and training in the dynamics of domestic violence.⁵⁹⁸ Louisiana law contains a presumption that a parent who has a history of perpetrating domestic abuse will not be awarded sole or joint custody of children, unless certain conditions are met. One of those is the successful completion of a “court-monitored domestic abuse intervention program”.⁵⁹⁹ Family violence intervention programs are not available in the majority of parishes in Louisiana, particularly rural areas. Even in areas with programs, judges sometime order abusers to attend anger management classes instead. This fails to recognize that intimate partner violence is not simply about anger and does not address the abuser’s desire for power and control over the victim.

There is no agency in Louisiana to license the programs and there is no monitoring of their quality or effectiveness. The LCADV developed standards for programs; however, these are entirely voluntary.⁶⁰⁰ Courts should monitor whether a defendant is attending the program; however, they do not always do this. For example, if a defendant’s probation ends before the end of the program, then the monitoring stops.

Kirby’s then 12-year-old daughter witnessed her father strangling Kirby. When granting Kirby a protective order, the judge ordered her ex-husband to attend a “batterer’s intervention program”. Kirby told Amnesty International “He was arrested four times while he was in the classes. He still got his certificate of completion successfully”. The rules of the program he attended state “Participants may not use any violence. A participant who does so may be required to attend additional classes, terminated from the program, and/or subject to other consequences”.⁶⁰¹ After completing the classes and while he had multiple criminal charges pending, he filed for sole custody of their three children. Despite Kirby’s daughter being a key witness in the case against Kirby’s ex-husband, a hearing officer granted him unsupervised visitation. Kirby said “it amazes me that my daughter’s not old enough to say “I don’t want to see my Dad” but she’s old enough to get on the witness stand and testify against him. I don’t get that”. At the second unsupervised visit, Kirby’s ex-husband threatened their daughter.⁶⁰²

Brandie told Amnesty International that her ex-husband started acting aggressively, first towards their daughter resulting in her returning from unsupervised visits with visible bruises, and later towards their younger sons. Brandie applied for sole custody and a permanent protective order. The court granted both. It ordered her ex-husband to attend a family violence intervention program and granted him supervised visits with the children. He violated the protective order within weeks and was arrested. Brandie said “He can go through this six-month program, get a certificate, probably not learn a damn thing, and then he can petition the court to re-establish his visitation without a monitor even though there’s a permanent protective order in place for myself and my three kids. What sense does that make?”⁶⁰³

⁵⁹⁷ CRC articles 3 and 12, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁵⁹⁸ <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-14/rs-14-35.3/>

⁵⁹⁹ <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-9/rs-9-364/>

⁶⁰⁰ <http://lcadv.org/wp-content/uploads/LCADV-BIP-Standards-2015.pdf>

⁶⁰¹ Family Violence Intervention Program, Rules of the Classroom, document for the program that Kirby’s ex-husband attended, provided to Amnesty International by the local organization supporting survivors of violence.

⁶⁰² Interview with Amnesty International, November 2018

⁶⁰³ Interview with Amnesty International, November 2018

5.4 INADEQUATE OVERSIGHT AND REMEDIES

Human rights standards on women’s access to justice require that the authorities monitor the justice system to ensure that the system, and professionals working in the system, act in accordance with human rights principles. It requires an effective complaints mechanism and for all cases of discriminatory practice to be identified and addressed. Authorities should also conduct research, in collaboration with civil society, into practices which hinder or limit access to justice, and put in place measures to address them and ensure that the justice system is gender-sensitive and accountable.⁶⁰⁴

The Louisiana Attorney Disciplinary Board, established by the Louisiana Supreme Court has a procedure through which individuals may submit complaints about attorneys, including DAs and ADAs. However, the immense power that DAs and ADAs hold means that very few people feel able to complain about them. Complaints are reviewed by the Office of Disciplinary Counsel. The prosecutor is asked to respond. Once the Council have all the information they decide whether to dismiss the complaint, impose a “private admonition” or start formal disciplinary proceedings.⁶⁰⁵ The Disciplinary Board received 2800 complaints in 2017 and 2532 in 2018; however, the Board does not publish the proportion of complaints involving prosecutors.⁶⁰⁶ In their data on the types of misconduct alleged in complaints, the Board states that there were 20 allegations of “prosecutor violations” in 2017 and 6 in 2018; however, there may be multiple allegations against one individual, and prosecutors may have been accused of other types of misconduct such as conflict of interest.⁶⁰⁷

In 2018, a bill was introduced to the Louisiana legislature to establish a State Commission on Prosecutorial Conduct with enhanced powers to receive and investigate complaints about the actions of prosecutors.⁶⁰⁸ District Attorneys mobilized to oppose the bill and it was not passed.⁶⁰⁹

There are few legal remedies available to hold individual prosecutors accountable for misconduct. Under federal law, individuals whose constitutional rights have been violated by local or state officials acting in their official role can bring a civil lawsuit against those officials.⁶¹⁰ However, the U.S. Supreme Court has ruled that prosecutors enjoy broad immunity from such suits.⁶¹¹ Prosecutors have absolute immunity from lawsuits when acting within their official function, such as when they are initiating a case or presenting in court⁶¹² even if they act intentionally to violate constitutional rights. Prosecutors also have qualified immunity for actions outside their official function, for example conducting training or acting as witnesses. To make a successful claim, the individual must show the constitutional right was “clearly established” and a reasonable official would have known that his or her conduct would have resulted in a violation.⁶¹³

In practice it means that even in egregious cases of prosecutor misconduct, courts frequently find against the plaintiff. For example, in the case *Connick v. Thompson* from Louisiana, the US Supreme Court held the former New Orleans DA not liable for failure to train prosecutors on their duty to disclose to the defense evidence favorable to the defendant as required under *Brady v. Maryland*⁶¹⁴ and denied reparations to John Thompson who was wrongly convicted of murder and spent 14 years on death row.⁶¹⁵

⁶⁰⁴ CEDAW, General Recommendation 33, para 20

⁶⁰⁵ See <https://www.lsba.org/Public/AttorneyDisciplinaryProcedures.aspx>

⁶⁰⁶ See <https://www.ladb.org/Statistics/Default.aspx?selected=Complaints+Filed+and+Closed>

⁶⁰⁷ See <https://www.ladb.org/Statistics/Default.aspx?selected=Misconduct+Alleged+in+Complaints>

⁶⁰⁸ See <http://www.legis.la.gov/legis/ViewDocument.aspx?d=1076792>

⁶⁰⁹ Amnesty International meeting with Court Watch NOLA, November 2018

⁶¹⁰ 42. U.S.C. § 1983 (2012), originally passed as Civil Rights Act of 1871. The remedy is money damages.

⁶¹¹ See *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976).

⁶¹² Absolute immunity applies to all functions “intimately associated with the judicial process,” *Imbler v. Pachtman*, 424 U.S. at 430.

⁶¹³ *Kalina v. Fletcher*, 522 U.S. 118, 127–29 (1997)

⁶¹⁴ *Brady v. Maryland*, 373 U.S. 83

⁶¹⁵ *Connick v. Thompson*, 563 U.S. 51 (2011)

6. SUPPORT SERVICES AND VIOLENCE PREVENTION

“Louisiana’s domestic violence shelters are consistently at capacity. Survivors in many rural areas are hours away from the nearest shelter and have limited access to non-residential advocacy services. Shelters and outreach offices have had to close in recent years. Meanwhile, the demand for services has increased.”

Mariah Wineski, Executive Director, LCADV.⁶¹⁶

6.1 HIGH DEMAND FOR LIMITED SERVICES

The Louisiana Coalition Against Domestic Violence has 15 member-organizations who provide support services for survivors of intimate partner violence and their children. Services include emergency shelter, longer-term transitional housing, legal advice, psycho-social care and counselling. Each year LCADV member programs serve approximately 17,000 survivors of domestic violence (including children of survivors accommodated in shelters). LCADV members answer an average of 40,000 crisis calls each year. Services are over-subscribed and LCADV members have to turn away people every day.⁶¹⁷

The LCADV told Amnesty International that there are 15 shelters for survivors of intimate partner violence across Louisiana. Together the 15 shelters have 380 beds. This does not mean that at any one time there could be 380 survivors in Louisiana’s shelters because the figure includes beds for children of survivors. Since 2012, five shelters for survivors of domestic violence have closed, mainly due to a lack of funding.⁶¹⁸ LCADV member organizations report being forced to eliminate staff posts due to lack of funding. Between 2016 and 2018 a total of 32 staff positions have been lost, the majority of them direct service posts, such as shelter staff or advocates.⁶¹⁹

⁶¹⁶ Amnesty International meeting with LCADV

⁶¹⁷ Amnesty International meetings with LCADV and LCADV member programs, May and November 2018, and July 2019

⁶¹⁸ Amnesty International meeting with LCADV, May and November 2018

⁶¹⁹ See <https://nnedv.org/mdocs-posts/2018-louisiana/> <https://nnedv.org/mdocs-posts/2017-louisiana/> https://nnedv.org/mdocs-posts/census_2016_handout_state-summary_louisiana/

Most shelters cover several parishes. For example, the shelter in Lafayette serves seven parishes. It has 45 beds and can accommodate eight families and six single people at any one time. They receive between 60 and 80 requests for shelter per month and have to turn many people away.⁶²⁰ The shelter in St Mary parish serves four parishes and has 26 beds. The shelter in Terrebonne parish has 35 beds and serves two parishes. In northern Louisiana, the shelter in Monroe has only 22 beds, including beds for children, and serves 12 parishes.⁶²¹

“We don’t have enough shelters, and women of color are dying. Women who live in impoverished communities feel they have been forgotten. They feel hopeless and think there is no way out.”

Twahna Harris, Founder and Executive Director, The Butterfly Society.⁶²²

Representatives of organizations providing support to survivors told Amnesty International that when the nearest shelter is full they will ask neighboring shelters if they are able to help. However, this sometimes causes problems for survivors because many people have their family nearby and they do not want to go to a shelter far away.⁶²³ In rural areas, where everybody knows each other, abusers are often able to get information about where a survivor is staying and continue to threaten them.⁶²⁴

The representatives of support services who spoke to Amnesty International all said that they provide services to survivors irrespective of gender. The vast majority of people seeking services are women who have been abused by men. They sometimes get requests for support from individuals in same-sex relationships and from men who have been abused by women.

6.2 INADEQUATE FUNDING OF SUPPORT SERVICES

“Many of the issues we are facing come down to one question: is domestic violence a priority for our state? Looking at the state’s budget, it doesn’t appear that it is.”

Mariah Wineski, Executive Director, LCADV.⁶²⁵

The state of Louisiana does not allocate any state funding for support services for survivors of domestic abuse. Funding which is administered by the state comes from federal sources. Mariah Wineski of the LCADV told Amnesty International that the state used to provide some funding from its state general fund, but since 2013, has gradually replaced it with federal funding from the Temporary Assistance for Needy Families (TANF) program. Although the line in the state budget looks the same, the source of the money is federal not state.⁶²⁶ Organizations that receive federal funding are often required to match a certain percentage from non-federal funding sources. The state’s failure to allocate any funds for services to survivors means that organizations in Louisiana often struggle to raise the required match funds, unless they receive a “match waiver” from the federal office in charge of the funding. Mariah Wineski of the LCADV told Amnesty International that coalition members are applying for less federal funding because of uncertainty over whether they will receive a waiver and concerns that without it, they will be unable to find the match funding. Previously, they were able to use state funding for the match.⁶²⁷

The LCLE is the state administering agency for federal grants from the US Department of Justice. The majority of federal funds come from the Victims of Crime Act (VOCA) Victim Assistance Program with a smaller amount from the STOP Violence Against Women Federal Grant Program. The primary purpose of VOCA funding is to provide services to victims of crime. STOP funds are to develop and strengthen law enforcement and prosecution to combat violence against women.⁶²⁸ A minimum of 10% of the federal VOCA grant must be allocated to work in each of the following areas: sexual assault, domestic violence, child abuse and previously underserved populations.⁶²⁹ As well as public and non-profit organizations, criminal justice agencies are eligible to receive VOCA funding for advocacy or services to crime victims. VOCA funds also

⁶²⁰ Amnesty International meeting with Faith House, November 2018

⁶²¹ Amnesty International meeting with LCADV, May and November 2018

⁶²² Amnesty International meeting with the Butterfly Society, July 2019

⁶²³ Amnesty International meeting with organization supporting survivors, May 2018

⁶²⁴ Amnesty International meeting with Chez Hope, May 2018

⁶²⁵ Amnesty International meetings with LCADV

⁶²⁶ Amnesty International meetings with LCADV

⁶²⁷ Amnesty International meetings with LCADV

⁶²⁸ LCLE, STOP Violence against women formula grant program, implementation plan 2017-2020, p.20 <http://lcle.la.gov/programs/uploads/2017-2020%20Implementation%20Plan.pdf>

⁶²⁹ LCLE, Victim services advisory board, Federal formula grant program guidelines, p.2 http://lcle.la.gov/programs/uploads/VAWA/Victim_Services_Advisory_Board_Guidelines_09302015.pdf

support crime victim compensation. Organizations receiving VOCA funds must provide 20% match funding from non-federal sources. For native American tribes, the match funding requirement is 5%.⁶³⁰

The LCLE allocates 30% of federal funds from the STOP program to victim services, 25% to law enforcement, 25% to prosecution, 5% to courts and 15% at its discretion. Of the 30% for victim services, 90% is allocated equally through the LCADV and the Louisiana Foundation Against Sexual Assault and 10% is allocated to “culturally-specific victim services projects”.⁶³¹ The LCLE reports that of the \$10.7 million it administered for domestic violence programs in fiscal year 2015, \$9.8 million came from VOCA and \$930,000 from STOP.⁶³²

Organizations applying for funding for programs must complete an application process. The program should have two goals and objectives against which success can be measured. Performance is self-reported by the organization. A Program Manager who is part of the process of assessing applications for funding told Amnesty International that there was no real checking on how organizations use the money and that it was often difficult to measure success, for example, whether someone felt better after receiving services.⁶³³ The LCLE told Amnesty International that it has the responsibility to “report any findings or reports of discrimination” committed by recipients of sub-grants to the DOJ and Office for Civil Rights. They may also report the allegation to relevant Louisiana State Agencies. The LCLE “will suspend or terminate future funding” should allegations of discrimination be “found to be true”.⁶³⁴

The New Orleans DA’s office received \$190,775 from VOCA between January 2016 and June 2018 for its victim assistance program and \$82,024 from the STOP program in 2017 for its domestic violence program.⁶³⁵ This funding covered the period when the DA was sending fake “DA subpoenas” to victims and witnesses and threatening them with jail and in March 2019, the LCLE approved another STOP grant of \$83,000 for the office.⁶³⁶

6.3 LACK OF STATE EFFORTS TO PREVENT VIOLENCE

Under human rights law, the authorities have the obligation to prevent intimate partner violence, as well as to respond when it occurs. Louisiana’s state authorities have undertaken a few measures; however, the state has no comprehensive strategy to prevent intimate partner violence and fails to fund the civil society organizations that are undertaking awareness raising and education campaigns. The prevention work happening in Louisiana are small scale, local initiatives run by dedicated staff and volunteers of under-funded organizations. For example, the Butterfly Society is a grassroots, community organization working to raise awareness of domestic violence in Baton Rouge’s Black community. Its founder, Twahna Harris, herself a survivor of intimate partner violence, told Amnesty International that the Butterfly Society “shows up where people think we would never go”, including holding events in barber’s shops and churches to talk about issues of domestic violence with people.⁶³⁷

In 2010, the Legislature introduced a requirement for public schools to provide “age and grade appropriate” education on teen dating violence for students in grades seven through 12. The education should include as a minimum: the definition of teen dating violence and its warning signs, and characteristics of healthy relationships. Schools are also required to have a policy on dating violence, and to collect data on numbers of incidents of dating violence reported to school employees.⁶³⁸

Mariah Wineski of the LCADV told Amnesty International that there are two key problems with the law. Firstly, the state has not provided schools with any funding to undertake this work, and secondly, that there is no enforcement mechanism to ensure that schools do provide the appropriate lessons. The coalition attempted to find out how many school districts were providing the lessons and had policies. Out of 70 school districts, fewer than five responded.⁶³⁹ LCADV coalition members who also provide services on sexual assault are required as part of that mandate to provide education on teen dating violence. Some other coalition

⁶³⁰ LCLE, Victim services advisory board, p.7,

http://lcle.la.gov/programs/uploads/VAWA/Victim_Services_Advisory_Board_Guidelines_09302015.pdf

⁶³¹ LCLE, 2017-2020 Implementation Plan, <http://lcle.la.gov/programs/uploads/2017-2020%20Implementation%20Plan.pdf>

⁶³² LCLE, 2017-2020 Implementation Plan, p.20 <http://lcle.la.gov/programs/uploads/2017-2020%20Implementation%20Plan.pdf>

⁶³³ Amnesty International meeting with Crime Victims Assistance Program Manager, November 2018

⁶³⁴ Amnesty International correspondence with LCLE, September 2019

⁶³⁵ Information on VOCA and VAWA grants in New Orleans provided to Amnesty International

⁶³⁶ See <http://lcle.la.gov/programs/uploads/LCLE%20Approved%20Applications,%20March%202019-%20Website.pdf>

⁶³⁷ Amnesty International meetings with the Butterfly Society, November 2018 and July 2019

⁶³⁸ La. R.S.17:81, <https://law.justia.com/codes/louisiana/2018/code-revised/statutes/title-17/rs-17-81/>

⁶³⁹ Amnesty International meetings with LCADV, 2019

members who focus exclusively on domestic violence, and have the resources to do so, have teen-dating violence programs and work with local schools in their areas.

6.3.1 THE LOUISIANA DOMESTIC VIOLENCE PREVENTION COMMISSION

Around half of states in the US have a dedicated domestic violence commission or similar governmental body. Powers of the commissions include: data collection and research, training and education programs, recommending policy and prevention strategies, and providing technical assistance. Some commissions also have responsibility for dispensing grant funding.

States fund the work of their commissions in different ways. For example, the Georgia Commission on Family Violence has a budget of \$1 million, half funded by state general funds and the remainder funded through a mixture of federal funds and funds from “sales and services. The commission has five staff. The Arkansas Commission on Child Abuse, Rape and Domestic Violence has a budget of \$735,000 from state appropriations and a staff of eight who work across the themes covered by the commission.

In 2014, the Louisiana legislature established a Domestic Violence Prevention Commission. It has 20 members who include representatives of: the LCADV, the New Orleans Family Justice Center, the Louisiana Sheriff’s Association, the Louisiana District Attorney’s Association, the LCLE, the Judiciary, and House and Senate legislative committees.⁶⁴⁰ The legislation creating the Commission sets out a broad range of duties. These include: reviewing programs to identify gaps; making recommendations on prevention and intervention; developing a plan to ensure state laws are implemented; and developing a framework for data collection. The Commission reports annually to the Governor of Louisiana, the speaker of the House of Representatives, and the president of the Senate.⁶⁴¹ While the Commission may investigate any issues relating to domestic violence that it considers important, and make recommendations on those, there is no requirement for the legislature, or any state officials, to implement the recommendations.

The Commission has no budget dedicated to it.⁶⁴² The Department of Children and Family Services is required to provide “clerical, administrative, and technical assistance” to the Commission.⁶⁴³ In practice, this means a staff member sends notices about Commission meetings, prints documents, attends the meetings and takes minutes. If the Commission decides to undertake research, the staff member does not necessarily assist. Commission members must undertake the work on top of their full-time jobs.

Mariah Wineski, who is the LCADV representative on the Commission and is currently its chair, told Amnesty International that the lack of funding hinders the ability of the Commission to carry out its mandate. The Commission is required to meet in person every quarter. Those who do not attend cannot vote. Commission members do not receive reimbursement of their travel expenses, so are dependent on the agencies they work covering the costs. To take decisions, 11 of the 20 Commission members must be at a meeting. For the last three Commission meetings, there have not been enough members present to vote on anything.⁶⁴⁴

⁶⁴⁰ La. R.S.46:2146, <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2146/>

⁶⁴¹ La. R.S.46:2145, <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2145/>

⁶⁴² See <https://www.cfrd.doa.louisiana.gov/boardsandcommissions/viewBoard.cfm?board=607>

⁶⁴³ La. R.S.46:2147, <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-46/rs-46-2147/>

⁶⁴⁴ Amnesty International meeting with LCADV, 2019

7. CONCLUSIONS AND RECOMMENDATIONS

The US and Louisianan authorities have failed to meet their obligations to exercise due diligence to prevent intimate partner violence and to effectively investigate, sanction and provide remedies in cases of violence. Survivors of intimate partner violence in Louisiana face an inconsistent and potentially harmful response from the institutions whose responsibility it is to protect them. There are inadequate safeguards to ensure discrimination and stereotyping do not influence the actions of criminal justice actors.

The lack of standardized policies, or guidelines, for courts, law enforcement and prosecutors means that institutions and agencies in different parishes can introduce working practices that act as a barrier to survivors obtaining protection or that put survivors' safety at risk. Inadequate training of professionals who come into contact with survivors of intimate partner violence means that those charged with assisting survivors may lack understanding of the dynamics of that violence and may bring the same myths and stereotypes about intimate partner violence that are prevalent in society into their work. Inadequate oversight of courts, law enforcement and prosecution results in no, or ineffective, remedies for survivors who receive an inappropriate response, or are further harmed by the justice system.

Failure to collect and disaggregate data on the extent and severity of intimate partner violence and on how institutions and agencies respond to the violence undermines efforts to address the issue. Whether laws and programs are successful in reducing intimate partner violence cannot be effectively assessed without accurate data, and when data is not disaggregated, discriminatory impacts remain hidden and unaddressed.

These failures are compounded by failures to provide adequate funding for services to support survivors of violence, and to fund work to prevent intimate partner violence through addressing the root causes.

RECOMMENDATIONS

To the Louisiana Supreme Court:

- Introduce comprehensive rules or best practices for all courts that deal with cases of intimate partner violence. The rules or best practices should comply with human rights standards for protection of survivors' rights and be designed in collaboration with survivors of intimate partner violence and organizations working with survivors. Policies should include comprehensive safety and security measures to protect survivors, their advocates or attorneys, when entering, waiting and leaving court as well as in court, and cover all aspects of civil and criminal proceedings with a focus on survivor safety and effective risk assessment.
- Require all courts in Louisiana to monitor, and report on, the numbers of protective order hearings which are continued due to papers not being served. Judges and court officials should continually stress the importance of prompt service of papers to Sheriff's offices and work with Sheriff's offices to overcome barriers to prompt serving of orders. Require all courts in Louisiana to monitor, and report on, numbers of protective orders which are not served resulting in the firearms declaration and transfer process not taking place.
- Develop and require comprehensive training for judges, hearing officers, and other court officials on intimate partner violence. Training should be developed in collaboration with survivors of intimate

partner violence and organizations working with survivors and meet best practice standards. The training should include the dynamics of intimate partner violence, challenging myths and stereotypes potentially held by participants, conducting effective risk assessments and ensuring survivor safety at all stages of the case. Training should be conducted in person with participation of survivors and organizations supporting survivors.

- Request the LPOR to monitor the numbers of protective orders granted by parish since the introduction of the firearm surrender process in January 2019 and compare the figures with data from previous years to identify whether any courts are granting fewer protective orders. In addition to the LPOR tracking number of orders entered into the registry by parish, track the number of individuals those orders relate to, in order to better identify potential problems in the system. For example, parishes where individuals have multiple TRO extensions because court papers are not served.

To all courts:

- Ensure that free interpretation is provided for non-English speakers in civil cases relating to intimate partner violence. Judges and court officials should not deny interpretation due to concerns that the court will be unable to recoup the costs.
- Lessen the burden on survivors by specifying a shorter time period in which they are required to wait for their case to be heard.
- Collect and publish anonymized data on TROs and protective orders. Data collected should include: the numbers of individuals applying for a TRO; the number of individuals granted a TRO; the numbers of TROs dismissed due to failure to serve the defendant; the number of TROs dropped by the petitioner before a protective order hearing; the number of individuals whose case includes a hearing for a protective order; the number of protective orders granted; the number of protective orders rejected following a hearing, and the reasons for rejecting TROs and protective orders. Data should be disaggregated by gender, race, type of relationship, and any other relevant factor.
- Establish and implement training programmes, in collaboration with Indigenous women's organizations, to ensure that court and prosecution officials are competent to deal with intimate partner violence and Indigenous issues, including issues of jurisdiction.

To the Louisiana Commission on Law Enforcement:

- Review, in collaboration with survivors and organizations working with survivors, all training on domestic violence to ensure that it upholds the human rights of survivors, meets best practices, focuses on victim safety, and equips officers with an understanding of how trauma, societal discrimination and officer bias affect survivors differently. All new and amended training should be designed and run with input from survivors and organizations supporting survivors. In addition to the training that new officers receive, periodic refresher training for long-standing officers should be compulsory, and conducted in person with participation of survivors and organizations supporting survivors.
- Introduce specialist training for supervisors/senior officers on overseeing effective investigations into intimate partner violence and family violence. The training should be designed with input from survivors and organizations supporting survivors and include ensuring that officers prioritize survivor safety and act in a professional, objective way at all times, overseeing officer reports on intimate partner violence to ensure accuracy, enforcing officer compliance with standards and best practices, and holding officers to account if they do not follow best practices

To the Louisiana Sheriff's Association:

- Develop, in collaboration with relevant stakeholders such as the Louisiana Domestic Violence Prevention Commission, organizations supporting survivors, and other relevant actors, a model policy or protocol to guide the actions of law enforcement agencies on intimate partner violence. The model policy or protocol should comply with human rights standards for protection of survivors' rights, prioritize survivor safety; and ensure officers do nothing to deter victims from seeking help from the authorities in future.
- Once the model policy has been developed, provide technical assistance to law enforcement agencies in adapting the model policy to their local situation, ensuring that the core principles of protecting the rights of survivors, and prioritizing survivor safety are integrated into the local policy.

- Remind all Sheriff's departments of the importance of serving TROs and protective orders immediately and encourage them to ensure deputies do everything possible to locate defendants quickly.

To all law enforcement agencies:

- Provide free copies of police reports and associated documentation relating to incidents of intimate partner violence to survivors.
- Develop a policy or protocol to guide the actions of officers on intimate partner violence. The model policy or protocol should comply with human rights standards for protection of survivors' rights, prioritize survivor safety; and ensure officers do nothing to deter victims from seeking help from the authorities in the future. The policy should be designed in consultation with survivors and organizations who work with survivors.
- Ensure that all survivors of intimate partner violence can seek assistance without fear of adverse consequences, such as referral of them or their partner to ICE, or arrest on an unrelated charge. Reach out to affected communities to ensure they know they can seek assistance without fear of repercussions.
- Collect data on intimate partner and other domestic homicides, and on numbers of incidents of intimate partner violence reported to law enforcement agencies. The data collection should differentiate between intimate partner violence and household/family violence, should identify instances of firearm use, and be disaggregated by gender, race, relationship type and any other relevant factor. Homicide data should also be disaggregated by method of killing.
- Ensure that all officers are trained and equipped to make impartial predominant aggressor determinations and to identify potential use of self-defense in order to minimize dual, or wrongful, arrests. Require officers making a dual arrest to explain in detail their reasoning in the written report that is checked by a supervisor.
- Collect data on the number of dual arrests made, and the reasons for those dual arrests. This data should be disaggregated by gender, race and type of relationship between those arrested.
- Senior officers should regularly review and evaluate how officers are handling cases of intimate partner violence. Work with organizations supporting survivors to establish a lessons-learned process aimed at providing continuing practical guidance to officers on improving the response.
- Sheriff's departments should ensure that TROs and protective orders are served immediately.
- Sheriff's departments should ensure that firearm transfer processes are completed quickly following convictions on charges of domestic abuse and issuing/serving of protective orders.

To all District Attorneys:

- All prosecutors dealing with cases of intimate partner violence and family violence should receive mandatory training and regular refresher training, designed in collaboration with organizations supporting survivors. Training should include dynamics of intimate partner violence, conducting effective risk assessments, ensuring survivor safety at all stages of the case, ensuring good communication with survivors, a gender-sensitive approach to analyzing potential self-defense by defendants who are survivors of intimate partner violence, and ensuring that all survivors are consulted at all stages of their case.
- Develop a policy or protocol to guide the actions of all staff on intimate partner violence. The policy or protocol should comply with human rights standards for protection of survivors' rights, prioritize survivor safety; and ensure prosecutors and other staff do nothing to deter victims from seeking help from the authorities in future. All policies should be designed in consultation with survivors and organizations who work with survivors.
- End the use of material witness warrants to pre-emptively detain victims of intimate partner violence to force them to testify. Ensure that victims who do not cooperate with prosecutors are not punished. Provide support to survivors who may want to testify but have safety or other concerns. Ensure those who do testify are able to do so safely, without the possibility of intimidation by the defendant.
- Routinely request "Gwen's law" hearings so that a thorough risk assessment may be done before bail is set.

- Require a comprehensive investigation of past history and dynamics of abuse before deciding if, or how, to prosecute a case involving an individual who has experienced intimate partner violence.
- Collect and publish anonymized data on the outcome of cases of intimate partner violence, disaggregated by gender, race, and other relevant factors. Assess the data for disparities, the reasons for those disparities, and potential discrimination. Take immediate steps to address identified disparities and discrimination.

To the Louisiana legislature:

- Require all criminal justice actors who deal with intimate partner violence, including law enforcement agencies, prosecutors and courts, to have specific domestic violence policies or protocols to guide their actions. Policies should comply with human rights standards for protection of survivors' rights; be designed with input from organizations who work with survivors and with reference to best practices on handling cases of intimate partner violence; prioritize survivor safety; and ensure officials do nothing to deter victims from seeking help from the authorities in the future. Require all criminal justice actors to establish mechanisms to monitor the implementation of the policies or protocols and for accountability in cases where an official does not act in accordance with the policies or protocols.
- Require all criminal justice actors, including law enforcement, prosecutors, judges and hearing officers who deal with cases of intimate partner violence to receive mandatory training which complies with human rights standards for protection of survivors' rights and meets best practice standards before taking up their posts, and regular refresher training every two or three years after that. The content of training should be designed in collaboration with civil society and include input from survivors.
- Allocate adequate state funds to provide comprehensive and inclusive services for survivors of intimate partner violence, including emergency shelter, transitional housing, legal support, and counselling. Allocate adequate state funds for prevention of intimate partner violence initiatives, including public awareness campaigns, and funding for schools for teen-dating violence prevention work.
- Ensure the right to privacy of survivors of intimate partner violence by authorizing the removal/redaction of sensitive personal information, such as victims' and their children's names, dates of birth, social security numbers, descriptions of abuse suffered and copies of sensitive/intimate photos, from publicly available court records. Legislators should consult with all relevant stakeholders on the best way to ensure that the safety of survivors and their right to privacy is balanced with freedom of the press.
- Immediately end the pre-emptive detention of victims of intimate partner violence on material witness warrants. Ensure that survivors of intimate partner violence are not compelled to testify at bail hearings, or trials, and are not punished for refraining to provide testimony. Ensure that prosecutors are adequately trained and resourced to support survivors who may want to testify but have safety or other concerns. Ensure those who do testify are able to do so safely, without the possibility of intimidation by the defendant.
- Amend the law to provide for the possibility of adult survivors of intimate partner violence testifying in court, via video link, if testifying in person would likely cause serious emotional distress, and without such simultaneous televised testimony, the victim or witness could not reasonably communicate their testimony to the court or to the jury.
- Allocate ongoing multi-year funding for legal aid in civil cases involving intimate partner violence (including protective orders, divorce and custody petitions). The amount of funding should be sufficient to ensure that all survivors who need legal aid have access across the state.
- Amend the law on possession of firearms in situations of domestic violence to remove the discrepancy between domestic abuse battery laws and battery of dating partner laws and ensure that survivors abused by current, or former, dating partners are accorded equal protection.
- Ensure that all Sheriff's departments have introduced the required process for firearm transfer in situations of intimate partner violence. Establish a mechanism to monitor how the process is operated to ensure its effectiveness.
- Strengthen the Louisiana Domestic Violence Prevention Commission by ensuring it has the resources needed to fulfil its mandate and conduct investigations into how institutions deal with and respond to intimate partner violence. Allocate adequate budget for either some full-time staff, or sufficient funds

to commission research and other support, and to reimburse Commission members travelling to meetings. Require the reports of the Commission to be considered by relevant legislative committees.

- Ensure that the LCLE, law enforcement agencies and prosecutors' offices have the technology and resources to collect and analyze data on intimate partner violence. Require data be collected on intimate partner, and other domestic homicides; on numbers of incidents of intimate partner violence reported to law enforcement agencies; on dual arrests; on numbers of incidents of intimate partner violence received by prosecutors; and on outcomes of the cases. The data should differentiate between intimate partner violence and household/family violence, should identify instances of firearm use, and be disaggregated by gender, race, relationship type and any other relevant factor. For data on homicides, it should also be disaggregated by method of killing. Ensure the data collected by agencies is published in an anonymized format that allows for identification of trends and disparities.
- Establish a Domestic Violence Fatality Review team with powers to review all relevant documentation, interview officials and make recommendations. Allocate adequate resources to the team to conduct a thorough review of intimate partner and domestic fatalities across the state over a time period to be determined by the review team. Ensure that lessons learned from the review are translated into changes in policy and practice to prevent future deaths.
- Review the laws which provide for an abuser to attend a "family violence intervention program" or "batterer's intervention program". Revise the laws to provide safeguards to ensure risk assessments, prioritization of survivor safety, and survivor views are used in determining whether a defendant is suitable for the program. Ensure that programs for abusers meet best practices standards; those running the programs coordinate closely with organizations providing support to the survivor in order to enhance safety; poor defendants are not disadvantaged in accessing programs or be failed because they cannot afford the fee. Ensure that program participants who commit further acts of abuse during the program are not given certificates of completion.
- Lessen the burden on survivors by providing free childcare at, or near, courts or by making funds available to reimburse survivors who need to pay for childcare.

To the Federal Government:

- Ratify without delay the following international human rights treaties: the UN Convention on the Elimination of All Forms of Discrimination against Women; the International Covenant on Economic, Social and Cultural Rights; the UN Convention on the Rights of Persons with Disabilities; the UN Convention on the Rights of the Child; and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará").
- Invite relevant UN special procedures – in particular the Special Rapporteur on violence against women, its causes and consequences – and the InterAmerican Commission on Human Rights Special Rapporteur on the Rights of Women to visit the country in order to examine intimate partner violence, especially the high rates of intimate partner gun homicides, and the challenges facing survivors in accessing justice in the US and provide detailed recommendations on how to address the issues raised.
- The US Congress should immediately reauthorize and appropriate funding for the Violence Against Women Act (VAWA), which as of this report had been allowed to lapse. Reauthorization of VAWA should include changes that close the "boyfriend and stalking loopholes" for all survivors by prohibiting people convicted of misdemeanor dating violence or stalking from having guns. Additionally, reauthorization should include stronger protections for Native women and families, including provisions that expand current tribal jurisdiction over non-Indians to include sexual violence, sex trafficking, stalking, child abuse, and violence against tribal law enforcement attempting to execute these provisions.
- The US Congress should amend the Violent Crime Control and Law Enforcement Act of 1994 (18 USC 922(g)(8)) to include *ex parte* / temporary protective orders in the type of court issued orders that prohibit offenders from possessing firearms.
- The federal government should ensure that procedures for obtaining federal funding are not unduly complicated and that the provision of essential services for victims of intimate partner violence is not adversely affected or delayed by the requirements of federal grant cycles.

- The US Congress should recognize the concurrent jurisdiction of tribal authorities over all crimes committed on tribal land, regardless of the Indigenous identity of the accused, including by legislatively overriding the US Supreme Court's decision in *Oliphant v Suquamish*.
- Federal authorities should make available the necessary funding and resources to tribal governments to develop and maintain tribal court and legal systems which comply with international human rights standards, including with regard to the right to a remedy, to non-discrimination and to fair trials, while also reflecting the cultural and social norms of their peoples.

Please also refer to the Amnesty International reports *In the line of fire*, and *Scars of Survival*, for a full list of conclusions and recommendations to address the human rights crisis of gun violence, and the rights to health and reparation for gunshot survivors, in the USA.

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CONTACT US



info@amnesty.org



+44 (0)20 7413 5500

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FRAGMENTED AND UNEQUAL

A JUSTICE SYSTEM THAT FAILS SURVIVORS OF INTIMATE PARTNER VIOLENCE IN LOUISIANA, USA

Intimate partner and domestic violence affect people of all genders, but it disproportionately affects women. A key element is the power and control exercised by the abusive partner over the other. This report focuses on Louisiana, a state which has high rates of intimate partner homicide, especially killings involving firearms. It examines laws on domestic violence and on firearm possession in situations of domestic violence. It looks at how implementation of those laws affects protection of survivors of violence differently, and how discrimination and stereotyping affect the response.

Lack of standardized policies, or guidelines, for courts, law enforcement and prosecutors mean that institutions and agencies in different parishes respond in different ways, sometimes putting survivors' safety at risk. Inadequate training of professionals means that those whose job is to assist survivors may lack critical understanding of intimate partner violence and hold the same stereotypes about it that are prevalent in society.

Survivors told Amnesty International about the numerous challenges they faced when applying for protection through the civil courts and when calling the police and involving the criminal justice system. These ranged from failure to take violence seriously, to arrests of survivors who called for help. The authorities are failing to meet their human rights obligations to prevent intimate partner violence and to effectively investigate, sanction and provide remedies in cases of violence.

If you are experiencing intimate partner or domestic violence in Louisiana, call the Louisiana Domestic Violence Hotline on 1-888-411-1333. Anywhere else in the US, call the National Hotline on 1-800-799-7233.