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I. INTRODUCTION

Jamie and Angel had been sharing a New York City apartment for six months when Angel hit Jamie for the first time.[1] Jamie forgave him but quietly suspected that life with Angel would be far from ideal. Angel was volatile and unpredictable—Jamie could never figure out how to avoid setting off his temper. Within three months of the first assault, Angel had left dark, visible bruises on Jamie's body four more times. Even in warm weather, Jamie now resorted to wearing long sleeve shirts and pants to keep the marks hidden. But after each violent episode, Angel was penitent, explaining that his outbursts were due to stress at work and promising that everything would be better after his schedule lightened. Jamie weighed Angel's apologies and commitment against the fleeting moments of fear and decided to keep the relationship together.

One night, Angel's fists put Jamie in the hospital with a broken nose and a concussion. Angel spoke to the admitting nurse on Jamie's behalf, claiming that Jamie's injuries were the result of slipping on icy pavement. Jamie dared not correct Angel. Each time the medical staff exited the room, Angel threatened to make Jamie's life a living hell if anyone, including the police, found out the truth. Now, instead of Angel promising to be better, Jamie was promising not to tell when things got worse.

And things did get worse. Once out of the hospital, Jamie lived like a prisoner, behaving in whatever ways were likely to avoid another beating, but this only seemed to feed Angel's paranoia. When Jamie came home from a follow-up visit with the doctor, Angel exploded. The trip was not pre-approved, and Jamie could not seem to account for the time to Angel's satisfaction. Amid a barrage of death threats and obscenities, Angel held Jamie in a headlock until Jamie passed out. Jamie awoke after Angel stormed out and discovered that Angel had continued the attack well after unconsciousness set in, layering kicks upon punches and then leaving Jamie's broken body on the bathroom floor. Jamie fled to a motel that night and called a domestic violence hotline for help in getting a restraining order against Angel.

The hotline counselor who answered Jamie's call was prepared to offer two options: call the police and have the abusive person arrested or petition the family court for intervention. But upon hearing the voice on the line asking for help, the counselor knew that family court was not an option for Jamie.

Jamie, as it turns out, is a man and if he wanted legal protection against Angel, Angel would have to be arrested first. Jamie's story exemplifies the dilemma faced by thousands of domestic violence victims in New York. Twenty-five to thirty-three percent of all intimate relationships involve some form of threats or physical violence.[2] New York has responded to this epidemic by offer-

1. The following is a fictional account of a relationship suffering from escalating abuse by one partner against the other.

2. *See* An Abuse, Rape, Domestic Violence Aid and Resource Collection, http://www.aardvarc.org/dv/gay.shtml (last visited Nov. 25, 2006); *see also* MAURA O'KEEFE, TEEN DATING VIOLENCE: A REVIEW OF

ing victims a form of injunctive relief against abusive parties known as an "Order of Protection" ("OP").[3] An OP can be obtained through both criminal and civil proceedings, but New York's Family Court Act ("FCA") limits availability of civil OPs to members of the abuser's "family or household," which includes only relations by blood, marriage (or former marriage), or children shared in common.[4] Notably absent from this definition are heterosexual intimate partners who are unmarried and do not have a child in common ("dating partners/couples"), regardless of the length and commitment of their relationship. Additionally, most same-sex couples cannot utilize the FCA, because New York does not recognize same-sex marriages,[5] and because the Act does not pertain to couples who have entered into valid civil unions or domestic partnerships.[6] While victims of "family or household" members control when and to what extent they pursue a family court OP, all those excluded from this definition must rely on law enforcement officials to arrest and prosecute the abuser before they can seek an OP.

This note argues that the patterns and prevalence of abuse in dating and same-sex relationships justify expanding access to civil OPs to include all victims, regardless of marital status or shared children.[7] Part II of this note will discuss the similarities of victims' experiences across every type of intimate relationship and the advantages of making family court OP proceedings available to victims. Part III will examine how recent, narrow judicial interpretations of the Family Court Act and the Domestic Relations Law ("DRL") likely exclude dating and

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RISK FACTORS AND PREVENTION EFFORTS 1 (Apr. 2005), http://new.vawnet.org/Assoc_Files_VAWnet/AR_TeenDatingViolence.pdf (demonstrating similar trends of violence in teen relationships).

3. *See* N.Y. FAM. CT. ACT §§ 828, 842 (McKinney 2007); N.Y. CRIM. PROC. LAW §§ 530.12, 530.13 (McKinney 2007).

4. N.Y. FAM. CT. ACT § 812(1)(a)–(d) (McKinney 2007).

5. *See* Hernandez v. Robles, 7 N.Y.3d 338, 357, 361 (2006).

6. The sole exception is the same-sex couple that has adopted a child together. The New York Domestic Relations Law allows a person to adopt another person if the adopting party is unmarried or is the spouse of the adopted child's birthparent. N.Y. DOM. REL. LAW § 110 (McKinney 2007). In same-sex partnerships, wherein one partner wishes to adopt the other's biological child (creating a child in common), he or she can do so by qualifying as an unmarried adopting party. The adoption process would create a legally cognizable parent-child relationship between the adopting person and his partner's child. N.Y. DOM. REL. LAW § 117(1)(c) (McKinney 2007). However, when the adopting parent is not married to the adopted child's birth parent, Section 117(1)(a) operates to sever the birth parent's ties to the child, thereby defeating same-sex partners' intentions to create a legal, two-parent family. N.Y. DOM. REL. LAW § 117(1)(a) (McKinney 2007). The Court of Appeals resolved this problem in *Matter of Jacob*, 86 N.Y.2d 651 (1995), in which it refused to construe Section 117 as dissolving the parent-child relationships of unmarried birth parents whose partners adopted their children, citing a public policy of reading adoption statutes to serve children's welfare by providing them with two parents. *See id.* at 656, 658, 662–64.

7. Although this note will discuss the limitations of the Family Court Act in terms of its effect on dating and same-sex couples, other familial bonds such as step-relationships are also adversely affected and may benefit from the proposed solutions.

same-sex victims from obtaining standing to seek a civil OP. This section will also examine the problems attendant in limiting this large segment of domestic violence victims to relying solely upon the criminal justice system. Part IV will propose to remedy these limitations within the FCA by (1) expanding the FCA definition of "family or household" members to include intimate partners and other familial relationships, (2) deriving a functional checklist of factors evincing a likely partnership between two people living in a single household, and (3) developing a new statewide household registry—enrollment in which creates a presumption of familial commitment and preserves the right to family court intervention before any problems in the relationship arise.

II. THE FAMILY COURT ADVANTAGE

A. Dating and Same-Sex Couples: Prevalence, Patterns, and Costs of Domestic Violence

Domestic violence is the "systematic exercise of illegitimate power and coercive control by one partner over another" through physical, psychological, emotional, and financial means.[8] This definition very clearly applies to any intimate or familial relationship regardless of formal, legally-recognized ties. Same-sex and heterosexual dating couples experience abuse at nearly identical rates as married couples and heterosexual couples with a child in common.[9] Moreover, the responses to abuse are similar among victims across married, dating, and same-sex relationships. Victims in every type of intimate relationship manifest patterns of hiding, minimizing, or otherwise masking the abuse.[10] Victims also share well-founded fears of increased violence if they try to leave their relationships,[11] of being unable to support themselves due to financial dependence on the abuser,[12] and of social isolation from friends and family cultivated by the abuser over time.[13] For these reasons, victims in heterosexual and same-sex relation-

8. *See* Sandra E. Lundy, *Abuse That Dare Not Speak Its Name: Assisting Victims of Lesbian and Gay Domestic Violence in Massachusetts*, 28 NEW ENG. L. REV. 273, 275–76 (1993).

9. *See supra* note 2 and accompanying text.

10. *See* Lundy, *supra* note 8, at 281–85.

11. *See* Jill Laurie Goodman, *Thinking About Danger and Safety*, *in* LAWYER'S MANUAL ON DOMESTIC VIOLENCE: REPRESENTING THE VICTIM 28 (Jill Laurie Goodman & Dorchen A. Leidholt eds., 4th ed. 2005) ("As domestic violence victim advocates well know, violence often escalates when a woman separates from her abuser."); Rita Thaemert, *Till Violence Do Us Part*, 19 ST. LEGISLATURES 26 (1993), *available at* http://www.thefreelibrary.com/Til1+violence+do+us+part-a013834300 ("Women leaving a batterer are at a 75 percent higher risk of being killed by them than those who stay.").

12. *See* Lundy, *supra* note 8, at 280–81 (noting that battered victims who leave their abuser must often return due to economic pressures, and that reactions to abuse are similar in both heterosexual and homosexual relationships).

13. *See id.* at 279, 285–86.

ships are equally as likely to stay with an abusive partner as are married victims.[14]

From an economic perspective, unaddressed domestic violence increases the amount of resources exhausted in responding to a victim's emotional and physical injuries. In one year alone, emergency room resources and staff serve victims at a cost of nearly $4.1 billion annually.[15] Employers lose workplace productivity when victims are forced to take time off to hide injuries or to comply with an abuser's demands.[16] Victims also lose the wages and benefits that could assist them in becoming independent,[17] all while becoming more and more isolated from the social network comprised of family, friends, and coworkers who could help support them.[18]

It is also widely recognized that vesting domestic violence victims with control over the matters affecting them is of paramount importance in keeping them safe.[19] A victim's intimate proximity to their abuser makes them an expert in the abuser's patterns of violence, and the decision to stay with an abuser quite often results from a victim's assessment that the abuser will become more violent if he or she tries to leave.[20] Victims are therefore more likely to forego seeking legal intervention that will limit their level of direct control over the outcome and expose the abuser to stigmatizing processes like arrest and prosecution.[21]

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14. It is sometimes argued that heterosexual victims with children are more likely to stay with their abusers than victims in other intimate relationships without children. This argument fails to consider that victims in same-sex relationships are frequently subject to greater emotional dependence on abusers, because their sexuality increases their social isolation from the community and its resources. *See id.* at 285. Among heterosexual dating couples, the absence of marriage or children can be supplanted by other "substantial commitment[s] to the relationship [such as] moving in together, relocating [or] making a major financial investment to benefit the [abuser]." *Id.* at 279.

15. NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, CTRS. FOR DISEASE CONTROL AND PREVENTION, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 2 (Mar. 2003), *available at* http://www.cdc.gov/ncipc/pub-res/ipv_cost/IPVBook-Final-Feb18.pdf (estimating the costs associated with intimate partner violence towards women).

16. *Id.*

17. *Id.*

18. *See* Lundy, *supra* note 8, at 284–88.

19. *See* OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE, MODEL DOMESTIC VIOLENCE POLICY FOR COUNTIES (1998), *available at* http://www.opdv.state.ny.us/coordination/model_policy/guiding.html ("One of the goals of intervention is to restore the victim's control over her own life. It is important, therefore, not to make decisions for her or to make personal judgments about her actions.").

20. *See, e.g.,* Lundy, *supra* note 8 at 280–81.

21. *See generally* BARBARA J. HART, BATTERED WOMEN AND THE CRIMINAL JUSTICE SYSTEM, MINN. CTR. AGAINST VIOLENCE & ABUSE, *available at* http://www.mincava.umn.edu/documents/hart/hart.html#id2295958 (last visited Oct. 7, 2007).

B. The Family Court Order of Protection Process and Victim Discretion

Access to family court OPs provides victims with nearly complete discretion in determining when and how to pursue OPs to adequately serve their interests. With the enactment of the Family Court Act in 1962,[22] New York recognized domestic violence as a unique type of offense, and sought to provide victims with a civil action aimed at ending violence and family disruption through protective measures.[23] Under Article Eight of the Family Court Act, titled "Family Offense Proceedings," the family court and criminal court share concurrent jurisdiction over "Family Offenses": a small set of crimes and violations enumerated in the New York Penal Law and commonly occurring in domestic violence.[24] Accordingly, victims may bring a civil action seeking an OP in family court[25] while simultaneously pursuing a criminal complaint based on the same abusive acts.[26]

1. Initiating a Family Court Petition

The decision to pursue an OP in family court lies solely with the victim,[27] who must be a member of the abuser's "family or household,"[28] which is further

22. 1962 N.Y. Laws ch. 688.

23. N.Y. FAM. CT. ACT § 812(2)(b) (McKinney 2007).

24. *Id.* § 812(1); *see also* Family Protection and Domestic Violence Intervention Act of 1994, 1994 N.Y. Laws ch. 222 ("[W]hat was once largely considered a private matter has come to be more correctly regarded as criminal behavior. The legislature [has determined] that domestic violence is criminal conduct occurring between members of the same family or household which warrants stronger intervention than is presently authorized under New York's laws. . . . The victims of family offenses must be entitled to the fullest protections of our civil and criminal laws."). Currently, offenses subject to Article Eight are disorderly conduct, harassment in the first and second degrees, aggravated harassment in the second degree, stalking in the first, second, third, and fourth degrees, menacing in the second and third degrees, reckless endangerment, assault in the second and third degrees, and attempted assault in the third degree. N.Y. FAM. CT. ACT § 812(1) (McKinney 2007). Offenses beyond the family court's jurisdiction are attempted murder, murder, and sex crimes. Criminal courts retain exclusive jurisdiction over all other enumerated criminal offenses. *Id*; *see also* N.Y. CRIM. PROC. LAW § 10 (McKinney 2007). As of November 13, 2007, criminal mischief also qualifies as a family offense. Assemb. 8854, 2007 Gen. Assem., Reg. Sess. (N.Y. 2007).

25. N.Y. FAM. CT. ACT §§ 828(1)(a), 841(d) (McKinney 2007). Other states may refer to their versions of orders of protection as "restraining orders" or "protection from abuse orders."

26. *Id.* § 821-a(5)(a) ("At such time as the petitioner first appears before the court, the court shall advise the petitioner that the petitioner may: continue with the hearing and disposition of such petition in the family court; or have the allegations contained therein heard in an appropriate criminal court; or proceed concurrently in both family and criminal court."); *see also id.* § 812(2)(g).

27. N.Y. FAM. CT. ACT § 812(3) ("[No official] shall discourage or prevent any person who wishes to file a petition or sign a complaint from having access to any court for that purpose."); *see also id.* § 823(b). Technically, only the court may dismiss a petition for lack of jurisdiction, and petitioners should be brought before the judge prior to that determination. In practice, however, clerks charged with assisting in filing petitions exceed their authority and turn uninformed petitioners away once they determine that the petitioner may not be able to establish a requisite relationship before the court.

28. N.Y. FAM. CT. ACT §§ 812, 821(1)(a).

defined as "(a) persons related by consanguinity or affinity; (b) persons legally married to one another; (c) persons formerly married to one another; and (d) persons who have a child in common regardless whether such persons have been married or have lived together at any time."[29] The victim begins the process by completing a petition, describing in detail the acts or threats of physical violence suffered at the abuser's hands, as well as alleging that each act constitutes a family offense over which the family court has jurisdiction.[30]

2. The First Court Appearance and Emergency Relief

Once the petition is filed, the victim can be legally shielded from further abuse in a matter of mere hours. On the very same day as filing the petition, the victim (the "petitioner") appears ex parte before a family court intake judge.[31] The vast majority of petitioners appear without counsel at this stage, although petitioners and their abusers (the "respondents") have a right to counsel at every appearance.[32] After briefly reviewing the allegations in the petition and interviewing the petitioner, the intake judge determines if the allegations and surrounding circumstances warrant any temporary relief.[33] Upon a showing of good cause, the intake judge may immediately issue a Temporary Order of Protection ("TOP"), directing the respondent to refrain from engaging in certain behaviors toward the petitioner.[34] The conditions within the TOP should serve the TOP's purpose[35]—namely, to stem the tide of family violence[36]—and are guided by the petitioner's requests and the intake judge's assessment of the seriousness of the abuse.[37] Typical TOP conditions include directing the respondent to: (1) stay away from the petitioner, the petitioner's house, school, and/or place of employment;[38] (2) cease residing with the petitioner;[39] (3) refrain from contacting the

29. *Id.* § 812(1)(a)–(d). As shall be discussed, these classifications facially omit dating and same-sex couples.

30. *See id.* § 821(1)(a). The victim must also apprise the court as to the existence of any children in the household, explain their relationships to the parties, make a formal request for relief in the form of an OP, and disclose whether any accusatory instrument alleging the same facts has been filed elsewhere. *See id.* § 821(c)–(e).

31. *Id.* §§ 153-c, 828(1).

32. *Id.* § 821-a(3)(a). If a party is indigent, the court must appoint counsel. *Id.*

33. *Id.* § 828(1)(a).

34. *Id.* § 828(1).

35. *Id.* §§ 828(1)(a), 842(a).

36. *Id.* § 812(2)(b).

37. *Id.* § 828(1)(a).

38. *Id.* § 842(a).

39. *Id.* §§ 842(a), 842(d). This is known as an "exclusion" OP. The distinction between "stay away" and "exclusion" is relevant when the parties reside in the same household and the respondent is being directed to leave that residence.

petitioner via mail, electronic/telephonic means, or third parties;[40] (4) refrain from acts or threats of violence toward the petitioner or any children or household members who have been or are likely to be exposed to contact with the respondent;[41] and (5) surrender possession of any firearms.[42] More rarely, the judge may grant temporary custody and visitation of any children in common,[43] order temporary child support,[44] or direct the respondent to participate in a batterer's education program that will address abusive behavior and refer the respondent to any necessary alcohol or drug programs.[45] The duration of TOPs vary by jurisdiction and individual judges, but they generally remain in effect until the parties return to court, and they may be extended as necessary until a fact-finding hearing is concluded.[46] Whether or not a TOP is issued against the respondent, the intake judge is empowered to issue a summons directing the respondent to appear before the family court (in addition to notifying the respondent of the allegations and the existence of any order).[47]

3. Subsequent Appearances and Possible Dispositions

Victims who have filed petitions with the family court may proceed to trial, enter into settlements, or withdraw their petitions at any time subject only to the court's approval[48] and the usefulness of such actions in ending the violence. The act of withdrawing the petition dismisses the case against the respondent and also

40. *Id.* § 842(j). Although the "no contact" provisions are not explicitly permitted by Section 842, this catch-all provision allows judges to impose any other condition necessary for the purpose of protection. *See id.*

41. *Id.* § 842(c).

42. *Id.* § 842-a(1)(a)–(b).

43. *Id.* § 842(b), 842(j).

44. *See* N.Y. FAM. CT. ACT §§ 828(4), 842(j).

45. *See id.* § 842(g). Other permissible conditions include payment of counsel fees, payment of medical expenses incurred arising from the incidents alleged in the petition, and directing the respondent to refrain from intentionally injuring or killing any companion animal belonging to the petitioner or a minor child in the house. *See id.* §§ 828, 842(f), 842(h)–(i).

46. Every OP issued under Article Eight must plainly state the date that it expires. N.Y. FAM. CT. ACT § 154-c(1).

47. N.Y. FAM. CT. ACT § 821-a(2)(a). The respondent must be personally served with the summons and petition. *Id.* § 826. While Section 154-a allows a copy of the petition to be served on the respondent at the first court appearance if it cannot practically be served at the same time as serving the summons, Section 826 requires that service of the summons be completed at least twenty-four hours prior to the time of the court appearance. The court may automatically direct the police or peace officers to serve the respondent unless the petitioner volunteers to arrange service independently. *See id.* § 153-b(b)–(c). The court may also order an alternate form of service (e.g., service by mail or publication) if the petitioner can demonstrate that personal service could not be completed after a "reasonable effort," as in circumstances where the respondent purposefully avoids personal service. However, an existing TOP is not enforceable against the respondent unless it too is served upon him or her. *See id.* §§ 154-c(3), 153-b(a)–(c). Therefore any delay in serving the respondent with the summons and TOP delays both the court's ability to proceed with jurisdiction over the respondent and the petitioner's ability to enforce the TOP.

48. *See* N.Y. FAM. CT. ACT § 821-a(5)(a)–(b); N.Y. C.P.L.R. 3217 (McKinney 2007).

terminates any TOP issued in conjunction with it.[49] If the TOP obtained at an initial court appearance is successful in ending the violence, some victims decline to prosecute the case further.[50] Conversely, victims may find that seeking protection incites abusers to increase the violence and control, whether emotionally, physically, or financially.[51] Multiple court appearances can also inadvertently compromise the victim's safety by giving abusers additional opportunities to harass or stalk the victim,[52] prompting victims to withdraw petitions until they feel it is safer to proceed.[53] Whatever concerns inform victims' choices, the choices are theirs alone.

If the petitioner chooses to proceed further in family court and establishes that the respondent was properly served with the summons, a number of possible dispositions are available.[54] If the respondent fails to appear in court, the court may leave the existing TOP in effect and remove the case from the court's calendar. Alternatively, the court may enter a judgment on default after conducting an inquest,[55] wherein the petitioner testifies to the underlying facts of the case and the court determines which family offenses, if any, are established by a preponderance of the credible evidence.[56] The benefits of an inquest are that the petitioner avoids cross-examination or contradiction from the respondent, due to his or her absence, and any findings of domestic violence are admissible for purposes of deciding later child custody and matrimonial claims.[57]

After a finding that the respondent committed a family offense, whether after a full adversarial trial or an inquest, the court proceeds to a dispositional hearing to determine which remedies are warranted by the abuse.[58] Remedies may include a new OP with any conditions that are necessary to protect the

49. *See* N.Y. FAM. CT. ACT § 821-a(b). A petition is required to obtain a TOP; therefore, withdrawal results in the vacating of the TOP, because the allegations upon which it was obtained no longer exist. *See id.* Some judges inquire into the petitioner's reason for withdrawing the case, particularly if they have reason to suspect that the petitioner is withdrawing the case out of fear or intimidation caused by the respondent or by another person at the respondent's urging.

50. *See* HART, *supra* note 21.

51. *See id.*

52. *See id.*

53. *See* Elizabeth Munro, *Litigating Family Offense Proceedings*, *in* LAWYER'S MANUAL ON DOMESTIC VIOLENCE: REPRESENTING THE VICTIM 41 (Jill Laurie Goodman & Dorchen A. Leidholt eds., 4th ed. 2005).

54. *See* N.Y. FAM. CT. ACT § 841.

55. N.Y. C.P.L.R. 3215(a)–(b) (McKinney 2007).

56. N.Y. FAM. CT. ACT § 832 (McKinney 2007). This course of action is slightly riskier for the petitioner than merely removing the case from the court calendar, as it is possible that the judge will find no family offense was committed and dismiss the petition. *See id.* § 841(a).

57. N.Y. DOM. REL. LAW §§ 170, 240(1)(a) (McKinney 2007).

58. N.Y. FAM. CT. ACT §§ 835(a), 833 (McKinney 2007).

petitioner and are permitted under Section 842 of Article Eight of the FCA.[59] The new OP may last between two and five years,[60] depending on whether the petitioner establishes that aggravating circumstances attended the abuse and justify an OP of longer duration.[61] The court must, in issuing a new OP, also order the respondent to surrender any firearms.[62] The court is further empowered to order other forms of relief to benefit the petitioner, including restitution for damages incurred and civil probation for the respondent.[63]

Even without an inquest or a hearing, a case may also resolve to the petitioner's benefit if the respondent appears, after being properly served, and consents to the petitioner's original TOP remaining in effect with the same or modified conditions until an agreed-upon expiration date.[64] When consenting, a respondent makes no admission of wrongdoing, nor does the court make any findings that could be used in later proceedings.[65]

4. Family Court Order of Protection Violations: A Choice of Forum

When an abuser violates a family court OP, whether temporary or entered after fact finding, the petitioner has the option of seeking redress through either the family or the criminal courts, or both.[66] The petitioner brings the violation to the family court's attention by filing a second petition alleging willful violation of

59. *See* N.Y. FAM. CT. ACT §§ 828, 842 (McKinney 2007); *see also supra* notes 37–45 and accompanying text.

60. *See id.* § 842(i). Practitioners refer to orders of protection entered after adjudication on the merits as "permanent OPs."

61. *See* N.Y. FAM. CT. ACT § 842(i) (McKinney 2007). Aggravating circumstances include the "use of a dangerous instrument against the petitioner by the respondent, a history of repeated violations of prior orders of protection by the respondent, prior convictions for crimes against the petitioner by the respondent or the exposure of any family or household member to physical injury by the respondent and like incidents, behaviors and occurrences which to the court constitute an immediate and ongoing danger to the petitioner, or any member of the petitioner's family or household." *Id.* § 827(a)(vii).

62. *Id.* § 842-a(2)(a)–(b).

63. *Id.* §§ 841(c), 841(e).

64. *See generally* N.Y. R. UNIF. TRIAL CTS. § 205.12(a)–(b) (McKinney 2007) (directing the court to place stipulations between the parties in written orders or in the court record).

65. *See* N.Y. FAM. CT. ACT § 828(2) (McKinney 2007). Since TOPs are sometimes extended only as needed from adjourn date to adjourn date, some judges allow respondents to also consent to OPs lasting up to five years, without requiring that the judge make any finding of aggravated circumstances. Of course, a respondent who does not consent to a TOP can demand that the petitioner prove the allegations at trial. *See id.* §§ 832, 841(a). Both parties are then permitted to present evidence and challenge their adversary's evidence, after which the court determines if a preponderance of the evidence supports a finding that the respondent committed a family offense. *Id.* If not, the court must dismiss the petition with prejudice against the petitioner. N.Y. C.P.L.R. 5013 (McKinney 2007). However, if a family offense is established, the court may proceed to a dispositional hearing in which the parties present any evidence that is relevant and material to the court's dispositional decision. *See* N.Y. FAM. CT. ACT § 834.

66. *See* N.Y. FAM. CT. ACT § 847.

the OP. As with the initial petition, the choice of moving forward on a violation petition lies with the petitioner. If a family court judge finds that the OP has been violated, she may extend the OP, place the respondent on probation, or even sentence the respondent to up to six months imprisonment,[67] allowing the petitioner to access typically criminal remedies through a civil proceeding.[68] As shall be seen, a victim who only utilizes the criminal justice system to address an OP violation loses much of the control that the family court would afford him or her.

III. ARTICLE EIGHT'S LIMITATIONS ON DATING AND SAME-SEX COUPLES

A. Current Access to Family Court Orders of Protection

As previously stated, any victim seeking protection from the family court must be a member of the abuser's "family or household,"[69] defined as "(a) persons related by consanguinity or affinity; (b) persons legally married to one another; (c) persons formerly married to one another; and (d) persons who have a child in common regardless whether such persons have been married or have lived together at any time."[70]

A plain reading of Article Eight's definition of "family or household member" obviously bars certain individuals from taking advantage of the family court, regardless of the intimate, familial, or dependent nature of an abusive relationship.[71] Though the New York Court of Appeals has yet to consider the question of how broadly to interpret Article Eight, appellate departments have already refused to read a more inclusive view of families into the definition. In *Anstey v. Palmatier*,[72] the Third Department held that Article Eight did not permit the family court to assert jurisdiction over a woman seeking an OP against her husband's stepfather.[73] According to the court, such a relationship did not qualify as one of "affinity" within the meaning of Article Eight.[74] Similarly, in *Orellana v. Escalante*,[75] the Fourth Department found that Article Eight barred the court from asserting jurisdiction over the former stepfather of a petitioner, because their relation by "affinity" ended when the respondent and peti-

67. *Id.* § 846-a.

68. Because violating an OP subjects the respondent to potential punitive remedies from both the family and the criminal courts, the commencement of trial in one court automatically divests the other of jurisdiction over the violation. *See* People v. Wood, 95 N.Y.2d 509 (2000).

69. N.Y. FAM. CT. ACT § 812(1).

70. *Id.* § 812(1)(a)–(d).

71. Only the family court itself, and not any person assisting the petitioner in filing, may decide issues of jurisdiction. *But see supra* note 27 and accompanying text.

72. 803 N.Y.S.2d 767, 767 (3d Dep't 2005).

73. *Id.* at 767.

74. *Id.*

75. 653 N.Y.S.2d 992 (4th Dep't 1997).

tioner's mother divorced.[76] In both of these instances, even though the stepfather may have acted like an emotionally and financially supportive parent for years, that parental behavior was not, absent a formal adoption by the stepparent, enough to be recognized by a specialized court created to deal solely with family matters.

Under these precedents, dating and same-sex couples holding themselves out as spouses yet lacking children in common must construct legally cognizable relationships to obtain Article Eight benefits. For heterosexual intimate partners, a legally solemnized marriage will automatically place them within the jurisdiction of not only Article Eight, but also other state and federal protections.[77] Same-sex couples have no similar statutory solution. The Domestic Relations Law, while not explicitly limiting marriage to opposite-sex couples or declaring same-sex marriage unlawful,[78] does speak of marriage in terms of husbands and wives.[79] Despite the absence of a clear statutory prohibition, the Court of Appeals, in *Hernandez v. Robles*,[80] construed the DRL as limiting marriage to opposite-sex couples[81] and held that such limitation did not violate the New York State Constitution.[82] The decision effectively permits authorities issuing marriage licenses to deny licenses to same-sex couples, thereby preventing them from qualifying as spouses under Article Eight. Since Article Eight applies to unmarried partners only when they share a child in common, only same-sex couples who share a child through adoption may access the family court for protection.[83]

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76. *Id.*

77. The United States General Accounting Office has identified more than one thousand federal protections, benefits, and responsibilities that apply only to married partners. *See* Letter from Barry R. Bedrick, Associate General Counsel, United States General Accounting Office, to Hon. Henry J. Hyde, Chairman, House of Representatives Committee on the Judiciary (Jan. 31, 1997), *available at* http://www.gao.gov/archive/1997/og97016.pdf. The Defense of Marriage Act, which limits interpretation of the word "marriage" to legal unions between one man and one woman for purposes of interpreting federal laws, ensures that same-sex couples cannot access any of these benefits regardless of having entered into a union legally recognized by a locality or a state. *See* 1 U.S.C. § 7 (2000); 28 U.S.C. § 1738C (2000).

78. Incestuous and bigamous marriages are automatically void under New York's Domestic Relations Law, while marriages in which one party is underage, mentally incapacitated, acting under force, fraud, or duress, or incapable of having sexual relations are voidable by either party to the marriage. *See generally* N.Y. DOM. REL. LAW §§ 5–7 (McKinney 2007).

79. *See*, *e.g.*, *id.* § 6.

80. 7 N.Y.3d 338 (2006).

81. *Id.* at 357.

82. *Id.* at 361. The plaintiffs, forty-four same-sex couples who were denied marriage licenses by various authorities, claimed that limiting marriage to opposite-sex couples violated the due process clause and the equal protection clause of the New York State Constitution. *Id.* at 358. After finding that the legislature might have rationally limited marriage and its attendant benefits to opposite-sex couples in order to promote family stability and permanence, the court denied each claim using a rational basis analysis. *Id.* at 358–66.

83. *See supra* note 6 and accompanying text. In the First Department's opinion in *Hernandez v. Robles*, from which the plaintiffs appealed, the court noted that "[m]arriage laws are not primarily about adult needs for official recognition or support, but about the well being of children and society." 805 N.Y.S.2d

B. Practical Effects: Victims and Control in the Criminal Justice System

Without access to family court, victims falling beyond Article Eight's jurisdiction must rely on the intervention of the criminal justice system. Yet, in stark contrast to their control over family court proceedings, victims interacting with the criminal justice system are virtually powerless to influence the cases directly affecting their lives.

1. First Contact: Discretionary Versus Mandatory Arrest

Most victims who call the police, either during or immediately following a violent incident, assume that police intervention will end the violence and give them the choice over filing charges.[84] Yet the truth of that assumption depends on the interaction of several different statutory provisions governing police conduct.

The extent to which certain domestic violence policies apply to an incident of violence depends on the relationship between the victim and the abuser. When an offense is committed by a stranger, police retain total and absolute discretion over the decision to arrest the offender.[85] If the police do not make an arrest in their discretion, the victim is also authorized to effectuate an arrest with police assistance.[86] Nevertheless, police may still decline to arrest the offender for lack of reasonable cause.[87]

However, if the victim and abuser are members of the same "family or household" (i.e., related by blood, marriage, or child in common),[88] police responding to an incident are bound by a mandatory arrest policy.[89] This policy requires

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354, 360 (1st Dep't 2005). Ironically, the court failed to observe that extending marital status to same-sex couples might benefit children by giving their abused parents another venue through which to end family violence.

84. *See generally* Bonnie L. Yegidis & Robin Berman Renzy, *Battered Women's Experiences with a Preferred Arrest Policy*, 9 AFFILIA 60 (1994) (detailing the disparities between one set of victims' expectations and the reality of police conduct under a "preferred" arrest policy, and revealing that most victims polled had little familiarity with their locality's arrest policies and found that their expectations of what police would do once they arrived on the scene frustrated).

85. *See* N.Y. CRIM. PROC. LAW § 140.10(1)(a)–(b) (McKinney 2007) (explaining that "a police officer *may* arrest a person" upon reasonable cause that a person has committed any offense in his presence or any crime whether or not in his presence) (emphasis added).

86. *See id.* §§ 140.30, 140.40.

87. *Id.* § 140.40(4) ("Notwithstanding any other provision of this section, a police officer is not required to take an arrested person into custody or to take any other action prescribed in this section on behalf of the arresting person if he has reasonable cause to believe that the arrested person did not commit the alleged offense or that the arrest was otherwise unauthorized.").

88. *Id.* § 530.11(1) ("'[M]embers of the same family or household' [with respect to a proceeding in the criminal courts] shall mean the following: (a) persons related by consanguinity or affinity; (b) persons legally married to one another; (c) persons formerly married to one another; and (d) persons who have a child in common, regardless whether such persons have been married or have lived together at any time.").

89. *Id.* § 140.10(4). New York promulgated its first mandatory arrest provision in the Family Protection and Domestic Violence Intervention Act of 1994, 1994 N.Y. Laws ch. 222. Furthermore, the Violence

officers to arrest a suspect upon reasonable cause to believe that the suspect: (1) committed a felony against the victim,[90] (2) violated an OP directing the suspect to stay away from the victim,[91] (3) committed a family offense in the course of violating an OP,[92] or (4) committed a misdemeanor crime which constitutes a family offense.[93]

The rationale for mandatory arrest policies is clear from the history of law enforcement interaction with victims. Prior to enactment of such policies, police frequently responded to domestic violence incidents by instructing the abuser to leave the household overnight, lecturing the victim on her role in instigating the violence, or convincing the victim not to press charges because of the financial hardships arrest would work on the family.[94] Mandatory arrest eliminated most of these practices by compelling police enforcement of domestic violence statutes.[95] But while the policies offer immediate and decisive intervention, automatically placing an abuser in police custody steals choice away from the victim. Victims calling the police may have needed immediate intervention to stop a violent attack, but if they know the violence will escalate after an arrest, they may fear the arrest more than the abuse itself.[96] Additionally, the arrested individual will likely miss at least one if not more days at work due to processing, arraignment, time spent in custody, and subsequent court appearances.[97] If he is the primary

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Against Women Act ("VAWA"), first incarnated in 1994, requires that state and local governments receiving federal funding maintain some mandatory or pro-arrest policy for domestic violence cases. *See* 42 U.S.C. § 3796hh(c)(1)(A)–(B).

90. N.Y. CRIM. PROC. LAW § 140.10(4)(a).

91. *Id.* § 140.10(4)(b)(i).

92. *Id.* § 140.10(4)(b)(ii).

93. *Id.* § 140.10(4)(c). The officer shall neither inquire as to whether the victim seeks an arrest of such person nor threaten the arrest of any person for the purpose of discouraging requests for police intervention. *Id.* For all other types of offenses, including sex offenses, the police retain the same discretion to arrest as with crimes committed by strangers. *Id.* § 140.10(1).

94. *See* Bruce J. Winick, *Applying the Law Therapeutically in Domestic Violence Cases*, 69 UMKC L. REV. 33, 37 (2000).

95. *See* Barbara Fedders, *Lobbying for Mandatory-Arrest Policies: Race, Class, and the Politics of the Battered Women's Movement*, 23 N.Y.U. REV. L. & SOC. CHANGE 281, 289–91 (1997).

96. While preferring abuse to safety may appear counterintuitive to someone not experiencing abuse, a pattern of abuse can become, if not predictable, at least expected by the victim such that she is able to internalize it and perceive it as something over which she exerts control. *See* HART, *supra* note 21.

97. For example, the Court of Appeals affirmed an interpretation of N.Y. CRIM. PROC. LAW § 140.20(1) as requiring that police present defendants to a court for arraignment within twenty-four hours of arrest, unless delay beyond that period can be satisfactorily explained. *See generally* Maxian v. Brown, 77 N.Y.2d 422 (1991). The lower court found that the first eleven to fifteen hours following arrest in New York County are "consumed" by police processes, and the Court of Appeals recognized that the "'deprivation entailed by prearraignment detention is very great with the potential to cause serious and lasting personal and economic harm to the detainee.'" *Id.* at 426 (quoting the appellate court, 561 N.Y.S.2d 418, 422 (1st Dep't 1990)). Therefore, even when officers act quickly, a defendant arrested in the middle of the night could miss at least one day of work.

financial provider of the household, precious household resources will be spent on attorney's fees, bail, and fines, regardless of whether the victim intended for the defendant to be arrested.[98] Yet when the abuser is subject to mandatory arrest, police must ignore these considerations. Arrested abusers are instantly stigmatized as criminals, and considerations of how the arrest will affect the family's economic and social status become irrelevant.

The problem is even more ominous for victims who are not members of the abuser's "family or household." Unless the local law governing police conduct differs from the state's mandates,[99] police have no obligation to make an arrest if no blood, marital, or child in common relationship exists between the abuser and the victim, even if the suspect is accused of one of the otherwise proscribed acts.[100] Technically, the police can refuse to arrest abusers even if victims request it.[101] Though mandatory arrest policies place "family or household members" in the seemingly untenable position of forgoing police intervention to keep control over their lives, the clearly-defined policies give this group of victims at least some certainty about what impact calling the police will have on their lives. No such certainty exists for dating and same-sex couples—it is virtually impossible for them to make safe, informed choices regarding police intervention, and this discrepancy poses yet another barrier to accessing the only form of help that is available to them.[102]

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98. *See* Winick, *supra* note 94, at 72.

99. For example, New York City defines domestic violence for arrest purposes as including violence between "same-sex couples, intimate partners who have lived together at some point, and registered domestic partners." Special Issues: Lesbian, Gay, Bi & Transgender, Mayor's Office to Combat Domestic Violence, http://home2.nyc.gov/html/ocdv/html/issues/lesbian.shtml (last visited Oct. 10, 2007).

100. Nevertheless, statistics indicate that police overwhelmingly apply mandatory arrest provisions to intimate partners who do not meet the "family or household" member definition. In 2002, the New York Division of Criminal Justice Services reported that "[s]uspects in non-family cases that met the offense component of the unconditional and conditional mandatory arrest criteria were arrested at rates similar to those of suspects in family cases that were actually covered by the legislation." ADRIANA FERNANDEZ-LANIER ET AL., COMPARISON OF DOMESTIC VIOLENCE REPORTING AND ARREST RATES IN NEW YORK STATE: ANALYSIS OF THE 1997 AND 2000 DOMESTIC INCIDENT STATISTICAL DATABASES 4 (May 2002), *available at* http://criminaljustice.state.ny.us/crimnet/ojsa/domviol_rinr/19972000dir_report.pdf.

101. *See generally* N.Y. CRIM. PROC. LAW § 140.10(4)(c).

102. For examples of procedures that responding police officers are not required to employ when responding to domestic incidents involving dating or same-sex couples, see generally N.Y. CRIM. PROC. LAW § 140.10(5) (McKinney 2007). *See also* N.Y. FAM. CT. ACT § 812(1). One disparity is that investigations into violent incidents between "family or household" members must be recorded and filed on a specialized domestic incident report, while non-cognizable relationships are not entitled to this detailed record of investigation unless provided for by local law. Family and household members are also entitled to other specific procedures at the time of arrest. Prior to 1994, officers responding to scenes where both the complainant and the suspect bore injuries would arrest both parties. To avoid unduly arresting victims, the legislature changed Section 140.10 to provide that police officers with reasonable cause to believe that more than one family or household member has committed a misdemeanor family offense against another must separately evaluate each complaint and attempt to arrest only the "primary physical aggressor," determined by comparing the extent of injuries inflicted by the parties, any threats of harm to the other

Particularly for victims in same-sex relationships, requesting police intervention raises a host of additional fears and questions, including the possibility of being confronted with bias, ridicule, and disbelief from police officers.[103] These fears are not unfounded. Upon discovering that a domestic violence call involves same-sex partners, police often scoff at the notion that one woman could abuse another, or that a man is incapable of defending himself against another man.[104] In 2000, New York City police refused to take complaints from 9 percent of LGBT victims reporting domestic violence.[105] In 8 percent of all cases reported to the police, the complainant was arrested, and 2 percent of all reports involved some level of physical abuse by the police.[106] Clearly, arrest is often a less than preferable path to relief for victims of dating or same-sex domestic violence.

2. Prosecution and No-Drop Policies

Assuming the abuser is arrested, the criminal complaint is then forwarded to a prosecutor, who at some point will likely inform the victim (the "complainant" or "complaining witness") that the prosecutor's office adheres to a "no-drop policy."[107] "No-drop policies" are internal rules adopted by individual prosecutors' offices that dictate that criminal cases shall not be dismissed solely because the complainant requests such a disposition or is unwilling to participate in the prosecution. Rather, an uncooperative complainant, like any other hostile witness, can sometimes be compelled to appear and testify against the defendant abuser.[108]

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party or another household member, any known prior history of domestic violence, and any indications that one of the parties acted defensively to protect herself. *See* N.Y. CRIM. PROC. LAW § 140.10(4)(c).

Some notice requirements are also applicable only to "family or household" members. For example, New York law requires responding officers to provide written notice to "family or household" member complainants of their rights: (1) to information about obtaining orders of protection; (2) to assistance in retrieving personal possessions, finding safe shelter, obtaining medical treatment, and receiving a copy of the police report; (3) to seek legal counsel in family court; (4) to ask the district attorney or officer to file a criminal complaint; and (5) to file a petition in family court and request an OP on the same day. The police must also provide the addresses and numbers of local domestic violence resources, and they must apprise a "family or household" victim that both criminal and family courts possess the power to issue OPs upon allegations constituting family offenses and that the family court has the power to order temporary child support and custody of children. N.Y. CRIM. PROC. LAW § 530.11(6).

103. Lundy, *supra* note 8, at 289–91.

104. *Id.*

105. KEN MOORE & RACHEL BAUM, ANTI-LESBIAN, GAY, BISEXUAL AND TRANSGENDER DOMESTIC VIOLENCE IN 2000 25 (2001), *available at* http://www.qrd.org/qrd/www/orgs/avproject/2000ncavpdvrpt.pdf.

106. *Id.*

107. *See* Angela Corsilles, Note, *No-Drop Policies in the Prosecution of Domestic Violence Cases: Guarantee to Action or Dangerous Solution?*, 63 FORDHAM L. REV. 853, 855–57 (1994).

108. *Id.* at 860 (describing tactics used by local prosecutors' offices across the United States to secure conviction while alleviating the dangers posed to the victim). The New York Office for the Prevention of Domestic Violence Model Domestic Violence Policy recommends that prosecutors and police presume victims will not testify and instead become well-versed in evidence collection that would obviate the need to call victims as

Again, the rationale for imposition of no-drop policies is clear from the history of domestic violence prosecutions. Previously, victims who pressed charges against their abusers and were later reluctant to participate in prosecuting the case were permitted or encouraged to withdraw their complaints.[109] As seen earlier, victims withdraw charges out of fear, threats and coercion, inability to support the family without the abuser's financial assistance, or a post-arrest increase in intimate violence.[110] Prosecutorial deference to victims' requests resulted in repeated cycles of arrest, arraignment, and withdrawal that reinforced abusers' sense of power over victims and minimized the seriousness of the underlying criminal behaviors.[111] No-drop policies aim to end these cycles by (1) reinforcing the prosecutor's duty to treat domestic violence seriously, (2) emphasizing the prosecutor's role in representing the interests of the state rather than a single victim,[112] and (3) removing abusers' power to coerce victims into withdrawing charges.[113]

No-drop policies are not without drawbacks. They deprive victims of any control over criminal cases and also potentially endanger them, either by increasing the likelihood of retaliation by abusers or by discouraging victims from seeking police assistance during additional violence.[114] Second, since the tools used to enforce no-drop policies include subpoenaing victims and holding them in contempt for refusing to cooperate, victims stand to be punished for reluctance to participate in a proceeding that could further jeopardize their safety.[115] Finally, policies imposing prosecutorial control over victims can destroy burgeoning feelings of self-empowerment that are necessary to help victims separate from their

witnesses. *See* OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE, MODEL DOMESTIC VIOLENCE POLICY FOR COUNTIES (1998), *available at* http://www.opdv.state.ny.us/coordination/model_policy/crimjust.html; *see also* Donald J. Rebovich, *Prosecution Response to Domestic Violence: Results of a Survey of Large Jurisdictions*, *in* LEGAL INTERVENTIONS IN FAMILY VIOLENCE: RESEARCH FINDINGS AND POLICY IMPLICATIONS 59 (U.S. Dep't of Justice & American Bar Assoc. eds., 1998).

109. Corsilles, s*upra* note 107, at 866–73 (explaining how prosecutors' unwillingness to waste resources on cases unlikely to proceed to conviction interacts with victims' fears, distrust of the legal system, increased emotional and physical abuse, and lack of financial stability to create attrition rates in domestic violence cases).

110. *Id.* at 870–71.

111. *See id.* at 866. The court quotes one prosecutor as stating that "it was a self-fulfilling prophesy. We'd file if she really wanted us to, but we knew that she'd want us to drop charges later . . . we may have even told her so. Then we sent her back home, often back to her abuser, without any support or protection at all. Sure enough, she wouldn't follow through and we'd think, 'It's always the same with these cases.'". *Id.*; *see also* Mary E. Asmus et al., *Prosecuting Domestic Abuse Cases in Duluth: Developing Prosecution Strategies from Understanding the Dynamics of Abusive Relationships*, 15 HAMLINE L. REV. 115, 117–18 (1991).

112. *See* Corsilles, *supra* note 107, at 874.

113. *Id*.

114. *Id.* at 875–76.

115. *Id.*

abusers, thus conveying them from one cycle of control into another, albeit less-intimate, one.[116]

From a psychological standpoint, the paternalistic nature of mandatory-arrest and no-drop policies impress upon victims that though they and their families are at most risk of harm, the criminal justice system will concern itself with a victim's wishes only when those wishes comport with the prosecutor's needs.[117] A single phone call for police assistance immerses victims into proceedings in which defendants' myriad rights are protected at all costs, while victim input is limited by the prosecutor's discretion. The ultimate result is that these policies discourage many victims from calling for police intervention the next time violence explodes for fear of unwittingly becoming entangled in a criminal prosecution against their partners, over which they will have no control.[118] Access to the family court is therefore essential to giving all victims ways to seek legal protection from which they can later extricate themselves should the process prove harmful.

3. Emergency Relief

The prosecutor, and not the victim, determines whether or not to request a TOP from the criminal court on behalf of the complainant.[119] Such requests are generally made at the defendant's arraignment,[120] are based upon the prosecutor's assessment of the severity of the violence, and are often made without the complainant's knowledge.[121] Though a TOP is issued on behalf of the complainant, the complainants themselves cannot dictate the duration or conditions of the TOP

116. *Id.*

117. *See id.* at 875–76.

118. *See* Fedders, *supra* note 95, at 292.

119. *See* N.Y. CRIM. PROC. LAW §§ 530.12, 530.13 (McKinney 2007).

120. These requests may be made at any point prior to trial. *See id.* §§ 530.12(1), 530.13(1) (stating that a court may issue an OP when any criminal action is pending). Courts may also issue OPs to ex parte victims prior to apprehension and arraignment, provided that an accusatory instrument has been filed against the defendant and that the facts presented establish good cause for the issuance of an OP. *Id.* §§ 530.12(3), 530.13(2).

121. The statute merely requires a showing of "good cause" without specifically requiring that the victim appear to provide testimony or that the prosecutor offer any additional information beyond the facts alleged in the accusatory instrument. *See id.* §§ 530.12(3), 530.13(2). A prosecutor often may not have sufficient time or contact information to consult with the victim prior to arraignment for the purpose of determining the appropriateness of a TOP. This lack of consultation with victims creates the potential for ill-fitting TOPs and dangerous pretrial living situations. A single violent incident may not be indicative of the defendant's overall lethality toward the victim, so the prosecutor cannot predict the likelihood of future abuse from records of reported incidents. *See, e.g.*, Malcolm Gordon, *Validity of "Battered Women Syndrome" in Criminal Cases Involving Battered Women*, *in* LEGAL INTERVENTIONS IN FAMILY VIOLENCE: RESEARCH FINDINGS AND POLICY IMPLICATIONS 65 (U.S. Dep't of Justice & American Bar Assoc. eds., 1998) (concluding that "there is no one pattern that characterizes all batterers' behavior" and illustrating that a victim's personal assessment of the threat posed by an abuser is based on information most prosecutors do not have access to without first speaking to the victim).

in criminal court proceedings.[122] As with decisions to prosecute, complainants can only relay their opinions to prosecutors regarding the need for a TOP—they cannot even be assured that they will have an opportunity to speak directly to the issuing judge. Any resultant TOP may or may not provide adequate protection from a complainant's perspective.[123]

Like a family court TOP, a criminal court TOP can direct that the defendant, among other conditions, be ordered to stay away from the complainant and his or her house, school, or place of employment.[124] It may also direct the defendant not to contact the complainant by mail, electronic/telephonic means, or via third-party contact.[125] The defendant may be directed to refrain from committing additional family offenses and from harming or threatening other members of the complainant's household.[126] Finally, criminal TOPs can be extended as necessary to protect the complainant while criminal charges are pending.[127]

However, assuming that the complainant requested and obtained a TOP at the commencement of criminal proceedings, very little other relief is available while the criminal charge is pending. Defendants quite frequently waive their statutory rights to speedy trials[128] while plea negotiations and investigations are ongoing, resulting in multiple adjournments with little if any progress toward dispositions. Complainants do not need to attend these court appearances unless called as witnesses, yet many find themselves returning to court for several months in order to stay abreast of the status of cases and remind prosecutors of their interests in the outcomes.[129] And unless a defendant remains held on bail while the case is pending, a TOP is the only preventative measure a complainant has until a sentence is rendered.[130]

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122. *See* N.Y. CRIM. PROC. LAW §§ 530.12(3), 530.13(2).

123. *See* Corsilles, *supra* note 107, at 875–76.

124. N.Y. CRIM. PROC. LAW §§ 530.12(1)(a), 530.13(1)(a). In determining which conditions to include within a TOP issued against a victim's family or household member, the court considers the history of abuse, threats, drug and alcohol abuse, access to weapons, and whether the TOP is likely to achieve its protective purpose without such conditions. *Id.* § 530.12(1)(a).

125. Although not specifically provided for by the New York Criminal Procedure Law in Section 530.12 and Section 530.13, the standardized forms established for use by the criminal courts explicitly contain such prohibitions. *See* New York State Unified Court System Homepage, http://www.courts.state.ny.us/forms/familycourt/pdfs/crim1.pdf (last visited Nov. 25, 2007).

126. N.Y. CRIM. PROC. LAW §§ 530.12(1)(c)–(d), 530.13(1)(b).

127. *Id.* §§ 530.12(4), 530.13(3).

128. *Id.* § 30.30(1)–(3).

129. *See* Corsilles, *supra* note 107, at 870; *see also* HART, *supra* note 21.

130. Of several statutory provisions relating to setting pretrial release conditions, only two address victims' safety. *See generally* N.Y. CRIM. PROC. LAW § 530.

4. Criminal Dispositions and Orders of Protection

The relief that ultimately becomes available hinges on the disposition of the criminal case. A defendant is only subject to probation or substantial imprisonment after a verdict or plea of guilty to offenses designated as "crimes," that is, any offense of misdemeanor level or higher.[131] Offenses valued as less than misdemeanors are labeled "violations," and the maximum penalty for a conviction for a violation ranges from monetary fines to fifteen days imprisonment.[132] Restitution may also be ordered in conjunction with any sentence.[133] More typically, the court allows the defendant to plead guilty and will impose limiting conditions on release rather than subjecting the defendant to probation (known as "conditional discharge").[134] In the alternative, the court may grant an Adjournment in Contemplation of Dismissal ("ACD").[135] As a requirement of probation, conditional discharge or ACD, the court may order the defendant to attend a batterer's intervention or education program.[136] None of the aforementioned dispositions are within a complainant's direct power to control or influence. Defendants alone may demand trial,[137] and prosecutors possess the power to compel reluctant victims to testify,[138] two facts of which criminal complainants become aware through lengthy and repeated adjournments and their interactions with prosecutors. Even plea bargains are often determined among prosecutors, defense coun-

131. *See generally* N.Y. PENAL LAW § 65.00(1)(a), art. 70 (McKinney 2007).

132. *Id.* § 55.10(3)(a). A typical violation charge in domestic violence contexts is harassment in the second degree. *See id.* § 240.26.

133. *See generally id.* § 60.27.

134. *See id.* § 65.05.

135. *See generally* N.Y. CRIM. PROC. LAW § 170.55(1) (McKinney 2007). A disposition of ACD releases the defendant on his own recognizance and removes the case from the court calendar for a specified time period after which it is automatically dismissed unless the prosecutor moves to have it restored to the calendar and proceeds with prosecution. *See id.* § 170.55(2). To receive an ACD, the defendant does not have to make any admission of guilt. *Id.* § 170.55(8).

136. *See id.* § 170.55(4); N.Y. PENAL LAW § 65.10 (McKinney 2007).

137. *See generally* N.Y. CRIM. PROC. LAW § 30.30 (McKinney 2007) (describing when a defendant may move to dismiss pending charges due to a prosecutor's failure to be ready for trial within certain specified time periods, excluding periods of continuance granted at the defense's request). The only provision pertaining to complaining witnesses is that which allows the prosecution additional time to try a case when the people were ready for trial before time expired and subsequently become unready for trial due to "some exceptional fact or circumstance" like the "sudden unavailability of evidence material to the people's case, when the district attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available in a reasonable period." *Id.* § 30.30(3)(b).

138. *See* N.Y. CRIM. PROC. LAW § 610.20 (McKinney 2007) (allowing the court, the prosecutor, or the defendant to issue a subpoena for the attendance of a witness at the proceeding); *see id.* §§ 620.10, 620.20 (allowing the witness to be adjudged a material witness in a pending criminal action and fixing bail to secure his or her future attendance at the proceedings). A witness who is unable to comply with the bail requirements is remanded to the custody of the sheriff. *Id.* § 620.50.

sel, and judges without consulting the complainants whose safety is most directly affected.[139]

When a complainant's safety does remain a concern, a new OP may be issued in conjunction with a conviction.[140] The duration of most criminal OPs is determined by the seriousness of the charge underlying the conviction. A guilty plea to a violation authorizes a new two-year OP.[141] For misdemeanor convictions, OPs can last up to five years,[142] and felony convictions authorize the imposition of OPs lasting up to eight years.[143] An exception to these offense-duration correlations arises when a case is disposed of by ACD. In those instances, the court is limited to issuing a new TOP, and the length of both the TOP and the ACD depends on the existence of a blood, marital, or child in common relationship between the defendant and the complainant.[144] If such a relationship exists, the ACD may remain in effect for one year, and the court may issue a TOP also

139. *See id.* §§ 340.20(4), 220.50(5) (setting forth procedures for memorializing a sentence agreed upon by the *prosecutor* and the *defendant* prior to the defendant pleading guilty). New York Criminal Procedure Law Section 220.50(4) contemplates situations where the permission of the *court* or the *prosecutor* is a necessary prerequisite to the defendant pleading guilty. Victims are permitted to make statements at sentencing or to presentence investigators. *See id.* §§ 380.50, 390.30. However, the defendant is afforded an opportunity to rebut any in-court statement made by the victim, and the victim must request permission to make the statement at least ten days prior to the sentencing date in felony cases. *Id.* §§ 380.50(2)(b), 380.50(2)(d), 380.50(2)(e).

140. As with family court OPs issued after a fact-finding hearing, an OP issued after a verdict or plea of guilty is also usually dubbed a "permanent" OP. The provisions of the New York Criminal Procedure Law authorizing permanent OPs fall under the sections relating to bail, not sentencing. *See generally* N.Y. CRIM. PROC. LAW § 530 (McKinney 2007).

141. N.Y. CRIM. PROC. LAW §§ 530.12(5), 530.13(4). The most recently updated version of Section 530.12(5) states as follows: "Upon conviction of any crime or violation between spouses, parent and child, or between members of the same family or household, the court may in addition to any other disposition, including a conditional discharge . . . enter an order of protection. . . . The duration of such an order shall be fixed by the court and, in the case of a felony conviction, shall not exceed the greater of (i) eight years; . . . or in the case of a class A misdemeanor, shall not exceed five years from the date of such conviction; or in the case of a conviction for *any other offense, shall not exceed two years* from the date of conviction." N.Y. CRIM. PROC. LAW § 530.12(5) (emphasis added); *see id.* § 530.13(4) (mirroring these terms for those parties not related by blood or marriage); *id.* § 1.20(13) (noting that "conviction" means the entry of a plea of guilty to, or a verdict of guilty upon, an accusatory instrument).

142. N.Y. CRIM. PROC. LAW § 530.12(5). The new law comes into effect on September 1, 2009. It will provide for five-year OPs for felonies and three-year OPs for misdemeanors. Notably, the vast majority of domestic violence offenses fall within the violation and misdemeanor categories. Thus, very few victims ever benefit from a criminal OP lasting longer than five years.

143. *Id.*

144. *See* N.Y. CRIM. PROC. LAW § 170.55(2)–(3). The statute references subdivision one of Section 530.11 of the chapter, which requires the parties to be related by blood, marriage, former marriage or a child in common. *Id.* This means that if a petitioner has a family relationship, the ACD can last longer. The section further states that in conjunction with the ACD, the court may issue a TOP under Section 530.12 or Section 530.13, which, as previously noted, allow TOPs for family offenses and non-family offenses, respectively. *Id.* So, if the ACD is the non-familial shorter version, then the accompanying TOP is shorter as well.

lasting up to one year.[145] Absent such a relationship, both the ACD and the OP are limited to six months duration.[146] The practical import of the distinction is that victims in dating and same-sex relationships, even when fully cooperative with the criminal process, may remain legally protected for only half as long as similarly situated victims in recognized "family or household" relationships without the benefit of access to the family court's concurrent jurisdiction.

5. Disparities in Burdens and Available Relief

Finally, in addition to a lack of control over criminal cases, it must be noted that victims who are not related to their abusers by blood, marriage, or children in common face higher burdens of proof in obtaining permanent OPs. For example, a victim alleging third degree assault in family court must prove her case by a preponderance of the credible evidence or else face dismissal of her claim.[147] Provided she is able to prove actual physical injury or some other aggravating factor, the court may grant her a five-year OP.[148] In contrast, absent any plea-bargaining, a criminal trial for the same assault requires a prosecutor to prove the case beyond a reasonable doubt before the court may issue a permanent OP.[149]

IV. OVERCOMING ARTICLE EIGHT'S EXCLUSIVITY

A. Expanding "Family": A Definitional Approach

In *Hernandez v. Robles*, the Court of Appeals raised the specter that New York's legislature drafted the DRL with the intent of prohibiting same-sex marriage.[150] If true, the exclusion of dating and same-sex couples from Article Eight's definition of "family or household" may be interpreted as a consistent attempt by the legislature to avoid inadvertently recognizing same-sex relationships.[151]

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145. *See* N.Y. CRIM. PROC. LAW §§ 170.55(2), 530.11, 530.12. The OP forms used differ depending on whether the OP (or TOP) is based on a family offense or a non-family offense. *See* New York State Unified Court System, Criminal Form 1, http://www.courts.state.ny.us/forms/familycourt/pdfs/crim1.pdf (last visited Sept. 12, 2007); *see also* New York State Unified Court System, Criminal Form 2, http://www.courts.state.ny.us/forms/familycourt/pdfs/crim2.pdf (last visited Sept. 12, 2007).

146. *See* N.Y. CRIM. PROC. LAW § 170.55(2)–(3).

147. *See* N.Y. FAM. CT. ACT §§ 832, 841(a).

148. *See id.* §§ 827(a)(vii), 842(i).

149. N.Y. CRIM. PROC. LAW § 300.10(2).

150. 7 N.Y.3d 338, 357 (2006).

151. In response to the Article Eight limitations, domestic violence advocacy groups have confronted the New York legislature with the possibility of expanding the Family Court Act definition of "family and household members" to include intimate partners. As recently as March 2006, the New York State Senate considered amending both the Family Court Act and the Criminal Procedure Law to include jurisdiction over "unrelated persons who are or have been in an intimate or dating relationship regardless whether such persons have lived together at any time" and expanding "family or household" members to include "unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household." *See* S. 7068, 228th Leg.

Yet unwillingness to extend marital status to same-sex couples need not exclude dating and same-sex couples from access to domestic violence remedies. This principle operates in numerous states where public opposition to same-sex marriage resulted in state constitutional amendments banning such unions.[152] Soon after, these same states also amended their domestic violence statutes to ensure that, despite being denied marital benefits, abused partners will not be precluded from legal protection and relegated to remaining in abusive situations on the basis of their sexualities.[153] For example, Ohio amended its constitution to state that "only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions, [which] shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage."[154] In response to fears that the amendment's language would prevent domestic violence statutes from applying to abused same-sex partners, Ohio revised the statutes to define, "family or household members" as including persons "living as a spouse," i.e., those who live or have lived with the offender within five years of an alleged act of violence.[155] An Ohio appellate court subsequently held that the language of the statutory definition violated the anti-same-sex-marriage amendment.[156] However, the court also acknowledged that the legislature's intent in drafting the statute was to protect individuals from violence rather than to surreptitiously garner official recognition for same-sex relationships. To serve that intent, the court suggested using broader statutory language making all domestic violence remedies available to any person who currently or previously shared living quarters with an alleged abuser.[157] In September 2007, the Supreme Court of

(N.Y. 2005). Yet after each legislative session, the suggested changes have failed to materialize, and the statute has never been passed.

152. Under the federal Defense of Marriage Act, states are permitted to disregard the act of any other state recognizing marriage between same-sex couples. 28 U.S.C. § 1738C (2000). As of late 2006, twenty-seven states had followed Congress's example by passing state constitutional amendments limiting, or permitting the state legislature to limit, marriage to a union between one man and one woman. *See* ALLIANCE DEFENSE FUND, DOMAWATCH, MARRIAGE AMENDMENT SUMMARY, http://www.domawatch.org/amendments/amendmentsummary.html (last visited Nov. 25, 2006) (listing those states that passed or attempted to pass marriage amendments to their respective state constitutions).

153. For example, Missouri and Kansas have left domestic violence protections available for same-sex partners by making their laws applicable to adults who currently do or formerly have shared a residence. LGBT TASK FORCE, ACLU OF KANSAS & WESTERN MISSOURI, THE RIGHTS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDERED PEOPLE IN MISSOURI AND KANSAS (2006), *available at* http://www.aclukswmo.org/chapters/lgbt.htm#violence.

154. OHIO CONST. art. XV, § 11.

155. *See* OHIO REV. CODE ANN. §§ 2919.25(F)(1)(a)(i), 2930.01(D), 3113.31(A)(3)(1), 3113.31(A)(3)(4) (2005).

156. State v. Ward, 849 N.E.2d 1076, 1077, 1082 (Ohio Ct. App. 2006), *rev'd sub nom. In re* Ohio Domestic-Violence Statute Cases, 872 N.E.2d 1212 (Ohio 2007).

157. *See id.* at 1082.

Ohio reversed this appellate decision, holding that the domestic violence statute "does not create or recognize a legal relationship that approximates the designs, qualities, or significance of marriage," and that the statute simply creates "a classification with significance to . . . domestic-violence statutes."[158]

While New York's lack of a constitutional ban on same-sex unions distinguishes it from Ohio, Ohio's approach exemplifies how a carefully crafted statutory scheme can address intimate violence without effectively elevating dating and same-sex couples to married status. In its current form, Article Eight's limited provisions avoid ascribing any legal status to same-sex relationships to the detriment of its stated purpose of eliminating violence.[159] To avoid this inconsistency, without formally recognizing any additional status for dating and same-sex relationships, the legislature must redefine Article Eight entirely. First, the concept of domestic violence under Article Eight must be expanded without reference to blood, marital, or child in common relationships, a change supported by the similar rates of violence among same-sex couples, dating couples, and couples already meeting the "family or household" definition.[160] Next, "members of the same family or household" must be divided into two separate categories of eligible family court petitioners. The first category, "members of the same family," would retain Article Eight's original limitation to parties related by blood, marriage, or a child in common. A separate category of "members of the same household" would then permit anyone sharing living quarters, including dating and same-sex couples[161] to immediately petition the family court for an OP without first having a child in common. In this manner, Article Eight protections could be extended to all types of family relationships without forming a legal basis for recognition of same-sex marriage.

B. A Functional Approach

While redefining the relationships to which Article Eight applies is the most direct, precise means of opening the family court to dating and same-sex couples, a broader definitional system allowing courts to determine jurisdiction by certain delineated factors would increase the likelihood that nontraditional families will not be precluded from obtaining OPs.

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158. State v. Carswell, 871 N.E.2d 547, 554 (Ohio 2007).

159. *See* N.Y. FAM. CT. ACT §§ 812(1)(a)–(d), 812(2)(b). Article Eight's current structure is even more nonsensical when considered in light of the New York Social Services Law, which extends domestic violence preventative services to "family or household members" consisting of "unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household." N.Y. SOC. SERV. LAW § 459-a(2)(e) (McKinney 2007).

160. *See supra* note 2 and accompanying text.

161. This new category would also cover step-relationships held excluded from Article Eight protection in *Anstey v. Palmatier* and *Orellana v. Escalante*. *See supra* notes 72–76 and accompanying text.

In some contexts, New York has already granted the term "family" broad interpretation when it appears in statutes intended to protect family expectations. In *Braschi v. Stahl Associates Co.*,[162] the Court of Appeals mandated broad interpretation of New York City's rent control regulations to recognize same-sex partners as "families" and to qualify them for protection from eviction when the lease-holding partner dies.[163] In interpreting the statute, the court sought to "avoid objectionable consequences,"[164] "prevent hardship and injustice,"[165] and effectuate the purpose of a remedial statute "designed to promote the public good."[166] Concluding that its use of the term "family" signified the legislature's intent to protect expectations of adults in emotionally and financially interdependent relationships,[167] the court noted that its interpretation "comport[ed] both with our society's traditional concept of 'family' and with the expectations of individuals who live in such nuclear units."[168] Trial courts were advised to examine subsequent claims by "the exclusivity and longevity of the relationship, the level of emotional and financial commitment, the manner in which the parties have conducted their everyday lives and held themselves out to society, and the reliance placed upon one another for daily family services."[169]

Despite the specifically enumerated "family or household" members under Article Eight, courts deciding future challenges to the statute should broadly interpret its applicability according to *Braschi*'s principles of serving public expectations and remedial purposes. Just as individuals living in non-traditional familial units stand to suffer virtually identical injuries and collateral consequences from abuse as those families permitted to use the family court, they should also expect to have identical rights and protections from abuse as any legally recognized victim. The fact that the *Braschi* court was concerned with a surviving partner's expectations of and the public's interest in housing availability should not limit the application of similar reasoning to interpretation of Article Eight—the interests at stake for domestic violence victims are equally as compelling as avoiding eviction, if not more so. As mentioned earlier, victims attempting to end abuse in any intimate relationship risk losing not just housing, but also

162. 74 N.Y.2d 201 (1989).

163. *Id.* at 211. The regulation at issue in *Braschi*, 9 N.Y. COMP. CODES R. & REGS. § 2204.6(d), provided that upon the death of a rent-controlled tenant, the landlord may not evict "either the surviving spouse of the deceased tenant or some other member of the deceased tenant's *family* who has been living with the tenant." 74 N.Y.2d at 206 (emphasis added). However, the term "family" was nowhere defined within the regulation when the court decided *Braschi*. *See id.*

164. *Braschi,* 74 N.Y.2d at 208.

165. *Id.*

166. *Id.*

167. *See id.* at 211.

168. *Id*.

169. *Id.* at 212–13. The legislature later adopted and codified these factors. *See* N.Y. COMP. CODES R. & REGS. tit. 9, § 2204.6(d)(3)(i)(a)–(h) (2007).

support, employment, or life itself.[170] Physical safety and economic security may depend on a victim's ability to control the initiation, scope, and course of any legal claims—control they may fully expect to command up until the moment it is denied them, with potentially disastrous results.

Additionally, Article Eight resembles the *Braschi* rent control statute in that it is remedial in nature. The articulated purpose of Article Eight, to end violence and return the family to safety,[171] by extension serves the public good: increased family safety potentially increases work productivity and child stability,[172] and decreases the amount of resources expended on future criminal justice intervention and public assistance benefits.[173] Expanding the applicability of Article Eight protections to relationships beyond the current "family or household" member definition will only further serve the Article's stated and implied purposes by widening the base of individuals eligible to address violence in a more private, civil manner—rather than through arrest and prosecution. Therefore, Article Eight should be amended to permit the family court to apply the *Braschi* factors and accept jurisdiction over any case in which it finds that the petitioner is in a committed, financially and emotionally interdependent relationship with the respondent.

C. Registries

As either a supplement or an alternative to modifying Article Eight, the legislature should create a new statewide domestic partnership or household registry allowing authorities to expeditiously determine if parties seeking relief have established a family-like unit that would presumptively grant them access to a family court OP.

To a limited extent, the legislature has already recognized that the modern concept of "family" extends beyond blood, marital, or child in common relationships. New York City's Administrative Law, under the purview of the state legislature, permits registration of domestic partnerships between any two people who, among other things, are not married or related by blood in a manner that would bar marriage between them in New York State,[174] who have a close, committed personal relationship, and who live together on a continuous basis at the

170. *See generally* Lundy, *supra* note 8, at 275–76.

171. *See* N.Y. FAM. CT. ACT § 812(2)(b) (McKinney 2007).

172. *See generally* ELEANOR LYON, WELFARE AND DOMESTIC VIOLENCE AGAINST WOMEN: LESSONS FROM RESEARCH (2002), *available at* http://www.vawnet.org/DomesticViolence/Research/VAWnetDocs/AR_Welfare2.pdf; LUNDY BANCROFT & JAY G. SILVERMAN, ASSESSING RISK TO CHILDREN FROM BATTERERS (2002), *available at* http://www.vawnet.org/DomesticViolence/ServicesAndProgramDev/ServiceProvAndProg/RisktoChildren.pdf.

173. *See generally* NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, *supra* note 15.

174. New York City Marriage Bureau Online, Domestic Partnership, http://nycmarriagebureau.com/MarriageBureau/index.htm?DomesticPartnership.htm (last visited Oct. 10, 2007).

same address.[175] The declared purpose of a New York City domestic partnership is to recognize "the diversity of family configurations, including lesbian, gay and other non-traditional couples."[176] Receipt of a Certificate of Domestic Partnership qualifies one for rights and benefits that include bereavement and child care leave for city employees, visitation in city-operated health facilities, designation as a family member on city-owned housing leases and succession to occupancy rights in some buildings supervised by the Department of Housing Preservation and Development, and receipt of city employee health benefits provided to family members pursuant to stipulations or collective bargaining agreements.[177]

All of the above-listed benefits are aimed at maintaining non-traditional couples' stability in ways commonly afforded to traditional families rooted in heterosexual marriages, evincing a legislative intent to serve the expectations of partners living in non-traditional families. Therefore, New York already has a legal mechanism through which to extend family court OPs to dating and same-sex couples: a legal presumption of a family relationship established by presenting the court with a Certificate of Domestic Partnership. Thus, these legislative initiatives are independent from any state-wide initiatives to legally recognize same-sex marriage.

However, creating a presumption of this nature through the implementation of a state-wide domestic partnership law would inevitably require thousands of localities to grant partners economic benefits historically denied to any non-heterosexual, non-married relationship, at tremendous administrative costs to businesses and local government. In response to these difficulties, the legislature should create a domestic household registry, enrollment in which is available to both couples bearing a Certificate of Domestic Partnership and any other partners or family units holding themselves out as families. The registry would list the members of any registered households, maintain a state-wide central database of all households, and issue formal paperwork to members reflecting household composition. As with a Certificate of Domestic Partnership, a family court resolving jurisdictional issues could refer to the registry or to a copy of the paperwork in determining if the presumption of a shared family or household applies to petitioners. Properly registered households can thus preserve the right to utilize the family court well before legal interventions become necessary.

One paramount advantage of household registries over state-wide domestic partnership laws is that a registry concept permits the legislature to incrementally assign rights and benefits to registered households as it deems necessary. Whereas a Certificate of Domestic Partnership already constitutes evidence of eligibility for a package of economic benefits, the registry would not automatically

175. *Id.*

176. *Id.*

177. *Id.*

vest any economic entitlements in the enrolled households, giving the legislature an opportunity to consider the desirability of extending additional benefits to those groups.

In creating a household registry, the legislature must also answer several other questions. What degree of intent must be shown to register, and how should that intent be quantified? Further, once a family unit is registered as a recognized household, under what circumstances can individuals be removed from the registry? In considering these questions, the legislature should also consider procedures for verifying household membership and requiring parties to examine the seriousness of their decisions to register.[178] Finally, given that abuse often continues after parties stop recognizing a formal relationship between them, the legislature must contemplate a policy favoring continued access to family court OPs even after a party removes the abusive household from the registry.

V. CONCLUSION

The disparity in victims' control in the New York family and criminal courts, and the lack of any substantial difference in the experiences of domestic violence victims from every type of intimate relationship highlight the fundamental inconsistency of excluding dating and same-sex couples from obtaining family court orders of protection under Article Eight. Minor changes to the statutory language and interpretation of the Family Court Act can remedy these irrational limitations without extending marriage to same-sex couples, allowing courts to examine evidence of familial commitment and obligations within households in determining jurisdiction over an offense. Without these legislative concessions, Article Eight ignores a vast population of victims and fails to meet its goal of ending family violence.

178. One possibility to serve this end is the implementation of a no-withdrawal policy.