BATTERED MOTHERS

SPEAK OUT

A Human Rights Report on Domestic Violence and Child Custody in the Massachusetts Family Courts

NOVEMBER 2002

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Ordering Information
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Wellesley Centers for Women
106 Central Street
Wellesley, MA 02481-8203
Tel: +781-283-2510

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Graphic design & layout: Arnold Chazal & Lana Makhanik, Kieris Solutions 781-777-1550  www.kieris.com
Copyediting: Frances Ann Haselsteiner
Contributing Authors
In order of contribution

Carrie Cuthbert, J.D.; Kim Slote, J.D.; Monica Ghosh Driggers, J.D.; Cynthia J. Mesh, Ph.D.; Lundy Bancroft; and Jay Silverman, Ph.D.

Battered Mothers' Testimony Project Steering Committee
In alphabetical order

The Battered Mothers' Testimony Project is a project of the Women's Rights Network at the Wellesley Centers for Women.

Lundy Bancroft: Author, The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics (Sage Publications) and Why Does He Do That? Inside the Minds of Abusive and Controlling Men (G.P. Putnam). Mr. Bancroft has also worked as a guardian ad litem, a court investigator, and an expert witness in cases involving allegations of domestic violence or child abuse.

Jacquelynne J. Bowman, J.D.: Deputy Director, Greater Boston Legal Services. Ms. Bowman has also served as Senior Attorney for Family and Juvenile Law and Managing Attorney of the Family and Individual Rights Unit of Greater Boston Legal Services. She is a member of the Governor's Commission on Domestic Violence Policy and the ABA Commission on Domestic Violence.

Carrie Cuthbert, J.D.: Founding Co-director, Women's Rights Network (WRN), Wellesley Centers for Women. WRN is a human rights initiative that addresses violence against women and related issues as human rights violations in the United States and throughout the world.

Gillian MacMillan-Smith: Survivor facing ongoing family court litigation to keep her daughter safe. Ms. MacMillan-Smith has also worked at a battered woman's shelter, as a counselor to victims of domestic violence, and at a batterer's intervention program.

Jay Silverman, Ph.D.: Director of Violence Prevention Programs, Division of Public Health Practice and Assistant Professor of Health and Social Behavior at the Harvard School of Public Health. Dr. Silverman is a developmental psychologist and public health researcher in the area of intimate partner violence.


Battered Mothers' Testimony Project Advisory Board
In alphabetical order

David Adams, Director, Emerge
Judy Beals, Executive Director, Jane Doe, Inc.: Massachusetts Coalition Against Sexual Assault and Domestic Violence
Kate Cloud, Executive Director, Political Research Associates, Felicia Collins-Correia, Executive Director, Domestic Violence Intervention Services
Quynh Dang, Director of Refugee and Immigrant Domestic Violence and Sexual Assault Programs, Massachusetts Department of Public Health
Peter Jaffe, Director, London Family Court Clinic, Ontario, Canada
Ellen Lawton, Staff Attorney and Project Director, Family Advocacy Program, Department of Pediatrics, Boston Medical Center
Hope Lewis, Professor of Law, Northeastern University School of Law
Cynthia J. Mesh, Independent Research Analyst
Kristian Miccio, Professor of Law, Western State University College of Law
Jennifer Roberston, Director, Advocacy for Women and Kids in Emergency
Florinda Russo, Regional Deputy Director, Amnesty International USA
Rita Smith, Executive Director, National Coalition Against Domestic Violence
Chuck Turner, Councillor, Boston City Council
Joan Zorza, Editor, Domestic Violence & Sexual Assault Report
About This Report

This human rights report documents and analyzes instances in which the Massachusetts family courts are violating internationally accepted human rights laws and standards. The report focuses specifically on cases involving child custody and visitation issues where there is a history of partner abuse. In the vast majority of examples discussed in the report, the family courts also are violating Massachusetts law and policy.

Our findings are based primarily on the in-depth testimonies of 40 battered mothers who experienced family court litigation in 11 of the 14 counties in Massachusetts. Our findings also draw on:

1. A written survey of 31 advocates working at programs serving battered women and/or children throughout the state;
2. Focus groups with Massachusetts-based advocates for battered women and children as well as survivors of partner abuse; and
3. Interviews with Massachusetts family court judges, probate probation officers, guardians ad litem, court-appointed psychological evaluators, Department of Social Services workers, a representative of the Massachusetts Commission on Judicial Conduct, and a representative of the Massachusetts Division of Professional Licensure.

Based on our findings, we identify and discuss six categories of human rights violations committed by the Massachusetts family courts in selected domestic violence and child custody cases:

I. Failure to protect battered women and children from abuse
II. Discrimination and bias against battered women
III. Degrad ing treatment of battered women
IV. Denial of due process to battered women
V. Allowing the batterer to continue the abuse through the family courts
VI. Failure to respect the economic rights of battered women and children

In addition to our findings, this report covers the history of and need for the Battered Mothers’ Testimony Project, our research methodology, and a discussion of relevant human rights principles, standards, and laws.

This report concludes with a series of detailed, practical recommendations for change that are based on our findings.

Above all else, this report is intended as a call to action. We call in particular on the Massachusetts family courts and the Massachusetts Legislature to take swift action to meet their human rights obligations to battered women and their children by implementing - without delay - the recommendations for change outlined in this report.

For a copy of the Executive Summary of this report, please visit our website at:

www.wcwonline.org
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Begun in 1999, the Battered Mothers' Testimony Project (BMTP) at the Wellesley Centers for Women is the first human rights initiative in the United States to address domestic violence and child custody issues. Our mission is to assess whether the Massachusetts family court system is acting in accordance with internationally accepted human rights standards and norms in selected cases and to identify and promote the necessary changes to ensure that the family courts meet their human rights obligations. The project is a multi-year effort with four distinct stages:

I. Documentation and Research
The BMTP employed a variety of research methods to collect data in a multi-year, four-phase process: (1) interviews with battered mothers; (2) written survey of battered women's and children's advocates; (3) focus groups with battered mothers and advocates; and (4) interviews with state actors such as family court judges, probate probation officers, guardians ad litem, Department of Social Service workers, and others.

II. Human Rights Tribunal on Domestic Violence & Child Custody
As a first step to raise public awareness of the injustices faced by battered mothers and their children in family court litigation, the BMTP organized a Human Rights Tribunal on Domestic Violence & Child Custody that was held at the Massachusetts State House in honor of Mother's Day (May 9, 2002). To our knowledge, this was the first popular human rights tribunal in the world to address human rights violations in family courts. The tribunal focused on the public testimonies of five battered mothers and the responses of four invited speakers.

III. Human Rights Report
This report: (1) details our research findings, (2) analyzes our findings according to international human rights standards as well as U.S. and Massachusetts legal and policy standards, and (3) makes detailed recommendations for change. The research methodology, data analysis, and recommendations are all based on principles of human rights and are discussed below and in the Appendices.

IV. Community Organizing for Change
The courage and leadership of the women who gave their testimonies to the BMTP and who spoke out at our human rights tribunal began a series of public steps that the BMTP is taking as part of a wider movement to protect the human rights of battered women and their children. Following the publication of this report, the BMTP will focus its efforts on community organizing, advocacy, and education around its recommendations for change in Massachusetts as well as on national replication of the project.

PARTNER ABUSE, CHILD ABUSE, AND CHILD CUSTODY: INTERNATIONAL AND U.S. CONTEXT
Throughout the world, partner and child abuse have been recognized as violations of fundamental human rights, particularly the right to freedom from violence. International human rights laws and principles clearly delineate government responsibilities for protecting individuals from violence by other individuals (such as spouses or parents) and recognize that violence against women in particular is a global problem requiring government action to prevent and end it (see "Introduction to Human Rights" and Appendix B for more details).
The international community has also identified partner and child abuse as major, global threats to public health. Further, research demonstrates that women are more often the victims of partner abuse than men. For instance, one-fourth of women in this country\(^4\) and one-tenth to two-thirds of women internationally\(^5\) are reported to be physically abused by husbands or men with whom they are in an intimate relationship. In 1998, women in the United States accounted for 75 percent of the victims of intimate murders and about 85 percent of the victims of non-lethal violence.\(^6\) Women are also 7 to 14 times more likely than men to report suffering severe physical assaults from an intimate partner.\(^7\) In Massachusetts, male partners have been found to be the group most responsible for murders of adult women.\(^8\) Women's husbands and boyfriends are also the group identified as most responsible for murders of children nationally.\(^9\)

The negative impact on children of exposure to partner abuse has also been well documented. Approximately 43 percent of female victims of intimate partner violence live in households with children under age 12.\(^10\) In Massachusetts, more than 40,000 children are exposed to domestic violence in their homes every year.\(^11\) Children of women who have been abused by a male partner are at high risk for being abused by these same men: 40 to 70 percent of children of battered women are found to be directly abused by their mother's batterer.\(^12\) These children have been found to suffer high rates of mental and physical health concerns (e.g., headaches, failure to thrive, vomiting, diarrhea)\(^13\) and are more likely to report distress related to post-divorce parental visitation.\(^14\) Children exposed to partner abuse are even at increased risk in the womb: violence against pregnant women is associated with very preterm labor and delivery, very low birth weight, and fetal or neonatal death.\(^15\) According to one study, approximately 156,000 to 332,000 women experience violence during pregnancy each year in the United States.\(^16\)

Furthermore, researchers are now identifying critical links between partner abuse, child abuse, and child custody disputes. Research indicates, for example, that child custody and visitation arrangements often provide a context for abusive men to continue to control and victimize women and their children\(^17\) and that a majority of highly disputed child custody cases involve a history of partner abuse.\(^18\) In addition, many of the negative effects of divorce on children are being reconsidered as more likely the result of conflict and violence in the home that predate, and possibly cause, the separation and divorce.\(^19\) And the fact that batterers often escalate their violence after their victims leave them is also well documented in the research literature. The Minnesota Center Against Violence and Abuse reports:

> Research confirms that battering men often escalate violence to recapture battered women and children who have sought safety in separation. Battered women seek medical attention for injuries sustained as a consequence of domestic violence significantly more often after separation than during cohabitation; as many as 75 percent of the visits to emergency rooms by battered women occur after separation. One investigation demonstrated that about 75 percent of the calls to law enforcement for intervention and assistance in domestic violence occur after separation from batterers. Another study revealed that half of the homicides of female spouses and partners were committed by men after separation or divorce.\(^20\)

Despite these recent advances in research and their implications for policy reform, practitioners and policymakers throughout the United States continue to overlook the critical subject of post-separation violence against women and their children in the context of child custody disputes. Post-separation partner and child abuse presents problems that are related to, but distinct from, pre-separation abuse and therefore require targeted responses.

The Massachusetts family courts are not alone in experiencing problems with how their personnel, and others connected with the courts, handle these situations. Indeed, Massachusetts was among the first states to recognize that gender bias negatively affects the administration of justice for battered women when the
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Supreme Judicial Court commissioned a report in 1989 on gender bias in the courts. In issuing that report, Massachusetts became part of a national effort to examine gender bias and partner abuse in the courts. At present, a majority of state court systems have issued similar reports, most confirming the Supreme Judicial Court's general findings. In the words of one prominent court observer and researcher: "Courts show little understanding of the circumstances under which battered women survive and the ways in which the cycle of violence, economic dependence, lack of support from family and community, and fear of the batterer combine to keep women in these situations." 21

DOMESTIC VIOLENCE AND CHILD CUSTODY: MASSACHUSETTS CONTEXT

The battered women's and children's advocacy communities in Massachusetts have worked tirelessly to provide services to abuse victims, develop interventions with perpetrators, educate the public, and prompt the government to make policy changes that improve the state's response to domestic violence and child abuse. Largely as a result of this work, the Commonwealth has emerged as a national leader in confronting the problem of domestic violence. State government leaders have consistently recognized that a coordinated response at all levels of government is needed to effectively address these issues. In 1992, for example, the Commonwealth declared domestic violence a public health emergency in reaction to increasing numbers of severe domestic violence cases, and the executive branch responded by appointing the Governor's Commission on Domestic Violence. Since its inception, the commission has done much to coordinate policies and initiatives on domestic violence throughout all levels of government. In addition, executive branch agencies, such as the Department of Public Health, have created specific programs dedicated to studying and improving the social conditions that lead to domestic violence.

The judiciary has also demonstrated an awareness of domestic violence and related problems. As stated above, the Massachusetts Supreme Judicial Court commissioned a report on gender bias in the courts that found that bias against women was widespread throughout the court system, including the family courts. This report also uncovered the fact that gender bias affects substantive decision making in court cases and the treatment of individuals coming to court. With regard to child custody decisions in particular, it found that family court judges and probate probation officers often do not consider violence toward women relevant and that family courts are ordering shared legal custody even when there is a history of partner abuse. 22 Moreover, the report found that, regardless of the presence or absence of partner abuse, fathers who actively seek custody obtain either primary or joint physical custody 70 to 90 percent of the time, and that when fathers contest custody, mothers are held to a different and higher standard than fathers. 23 This finding is significant because it contradicts the myth that family courts are biased in favor of mothers; indeed, it demonstrates that in these cases, the courts are biased against mothers and in favor of fathers.

Following publication of this study, the Massachusetts Supreme Judicial Court appointed the Committee on Gender Equality, which served from 1989 to 1994 and began to implement the report's recommendations. Since 1994, the work of this committee has been carried forward by the Administrative Office of the Trial Court's Gender Equality Advisory Board. Together, these two groups instituted a series of reforms that included (1) creating Guidelines for Judicial Practice in Abuse Prevention Proceedings; (2) authoring new canons in the Code of Judicial Conduct that prohibit gender-biased behaviors; and (3) issuing specialized forms for judges to use in making written findings related to the issuance of custody orders. Additional reforms involved creating new court-based resources and services for domestic violence victims and training for court officers on gender-neutral behavior. 24 The Judicial Institute, which is part of the court system, and the private Flaschner Judicial Institute provide the majority of this training. Although all new judges now receive one day of training on domestic violence practice through a biannual judicial orientation program, participation in additional training programs for judges is optional. 25 Indeed, virtually none of the domestic violence training for court personnel, including judges, is mandatory. Neither the courts nor the Legislature appear to have dedicated sufficient funds to such training. 26
In 1989, the Committee on Gender Equality also established a Task Force on Domestic Violence that focused on 209A (restraining order) proceedings involving questions of child custody, visitation, and support. The task force conducted research with all levels of court personnel and investigated a wide variety of complaints about the 209A system. The task force's findings mirror some of the findings of the BMTP, and its recommendations would have gone a long way toward improving the process of determining child custody, visitation, and support orders. To date, the task force's recommendations have never been pursued with the full force of a dedicated reform project and have not been meaningfully implemented.

The Massachusetts Legislature responded to increasing concerns about children's safety in child custody and domestic violence cases by passing the Presumption of Custody Law in 1998. This law acknowledges the harm to children of exposure to partner abuse (as well as child abuse) by creating a rebuttable presumption that it is not in children's best interests to be placed in the sole custody, shared legal custody, or shared physical custody of an abusive parent upon a court finding that a pattern or serious incident of abuse has occurred. To our knowledge, no systematic steps have ever been taken, either by the courts or by the Legislature, to ensure that this law is applied uniformly, beyond an initial distribution of basic information about it.

Despite the advances outlined above, the Massachusetts family courts' approach to dealing with domestic violence and child custody issues appears to be largely passive, or at best, reactive. Certainly, many of the recommendations made in the 1989 gender bias study have not yet been implemented or even considered. The court policy reforms that have been instituted often are not enforced or cannot be enforced because they are only informal administrative directives (as opposed to laws or court rules). Moreover, there are few effective and accessible complaint procedures and mechanisms to hold state actors accountable for their actions. And while the research done by specially appointed committees is helpful, little of it focuses on the litigant's point of view, and most of it has not yet resulted in concrete reforms. To make matters worse, the courts have devoted minimal resources to helping their most vulnerable users - pro se (self-represented) and economically disadvantaged litigants - whose numbers are increasing steadily. This population is also particularly hard hit by the shortage of attorneys trained in partner abuse and the general lack of services for navigating the family court system.

We found that, as a result, battered women still face major problems in the Massachusetts family court system, including losing custody of their children to their abusive ex-partners, being forced to send their children on unsupervised visitation with abusive ex-partners who may also have abused the children, experiencing discrimination and bias, being denied their due process rights, and experiencing economic hardship related to the litigation.

In presenting this report and its recommendations, we acknowledge that improving the family courts' response to partner abuse and child custody issues is no small undertaking. The state's 50 family court judges hear 155,000 cases a year, and roughly 22,000 of these cases involve divorce. In addition, the courts are suffering from the effects of shrinking resources in the face of growing demand, and the Commonwealth's most recent budget crises have greatly deepened the divide between services needed and services provided by the court system.

Nevertheless, the deficiencies listed above have the potential to seriously undermine battered mothers' trust and confidence in the court system, as they certainly have for the battered women we interviewed. For battered mothers (and therefore their children), loss of confidence in the family courts is a particularly serious problem because it can mean that they choose to remain with the batterer rather than face a family court system that may deny justice to them and their children.
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Urgent action is therefore needed. More than a decade after the release of the Massachusetts gender bias study, battered women's and children's advocates in this state have been continuing to amass anecdotal evidence about problems with how the Massachusetts family courts are handling partner abuse and child custody cases. However, the Massachusetts court system still does not collect specific data on the number of family court cases it hears each year that involve partner abuse and child custody issues, thereby making quantitative research on this topic extremely difficult to conduct. Thus, there has been no body of research in Massachusetts that documents the specific problems that battered mothers encounter in the family courts, the range of these problems, or their long-term impact on battered mothers and their children.

The Battered Mothers' Testimony Project begins to meet this need for information through an innovative research approach that is grounded in the voices and experiences of those most directly affected by the problems being studied - the battered mothers themselves. As discussed above, current research data demonstrate that the majority of partner abuse cases involve male violence against female partners; this project therefore chose to limit its primary interviews to female victims of partner abuse. In doing so, we make no claim that women are generally better individuals or better parents than men. Rather, we wish to draw attention to the fact that when any individual's human rights are violated, it is cause for grave concern, and the government is required to take swift action to remedy the violation. Further, while the BMTP could have been conducted in any state in this country (because of the common nature of these violations), we chose Massachusetts because the parent organization for the project is located in this state and because Massachusetts has demonstrated leadership on domestic violence issues in the past.

Project Documentation and Research Strategies

The Battered Mothers' Testimony Project instituted a multi-year, four-phase study using a variety of research approaches in which human rights fact-finding was complemented by qualitative and quantitative social science research methodologies. To our knowledge, this is the first research project on battered mothers in the United States to implement this type of multi-method research design.

The goal of human rights fact-finding is to identify human rights violations as reported by the victims of the violations and those who witnessed them. Whether in the context of large-scale human rights violations or relatively fewer instances of abuse inflicted on a subset of a population, human rights fact-finding aims to uncover patterns of state practices that may indicate where human rights violations are occurring, who is responsible for the violations, and who is affected by them. The ultimate, and explicit, goal is to expose human rights violations in ways that prompt governments to implement changes that rectify the violating practices. Human rights principles also require that fact-finding efforts document the ways in which violations are experienced differently by different people, according to intersecting factors such as sex, race, ethnicity, socioeconomic status, immigration status, age, and sexual orientation.

As in human rights fact-finding, the driving force behind qualitative research is the prominence of the voices of the people under study (project participants). Qualitative research methodology is especially strong in enabling researchers to document the lived experiences of individuals and to give participants the opportunity to describe, in their own words, the social, cultural, and political phenomena affecting them.

This project also used quantitative research tools to collect standardized sociodemographic information and event data about participants' lives during a specified period of time related to the abusive relationship with an intimate partner and subsequent litigation in the family courts.

Our four-phase study is outlined briefly below (see Appendix C for further details on data collection, analysis, and management, including sample questions from the interviews and questionnaires).
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Phase 1: One-to-One Interviews with 40 Battered Mothers

The primary sample for this study represents 40 battered mothers who experienced family court litigation in 11 of the 14 Massachusetts counties. Criteria for participant inclusion were:

1. Being a mother;
2. Experiencing violence from an intimate partner with whom they had children and with whom they no longer reside;
3. Engaging in custody litigation with the abusive ex-partner in a Massachusetts family court;
4. Expressing grievances about family court processes and actors and/or perceiving that their human rights may have been violated by family court state actors; and
5. Willingness to speak with a documenter about these experiences.

Participants were recruited through social service agencies and legal providers serving a variety of clients including:

1. Battered women;
2. Communities of color;
3. Victims/survivors of same-sex battering; and
4. Immigrant/refugee battered women.

Battered women's advocates who volunteered as testimony-takers for the study also contributed significantly to participant recruitment. Snowball sampling (recruiting by word-of-mouth) through participant women was also utilized.

 Participants represented a diverse group of battered mothers not only in terms of geographical location throughout the state, but also with regard to the following individual characteristics:

- Age range: 24 to 58;
- Annual income range: $15,000 and under to $105,000 and over;
- Educational-level range: Completion of some high school to advanced degrees;
- Race/ethnicity: Approximately one-quarter of participants were women of color (including both U.S. citizens and immigrants). The remainder were white women; and
- Sexual orientation: While all of the participants were in abusive relationships with men and describe the family court litigation with these male ex-partners, at least one participant currently is or has been in a same-sex partner relationship.

In the interviews, participants were asked about:

1. Their experiences of partner and child abuse both pre- and post-separation;
2. Economic issues related to the family court litigation;
3. Their experiences and problems with five categories of state actors: judges, guardians ad litem, probate probation officers, Department of Social Services workers, and court-appointed psychological evaluators; and
4. Their recommendations for improving the family court system.

All reasonable efforts have been made to ensure the confidentiality of participants. A confidentiality protocol was reviewed and approved by the Wellesley Centers for Women Ethics Committee. All participants have been assigned pseudonyms and interview transcripts have been de-identified. All names in this report are pseudonyms, including those of women's ex-partners and children.

Phase 2: Written Survey of 31 Advocates for Battered Women and Their Children

Our second sample included advocates across Massachusetts who agreed to complete a written survey about their experiences with how the Massachusetts family courts are handling child custody and visitation issues when there is a history of partner abuse. The survey consisted of 19 open-ended questions regarding respondents' experiences with domestic violence and child custody issues, including their experiences with
judges, guardians ad litem, probate probation officers, and the Department of Social Services. Questions were
designed to elicit respondents' reflections on the issues as well as concrete examples of problems with the
family court system that they, through their clients, have observed. Advocates were recruited through
direct mail contact and snowball sampling. Approximately 40 surveys were mailed and 31 were returned.
As with all of our documentation efforts, respondents were asked to list what changes to the family court
system they would recommend.

**Phase 3: Focus Groups with Survivors of Partner Abuse and Advocates for Battered Mothers**

The project conducted five focus groups with advocates and survivors of partner abuse to explore how
intersecting issues of race, gender, socioeconomic status, immigration status, and/or sexual orientation may
come into play for battered mothers in the family courts. Focus group participants were also asked for their
recommendations for change.

The majority of the survivor participants were also included in the first sample; the others had contacted the
BMTP after the deadline to be interviewed individually had passed, and instead were invited to participate in
focus groups. The advocate participants were selected because of their experience and expertise in the
relevant issue areas being discussed and were recruited through the professional contacts of BMTP Steering
Committee members.

These focus groups included a total of 23 women in five separate focus group sessions, as follows:
1. Women-of-color survivors of partner abuse: 3 African Americans, 2 Latinas (U.S. citizens);
2. Legal advocates for U.S.-citizen women-of-color survivors of partner abuse: 1 African American,
   2 Latinas;
3. Advocates for immigrant and refugee survivors of partner abuse: 5 representing Haitian,
   Vietnamese, Brazilian, Chinese, and Cambodian communities;
4. Advocates for lesbians, bisexuals, and transgendered survivors of partner abuse: 3; and

A confidentiality protocol was also implemented for focus group participants. No names of focus group
participants are used in this report.

**Phase 4: Interviews with 16 State Actors in Massachusetts Who Work Within or in
Relation to the Family Court System**

The project conducted one-hour, confidential interviews with selected state actors that included
pre-established questions designed to elicit their understanding of and attitudes toward domestic violence
and child custody cases. As with all those contacted by the project, state actors were asked for their
recommendations for change. The project interviewed state actors from each major state actor category
discussed in this report (seven were female and eight were male). State actors were asked to be interviewed
for one of three reasons:
1. At least two women in our study made specific complaints about them;
2. Women and/or advocates identified them as handling partner abuse and child custody issues
   well; or
3. They possessed specific knowledge about an aspect of the family court system based on their
   professional affiliation or position.

In keeping with human rights documentation principles, however, the majority of state actors were chosen
because of complaints received against them. No names of state actors appear in this report. This sample
included:
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- 7 Massachusetts family court judges;
- 1 representative from the Massachusetts Commission on Judicial Conduct;
- 2 representatives from the Domestic Violence Unit of the Massachusetts Department of Social Services;
- 4 guardians ad litem;
- 1 probate probation officer; and
- 1 representative from the Massachusetts Division of Professional Licensure.

Limitations of Sample

While the samples of individuals represented in the multiple phases of this study are diverse in many respects, this study does not purport to represent all battered mothers who have experienced litigation in the Massachusetts family court system, all battered women's advocates, or all state actors in the Massachusetts family courts. Additionally, these findings are limited in scope by the fact that some participants or respondents did not or were not able to answer all of the questions posed to them. Furthermore, because the interviews, focus groups, and surveys were conducted in English, participation was limited to individuals with English proficiency. The project also makes no claim regarding statistical significance, ability to generalize to a larger population, or the overall extent of the reported problems either in Massachusetts or elsewhere.

What the Numbers Mean

The interview transcripts from the primary sample of 40 battered mothers were analyzed for content by members of the BMTP Steering Committee. The analysis results were managed with a customized database (Microsoft® Access 2000) that allowed for comparative examination of both sociodemographic information and content analysis. The numbers cited in this report were generated both from answers to standardized closed-ended questions and open-ended questions that resulted in free-form conversation between the documenters and the battered mothers. Accordingly, the frequency counts included in this report refer only to the number of women who, during the interview itself, reported a particular problem. The frequency counts therefore are likely to be low, since most women could not discuss every aspect of their cases during the interview process.

Conclusion

The nature, range, and overlap of the problems reported by the 40 women in our primary sample were echoed by advocates and, in some instances, by state actors as well. Our findings therefore are sufficient to:

- Offer a critical and detailed understanding of the range of specific problems and injustices encountered by battered mothers and their children in family court litigation;
- Establish that human rights violations have occurred in the Massachusetts family courts and that Massachusetts is obligated to take steps to remedy them; and
- Develop practical recommendations for change based on input from multiple stakeholders.

Following is a brief introduction to the human rights principles that guide the project's analysis of its findings and recommendations for change.
Human rights are inscribed in the hearts of people; they were there long before lawmakers drafted their first proclamation.

Mary Robinson, U.N. High Commissioner for Human Rights

Human rights are much more than a body of law: they constitute a universal value system and vision of principles that form the foundation of global freedom, justice, and peace. These rights are based on the fundamental principle that all people - no matter who they are or where they come from - possess an inherent human dignity, and that regardless of sex, race, class, sexual orientation, immigration status, age, religion, or other distinctions, they are equally entitled to enjoy their human rights and are equally responsible for respecting the human rights of others. Furthermore, governments (referred to by the international community as "States") throughout the world, including the United States, have clear and specific responsibilities to protect and promote the human rights of people within their jurisdictions.

Human rights require high standards of government accountability for women's and children's rights.
The international community has set high standards of governmental responsibility that have not always been met by the United States in fulfilling the needs and rights of people within its jurisdiction. For example, human rights standards confer on state actors (i.e., government) the responsibility not to directly violate rights and also the responsibility to prevent violations by non-state actors (such as perpetrators of partner and child abuse). Because these standards are widely accepted throughout the world, they give advocates in the United States the legal and moral foundation on which to raise the bar on what we can expect our government to do to protect the human rights of battered women and children.

The right to freedom from violence is one of the most fundamental human rights: without it, all other rights are meaningless.
Freedom from violence, whether committed by a "private" individual such as a spouse or by a state actor such as a police officer, is a fundamental human right. When a battered woman takes the courageous step to leave her abuser in order to protect herself and her children, a human rights approach demands, at a minimum, that our family courts not risk her re-victimization through dangerous child custody or visitation orders. Without freedom from violence, how can a battered mother effectively build a new life for herself and her children?

Human rights require fulfillment of women's and children's economic rights.
The human rights framework recognizes that all rights are interrelated and interdependent; thus, the fulfillment of battered women's and children's economic rights - such as the rights to food, shelter, and health care - also is essential if women and children are to achieve freedom from violence. A human rights approach requires the family courts, for example, to ensure that child support orders are adequate for battered mothers to obtain the resources for themselves and their children to which all individuals have a right, and to ensure that the orders are enforced. This approach also requires them to hold batterers accountable for filing harassing and baseless legal motions that destroy women and children financially.

Human rights demand justice for all women and children.
The human rights system demands that justice be made equally available to all people, regardless of sex, race, class, sexual orientation, immigration status, age, religion, or other distinctions. This approach gives women's and children's advocates a powerful tool for demanding that the family courts apply the law equally to, and treat with equal dignity, not only women and men, but also poor women, white women, women of color, immigrant and refugee women, lesbian, bisexual, and transgendered people, and women from other marginalized populations.

The human rights framework internationalizes and strengthens the struggle for women's and children's human rights.
Using the human rights model enables advocates to name the injustices that battered women and their children face in the family courts for what they are: violations of fundamental human rights and norms that have been agreed to throughout the world, including by the United States. The human rights approach lets us spotlight the abuses taking place in our own country and communities, demand accountability, and strengthen the global struggle for the human rights of all people everywhere.
The following provides a brief overview of the basic human rights principles that are the inspiration for the BMTF and that underlie our inquiry into the Massachusetts family courts and our analysis of our findings.

**U.S. GOVERNMENT'S OBLIGATION TO "RESPECT, PROTECT, FULFILL" HUMAN RIGHTS**

Since the United Nations proclaimed the Universal Declaration of Human Rights in 1948, the international community has adopted numerous laws, standards, and mechanisms to protect and promote the human rights of individuals vis-à-vis their governments. The Battered Mothers' Testimony Project is using these human rights standards to investigate and evaluate how the Massachusetts family courts are handling child custody and visitation decisions when there is a history of partner abuse and, in some of the cases, child abuse as well.

Government responsibility for the human rights of people within its jurisdiction can be summarized under the broad categories of "respect, protect, fulfill" as outlined below. For the Massachusetts family court system, this means that judges, guardians ad litem, probate probation officers, and other state actors not only must refrain from directly violating the human rights of women and children through their actions (such as gender discrimination), but also must take positive steps to protect children and women from abuse by non-state actors such as ex-husbands, ex-boyfriends, and fathers.

**Respect**
The obligation to "respect" focuses on the direct actions a government takes through its laws, agents, and systems. Thus, if a government systematically discriminates against women in its court-ordered investigations and evaluations or fails to assure women an equal voice in court, then the government is failing to respect women's human rights.

**Protect**
The obligation to "protect" requires governments to ensure that private individuals or entities do not violate the human rights of other private individuals. According to Amnesty International, a government can be deemed responsible for carrying out human rights violations because of a specific kind of connection with non-state actors or because of its failures to take reasonable steps to prevent or respond to violations. Thus, this obligation clearly includes protecting women and children from abuse by individual perpetrators and can be violated by, for example, judges who allow batterers to use the family court system to harass women or who order women and children into unsafe custody or visitation arrangements with a batterer and/or child abuser.

**Fulfill**
The obligation to "fulfill" requires governments to take active measures to ensure that people within their jurisdiction have the opportunity to obtain satisfaction of their needs (where recognized in human rights laws and instruments) that cannot be secured by their own personal efforts. For example, this responsibility requires governments to provide clean drinking water or to create the conditions necessary for women's non-governmental organizations to form and function. It also requires governments to provide battered women and their children with access to shelter and the economic resources needed to flee their abusers and establish an independent, safe life.

**THE MORAL AUTHORITY OF HUMAN RIGHTS**

Human rights are grounded, first and foremost, in the human condition. We have human rights because we are human, not because our government has enacted laws granting us those rights. Human rights therefore are primarily a set of universal principles and a source of moral authority for a fair and compassionate global
community, of which the United States - including the Massachusetts family court system - is a part. From a human rights perspective, then, the essential question is not simply whether a government is "legally bound" to a specific international treaty or law, but whether the government is acting in accordance with universal human rights principles.

For instance, a government arguably cannot ignore entire categories of internationally accepted human rights with the excuse that it has not ratified a particular international treaty on human rights. Although the United States has failed to ratify many international human rights treaties as well as made formal "reservations" to many of the treaties it has ratified, legal scholars have pointed out that "U.S. officials concede that the norms guaranteed still must be observed by all state and federal officials, including judges."45

Indeed, by virtue of its membership in the United Nations, the United States is automatically considered to be in agreement with the principles of U.N. declarations such as the Universal Declaration of Human Rights, the foundation of the international human rights system, and the Declaration on the Elimination of Violence Against Women which defines violence against women as a human rights violation and delineates governments' obligations to end and prevent it.

In addition, the United States is bound on a fundamental level to the international treaties that it has signed but not ratified, including the U.N. Convention on the Rights of the Child and the U.N. Convention on the Elimination of All Forms of Discrimination against Women. Specifically, the United States has an obligation to observe the object and purpose of these treaties; in other words, it must not, at the very least, act in any way that contraveses or contradicts the fundamental terms of the treaty. Moreover, many of the key rights guaranteed by certain international treaties, such as the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the U.N. Convention on the Rights of the Child, and the U.N. Convention on the Elimination of All Forms of Discrimination Against Women, are considered to be so widely accepted by the international community that they arguably constitute part of customary international law, and "[U.S.] state and federal law should be interpreted so as not to conflict with customary international human rights norms and obligations."46 (See Appendix B for a complete discussion of relevant international human rights laws).

**Human rights investigation of the Massachusetts family courts**

The Battered Mothers' Testimony Project has shaped its human rights investigation of the Massachusetts family courts around the following broad questions, all of which are grounded in the principles of international human rights law and standards:

- Are the Massachusetts family courts respecting, protecting, and fulfilling battered mothers' and their children's fundamental human rights to:47
  - Bodily integrity and freedom from violence;
  - Non-discrimination and equal protection of the law;
  - Freedom from torture and degrading treatment;
  - Due process;
  - Freedom of speech and a fair hearing; and
  - Adequate standard of living.

- Are the Massachusetts family courts exercising due diligence with respect to violence against women and children?

"Due diligence" is the primary human rights standard for assessing how a government responds to human rights abuses such as partner and child abuse that are committed by non-state actors.48
A government may be held complicit in such violence where it systematically fails to provide protection from private actors who deprive others of their human rights or "condones a pattern of abuse through pervasive non-action." Thus, the two primary questions the BMTP asked with regard to due diligence are:

- Are the Massachusetts family courts exercising "due diligence to prevent, investigate and punish acts of violence against women, whether those acts are perpetrated by the State or by private persons"? (Declaration on the Elimination of Violence Against Women, art. 4)

- Is the Commonwealth of Massachusetts "[developing], in a comprehensive way, preventive approaches and [taking] all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and [ensuring] that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions"? (Declaration on the Elimination of Violence Against Women, art. 4)

Are the Massachusetts family courts acting in children's best interests in child custody and visitation cases where there is a history of partner and/or child abuse?

The "best interests of the child" standard is the primary standard for protecting children's rights and well-being in both international and domestic law. For instance, the U.N. Convention on the Rights of the Child (CRC) requires governments to protect and promote the human rights of children in all areas of their lives and sets forth the "best interests of the child" as its primary standard for how governments should handle situations involving children. With regard to child custody issues in particular, the U.N. Convention on the Rights of the Child states that children have the right to contact with their parents, except when separation is necessary for the children's best interests. The Convention is clear that abuse and neglect are not in children's best interests:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (CRC, art. 3)

States parties should take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. (CRC, art. 19)

Remedies

Where the Massachusetts family courts are found to be violating the human rights of battered mothers and their children, what remedies and reforms must be made in order for the courts to respect, protect, and fulfill the human rights of battered mothers and their children?
INTRODUCTION TO FINDINGS

Despite the unique and complex set of circumstances constituting the case of each of the 40 women who gave their testimonies, the stories they report of abuse by their ex-partners and within the Massachusetts family court system are strikingly similar. While the women comprise a diverse group in terms of their own personal characteristics, consistent themes emerged in the women’s testimonies that can be summarized in the common scenario below. Each item listed reflects problems identified most frequently by the women we interviewed, and the quotations are representative of many women’s testimonies.

1. A woman enters a relationship with a man and has children. At some point in the relationship, her partner begins to subject her to physical, sexual, psychological, and/or economic abuse. Often the abuse occurs while the woman is pregnant. Much of this abuse is extensively documented.

   He said, “Okay, you don’t want [sex]?” He started punching me that night, punching me and hitting me. I was two months pregnant. (Francine)

   Note: As stated earlier, all names have been changed to protect the privacy of participants.

2. The children witness the abuse of their mothers or are subjected to sexual, physical, or psychological abuse themselves, sometimes during a partner abuse incident.

   My husband took the baby and said, “Shut this fucking kid up!” and threw him across the room. And all I could see was Nathan hitting the wall, and I grabbed him. (Fran)

3. The woman eventually takes steps to leave her abuser to protect herself and her children. She seeks the help of the Massachusetts family court system by requesting custody of the children as well as visitation arrangements with her ex-partner that are safe for herself and her children.

4. She finds instead that the Massachusetts family court system does exactly the opposite of what she had requested or expected. The courts, primarily by granting the abuser custody of, or unsafe visitation with, the children:
   • Fail to protect her;
   • Fail to protect the children;
   • Forbid her from protecting the children by requiring her to comply with unsafe custody and visitation orders or risk being held in contempt of court; and
   • Allow her ex-partner to use the family court system to abuse her and the children emotionally and financially.

5. After she has left her ex-partner and has gone to the Massachusetts family courts regarding child custody and visitation issues, her ex-partner continues to abuse her by violating restraining orders, stalking, harassing and intimidating her, threatening to kill her, and/or physically and sexually abusing her.

   He would grab me, like grab my breast or my bum, or my vagina, or at one point, he was sitting at my kitchen table, waiting for the kids to come down, and he took his penis out while he was sitting at the kitchen table. (Alice)

   I couldn’t have a life after I left him, like I couldn’t date, couldn’t do anything. He’d always be watching me. (Janice)

6. Her ex-partner also abuses the children post-separation - physically, sexually, and/or psychologically. He also neglects them.
[My daughter] came home the first time with claims that he kissed her with his tongue. And then it just escalated... [Almost every weekend after that, she had new disclosures to tell me. She told me that he put two fingers inside of her vagina. (Beth)]

When I first saw my son after that year [with his father], he had on pants... that were ripped, he had eczema so bad, he had sneakers that were too small, with no laces, he was emaciated... [To this day, this boy is like a boy of stone. (June)]

The long-term physical, psychological, and economic impact on her and the children is devastating.

[My relationship with my children] is completely destroyed. I mean before, we had a very close relationship. They didn't have a father, they only had a mother doing everything... And it went from a very close, nurturing relationship to a nonexistent one. I haven't seen my kids in a year and a half. You know, I can't send them a birthday card, I have no way of knowing whether they're dead or alive or injured. (Lorie)

Looking at these women's stories in the aggregate, we are left with no doubt that the family courts can play a substantial role in the perpetuation (or prevention) of partner and child abuse once a woman leaves her abuser. It is clear that many of the problems documented by the Battered Mothers' Testimony Project happen because of systemic flaws in the family court system, including:

- State actors who lack an understanding of domestic violence, child abuse, child development, and trauma;
- State actors who ignore, minimize or refuse to examine evidence or allegations of domestic violence and/or child abuse;
- State actors who exhibit bias against battered women and in favor of their abusive ex-partners;
- State actors who allow batterers to use the court system to harass and financially drain battered women (and children); and
- State actors who fail to apply the law.

**Organization of Findings**

This human rights report is organized around six distinct human rights violations that appear to occur because of specific actions, inactions, and attitudes by family court judges, probate probation officers, guardians ad litem, Department of Social Service workers, and court-appointed psychological evaluators ("state actors"). We recognize that some of these state actor behaviors can result in violations of multiple human rights at the same time. Nevertheless, we identify and discuss in this report six distinct human rights violations:

- Failure to protect battered women and children from abuse
- II. Discrimination and bias against battered women
- III. Degrading treatment of battered women
- IV. Denial of due process to battered women
- V. Allowing the batterer to continue the abuse through the family courts
- VI. Failure to respect the economic rights of battered women and children

For each human rights violation discussed, we first provide detailed accounts of problems that battered mothers said they faced during family court litigation. Problems identified in battered mothers' testimonies are then supplemented by information gathered from advocates. Next, where relevant, we discuss the results of our interviews with state actors as they pertain to the particular violation. Lastly, we explain how these problems constitute human rights violations in light of international, U.S. federal, and Massachusetts state laws and standards. The report concludes with a series of practical recommendations for reform of the family court system.
Problem
Some Massachusetts family courts are placing battered women and their children in danger by issuing child custody and visitation orders that require them to have ongoing, unprotected contact with batterers and child abusers. These women and children are harmed and/or threatened with harm physically, sexually, emotionally, and/or economically by the abuser as a result. There are family court judges, guardians ad litem, probate probation officers, Department of Social Service workers, and court-appointed psychological evaluators who fail to protect battered women and their children by:

1. Granting or recommending custody of children to batterers;
2. Granting or recommending unsafe visitation with batterers;
3. Ignoring or minimizing mothers' reports of partner abuse or child abuse/mistreatment, including by:
   a. omitting women's descriptions of, or concerns about, abuse from official reports and recommendations;
   b. inappropriately or inaccurately characterizing women's reports of abuse;
   c. failing to pay attention to women's concerns about their children's safety and well-being;
   d. taking punitive actions against women for attempting to protect their children; and
   e. blaming women for the abuse, its impact on the children, or for the children's refusal to visit with their fathers.
4. Failing or refusing to investigate partner abuse or mothers' allegations of child abuse;
5. Failing to examine or credit documented evidence of partner or child abuse; and

Note: Many of these fact-finding issues also may implicate battered women's rights to due process (see Section IV) and non-discrimination (see Section II).

Human rights violated
When the Massachusetts family courts fail to protect battered mothers and their children from partner and/or child abuse, they violate women's and children's human rights to freedom from violence and, in some circumstances, their right to freedom from torture and degrading treatment and to non-discrimination. They also fail to uphold the government's human rights obligations to exercise due diligence and to act in children's best interests.

Case summary
Karen's ex-partner, Jason, served several months in jail for a severe assault on her, which was witnessed by the older of their two sons, Jeremy. After being released from jail, Jason made no effort to visit the children for more than a year. He then went to family court requesting visitation and was granted visitation on alternate weekends with overnights. Both boys began to show marked deterioration emotionally - for example, the older boy (who was eight) began to hit his mother and to beg not to have to go on visits, and the younger boy (who was six) became insecure and also requested not to go on visits. The children reported that their father was drinking alcohol and was abusing his new wife. However, despite Jason's criminal record, his incarceration, and his extended period of choosing not to visit the boys at all, the family court judge continued to disbelieve the mother's reports of her children's distress. Moreover, the children's attorney advocated for unrestricted visitation for the father while simultaneously refusing to meet with the children. Karen reports a long history of rudeness and condescension toward her by the judges and by the children's attorney involved in the case.
A BMTP representative has been present at two of Karen's court hearings. At one of those, the probate probation officer stated to the judge that Karen was not a good parent and that Jeremy should therefore be placed with his father. One of the reasons that the probate probation officer gave for Jeremy's placement with his father was that Karen had, years earlier, lost custody of her two older children (by a different father). What the probate probation office knew, but did not mention to the judge, was that the father of her two older children had told the guardian ad litem on the case that the only reason he sought custody was that he knew Karen was being beaten by Jason. He was quoted in the guardian ad litem report as saying that he believed his ex-wife was a very good mother.

Recently, Jason was arrested for drunk driving. The response of the children's attorney to this event was to say to Karen, "I guess you're happy now." The judge has continued to allow unsupervised visitation despite Jason's arrest for drunk driving and has taken action only by eliminating overnight visits with Jason.

A. Granting or recommending custody of children to batterers

All the women we interviewed said that their ex-partner subjected them to physical, sexual, psychological, and/or economic abuse at some point during their relationship. The majority of women said that their ex-partner abused them during a pregnancy. Almost all of the women also reported that while they were still in a relationship with their ex-partner, he subjected the children to sexual, physical, psychological abuse, and/or economic abuse. Further, the vast majority of women said that, prior to separation, their children had witnessed incidents of partner abuse and nearly a quarter said that their children were harmed, or at risk of being harmed, during a partner abuse incident. Given the research literature discussed in the Introduction, all 40 of the women in our primary sample and their combined total of 90 children thus were at high risk of further harm by the ex-partners after separation. Indeed, as discussed below, all of the women we interviewed reported that their ex-partners subjected them and/or their children to harm post-separation.

The vast majority of women we interviewed said that their ex-partner currently has, or has had at some point during the family court litigation, some form of custody of the children. (See Appendix A). More than half of the women said that a state actor - typically a judge, guardian ad litem, or probate probation officer - had granted or recommended joint or sole physical custody (temporary or permanent) of the children to their ex-partners at some point during their family court litigation. In other words, state actors in the majority of our cases appeared willing to expose children to danger by awarding custody to men who had abused their mothers and, in some cases, abused the children as well.

Marsha, one of our study participants, summed up the effect of such decisions on her:

I don't think there is a worse thing in the world than not being able to protect your children. Like someone's got my hands tied behind my back and I'm watching them beaten up, and I can't protect them.

In Marsha's case, the judge changed physical custody of her daughter to her ex-partner at an ex parte hearing (i.e., when Marsha's ex-partner was present but not Marsha) based on a fabricated story that their son had threatened their daughter with a knife and that Marsha had failed to protect her. Marsha reported that her ex-partner had no evidence to back up his claim. Despite the lack of evidence, his history of partner abuse, and a supported 51A (child abuse/neglect report) against him, the judge granted him custody of their daughter. Marsha was forced to comply and send her daughter to live with the father.

In Beth's case, a judge granted temporary custody of her daughter to Beth's ex-partner in an ex parte hearing (the ex-partner claimed Beth was a flight risk and would take their daughter with her), despite the history of domestic violence and the fact that Beth held a restraining order against him at the time.

The judge in Janice's case granted physical custody of two of her three daughters to her ex-partner, despite
his violence toward Janice and his threats to kill her and the children. For example, Janice told the BMTP that when she left her ex-partner, "[H]e said that he was going to kill [the children]. If I wasn't going to be with him, he said he didn't want no one else to raise his kids." Janice reported that, after she left him, her ex-partner chased her out of the house in her underwear with a knife, pointed a gun to her head twice, and punched her in the eye and in the stomach. The daughters remained in the custody of their father for six years until he was sent to jail on drug trafficking charges, at which point the children were returned to Janice.

The majority of women we interviewed said that after they had left their ex-partner and gone to family court, he subjected them and their children to some form of abuse or mistreatment. For instance, over a third said their ex-partners stalked them post-separation, and nearly a quarter said that their ex-partner threatened to kill them once they left. Many also reported that their ex-partner physically or sexually abused them post-separation. Further, the majority of women we interviewed said that their ex-partner violated a restraining order that they held against him once they had separated.

Women also reported that their ex-partners harmed their children post-separation, almost always during court-ordered exchanges of the children or during court-ordered visits with their fathers. For instance, nearly a quarter of the women we interviewed said that their ex-partner had sexually abused their children post-separation. Many women also said that their ex-partners had psychologically mistreated their children or neglected them.

Advocates confirmed the women's statements. The vast majority of lawyers, legal advocates, and service providers to battered women and children who responded to our survey said, for example, that they were aware of a situation where a woman had been endangered or abused by her ex-partner because of the contact with him required by court-ordered custody and/or visitation arrangements. The vast majority also said they were aware of situations in which children were endangered or harmed by their father as a result of similar court orders.

Advocates reported that judges, probate probation officers, guardians ad litem, and other state actors often do not appear to understand - and therefore disregard - the extent of the danger that batterers pose to women and children after separation. Some advocates suggested that state actors' disregard for the risk of continuing abuse contributes to their willingness to grant or recommend that batterers have custody of children. For example, an advocate at a hospital-based program for battered women said that a guardian ad litem in one case had described the father as "defensive, manipulative, and deceptive," and acknowledged that he had tried to alienate the children from their mother. Nevertheless, this guardian ad litem never connected his own observations of the father's behavior with the mother's reports of partner abuse and went on to recommend that the father have custody.

Other advocates said that guardians ad litem do not understand or have knowledge of the negative impact on children of being exposed to the abuse of their mothers. For example, unless a child has been physically abused by a parent, the guardian ad litem may assume that contact with both parents is in the child's best interests and make recommendations accordingly. It is clear, however, that children can be gravely harmed by witnessing the abuse of their mothers even if they themselves have not been physically harmed.

B. Granting or recommending unsafe visitation with batterers

*Even where pickup and dropoff [for visitation] is at the police station, women get harassed, followed, and threatened by ex-partners.* (Legal advocate, battered women's program)

Poorly constructed visitation arrangements also can expose battered mothers and their children to danger and violence. Because visitation is a consistent point of contact between batterers and their families, safeguards are needed to protect women and children during exchanges of children and throughout the
duration of the visits. Without such safeguards, children may be exposed to, or harmed during, incidents of abuse, or they directly may be abused themselves. Certainly, in cases where both partner abuse and child abuse are issues, crafting visitation arrangements that provide protection for women and children, including vigilant supervision of abusers, should be standard.

Our findings show that judges, guardians ad litem, and probate probation officers often overlook or minimize the dangers to battered women and their children posed by visitation with a batterer (who in some cases may also be a child abuser). One of the most common complaints of the women in our study was that a state actor granted or recommended that their ex-partner have unsupervised visitation with the children - an inherently dangerous situation. Some reported that their ex-partners were even granted overnight visits with the children. If these women refuse to send their children on visits out of a desire to protect them, they risk being held in contempt of court, or even losing custody to the batterer, presumably as punishment.

In Ian’s case, for example, the judge granted her ex-partner unsupervised visitation despite his criminal record and documented history of partner abuse. It wasn’t until Ian’s ex-partner threatened to kill himself that the judge finally terminated visitation.

In Charlotte’s case, a judge granted her ex-partner supervised visits for six weeks, followed by unsupervised visits, even though her ex-partner had been convicted in a domestic assault and battery and Charlotte had a restraining order against him. Charlotte told the BMTP that her child was then physically hurt by the father during the unsupervised visits.

Sarah described her guardian ad litem’s approach to visitation:

[The guardian ad litem] decided that... just because I say there’s a problem, it’s not necessarily a problem and that... [the father] has rights as a father and that his violence was not that bad and that he should be allowed to see his children without a monitor.

The danger to children posed by a batterer and/or child abuser can be exacerbated as well by the lack of inadequate safeguards during visitation. According to our findings, judges and guardians ad litem appear to expose women and children to dangerous visitation arrangements by appointing or recommending unsafe, biased, and/or nonprofessional people to supervise children’s visits with alleged and documented abusers. In one example, Bridget reported that the guardian ad litem recommended that her ex-partner’s new girlfriend supervise visits, and the judge agreed.

Beth told the BMTP that the judge in her case had switched from having a professional supervise visits between the father and daughter to having the father’s family members supervise, even though the sexual abuse evaluation ordered by the court had concluded that the likelihood that sexual abuse (by the father) had taken place was quite high. In this case, the daughter was required to go on unsupervised overnights with her father over the daughter’s strong objections.

Lawyers, legal advocates, and service providers to battered women and children echoed the survivors’ reports with strong concerns that the family courts order unsafe visitation arrangements. As noted above, the majority of those who responded to our survey were aware of specific incidents in which battered women or children were harmed by the abuser in the context of family court child custody and/or visitation orders.

Advocates made specific complaints about the approach of guardians ad litem and Department of Social Services workers to visitation. For instance, some advocates observed that despite evidence of abuse, guardians ad litem still sometimes recommend that batterers be allowed visitation with their children. At least one advocate also said that some Department of Social Service workers appear to wait until a child is subjected to actual violence by a parent who has committed partner abuse before they stop supporting visitation with that parent.
Our findings demonstrate that awarding custody of children to batterers and placing children in unsupervised or otherwise unsafe visitation arrangements with them is the primary way that state actors in the family courts fail to protect women and children from harm. As Amanda told us, "I don't feel as though the court ever protected Heather [her daughter]. If anything, they made it worse." The remainder of this section draws on women's testimonies to offer explanations for this failure.

C. Ignoring, minimizing, or refusing to believe mothers' reports of partner abuse or child abuse/mistreatment

In my first meeting with the guardian ad litem, I had told him that there was a significant history of domestic violence, [that] my ex-partner had been to [a batterer's intervention program] and that I was disabled as a result of the abuse, and he told me, "No one cares about that abuse crap." (Cassie)

One of the primary concerns expressed in the women's testimonies is the failure of state actors to consider or take seriously their reports of the violence and threats their ex-partners subjected them to (both pre- and post-separation) and their reports of their children being abused or otherwise mistreated by their ex-partners post-separation. An examination of women's testimonies enabled us to identify at least five distinct ways in which judges, guardians ad litem, probate probation officers, and Department of Social Service workers minimized or dismissed their reports of partner and/or child abuse:

1. **Omissions from official reports and recommendations of women's descriptions of or concerns about abuse** (particularly by guardians ad litem, probate probation officers, and court-appointed psychological evaluators). Sarah, for example, told the BMTP that the guardian ad litem in her case omitted from his report all history and evidence of partner abuse she had provided, clearly showing his lack of awareness about the negative impact of partner abuse on children. Instead, the guardian ad litem "wrote in his report that violence is endemic to our society, and really this violence was not that bad." This guardian ad litem's idea that violence is inevitable or that a small amount of partner abuse is excusable flies directly in the face of Massachusetts law and policies as well as principles of human rights.

2. **Inappropriate or inaccurate characterizations of women's reports of abuse** (particularly by probate probation officers and guardians ad litem). Some women said that state actors were reluctant to use the word abuse to describe the women's reports of partner abuse and subsequently downgraded their reports to describe dramatically less serious problems such as a "conflict in parenting styles." Advocates reiterated this problem. One advocate offered the example of guardians ad litem who fail to hold the abusive partner responsible for the partner abuse and therefore recommend only that both parties participate in parent education classes.

3. **Failure to pay appropriate attention during investigations to women's concerns about their children** (particularly by judges, guardians ad litem, probate probation officers, and Department of Social Services workers). The vast majority of women made this complaint about state actors involved in their cases. For example, Karen said that none of the state actors in her case took her concerns about her children seriously. The following is one example she provided: "[M]y concerns [are] now [that my ex-partner] shouldn't have [visits] unsupervised. My basic answer from everybody is until he does something or something happens [to the kids], this is how it is."

Another woman we interviewed, Jane, said that the guardian ad litem in her case wrote in his report to the court:

"While there appears to be validity to [Jane's] claims of experiencing her relationship with [her ex-partner] as being one in which she has been abused (e.g., her allegations of past marital rape, verbal denigration, and financial control), there is no credible evidence that the children have been victimized by, or witnessed any..."
incidents of violence between, their father and mother. Therefore, while [Jane] may have indeed felt
intimidated and fearful upon her [court-ordered] return to the marital home [where her ex-partner no
longer lived but returned repeatedly to ransack it] . . . her removal of the children to [a battered woman’s
shelter], and the absence of her son from school for an extended period are actions that are clearly not in
the children’s best interests."

4. Punitive actions against women for attempting to protect their children (particularly by judges).
A judge in one case required Gabby to do 12 weeks of hard-labor "community service" during the winter
because she refused to send her son on court-ordered visits with his father that were supervised by the
father's sister. The judge had ordered visits even though a series of professionals had confirmed that
Gabby's ex-partner had sexually abused their son.

5. Blaming women for the abuse, for its impact on the children, or for the children's refusal to go on
visits with the father (particularly by guardians ad litem and Department of Social Service workers).
Women and advocates alike offered examples of this problem, including state actors who pressured
women to drop their restraining orders against their ex-partners or who blamed them for "letting" their
ex-partners either abuse the children or abuse them in front of the children.

What is striking about our findings of state actors' ignoring, minimizing, or refusing to believe women's
reports of partner or child abuse is that the majority of women who experienced these problems said that
more than one state actor involved in their cases behaved in this way. It is no surprise, then, that in many of
these cases the family courts placed women and children in such unsafe custody and visitation arrangements.

Like the mothers we interviewed, many battered women's and children's advocates also said that one of the
biggest problems with how judges, guardians ad litem, probate probation officers, and Department of Social
Service workers handle custody and visitation issues is their inadequate level of knowledge about partner
abuse, which can lead them to treat women's reports of abuse with skepticism or disbelief. As one advocate
at a battered women's program told us, "[b]attered women aren't always heard, believed, or taken seriously
when trying to convey the seriousness of their situation."

D. Failing or refusing to investigate partner abuse and/or mothers' allegations of child abuse
When women told state actors about the partner abuse they had endured and/or made allegations of child
abuse against their ex-partners, the state actors involved in their cases often reportedly failed to investigate or
consider their claims. Failure to investigate abuse allegations amounts to an unacceptable dismissal of
abuse allegations and in some cases suggests a flat-out refusal to believe even the possibility that abuse might
have taken place. Many women relayed experiences like these:

[The children] went to [children’s mental health services], where the whole thing began. And there were a
lot of problems there with the therapist. There was one man there who believed that the children didn’t get
sexually abused. And they never even called the doctor [the children’s pediatrician] or anything. They
didn’t do any of those investigations. (Shelley)

What can I say, [the Department of Social Services has] been atrocious. They ignored all the stuff . . . [no]t
investigating. They had the same documentation, they had the affidavit from the psychologist, they had the
doctors’ letters, the lack of medication . . . I had all recent 2000 stuff. They screened it out. (Jessica)

Jane's case provides another example of investigative failures. Jane's ex-husband was physically and verbally
abusive to her during their relationship. He raped her, threatened to harm her and the family pets, and
terrorized her by driving dangerously with her in the car. When Jane told the guardian ad litem assigned to
her case about this history of abuse, the guardian ad litem dismissed her concerns and refused to investigate
her allegations.
For instance, although the guardian ad litem asked Jane for a list of witnesses, he never contacted anyone on the list whom she had identified as having witnessed the abuse firsthand. In fact, to the best of Jane's knowledge, the guardian ad litem never made any investigations to confirm or disconfirm her allegations of partner abuse. Jane further stated that during the divorce trial, this guardian ad litem testified that he recalled having conversations with some of the witnesses but that he could not recall the content of those conversations.

The information we collected on this topic from women was reiterated by advocates. For example, in response to being asked if guardians ad litem adequately investigate and address partner abuse in their reports, not one survey respondent said yes; in fact, the vast majority said no or that the quality of guardians ad litem varies widely. Many respondents said that guardians ad litem do not understand partner abuse well enough to conduct thorough investigations and that guardians often do not contact the important or relevant professionals involved in a case before making a report. One advocate at a hospital-based program for battered women said that guardians ad litem almost never contacted her program, even if the program had worked with a woman for years. The following survey responses provide us with further examples of the problem:

Many guardians ad litem who are instructed to investigate and make recommendations regarding custody and visitation say that the "past abuse" of one parent by another is irrelevant and that the parents need parenting education to learn how to move on in a way that spares the children. (Legal advocate, battered women's program)

Again, there is remarkable inconsistency on this issue. ... Some guardians ad litem do an excellent job of investigating and produce comprehensive reports. Others produce only half-thought-through reports and drop the ball on investigating in-depth. (Attorney)

E. Failing to examine or credit documented evidence of partner abuse or child sexual abuse

Many women said that even when they presented state actors, namely judges and guardians ad litem, with documented evidence of abuse, many refused to consider such evidence in making custody and visitation recommendations and decisions. In some cases, this evidence included documentation that the mother had in hand or that was readily available in official records, such as restraining orders, police reports, or CORIs (criminal background checks). In the words of one mother:

[The judge] wanted me to go out of my way to prove physical [abuse], and when I would actually bring stuff, they told me that they couldn't admit it into evidence; that it wasn't enough, that it was... either hearsay or... I couldn't bring certain documents into court. You know, everything I tried to bring to prove that there was violence that went on, I would be turned down. (Sandy)

A quarter of our interviews with battered mothers involved allegations of child sexual abuse against the father. As with documentation of partner abuse, many of these women said that state actors (particularly judges, guardians ad litem, and Department of Social Service workers) often refused to examine documentation or evidence of child sexual abuse that were presented to them. For example, Janice told us that she gave the Department of Social Services the necessary release forms to speak with her children's doctor as well as other people involved in her case, but the Department of Social Services never followed through and contacted these key people.

Despite documentation of child sexual abuse, some women described how the guardians ad litem on their cases nevertheless pushed for visitation supervised by the batterer's family members. Some cases revealed what appear to be willful refusals by a range of state actors to examine important probative evidence regarding physical and emotional risk to the children. In a particularly clear example of this problem, Beth described to the BMTP her experience with child sexual abuse evaluations and the court:
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The hospital-based sexual abuse evaluation expert concluded that it was of high likelihood that my daughter had been sexually abused. . . After that, a guardian ad litem wrote another recommendation, did another report sort of dissing the [sexual abuse evaluation] report, and after that the judge basically did not take that sexual abuse evaluation into account. And when I tried to protect my daughter, it went from supervised visitation to visitation supervised by [my ex-husband's] mother-in-law and wife. I spent about $8,000 trying to fight that. When I tried to fight that, when I said that I didn't think it was an appropriate decision to have his wife or his mother-in-law be the supervisor, the judge really insulted me and [put in her written findings in temporary orders] that [the problem] was my "naked reluctance" and that I was basically not being cooperative and not open to their relationship.

Another pointed example of this problem occurred in Sonia's case, in which she attempted to present evidence of her ex-partner's recent arrest for violence toward his new wife to two different judges of the same family court. The BMTP reviewed copies of the police report on that arrest that indicated that Sonia's son was present during his father's assault on his stepmother. When Sonia attempted to present the police reports to the judge, the judge refused to look at them:

> When we went into court and when Michael was looking for sole custody, I told [the judge] that I felt that Luke was in a violent home and was in danger of being harmed, and [the judge] wouldn't have anything to do with it. He wouldn't listen to me. I had documents there that I wanted to show him but he refused to look at them. . . . [A] few weeks later, [he] gave Michael sole legal and physical custody of Luke.

Sonia also made concerted efforts to have the guardian ad litem, a psychologist, investigate the matter:

> I called up [the guardian ad litem] and said, "Did you know [Michael] was arrested for assault and battery, assault with a dangerous weapon, and mayhem and domestic violence on his wife?" and he admitted that he did . . . I said, "Please go to the police station and talk to the police. I've had concerns about what's going on." He refused to go. He refused to call the police station. . . . I was so concerned that the guardian ad litem was ignoring my concerns that I filed a 51A [against Michael] . . . [a]nd when I talked to [the guardian ad litem] after that, on a follow-up call, he told me that it was all a big mistake.

Sonia never succeeded in persuading the guardian ad litem or the court to read the police reports that clearly documented the father's violence against his new wife in the presence of his son. The guardian ad litem went on to recommend that Michael have sole legal and physical custody of Luke, which was granted, even though Luke had exhibited severe behavioral problems while in his father's care, including sexually assaulting a girl.

F. Guardians ad litem: Specific problems

Responses by guardians ad litem to women's allegations of child sexual abuse appeared to follow certain patterns in women's testimonies that call for special attention. The evidence, while limited, points to patterns of behavior that should be of concern to the Massachusetts family courts. Specifically, our findings indicate that guardians ad litem may be failing to act appropriately in these cases because of an underlying bias against battered mothers. (Bias is discussed further in Section II):

- The guardians ad litem in at least four cases exhibited a strong predisposition toward finding that concerns about sexual abuse were not serious and concealed or misrepresented important evidence in an apparent effort to sway the court against paying attention to those facts;
- The guardians ad litem in at least two cases recommended mental health services for the protective mother but not offender treatment for the perpetrator; and
- The guardians ad litem in at least four cases sought to expand contact between the child and the perpetrator over the objections of other qualified professionals, over the judgment of the mother, and
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sometimes over the expressed preferences of the child. When a child exhibited symptoms that appeared to be linked to sexual abuse, the guardians ad litem blamed the mother, saying that the child was reacting to the mother's anxiety.

Gabby's case illustrates the problem. The original guardian ad litem on Gabby's case concluded that the father had sexually abused Gabby's child but still went on to recommend that the father's relatives be used as visitation supervisors. A clue to this guardian ad litem's decision-making process can be found in his deposition testimony, where he expressed his belief that an incest perpetrator has a good likelihood of stopping his incestuous behavior as long as he has not been using the sexual contact with the child as his primary mode of sexual satisfaction. Clearly, this guardian ad litem completely disregarded the harm that had already been done to the child. (The BMTP obtained and reviewed a copy of the guardian ad litem's deposition.) Later, the judge in this case made written findings confirming the guardian ad litem's conclusions that the father had indeed sexually abused his son. However, in the same document, which the BMTP has obtained and reviewed, the judge allowed the father's sister to supervise the father's visits with the child, despite the judge's own acknowledgment that the sister "testified that she did not believe that her brother had abused [the child]." Gabby's case demonstrates that guardian ad litem reports can strongly influence judicial findings. The failure of guardians ad litem to take appropriate action therefore has the potential to seriously undermine the ability of the courts to protect children in light of substantial evidence of sexual abuse.

In another case, Shelley told the BMTP that following separation from her ex-partner, all three of her children disclosed to her that they had been repeatedly sexually touched by their father. For an extended period prior to their disclosures, her children had been saying that they did not want to go on visits but would not explain why. When the eldest disclosed the abuse, Shelley took her to the girl's pediatrician, who happened to be widely known as an expert on detection of sexual abuse. The pediatrician found physical evidence of the abuse and made a child abuse report to the Department of Social Services. The second child later told the mother that he had been afraid to disclose the abuse because his father said that he would kill them all if they told. The children informed her that the abuse had begun while the family was still living together and they had been afraid to tell her, and that it had continued during visitation with the father post-separation.

Subsequent to the children's disclosures of sexual abuse and the doctor's findings, and with the Department of Social Services involved in the case, the court appointed a series of guardians ad litem to the case, first a separate guardian ad litem for each child, then a single guardian ad litem for all three children. Each of the original three guardians ad litem concluded that Shelley was a responsible parent who was providing appropriate structure and care for her children. However, the single guardian ad litem who replaced them took a strong stand that the children needed to be reunited with their father and discounted Shelley's reports that the children were suffering from nightmares and did not want to see their father. The guardian ad litem also told her that he was not sure that the abuse had ever occurred. Because of this guardian ad litem's recommendations, the judge ordered the children to go on a series of unwanted supervised visits. The apparent effect of these visits was to re-traumatize the children; for example, Shelley reported that her eldest child wet the bed every night during the period of forced visitation. The visits were eventually abandoned because of the children's refusal to go.

These are just two examples of the concerns we found with guardians ad litem in cases involving child sexual abuse. Indeed, one of our more disturbing findings is that a number of guardians ad litem who claim publicly to have extensive training and experience in sexual abuse issues (including those in the above examples) are reportedly acting in ways that are inconsistent with the great majority of published research on incest perpetration, the nature of the disclosure process, and the circumstances in which children are most likely to heal emotionally. The overall attitude of these guardians ad litem appears to downplay the seriousness of sexual offenses and effectively helps perpetrators avoid consequences for their criminal actions. They also lead to court orders that prevent women from protecting their children.
In addition, at least four of the battered mothers who spoke with the BMTP also described extensive evidence of child sexual abuse by the batterer that they felt was dismissed or inappropriately minimized by the guardian ad litem, and in three of those five cases the guardian ad litem was associated with the Children and the Law program at Massachusetts General Hospital, which is considered to have particular expertise in child sexual abuse. Other guardians ad litem about whom women complained are associated with the highly regarded program at the University of Massachusetts Medical Center, Worcester. (We are also currently investigating a fourth case involving dismissal of persuasive evidence of child sexual abuse and domestic violence by the same guardian ad litem program, in a case that we learned of too late to include in our 40 testimonies.) These programs are frequently utilized by the family courts in child sexual abuse cases. As noted above, all these problems may also implicate battered women's due process rights (due process issues are discussed in Section IV).

As we mentioned earlier in this report, the BMTP chose which state actors to interview largely on the basis of complaints we received. In these interviews, we often discovered that the statements that state actors made to us about their beliefs and their approaches to cases sharply contrasted with what we had learned about how these same individuals had handled the cases we investigated. This contrast should be borne in mind as we review the key elements of our state actor interviews.

A. Lack of knowledge about partner abuse and child abuse

Our interviews with judges, guardians ad litem, Department of Social Service workers, probate probation officers, and court-appointed psychological evaluators provided some insight into why these state actors may overlook or minimize women's reports of abuse and therefore be willing to grant batterers custody of or unsafe visitation with the children. While the majority of state actors interviewed expressed their conviction that most allegations of partner abuse are true, they also made numerous statements that revealed a lack of understanding about abuse, especially as it is manifested once the couple has separated.

For instance, many state actors said that while most partner abuse allegations are likely true, they are often exaggerated or distorted. In the words of one guardian ad litem: "I would say probably less than 10 percent [of allegations are false]. However, ... what percent of the allegations are distorted and exaggerated? That, I would say, happens a lot." State actors' reactions to their perceived exaggeration of abuse allegations may contribute to their taking actions (such as awarding or recommending that batterers have custody of, or unsupervised visits with, the children) that contradict their stated beliefs about the general truthfulness of those allegations. This may, in turn, provide some explanation for the sharp disjuncture between women's reports of state actors' attitudes and behaviors regarding partner abuse and state actors' reports of their approaches to it.

At the other end of the spectrum, one guardian ad litem expressed an opinion that most battered women lie about abuse: "Seventy-five to 80 percent of allegations of abuse are false ... a very high percentage. Most cases I see are middle-class divorce custody disputes where there is no real history." While only a minority of state actors we interviewed expressed similar views, our case findings may indicate that such skepticism about abuse allegations may be more prevalent than it appears to be from our interviews with state actors. This causes concern because state actors, and guardians ad litem in particular, are not held to established standards when evaluating custody disputes involving abuse allegations; instead, they are free to make judgments based solely on their own opinions and perspectives.
Many of the judges, guardians ad litem, probate probation officers, and other state actors we interviewed also indicated that they do not take seriously or understand the threats to women and children's safety posed by batterers, especially following separation of the parents. This finding matched women's and advocates' reports of state actor behavior. For example, no state actor we interviewed commented on the propensity of batterers to continue or escalate their abusive behaviors if left unsupervised. Furthermore, most of the state actors we interviewed did not articulate knowledge of current research and literature regarding the harm to children from exposure to partner abuse nor the reality that batterers are highly likely to commit child abuse. Many did not mention, for example, the need to conduct criminal background checks on alleged batterers or to pay attention to substance abuse problems.

B. Inconsistencies in defining abuse and evaluating abuse allegations

Answers to our standard interview questions by different state actors revealed a significant lack of consistency in their definition of abuse, their evaluation of the truthfulness of abuse allegations, and their preferred course of action. The following two quotes from different judges illustrate this disparity:

"There is a lot of conduct that I would consider to be abusive but not battering. Abusive conduct could be repetitive vulgar name calling, perhaps some pushing and shoving, making obscene gestures, that type of conduct. Battering I would consider to be something that caused a person some physical injuries; particularly as a result of such conduct, the victim had to undergo some hospitalization and medical treatment."

In contrast:

"Battery is not just physical abuse. Battery is verbal abuse, battery is constantly putting down people and emotional abuse. So you've got emotional, you've got verbal, and you've got physical."

It is worth noting here that the Massachusetts Presumption of Custody Law creates a rebuttable presumption that placement of a child in the custody of a parent who has abused the other parent and/or the child is not in children's best interests. This law defines abuse broadly as the occurrence of one or more of the following acts between one parent and the other parent, or between a parent and child: (1) attempting to cause or causing bodily injury; and (2) placing another in reasonable fear of imminent bodily injury. Similarly, a "serious incident of abuse" is defined as (1) attempting to cause or causing serious bodily injury; or (2) placing another in reasonable fear of imminent serious bodily injury; or (3) causing another to engage involuntarily in sexual relations by force, threat, or duress. None of the state actors we interviewed referred to this definition of abuse.

Of the seven judges we interviewed, three stated that they seek to establish a preexisting pattern of behavior to determine whether someone is a batterer, two rely on an actual description of the abuse, one looks at hard evidence in conjunction with a description, and one looks at the seriousness of the abuse. When we asked judges, guardians ad litem, and probate probation officers about how they determine if abuse allegations are false, their answers underscored the inconsistencies in the analytical methods they use. For example, none of our interviewees offered the same list of criteria for making such determinations, and many were only able to come up with a few factors that they look for in every case.

Some judges we interviewed demonstrated their failure to fully comprehend the dynamics of battering by drawing distinctions between legal custody and physical custody. These judges seem to assume that batterers who receive legal custody will not use it as a means to control their victims. One judge said, "Shared legal custody. I think that is often appropriate. Just because someone is an abuser doesn't mean necessarily that they always make poor legal custodial decisions."
In making such assumptions, judges (and other state actors) overlook the fact that legal custody allows the batterer access to the situation he wishes to control, and thereby opens the door for him to commit further abuse. Moreover, the Massachusetts Presumption of Custody Law strongly discourages the award of shared legal (as well as physical) custody to abusive parents.

The state actors we interviewed also appear to lack the knowledge needed to evaluate allegations of child sexual abuse and to determine whether it has taken place. Instead, they seem to rely heavily on professional sexual abuse evaluations. This is cause for concern given the problems with child sexual abuse evaluations and the guardian ad litem issues described by the women we interviewed that are discussed above. As one judge explained:

My sense was, this is my empirical data, that more often the allegations of child sexual abuse were false more often than the physical. ... Sexual abuse to me is, have a professional, comprehensive evaluation and if you think the first one was wrong, have a second one.

Similarly, when asked what would constitute proof of such abuse, one judge said, "The court will rely a lot on the investigations by guardians ad litem who were experts in the sexual abuse area, and so you look at what their findings were." A guardian ad litem's answer to the same question referred to evaluations by pediatricians with expertise in sexual abuse.

Thus, our findings demonstrate that state actors in the Massachusetts family court system may not have a common, consistent method for defining abuse and assessing abuse allegations. Their inability to make consistently well founded assessments and decisions about abuse leads us to conclude that these decision-makers:

- Do not have sufficient training and knowledge about the issues;
- Do not have the guidelines and/or standards to help them carry out such analyses; and
- Do not apply such tools consistently and/or choose not to use them at all and are instead substituting their own subjective viewpoints.

There is no doubt that partner abuse, child abuse, and child custody cases are complex and very difficult to resolve effectively. However, courts cannot protect people from abuse if court personnel, including judges, do not have the capacity to accurately determine whether abuse happened and how that abuse should affect case outcomes. Particular problems include the absence of clear protocols and standards for conducting guardian ad litem investigations and for weighing evidence, and the failure to adequately train state actors on critical issues, including post-separation abuse. These problems undermine the judicial decision-making process in these cases, result in harm to battered women and children, and ultimately contradict the Massachusetts and international laws and policies that are designed to protect victims of violence.

C. Failure to take violations of restraining orders seriously

Our interviews with judges and guardians ad litem in particular indicate that they also minimize the relevance of partner abuse in their handling of restraining order (209A) violations. Not only should a restraining order violation trigger criminal prosecution, but it also should gravely undermine the credibility of the batterer and seriously affect his or her ability to obtain or retain custody of the children.

The state actors we interviewed, however, did not view restraining order violations with such gravity; rather, most of them seem to have little regard for the 209A process as a whole. One guardian ad litem's opinion of restraining orders was particularly striking:

There is no due process with accusations of violence, particularly women accusing men. 209A hearings do not provide a platform to present evidence [and they] rely on undocumented and unproven statements.
of the alleged victim. The whole 209A process is unconstitutional, a violation of constitutional rights.
A defendant accused of murder has more rights.

Indeed, all but one of the seven judges we interviewed had or offered the opinion that most restraining order violations are "inadvertent" and therefore only merit nominal attention in their determinations and findings.

Our interviews with state actors suggest that the family courts require little evidence to show that a restraining order violation was inadvertent in comparison to the amount of evidence they require to substantiate an abuse allegation. It is important to note that abuse victims face a strong standard of proof when they file for a 209A, including completing affidavits and offering substantial evidence to support their claims. Of course, the original purpose of the 209A law was to protect victims. That this law makes violating a restraining order a criminal offense reflects an understanding of the potential gravity of danger posed to victims when their abuser violates the order. Although criminal courts have jurisdiction over violations of restraining orders (whether issued by district courts or family courts), the fact that such a violation constitutes a criminal offense should greatly increase the seriousness with which family courts consider them in making custody and visitation decisions. Nonetheless, only one of the state actors we interviewed - a judge - said that a restraining order violation would seriously affect her custody and visitation decisions.

**Failure to Protect Women and Children from Abuse is a Human Rights Violation**

**International standards**

The rights to freedom from violence and torture are enshrined in many international declarations and laws promulgated by the United Nations that the United States must uphold (see Appendix B for details). The Universal Declaration of Human Rights, for example, states that "everyone has the right to life, liberty and security of person" (art. 1), and that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (art. 5). These fundamental rights are also foremost in key United Nations treaties such as the U.N. International Covenant on Civil and Political Rights and the U.N. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

International human rights laws and standards require the Massachusetts family courts to protect battered women and their children from being abused by batterers and child abusers. Court-ordered custody and visitation arrangements that require women and children to have ongoing, unprotected, and dangerous contact with men who abuse them therefore clearly violate these obligations. As discussed above, many of the women we interviewed - and their children - were harmed by the batterer (who in some cases was also a child abuser) after the women had left the batterer and gone to family court over custody and visitation issues. The women's ex-partners subjected them to stalking, threats to kill them, and physical, emotional, and/or sexual abuse in this context. Further, a quarter of the women said that their ex-partners sexually abused their children in the context of custody and visitation arrangements. Lawyers, legal advocates, and service providers working with battered women and children also recounted instances where women and children were harmed by the abuser in the context of court-ordered custody and visitation arrangements.

In some of these cases, the harm inflicted on these women and children may arguably amount to torture according to international law and principles. Amnesty International has declared that when a government fails to exercise due diligence regarding domestic violence (see below), it facilitates this type of torture in the family. Other experts also have argued that severe partner abuse or child abuse constitute a form of torture because they, like torture:

1. Involve physical and/or psychological suffering;
2. Are intentionally inflicted;
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3. Are committed for specific purposes; and
4. Occur at least with the tacit involvement of the government if the government does not exercise due diligence and equal protection in addressing the violence.\textsuperscript{105}

Placing women in situations where they are then re-victimized by the batterer amounts to a failure of the Massachusetts family courts to "exercise due diligence to prevent, investigate and punish acts of violence against women," as required by the Declaration on the Elimination of Violence against Women (art. 4). Due diligence is the primary human rights standard for assessing how a government responds to human rights abuses such as partner and child abuse that are committed by non-state actors.\textsuperscript{106} A government may be held complicit in such violence where it systematically fails to provide protection from private actors who deprive others of their human rights or "condones a pattern of abuse through pervasive non-action."\textsuperscript{107}

The fact that the BMTP identified 40 women who reported that the Massachusetts family courts exposed them and their children to harm through court-ordered child custody and visitation arrangements suggests that the family courts are failing to exercise due diligence on both counts. For example, when Massachusetts family courts grant custody of children to batterers and/or to child abusers or place children in unsafe visitation arrangements with them, and the women and/or the children are harmed - as was reported to have happened by many of the women we interviewed - they are failing to provide these women and children with protection from abuse. Similarly, the Massachusetts family courts are guilty of the above-mentioned "pervasive non-action" when they fail to credit women's allegations of partner and child abuse and consequently fail to investigate or consider evidence of the abuse and act accordingly. That advocates confirmed women's reports of harm is further evidence of this failure. It should be noted here that the BMTP received (and continues to receive) far more requests from battered women who want to give testimony to the project than we have been able to interview and therefore include in this report.

The U.N. Declaration on the Elimination of All Forms of Discrimination Against Women also states that governments must act with due diligence regarding violence against women by taking effective legal, preventive, and protective measures to protect women against such abuse (Gen. Recommendation No. 19, art. 24). This Declaration sees these measures as essential to protecting women's rights to non-discrimination and equal protection of the law. Thus, when the Massachusetts family courts fail to exercise due diligence in domestic violence and/or child abuse cases, they are also committing a form of gender discrimination according to international law and principles.

The failure to protect children from abuse is also a blatant violation of the U.N. Convention on the Rights of the Child, which states that "[governments] shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child" (art. 19). According to this Convention (as well as Massachusetts law), governments are expected to promote the "best interests of the child" in all of their actions concerning children (art. 3). With regard to child custody issues in particular, the Convention states that children have the right to contact with their parents, except when separation is necessary for the children's best interests. The Convention thus is clear that abuse and neglect are not in children's best interests.\textsuperscript{108} Therefore, when family courts place children in the custody of or in unsafe visitation arrangements with a batterer and/or child abuser, they are violating their international (and domestic) obligations to act in children's best interests. In our findings discussed above, many women did in fact report that their ex-partners subjected their children to sexual, physical, psychological, and/or emotional harm in the context of court-ordered custody and visitation arrangements.
**U.S. standards**

The right to be free from partner abuse also is recognized by U.S. federal law. Of particular importance, the Violence Against Women Act addresses the problem of violence against women in a number of ways, including by funding programs designed to prevent violent crimes against women, providing services to victims, and improving government responses to these crimes, especially in the area of criminal justice. Passage of this law was a remarkable achievement for U.S. movements to end violence against women because "for the first time, the federal government explicitly recognizes that safety of women is inextricably tied to prevention of and protection from harm." The Violence Against Women Act also is a crucial piece of legislation because it recognizes an affirmative duty of the federal government to prevent and protect against partner abuse, including the recognition that "inaction by the individual and collective states, as well as a pattern of discriminatory practices, constitutes gender inequality, [which] violates Fifth and Fourteenth Amendment protections.

The right to be free from child abuse also is enshrined in U.S. federal law, in particular titles 18 (Crimes and Criminal Procedure) and 42 (The Public Health and Welfare) of the United States Code and the Victims of Child Abuse Act of 1990.

**Massachusetts standards**

Massachusetts has enacted a number of laws and policies designed to protect individuals from partner and child abuse, including in the context of child custody disputes. Its laws and policies also seek to ensure adequate financial care of children upon divorce (economic issues are discussed in Section VI). Massachusetts law and policy, like international law, are clear that placing a child in the custody of an abuser is not in the child's best interests. Our findings thus indicate that the Massachusetts family courts, through dangerous custody and visitation arrangements that often contribute to the re-victimization of women and children, contravene Massachusetts law and policy as summarized below.

**Presumption of Custody Law**

By far the most relevant law in Massachusetts with regard to partner abuse and child custody cases is the Presumption of Custody Law, enacted in 1998. The Massachusetts Legislature passed this law in recognition of the widely documented harm to children of being exposed to partner abuse. The law states:

[A] probate and family court’s finding, by a preponderance of the evidence, that a pattern or serious incident of abuse has occurred shall create a rebuttable presumption that it is not in the best interests of the child to be placed in sole custody, shared legal custody or shared physical custody with the abusive parent.

As discussed above, the law defines abuse as the occurrence of one or more of the following acts between one parent and the other parent or between a parent and child: (1) attempting to cause or causing bodily injury; (2) placing another in reasonable fear of imminent bodily injury. Similarly, a "serious incident of abuse" is defined as (1) attempting to cause or causing serious bodily injury; (2) placing another in reasonable fear of imminent serious bodily injury; or (3) causing another to engage involuntarily in sexual relations by force, threat, or duress.

The Presumption of Custody Law also provides safeguards for children in the context of visitation. According to the law, if the court orders that the child have visitation with the abusive parent, "the court shall provide for the safety and well-being of the child and the safety of the abused parent," including ordering that the visitation be "supervised by an appropriate third party, visitation center or agency . . . [and] prohibiting overnight visitation . . ." if such steps are deemed necessary.
Thus, in the cases discussed above where the Massachusetts family courts reportedly granted custody to a batterer and/or child abuser, the courts may have been violating Massachusetts law and policy.

- **Massachusetts Guidelines for Judicial Practice in Abuse Prevention Proceedings**
  These guidelines cover instances when a restraining order (209A) is in effect. Regarding custody orders, the guidelines follow the Presumption of Custody Law, although the guidelines are clear that the issuance of a restraining order does not, in and of itself, constitute a pattern or serious incident of abuse (§ 12:05 commentary). However, if there is a restraining order in effect, or if there was a prior order, the guidelines require judges to justify an order of shared legal or physical custody with written findings of fact (§ 12:06 commentary).

These guidelines also address safety concerns regarding visitation with a batterer:

> Although psychological research and clinical experience demonstrate that by and large children fare better if allowed an ongoing relationship with both parents, the risks of maintaining contact with an abusive parent must be weighed against the impact of disrupting the parent-child relationship. No contact should be allowed, however, unless and until safety can be assured. The court should order visitation options which maximize the safety and well-being of the child and the safety of the abused parent. (§ 12:03 commentary)

- **Case law**
  Massachusetts case law contains strong precedents establishing that placing a child in the custody of a parent who has abused the other parent or the child is not in the best interests of the child. The primary case relied upon is Custody of Vaughn,116 in which the Massachusetts Supreme Judicial Court recognized that domestic abuse within a family can have harmful effects on minor children and must be considered by a court when a custody or visitation dispute arises between the parents. This case is key because it is the only case of this type to have reached the Supreme Judicial Court to date; however, many other cases - including appeals court cases - have cited Custody of Vaughn.

- **Abuse prevention law**
  Massachusetts law also provides protections against partner abuse. Under the Massachusetts Abuse Prevention Act,117 individuals may obtain restraining orders against abusers by requesting that the district, superior, or family courts order the abuser to refrain from abusing or contacting the individual, to vacate the home, and/or to pay child support. Victims of abuse can also obtain custody of their children under this law. The Abuse Prevention Act defines abuse as: (1) attempting to cause or causing physical harm; (2) placing another in fear of imminent serious physical harm; or (3) causing another to engage involuntarily in sexual relations by force, threat, or duress. Although restraining orders in Massachusetts are civil orders, violation of such orders is a criminal violation that should result in arrest.

- **Criminal law**
  Partner abuse and child abuse are criminal offenses under Massachusetts law. The two most relevant parts of the Massachusetts criminal code that are applied to domestic violence are Chapter 265 sections 13A (Assault or Assault and Battery; Punishment) and 43 (Stalking):

**Assault and battery**: Crimes of domestic violence are prosecuted under Massachusetts' laws against assault and battery. The degree of punishment possible increases for those who commit an assault and battery on a pregnant woman, on someone who has an active restraining order against him or her, or in a way that causes serious bodily injury.118
I: Failure to Protect Battered Women and Children from Abuse

**Stalking:** Crimes of domestic violence also are prosecuted under Massachusetts' laws against stalking. This law states that whoever "(1) willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress; and (2) makes a threat with the intent to place the person in imminent fear of death or bodily injury, shall be guilty of the crime of stalking."119

**Conclusion to Section I**

Our findings indicate that the Massachusetts family court system is failing to protect a number of battered women and children through child custody and visitation orders that require them to have unsafe contact with batterers and child abusers. In the most egregious cases, judges are placing some children in situations where they are being physically or sexually abused. In other cases, children are being placed in situations where they are psychologically and verbally abused as well as manipulated or neglected. In many of these instances, battered mothers are further endangered and sometimes harmed by the very individuals they fled in search of safety.

This behavior by the Massachusetts family courts violates battered women's and children's fundamental human rights to freedom from violence and, in some cases, may also violate their rights to freedom from torture and gender discrimination. Further, because the family court system currently does not systematically guarantee that those appointed to evaluate and investigate allegations of domestic violence and child abuse, including child sexual abuse, have the necessary expertise in those areas, women's due process rights also may sometimes be compromised.

These problems also mark a failure of the Massachusetts family court system to meet its human rights obligations to exercise due diligence and to act in children's best interests, and they directly violate the clear policy of the Commonwealth that placement of a child in the custody of a perpetrator of partner and/or child abuse is not in the best interests of children.

Moreover, our findings indicate that these actions and failures to act are systemic problems rather than isolated incidents, and that some individual state actors may be committing human rights violations against multiple battered mothers and children, thereby highlighting the need to hold state actors accountable for their actions. The tremendous inconsistency in quality and expertise of individual state actors with regard to partner abuse and child abuse reported to us by advocates underscores the problem.

It is also important to note that in many of the cases referred to in this report, the guardians ad litem who reportedly violated the human rights of battered women are among the most widely respected, including several present or former officers of the Massachusetts Association of Guardians ad Litem (MAGAL). These guardians ad litem are among those whom judges consider particularly good choices to handle domestic violence cases (even though they have no professional experience working at programs for battered women, programs for batterers, or programs for children who witness domestic violence).

It therefore is critical to underline our broader finding that the level of training and experience possessed by a guardian ad litem did not appear to affect how well he or she responded to domestic violence and child abuse cases. Indeed, it is perhaps the conduct of the most respected guardians ad litem that is in most urgent need of review and oversight in domestic violence and child sexual abuse cases.
Given these findings, the family courts should recognize that increasing the credential requirements for guardians ad litem will not improve their responses to partner abuse or child sexual abuse unless the requirements specifically ensure that guardians ad litem have expertise in those fields, as well as in the fields of child development and mental health. Even more important, our findings demonstrate that any kind of requirement for professional training and experience will bring only very limited benefits unless meaningful systems of supervision, accountability, and discipline are also put in place. Current eligibility standards for guardians ad litem do not require any professional expertise in partner abuse, child abuse, or child development, although they now do require a small amount of annual training on domestic violence.

Of greater importance than eligibility standards is the issue of appropriate performance and practice standards. Currently there are no standards in Massachusetts for how guardians ad litem should conduct investigations in child custody cases involving allegations of partner abuse or child abuse, including child sexual abuse; no policy describes the types of evidence that have to be sought and considered or the basis upon which allegations can be credited or discredited; no policy delineates the use and misuse of psychological evaluation in alleged abuse cases or provides guidelines regarding other issues critical to the well-being of battered mothers and their children. Standards and requirements thus must be created to ensure that guardians ad litem are impartial, conduct thorough investigations, and are subject to scrutiny.

It also is important to recognize that battered women involved in custody and visitation litigation are not asking the family courts to intervene to protect them and their children, in the way they might do by calling the police or by seeking a restraining order (although they may be pursuing those actions separately as well). They are asking only to be permitted to protect themselves and their children by not being forced to place the children in the batterer's custody or in unsafe visitation situations with him, and by not being forced themselves into dangerous or threatening contact with the batterer. Battered mothers also are asking not to be punished, or to have their children punished, when they take steps to protect their children.

Thus, reforms are also clearly needed in order to ensure, at a minimum, that:

1. The Presumption of Custody Law is applied;
2. All state actors in these cases receive adequate training on domestic violence, child abuse, child development, and mental health issues;
3. Meaningful mechanisms of enforcement of any standards for judges, guardians ad litem, and sexual abuse evaluators, including existing standards contained in the Massachusetts Guidelines for Judicial Practice, are created; and
4. Meaningful systems of accountability are developed for state actors.
Problem
There are Massachusetts family court judges, guardians ad litem, probate probation officers, Department of Social Service workers, and court-appointed psychological evaluators who are:

- Conducting investigations and evaluations and producing reports that unfairly or baselessly favor fathers over mothers;
- Holding battered mothers to higher behavioral and parenting standards than fathers;
- Stereotyping battered mothers as hysterical and unreasonable; and
- Discriminating against battered mothers on the basis of sex, race, ethnicity, socioeconomic status, and/or sexual orientation.120

Human rights violated
There are state actors in the Massachusetts family courts who are violating battered mothers' human rights to:

- Non-discrimination;
- Equal protection of the law;
- Equality in judicial proceedings; and
- Due process.

Case summary
Sandy told the BMTP that she had experienced a pattern of severe physical abuse that included incidents in which Gary punched her, kicked her, beat her with a belt, and raped her. On one occasion Gary threw Sandy against a wall while she held their eight month-old daughter in her arms. Sandy had emergency room records documenting her injuries from one of the beatings. A family court judge put in writing his findings that Sandy's reports of domestic violence were credible and that Gary's denials lacked credibility, describing the case as one of "classic spousal abuse."

Nonetheless, the guardian ad litem who was subsequently appointed discriminated heavily in Gary's favor. His initial bias was revealed when he stated to Sandy, "My son is a single dad, and things are tough, and they can be great dads." Next, he expressed skepticism to Sandy about her reports of domestic violence and said that he might form the conclusion that she was the offender, depending on what he discovered about where her bruises had been located. He did not at any point show signs of taking the domestic violence seriously.

Ultimately, the guardian ad litem chose Gary's "friend" Leslie to supervise his visits with the children, even though Sandy told the guardian ad litem that she knew (from her children's reports) that Leslie was clearly Gary's new partner. The guardian ad litem chose to believe Gary's claims that Leslie was strictly a platonic friend. The judge then accepted the guardian ad litem's recommendations, despite the documented history of severe domestic violence. Two years later, Gary beat Leslie severely, an event that led Leslie to disclose to Sandy that she had been suffering repeated beatings from Gary and keeping them secret. At this point the guardian ad litem resigned from the case, and a different judge immediately imposed professional supervision on Gary's visits.

A. Biased investigations, evaluations, and reports
Over half of the women we interviewed reported that one or more state actors - especially guardians ad litem - had conducted or made a biased investigation, evaluation, or report that either unfairly disadvantaged them or heavily favored their ex-partners.121 Many of their complaints describe incidents where the guardian ad
litem sided actively with the fathers, refused to look at evidence that supported the mother's claims of abuse, conducted interviews in a way that favored fathers, and/or distorted facts to benefit the fathers. (These problems are also discussed in Section IV on due process issues.) The following quotations are illustrative:

In the guardian ad litem's report, [my ex-partner's] buddies would have about two or three pages each, and my professional people, from the school - school counselor, school nurse, teachers, even the kids' counselor - got about a quarter of a page and that was it. My stuff could be put on one and a half pages. And his took up the rest. (Hilda)

The Department of Social Services caseworker said, "We don't need to talk to you, we've already made our decision." Without even talking to me or getting my story. I said, "Who did you talk to?" They said, "Oh, I talked to your husband, I talked to your kids." . . . She refused to listen to me and actually when she wrote up [her reports], . . . she said, "Mother claims she was abused by father." But whatever the father said, it was a statement. . . . So the way she wrote the report [she obviously didn't believe me]. (Lorie)

[The guardian ad litem's reports] were biased in favor of Michael. If I brought up, for instance, the history of domestic violence or what was going on, the report said, "Well, I asked [Michael] about this and he vehemently denied it" . . . . (Sonia)

Many other women we interviewed provided similar examples of bias. In one case, Jane described how the guardian ad litem did home studies of her and her new female partner but did none of her ex-partner, even though he was living in an unsafe neighborhood at the time. Jane also said that the guardian ad litem failed to include in his report any information from witnesses who supported Jane's claims of abuse. In another case, Paulina commented that the guardian ad litem failed to include in his report an interview with a psychologist who had remarked positively about Paulina and her parenting. The guardian ad litem discussed at length that Paulina's ex-partner was a wonderful father.

According to Jessica, the guardian ad litem's report claimed that she would refuse to let her ex-partner see the children if she got custody - although there was no evidence to support this claim - and therefore recommended that the father get custody. The guardian ad litem never contacted any of the appropriate offices to investigate the ex-partner's criminal record. Jessica told the BMTP:

They had the information and they chose to do nothing with it except to ignore it and rewrite history in favor of the father to the detriment of the children.

In Beth's case, a hospital-based specialized sexual abuse evaluation team concluded that there was a "quite high likelihood" that Beth's daughter had been sexually abused by the father. The guardian ad litem, however, rejected the team's findings and recommended in her report a transition to unsupervised visitation within six months. This guardian ad litem also made several statements in her report indicative of bias against the mother and in favor of the father. For example, the guardian ad litem wrote that the child's sexualized behaviors might have been a product of having witnessed the birth of her younger brother, although the guardian ad litem was entirely aware that this birth occurred one full year after the child's disclosures of sexual abuse and well after the hospital team's sessions with the girl were complete. In the guardian ad litem's report, she also described Beth as "preoccupied with sexual abuse," and stated that she was "unable to entertain alternate hypotheses." The guardian ad litem failed to mention that the daughter's disclosures to her mother had been detailed and repeated, that the Department of Social Services had concluded that the child in fact had been sexually abused, and that the child's severe psychological symptoms had abated rapidly when unsupervised visitation was terminated. Gabby reported a similar problem:

[The guardian ad litem] said that if the child has any problems after the supervised visitation, then it may stem from the mother. That it might come from my anxiety over the visitation.
II: DISCRIMINATION AND BIAS AGAINST BATTERED WOMEN

Indeed, many women offered examples of how state actors failed to consider or investigate their allegations of abuse in ways that indicated bias:

In the first interview we had, [the guardian ad litem] said to me that women hit men as much as men hit women... The '80s was a time when everyone was claiming sexual abuse, but we all know that it was mostly lies; he said that in the '90s the big thing is domestic violence, but we all know that it's lies, too, because women hit men as much as men hit women. I had a feeling then that he had so much power over me and the children and what happens to them. (Patience)

The guardians ad litem never talked to the District Attorney, they never talked to the chief of police, they never talked to the probation officer. They didn't talk to anybody, but they did say that I made it all up. [They] wrote... that there was no domestic violence and [that] I made it up to increase my odds of getting what I wanted in probate court. (Jessica)

Many of the examples cited above indicate that state actors, particularly guardians ad litem, often do not find battered women credible and therefore dismiss their allegations of partner and child abuse.

The advocates we surveyed reiterated this problem. For example, one advocate at a hospital-based program for battered women commented with regard to probate probation officers: "[They] disbelieve and pathologize battered moms." And the coordinator of a legal advocacy program at a battered women's organization commented that some guardians ad litem "assume that a woman will accuse her batterer of sexual abuse out of vindictiveness [or] that she must be seeing abuse where it doesn't exist because of her own victimization." (Many of these problems are also addressed in Section I.)

B. Holding mothers to higher behavioral and parenting standards than fathers

Over half of the women we interviewed told us that state actors had held them to a higher parenting standard than their ex-partners. Many reported feeling that they constantly had to prove themselves as parents in ways that their ex-partners did not. For example, Paulina said that the guardian ad litem in her case asked her to make a list of the activities she did with her daughter, but did not ask the father to do the same. Janice reported a similar experience:

I had to prove myself all those years. He was just, you know, the perfect dad. The judge had no concerns over him. And it's like, they wanted me to do so many things, they wanted me to go to school, they wanted me to do this and that, but they weren't asking him to do anything.

Women also stated that some state actors were quick to criticize them or hold them responsible as parents, but did not do the same with their ex-partners. For example, women said that they were often blamed for problems directly involving the children, but that their ex-partners were not. These patterns of bias appear to reflect deeply rooted assumptions about mothers and fathers that set up expectations for women to be primary caretakers, while men who merely show an active interest in their children's daily lives are seen to meet their paternal obligations. Courts thus may be rewarding fathers with visitation or custody when they seek involvement in their children's lives, even when it is not in children's best interests to be placed in their father's care. Sonia described the problem this way:

I had the feeling that... every part of my parenting was criticized. Whereas he was a father who... moved from place to place and left the town... but not only did he not lose custody, I couldn't get sole custody. I felt the judges were blaming me for the kids' bad behavior or academic problems.

Similarly, women reported that state actors rewarded their ex-partners for behavior that would merit little attention if it was done by the women. For example, the judge in Bridget's case called her ex-partner the "primary caretaker" because she was working full-time, although she was also doing most of the child care.
Charlotte told the BMTP:

[My ex-partner] doesn't pay child support... he hasn't seen [my son] in three years... But now he wants to be a father. Everybody's like... now he's decided he wants to be a father, God forbid we don't give him the chance.

And Janice described how the probate probation officer's report was entirely in her ex-partner's favor and neglected to include information about his abuse of her, including the abuse that he inflicted on her while she was pregnant with their child.

These current findings reiterate those of the 1989 Massachusetts study of gender bias in the courts that found that when fathers contest custody, mothers are held to a different and higher standard than fathers. Specifically, this report found that:

- About half of the probate judges surveyed agreed that "Mothers should be home when their children get home from school," and 46 percent agreed that "A preschool child is likely to suffer if his/her mother works."
- Women who are temporarily separated from their children may lose custody even if they have been primary caretakers.

C. Stereotyping women as hysterical and unreasonable

Some women reported that state actors viewed them as being hysterical, unreasonable, and overly emotional. Generally, this appeared to reflect that the state actor either failed to believe that abuse had occurred or failed to understand the traumatic effects of abuse on victims. This behavior could also be tied to negative stereotypes of women.

[The guardian ad litem] was saying [that I] was psychologically unstable and, you know, irrational, emotional, and angry. It's like, yeah, if you've been through 10 years of what I've been through... You go through hell and try to get out of hell and they punish you, saying "Oh, you cry too much and you're upset, so you know, the kids are more stable with the father, there's no emotion." (Lorie)

[The guardian ad litem] characterized me as very emotionally needy, unstable, maybe depressed, needing psychological help, just an absolute flake, and when my therapist read this, she was so appalled... she is a guardian ad litem as well. (Cassie)

In contrast, women reported that state actors viewed their ex-partners as being calm and reasonable, and therefore more credible and stable than the women. The ability of batterers to stay in control and manipulate people is well documented and is also underscored by our interviews with battered women, advocates, and state actors. As Karen noted: "He'll charm the pants off of anybody. Nicest, sweetest man in the world in front of people, or when he needs to be."

D. Other bias in favor of the father and against the mother

In addition to the examples discussed above, the majority of women reported that one or more state actors in their cases - primarily judges, guardians ad litem, and probate probation officers - showed bias in favor of their ex-partners and against them in various ways. In some cases, this bias took the form of state actors taking more time to listen or pay attention to the ex-partner's claims, witnesses, and evidence than to those of the woman. In other cases, women reported that the state actors imposed demands on them or scrutinized them in ways not applied to ex-partners.

Many women explicitly articulated feeling that these actions were directed at them either because they were women or because they were battered women. (Many of these behaviors by state actors were also...
identified by the advocates in our survey.

One woman, Amanda, said that her ex-partner admitted in court to smoking marijuana but that he suffered no consequences for breaking the law. By contrast, based solely on his allegations that Amanda was a cocaine user, Amanda was ordered to undergo drug testing: "Max, who has a past of drug abuse and violence and everything else, and I was the one who had to go through [drug testing]. No one ever said, 'Okay, Max, if you want this you need to go through anger management courses.'" In another case, the guardian ad litem asked Beth's ex-partner (but not Beth) for his suggestions regarding a visitation supervisor. The ex-partner's new wife received the appointment, despite evidence that he had sexually abused the child and the fact that the new wife had refused to participate in a court-ordered sexual abuse evaluation.

In other cases, women we interviewed said that they felt the state actors had clearly sided with or befriended their ex-partners, often to the point of creating a conflict of interest. For example, Cecilia wanted her ex-partner to have overnight visits with their child only every other weekend, but the probate probation officer said, "The judge isn't going to do this, you have to let him see your son, it's his son, too... You can't keep your son away from him" (which she said she had never tried to do). In this same case, Cecilia stated that the judge waved at her ex-partner's family when they came to court to support him. Another woman described the ways that state actors showed bias in favor of her ex-partner:

[The guardian ad litem was] very one-sided. We'd walk into court and she would be standing there talking to [my ex-partner] and his mom. Wouldn't even speak to me or my parents. It was like that. (April)

Women also described incidents where state actors defended their ex-partners and made excuses for them, yet denounced the women's behavior without basis. For example, Hilda reported that when she went to court to try to stop visitation because her ex-partner was drinking excessively, the probate probation officer defended him as a "great guy" and commended him for complying with his drug testing, while criticizing her for being an "over-reacting mother."

Karen described a similar problem with a probate probation officer:

[The probate probation officer] stood up there in court and told the judge that [my ex-partner had] paid his time and that he's an upstanding citizen and that I was basically a drama queen... when we had - what? five, six years of restraining orders... [The probate probation officer] was absolutely siding [with my ex-partner]. She would call him and have discussions with him all the time... She would bring him in her office without my attorney, or without me, and have discussions with him... She hates women. Because you don't know how many women I know that go to [family court], they have said the same thing. (Hilda)

E. Discrimination on the basis of race and ethnicity

Although only one woman in the primary sample stated that they had been discriminated against specifically because of their race or ethnicity, the advocates and survivors in our focus groups provided information that women of color (both U.S. citizens and immigrants or refugees) face ongoing bias in the family courts.129 One point stressed by focus group participants was that women of color are often not seen as victims and thus do not receive appropriate attention from the various state actors involved in their cases. They noted that low-income African-American women are stereotyped as being aggressive, drug-abusing, and lacking in credibility. As a result, their allegations of abuse may be minimized, dismissed, or ignored (these issues are also discussed in Section I). As one attorney explained,

I notice that... in front of judges and in front of family service officers and police, dark-skinned African-American women don't have as much credibility when it comes to restraining orders, that if they fight back, or if they are angry that somebody has beat on them, then they are seen as aggressive. She is not seen as a victim.
Indeed, focus group participants highlighted the ways that judges' stereotypes of African-American women as "strong" place these women at a disadvantage in restraining order hearings and noted that this in turn affects how seriously their claims of partner abuse are taken by the family courts. For example, in discussing a case where an African-American client was denied a restraining order, apparently because the judge held such a race-based stereotype, an attorney said, "The [family court] judge dismissed the domestic violence and so it was not a factor in the custody decision, whereas if he had given credibility to the domestic violence, he probably would have ordered supervised visitation... but in this case there was no supervised visitation."

Another focus group participant, an advocate for battered Asian-American women, described how judges' stereotypes of Asian families can contribute to their making custody and visitation decisions that endanger children: "When I was working with Asian women, I did see that... [the judges would say that family was important to Asians and grant custody or unsupervised visitations [to batterers], especially in cases where the child was a boy, ... [even in one case where the child was sexually abused by the father."

Participants in our focus groups also repeatedly observed that race and class issues intersect and affect the ways that battered women are treated in the family court system. Advocates in our focus groups discussed one aspect of this problem this way:

[S]ome of the Department of Social Service workers treat women of color differently, especially women of color of lower socioeconomic status, than white women who are upper-middle class. ... It's like [for] white women who are in an upper-middle class home who are married, [the Department of Social Services] will see domestic violence as domestic violence ... whereas in other situations which involve women of color, inevitably other issues come. Clients are more under a microscope, and they are not seen as victims as much. I know that my clients who are predominantly African-American women have a harder time with Department of Social Services workers than my white clients.

Another issue highlighted by both advocates and survivors in our focus groups is that state actors appear to be particularly unforgiving of women of color who are suspected of using illegal drugs or who have used them in the past. One Latina survivor reported that the Department of Social Services was quick to substantiate a charge of drug use and related child neglect against her (by supporting a 51A against her), even though the department had never ordered her to take a drug test. And an African-American survivor who had been clean for years and had attended addiction prevention programs, as well as parenting and job training programs, felt that the judge and Department of Social Services workers only looked at her past record and were unable to consider the positive changes she made in her and her children's lives. An attorney in a focus group described how the intersection between race and addiction issues can lead to bias:

I think another barrier that women of color face is that if they are in recovery, [they are] treated and perceived differently from white women who are also in recovery. The woman of color is an addict; the white woman is in recovery. Also socioeconomic status plays into that, too, because someone who is abusing crack is treated differently than someone who is using powdered cocaine or prescription drugs.

Advocates in our focus groups also described how immigrant and refugee women are discriminated against in the family courts primarily because of state actors' lack of cultural competency. One attorney commented, "I think what counts the most is who has the better job, the better command in English, and who appears to be more American."

Another advocate relayed the following experience of an Asian client (a battered woman):

[The Department of Social Services] set up a plan with a Vietnamese case; they ordered her to go to parent education classes and counseling. She couldn't because she didn't understand English. [The Department of Social Services] took her child away because she could not comply with the plan. [The Department of Social Services] told her that if she really wanted the child back, she had to go to a battered women’s shelter.
II: DISCRIMINATION AND BIAS AGAINST BATTERED WOMEN

F. Discrimination on the basis of gender differences in socioeconomic class

Over a quarter of the women we interviewed reported they experienced discrimination or bias on the basis of class, education level, or income. These women reported that state actors tended to favor ex-partners who had greater economic resources or higher socioeconomic status than they did and, at the same time, looked down on them if they had low incomes, were on public assistance, or presented in court as less polished or educated than their ex-partners.

A number of women expressed the feeling that state actors appeared reluctant to believe allegations of domestic violence or child abuse brought against a well-educated or professional father, despite research on the cross-class nature of these problems. For example, Patience reported that state actors did not believe her ex-partner could be guilty of committing partner and child abuse (including child sexual abuse) because he did high-level scientific work for the government.

Similarly, Sonia told us: "I think because [my ex-partner] was a doctor, and at one point he was [a chief specialist] at [name of hospital], I think they were biased in favor of his status and position. . . . That put me at a disadvantage." April also told us that the economic inequity between her and her ex-partner had been used against her: "[The guardian ad litem said] something to the effect of . . . I can't be that good of a parent, and dad's a better parent because he works, he has a job, [while] I get [social security income] and [he] just bought a house." (Economic issues are further discussed in Section VI.)

G. Discrimination based on the mother's sexual orientation

Although all of the cases in our study consisted of male-female court battles, one of the women who testified, Jane, felt that she faced discrimination by state actors because she is currently in a relationship with another woman. For example, not only did the court order that Jane's children should not have any contact with her new female partner, but her new partner was also interviewed and subjected to scrutiny on numerous occasions by the guardian ad litem assigned to the case. In contrast, the guardian ad litem never interviewed Jane's (male) ex-partner's girlfriends or his new wife.

In addition, the transcript of a court tape records the judge in this case exhibiting blatant discrimination against Jane for being in a same-sex relationship (a quotation from this transcript is highlighted in Section III). The court eventually granted Jane's ex-partner custody of their two young children, taking them away from her, even though Jane had been their primary caretaker since birth and despite the history of domestic violence. Jane reported that she felt that her same-sex relationship was part of the reason she lost custody of her children. She is still continuing her fight to regain custody.

Jane's reported discrimination because of her sexual orientation was also raised by advocates in our focus groups. As one advocate for abused lesbians, bisexuals, and transgendered people explained: "We see folks whose ex-partners, particularly lesbians whose ex-partners are men, then coming in and taking custody of the kids because [the lesbians] have come out." These advocates also described other ways that bias against lesbians, bisexual women, or transgendered people can play out in the family courts, namely that women in same-sex relationships feel that it is not even safe to raise the issue of partner abuse in court when their abusive partner is female. In some cases, they are afraid that the state will take custody of the children if they learn that the partners are in a same-sex relationship and that there are also allegations of abuse.

Indeed, advocates reported that lesbians often avoid the family courts altogether. In some cases, they do so because they are worried that family court litigation will force them to come out in their communities. As advocates in our focus groups pointed out, for women of color, particularly African-American and Latina...
women, the risk of being "outed" may not be one they are willing to take because their communities are very small and very homophobic; therefore, they risk losing their primary, or possibly only, support network if they come out. In other cases, lesbians, bisexual women, and transgendered people simply lack confidence that they will receive justice in the family courts and therefore avoid them.

**DISCRIMINATION AND BIAS: FINDINGS FROM STATE ACTORS**

### A. Bias in determining litigants' credibility

During our interviews with state actors, the topic of litigants' and witnesses' credibility arose in response to a variety of the questions we asked. Since abuse allegations often boil down to "he said, she said" situations, state actors - particularly judges - appear to rely heavily on the perceived credibility of the litigants and their witnesses in making their findings. All of the state actors we interviewed reported that they try to assess credibility by using hard evidence, such as medical and police records, to corroborate the testimony of the litigants. However, such records often are not available or give little useful information about abuse. In the absence of supporting documentation, no uniform system or protocol exists for determining credibility.

As a result, a state actor's bias (conscious or unconscious) may be given free rein. In fact, no two state actors we interviewed used the same list of factors to determine credibility, with the exception of "hard" evidence. While reliance on hard evidence is understandable, it should not be emphasized over the best interests of children and the protection of victims of abuse. That is, lack of hard evidence of abuse should not lead to the conclusion that abuse allegations are false. Indeed, the research literature has demonstrated that intimate partner abuse is underreported to official sources such as the police.134

As mentioned earlier in this report, a 1989 study of gender bias by the Massachusetts Supreme Judicial Court found that state actors in the Massachusetts court system - including the family courts - do indeed exhibit gender bias. These findings were confirmed by our study. For example, many of the state actors we interviewed reported that they in effect rely on a subjective interpretation of parties' demeanors to assess their credibility. In the words of one judge:

> One of the things you look at is body language. You look at the person who is talking as to why or why not they want a restraining order. You look at the other person to see out of the corner of your eye how they're reacting to the allegations. Body language gives away a lot of it. Disposition of the people, how they're speaking, how close they are together. A lot of this really comes down to your call, your judgment as to who you believe and who you don't.

Assessments of demeanor can put battered women, especially those who are acutely aware of the danger they and their children face, at a distinct disadvantage in court. Given that control of self and others is common to the pathology of batterers, a judge, guardian ad litem, or probate probation officer, for example, could form the impression that the calm, in-control batterer is more credible than the nervous, frightened, or traumatized woman. As described above, women's testimonies suggest that this in fact occurs.

As one Department of Social Services employee explained:

> Typically, [the batterer] is better off financially, he is not traumatized, he hasn't been battered, and the children love their father and they want to be with him. And you know evaluators and court folks are not well trained about the dynamics of child abuse, will talk to a child, and the child will say, "I want to see my father, I want to be with him," and you know, it gets more complex.
State actors - especially judges and guardians ad litem - appear to believe that many allegations of abuse are exaggerated and distorted, even though no research exists to support this belief. This is cause for concern because such a belief may negatively affect a battered woman's credibility in court and contribute to case outcomes that endanger her and her children. For example, if a given state actor perceives a woman to be hysterical, her allegations of abuse may be ignored or minimized. The following quotations illustrate the problem:

> There is a need to "determine the veracity" of the statements. ...Many women use allegations of abuse as a tool [in divorce proceedings] when indeed there is no abuse. (Guardian ad litem)

> What I find much more frequently than false allegations is the question of spinning. In other words...I think that false allegations are the less likely thing to hear. I think that what you're more likely to see is people spinning things. (Guardian ad litem)

Indeed, the attitudes of guardians ad litem to domestic violence issues seem to be particularly problematic. For example, when asked why fathers can still win custody in cases where the Department of Social Services has documented partner or child abuse, one Department of Social Services worker offered the following insight: "I have seen, too, on the part of guardians ad litem, where you find that there is a bias against women in the sense that women are being vindictive and will pull out all the tricks to get back at their divorcing spouses." Such preconceived notions about women's propensity for exaggeration and vindictiveness seriously undermine the fairness of the judicial process in these cases.

Even the distant past can affect a woman's credibility. For example, if a woman has had a past history of suffering sexual abuse, that fact can skew the state's view of her present allegations of sexual abuse against her children:

> We've had cases, a few cases, where I did believe that the custodial parent, the mother, had been sexually abused as a child, who as a result of that history had felt that her children were suffering the same circumstances. ...Those are very rare cases, but we have some of those cases. (Judge)

Credibility of litigants is essential in order for them to prevail in legal proceedings. Once lost, it is difficult, if not impossible, to regain. The Rhode Island Supreme Court Committee on the Treatment of Women in the Courts summarized the negative impact of women's lack of credibility in the courts owing to gender bias:

> The treatment that women witnesses and litigants receive is...critical to the proper exercise of justice. The credibility of a witness is often central to the fact-finding process, and this credibility can be undermined if the impression is given that because the litigant or witness is female, she is not to be taken seriously. There are many subtleties and intangibles involved in establishing credibility. Obviously, if disrespect or hostility is shown for the individual through biased remarks and conduct by attorneys, judges, and court personnel, it may very likely have an impact on the outcome of the case. Therefore, such treatment not only is humiliating to the person involved and leaves her with a negative view of the judicial process, it may also result in the denial of her substantive rights.135

**B. Reliance on assumptions and concepts that justify minimizing abuse**

Many of the state actors we interviewed repeatedly relied on certain assumptions and conceptual frameworks as tools they use to reach decisions on child custody. These assumptions and concepts appeared to provide state actors with justification for allowing a grant of custody or unsupervised visitation to the batterer despite the presence of abuse. The following is a partial list of examples:

- The presence of open communication between the parties as an indication of the absence of abuse;
- A strong tendency in favor of joint legal custody (despite the Presumption of Custody Law) based on the assumption that legal custody will not be used by batterers to exert control over their victims;
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- Giving undue weight to the batterer's willingness to be rehabilitated; and
- Paying attention to the child's "extraordinary bond" with the father.136 (In the context of ordering supervised visitation one judge reported, "I've heard of psychologists who testified before me where the child is bonded to perpetrator and it is in the best interests of the child to have immediate contact with the perpetrator in a controlled setting - in the context of child abuse - taking the position that this may have a negative impact on the child's well-being to be bonded with someone and have the person disappear from their life entirely.")

Further, out of all the state actors interviewed, only one emphasized that in a situation involving abuse, the law states that the presumption is against giving custody to a batterer. In fact, most spoke about their willingness to grant sole custody or joint physical custody to perpetrators regardless of abuse, as long as the alleged batterer has a "demonstrated ability to parent" or can otherwise be motivated to change: "The presence of abuse in and of itself is not enough to rule out joint custody." (Guardian ad litem)

C. **Systemic problems in the family court system that promote bias**

Looking beyond the issue of litigant credibility, we uncovered one example of a situation where the adversarial nature of the family court process can itself result in bias against women and children. A Department of Social Services worker divulged that when her agency pursues a child protection case, she and her colleagues are typically told that "... in order to win the case, and if we don't want the children to be subjected to risk with either parent, we have to make the case equally strong against both parents, so that [the mother] has to look as bad as [the father] does, even though we know that the risk to the children lies with the batterer's behavior." In other words, in order to render a decision that they feel is in the best interests of the child, the Department of Social Services sometimes can knowingly make a battered mother look bad. It is clear that Department of Social Services workers' minimization of abuse in these circumstances may result in bias against battered mothers and in outcomes that are not in children's best interests.

Interviews with other state actors disclosed similar behaviors that ultimately manifest bias against women. They also revealed that these state actors are not always, in fact, impartial fact-finders acting in the best interest of the child. For example, in asserting the importance of maintaining an impartial point of view, several of our interviewees nevertheless articulated a tendency to minimize fathers' behaviors while accentuating mothers' negative characteristics. The following quote is illustrative:

> For instance, what if dad is an abuser but mom is a religious kook and wants to home school the kids and keep them away from any other children who do not share her unique religious views, so [she's] an isolationist and frankly wants nothing to do with public schools or other kids in the neighborhood. I think I am less likely to give that mom sole legal custody because the dad ought to be the guy who votes for something more normalizing, something less cultish, so I might give that guy joint legal custody, hoping that he will be the advocate when it comes to educational decisions for a better result. He may be a lousy advocate for some other decisions, but when it comes to educational decisions, if I give the mom sole custody I know that she will make poor educational decisions. (Judge)

**DISCRIMINATION AND BIAS ARE HUMAN RIGHTS VIOLATIONS**

**International standards**

The principle of equality runs consistently throughout international human rights laws and standards, including the Universal Declaration of Human Rights, the U.N. International Covenant on Civil and Political Rights, the U.N. International Convention on the Elimination of All Forms of Racial Discrimination, and the U.N. Convention on the Elimination of All Forms of Discrimination against Women. Specifically, governments are required to treat all people within their jurisdiction equally, regardless of differences such
as sex, race, class, ethnicity, and sexual orientation. The human right to equality before the courts and to equal protection of the law is particularly prominent in international law and requires governments to take positive steps to prevent and eliminate discrimination on such bases.

Our findings indicate that there are state actors in the Massachusetts family courts who are discriminating and exhibiting bias against:

1. Women;
2. Battered mothers;
3. Battered mothers of color, both U.S. citizens and immigrants or refugees;
4. Battered mothers from lower socioeconomic classes than their ex-partners; and
5. Battered mothers whose new partners are women.

As discussed above, this discrimination and bias are manifested both in the fact-finding process - particularly in guardian ad litem investigations and reports - and in court proceedings themselves. The courtroom culture of bias created by these actions is not easily overcome and contributes to related violations of battered mothers' rights to due process, freedom from violence, and other rights, as guaranteed under international and U.S. domestic law.

The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is particularly relevant to our findings as it requires governments to eradicate gender discrimination in all spheres of life, including in the courts:

[Governments shall] establish legal protection of the rights of women on an equal basis with men and . . . ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination." (CEDAW, art. 2)

[Governments shall] accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they . . . shall treat them equally in all stages of procedure in courts and tribunals. (CEDAW, art. 15)

Women's human rights to gender equality in the legal process thus are violated when, for example, judges stereotype battered mothers as hysterical and unreasonable; guardians ad litem conduct biased investigations by systematically considering evidence that only supports the father's claims or by distorting facts to benefit the father; the Department of Social Services holds mothers to higher behavioral and parenting standards than fathers; or judges are reluctant to believe battered women's allegations of abuse against an ex-partner apparently because of his comparatively high socioeconomic status. As discussed earlier in this section, the women we interviewed described all of the above scenarios (among others).

International law, most notably the U.N. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), is also clear that discrimination on the basis of race or ethnicity constitutes a human rights violation, and that all human rights must be made available to all people regardless of race or ethnic origin. The U.N. International Convention on the Elimination of All Forms of Racial Discrimination specifically calls on governments:

[To prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) The right to equal treatment before the tribunals and all other organs administering justice. (ICERD, art. 5)]

Our findings, particularly from our focus groups, indicate that state actors in the family courts exhibit bias and discrimination against battered mothers of color in complex and often subtle ways - for example, by not seeing African-American women as victims in need of services and protection.
When state actors treat women of color differently from white women or treat immigrant women of color differently from U.S. citizen women of color, they violate these women's human rights to non-discrimination and equal protection of the law.

U.S. standards

The U.S. Constitution also requires the government to uphold its citizens' rights to non-discrimination (Equal Protection clause of the Fourteenth Amendment). In addition, the U.S. Civil Rights Act of 1964 specifically prohibits certain types of discrimination on bases such as race and sex; however, this law prohibits sex discrimination only in specific settings (such as public schools, employment, and housing) and thus is more limited than human rights laws and standards.138

It also should be noted that bias and prejudice in legal proceedings are violations of the American Bar Association's Model Code of Judicial Conduct. Canon 3 of that code specifically states that "[a] judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so."139

Massachusetts standards

Massachusetts law and policy also contain strong anti-discrimination provisions. It therefore is clear from our findings that the instances of family court discrimination and bias described by the women and advocates we contacted violate the laws and policies of this state as outlined below.

- **Massachusetts Constitution**

  The Massachusetts Constitution, like the federal Constitution, guarantees equality under the law:

  All people are born free and equal and have certain natural, essential and inalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin. (Mass. Const., art. 1)

- **Massachusetts Civil Rights Act**

  This act was established to protect the rights of all citizens and visitors to Massachusetts against hate crimes. Thus, for example, if someone has interfered with a person's fundamental constitutional rights (or other secured right) on the basis of race, religious creed, national origin, age, gender, sexual orientation, or disability, the victim may obtain an injunction prohibiting the perpetrator from committing certain actions (and violation of a civil injunction is a criminal offense).140

  Massachusetts public policy also holds that the family courts should not discriminate on the basis of sexual orientation. According to Massachusetts Practice, the legal reference for Massachusetts law, the Massachusetts family courts should not take a person's sexual orientation into consideration when determining whether that person is fit to have custody or visitation with a child unless that person's conduct somehow "adversely affects the child."141 It goes on to state: "The courts in this state have ruled that neither a parent's heterosexual relationship with another person or a homosexual relationship is per se grounds for denying custody or visitation."142
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Massachusetts Code of Judicial Conduct

The Code of Judicial Conduct\textsuperscript{143} also recognizes litigants' rights to equality and non-discrimination in the courts. It states that judges shall "perform judicial duties without bias or prejudice" and should disqualify themselves if they have a "personal bias or prejudice concerning a party.\textsuperscript{144}\n
Conclusion to Section II

Our findings indicate that a number of state actors in the Massachusetts family courts exhibit bias and discriminate against battered women on multiple and often intersecting bases, including gender, race, ethnicity, class, and sexual orientation. This behavior violates battered women's human rights to non-discrimination, equal protection of the law, equality in judicial proceedings, and due process. It also violates U.S. law as well as Massachusetts law and policy. Not only do these actions and failures to act deny battered women justice, but they also risk prompting many to avoid the family courts altogether.

The Supreme Judicial Court of Massachusetts has already documented gender bias (1989) and racial/ethnic bias (1994) in the court system. Our findings indicate that these problems persist. At a minimum, extensive mandatory education on partner abuse, child abuse, child development, and mental health issues, as well as on cultural diversity and cultural competency issues, is needed for all state actors in the family court system. Our findings regarding bias and discrimination also underscore the need for meaningful mechanisms to hold accountable those state actors who engage in these behaviors.


Problem

There are state actors in the Massachusetts family courts, primarily judges, guardians ad litem, and probate probation officers, who are treating battered mothers with condescension, scorn, and disrespect. As a result, battered mothers may be re-victimized and their allegations of abuse dismissed or not responded to effectively. This can contribute to the courts' ordering custody and visitation arrangements that endanger women and that are not in children's best interests.

Human rights violated

There are state actors in the Massachusetts family courts who are violating battered mothers' human right to freedom from degrading treatment.

Case summary

Lorie had suffered one of the most severe patterns of domestic violence that was reported to us. For example, her husband, Noah, had hit her hard in the face with his head, breaking one of her front teeth (an incident for which she had dental records as evidence); repeatedly pulled clumps of hair out of her head; slapped her in the face, knocking her glasses off, in front of the children; tore off her clothes; and one time picked up a large butcher knife while Lorie had their baby in her arms and said to her, "Put the kid down, I'm going to kill you now!" Lorie has extensive documentation of the abuse, including detailed statements from witnesses who had observed these events and Lorie's many injuries, which the judge and the custody evaluator apparently refused to read. Custody of all children was awarded permanently to the batterer with no examination of the extensive evidence of domestic violence.

Lorie reported a number of forms of degrading and disrespectful treatment by state actors. The guardian ad litem said to her, for example, "I know you lied to me. You better tell me the truth now, because I'm getting phone calls from people and they can tell me the truth." The guardian ad litem also described Lorie as irrationally angry and as overly emotional and unstable because she sometimes broke into tears, thus ignoring the depth of trauma engendered by Lorie's extreme history of battering. The guardian ad litem also discredited her reports of domestic violence, despite his own acknowledgment that Noah was controlling, domineering, and dishonest. Lorie also reported recurring experiences in which judges did not let her speak at hearings, read and shuffled papers while important witnesses were testifying, and were nearly falling asleep during trial.

Degradation of battered mothers

Nearly every woman who gave testimony to the BMTP said that judges, guardians ad litem, and probate probation officers in the family court system had treated her with condescension, scorn, and disrespect, including by responding to her claims of abuse with sarcasm and dismissal. Compounding the problem is the fact that most of these women reported being personally mistreated by more than one family court official with whom they interacted.

The judge had an extremely condescending, nasty attitude toward me, but also at times to the Safeplan advocate that was helping me, and even to the bailiff - they couldn't even believe the way he spoke. (Uma)

(Uma said she also received similar treatment from the probate probation officer in her case.)
Flo\a noted that "I really felt like I was a piece of garbage to [the state actors] - We're not individuals, we're not looked at as having different issues, different circumstances."

In other instances, women described being directly yelled at by court officials. For example, Janice told the BMTIP:

[The judge] told me off a couple of times. He yelled at me - that I needed to shut up, that I needed to stay quiet . . . I need to keep my emotions to myself . . . They treat you like you're kids in there.

In addition, some women described how state actors would cut them off rudely or put them down. Sonia told the BMTIP:

I think [the judges] at times, they were just very critical and condescending. And I think that they just cut me off a lot, they didn't want to hear what was going on . . . During the custody trial, [the judge] just said, "Well, you're rambling," while I was trying to tell the history of what happened with Luke while he was living with his father. 146

Other women used terms like nasty, sarcastic, quick to dismiss, and harsh to describe the ways that judges, guardians ad litem, and probate probation officers treated them. Ingrid described an encounter with a guardian ad litem who displayed a particularly arrogant and intimidating attitude: "When I first met [the guardian ad litem], the first thing out of his mouth other than "hello" . . . was, "When I make a decision, I'm always right."

Jane's case provides another example. The judge held Jane responsible for the fact that her abusive ex-husband had repeatedly vandalized her home because, according to the judge, Jane failed to understand the "pain" she had caused him by leaving. The following is an excerpt from the court tape of the hearing (of which the BMTIP has a copy) during which the judge raised her voice at Jane and said the following:

So maybe it's not a good reaction from Dad over here, but you're playing into it. I don't care if you're with a male, a female, or a dog [Jane's new partner is a woman]. I don't care. I understand from his point of view, he's going to be out of your life. It's got to be painful for him. You are not acknowledging the pain that this guy is feeling. It's painful for him.

Following this hearing, the judge found Jane in contempt of court because she fled to a shelter - on the advice of her local District Attorney's office - in violation of the court order to remain in the marital residence. The judge then granted custody of the children to the batterer,147 with whom they remain to this day.

Other women described judges who wouldn't pay attention to them during hearings and instead read unrelated documents such as newspapers while various parties were speaking. Paulina described how her judge "looked like he was in la-la land. He read half the time when we spoke. He was reading stuff right in front of me."

And Lorie described the following experience with a judge: "I remember even during the trial, [the judge], she was like looking at her bills . . . and picking up phones and, Jesus, I'm talking about my life here! And I think it was even the guardian ad litem that's testifying and she would not pay full attention."

At the beginning, I couldn't help but cry, you know . . . and this judge looked at me . . . [and said to my attorney] 'You don't control your client.' He threatened me . . . He was going to give the custody to my husband or something . . . He was harsh, he was very harsh. And my husband stood there smiling. It was disgusting. (Fran)
Like the women who spoke with the BMTP, the lawyers, legal advocates, and service providers to battered women and children we surveyed expressed serious concern about the treatment of battered mothers by state actors in the family court system. In fact, over half of the advocates who responded to our survey said that they were aware of incidents of personal mistreatment of battered mothers by judges, guardians ad litem, probate probation officers, and other state actors in the family court system. One advocate provided an example of a judge who yelled at an attorney to "control" her client who had become upset in the courtroom.

Another described a situation where a battered mother was seeking financial support from her husband and the judge stated that "she hadn't contributed a dime to society and should receive nothing." Additionally, advocates noted that guardians ad litem also yell at battered mothers.

Focus group participants identified patterns of degrading treatment of battered mothers by state actors in the family courts by making connections between this treatment and discrimination and bias. As one attorney noted:

*I see a different reaction from judges and family service officers to women who may dress in a certain way and who are articulate and educated as opposed to women who are not dressed as professional. In my opinion, they are not given much credibility, their story isn't trusted as much. In particular, the family service officers are condescending and disrespectful.*

Other focus group participants reported that state actors treated battered women of color disrespectfully while treating their middle-class or professional African-American male partners with respect. Advocates and survivors alike in our focus groups theorized that state actors behave this way partly out of fear of being labeled racist by the ex-partners.

**Note:** State actors were not asked about degrading treatment of battered mothers.

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**Degradation treatment is a human rights violation**

**International standards**

One of the most fundamental principles and moral bases of the human rights system is that people should be treated with dignity and respect. In particular, governments have the responsibility to take steps to respect, protect, and fulfill their citizens' human rights in ways that are consistent with human dignity.

*All human beings are born free and equal in dignity and rights. (Universal Declaration of Human Rights, art. 1)*

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. (Universal Declaration of Human Rights, art. 5)*

As our findings illustrate, one of the most common complaints voiced by the women we interviewed, and one that causes them great anguish, was that the Massachusetts family court judges, probate probation officers, guardians ad litem, and other state actors treated them disrespectfully, scornfully, and condescendingly. As a result, battered women often found themselves re-victimized by the very system to which they had turned for protection and support. When women are personally mistreated in child custody and visitation proceedings, their human right to freedom from degrading treatment is violated and their rights to due process and equal protection of the law compromised. Moreover, their confidence in the justice system is crushed.
Massachusetts standards

The Massachusetts Code of Judicial Conduct also provides clear guidelines for how state court judges in the Commonwealth, including family court judges, should conduct themselves in relation to the litigants who come before them. The code recognizes the importance of treating people with dignity and respect, stating that judges should be "patient, dignified and courteous to litigants" and shall "perform judicial duties without bias or prejudice." Indeed, when we described to a representative from the Commission on Judicial Conduct some of the ways women reported they were treated by judges, the representative confirmed that such behavior violates the code:

[That behavior], if proven, would violate Canon 3A3, which says that a judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers and his staff, court officials, and others subject to his direction and control. So, in other words, treating [anyone] with any sort of disrespect may very well be judicial misconduct.

Conclusion to Section III

As stated above, the family courts are under a human rights obligation to administer justice in ways that are consistent with human dignity and respect. Not only do our findings indicate that a number of state actors do just the opposite with regard to battered mothers, but that in many cases in which this mistreatment occurs, battered mothers do not receive justice. Judges' degrading treatment of litigants in the family court system also directly contradicts Massachusetts policy as outlined above. At best, this treatment compounds women's experiences of abuse; at worst, it contributes to a court system in which a culture of gender bias still persists and that produces case outcomes whose negative impact can last a lifetime.

These findings should act as a catalyst for the state to implement meaningful oversight of the actions of all state actors in the family courts with regard to their treatment of battered mothers.
Problem

- There are state actors in the Massachusetts family courts, particularly judges, who are failing to provide battered mothers with an adequate opportunity to be heard in court.
- There are state actors in the Massachusetts family courts, particularly probate probation officers, who are pressuring battered mothers to engage in unsafe, face-to-face mediation and/or dispute intervention with their abusers.
- There are state actors in the Massachusetts family courts, particularly judges, who are denying battered mothers access to guardian ad litem reports for their cases.

Human rights violated

There are state actors in the Massachusetts family courts who are denying battered mothers their human rights to:

- Freedom of speech;
- Equal protection of the law; and
- A fair hearing for resolving disputes.

Case summary

Fran had suffered a long history of violence from her husband, Nathan, that included his kicking her hard enough to injure his own foot; wrapping the telephone cord around her neck and then pinning her to the bed, holding her there until she began to lose consciousness; driving in a terrifying manner with her and the children in the car and screaming that he was going to kill them all; and dragging her into his car in public when she was trying to escape, which led a man in a nearby car to physically intervene so she could get away.

Fran experienced several obstacles to due process. The most frequent was that she was prohibited from speaking at hearings by the judge, who was willing to listen only to what the probate probation officer would summarize. The probate probation officer, who apparently was biased against Fran and inappropriately friendly with Nathan, would misrepresent statements Fran had made to her, which the judge would not give Fran the opportunity to correct. This same probate probation officer took control of Fran's case repeatedly, which appeared to violate proper process at the family court, where the probate probation officer has normally been chosen randomly for each hearing. This same probate probation officer circumvented a critical judicial order: The judge had ordered Nathan's participation in a batterer's intervention program, but the probate probation officer permitted him instead to attend private therapy with a therapist who had no expertise in domestic violence. These denials of due process by the probate probation officer were accompanied by social contact in the hallways between Nathan and the probate probation officer, including one incident in which they were talking and laughing following a hearing in which the judge had ruled in Nathan's favor on a particular issue.

A. Denial of adequate opportunity to speak in court

Almost half of the women we interviewed reported that the judge in their case denied them an adequate opportunity to tell their side of the story or to respond to issues that had been raised by their ex-partners. Some women said that if they were represented by an attorney, the judge would let only the attorney speak and not the women themselves.
Thus, if the attorney failed to represent the woman adequately - a common problem in our findings - the woman was effectively prevented from presenting her case to the court. For example, Beth told the BMTP:

"Judge [X] especially, and I've probably been in front of her 12 to 15 times, continuously, as long as I am represented by an attorney, I am not allowed to speak. So if my attorney misses something or says something that I don't agree with, she will tell me, "You have an attorney. That's what you have an attorney for." Basically, shut up. And she has been consistently rude and very contemptuous.

Some women also commented that their ex-partners (and their attorneys) were consistently given more time and opportunity to speak in court, as well as to present evidence and witnesses than were the women. This problem was exacerbated for women who did not have attorneys and were representing themselves pro se (without an attorney). The advocates we surveyed also highlighted this problem. Granting men a greater opportunity to speak in court than women should be of concern to the state, because it may contribute directly to outcomes that favor fathers and that hurt mothers and children.

In our focus group of advocates for battered immigrant and refugee women, participants listed numerous due process problems for women whose first language is not English. Many of these women are ultimately denied an adequate opportunity to be heard in court because of the poor quality or bias of interpreters or because judges get frustrated with their poor English skills. Examples include interpreters who paraphrase women's statements instead of interpreting them verbatim, and interpreters who are friends with or related to the batterer or even are the batterer's attorney. One lawyer said that she has seen cases where the "Vietnamese interpreter is a lawyer himself . . . and provided legal advice to the [batterer] as well as interpreting." To make matters worse, many judges do not ascertain whether women have expressed themselves fully in court; often they assume that because the woman has an interpreter or an attorney, she has been fully represented.

Judges thus are failing to provide women with an adequate opportunity to speak in court. This denies women equal protection of the law and their right to a fair hearing because it compromises their ability to represent themselves in court. This behavior on the part of judges also violates the Massachusetts Code of Judicial Conduct. The code explicitly states that judges should give every person the "full right to be heard according to the law," and that judges can be sanctioned if they are found to have systematically failed to conduct themselves according to the code.

B. Pressure to engage in unsafe mediation or dispute intervention

Many women reported that the probate probation officer assigned to their case conducted mediation or face-to-face dispute intervention between them and their ex-partners despite knowledge of the existence of partner abuse. Often these women said that they were pressured to engage in mediation and were not given the choice to opt out even in cases where there was a restraining order in effect. Mediation between batters and their victims exposes victims to danger and can result in their agreeing to terms that are not in the best interests of the children or themselves. As Fran noted:

*When I said, listen, there is a restraining order and I don't feel comfortable sitting in the same room, she [the probate probation officer] looked at me and is like, "Oh, geez, don't be ridiculous." That's what she said to me! She . . . made us go in the room together.*

Charlotte told the BMTP:

*We had to sit in a room, without our attorneys, with her [the probate probation officer] in the room, and I was made to look like the bad guy. Because I kept saying that's not acceptable. What about the domestic [assault and battery]? What about the history? It was totally disregarded. . . . I felt [the partner abuse] was not taken seriously, and I felt it was held against me.*
The lawyers, legal advocates, and service providers whom we contacted also identified this problem and said that as a result, women often compromise on important safety issues in order to reach an agreement quickly.

In addition, advocates shed light on the constraints facing probate probation officers:

> There is an enormous inconsistency among probation officers within the court system. Some are patient, well-trained mediators in a difficult job. Others have been doing this work way too long and are cynical and uncaring. For all of them, they face much more work than they can possibly handle well. These problems lead to many unfortunate consequences, including undue skepticism of victims of domestic violence, inappropriate comments, and inappropriate pressure toward entering into agreements that may not be suited to the particular litigant's needs or desires. (Attorney)

Women also told us that probate probation officers have pressured them to reach decisions or agreements that favor their ex-partners. For example, the probate probation officer in Jan's case pressured her to agree to visitation between the children and her ex-partner, even though he had just been released from prison for threatening to kill his new wife and her child:

> [The probate probation officer] wanted to set up visitation and I said, "No, I'm not going to allow that." And she said, "Well, it would be supervised." And I said, "No, he was just released from jail for saying he was going to kill his wife and her kid." And then my lawyer was getting angry with me, everyone was angry with me, because I wasn't agreeing. . . . It was terrible and [the probate probation officer] was the person who said [to me], "You need to help build the bridge here."

A different probate probation officer in Jan's case pressured her to vacate her restraining order against her ex-partner in order to reach a quick decision about visitation.

Finally, the lawyers, legal advocates, and service providers we surveyed also noted that battered women are at a particular disadvantage if they are not represented by an attorney because probate probation officers often do not inform women about their rights:

> Women without attorneys are discriminated upon in mediation if the batterer has counsel. If there's a 209A [restraining order] and the woman wants to meet separately, some probate probation officers don't like this. The women aren't always told they don't have to sign any papers and can go before the judge. They are intimidated. (Legal advocate, battered women's program)

This practice of coerced mediation with the batterer violates women's due process rights. The dynamics of power and control in an abusive relationship make it inherently difficult for a level playing field to exist - as is required for successful mediation. Further, mediation cannot work where there is no real opportunity to voice one's concerns and have one's needs represented. Thus, mediation in cases of partner abuse can serve only to pressure the victim to give into the batterer's demands, which in turn can result in custody or visitation arrangements that endanger both the victim and the children. Moreover, this practice continues even though the Massachusetts Guidelines for Judicial Practice in Abuse Prevention Proceedings state that "[p]arties cannot be required to mediate when a restraining order is in effect, nor should they be required to meet face to face in or out of the courtroom to discuss settlement in any Probate and Family Court proceeding." 

C. Denial of access to guardian ad litem reports

Over a quarter of the women with whom we spoke reported that they were not given copies of the guardian ad litem reports in their cases. In some of these cases, the women never saw the reports. In other cases, they were allowed to read them only in their attorneys' offices but were forbidden from retaining a copy of
the report. In addition, some women reported being ordered by the judge or guardian ad litem not to discuss the report with anyone other than an attorney or a mental health professional,\textsuperscript{161} in what appears to be a violation of First Amendment free speech rights. As Paulina said, "I was told that I could not read the [guardian ad litem] report. I could not go to the courthouse and read the report. I had to go file a motion with my lawyer in order to even read it, but I could never have a copy of it."

Family courts generally do not permit litigants to retain copies of their guardian ad litem reports, and, as in the cases referenced above, sometimes do not allow litigants to read them at all. The family court defends this practice on the grounds that guardian ad litem reports contain highly sensitive information about the parents and the children that could be damaging if shown to the children or to the general public. But in reality, the contents of guardian ad litem reports are rarely any more sensitive than many other papers in the court file that either party could choose to show to anyone. The impounding of guardian ad litem reports (and psychological evaluations) thus arguably serves to protect the work of evaluators from scrutiny and to make what their evaluators have said difficult for battered mothers to challenge.

Moreover, guardian ad litem reports are heavily relied upon by judges as evidence and are often the most crucial part of the fact-finding process in partner abuse and child custody cases. It is particularly critical, then, that all of the parties involved be allowed to easily review as well as retain copies of such reports to be able to dispute their content. The ability to do so is central to parties' ability to pursue their cases effectively. For battered mothers, it may ultimately affect their ability to protect their children. As our findings in Sections I and II show, many guardian ad litem reports are inaccurate, incomplete, or biased; therefore, battered mother's due process rights may be violated when they are denied an opportunity to review and dispute the content of their guardian ad litem reports.

### D. Ethical problems

Women reported a variety of concerns about the ethical or professional behavior of state actors in their cases. Conflict of interest was highlighted by many women as a particular problem. For example, Sonia reported that the guardian ad litem in her case was not only a personal friend of her ex-partner's attorney, but also that he worked at the same university as her ex-partner's wife. Hilda told the BMTP that the probate probation officer and her ex-partner knew each other from Alcoholics Anonymous. Another woman, Karen, stated that the probate probation officer assigned to her case officiated at the wedding between her ex-partner and his new wife while working on the case. And in yet another case, Teale reported that the judge in her case appointed a guardian ad litem who was specifically recommended by her ex-partner's attorney and is the daughter of another judge. These women felt strongly that such conflicts of interest translated directly into unfair treatment of them in family court.

In addition, many women reported that one or more of the state actors involved in their cases, usually the guardian ad litem or the probate probation officer, had lied about the case or seriously misrepresented facts in a way that favored the batterer.\textsuperscript{162} (Bias is discussed in Section II.) Marsha stated that the guardian ad litem greatly distorted the therapist's statements in her report, and Daria noted that the guardian ad litem misrepresented what the director of the supervised visitation center had said regarding her case. Anita reported that the probate probation officer on her case lied to the judge, saying that he did not have the comment letter from Anita's social worker when, in fact, Anita's attorney had just given the letter to the probate probation officer.

Jessica's case further illustrates the problem. Jessica reported to the BMTP that the guardian ad litem on her case claimed in his report to have spoken with her former marriage counselor (a clinical psychologist) and that the psychologist had told him that domestic violence was never mentioned during the marriage counseling sessions.
However, the psychologist denied that the guardian ad litem ever contacted him, and stated further that domestic violence was a subject of some of those sessions. (The BMTP has obtained a copy of the psychologist's affidavit that states these facts on his letterhead.) Further, Jessica reported these events to the Massachusetts Division of Registration and provided a copy of the psychologist's affidavit. The Division of Registration declared, without explanation, that the guardian ad litem was not guilty of any misconduct. Yet, as Jessica put it, "[The guardian ad litem] totally made stuff up. He fabricated talking to people, fabricated what they said."

Other women described ways that guardians ad litem and probate probation officers omitted or distorted information:

[The guardian ad litem was] operating below standard, fabricating stories, perjuring, lying, not following through with other professionals involved in the field, not following up with the key people, not contacting academic institutions, and basically not operating in the best interests of the child. (Cassie)

At several different times, especially with one particular family service officer, the way the story was portrayed - not only was it inaccurate, it was an outright lie. And it led to the judge making a decision that was totally based in bad information; it was extremely biased and prejudiced [in favor of] him and against me... (Sonia)

In another example, Jane fled to a battered women's shelter with her children after her ex-husband repeatedly ransacked her house. Jane said that the guardian ad litem in her case told the judge that while she and the children were in the shelter, she did not have any contact with the guardian ad litem, and that her ex-partner was unaware of where she and the children were during that time. However, Jane reported that she had spoken numerous times to the guardian ad litem when she was in the shelter. The guardian ad litem had called her on her cell phone several times a day, pressuring her to leave the shelter and divulge her whereabouts:

I had had contact several times by telephone with the guardian ad litem. I had gone to his office. I had asked him to speak to the Victim's Advocate from the District Attorney's office who I had gone to after I had been turned away at Probate Court with my photos [of her ransacked house]. I went to [the Victim's Advocate], and she was one of the first people who told me, "Get out of that house." So [the guardian ad litem] had all of that information, but he failed to present that to the judge at the time that custody [was] changed [to my ex-partner].

When the primary fact-finders in these cases fail to do their job thoroughly and ethically, the judge should not rely upon their recommendations. Judges, however, apparently rely heavily upon guardian ad litem reports as significant (or even primary) sources of evidence in partner abuse and child custody cases. This practice can violate women's due process rights when the fact-finding process is flawed, as in the instances described above (and elsewhere in this report).

**DENIAL OF DUE PROCESS: FINDINGS FROM STATE ACTORS**

A. **Denial of adequate opportunity to speak in court**

A representative from the Commission on Judicial Conduct told us that the Commission has received complaints about judges who do not allow battered women a sufficient opportunity to speak in court:

[T]here are some judges who seem not to get it in the area of battered women. Occasionally, [the Commission on Judicial Conduct] will see a judge who just - when you listen to the tapes of the court proceedings, they are always cutting off the woman, not letting her finish her sentences.
At least, in the past, some judges did not get it that this type of abuse really exists. They didn't think that a man would really do that to his wife or his children. And [the Commission on Judicial Conduct has] had to deal with problems like that.

B. Lack of resources in the family courts

One contributing factor to the denial of due process to battered women in family court litigation is the Commonwealth's failure to dedicate sufficient resources to these cases. The state actors we interviewed acknowledged this shortcoming, if not its full impact on battered women and their children. Indeed, when asked what they might need to do their work better, state actors often pointed to the lack of available resources needed to implement changes.

According to one judge:

[We need] the resources to investigate and inform the judge of the facts that the parties themselves may not be willing or able to share with the court adequately, to give the judge all the evidence that he or she needs to make an appropriate decision.

It is also clear that insufficient resources exist for family court litigants who cannot, for example, afford to hire an attorney or a guardian ad litem. This deficiency can affect case outcomes. Indeed, some of our interviewees observed that such litigants do not receive the same level of attention as those who have greater personal financial resources:

There's a lack of resources and a lack of time. . . . The Commonwealth doesn't have the kind of funding to pay for guardians ad litem for people who can't afford to have them. And so there's a two-tier system, there's a tier for people who are wealthy enough to afford the cost of a guardian ad litem, and for people who aren't wealthy enough to afford the cost of a guardian ad litem, and aren't wealthy enough to afford the cost of attorneys, they slip through the cracks. (Guardian ad litem)

Perhaps ensuring that there is adequate funding for guardians ad litem whenever we need them [would be a good change to the family court system]. Sometimes there are cases of people who cannot afford private guardians ad litem, and we really don't have enough resources. (Judge)

Indeed, the resource gap and resultant due process problems are most apparent in the guardian ad litem system. Most of the state actors we interviewed, especially judges and guardians ad litem, spoke about the need for more funding for guardians ad litem and the need to standardize their qualifications. Their level of concern appears to stem from their knowledge of the extent to which judges rely on guardians ad litem to sort out the facts.

You know, oftentimes, what helps us out the most is if I get a good guardian ad litem appointed to make an investigation in terms of the impact of the domestic violence on the children, not just the abused parent but on the children. (Judge)

We err by probably not intervening more dramatically in people's lives with the guardians ad litem (Probate probation officers)

When asked about whether guardian ad litem training is adequate, one judge commented, "[I] think they always need training. I get upset when there is an issue of domestic violence, they go through their whole custody thing and recommendations, they never even hit domestic violence, and they never even mention it."

A battered mother is denied due process when the guardian ad litem does not investigate or address all of the issues and evidence in her case or when she has no access to a guardian ad litem because of her limited resources. It thus is easy to see how an underfunded and faulty guardian ad litem system negatively affects the processing of each case.
C. Failure to provide effective support and remedies at law

State actors themselves pointed out a number of instances where the family court system does not afford adequate support and remedies to litigants with complex cases. The following is a partial list of the problems they identified:

- Inadequate pro se litigant resource programs;
- Inadequate assistance for economically disadvantaged litigants;
- Insufficient parenting programs;
- Inadequate cooperation with the Department of Social Services. Interview responses from state actors revealed that a reluctance to place children in the foster-care system nudges state actors in the direction of granting custody to batterers when the victim parent is found incapable of parenting, despite the obvious risk of harm to the children; and
- Insufficient or inconclusive data on whether batterer’s intervention programs are working.163

Considering the potential losses to be suffered by women and children who may be out-maneuvered by their batterers in court, it is imperative that the state provide sufficient, if not ample, support and remedies in such situations. Unless such support and remedies are made available, we can never be certain that case outcomes for battered women and children in the Commonwealth are fair.

International standards

Human rights laws and standards require governments to provide those within their jurisdiction with due process of the law, including a fair hearing for resolving disputes, freedom of speech, and equal protection of the law. These due process rights are enshrined in a number of key declarations and treaties including the Universal Declaration of Human Rights (UDHR), the U.N. International Covenant on Civil and Political Rights (ICCPR), the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).164

Our findings indicate that in some cases, the Massachusetts family courts are denying battered women their due process rights. As with all human rights, denial of one right - such as freedom of speech - compromises the exercise of other human rights, such as the right to equal protection of the law. Thus, when a judge fails to give a battered mother an adequate opportunity to voice her concerns about her children in a custody hearing or silences her about the history of partner abuse (while at the same time gives her ex-partner greater opportunity to speak, for example), her rights to free speech, a fair hearing, and equal protection of the law are all implicated.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations. (UDHR, art. 10; ICCPR, art. 14)

[Governments shall] establish legal protection of the rights of women on an equal basis with men and . . . ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination. (CEDAW, art. 2)

As discussed above, many of the women we interviewed reported to us that they were not given an adequate opportunity to speak in court. Advocates in our focus groups identified the same problem. In these cases, the Massachusetts family courts are denying women their free speech rights. In the instances when women reported that their ex-partners also were given more time than they were to state their case, women’s rights
to equal protection of the law are violated. In some cases, the Massachusetts family courts appear to deny battered women a fair hearing by not consistently applying the Massachusetts Presumption of Custody Law (as discussed in Section I). This failure denies women and children equal protection of the law and directly contravenes the international (as well as domestic) best interests of the child standard. That is, a battered woman who enters a Massachusetts family court cannot be ensured that the primary law designed to protect her and her children will be applied in that court. Indeed, in our study, the abusive ex-partners of the majority of the women with whom we spoke reportedly were granted custody of the children in what appears to be a violation of Massachusetts law and policy that should cause the state serious concern.

Battered women's rights to a fair hearing and equal protection of the law also are violated when a probate probation officer allows mediation between couples when there is a history of partner abuse, when a state actor behaves unethically within the context of an active case, or when a battered woman is denied access to official court documents such as guardian ad litem reports. All these acts, described by the women we interviewed, serve to compromise women's safety as well as their ability to argue their cases and represent themselves equally and fully. This, too, violates international standards.

U.S. standards
Due process rights also are safeguarded in U.S. constitutional as well as statutory law. As one legal scholar explains in the context of violence against women:

>The framers of the Fourteenth Amendment, in crafting the Due Process Clause, codified conceptions of life, liberty and property that were consistent with classical conceptions of fundamental human rights - the right to personal security chief among them. The framers also adopted the positive nature of these rights. . . . Consistent with its history, the Fourteenth Amendment's Due Process Clause is triggered when states fail to adequately protect their citizens from conduct that interferes with the right to personal security and bodily integrity.

Thus, when the family courts deny battered women due process, they not only are violating international law but also are directly contravening bedrock principles of U.S. law.

Massachusetts standards
The Massachusetts Constitution and state laws and policies also protect the due process rights of those within its jurisdiction.

With regard to mediation in particular, the Massachusetts Guidelines for Judicial Practice in Abuse Prevention Proceedings make clear that the state should not mediate or conduct face-to-face dispute intervention between couples when there is a restraining order in effect:

>Parties cannot be required to mediate when a restraining order is in effect, nor should they be required to meet face to face in or out of the courtroom to discuss settlement in any Probate and Family Court proceeding. . . . The Probation Department may conduct dispute interventions provided the parties have the opportunity to remain separate and apart and the victim is made aware that such dispute intervention is not mandatory. Probation officers should ask whether or not a restraining order is in effect at the outset of every dispute intervention. (§ 12:05 commentary)

And with regard to freedom of speech and a fair hearing, the Massachusetts Code of Judicial Conduct states that judges should give every person the "full right to be heard according to the law" and also that judges can be sanctioned if they are found to have systematically failed to conduct themselves according to the code.
Further, the Massachusetts Commission on Judicial Conduct has the authority to discipline judges regarding their conduct in court (as opposed to complaints regarding their legal decisions or application of the law, which are reserved for the appeals process). Grounds for disciplining a judge include willful misconduct in office, conduct prejudicial to the administration of justice, and any conduct that constitutes a violation of the Code of Judicial Conduct or Code of Professional Responsibility. If a majority of commission members determines that discipline against a state court judge should be recommended, the commission may recommend to the Supreme Judicial Court of Massachusetts that the judge be sanctioned, which can include such steps as removal, discipline, and fine. Thus, in many of the examples provided in this section, the family courts are contravening Massachusetts standards.

Conclusion to Section IV

Our findings demonstrate that in certain cases the Massachusetts family courts are denying battered mothers their human rights to due process of the law, including their rights to freedom of speech, a fair hearing, and equal protection of the law. When battered mothers are denied their due process rights, their ability to achieve justice and safety for themselves and their children is seriously compromised.

Reforms are needed to ensure that battered women are allowed to express themselves fully in court, that they are granted access to guardian ad litem reports and other critical court documents in their cases, and that they are not pressured or forced into unsafe mediation or dispute intervention with their abusers.

Our findings also demonstrate the need to implement meaningful and accessible mechanisms of accountability for state actors who deny battered women their due process rights, and the need for the Commonwealth to provide increased resources for these cases, particularly resources sufficient to ensure that battered women have access to affordable and quality legal representation.
Problem
There are batterers who use the family court system in ways that amount to harassment, retaliation, and intimidation of battered mothers. Battered mothers (and therefore children) are harmed emotionally and financially. There are also state actors in the Massachusetts family courts, particularly judges, who fail to identify and, thereby, sanction this abuse of the court process, rendering them complicit in it and in any resulting harm to women and children. Specific litigation abuse tactics used by batterers that our study uncovered include:

- Filing multiple harassing, baseless, or retaliatory motions;
- Making false allegations against women;
- Manipulating the court process to avoid paying child support or to receive a reduction in child support; and
- Using parallel actions in courts of different jurisdictions to gain an advantage.

Human rights violated
The family courts' tolerance of batterers' litigation abuse tactics amounts to a failure to exercise due diligence. It also violates battered mothers' and their children's human rights to:

- Due process;
- Equality in judicial proceedings; and
- Adequate standard of living.

It also violates children's right to receive economic support from their parents.

Complicity with abuse: Findings from battered women and advocates

A. Filing multiple harassing or retaliatory motions

_There has been no visitation since 1995 because he was sexually molesting [our daughter] on visitation. And she's scared to death of him. But that doesn't stop him from trying to go for visitation constantly, to harass us. There's a whole pattern of the next court date, and the emotions I go through building up to it, and then actually being there and seeing him, and him stalking me in the halls... and having to do that week after week, year after year. It just never gets any better._ (Uma)

The majority of women we interviewed described to us scenarios in which their ex-partners filed an unending stream of family court motions that amounted to harassment, retaliation, or intimidation. Several women also said that their ex-partners intimidated them while at court. None of the women we interviewed said that judges or other state actors involved in their cases took steps to address this behavior on the part of their ex-partners.

A number of women noted that when they separated from their ex-partners, their ex-partners threatened to take the custody issues through the courts until the women were left with nothing, including no money and no children. As Charlotte put it, "This is what he told me he would do, that he would drag it through the courts, and he would keep it going until I had no money left whatsoever." Our findings indicate that, like Charlotte's ex-partner, many of these men made good on their threats.

_He's forced me to go back to court endlessly. I can't remember how many motions we have on our docket. There's got to be 150. Every time I turned around for years, there was another piece of paper coming in the mail from the courts._ (Sonia)
Advocates echoed women's reports of this problem. For example, one advocate for battered Haitian women told us:

Most Haitian men do not want the children, but apply for custody to control the victim. He needs the children as a weapon against the woman.

In one focus group, advocates noted that often a batterer will not seek custody until he is in a new relationship with a different woman. Advocates said that, in their experience, batterers do this not because they genuinely want to care for the children, but because they want to take the children away from their mother and have them raised by someone else. As one attorney stated:

[Batterers] will seek outrageous visitation that will guarantee them contact with the mother, or if they seek custody, they will seek joint legal custody so that, if there is a restraining order, they can at least control what's going on. I can't say that I have had a case where the father was truly seeking custody.

With regard to retaliatory motions, focus group participants pointed out that if it is the battered mother who seeks a divorce or separation, then the batterer (a male ex-partner) will often file for custody in retaliation. Other focus group participants noted that for lesbians, the batterer will often threaten to "out" the victim as a lesbian if she seeks custody of the children.

B. Making false allegations against women

He's done everything he could: lied about me in court, psychologically destroyed me, tried to destroy my credibility. (Sonia)

Many women\textsuperscript{169} also told the BMTP that their ex-partners made a range of false allegations against them in family court that often undermined their credibility in ways that may have negatively affected the outcome of their cases.\textsuperscript{170} According to the women, their ex-partners baselessly accused them of abusing, neglecting, or kidnapping the children,\textsuperscript{171} of denying their ex-partners visits with the children,\textsuperscript{172} of being a flight risk,\textsuperscript{173} and of using drugs,\textsuperscript{174} to name a few of the most prevalent accusations. Many women also described how their ex-partners would use the children as the centerpiece of their post-separation partner abuse and harassment litigation strategies. For example:

[Our son] wouldn't [go on visits]. . . . He'd shut the door in his father's face, or when his father would call he wouldn't pick up the phone: "I'm not going and that's it." Then the father would turn around in probate court and say I was the one refusing the child from going, and it wasn't even me and I got in trouble. (April)

He'd already been denied custody twice, so he shot for number three. Brought me in and said I was a cocaine addict. (Amanda)

Battered women's advocates reported similar behaviors by batterers. Focus group participants, for example, noted that for battered U.S. citizens who are women of color, particularly African-Americans and Latinas, false allegations of drug use are more likely to be believed by state actors than for white women, making this litigation abuse tactic particularly effective against them.
Manipulating the court process to avoid paying child support or to receive a reduction in child support

Women also described a number of ways that their ex-partners manipulated the court system to receive reduced child support orders. Many said their ex-partners lied about job status and/or income or hid assets. Others reported that their ex-partners moved from job to job, presumably in order to avoid child support orders, fought for custody when the women sought an increase in child support, or, similarly, fought for custody presumably in order to avoid paying child support. For example, Abby reported that her ex-partner "wouldn't disclose how much he was making. And when it was disclosed, that day he came in [to court] and said he was out of a job." As one attorney put it, "I think that, in a lot of these divorce cases where the fathers were fighting for custody, it was because they were trying to get some trade-off in some areas, such as reduction of child support." A number of women described that their ex-partners employed these tactics in apparent retaliation for the women's requests for increased child support or even to receive some child support.

In these women's cases, there appeared to be no meaningful vigilance on the part of the family courts to ensure that men's claims regarding their income and assets were accurate. Yet the accuracy of these claims is essential if children are to be supported by their parents to the best of their ability. Indeed, it is ultimately the children who suffer the most from these types of litigation abuse strategies. Holding these men accountable for their abuse of the system emerged from our findings as a major - and urgent - area for improvement in the family courts.

Using parallel actions in courts with different jurisdictions to gain an advantage

Some women talked about other ways that their ex-partners successfully manipulated the family court system to their advantage, including using their case in district court to their advantage in family court, and vice versa. Beth told us:

He's used criminal court in family court to his advantage, so he's told the family court, "Well, she's just trying to get custody because she's saying I'm abusive. She's using the abuse card." And in district court, he's saying, "Well, she's just getting this restraining order against me because there's an issue of custody." And as soon as he says that the court dismisses [the restraining order].

Jane reported that her ex-husband and his attorney accused her in family court of "trumping up" charges that he violated the restraining order she held against him - issued by the district court - so that she could get a "leg up" in the family court custody battle (both district courts and family courts can issue restraining orders).

One advocate with extensive experience working with batterers and as a guardian ad litem explained that in a typical scenario:

1. A batterer is charged with assault and battery or with violating a restraining order;
2. He tells the district court that he is in custody and visitation proceedings in the family court and that his ex-wife or girlfriend is using criminal proceedings to bolster her case in family court;
3. This strategy sometimes succeeds in convincing the district court to dismiss charges or to acquit the batterer; and
4. The batterer then uses the district court's acquittal or dismissal in family court to undermine his ex-wife's credibility in family court and to further undermine her ability to make safe custody and/or visitation arrangements for her children.
Some of the state actors we interviewed voiced concerns that, rather than an instrument to protect women from abuse, the 209A process has become a strategic pawn. One judge observed that the "very active fathers' rights community . . . has decided that[ protective orders] are a triumph tool of women to gain an advantage in court" and that this view of 209As as legal "tools," rather than as protective instruments, has begun to erode the purpose and effectiveness of abuse prevention orders - a result that ultimately harms battered women.

Other states have recognized that so-called mutual orders of protection, which are simultaneously granted protection orders for both parties, can also be used by batterers to undermine women's legal positions with respect to child custody and self-protection. In the Report of the New York Task Force on Women in the Courts, for example, study participants pointed out that mutual orders of protection have a variety of negative effects, including exonerating the batterer and perpetuating the abuse.180

The ability of batterers to play their district court cases and family court cases off each other to their advantage indicates, at a minimum, that there is substantial lack of communication between these two courts regarding cases that come before both. It also suggests that batterers are successfully playing into stereotypes and prejudices of state actors regarding domestic violence. Improved, streamlined communication between district and family courts is needed in order for partner abuse cases to be handled effectively. At the very least, state actors need to be cognizant of and respond appropriately to batterers' litigation strategies.

It therefore is clear from our findings that some batterers can manipulate the family court process to continue to victimize women in ways that endanger and may harm the children as well. It is equally apparent that part of the reason for their success is the failure of the family courts to identify and end the litigation abuse or to hold the abusers accountable for it.

Note: We did not specifically ask the state actors we interviewed about litigation abuse issues, and none mentioned them unprompted.

International standards
Our findings indicate that the Massachusetts family courts are failing to exercise due diligence when they allow batterers to manipulate the family court system in ways that harass, intimidate, and cause severe financial and emotional harm to women and children. The further failure of the courts to sanction batterers for these litigation abuse tactics effectively makes them complicit in the abuse and indicates that they have not fulfilled their obligation to exercise due diligence to prevent and punish such abuse. As stated in the U.N. Declaration on the Elimination of Violence against Women, governments have a responsibility to "ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions" (art. 4).

By allowing batterers to file multiple baseless and costly legal motions and make false allegations against their victims, the Massachusetts family courts also are violating women's human rights to equality in judicial proceedings as required by numerous human rights laws.181 The U.N. Convention on the Elimination of All Forms of Discrimination Against Women, for example, explicitly requires governments to take steps to ensure gender equality during legal proceedings by "establish[ing] legal protection of the rights of women on an equal basis with men and . . . ensur[ing] through competent national tribunals and other public institutions the effective protection of women against any act of discrimination" (art. 2).
V: ALLowing the BATTERER to CONTINUE
THE Abuse through the FAMILY COURTS

Similarly, the courts' complicity with batterers' litigation abuse tactics may also violate battered women's due process rights, primarily because it denies women a "fair and public hearing" in "full equality," as guaranteed by the Universal Declaration of Human Rights (art. 10). (Other due process issues are discussed in depth in Section IV).

The state must take these failures seriously because they render the courts at least partially complicit in any abuse of children that results from litigation abuse tactics. If such tactics contribute directly to batterers' getting custody of or unsupervised visitation with their children, and the children are physically, sexually or psychologically harmed as a result, the courts bear some responsibility for this harm.

Furthermore, when the Massachusetts family courts allow batterers to get away with lying in court to avoid paying child support, such as by not questioning or investigating the accuracy of batterers' income claims, they are violating children's economic human rights as guaranteed by the Universal Declaration of Human Rights (UDHR), the U.N. Convention on the Rights of the Child (CRC), and the U.N. International Covenant on Economic, Social and Cultural Rights (ICESCR):

States parties [Governments] shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child. (UDHR, art. 27)

The widest possible protection and assistance should be accorded to the family . . . particularly . . . while it is responsible for the care and education of dependent children. (ICESCR, art. 10)

Massachusetts standards

When a batterer files baseless legal motions in court against his victim, he abuses the court process and interferes with her freedom of speech. This tactic is very similar to the strategy used by large corporations who wield their economic and political power to bring meritless suits against individual whistleblowers, a tactic commonly referred to as a strategic lawsuit against public participation, or SLAPP. SLAPPs do great harm to the legal process by quashing individual rights, chilling public debate on important issues, and needlessly consuming court resources.

For that reason, Massachusetts, like many other states, has passed an anti-SLAPP statute. The precedent for using this law on behalf of victims of partner abuse exists in the case of Fabre v. Walton. In this case, the Massachusetts Supreme Judicial Court ruled that an alleged batterer's lawsuit to dismiss a woman's application for an abuse protection order would not be allowed to go forward without a "substantial basis" that the woman's partner abuse claim was "devoid of any reasonable factual support." Thus, the anti-SLAPP law can be used to stop batterers from filing harassing legal motions designed to silence women.

In addition, attorneys have an obligation under the Rules of Professional Conduct and the Massachusetts Rules of Civil Procedure and Domestic Procedure not to bring harassing or frivolous motions and other actions. Massachusetts law also punishes frivolous, insubstantial, or bad-faith appeals. Thus, state policy does not tolerate this abuse of the court process. When the family courts fail to identify and respond to litigation abuse, they are not adhering to this policy in partner abuse and child custody cases.
Conclusion to Section V

Our findings indicate that there are state actors - particularly judges - who are failing to identify, and thus are sanctioning, batterers' litigation abuse tactics. Judges have both a domestic and international legal obligation to prevent abuse of the court process. Their failure, in certain cases, to prevent this type of abuse amounts to a violation of women's human rights and makes the family courts complicit in the resulting financial, emotional, and other harm to women and children.

Perhaps worst of all, the success of these abuse tactics can erode a woman's stamina for sustaining the family court battle to keep herself and her children safe. As one attorney said, a batterer's abuse of the court process can result in "the gradual degradation of a woman's will to fight at all." The same attorney also pointed out that:

The court process itself is daunting and traumatic. In addition, the abuse of the court process by the abuser (bringing the woman into court on innumerable frivolous motions) can lead to emotional and financial trauma, including the loss of employment.

Part of the problem appears to be the influence of father's rights groups, which are reported to sometimes assert that mothers baselessly apply for restraining orders to get an advantage in custody proceedings, even though no research supports this position. Several women we interviewed said that their ex-partners were actively involved in such groups, and several advocates cited their influence as one of the major problems facing battered mothers in family court. One judge we interviewed referred to their strategies in the courtroom itself:

I think there is a very active father's rights community who have decided that protective orders and this issue of domestic violence ... they would say [are] a triumph tool of women to gain an advantage in a court. Those are very active groups, and they do some intimidating things ... they come and hang out in courtrooms in a group, they picket, and in general they mark the victim, that's what they do. They act like [the women] are cheaters and liars and that they seek agenda advantage.

In fact, research indicates that batterers are more likely to fight for custody of their children than non-battering fathers. As noted earlier, in Massachusetts, gender bias in favor of fathers in custody disputes has been documented by the state itself. The Supreme Judicial Court's gender bias report found that when fathers fight for custody of their children, they win sole or joint physical custody more than three times as often as mothers. This is not necessarily surprising. A well-known tactic of batterers is to use any available tool to control and harm their victims and to target their victims' vulnerabilities. When women leave their batterers, the family courts are the obvious tool for batterers to use to continue to control and harm them, largely because family court litigation puts children at the center of the battle.

The family courts' shortcomings in this area also re-emphasize our analysis of certain state actors' lack of understanding of post-separation partner abuse strategies, their failure to protect women and children from abuse (see Section I), and their bias against women (see Section II). Thus, reforms are needed to ensure that the family courts identify, penalize, and prevent these litigation abuse tactics.
Section VI: Failure to Respect the Economic Rights of Battered Women and Children

Problem
There are state actors in the Massachusetts family courts - particularly judges - who are negatively affecting battered women's economic well-being through their actions and failures to act. In some cases, this hinders women's abilities to provide for their children. Specific problems include:

- Judges' making unfair or unreasonable child support orders;
- Judges' failing to hold batterers accountable for nonpayment of child support;
- Judges' reducing child support orders to compensate for the cost of abuse-related services such as supervised visitation;
- Judges' allowing batterers' financially draining litigation abuse tactics, which cause women to miss work or to lose their jobs, among other problems; and
- The Commonwealth of Massachusetts' failing to provide and allocate sufficient resources for poor or pro se litigants.

Human rights violated
There are state actors in the Massachusetts family courts who are failing to respect battered mothers and their children's economic human rights to an adequate standard of living and continuous improvement of living conditions. These state actors are also failing to meet their human rights obligations to:

- Provide a standard of living adequate for children's development;
- Take all appropriate measures to secure economic support for the child from parents or others having financial responsibility for the child; and
- Ensure equal protection of the law and due process to battered women.

Case summary
Marsha told the BMTP that her husband had always threatened that if she tried to leave, she would be lucky to keep the shirt on her back, let alone retain custody of their two children. He was true to his word. Shortly after Marsha left him, he put everything they owned (including three health clubs, three homes, and a valuable piece of property) into stocks, bonds, and trust funds in his own name. Marsha's ex-partner then claimed to the judge that he was about to go bankrupt and, despite Marsha's assertions that this would not happen (and it did not), the judge reduced her child support. When Marsha pleaded with the judge to order her ex-partner to sell their boat instead, the judge refused. At the age of 45, Marsha lost everything she had owned and worked for: her home, job, business, insurance, retirement, and savings. Marsha's ex-husband later used her diminished financial position against her in custody threats, even though he was repeatedly in contempt of court for nonpayment of child support and refusing to carry health insurance for her and the children.

After they separated, Marsha's ex-husband escalated his mistreatment of their children. She said she felt as if she had left the battlefield but had to keep sending her children back in. In fact, Marsha lost custody of her daughter during an ex parte hearing in which her ex-husband fabricated a story that their son had threatened their daughter with a knife while in Marsha's care and that Marsha had failed to intervene. Marsha had to hire an attorney to go back to court to fight for custody of her daughter. She is now in her fifties and has been scraping by for nine years. All her savings have gone to lawyers. In her testimony at the BMTP's human rights tribunal, Marsha stated, "Over the years, all of my parenting, all of my efforts, and all of my love have
VI: FAILURE TO RESPECT THE ECONOMIC RIGHTS
OF BATTERED WOMEN AND CHILDREN

been undermined consistently. Through all of this the 'offender' goes unscathed. He has never been made to be accountable for anything. He has money and he has power and he feels invincible. I've been hurt badly, but even worse my children have been scarred for life. We should no longer allow one human being to terrorize another, and if the courts don't help us, where are we to turn?"

A. Overall economic hardship for battered mothers related to family court litigation

have been in court for eight years, and you know it has absolutely devastated us financially. (Patience)

[The family court litigation has] financially crippled me and, therefore, interfered with financial resources that should have gone to taking care of the kids. It put me in debt. I've had to file for bankruptcy twice. (Sonia)

Economic issues related to family court litigation emerged from our interviews as a major problem for battered mothers. A majority of the women we interviewed reported that they suffered financial hardship related to their family court ordeals to varying degrees. Some women expressed that they and their children had been "financially devastated" by their ex-partners and the custody and visitation litigation, while others described their economic circumstances in ways that made clear that they were experiencing hardship. Some said that they had spent tens or even hundreds of thousands of dollars on legal fees and court-related costs, and others said that they were hundreds of thousands of dollars in debt.

Moreover, many of these women began their family court litigation on substantially unequal playing fields with their ex-partners in terms of economic resources. The majority of women said that their ex-partners had incomes that were at least twice theirs, and in some cases four to six times greater. For some women, these factors conspired to prevent them from being able to hire an attorney at all or from being able to retain an attorney throughout the entire course of the litigation.

According to the women, their ex-partners fared much better than they did in terms of the economic impact of the litigation. Jane told the BMTP that "[t]he legal fees have been astronomical, and I have been in court at least once a month for the past almost two years on motions, and [my ex-partner] just doesn't seem fazed by the legal fees whatsoever." For many of these women, the financial hardships have led to significant changes in their lives and the lives of their children. Some have had to go on food stamps as a result of not getting child support that was due them or have missed work or lost their jobs because of multiple court dates. Others have had to move to neighborhoods with less successful schools or change their children's school in order to get affordable housing or to avoid school-related costs that they can no longer pay.

Like the battered women we interviewed, the advocates we contacted identified economic issues as a central problem for battered women in the family courts. When the lawyers, legal advocates, and service providers to battered women and children we surveyed were asked to name major problems facing battered women in the family courts, "financial hardship" was one of the most frequently provided answers. Economic issues were also at the top of the list for respondents when answering a question about the most harmful consequences to women and children of court-ordered custody and visitation arrangements with batterers.

B. Family court actions that compromise the economic well-being of battered mothers and their children

I had to pay $90 every two weeks for the [visitation] supervisor and to pay half her fees. I was the non-offending parent! (Gabby)

Many women reported to the BMTP that family court judges in particular failed to divide costs or assets equitably, ordered unfair or unreasonable levels of child support, failed to hold batterers accountable
VI: Failure to Respect the Economic Rights of Battered Women and Children

for their financially draining litigation abuse tactics, and/or failed to penalize batterers for failure to pay child support.196

A prominent concern among women was that, even though the need for supervised visitation or a guardian ad litem appointment arose because of their ex-partner's abusive behavior, the court nevertheless ordered the women to pay a portion of the costs (often as much as 50 percent). For example, in Beth's case, her ex-husband's income was more than five times as much as hers, yet the court required her to pay half the cost of the parent monitor, who was to coordinate his visits with their daughter. The probate probation officer's approach to these issues is reflected in the comment Beth said she made: "You can't have your cake and eat it too. You can't expect and want supervised visitation and then not be willing to pay for part of it."

Some women said that judges reduced the amount ordered for child support to compensate for the costs of supervised visitation, an arrangement that, in effect, makes children pay for the cost of supervised visits with a man who abused them and/or their mothers. A number of women also reported that state actors blamed them for the reduction in child support. For example, Daria said that although she was certain that the judge ordered child support below the guidelines because visitation costs were deducted from it, the judge wrote in the findings that it was because the "mother is underemployed." As Daria said, "[The judge] blamed me for the lower child support that included me paying for the visits for the abusive partner." Sonia also reported that a lower level of child support was ordered for one of her children because the guardian ad litem falsely portrayed her as choosing not to work in order to drain her ex-partner financially.

Many women described how judges made unfair or unreasonable child support orders and sometimes failed to order child support at all. This failure often contributed to the women's overall diminished financial position following the separation from her abuser. In one case, Felicia knew that her ex-partner was working under the table, but he claimed in court that he was not working at all. The result was that, over time, her child support was reduced from $600 a week to $100 a week. In another case, Cassie told the BMTP that a judge in her case let her ex-husband get away with lying about his income, which resulted in his receiving an unreasonably low child support order.

The judge in Jocelyn's case refused to order her ex-partner to pay any child support because he was not reporting any income, even though he was paying for an attorney and was paying house bills. Jocelyn then asked the judge to garnish wages from her ex-partner's worker's compensation; eventually, the judge ordered $40 in child support to be taken out of his worker's compensation checks. In Cecilia's case, she said that the judge ordered her ex-partner to pay an amount of child support that was below the child support guidelines without offering any explanation for why she did so.

Some women noted that judges simply don't understand the harshness of many battered mothers' economic circumstances, including the impact on them of receiving low (or no) child support. In the words of two women we interviewed:

*The judge knew I was on food stamps. He knew I was on [public assistance]. He knew that the kids and I were on Mass Health [public health insurance]. So he knew we had no money and still he didn't order Tim to pay me child support. (Jessica)*

*I don't think they [the judges] realize what this does to families. I have to buy food, whether I get the money or not. I have to heat the house in winter whether I get the money or not. (Hilda)*

Compounding the problems highlighted above is the fact that even when the family courts ordered women's ex-partners to pay child support (no matter what the amount), almost half reported that their ex-partners either failed to pay child support or paid it inconsistently.197 These women said that their ex-partners rarely suffered any consequences in family court for failing to pay child support. They also relayed examples of
how their children directly suffered from their father's failure to provide them with sufficient economic support. The following quotations echo those of many women who gave such testimony to the BMTP:

I remember my son having a 103-degree fever one night and having to get to the pediatrician, and I didn't have a dime on me 'cause he wasn't paying any child support. (June)

He just totally wiped the kids and I out of everything and he was giving us no money. Don't forget that. He was giving not one penny for child support. So he set us way back. (Jessica)

C. Family court actions (or failures to act) that allow batterers to use the courts to drain women financially

As discussed in detail in Section V of this report, our findings indicate that batterers are often adept at manipulating the family court system to their advantage. This manipulation includes filing multiple, harassing motions and lying about income and assets in order to receive lower child support orders (among others). The family court's complicity with - or ignorance of - these tactics, and judges' willingness to reduce child support orders to compensate for visitation costs, can contribute in significant ways to the financial struggles and hardship suffered by battered mothers and their children.

D. Battered women missing work or losing jobs because of court dates

Many women whose ex-partners brought them into family court on multiple motions often missed work regularly, lost their jobs as a result, then took low-paying jobs that were beneath their skill levels or simply had to stop working. When these problems are combined with the high costs of litigation (e.g., attorney fees, transportation, expert testimony, and child care), it is no wonder that so many women told the BMTP that they were in dire financial straits.

I mean, I am constantly struggling because it's constantly missing work for this and missing work for that, and you know, financially, I'm ruined. (Karen)

I was self-employed, and actually what happened was that I became so psychologically and emotionally drained by the whole legal thing that I became unable to work. (Jessica)

Not surprisingly, the impact of the family court litigation on women's ability to work also affects their capacity to provide their children with the economic resources they need or otherwise would have had access to. Charlotte lamented that she is now in a job where she is getting paid far less than what she could be paid in other jobs for which she is professionally qualified, but her family court litigation prevents her from holding down a job that would require her to be at work on a regular basis. She pointed out that she could be providing a more stable life for her son if her situation were different. Gabby said that the repeated court dates in her case have hindered her ability to sustain full-time employment and to move forward in her career. Another woman, Janice, told the BMTP that because she was in court so frequently, she usually didn't tell her workplace where she was - she felt certain she would be fired if they knew.

E. Battered women's difficulty in finding affordable and quality legal representation

The negative financial and emotional impact on battered mothers of their family court litigation also means that they are often unable to pursue their cases as effectively as they need to in order to keep themselves and their children safe. The vast majority of women said they were unable to take certain actions related to the litigation - such as hire a lawyer, appeal their cases, and hire expert witnesses - because of the expense.
VI: FAILURE TO RESPECT THE ECONOMIC RIGHTS OF BATTERED WOMEN AND CHILDREN

A majority of the women we interviewed said that they were unable to afford a lawyer at all or were unable to afford one for the entirety of the litigation (in contrast to their male ex-partners). The following statements from women are illustrative:

I think that if I would’ve been able to pay, I would have never lost my children. The judge wouldn’t have gotten away with all the things he did because he would’ve known that I had a representative to take care of my rights. (Janice)

I couldn’t fight anymore. couldn’t continue because I just didn’t have any money left. (Abby)

There were outright lies in the guardian ad litem report. There were distortions, there were untruths, there were so many things that, probably, if I had had an attorney, would never have been allowed. (Sonia)

The inability to hire a lawyer has an obvious negative impact on battered mothers' cases, many of whom are then forced to represent themselves in court. The lawyers, legal advocates, and service providers to battered women and children who responded to our survey offered a number of insights into how state actors' treatment of unrepresented battered women can affect their family court cases. For example, as discussed in Section IV (regarding due process), several of these advocates reported that during the mediation process, probate probation officers often place pressure on women to compromise, especially those who are not represented by an attorney. As a result, battered women often enter into agreements that do not protect themselves and their children. A battered woman may, for example, get pressured into agreeing to give the batterer unsupervised visitation with the children, or she may not receive adequate assistance with filing restraining orders. As also noted in Section IV, one advocate observed that battered women are also discriminated against if they are not represented by an attorney because they often are not aware of or told about their legal rights or they may feel intimidated.

Less obvious is the impact on women of not being able to hire quality lawyers; that is, those with expertise in partner abuse and child abuse. Indeed, the majority of women reported that at some point in their court cases, they had attorneys who represented or advised them in harmful or ineffective ways.

If I had had a lawyer who deals with domestic violence, things could have been different than now. I think they would have understood me and protected the children more, and not agreed to joint custody, joint legal custody. I mean, there was so much history of abuse. (Patience)

At the beginning of my divorce, I couldn’t afford anything, and I got a court-appointed lawyer from the Bar Association who was just out of school, and they didn’t really know what they were doing. Basically at the beginning, I was left out in the cold. (Fran)

Advocates also identified the lack of quality and affordable legal representation for battered mothers as a major problem they face in family court. As one legal advocate at a battered women's program noted, "Many women are not poor enough to qualify for legal services, but too poor to afford a private attorney."

Advocates drew particular attention to the lack of competent attorneys trained in handling partner abuse cases as well as a general lack of good communication between clients and their attorneys. In addition, advocates said that attorneys have a tendency to push women into inappropriate arrangements with their batterers or even to pressure women into "giving up." The lack of access to affordable and quality representation for many battered women hinders their ability to prevail in their family court cases. It also implicates their due process rights and is a clear area where reform is needed, both from our elected officials and the private bar.

Note: State actors were not asked directly about the economic aspects of domestic violence and custody cases. We therefore do not have significant findings from our state actor interviews with regard to these issues.
VI: FAILURE TO RESPECT THE ECONOMIC RIGHTS OF BATTERED WOMEN AND CHILDREN

Failure to Respect Women's and Children's Economic Rights Is a Human Rights Violation

International standards

As discussed at the beginning of this report, government responsibility for the human rights of people within its jurisdiction can be summarized under the broad categories of "respect, protect, fulfill." These obligations are both negative and affirmative. That is, governments must refrain from directly violating the human rights of those within their jurisdictions and also take positive steps to respect, protect, and fulfill their rights. In the cases discussed in this section, the Massachusetts family courts arguably have an obligation to refrain from actions that economically harm battered women, and they also have an obligation to ensure that battered women and their children have access to the resources they need in order to realize their economic human rights.

International human rights laws and standards, most notably the Universal Declaration of Human Rights and the U.N. International Covenant on Economic, Social and Cultural Rights, in fact require governments to take appropriate steps to ensure that people within their jurisdictions, including children, have access to the resources necessary to achieve an "adequate standard of living . . . and the continuous improvement of living conditions." In addition, the Universal Declaration of Human Rights, the U.N. International Covenant on Economic, Social and Cultural Rights, and the U.N. Convention on the Rights of the Child call for special economic protections for children and families. The Universal Declaration of Human Rights states that "motherhood and childhood are entitled to special care and assistance" (art. 25), and the U.N. International Covenant on Economic, Social and Cultural Rights maintains that "the widest possible protection and assistance should be accorded to the family . . . particularly . . . while it is responsible for the care and education of dependent children" (art. 10).

The U.N. Convention on the Rights of the Child (CRC) in particular obligates governments to provide "a standard of living adequate for the child's physical, mental, spiritual, moral and social development" (art. 27). This convention also explicitly recognizes the responsibility of governments to ensure that children are provided with adequate child support:

\[\text{[Governments] shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child. (CRC, art. 27)}\]

Thus, when the Massachusetts family courts allow batterers to destroy women financially through years of litigation abuse tactics, which in turn hinders women's ability to hire attorneys, maintain employment, and care adequately for their children, they fail to respect women's and children's economic human rights (as well as women's rights to due process and equal protection of the law).

Moreover, in a number of examples described in this section, the state is simultaneously promoting children's rights to freedom from violence (by ordering supervised visits) and compromising children's economic rights (by reducing the amount ordered for child support). To privilege one human right at the expense of another constitutes, at a minimum, a failure to respect the compromised right. Thus, in these instances, the family courts are failing to respect children's right to a standard of living adequate for their development and are also failing to meet their human rights obligation to secure maintenance from the parents.

The state is failing to respect battered mothers' economic rights for similar reasons because the courts in these instances are forcing women to choose between their children's safety (via supervised visits) and the part of their livelihood that comes from child support (which, of course, goes to support the children).
Finally, the failure of Massachusetts to make lawyers accessible to all battered women also constitutes a breach of the state's duty to make available the resources needed for battered mothers to realize their human rights.

**Massachusetts standards**

The Massachusetts child support law\(^{205}\) states that family courts should determine the amount of child support using the "best interests of the child" standard as their guide. In particular, the law says that the court shall apply the Child Support Guidelines promulgated by the Chief Justice for Administration and Management, and that there shall be a rebuttable presumption that the guideline amount is appropriate. If a party overcomes this presumption, the court can depart from the guidelines but must make specific written findings of fact explaining why the guideline amount would be "unjust or inappropriate," and also showing that the revised amount is consistent with the "best interests of the child." The Child Support Guidelines were created in part to "encourage[] joint parental responsibility for child support in proportion to, or as a percentage of, income and to provide the standard of living the child would have enjoyed had the family been intact."\(^{206}\)

The Massachusetts Legislature and the Chief Justice for Administration and Management presumably did not intend for batterers to manipulate the system in ways that would result in lower child support orders than they are capable of paying. Nonetheless, our findings reveal a pattern of family court behavior that allows batterers to avoid their financial responsibilities to their children, for example by neglecting to verify batterers' self-reports of income level and job status, reducing the amount ordered for child support to compensate for the cost of supervised visitation, and failing to hold batterers accountable for non-payment of child support. By allowing themselves to be manipulated in this way by batterers, and by permitting batterers to abuse women financially through endless litigation, the family courts severely compromise battered women's abilities to support themselves and their children financially and, consequently, fail to respect women's and children's economic human rights.

**Conclusion to Section VI**

The downward financial spiral in which many of the women we interviewed now find themselves can be traced in part to certain family court judges' actions and failures, and therefore amount to a failure of the state to respect battered women's economic rights. The failure of the Commonwealth to make attorneys available and accessible to all battered women in the family courts marks a particular failure to meet this obligation. Moreover, a battered mother's financial inability to hire an attorney, for example, may also compromise her due process and equal protection rights because lack of legal representation may restrict her ability to pursue her family court cases to the same extent that her ex-partner will. It is important to emphasize that it is not only poor women who cannot afford to hire an attorney. Many working women who do not qualify for legal aid still may not be able to afford an attorney, and these women fall through the cracks.

As with all of the issues spotlighted throughout this report, these economic factors contribute to family court outcomes that are harmful to women and children in both the short and long term. Family economic hardships may be especially damaging to children who are traumatized by exposure to domestic violence and therefore in great need of access to resources to support their recovery. Urgent reforms thus are needed to ensure the economic well-being of women and children in family court litigation, including by expanding their access to affordable and quality legal representation.
The testimonies that we received from battered mothers show remarkably similar experiences, despite the diversity of the women in our sample. Women's reports of their mistreatment in the family courts were validated by focus group participants and survey respondents and, in some instances, by interviews with state actors. We are left with no doubt that human rights violations are being committed by both female and male state actors in the family court system. Instead of protecting battered women and children from abuse, the family courts sometimes facilitate it. Instead of promoting healthy and safe parenting, the family courts sometimes reward abusive parents and punish protective parents.

The Commonwealth is obligated under human rights laws and principles to remedy the problems identified in this report. The state has an obligation, for example, to:

- Protect battered women and children from abuse;
- Act in the best interests of the child;
- Ensure that battered women are not discriminated against in the courts;
- Ensure that battered women have access to the economic resources they need to build lives free from violence for themselves and their children;
- Refrain from harming women and children economically;
- Uphold battered mothers' due process rights in family court;
- Punish perpetrators; and
- Treat all women with dignity and respect.

The stakes for Massachusetts families and society at large are high and call for urgent action by the state. For example, the long-term negative impact on battered mothers and their children both of the abuse and of family court litigation appears to be substantial. In our findings, for instance, women reported that their ex-partners succeeded over time in destroying or seriously compromising the mother-child bond. Indeed, three-quarters of the women we interviewed said that their ex-partners had damaged their relationships with their children. Of equal, if not greater, concern, over half of the women reported that their children were mimicking their ex-partners' violent or aggressive behaviors, either during the relationship or after separation. And about half of the women reported that since separation, their children have shown symptoms of extreme stress and anxiety or developed psychological or emotional problems as a result of the ongoing contact with their fathers.

My kids are both involved in the courts now. Everything that they say will happen to kids who grow up in homes of domestic violence has happened. They've become abusive to me. I've had to file a restraining order against Luke for the same kind of abusive behavior that his father perpetrated on me.

(Sonia)

Our findings also indicate that the family courts' mishandling of these cases is creating a crisis of public confidence in the courts. For battered mothers, a lack of confidence in the family courts can mean that they - and their children - remain with the batterer. This crisis may be exacerbated for battered women from marginalized populations such as women of color, immigrant/refugee women, lesbians, bisexual women, and transgendered people, who may already mistrust the government and the justice system.

Without significant reform of the family courts, battered mothers' and children's lives will continue to be damaged by abuse and financial hardship, and the costs to society will continue to mount.
We asked all those whom we interviewed and surveyed for their recommendations on how to improve the family courts' handling of partner abuse and child custody cases. The primary areas for reform that they identified can be grouped into four major categories, each of which is briefly discussed:

- Training for state actors on (at minimum) partner abuse and child abuse;
- Reform of the guardian ad litem system;
- Increased economic and legal resources for battered women and their children; and
- Accountability of state actors in the family court system.

Members of every category of people interviewed by the BMTP (including some state actors) said that state actors need training on partner abuse and child abuse, including in the post-separation context. Survivors and advocates specifically recommended that such training be mandatory, of considerable length, and conducted by advocates. Regarding content, the people we interviewed and surveyed stated that training should address the ways that batterers manipulate the court process and include components on cultural sensitivity as well as on issues affecting minority and gay, lesbian, bisexual, and transgendered populations. Others said that lethality assessments need to be formalized and focused on children's best interests rather than on parents' rights, and that a benchbook is needed on partner abuse protocols for family court judges. Family court judges said that they could benefit in particular from better data on partner abuse, child abuse, and related issues.

Members of nearly every group were adamant that the guardian ad litem system needs to be overhauled or at least substantially reformed. A number of survivors and advocates specifically suggested that the current guardian ad litem system be replaced by multi-disciplinary evaluation teams. Still others said that all guardians ad litem should receive mandatory partner abuse training and that previous professional training or credentials should not suffice as qualifications to serve as a guardian ad litem on partner abuse and custody cases. Several guardians ad litem themselves said that better and more professional evaluations are needed.

Many people who spoke with the BMTP also acknowledged the need for increased economic resources for battered mothers who have left their abusers, both in terms of support services and legal representation. And many also underscored the need for increased accountability of state actors and perpetrators in these cases. Some survivors identified the need for an ongoing court-monitoring project. In addition, some judges said that they need more and better resources with which to conduct investigations and more time to process cases, and that the court environment itself needs to be made less hostile to battered mothers.

What follows is a detailed series of practical reforms of the family court system proposed by the BMTP, all of which are rooted in our documentation findings.
The Commonwealth of Massachusetts is under a clear human rights obligation to take positive steps to remedy the human rights violations against battered mothers and their children documented in this report. The ultimate goal of our human rights documentation efforts is to propose detailed, practical reforms of the family court system based on the specific knowledge gained of problems in the system through our interviews with battered women, advocates, and family court state actors. Over the long term, the BMTP plans to continue to inform stakeholders in the court process and community about our findings and to help organize efforts to implement our recommendations for change.

The BMTP acknowledges that the Commonwealth, as well as the women's and children's advocacy communities, already have taken important steps to address issues related to domestic violence and child custody cases. We also recognize that there are no easy fixes, and that many of the reforms we propose will require additional funds or a reallocation of existing funds.

That said, there is an urgent need for the Commonwealth to act swiftly and thoroughly to remedy the problems identified in this report. At stake are the lives and well-being of countless women and children, as well as public confidence in the justice system itself. In addition, it is clear that the Commonwealth needs to sustain and expand its current statewide efforts on domestic violence to address effectively issues around custody and visitation; indeed, this is an essential part of the executive branch's leadership and responsibility.

The BMTP supports parents' rights to involvement in their children's lives. Our proposed reforms seek to ensure, however, that child custody and visitation arrangements promote healthy and safe parenting. We acknowledge that concerns about false or exaggerated claims of abuse exist, just as they do with regard to false denials of abuse. All of our proposed reforms therefore are designed to ensure that investigations, evaluations, and court orders in domestic violence and child custody cases are thorough and unbiased so that both false denials of abuse and false allegations of abuse are identified and responded to appropriately.

**Recommendations to the Massachusetts Probate and Family Court**

### A. Reform of the guardian ad litem system

**Team approach**

In cases involving allegations of domestic violence and/or child abuse, we recommend that multi-disciplinary teams, rather than a single guardian ad litem, conduct custody investigations and evaluations. Members of these "custody evaluation teams" should have, at minimum, expertise in partner abuse/battering, child protection/abuse, and mental health, as well as strong investigative skills. In addition, where needed because of specific concerns in the case, others should be brought in either as team members or as consultants, such as parenting specialists with domestic violence expertise, substance abuse professionals, specialists on children with special needs, education specialists, and the attorney/advocate for the children.

*Note:* If the court orders a psychological evaluation of any of the parties, a separate person not on the team should conduct the evaluation.

**Team practice standards**

We recommend that any practice standards developed by the Guardian ad Litem Working Group of the Transition Subcommittee of the Governor's Commission on Domestic Violence for such custody investigations and evaluations be mandatory and that they include, inter alia, the following:
Recommendations for Change

Required elements of a proper investigation, including a timeline, sources, and issues to investigate; issues of impartiality and ethics; proper treatment of those being investigated; thorough inquiries into all relevant sources of evidence (including witnesses and documents); proper documentation of findings (methods). The standards should also reflect the goal of avoiding duplicative efforts;

Detailed regulations regarding the appropriate uses of psychological testing and evaluation, including barring the use of psychological evaluations except when serious mental health concerns are present. Judges should make written findings when they order psychological evaluations;

Protocols for interviewing children and interpreting their statements in cases where there has been partner and/or child abuse. This should include tape recording of all interviews with children, to be reviewed by an independent arbiter in the event of questions about the accuracy of statements attributed to the child or about the use of inappropriate leading questions. The children's wishes must be articulated in the report, and if the custody evaluation team's recommendations are contrary to the children's wishes, the team must document its rationale in the report;

Note: Not all children should be interviewed in any given case. Currently, judges have discretion regarding whether to order a child under age 14 to be interviewed.

Detailed regulations regarding the appropriate uses of psychological testing and evaluation, including barring the use of psychological evaluations except when serious mental health concerns are present. Judges should make written findings when they order psychological evaluations;

Standards that clearly require the evaluators to present all of the evidence they collect, not just the evidence supporting their conclusions or recommendations. (These standards should create an affirmative duty similar to a criminal prosecutor's affirmative duty to turn all exculpatory evidence over to the defense); and

Clear standards for how to treat parties, i.e., all parties and their attorneys should be treated with dignity and respect at all times.

Enforcement of practice standards

We call on the Probate and Family Court to ensure that these practice standards are linked to clear and enforceable sanctions for those who fail to adhere to them. Specifically, we recommend the creation of a Commission on Custody Investigator and Evaluator Conduct that has meaningful powers of investigation and sanctioning. A majority of the members should not themselves be guardians ad litem, and the commission should include domestic violence and child protection professionals and survivors as well as be representative of diverse populations throughout the Commonwealth. This commission could oversee training of custody evaluation teams, oversee adherence to practice standards for the teams, create assessment protocols and instruments for evaluating situations involving domestic violence and custody disputes, and undertake the responsibility of conducting disciplinary hearings for team members who do not meet their training requirements or fail to follow the standards.

As the Administrative Office of the Trial Court (AOTC) keeps files on complaints against individual guardians ad litem, we urge the AOTC to make recommendations to the Chief Justice for Administration and Management that those guardians ad litem with substantive and frequent complaints against them be immediately removed from the official list referenced in Supreme Judicial Court Rule 1:07.
Custody evaluation reports

We suggest that the required elements of the team’s evaluation report should be listed on an official court form that is submitted to the court with every report. The required elements should include, inter alia:

1. A listing of all allegations of abuse made by the party claiming abuse and signed by him or her;
2. A listing of all the parties interviewed and their relationships to the litigants;
3. Findings regarding the abuse suffered by the victim;
4. Findings regarding abuse suffered by children;
5. A listing of evidence that led to the findings;
6. A statement of reasons for custody and visitation recommendations;
7. A statement of alternative recommendations; and
8. A statement of the child’s wishes.

We call on the Probate and Family Court to ensure that all custody evaluation reports produced by these teams be provided directly to both parents/parties, for them to retain and share with whomever they wish. In addition, the court should prohibit the impounding of such reports, except for specific pages to be impounded by explicit judicial order with written findings explaining why those pages are being impounded.

The court should expressly grant parties the opportunity to submit written responses, corrections, and clarifications to this report, and to any other court-ordered evaluations, and should attach those responses to the report as part of the permanent record. Guardians ad litem should be required to inform the parties of their right to submit responses to the report at the outset of their investigation or evaluation.

The court system should develop forms to facilitate the custody evaluation report process. These forms should be used in every case, but the forms should also explicitly state that completed forms do not, by themselves, create the presumption that the report is complete or legally acceptable.

Parties’ rights

The court should create a document delineating parties’ rights upon appointment of a custody evaluation team that specifically addresses the evaluation process, including their right to a fair, comprehensive, and unbiased investigation; their right to have an attorney present at all meetings with the evaluators; their right not to engage in any mediations brokered by the evaluators; and their right to be treated with dignity and respect by the evaluators. This document should be given to the parties when the custody evaluation team is assigned to the case, and it should be signed by the parties when they have reviewed its provisions and clearly understood its contents. It also should be distributed to all custody investigation/evaluation team members, judges, and lawyers practicing in the family courts.

Certification

We urge the Probate and Family Court to create a certification program for custody evaluation teams and to appoint only certified custody evaluation teams. No specific educational background, degree, or license should be required for participants in this program, although backgrounds in domestic violence, child protection, substance abuse, parent education, mental health, or probation should be considered valuable and weighed accordingly. Backgrounds in relevant fields may be demonstrated by documented coursework, clinical work, work at a community-based battered women’s or children’s organization, a certified batterer intervention program, and so on.

Currently, in order to be on the approved guardian ad litem list used by the family courts, a guardian ad litem investigator must be a professional licensed by a board, such as an attorney or a social worker. Only licensed mental health professionals can conduct psychological evaluations. However, these standards do not require, and therefore do not ensure, that guardians ad litem have training or expertise in domestic violence or child abuse.
The court should require anyone working, or applying to work, as a custody evaluation team member to have a background check, including a criminal record check and a reference check, to ensure that he or she does not have a history of perpetrating domestic violence or child abuse.

**Fee structure**

The court should create a sliding-fee scale for the private payment of custody evaluation teams and establish a blind fund into which payments are made. Team members would bill this fund instead of the litigants (see recommendations to the Legislature for details).

The court should expand use of Interest on Lawyers’ Trust Accounts (IOLTA) funds to pay for custody evaluator teams/guardian ad litem services in cases of financial hardship. Until such time as this reform can be implemented, judges who are ordering parties to pay for a guardian ad litem evaluation, or for any other court-ordered evaluation, should specify a maximum allowable hourly rate and a maximum total fee that the evaluator can charge.

**Note:** In the event that the current guardian ad litem system is not replaced by a multi-disciplinary team model, the BMTP proposes that all of the above recommendations for improving the guardian ad litem system be implemented with regard to individual guardians ad litem.

### B. Training for family court personnel

In making these recommendations, we recognize that the GAL Working Group of the Transition Subcommittee of the Governor’s Commission on Domestic Violence has already developed suggested training guidelines for guardians ad litem (to be made public in 2002 or 2003). Our recommendations are intended to support and enhance that work.

We call on the Probate and Family Court to require frequent, mandatory training on partner and child abuse for all family court personnel, including specific sections on post-separation issues and batterer tactics in court ("litigation abuse"). We recommend that this training be attended by all judges, regardless of the length of their tenure on the bench, as well as by probate probation officers, clerks, and guardians ad litem (including custody evaluation team members). If possible, all attorneys practicing in the family courts should receive this training as well.

Such training should be of substantial length and include, inter alia, the following:

- Training on relevant laws, especially the Presumption of Custody Law (Mass. Gen. Laws ch.208, § 31A), and proper protocols for handling custody and visitation where there are allegations of partner abuse and/or child abuse, including as outlined in the Guidelines for Judicial Practice in Abuse Prevention Proceedings;
- Training on how to assess and define partner abuse, using primarily the Guidelines for Judicial Practice (§ 12:01 commentary) and the Presumption of Custody Law;
- Training on the elements of conducting a proper investigation, including how to use clinical assessments as part of the investigation without over-relying on them;
- Information based on the latest available research about the connections between partner abuse and child abuse, including child sexual abuse, and the connections between pre-separation abuse and post-separation abuse;
- Information to counter the myth that false or exaggerated allegations of domestic violence and child sexual abuse are common in custody and visitation litigation; and
- Information and perspectives about bias on the basis of gender, race, ethnicity, socioeconomic status, sexual orientation, and other distinctions.
We urge the Chief Justice of the Probate and Family Court to use his or her power to sanction judges who fail to complete this training, including by requiring them to participate in a judicial enhancement program (in accordance with Mass. Gen. Laws ch. 211B, § 10, xv). 212

C. Practice standards for judges

Standards for handling cases involving allegations of partner and/or child abuse

We call on all Probate and Family Court judges to adhere to the Guidelines for Judicial Practice and to apply the Massachusetts Presumption of Custody Law (Mass. Gen. Laws ch. 208, § 31A) that is also outlined in sections 12:02 and 12:05A of the Guidelines (regardless of whether a party invokes the law).

Application of the Presumption of Custody Law should include taking the precautions outlined in the law for ordering "visitation options that maximize the safety and well-being of the child and the safety of the abused parent." We recommend that visitation plans avoid all contact between batterers and victim-survivors, and that judges appoint only professionals to supervise visits in these cases, and not friends or relatives, because of the inherent conflict of interest. Furthermore, the supervision must be vigilant, and the supervisor should be trained in domestic violence and child abuse issues. The protective parent should be encouraged to make an immediate report directly to the judge if he or she has reason to believe that the supervision is not vigilant and impartial, upon receipt of which the court would respond swiftly and effectively.

We recommend that judges order batterers to pay the costs of custody evaluators and supervised visits, without a reduction in child support. No portion of these costs should be charged to the victim-survivor, especially in cases where a significant economic disparity exists between the partners. Child support should not be compromised in any way by such costs. Further, courts should greatly expand the practice (rarely used today) of ordering batterers to pay for all or part of the victim's legal fees.

We recommend that judges apply an appropriate standard of proof (e.g., preponderance of the evidence) for evaluating the truthfulness of parties' allegations of both abuse and denials of abuse. The application of this standard should be included in all written findings.

We urge judges to verify the financial/income information provided by non-custodial parents, especially when that parent is seeking a decrease in child support or the custodial parent is seeking an increase.

We call on judges to ensure that their child support orders are enforced and to sanction those who fail to comply. The family courts should coordinate more effectively with the Child Support Enforcement Unit of the Department of Revenue on these matters.

We call on judges to provide all litigants with sufficient time to express themselves fully in court, even when they are represented by an attorney (in accordance with the Code of Judicial Conduct).

We call on judges to treat all litigants and their attorneys with dignity and respect (in accordance with the Code of Judicial Conduct).

We recommend that pre-trial conferences include all relevant parties, including the judge, attorneys for all parties, assigned custody evaluation team/guardian ad litem, assigned probate probation officer, assigned Department of Social Services representative, and any experts who were utilized by the parties or the judge.

Note: The purpose of this conference would be for the judge to hear recommendations from all people involved in the case and to evaluate those recommendations in an efficient and timely fashion. Such a conference would also minimize ex parte communications between various individuals.
**Recommendations for Change**

### Enforcement of standards

We call on the Chief Justice of the Probate and Family Court to discipline any judges who fail to adhere to the Guidelines for Judicial Practice, particularly where they pertain to custody and visitation (in accordance with Mass. Gen. Laws ch. 211B, § 10, xv).

We call on the Chief Justice of the Probate and Family Court to require any judges who have failed to adhere to the Code of Judicial Conduct or the Guidelines for Judicial Practice to participate in a judicial enhancement program (in accordance with Mass. Gen. Laws ch. 211B, § 10, xv).

We call on the Chief Justice of the Probate and Family Court to transfer cases from one court to another if there is evidence that a particular judge is unable to hear a case in an unbiased and fair manner (in accordance with Mass. Gen. Laws ch. 211B, § 10, iv).²¹³

We call on the Chief Justice of the Probate and Family Court to disseminate information to all litigants, attorneys practicing in the family courts, the advocacy community, and court personnel about how to file a complaint with his or her office against a particular judge. This information should be posted prominently and made available (in several languages) in every family court.

We recommend that the Commission on Judicial Conduct should have expanded powers to investigate and respond to complaints about judges. It should also have the resources to obtain tapes of court hearings in cases where the alleged victim is unable to pay for them, similar to the appellate process that allows waivers of fees in certain circumstances.

### Practice standards for probate probation officers

#### Standards for handling cases involving allegations of partner and/or child abuse

We call on all probate probation officers to adhere to section 12:05 of the Guidelines for Judicial Practice, which states that they cannot conduct face-to-face dispute intervention or require parties to mediate where there is an active restraining order in effect, and which states that they should ask whether a restraining order is in effect at the outset of every dispute intervention.

We call on the Administrative Office of the Trial Court to reform section 12:05 of the Guidelines for Judicial Practice to forbid any mediation or face-to-face dispute intervention even if the victim agrees to it (to avoid any possible coercion) and even in cases where there is no active restraining order but one party alleges partner abuse.

#### Enforcement of standards

We call on the Commissioner of Probation to discipline those probate probation officers who have failed to adhere to the Guidelines for Judicial Practice by conducting face-to-face dispute intervention or requiring parties to mediate where there is an active restraining order in effect. We also call on judges and chief probation officers in every court to initiate disciplinary proceedings against probate probation officers when litigants bring complaints about forced mediation or face-to-face dispute intervention to their attention. (See section 1600 of the Policy and Procedure Manual of the Office of the Massachusetts Commissioner of Probation)

We urge the Commissioner of Probation to disseminate information to all litigants, attorneys practicing in the family courts, the advocacy community, and court personnel about how to file a complaint with his or her office against a particular probate probation officer. This information should be posted prominently and made available (in several languages) in every family court.
Evaluations of practices

We urge the Probate and Family Court to create an independent Office of the Statewide Ombudsperson. This office would serve as a single point of contact for family court litigants who have complaints and ensure that these complaints are resolved to the satisfaction of litigants. At the very least, the ombudsperson’s office should serve as a centralized location for the receipt and resolution of all complaints about the family courts. This ombudsperson would report to the Chief Justice for Administration and Management.

Following up on the Supreme Judicial Court’s benchmark studies on gender bias (1989) and racial and ethnic bias (1994), we recommend that there be an audit of every family court in Massachusetts every three to five years. This audit should include an evaluation of gender bias, racial and ethnic bias, sexual orientation bias, custody and visitation outcomes, and litigant satisfaction. The audit should be overseen by an independent commission or similar entity.

Supervised visitation

We call on the Commonwealth of Massachusetts to conduct a statewide supervised visitation needs assessment to quantify the demand for such services and to study the supervised visitation systems of other states in order to collect models for improving the system in Massachusetts (examples include Delaware, the District of Columbia, Florida, South Dakota, and Vermont).

We recommend that the state increase the number and quality of supervised visitation centers as needed, based on the findings of the needs assessment and study.

We recommend that the Department of Revenue work with the courts and the Department of Social Services in utilizing federal Access and Visitation Grant funds to support supervised visitation services. At least some portion of these funds should finance supervised visitation for battered mothers who are in financial need.

Administration/court records

We call on the court system to collect more detailed annual data about divorce proceedings. At a minimum, these data should include:

The number of contested and uncontested divorces initiated in and processed by the probate and family courts;
The number of cases (both contested and uncontested) that involved custody and visitation disputes;
The number of divorce cases and child custody/visitation disputes that involved allegations of domestic violence and/or child abuse;
The disposition of the various types of divorce and custody cases; and
The numbers of cases where guardians ad litem and/or expert entities and/or psychological evaluators were used and the types of recommendations they made to the court.

Public statement

We call on the Chief Justice of the Probate and Family Court to release a public statement acknowledging that problems still exist throughout the family court system in the handling of custody and visitation in cases where there has been partner abuse and/or child abuse, and expressing the commitment of his/her office to rectify the situation through serious and wide-ranging reforms.
Recommendations to the Massachusetts Legislature

A. Funding

We call on the Massachusetts Legislature to fund all of the above steps as needed and as elaborated upon below:

- Establish a sliding-fee scale for the private payment of custody evaluator teams and establish a special fund administered by the Probate and Family Court into which fees will be deposited by the parties and out of which custody evaluator teams/guardians ad litem will be paid. Under this structure, custody evaluation teams would bill the fund instead of litigants, thereby providing greater opportunity for oversight and neutrality since they would be paid by a neutral party;

- Provide greater funding for free legal services for children who have been exposed to batterers, including children whose mothers have left the batterer;

- Provide greater funding for free (or very low cost) legal services for battered women in custody and visitation litigation;

- Provide greater funding for court interpreters in the family courts for battered mothers whose first language is not English and ensure the interpreters’ impartiality and level of skill;

- Fund victim/witness advocates to assist battered women who are involved in custody, visitation, or child support litigation in family courts (not just for restraining orders, as is currently the case). Every family court should have at least one victim/witness advocate;

- Expand funding to the Commission on Judicial Conduct to enable it to investigate and respond to complaints about judges more effectively as well as to obtain tapes of court hearings in cases where the complainant is unable to pay for them;

- Fund battered women’s programs, especially legal advocacy and support groups, to provide services to battered women undergoing the family court process (i.e., to deal with post-separation issues);

- Fund improvements to court facilities so that the courts can quickly act to provide privacy and safety for battered women when they use court buildings. Under current conditions, the courts recognize the need to provide such safety measures, but improvements cannot be made until new courthouses replace old buildings; and

- Fund onsite child care in all courts.

B. Statutory reform

We call on the Massachusetts Legislature to take the following steps toward statutory reform:

- Mandate by law that all custody evaluators/guardians ad litem be trained in both partner abuse and child abuse issues. (For a model see Rule 1257.7 of the California Rules of Court, rule 1257.7);
Reform the Presumption of Custody Law in the following ways:

- Create a rebuttable presumption that a person who has perpetrated a pattern or serious incident of partner or child abuse should be required to have supervised visits with his or her children for at least one year post-separation;
- During this time, require the perpetrator to complete a state-certified program for batterers and show additional evidence of addressing seriously his or her battering problem;
- Require visitation to take place at a supervised visitation center; and
- Require batterers to pay for the costs of supervised visitation. Child support orders should not be lowered to compensate for the cost of supervised visitation.

In cases involving allegations of domestic violence, require family court judges to make written findings of fact regarding which parent has been the primary caretaker before making a custody determination, even in temporary orders. This "primary caretaker" standard should be incorporated as an explicit component of the "best interests of the child" standard that is currently in use;

In cases involving allegations of domestic violence, require family court judges to investigate and consider the alleged batterer's criminal record as a key factor in making custody and visitation decisions;

Require family court judges to use only state-certified batterer intervention programs when sending batterers or alleged batterers to counseling;

Make it more difficult for parties to use repetitive court dates for intimidation and control and to file baseless court motions; and

Mandate by law that all custody evaluators/guardians ad litem be trained in both partner abuse and child abuse issues. (For a model see Rule 1257.7 of the California Rules of Court, rule 1257.7).

Recommendations to Non-governmental Organizations and Institutions

A. Battered women's and/or children's organizations

We call on battered women's and children's organizations in Massachusetts to consider the following steps to help remedy the problems discussed in this report:

- Creation of human rights monitoring teams (consisting of survivors and advocates) to evaluate and document how individual family courts are handling domestic violence and child custody cases. These "court watches" can be managed by one central non-governmental organization capable of synthesizing the findings into public reports;

- Creation of an urgent action mobilization program that can respond immediately in cases where, for example, custody has just been awarded to a batterer (especially if there are allegations of child abuse) This program can include a letter-writing and call-in campaign to those judges and collaboration with the media;

- Provision of legal resources to battered women involved in custody and visitation litigation in the family courts. In particular, organizations can:
  - Collect information about lawyers who handle such cases particularly well or particularly poorly
  - Provide a list of qualified pro bono attorneys with experience in this field;
Recommendations for Change

- Provide a list of attorneys willing to give pro bono legal advice to pro se battered women;
- Provide legal advice and services to battered women engaged in family court litigation; and
- Give pro se battered women written resources about how the family court process works and put them in touch with the pro se coordinator at the Administrative Office of the Trial Court.

Assistance to battered women regarding how to file official complaints against state actors in the family court system, including submitting written complaints to the Chief Justice of the Probate and Family Court regarding individual judges, to the Commissioner of Probation regarding individual probate probation officers, and to the Administrative Office of the Trial Court regarding individual guardians ad litem (including requesting that the Chief Justice of Administration and Management remove these guardians ad litem from the official list as per Supreme Judicial Court Rule 1:07);

- Creation of hotlines, support groups, and counseling programs specifically designed to meet the needs of battered women in custody and visitation litigation in the family courts;

Creation of a speaker's bureau focusing on battered women and child custody issues; and

- Creation of a statewide "Protective Parents" network.

B. Legal Profession and Bar Associations

We call on the legal profession (including legal aid and private law firms) to take the following steps to help remedy the problems discussed in this report:

Assign experienced attorneys with appropriate training to cases involving partner abuse and child custody. If new attorneys are assigned to these cases, they should be trained on these issues and work closely with seasoned family law practitioners;

Increase pro bono representation to battered women in custody and visitation litigation, especially to those women whose incomes are too high to receive legal aid. All pro bono attorneys should be trained on these issues;

Provide pro bono legal advice to pro se battered women;

Attorneys should refrain from misusing (209A) abuse prevention orders. Motions for these orders should be made only when they are grounded in substantial evidence and should not be used to "duel" in court or delay the court process to gain advantages of time or legal positioning;

Fulfill the ethical obligation to zealously represent clients when they work with battered women by:
- Raising the Presumption of Custody Law early and often during child custody proceedings;
- Forcefully objecting to baseless court motions and frivolous court actions made by batterers, and making use of Massachusetts's anti-SLAPP law217 to accomplish these aims;
- Thoroughly questioning findings and recommendations made by guardians ad litem, probate probation officers, experts, and other key players in these cases;
- Objecting to all ex parte hearings and meetings;
- Insisting that guardian ad litem reports and other, similar documents be made available to their clients and that clients have the opportunity to respond to these reports; and
- Ensuring that their clients have an adequate opportunity to be heard by the court.
### Appendix A: Table on Partner Abuse, Child Abuse, and Child Custody

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<th>Physical, Sexual, Psychological and/or Economic Abuse of Female Intimate Partners and Children Pre-separation and Post-separation</th>
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<td><strong>PRIOR TO SEPARATION</strong></td>
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<td>Number of women reporting partner abuse</td>
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<td>Number of women reporting child abuse</td>
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<td><strong>AFTER SEPARATION</strong></td>
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<td>Number of women reporting partner abuse</td>
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<td>Number of women reporting child abuse</td>
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### Abusers of Intimate Partners and Children

Retain Sole or Joint Physical Custody of Children After Separation

| Number of men reported to have retained sole or joint physical custody of children after separation | 15 |

Women reported to the BMTP that each and every one of these 15 men abused BOTH them and their children prior to separation and that these same 15 men have continued to abuse BOTH them and their children AFTER separation.
A. U.S. RECORD ON KEY INTERNATIONAL TREATIES, CONVENTIONS, AND DECLARATIONS

Universal Declaration of Human Rights (UDHR), 1948
United States in agreement by virtue of U.N. membership.

U.N. Declaration on the Elimination of Violence Against Women (DEVAW), 1993
United States in agreement by virtue of U.N. membership.

U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984

U.N. International Covenant on Civil and Political Rights (ICCPR), 1966

United States signed in 2000 (has not ratified).

United States is a party to this convention.

United States signed in 1980 (has not ratified).

U.N. International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
United States signed in 1977 (has not ratified).

U.N. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965

Overview
The United States - including the Massachusetts family courts - has human rights obligations to battered women and their children under international, federal, and state law. Although the United States played a central role in founding the United Nations and in the drafting of subsequent international human rights laws, the U.S. government has been reluctant to adhere formally to international law. Nevertheless, the United States is obligated to uphold a wide range of human rights standards and norms, including those relating to women's and children's rights. Furthermore, the U.S. government has acknowledged in federal and state laws most of the rights covered in relevant human rights laws, including the right to be free from abuse, the right to non-discrimination and equal protection of the law, and the right to child support.²¹⁸

The following is a brief explanation of the ways and degrees to which governments, including the United States, can be held to human rights laws and standards.

- **United Nations declarations.** Declarations are statements of principle and intent regarding particular human rights concerns. They are not binding law. All U.N. member states are considered to be in agreement with U.N. declarations.

- **Ratification of international human rights treaties.** When a government ratifies a treaty, it agrees to be legally bound by its terms. In order for the United States to ratify a treaty, the President must sign it and the Senate must agree to ratification by a two-thirds majority. Congress may also ratify a treaty subject to certain exceptions, called reservations, that are designed to negate rights that are more protective than U.S. constitutional standards. The U.S. Congress has made reservations to many key international treaties, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Furthermore, the United States has declared that all the treaties it ratifies are "non-self-executing," meaning that Congress must also provide implementing legislation to give them the force of law. Notwithstanding the failure of the United States to ratify many international human rights treaties and its practice of making many reservations to those it does ratify, legal scholars have noted that "U.S. officials concede that the norms guaranteed still must be observed by all state and federal officials, including judges."²¹⁹

- **Signing international human rights treaties.** Ratification is a critical step toward the enforceability of the rights enshrined in international treaties. However, countries that have signed but not ratified such treaties still have an obligation to observe their 'object and purpose.'²²⁰ In other words, they must, at the very least, not act in any way that contravenes or contradicts the fundamental terms of the treaty.
Key human rights instruments that are applicable to domestic violence and custody cases in the United States are summarized below.

**Universal Declaration of Human Rights (UDHR)**

The UDHR was adopted by the United Nations in 1948 and is the foundation of the international human rights system. It sets forth universal human rights as well as government obligations with respect to those rights, upon which subsequent treaties have elaborated (most notably the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, discussed below). By virtue of its membership in the United Nations, the United States is automatically considered to be in agreement with the principles of U.N. declarations such as the UDHR. Moreover, many legal scholars have argued that all countries are bound to uphold the standards enshrined in the UDHR as customary international law because they are so widely endorsed and accepted throughout the world. At a minimum, then, the United States has agreed not to take actions that violate the purpose of the UDHR, including actions that violate people's rights to freedom from violence and torture. The following are some of the key articles in the UDHR:

- All human beings are born free and equal in dignity and rights. (UDHR, art. 1)
- Everyone has the right to life, liberty and security of person. (UDHR, art. 3)
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. (UDHR, art. 5)
- All are equal before the law and are entitled without any discrimination to equal protection of the law. (UDHR, art. 7)
- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations. (UDHR, art. 10)
- Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. (UDHR, art. 8)
- Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family... Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. (UDHR, art. 25)

**Declaration on the Elimination of Violence Against Women (DEVAW)**

[Governments should] develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions. (DEVAW, art. 4)

The DEVAW, adopted by the U.N. General Assembly in 1993, is the primary international human rights instrument addressing violence against women. It lays out detailed steps governments should take to eliminate violence against women, including the due diligence standard.

[Governments should] exercise due diligence to prevent, investigate and punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. (DEVAW, art. 4)
Appendix B: International Human Rights Laws & Standards

Due diligence is the primary human rights standard for assessing how a government responds to human rights abuses such as partner and child abuse that are committed by non-state actors. The due diligence standard requires governments to take effective legal, preventive and protective measures to address these forms of private violence. Put another way, "due diligence" describes the minimum steps a government must take to fulfill its responsibilities to protect victims and to punish perpetrators of abuse. A government may be held complicit in such violence where it systematically fails to provide protection from private actors who deprive others of their human rights, "condones a pattern of abuse through pervasive non-action," or fails to take reasonable steps to prevent or respond to the abuse. With regard to violence against women, due diligence has been described by one legal scholar as follows:

In the context of norms recently established by the international community, a State that does not act against crimes of violence against women is as guilty as the perpetrators. States are under a positive duty to prevent, investigate and punish crimes associated with violence against women.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. (CAT, art. 2)

The CAT, adopted by the United Nations in 1984, requires governments to prohibit and punish torture both in law and in practice. It requires governments to provide alleged torture victims with a "prompt and impartial" investigation, and to grant them the right to have their case examined by "competent authorities.

Amnesty International has declared that when a government fails to exercise due diligence regarding domestic violence, it facilitates this type of torture in the family. Other experts have also argued that severe partner abuse or child abuse constitute a form of torture because they, like torture:

- Involve physical and/or psychological suffering;
- Are intentionally inflicted;
- Are committed for specific purposes; and
- Occur at least with the tacit involvement of the government if the government does not exercise due diligence and equal protection in addressing the violence.

The United States ratified the CAT in 1994. Most of the key rights guaranteed by this Convention (and other treaties the United States has ratified) are considered to be so widely accepted by the international community that they, like the Universal Declaration of Human Rights, constitute part of customary international law, meaning that "[U.S.] state and federal law should be interpreted so as not to conflict with customary international human rights norms and obligations."

International Covenant on Civil and Political Rights (ICCPR)

The ICCPR, adopted by the United Nations in 1966, is the key international treaty articulating fundamental civil and political rights and reiterates many of the fundamental rights in the Universal Declaration of Human Rights, including the right to liberty and security of person, freedom from torture, freedom of speech, non-discrimination, equal protection of the law, and a fair hearing. The United States ratified this treaty in 1992.

Convention on the Rights of the Child (CRC)

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (CRC, art. 3)
Appendix B: International Human Rights Laws & Standards

The CRC was adopted by the United Nations in 1989 and is the principle international law upholding children's rights. It requires governments to protect and promote the human rights of children in all areas of their lives and sets forth the "best interests of the child" as its primary standard for how governments should handle situations involving children. With regard to child custody issues in particular, the CRC states that children have the right to contact with their parents, except when separation is necessary for the children's best interests. The Convention is clear that abuse and neglect are not in children's best interests:

[Governments shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. (CRC, art. 19)]

The CRC also addresses children's economic rights, particularly regarding their well-being and child support:

[Governments recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. (CRC, art. 27)]

[ Governments shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child. (CRC, art. 27)]

The United States signed the CRC in 2000 but has not ratified it. This failure is striking considering that the CRC is the most widely accepted human rights treaty in history, having been ratified by 191 countries. The United States is the only industrialized nation in the world that has not ratified the CRC. In fact, the only other country in the world that has not ratified this groundbreaking treaty is Somalia, which is presently without a recognized government. As the most widely ratified treaty in the world, however, the CRC arguably has the force of customary law and the United States must follow its terms.

The Hague Convention on the Civil Aspects of International Child Abduction

The Hague Convention addresses international abductions of children. It states that parents should have their children returned to them unless it is not in the children's best interests: "[T]he State is not bound to order the return of the child if . . . there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation" (art. 13). The United States is a party to the Convention.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The CEDAW, adopted by the United Nations in 1979, is the most wide-ranging treaty mandating equality between women and men. It requires governments to eradicate discrimination against women in all spheres of public life, including in courts of law.

[ Governments shall establish legal protection of the rights of women on an equal basis with men and . . . ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination. (CEDAW, art. 2)]

[ Governments shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals. (CEDAW, art. 15)]
Appendix B: International Human Rights Laws & Standards

According to the CEDAW, violence against women (including partner abuse, incest and child abuse against the girl-child) also constitutes a form of discrimination against women that governments are required to eliminate. The CEDAW states that governments must act with due diligence regarding violence against women in order to ensure that women's rights to non-discrimination and equal protection of the law are not violated. Specifically, governments must take effective legal measures, preventive measures, and protective measures to protect women against gender-based violence.

The CEDAW has been ratified by 170 countries, more than two-thirds of U.N. member nations. The United States signed the CEDAW in 1980 but remains the only industrialized nation in the world not to ratify it. However, the CEDAW arguably has the force of customary law because of its widespread ratification, rendering the U.S. government at the very least bound to uphold its principles.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR was adopted by the United Nations in 1966 and requires governments to protect and promote the rights to food, shelter, health care, education, employment, and other related economic, social, and cultural rights. Specifically, the ICESCR recognizes that everyone - including children - has the right to an "adequate standard of living" and to "the highest attainable standard of physical and mental health." The ICESCR also calls for special economic protections for children:

The widest possible protection and assistance should be accorded to the family... particularly while it is responsible for the care and education of dependent children. (ICESCR, art. 10)

The United States signed this treaty in 1977 but has failed to ratify it.

United Nations International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

The ICERD, adopted by the United Nations in 1965, is the principal international treaty requiring governments to eradicate racial discrimination in all areas of public life. The United States ratified the ICERD in 1994.

Each State Party (government that has ratified the treaty) undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation. (ICERD, art. 2)

States Parties (governments that have ratified the treaties) undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) The right to equal treatment before the tribunals and all other organs administering justice. (ICERD, art. 5)
APPENDIX C: METHODOLOGY

This section contains only that information regarding methodology that is not outlined in the Introduction on pp. 5-8.

PHASE 1: INTERVIEWS WITH BATTERED MOTHERS

Data collection

In-depth interviews were conducted with participants in the primary research sample on a one-to-one basis by members of the Steering Committee and volunteer documenters who were trained in human rights and interview techniques by the Steering Committee.

The following tables represent the demographic information collected from this primary sample of 40 women:

<table>
<thead>
<tr>
<th>Race/Ethnicity</th>
<th>Annual Income</th>
<th>Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>28: White</td>
<td>13: $15,000 or less</td>
<td>• 90 children for the 40 mothers combined;</td>
</tr>
<tr>
<td>3: African-American</td>
<td>11: $15,001 - 25,000</td>
<td>• Born between 1970 and 2000;</td>
</tr>
<tr>
<td>2: Black West Indian</td>
<td>4: $25,001 - 35,000</td>
<td>• Women have between 1 and 5 children each.</td>
</tr>
<tr>
<td>3: Latina</td>
<td>5: $35,000 - 45,000</td>
<td>(77 out of these 90 are children of the abusive ex-partners with whom the</td>
</tr>
<tr>
<td>2: White and Native American</td>
<td>1: $45,001 - 55,000</td>
<td>participants are engaged or have been engaged in family court litigation</td>
</tr>
<tr>
<td>1: Native American</td>
<td>2: $55,001 - 65,000</td>
<td></td>
</tr>
<tr>
<td>1: (Information unavailable)</td>
<td>2: Over $105,000</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Highest Education Level Achieved</th>
<th>Citizenship</th>
<th>Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>1: Some high school</td>
<td>30: U.S. citizens (born or naturalized)</td>
<td>Range: 24 to 58 years</td>
</tr>
<tr>
<td>4: High school diploma or GED</td>
<td>2: Non-U.S. citizens</td>
<td>Median age: 42 years</td>
</tr>
<tr>
<td>10: Some college coursework completed</td>
<td>1: Dual U.S./another country</td>
<td></td>
</tr>
<tr>
<td>7: Associate's degree</td>
<td>7: (Information unavailable)</td>
<td></td>
</tr>
<tr>
<td>6: Bachelor's degree</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3: Bachelor's degree plus some post-graduate coursework</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3: Master's degree</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3: Professional degree (1: J.D.; 1: M.B.A; 1: M.D.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1: Doctorate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1: (Information unavailable)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

A semi-structured interview based on a standard questionnaire with 83 items was used to interview these women. The questionnaire included both closed- and open-ended questions, and the interviews were audiotaped. Interviews were conducted once with each participant and averaged four hours in length.

The questionnaire included the following broad topics:

History of physical, sexual, economic, and psychological partner and child abuse, both before and since separation from the batterer

Example questions:
1. Can you tell us about any ways that (your ex-partner) tried to harm you emotionally or psychologically, such as by calling you names, blaming you for his problems, trying to make you feel crazy, humiliating you, controlling you, intimidating you, or otherwise treating you cruelly? If yes, please describe.
Appendix C: Methodology

2. Were your child(ren) ever present during any of the types of incidents you just described? For example, were they ever being held by you or (your ex-partner), napping or playing in the house or apartment, riding in the car with you, etc., during these incidents? If yes, please describe.

Did (your ex-partner) ever do anything to sexually harm your child(ren), such as touch their genitals, breasts, or buttocks, or have them perform any kind of sexual acts with him? If yes, please describe.

4. Since separation, has (your ex-partner) used money to hurt or control you, such as left you with his debts, stolen from you, destroyed your property, damaged or destroyed your credit, or caused you high legal expenses? If yes, please describe.

5. Has (your ex-partner) ever used physical force or violence against you since separation? If yes, please describe.

6. Since separation, what has been hardest for you about (your ex-partner)'s behavior overall?

Specific ways that the batterer has continued to abuse the participant through family court litigation

Example question:
Do you feel that (your ex-partner) has used the courts or the legal process to deliberately harm you financially? If yes, please explain.

How the participant's financial status has affected her ability to pursue her case effectively

Example question:
Did you ever want to do something related to the custody and visitation litigation that you didn't do because it was too expensive, such as hire a lawyer, take a deposition, hire an expert witness, take your case to trial, etc.? If yes, please describe.

How the participant and her children have been treated by state actors in the family courts

Example question:
In your opinion, have any of the family court judges in your case ever:
* Issued orders or rulings that you feel were not in your child(ren)'s best interests, including granting custody of them to (your ex-partner)?
* Failed to take the partner abuse history seriously?
* Not given you an adequate chance to tell your side of the story or to present evidence in support of your case?
* Made unfair or unreasonable child support orders?
* Placed your child(ren) in unsupervised visitation with (your ex-partner) or in supervised visitation with someone other than a professional supervisor?
* Behaved dishonestly or unethically in any other way?

Other ways the participant may have been discriminated against, such as on the basis of race, ethnicity, English language ability, socioeconomic status, religion, sexual orientation, and educational level (General question)

Participants' recommendations for changes needed in the family court system

Following the interviews, the audiotapes were transcribed and the transcriptions reviewed for accuracy by a second person. Once transcribed, the tapes were destroyed.
Data analysis and management

The data analysis and management followed a protocol developed collaboratively between members of the project Steering Committee and the research analyst. Data analysis has included five principal phases, as described by Miller and Crabtree (1999). These include describing, organizing, connecting, corroborating/legitimating, and representing the account. During the initial phase of content analysis, interview transcripts were read to identify emerging themes. Coding schema were then developed to identify and define particular problems participants reported facing under four main categories:

- Partner abuse pre- and post-separation;
- Child abuse pre- and post-separation;
- Economic issues related to intimate partner violence and family court litigation; and
- Problems encountered directly with state actors and advocates related to the litigation process itself.

As the analysis proceeded, coding schema were modified and refined to reflect new understanding of emerging results. A specific human rights analysis of the data results followed, applying specific human rights standards to identify those problems indicating that human rights violations were occurring in the family court system. Inter-rater reliability was verified through regular and ongoing discussion of developing results.

For the purpose of managing the data generated by analysis, a customized relational database (Microsoft Access 2000) was developed and employed to organize coded data and to permit complex queries. The database, an inventory of problems women reported facing in an abusive relationship, and during family court litigation, allows researchers to:

- Compare data across transcripts;
- Answer questions about frequency of occurrence of defined problems as reported during the interview for one case and across multiple cases;
- Identify state actors and service providers who are mentioned once or multiple times; and
- Compare how individual battered mothers express the story of their experiences.

**PHASE 2: WRITTEN SURVEY OF ADVOCATES**

Data collection

**Example questions:**

1. In your opinion, what are the major problems encountered by battered women when they litigate child custody and visitation issues against their abusive ex-partners in the Massachusetts family courts?

2. Are you aware of any cases where a woman has been endangered or abused by her ex-partner because of the contact with him required by court-ordered custody and/or visitation arrangements? (Same question asked with regard to children)

   In your opinion, do guardians ad litem adequately investigate and address partner abuse in their reports?

4. In your opinion, what are the biggest problems with how [judges, guardians ad litem, probate probation officers, Department of Social Services workers] handle domestic violence and child custody cases?

5. In your experience, do family court judges know about the child custody presumption law? If yes, is the law being applied?

Data analysis and management

Survey responses to individual questions were analyzed to identify the broad themes most frequently mentioned by respondents. Responses to several related questions were analyzed in the aggregate to further identify broad trends in responses.
Appendix C: Methodology

Phase 3: Focus Groups

Data collection
In each of the five focus groups a set of questions specific to the particular nature of the group and goal of the discussion was covered. Focus groups were facilitated by BMTCP Steering Committee members. All of the focus group discussions were recorded directly into a computer or were audiotaped and transcribed. For one group, the discussion was extensively documented via handwritten notes.

Example questions are highlighted below for each focus group.

Women of color survivors of partner abuse

Did you feel like people in the family court stereotyped you, made incorrect or unfair assumptions about you, or looked down on you in any ways? If yes, do you think this had anything to do with your race or ethnicity or with your class or education level?

Do you think your race or ethnicity was a factor in the outcome of your case? If yes, what difference do you think it would have made if you'd been white? What difference do you think the race of your lawyer made, if you had one?

What kind of treatment and outcomes did you expect in the family court? Were your expectations met? If not, why not? Did you ever consider not going to the family court at all? If yes, why?

Legal advocates for U.S. citizen women of color survivors of partner abuse

What impact do you think a battered mother’s race has on how custody and visitation is decided?

What impact do you think the race of a battered mother’s ex-partner has on how custody and visitation is decided?

Do you think that differences in the socioeconomic status of battered U.S.-citizen women of color have an effect on how custody and visitation are decided?

Advocates for immigrant and refugee survivors of partner abuse

Have any of your clients experienced problems with state actors in the family court system because of their race, ethnicity, national origin, cultural/religious practices, or English-language ability? (For example, have state actors ever thought your clients weren't credible or believable because they didn't look the state actors in the eye? Or have state actors ever stereotyped your clients as bad mothers because of their race or thought your clients couldn't be effective mothers because they don't speak English?)

What impact do you think the race, ethnicity, national origin, English-language ability, or immigration status of the ex-partner has on how custody and visitation are decided? (For example, when the ex-partner is a white U.S. citizen, do you think that immigrant women of color lose custody of their children to them more often than when the ex-partner is also an immigrant of color?)

Have any of your clients had problems obtaining qualified and impartial interpreters, either in family court or for their interactions with DSS and guardians ad litem? If yes, how do you think that this has affected your clients’ cases?

Advocates for lesbian, bisexual, and transgendered survivors of partner abuse

What impact do you think a battered mother's sexual identification has on how custody and visitation is decided in the Massachusetts family courts?

Why might an abused lesbian, bisexual, or transgendered person not use the Massachusetts family court system to resolve child custody and visitation issues with their abusive ex-partner?
Appendix C: Methodology

Mainstream service providers (primarily lawyers and legal advocates)

1. In your opinion, what are the major problems encountered by battered women when they litigate child custody and visitation issues against their abusive ex-partners in the Massachusetts family courts?

2. Do you know of cases where a child has been abused physically or sexually or has suffered psychological distress as the result of a family court order regarding custody or visitation?

3. What strategies do you think might be most effective in bringing this issue to public attention and demanding systemic change?

Data analysis and management

For each focus group, answers to specific questions were analyzed to identify the issues and themes most frequently voiced by participants. Answers to the questions were also analyzed in the aggregate and in the context of the broader discussion of each group, to identify the range of issues raised and the broad themes that emerged. Focus group outcomes were also analyzed in the aggregate to identify common themes, including in participants' recommendations for change.

Phase 4: Interviews with state actors in the Massachusetts family court system

Data collection

Questionnaires were developed specific to the type of state actor interviewed and included both closed- and open-ended questions. All of the interviews were audiotaped and transcribed (once transcribed, the tapes were destroyed).

Example questions for judges, guardians ad litem, and probate probation officers are highlighted below.

Questions for family court judges

1a. In cases involving allegations of partner abuse, when is it appropriate, in your opinion, to order:
   - Shared legal or physical custody;
   - Sole custody to the alleged perpetrator;
   - Sole custody to the alleged victim;
   - Supervised visitation with the alleged perpetrator; or
   - Unsupervised visitation with the alleged perpetrator.

1b. Does it make a difference if there is actual evidence of the abuse? When might it be appropriate for you to disregard or discard evidence of alleged partner abuse?

2. If the alleged perpetrator violates a restraining order, how does this affect your decision making with regard to custody and visitation?

3. What criteria do you use to assess whether or not someone is making false allegations of child sexual or physical abuse?

4. In general, do you think that there are any problems with how the Massachusetts family courts are handling child custody and visitation when there is a history, or alleged history, of partner abuse? If yes, what factors might make it difficult for a family court judge to address issues of custody, visitation, and family violence effectively?
Appendix C: Methodology

Questions for guardians ad litem

1. In cases where there is a history, or alleged history, of partner abuse, should this history play a role in the investigations and recommendations you make regarding custody and visitation? If yes, how or why should partner abuse play a role?

2. Are there signs of exposure to partner abuse that you see or look for in the children from these cases? If yes, what are these signs, and how do they factor into your recommendations?

3. What advice would you give a battered woman who believes that her children have been sexually or physically abused by her ex-partner, in cases where he is seeking custody of or unsupervised visitation with the children?

Questions for probate probation officers

1. In cases where there is a history, or alleged history, of partner abuse, should this history play a role in the recommendations you make regarding custody and visitation? If yes, how or why should partner abuse play a role? Does it make a difference if the partner abuse is documented?

2. Under what circumstances would it be appropriate, in your opinion, to mediate custody and visitation issues with a couple in cases where there have been allegations of partner abuse? Does it make a difference if there is an actual restraining order in place?

Data analysis and management

Judges', guardians ad litem's, probate probation officers', and Department of Social Service workers' responses to individual questions were analyzed according to the broad themes most frequently mentioned. Individual commentaries that fell outside the identified themes were also noted.
A report of alleged child abuse filed with the Massachusetts Department of Social Services, which can be made by any individual.

Abuse Prevention Order: Also known as a "restraining order" or a "209A," this civil order requires the named defendant to refrain from abusing the plaintiff and may also place other restrictions on the defendant, such as to vacate the plaintiff's residence, to stay away from the plaintiff, to have no contact with the plaintiff (including by phone or mail), or to have no contact with the plaintiff's children. Abuse prevention orders may be issued by district courts and by family courts. Violation of the order is a criminal offense.

Abuser: This term is used in this report to refer to anyone who perpetrates domestic violence or child abuse.

Administrative Office of the Trial Court: In this report, this term refers to the office of the Chief Justice of the Probate and Family Court, which has administrative responsibility for family courts across Massachusetts.

Advocate: A professional specializing in working with battered women or with their children.

Batterer: A person who perpetrates domestic violence (see "Domestic Violence").

BMTP: The Battered Mothers Testimony Project, a human rights project of the Women's Rights Network at the Wellesley Centers for Women.

Child Abuse: Intentional or neglectful actions or failures to act by an adult that cause a child physical or sexual harm, or a recurring pattern of psychological harm, that result in death, or that present an imminent risk of serious physical or psychological injury.

Commonwealth: The state of Massachusetts.

Court Appointed Psychological Evaluator: A licensed clinical psychologist (or occasionally a licensed clinical social worker) who is appointed by the court to evaluate the mental health of a mother, father, or child who is involved in a custody or visitation dispute.

Court Clinic: A few family courts in Massachusetts have onsite court clinicians who perform mental health evaluations for the court.

Custody Evaluator: Custody evaluators in Massachusetts are appointed to serve as guardians ad litem; therefore, for the purposes of this report, the two terms are synonymous (see "Guardian ad Litem").

Department of Social Services: The child protective service for the Commonwealth of Massachusetts. Department of Social Services determinations often play an important role in the outcome of custody and visitation disputes before the family court. Note: We have chosen in some cases to include the women's descriptions of their experiences with the Department of Social Services, even though it is not part of the family court (and in fact is part of the executive branch of state government). Our reason for this choice is that some women reported that the Department of Social Services' mishandling of domestic violence cases affected the outcome of the woman's custody and visitation dispute in the family court. Women also sometimes reported that the Department of Social Services' decisions were followed uncritically by family court judges, even where the department had made serious errors or had failed to investigate the allegations. In these cases, errors made by the Department of Social Services were closely interwoven with the experiences the women faced in family court.

Dispute Intervention: The process by which a probate probation officer attempts to mediate between parties who are disputing custody, visitation, or child support, in an attempt to reach a stipulated agreement so that the matter will not have to be contested in front of a judge. At most courts, parties are routinely expected to participate in dispute resolution before going before a judge, even in cases involving allegations (or confirmed histories) of domestic violence, child physical abuse, or child sexual abuse.
Appendix D: Glossary of Terms

Domestic Violence: A pattern of coercive control that one relationship partner exercises over another that includes physical or sexual assault or the creation of credible physical or sexual threat. The use of assault or threat may be intermittent and may not be the predominant form of coercion, which may be psychological, verbal, economic, or sexual in nature.

Ex Parte Communication: Any communication that a judge has regarding a case that takes place outside of the presence of one or both of the parties and one or both of the attorneys. This would include, for example, a phone call between a judge and a guardian ad litem.

Ex Parte Hearing: A court hearing that is held despite the absence of one of the parties and of his or her attorney (which for this report means the absence of either the mother or the father and his or her attorney).

Family Court Mediation: See "Dispute Intervention."

Family Court: In this report, we use this term to refer to the Massachusetts Probate and Family Court.

Family Service Officer: See "Probate Probation Officer."

Guardian ad Litem: As it is used in this report, this term refers to an individual (who, under current state standards, must be a lawyer or mental health professional) who is appointed by the family court to make recommendations to the court regarding custody and visitation of minor children. (Massachusetts law also provides for the appointment of guardians ad litem to fill other roles, but these are not discussed in this report.) Currently, an individual wishing to serve as a guardian ad litem has to apply to be placed on the guardian ad litem list at the specific county's family court for which he or she wishes to serve. This requirement has existed for less than two years.

Judge: In this report, we use this term to refer to justices of the Massachusetts Probate and Family Court. Judicial appointments in Massachusetts are permanent.

Mandated Reporter: A professional who is required under Massachusetts state law to make a child abuse report whenever he or she has reason to believe that a child is being abused or neglected.

Partner Abuse: This term is used in this report as a synonym for "domestic violence" (see definition above)

Probate Probation Officer: Also known as "family service officer," these employees of the Office of the Commissioner of Probation are responsible for gathering facts about cases coming before the family court, for performing "dispute intervention," and for making verbal reports to family court judges at hearings. Judges often ask probate probation officers to make recommendations to the court as part of their report at hearings. Sometimes a probate probation officer is also appointed to serve as guardian ad litem.

Psychological Evaluation: An evaluation performed either by a court-appointed psychological evaluator or by a Court Clinic (see above) that forms conclusions about the mental health of a mother, father, or child who is involved in a custody or visitation dispute.

Restraining Order: See "Abuse Prevention Order."

State Actor: An individual working for the government or as an agent of the government. As used in this report, "state actor" typically refers to an individual working in, for, or in formal connection to, the Massachusetts family court system, such as a judge, guardian ad litem, or probate probation officer (see above for definitions).
Introduction

1 A 10-minute video about the project and the tribunal is available through the Wellesley Centers for Women’s publication office for $5. To order, please call: +781-283-2510.

2 The project is currently being replicated by the Arizona Coalition against Domestic Violence.


13 Supreme Judicial Court of Massachusetts, Gender Bias Study of the Court System in Massachusetts (Boston: 1989), 59.

14 Ibid., 59, 62.
Other steps included (1) publishing a court conduct handbook that was distributed to all judges and court personnel and printed in the Lawyers Weekly; (2) coordinating a statewide judicial response system to provide emergency judicial intervention for restraining order requests after court hours; (3) setting up domestic violence resource centers in 68 district courts and 14 counties where the probate and family courts are located to provide information and literature on community services available to victims of domestic violence; and (4) producing a videotape, titled For Your Protection: 209A, in several languages to educate victims about the process of obtaining a restraining order.

Available training for judges includes (1) two-day team training sessions ending in professional development programs for judges and plans to improve a particular court's response to domestic violence; (2) all-court conferences on family violence; and (3) specialized Judicial Institute programs for judges on batterers as parents, criminal enforcement in domestic violence cases, domestic violence and substance abuse, and improving the court's response to domestic violence. (These programs are also offered for non-judge court personnel.) In addition, the courts have devoted some resources to training non-judge court personnel who interact with domestic violence cases. This has been done through one-day programs offered in various regions of the state, special seminars on domestic violence for court employees, and an annual one-day program on the judicial response system that covers domestic violence issues.

Since 1994, the state budget's line item for domestic violence education for court personnel has been funded with only $100,000 annually.

This information was provided to the Battered Mothers' Testimony Project by a knowledgeable anonymous source.

The Legislature's most prominent recent work on domestic violence has been that of Senator Cheryl Jacques who, together with the Senate Committee on Post Audit and Oversight, released a report on the Massachusetts guardian ad litem program in March 2001. That report placed a much-needed spotlight on the guardian ad litem system. See Guarding Our Children: A Review of Massachusetts' Guardian Ad Litem Program within the Probate and Family Court, available at: <http://www.state.ma.us/legis/bills/s01828.htm>.

This information was provided to the Battered Mothers' Testimony Project by a knowledgeable anonymous source.

The information in this paragraph on the status of court system reform was provided to the Battered Mothers' Testimony Project by knowledgeable anonymous sources.

These numbers are approximate and based on figures reported in the Supreme Judicial Court's fiscal-year 2000 and fiscal-year 2001 Annual Reports on the State of the Massachusetts Court System.

Human rights documentation typically has not followed research protocols. Rather, human rights documenters tend to conduct interviews with victims, witnesses, and state actors without using a standard interview guide. Some human rights documenters audiotape their interviews, others rely on notes.

The Vision of Human Rights

Research indicates that women are often at increased risk of violence by their batterers in the period immediately following separation, thereby heightening the family courts' responsibility to keep them safe through their custody and visitation orders. See, e.g., Hart, "Children of Domestic Violence," at <http://www.mincava.umn.edu/hart/risk&ser.htm>, citing Stark and Flitcraft, "Women and Children at Risk," 97-118; Bureau of Justice Statistics, Preventing Domestic Violence against Women, and Bernard et al., "Till Death Do Us Part," 271-280.

Introduction to Human Rights


Rhonda Copelon describes the government human rights obligation this way: "There are a number of dimensions to this positive obligation. The right to be free from torture, for example, requires that States institute systemic preventive measures against official misconduct-training, monitoring, and sanctions, for example. The positive obligation also requires States to protect human rights against private deprivation. Life, liberty and security of person, for example, must be protected against privately inflicted harm through investigation, punishment and preventive measures. ... This is in sharp contrast to the U.S. approach, which views positive measures as an optional matter for legislation." R. Copelon, "The Indivisible Framework of International Human Rights: A Source of Social Justice in the U.S.," New York City Law Review 3, no. 59 (1998): 66.


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Endnotes


Miccio, "With All Due Deliberate Care," 680.

4 These rights are enshrined in numerous human rights laws and standards, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC).


5 The Battered Mothers' Testimony Project recognizes that family courts do not have criminal jurisdiction to punish batterers. However, family courts do have the power to refer criminal cases to appropriate forums and to sanction violence in other ways through their family court orders.

5 "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents. . . . States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests." CRC, art. 9.

Human Rights Violations by the Massachusetts Family Courts

5 The Battered Mothers' Testimony Project recognizes that intimate partner abuse occurs in same-sex relationships and that, in some cases, women batter men. However, as described in our methodology, all of the participants in this project were women who had been battered by a male partner.

5 Reported by 22/40 women interviewed.

47/40 women reported that they have "documented evidence" of abuse, such as medical records, police reports, and 209A restraining orders and affidavits.

5 Reported by 33/40 women interviewed.

5 Reported by 5/40 women interviewed.

5 Reported by 18/40 women interviewed. Women also described ways that their ex-partners neglected the children while in their care and other examples of poor parenting.

5 Women described a wide range of behaviors that they felt amounted to psychological abuse and mistreatment of their children by their ex-partners prior to separation that were difficult to quantify with specificity.

5 Reported by 9/40 women interviewed.

5 Reported by 23/40 women interviewed.

5 Reported by 14/40 women interviewed.

5 Reported by 29/40 women interviewed.

5 Reported by 9/40 women interviewed.

5 Reported by 6/40 women interviewed.

5 Reported by 40/40 women interviewed.

5 Reported by 16/40 women interviewed.

5 Reported by 26/40 women interviewed.

5 Reported by 22/40 women interviewed.

5 Women described a wide range of behaviors that they felt amounted to psychological abuse and mistreatment of their children by their ex-partners prior to separation that were difficult to quantify with specificity.

5 Reported by 33/40 women interviewed.

Section I
Reported by 14/40 women interviewed.

Reported by 9/40 women interviewed.

Reported by 24/40 women interviewed.

Reported by 7/10 women interviewed.

Reported by 7/40 women interviewed.

Reported by 6/40 women interviewed.

Reported by 7/40 women interviewed.

Reported by 5/40 women interviewed.

Reported by 2/40 women interviewed.

Reported by 3/40 women interviewed.

Reported by 3/40 advocates surveyed.

Massachusetts custody evaluators and judges are not alone in dismissing the impact of partner abuse on children. "The law in many states provides for evidence of intra-parental violence to influence custody decisions and visitation arrangements. Nonetheless, most of the studies of gender bias in the courts report that judges routinely ignore the issue or dismiss it as insubstantial the impact of parental violence on children in the household." Czapanskiy, "Domestic Violence, the Family, and the Lawyer's Process," 247, 255.

Further, "these new statutes [that consider domestic violence in custody decisions] are still inadequate because they fail to consider the detrimental impact of witnessing domestic violence. Specifically these statutes tend to require proof that parental violence has a direct impact on the child, which significantly limits the ways domestic violence can be considered in determining what is in the best interest of the child." A. Brown, "Child Custody in Cases Involving Domestic Violence: Is It Really in the 'Best Interests' of Children to Have Unrestricted Contact with Their Mother's Abusers?" Journal of the Missouri Bar 57 (Nov.-Dec. 2001), 302.

Reported by 18/40 women interviewed.

Reported by 6/40 women interviewed.

Reported by 38/40 women interviewed.

Reported by 21/31 advocates surveyed.

This includes pre- and post-separation allegations of child sexual abuse.

Reported by 6/40 women interviewed.


In fact, research indicates that batterers are more determined to commit abuse after separation and may therefore use any available opportunities to continue their behavior: "Abuse of children by a batterer is more likely when the marriage is dissolving, the couple has separated, and the husband/father is highly committed to continued dominance and control of the mother and children." Hart, "Children of Domestic Violence," at <http://www.mincava.umn.edu/hart/riskesr.htm>, citing L. H. Bowker, M. Arbitell, and J. R. McFerron, "On the Relationship between Wife Beating and Child Abuse," in Perspectives on Wife Abuse, ed. K. Yllo and M. Bograd (Newbury Park, Calif.: Sage Publications, 1988).


Since woman and child abuse by husbands and fathers is instrumental in subjugating, controlling, and isolating when a woman has separated from her batterer and is seeking to establish autonomy and independence from him, his struggle to control and dominate her may increase and he may turn to abuse and subjugation of the children as a tactic of dominance and control of their mother. Hart, "Children of Domestic Violence," at <http://www.minnava.umn.edu/hart/risk&dom.htm>.

Some of the judges explicitly talked about their reliance on the Children and the Law project at Massachusetts General Hospital.

Like Massachusetts, New Jersey and New York have clear statements of public policy designed to protect victims of domestic violence. However, "...judicial enforcement of those protections is often influenced by a common law heritage and cultural stereotypes which treat wives as the property of their husbands, sanction wife abuse, and assume that women provoke the attacks and enjoy the pain." L.H. Schafran, "Documenting Gender Bias in the Courts: The Task Force Approach," Judicature 70 (1987): 280, 283.


States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents. ... States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. CRC, art. 9.


G. K. Miccio, "With All Due Deliberate Care," 675.

Ibid., 675-676.

42 U.S.C. § 67 et seq.


Massachusetts' child custody law also provides guidelines for considering children's welfare in custody disputes: "In making an order or judgment relative to the custody of children, the rights of the parents shall, in the absence of misconduct, be held to be equal, and the happiness and welfare of the children shall determine their custody. When considering the happiness and welfare of the child, the court shall consider whether or not the child's present or past living conditions adversely affect his physical, mental, moral or emotional health." Mass. Gen. Laws ch. 208, § 31A (1998).


Section II

One woman, Jessica, reported to us that she felt discriminated against by the judge in her case because she is disabled: "I'd say that [the judge] discriminated against me as a battered woman and as a disabled woman, and he has discriminated against the children as disabled children with special needs. I wasn't going to be able to care for the kids, I couldn't drive, which was a lie. You know, all of that."

Reported by 23/40 women interviewed.

Reported by 21/40 women interviewed.

Supreme Judicial Court, Gender Bias Study, 59.

Reported by 3/40 women interviewed.


Reported by 28/40 women interviewed.

Reported by 13/40 women interviewed.
Endnotes.

45 Reported by 32/40 women interviewed.
46 This behavior also implicates women's due process rights as discussed in Section IV.
47 This case also is discussed in other sections of this report, including Sections I and II.
48 Reported by 18/40 women interviewed.
49 The various state task forces assigned to study gender bias in the courts found that "...the disrespect and devaluation experienced by white women is even more pronounced for women of color." L. H. Schafran, "Gender Equality in the Courts: Still on the Judicial Agenda," Judicature 77 (1993): 110.
50 "[M]etaphorical re-battering is well documented in state court gender bias reports. For example, many protection order statutes provide that judges may award temporary financial relief, yet judges are reported to routinely deny such relief." Czapansky, "Domestic Violence, the Family, and the Lawyering Process," 247, 253.
51 Supreme Judicial Court Rule 3:09.
52 Supreme Judicial Court Rule 3:09.
53 Reported by 15/40 women interviewed.
54 The gender bias aspect of this problem is discussed in greater depth in the Section II.
55 Supreme Judicial Court Rule 3:09.
56 Reported by 6/40 women interviewed.

45 Reported by 32/40 women interviewed.
46 This behavior also implicates women's due process rights as discussed in Section IV.
47 This case also is discussed in other sections of this report, including Sections I and II.
48 Reported by 18/40 women interviewed.
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51 Supreme Judicial Court Rule 3:09.
52 Supreme Judicial Court Rule 3:09.
53 Reported by 15/40 women interviewed.
54 The gender bias aspect of this problem is discussed in greater depth in the Section II.
55 Supreme Judicial Court Rule 3:09.
56 Reported by 6/40 women interviewed.
Endnotes

139 Guidelines for Judicial Practice, § 12.05 commentary (Supreme Judicial Court of Massachusetts).
140 "Reported by 12/40 women interviewed.
141 "Reported by 3/40 women interviewed.
142 "Reported by 15/40 women interviewed.
143 The evidence to support the success of batterer intervention programs can be found in E. Gondolf, Batterer Intervention Systems (Tousand Oaks, Calif.: Sage Publications, 2001).

144 "Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.
145 CRC, art. 13.
146 CRC, art. 19.
148 Supreme Judicial Court Rule 3:09.
149 Reported by 28/40 women interviewed.
150 "For a discussion of the propensity of batterers to lie, see Adams, "Identifying the Abusive Husband in Court," 23-25.
151 Reported by 1/40 women interviewed.
152 Reported by 3/40 women interviewed.
153 Reported by 2/40 women interviewed.
154 Reported by 2/40 women interviewed.
155 Reported by 11/40 women interviewed.
156 Reported by 3/40 women interviewed.
157 Reported by 1/40 women interviewed.
158 Reported by 1/40 women interviewed.
159 Reported by 21/40 women interviewed.
160 "Numerous witnesses pointed out that mutual orders of protection . . . perpetuate the historical fallacy that battered women are responsible for their batterers' behavior and equal parties to the violence and, because they implicitly exonerate rather than punish the abuser, also perpetuate the violence. Moreover, mutual orders create a serious hazard for women by giving confusing directions to the police." Schafran, "Documenting Gender Bias in the Courts," 280, 284.
161 See, e.g., UDHR, art. 7, and ICCPR, art. 14.
162 "(1) Every person has the right to a standard of living adequate for the health and well-being of himself and of his family . . . .
(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection." UDHR, art. 25.
163 These observations have been made by both the Sierra Club Legal Defense Fund and the California Anti-SLAPP Project in various publications distributed by those organizations.
166 Supreme Judicial Court Rules 3:07, Rule 3.1
169 Supreme Judicial Court, Gender Bias Study, 59.
170 Ibid.

Section VI

172 Reported by 23/40 women interviewed.
173 Reported by 9/40 women interviewed.
174 Reported by 15/40 women interviewed.
175 Reported by 15/40 women interviewed.
Endnotes

196 Reported by 7/40 women interviewed.
197 Reported by 18/40 women interviewed.
198 Reported by 22/40 women interviewed.
199 Reported by 30/40 women interviewed.
200 25/40 women reported that they did not have a lawyer "all of the time", whereas 18/40 stated that their ex-partner did not have a lawyer "all of the time".
201 Reported by 22/40 women interviewed.
203 Rhonda Copelon describes the government human rights obligation this way: "There are a number of dimensions to this positive obligation. The right to be free from torture, for example, requires that States institute systemic preventive measures against official misconduct-training, monitoring, and sanctions, for example. The positive obligation also requires States to protect human rights against private deprivation. Life, liberty and security of person, for example, must be protected against privately inflicted harm through investigation, punishment and preventive measures... This is in sharp contrast to the U.S. approach, which views positive measures as an optional matter for legislation." R. Copelon, "The Indivisible Framework of International Human Rights: A Source of Social Justice in the U.S.," New York City Law Review 3, no. 59 (1998): 66.
204 ICESCR, art. 11.

Conclusion to Findings

207 Reported by 30/40 women interviewed.
208 Reported by 25/40 women interviewed.
209 Reported by 26/40 women interviewed.

Recommendations for Change

212 "The power to discipline any justice assigned or appointed to his department who refuses or fails to comply with any order concerning the performance of his duties as justice or any other lawful order of the chief justice of his department; provided, the chief justice shall also have the power to require any justice assigned to his department to participate in a judicial enhancement program in response to any action of such justice which brings the judiciary into disrepute, which lowers the public confidence in the judiciary or which impedes the administration of justice." Mass. Gen. Laws ch. 211B, § 10, xv (2002).
213 "The power to suspend any particular session in any court within his department... and the power to transfer cases and matters from a court to any other court within his department... as are deemed necessary for the proper administration of justice." Mass. Gen. Laws ch. 211B, § 10, iv (2002).
214 Supreme Judicial Court of Massachusetts, Gender Bias Study of the Court System in Massachusetts (Boston: 1989).
215 Supreme Judicial Court of Massachusetts, Equal Justice: Eliminating the Barriers (Boston: 1994).
216 At present, the Commonwealth is required to pay for all guardians ad litem. Mass. Gen. Laws ch. 215, § 56B (2002). However, guardians ad litem, court interpreters, and other fee-based services are all paid out of the same court budget line item. The Legislature should establish a separate budget line item for guardians ad litem so that the Commonwealth can fulfill its responsibility to litigants as mandated by law.

Appendices

218 ICCPR, art. 19. See section on U.S. legal standards and obligations.


These measures are also outlined in the CEDAW, Gen. Recommendation No. 19, art. 24(t).


Coomaraswamy, Report on Violence against Women, para. 22.

"For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity . . . ." CAT, art. 1. Article 5 of the UDHR also prohibits torture: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

CAT, art. 12.

Ibid., art. 13.


The United States has also ratified the ICCPR (1992) and the ICERD (1994).

Miccio, "With All Due Deliberate Care," 680.

ICCR, art. 9.

Ibid., art. 7.

See also article 19 of the UDHR: "Everyone has the right to freedom of opinion and expression . . . ."

ICPR, art. 26.

Ibid., art. 14.

Ibid.

"States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents . . . . States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests." CRC, art. 9.


Partner abuse also violates the right to equality in marriage and family relations, which is enshrined in the CEDAW (art. 16).


ICESCR, art. 11.

Ibid., art. 12.

The foundational principle of the ICERD is expressed in article 2: "[States Parties shall] condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms . . . ."