Problem-Solving Courts for Taiwan Family Courts:

Current Preface and Future Prospects in Domestic Violence

By

Liling Lee

A dissertation submitted in partial satisfaction of the requirements for the degree of Doctor of Juridical Science in the School of Law of the University of California, Berkeley

Committee in charge:

Professor Herma Hill Kay, Chair
Professor Malcolm M. Feeley
Professor Jill Duerr Berrick

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Abstract

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This study is a reflection of the author's experience working as a family court judge for nine years in Taiwan. It lays out the practical problems in Taiwan’s legal system, in regards to domestic violence, which is mainly transplanted from the U.S. It explores the query as to whether problem-solving courts provide a helpful alternative, as well as examining the possible challenges of implementing a problem-solving court system.

This thesis begins with a statement of the problems of domestic violence court system in Taiwan, and then synthesizes the literature review to introduce the Problem-Solving Courts from a broader perception of specialized courts and also Domestic Violence Courts, and their transformation into Integrated Domestic Violence Courts. This is followed by the description of Taiwan’s domestic violence legal system and its practical matters. Before attempting to propose a localized problem-solving court—the Integrated Family Court—as an alternative for Taiwan, the author makes comparisons of domestic violence case handling between Domestic Violence Courts in the U.S. and Taiwanese Courts through the lens of Therapeutic Jurisprudence and Restorative Justice. Lastly, the author depicts recommendations and explains how the proposed Integrated Family Court may provide a solution to the mentioned problems and its possible challenges.
# Table of Contents

Introduction .............................................................................................................................................. 1

Chapter I. Problems in the Taiwanese Legal System’s Approach to Domestic Violence Cases 3
A. Family Court Protection Order Procedure Independent of Criminal Court Procedure 3
B. The Discretionary Batterer’s Intervention Program (BIP) ................................................................. 7
C. Conflict between Closing Cases and “Doing More” ......................................................................... 14

Chapter II. Domestic Violence in U.S. Problem-Solving Courts .......................................................... 16
A. Origin of the Domestic Violence Courts: Problem-Solving Courts (PSCs) ............................... 16
B. Specialized Domestic Violence Courts (DV Courts) ....................................................................... 35
C. Transformation of the Domestic Violence Courts: Integrated Domestic Violence Courts (IDV Courts) ........................................................................................................................................ 50

Chapter III. Domestic Violence Legal System in Taiwan ........................................................................ 54
A. Initiation of the Domestic Violence Prevention .............................................................................. 54
B. The Domestic Violence Prevention Act .......................................................................................... 55
C. Domestic Violence Prevention and Family Court ........................................................................... 60

Chapter IV. Comparisons of Domestic Violence Case Handling between Domestic Violence Courts in the U.S. and Taiwanese Courts ................................................................................................................. 61
A. Court and Case Process .................................................................................................................. 61
B. Therapeutic Jurisprudence Application ........................................................................................ 69
C. Attempt on Restorative Justice ..................................................................................................... 97
D. Conclusion ........................................................................................................................................ 110

Chapter V. Recommendations .................................................................................................................. 112
A. Taiwanese Integrated Family Court (IF Court) is a helpful alternative to the Taiwanese family legal system to better ensure DV victim safety and offender accountability ................................................................. 112
B. Potential challenges to the Process of Establishing Taiwanese IF Courts ..................................... 119

Conclusion ............................................................................................................................................... 129
# Table of Contents

Introduction ......................................................................................................................... 1  

Chapter I. Problems in the Taiwanese Legal System’s Approach to Domestic Violence Cases 3  
A. Family Court Protection Order Procedure Independent of Criminal Court Procedures 3  
   1. Higher Costs to Parties ......................................................................................... 4  
   2. Re-victimization ................................................................................................. 4  
   3. Inefficient Use of Court Resources ................................................................... 5  
   4. Inconsistent Court Decisions ............................................................................ 5  
B. The Discretionary Batterer’s Intervention Program (BIP) ....................................... 7  
   1. Low Rate of BIP Orders by Family Court ......................................................... 7  
   2. BIP Ordered Only Rarely by Criminal Procedure .............................................. 9  
   3. No BIP Monitoring in Family Court ................................................................... 10  
   4. Lenient Disposition for BIP Noncompliance in Criminal Court ..................... 11  
   5. BIP Effectiveness as Questionable .................................................................. 11  
      a. Overview ........................................................................................................ 11  
      b. Questionable Effectiveness ......................................................................... 12  
C. Conflict between Closing Cases and “Doing More” .............................................. 14  

Chapter II. Domestic Violence in U.S. Problem-Solving Courts .............................. 16  
A. Origin of the Domestic Violence Courts: Problem-Solving Courts (PSCs) .......... 16  
   1. Core Elements ................................................................................................... 16  
   2. The Rise of the Problem-Solving Court .............................................................. 17  
      a. Dissatisfaction with the Criminal Justice System ........................................ 17  
      b. Administration Support and Funding ............................................................ 18  
   3. Models ................................................................................................................ 18  
      a. Drug Court .................................................................................................... 18  
      b. Community Court ....................................................................................... 19  
      c. Domestic Violence Court .......................................................................... 19  
      d. Mental Health Court .................................................................................... 19  
      e. Other PSCs .................................................................................................. 20  
   4. Theoretical Foundation ....................................................................................... 20  
   5. Evaluation .......................................................................................................... 22  
      a. Effectiveness .................................................................................................. 22  
         i. Drug Court ................................................................................................ 23  
         ii. DV Court ............................................................................................... 23  
         iii. Community Court ............................................................................... 23  
         iv. Public Perceptions ................................................................................... 24  
      b. Fairness .......................................................................................................... 24  
   6. Foreign Regions’ Legal Borrowing from U.S. Problem-Solving Courts .......... 27  
      a. International Problem-Solving Court Movement ......................................... 27  
      b. Five Importing Regions ................................................................................ 28  
         i. England ..................................................................................................... 28  
         ii. Canada and Australia ............................................................................. 28  
         iii. Ireland and Scotland ............................................................................. 29  
      c. Law and Culture ........................................................................................... 30  
      d. American Exceptionalism ........................................................................... 31
B. Specialized Domestic Violence Courts (DV Courts) .................................. 35
   1. Overview .................................................. 35
   2. Application of Theoretical Foundation to DV Courts .......................... 38
      a. Therapeutic Jurisprudence ........................................... 38
         i. Pros ................................................................. 38
         ii. Cons .............................................................. 40
      b. Restorative Justice ................................................. 42
   3. Evaluation .................................................... 45
      a. Efficient Case Processing ......................................... 45
      b. Coordinated Response ............................................ 46
      c. Informed Decision-Making ........................................ 47
      d. Offender Accountability ......................................... 47
      e. Reduced Recidivism .............................................. 48
      f. Victim Safety and Services ..................................... 49
C. Transformation of the Domestic Violence Courts: Integrated Domestic Violence
   Courts (IDV Courts) ................................................................... 50
   1. Overview .................................................................. 50
   2. Evaluation .................................................................. 52

Chapter III. Domestic Violence Legal System in Taiwan .................................... 54
A. Initiation of the Domestic Violence Prevention ........................................... 54
B. The Domestic Violence Prevention Act ....................................................... 55
   1. Purview ................................................................. 55
   2. Application ............................................................ 56
   3. Civil Protection Order ................................................ 56
   4. Criminal Procedures ................................................ 58
   5. Preventions ............................................................ 59
C. Domestic Violence Prevention and Family Court ........................................ 60

Chapter IV. Comparisons of Domestic Violence Case Handling between Domestic Violence
   Courts in the U.S. and Taiwanese Courts ....................................................... 61
A. Court and Case Process ........................................................................... 61
   1. Specialized Courts ................................................................ 61
      a. U.S. ........................................................................ 61
      b. Taiwan .................................................................... 62
   2. Case Identification .................................................................. 63
      a. U.S. ........................................................................ 63
      b. Taiwan .................................................................... 64
   3. Case Disposition ..................................................................... 64
      a. U.S. ........................................................................ 64
      b. Taiwan .................................................................... 65
   4. Case Sentencing ..................................................................... 67
      a. U.S. ........................................................................ 67
      b. Taiwan .................................................................... 68
B. Therapeutic Jurisprudence Application ......................................................... 69
   1. Victim Safety and Services ..................................................... 69
      a. U.S. ........................................................................ 69
      b. Taiwan .................................................................... 72
2. Offender Accountability and Program Mandates ......................................................... 80
   a. U.S. ....................................................................................................................... 80
      i. Offender Assessment and Programs ................................................................. 80
      ii. Supervision and Court Responses to Noncompliance .................................. 82
         a) Court Supervision ....................................................................................... 83
         b) Enforcement of Noncompliance .................................................................. 84
         c) Factors Associated with Supervision and Greater Responses to Noncompliance ... 85
      iii. Reduced Recidivism ...................................................................................... 85
   b. Taiwan .................................................................................................................. 86
      i. Offender Assessment and Programs ................................................................. 86
      ii. Program Facilities .......................................................................................... 89
      iii. Enforcement of Noncompliance .................................................................... 94
      iv. Reduced Recidivism ....................................................................................... 94
C. Attempt on Restorative Justice ................................................................................ 97
   1. U.S. ....................................................................................................................... 97
      a. Types of Restorative Justice Applied in Domestic Violence ............................. 97
      b. Challenges for Restorative Justice in Domestic Violence .............................. 99
      c. Potential Benefits to Domestic Violence Victims ............................................ 100
      d. Special Consideration in Domestic Violence ................................................. 101
      e. Evaluation of Restorative Justice Models ...................................................... 102
   2. Taiwan .................................................................................................................. 103
      a. Restorative Justice in Chinese Society ............................................................ 103
      b. The Development of Restorative Justice ....................................................... 105
      c. Restorative Justice in the Prosecutor’s Office .............................................. 106
      d. Evaluation and Challenges .......................................................................... 107
      e. Suggestions ..................................................................................................... 109
D. Conclusion ............................................................................................................. 110
   1. U.S. ....................................................................................................................... 110
   2. Taiwan .................................................................................................................. 111

Chapter V. Recommendations ...................................................................................... 112
A. Taiwanese Integrated Family Court (IF Court) is a helpful alternative to the Taiwanese family legal system to better ensure DV victim safety and offender accountability. .................................................. 112
   1. Taiwanese IF court may reduce costs to parties, re-victimization, the sapping of court resources, and the inconsistency of court decisions when a DV victim requests a civil protection order and accuses the offender of committing crimes at the same time. .................................................................................................................. 112
   2. Intensive training and the establishment of coordinated judicial administrative rules for judges in Taiwanese IF court may increase the rate of BIP, which may also help research that evaluates and promotes the effectiveness of BIP. ........................................ 113
   3. Taiwanese IF court judges can better make use of criminal BIP, probation officer monitoring, and make appropriate disposition for DV offender’s noncompliance to BIP ........................................................................................................ 114
4. Clear problem-solving (TJ &/or RJ) policies and setting guidelines for Taiwanese IF courts to use in exerting discretion in DV cases may help moderate internal tension among judges. .......................................................... 115

B. Potential challenges to the Process of Establishing Taiwanese IF Courts ............ 119
1. Challenges to U.S. Problem-Solving Courts .................................................. 119
   a. Fairness ........................................................................................................ 120
   b. Deterioration of the Adversarial Process .................................................... 120
   c. Coercion ........................................................................................................ 120
   d. Neutrality ...................................................................................................... 121
   e. Legislative Mandate ..................................................................................... 121
2. Challenges to Imported Problem-Solving Courts ............................................ 123
   a. Top-down political system ........................................................................... 123
   b. Judge’s Assent .............................................................................................. 124
3. Challenges to Taiwanese IF courts ................................................................... 125
   a. Importing a Common Law System into a Civil Law System ......................... 125
   b. Family Court judges against Required Criminal Expertise and Increasing Caseloads ........................................................................................................... 126

Conclusion ............................................................................................................. 129
References .............................................................................................................. 130
Appendix .................................................................................................................. 147
List of Tables

Table 1 Case Disposition of the Civil Protection Order (2014).................................65
Table 2 Protective Orders as Conditions in DV Deferred Prosecution (2005-2014)........66
Table 3 Convicted DV Defendant, Probation, and Criminal Court Order (2005-2014)......67
Table 4 Convicted DV Defendant, Supervised Probation, and Mandated BIP (2005-2014)......68
Table 5 Convicted DV Defendant and Types of Sentencing (2005-2014).........................69
Table 6 Resources of the DV Reports (2005-2014)..................................................72
Table 7 Types of DV (2008-2014)...........................................................................73
Table 8 Sex of the DV Victim of the Intimate Relationship (2008-2014)........................73
Table 9 Nationality of the DV Victim of the Intimate Relationship (2008-2014).............74
Table 10 Types of Applicants in Civil Protection Order (2005-2014).............................74
Table 11 Case Disposition of the Civil Protection Order (2005-2014)...........................75
Table 12 Reported Cases, Application for and Issuance of Civil Protection Order............75
Table 13 Number of DV Cases/Defendant at Different Stages of Criminal Proceedings (2005-2014).........................................................................................................76
Table 14 Disposition of DV Defendant in Prosecutor Office and Criminal Court (2005-2014)...77
Table 15 Types of Services for DV Victims (2006-2014).............................................78
Table 16 Expenditure of Services for DV Victims (2006-2014).....................................79
Table 17 Mandated BIP of Civil Protection Order (2005-2014)...............................86
Table 18 Number of Items of BIP (2011-2014).........................................................87
Table 19 Types and Number of BIP (2014)................................................................87
Table 20 Mandated BIP and Assessment (2011-2014)...............................................88
Table 21 Comparison of BIP Facilities Responding to Questionnaire (n=43) and Total Facilities (n=58) as to Type of Institution and Regional Location..............................90
Table 22 Personnel and Management Decisions in Facilities Responsible for Providing Mandatory Treatment for DV Offenders (n=43)..................................................90
Table 23 Evaluation and Follow-up Post DV Offenders’ Treatment Plan (n=42)..............91
Table 24 Difficulties Confronted While Executing Treatment for DV Offenders.............92
Table 25 Sentencing for Noncompliance of the Civil Protection Order (Including BIP) (2005-2014)..............................................................................................................94
Table 26 People’s Views towards Legal Officials’ Work.................................................104
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**Introduction**

In the last two decades the Taiwanese family legal system has undergone a revolution in terms of individual family policy-making leadership; the enacting of family procedure law; the establishment of independent family courts; the equipping of family court facilities; and the regulation of requirements for family court judges. In addition to measures taken to differentiate the family legal system from the civil legal system, the legal transplantation of domestic violence (DV) prevention mechanisms (mainly from U.S. models) is a highlight of the innovative process. Taiwan’s Domestic Violence Prevention Act of 1998 is the pioneer in Asia.

Nevertheless, although the Act has been implemented for 17 years, there are unresolved problems that undermine deterrence of DV. For instance, unlike in the U.S., the vast majority of protection orders and batterer’s intervention programs (BIPs) are issued by family courts in Taiwan. When the same DV offense is pending both in the family court and charged in the criminal court, this causes not only higher costs to parties and a greater likelihood of re-victimization, but also inefficient use of court resources and inconsistent court decisions. Additionally, because the ordering of BIPs is based on the judge’s discretion, low enrollment in BIPs and the questionable effectiveness of BIPs reciprocally impact each other. Moreover, a lack of monitoring of BIPs in family court and leniency toward noncompliance to BIPs in criminal court limit the preventative and therapeutic aims of BIPs and might also put the victim in danger. Furthermore, disparities in assignments to therapeutic interventions result in unpredictable dispositions and tension between judges.

In the late 1980s in the U.S., problem-solving courts (PSCs)—specialized courts focusing on the promotion of therapeutic outcomes within a collaborative framework sharing five features: close and ongoing judicial monitoring, a multidisciplinary or term-oriented approach, a therapeutic or treatment orientation, the altering of traditional roles in the adjudication process, and an emphasis on solving the problems of individual offenders—emerged as a possible remedy to ongoing discontent with the criminal justice system. Legal actors in PSCs are expected to measure their successes by effects rather than processes, and to perceive cases brought before the court within a broader context. Although such unconventional judicial methods have raised legal and ethical concerns, most PSCs have proved effective in reducing systemic and social costs. Currently, PSCs have extended application from the original models—Drug Courts, Community Courts, Domestic Violence Courts (DV Courts), and Mental Health Courts—to other courts such as Unified Family Courts, Integrated Domestic Violence Courts (IDV Courts), and various combinations of any of the PSCs found in the U.S.

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2. Legal actors in this study include judges, prosecutors, lawyers, probation officers, police officers, and mediators. See cf: Bruce J. Winick, Therapeutic Jurisprudence and Problem Solving Courts, 30 FORDHAM URB. L.J. 1055, 1063 (2002). In contrast, non-legal actors or professionals in this study include psychologists, psychiatrists, and social workers.
Triggered by the perceived success of the PSCs in the U.S., more and more foreign countries or regions have jumped aboard the problem-solving movement, borrowing the structures and processes of U.S. PSCs and more or less transplanting these to their own legal systems, making this trend international. The five prominent importing regions, England, Canada, Australia, Scotland, and Ireland, all perceive adoption of the PSC as a product of synthesis, modifying the U.S. model to fit their local legal environments.

The project draws on my personal experiences as a Taiwan family court judge of nine years, along with a qualitative empirical investigation to clarify the problems of Taiwan’s family legal system, explore whether PSCs may provide a remedy, and examine how PSCs may fit into Taiwan legal culture in light of the experiences of other regions that have adopted PSCs. The qualitative research design includes the following methods: observations and interviews with judges and mediators of criminal and/or family courts in California; observations and interviews with judges, attorneys, resource coordinators and social workers in family courts and/or IDV Courts in New York; interviews with judges, lawyers, prosecutors, probation officers, psychologists, psychiatrists, and social workers associated with the Family Divisions of the Taipei District Courts in Taiwan; observation of focus groups and content analyses of focus group reports; and analysis of recent publications to collect perspectives of legal professionals and non-legal experts both in Taiwan and the U.S.

This thesis begins with a statement of some of the problems in the Taiwanese legal system’s approach to DV cases. To examine the necessity and possibility of legal borrowing from the PSC movement, the literature review provides a broad overview of specialized courts in the U.S. and, in order to explore how legal transplantations may adjust and adapt to a local environment, I also describe the experiences of the primary importing regions. More specifically, the specialized DV Court and its successor, the Integrated Domestic Violence Court (IDV Court), are described and evaluated through the lens of Therapeutic Jurisprudence (TJ) and Restorative Justice (RJ). Then, following a description of DV prevention in the Taiwanese legal system, I compare U.S. DV court cases with DV cases in Taiwanese family courts in terms of court- and case process, application of TJ, and attempts toward RJ. Lastly, the Taiwanese Integrated Family Court (IF Court) is proposed as a solution to the problems described herein.

The recommendations proposed here, along with the potential challenges to the establishment of Taiwanese IF Courts, can be expected to apply to both Taiwanese judicial administrations and continental Asian countries (especially those sharing traditional concepts of family and marriage as rooted in Chinese culture) borrowing or planning to borrow, directly or indirectly, from the DV legal system in Taiwan or the U.S.
Chapter I. Problems in the Taiwanese Legal System’s Approach to Domestic Violence Cases

A. Family Court Protection Order Procedure Independent of Criminal Court Procedure

According to Taiwan’s Domestic Violence Prevention Act, protection orders are comprehended as “Civil Protection Orders”, and, based on the Code of Family Procedure, these procedures occur exclusively in the Juvenile and Family Court or the family division of the district court. (Hereafter “family court” refers to both family court and the family division of the district court.) Although the prosecutor or the criminal court can issue protective orders to ensure victims’ safety when (accused) offenders are not detained and can obtain deferred prosecution, probation or parole, these orders are not defined as “criminal protection orders” by the Act. Again, “protection orders” generally refer to “Civil Protection Orders”, which are issued only by family courts. As a result, the protection order is not necessarily accompanied by criminal investigation.

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4 The initiation and contents of the Act are introduced in Chapter III. Domestic Violence Legal System in Taiwan.
5 See Domestic Violence Prevention Act Ch. 2. The Code of Family Procedure, which was modified from, and also replaced, the previous family part of the Code of Civil Procedure and Non-Contentious Code, applies to all family cases and trumps any other procedural statute regarding family matters. See Code of Family Procedure §51, 97.
6 Code of Family Procedure §3 (2012). Before the first Juvenile and Family Court was established in southern Taiwan in 2012, family cases were handled by the family division of the district court. According to the Legislature’s resolution in 2011, three more juvenile and family courts will be established in northern, central, and eastern Taiwan in the future. See Legislative Yuan Bulletin, 100/88, 295.
7 In addition to being released, the suspect may be asked to deposit a guarantee, to ask someone to be responsible for the future acts of the said suspect, or have restrictions placed on where they can live. See Domestic Violence Prevention Act §31.
9 Domestic Violence Prevention Act §38, 39.
10 Compared to the term “civil protection order” clearly defined in the Domestic Violence Prevention Act, the term “criminal protection order” cannot be found in the Act. That is, the “protection order” is simply defined as the “civil protection order” in the Act. Protective measures ordered by a criminal court are not included in the definition of “protection order”. However, a few judges or scholars define orders of protective measures issued by prosecutor or criminal court as “criminal protection orders”. E.g. Feng-hsien Kao, Analysis of Criminal Protection Orders under Taiwan's Domestic Violence Prevention Act, 190 FT LAW REVIEW 51, 52 (2013).
11 According to the criminal law, there are certain crimes indictable only upon complaint. They can be comprehended as a “private cause of action”, such as couple’s rape and minor injury. In addition, the complaint must be filed within six months from the identification of the offender, and can be withdrawn at any time before the decision-making in the first instance of the trial. See Penal Code §229-1, 221, 287, 277; Code of Criminal Procedure §237, 238. On the other hand, prosecutors can indict, in most serious crimes even if victims reject or withdraw complaints.
The protection order’s independence from civil or criminal procedure provides DV victims with more autonomy in procedural matters. Some victims do not intend for offenders to experience the criminal process. They may want a protection order only in support of a petition for unilateral divorce\textsuperscript{12}, or to show that it would be detrimental to the child to be placed in the custody of the offender.\textsuperscript{13} Other victims may not be ready to leave their intimate partners and may choose to stay in the relationship,\textsuperscript{14} believing that the violent behavior is conditional and will change once the offender receives drug- or alcohol treatment. These latter victims may pursue the civil protection order in family court even when they do not file a lawsuit for divorce or custody.

On the other hand, when DV victims apply for a civil protection order and complain of crimes at the same time, this duality results in concurrent cases in the family- and criminal court. In turn, when cases based on the same DV instance are pending in different courts, the following disadvantages emerge.

1. Higher Costs to Parties

It is obvious that both victims and offenders incur higher costs in terms of money, time, and energy when sessions are held in different buildings or different geographical locations.\textsuperscript{15} Attorneys have good reasons to charge double or more. Police officers, psychologists, psychiatrists, social workers, and witnesses must testify or work on the same issues twice or even more often when the prosecutor or judge considers it necessary.

2. Re-victimization

DV victims have often experienced prolonged suffering before their cases come to court.\textsuperscript{16} Some victims experience a form of learned helplessness\textsuperscript{17} and/or post-traumatic stress disorder,\textsuperscript{18}

\textsuperscript{12}Unlike the U.S., Taiwan did not adopt no-fault divorce. If either the husband or the wife meet certain conditions or reasons resulting in them being unable to maintain marriage, which are attributed to the husband or the wife in the absence of a relevant degree of negligence, may petition the court for a judicial decision of divorce. Civil Code §1052.

\textsuperscript{13}The DV offender’s custody of a minor is presumed to be against the best interest of the child. See Domestic Violence Prevention Act §43.

\textsuperscript{14}For those “foreign brides” mainly from mainland China and Southeastern Asian countries, they incline to stay in the marital relationship before they acquire Taiwanese identification in Taiwan. “Foreign brides” have caused a social wave in Taiwanese society. In the last decade, about 13% of registered married women were from foreign countries. That is, there is one foreign bride in every 7.5 married couples. Nearly two thirds of foreign brides are from mainland China (65%), and 30% from Southeast Asian countries, mainly from Vietnam (61.5%), Indonesia (15.4%), and The Philippines (5%). See Statistics, Interior of Ministry (2005-2014).

\textsuperscript{15}For example, it takes more than 20 minutes by car between the family division and the criminal division in Taipei District Court, and the Juvenile and Family Court in Kaohsiung and the criminal division in Kaohsiung District Court as well.

\textsuperscript{16}See, e.g., ANN JONES, NEXT TIME SHE’LL BE DEAD: BATTERING & HOW TO STOP IT, 170-73 (1994).

\textsuperscript{17}See Lenore E. Walker, BATTERED WOMAN SYNDROME AND SELF-DEFENSE, 6 NOTRE DAME J. L.
such that having to speak about what they have suffered repeatedly in different courts is likely detrimental to their psychological state. Moreover, because children who observe DV are also the victims of DV whether they are physically abused or not, they experience negative effects when they are called multiple times to testify to what they have seen.19

3. Inefficient Use of Court Resources

The trial of the same DV case in both the family- and criminal court causes court personnel- and facilities costs to increase unnecessarily. Although the rules of evidence differ in family- and criminal procedures,20 fact-finding proceedings overlap widely in terms of witness examination and the presentation of evidence. Moreover, the evaluation of sentencing in the criminal court is similar to the evaluation of the content and duration of the protection order.21 Inefficient use of court resources increases the court’s caseload and represents an increase in financial resources allocated to these families.

4. Inconsistent Court Decisions

Different evidence presented in the family- vs. the criminal court may lead to inconsistent decisions by these courts,22 which could confuse the parties. In addition, although in an ideal world every judge would interpret evidence in the same way, in reality, regardless of professional training, each judge has a different background, different life experience, and different personal beliefs. Thus, even when the evidence presented in the family and criminal court is exactly the same, it may be evaluated differently due to differences in each judge’s

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18 See Walker, Battered Woman Syndrome and Self-Defense, supra note 17, at 327-328.
20 In Taiwan, the legal standards for the burden of proof in family and criminal proceedings are the preponderance of the evidence and proving a claim beyond a reasonable doubt, respectively.21 For instance, circumstances that should be taken into account in sentencing include the danger and damage caused by the offense and the offender’s attitude after committing the offense, which should also be taken into consideration in issuing the terms and length of the civil protection order. See Penal Code §57.
22 It is understandable that different legal standards regarding what constitutes the burden of proof in different procedures, such as the “preponderance of the evidence” in the family courts or proving “beyond a reasonable doubt” in the criminal court, may cause inconsistent results between court decisions. For instance, an accused party is not found guilty in the criminal court may still have to pay restitution in the family court. In this context, the application of different legal standards resulting in “conflicts” in court decisions is excluded.
Although it is understandable that the same evidence may be viewed differently based on individual differences in perspective, it is likely not acceptable to a party to win in one court while s/he loses in the other.

Moreover, the therapeutic aim of the family court may not be fulfilled in criminal court. While the family court views DV as a cyclical behavior pattern and intends to provide offenders with counseling and treatment to prevent future DV, the criminal court tends to perceive each incident of DV as a separate crime. For instance, when an offender violates the civil protection order by failing to complete the batterer's program, the criminal court’s punishment might be probation without the requirement to complete the program, or a fine. As one criminal judge stated, “I cannot send someone to jail because he doesn’t finish classes.”

Generally speaking, BIPs include cognitive education, parenting education, psychological counseling, mental health therapy, treatment for drug or alcohol addiction, and any other treatment or counseling deemed necessary. Both in family- and criminal court, the BIP is ordered at the court’s discretion. The family court can order the offender to attend a BIP as part of a protection order; and failure to complete the BIP constitutes a violation of the protection order. The criminal court can order offenders to participate in the BIP when they commit the crime of DV or when they violate a protection order. The criminal court may order the BIP as a condition of release from detention; probation; or parole.

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23 There is no jury in Taiwan. All cases are heard and decided by one or three judges on bench.
24 Interview with a criminal court judge, Jan 21, 2015. The application and practice of the protection order in family and criminal courts will be discussed in Chapter III. Domestic Violence Legal System in Taiwan.
25 Domestic Violence Prevention Act §2.
26 Only ordinary protection order may contain BIP, but not temporary or emergency orders. See Domestic Violence Prevention Act §14, Paragraph 1.
27 When violating the protection order, the defendant shall be sentenced to an imprisonment of three years or less, detention, and/or fined a penalty at an amount not greater than 100,000 NTD. Domestic Violence Prevention Act §61.
28 The crime of domestic violence refers to any purposeful exercise of domestic violence among family members that constitutes an offense defined in any criminal law. See Domestic Violence Prevention Act §2.
29 The crime of violation of the protection order is limited to the following types of protection order: (a) prohibited from inflicting domestic violence; (b) prohibited from engaging in harassment, contacting, stalking, communicating, mailing, or any other unnecessary correspondence; (c) ordered to move out of the domicile or residence, and to refrain from using, profiting, disposing of property belonging to the domicile or residence; (d) ordered to keep a distance from the domicile or residence, the school, the workplace or other places; and (e) ordered to complete a batterer’s intervention program. See Domestic Violence Prevention Act §61.
30 Supra note 7-9.
B. The Discretionary Batterer’s Intervention Program (BIP)

1. Low Rate of BIP Orders by Family Court

According to official statistics, there were 23,428 applications for civil protection orders in family courts in 2014. Of the 14,365 approved protection orders, 3,226 or 22.5% included BIPs. In other words, less than one-fourth of protection orders request offenders to complete therapeutic programs or receive treatment to prevent future DV.

The Juvenile and Family Department of the Judicial Yuan, the highest judicial policy maker and drafter of regulations to prevent DV, has long encouraged family court judges to include BIPs in the protection orders issued to DV perpetrators. However, BIPs have been ordered with much less frequency than the Juvenile and Family Department has expected, and this low frequency is often criticized in the literature.

The low rate of BIPs in family courts reveals some systemic issues. First, retention of family court judges is low. Family court has little attraction to judges because of the court’s heavy caseload and the highly emotional nature of the proceedings. In addition, some family courts are located away from the city’s center, which lessens their appeal to judges. Moreover, family court judges are not often promoted to high court. The low rate of appeals in family court cases, along with the fact that the majority of appellant cases terminate in district courts, result in less opportunity to impress those high court judges.

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31 In 2014, the population was 23,433,753, and the reported DV cases were 133,716 in Taiwan. That is, about 10% reported DV offenders were mandated BIPs in 2014. See Judicial Yuan, 2013 Official Statistics, 9-78, 9-79. http://www.judicial.gov.tw/juds/index1.htm (last visited March 23, 2015), Statistics, Ministry of Interior and Ministry of Health and welfare. In contrast, in the U.S., batterer intervention programs are often mandated in judicial sentencing for domestic violence offenders. For example, in California, if “a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following . . . (s)uccessful completion of a batterer's program.” CAL. PENAL CODE § 1203.097 (2014). The rates of application, issuance of protections orders, and BIPs in the last ten years in Taiwan are demonstrated in Table 14 and 17.

32 For instance, the monthly statistics of the rate of BIPs in all family courts have been compiled and distributed to family court judges for their reference.


34 A legal representative is not required in family trial courts. In practice, although the parties have attorneys in hearing, they may still want to be present in person and express themselves directly to judges to stress their concerns and feelings that attorneys can hardly deliver. Such a fact-to-face communication between parties results in a highly emotional atmosphere in the family courtroom.

35 For instance, the Family Division of Taipei District Court located on the edge of the city is separate from the main building of the Taipei District Court in the metropolitan area for extending the court space. See supra note 15.
responsible for selection and promotion.\(^{36}\) Along related lines, it is also difficult for family court judges to transfer to other types of courts. (F1-2) Along related lines, it is also difficult for family court judges to transfer to other types of courts. (F1-3, F2-3)

It is not surprising that judges of DV cases are not aware of or pay little attention to therapeutic goals when they plan to remain in family court for only a few years.\(^{37}\) In turn, it is unreasonable to expect inexperienced judges to properly evaluate an individual’s need for cognitive education or psychological counseling, and less experienced judges are less familiar with the experts who can help determine the appropriate therapy or addiction treatment. Unfortunately, heavy caseloads prolong the time it takes for new judges to become grounded in the therapeutic, non-legal issues that are not addressed in the course of their legal education.

In addition to the low retention of family court judges, case closure deadlines also contribute to the low rate of BIPs in family courts. As part of its case management procedures the Judicial Yuan sets standards for case length based on the type and complexity of each case. Judges are expected to close cases within a certain period of time; and cases that are not closed within this period are listed as “delayed cases.” A given court’s delayed cases are not only reported and distributed to all judges serving in that court (which creates competition and an additional source of pressure), but these cases also substantially affect promotions, transfers, annual evaluations, and qualification for membership to self-disciplinary committees.\(^{38}\) Case closure deadlines are a burden to judges and discourage them from requiring offenders to undergo the time-consuming examination necessary for effective mental-health and addictions treatment.\(^{39}\) Delayed cases are a concern for judges. (F4) In cases involving ordinary protection

\(^{36}\) All judges at the level of the district court may apply for high court judges when they meet requirements. A committee consisting of high court judges will review the applicants’ qualification and consult comments from high court judges who reviewed applicants’ former judgments. Unlike general civil cases, most family cases are terminated in district courts and can be rarely seen in high courts. Thus, high court judges can hardly make positive comments for family courts judges who apply for promotion to high courts.

\(^{37}\) Judges are required to serve for a certain term in a division before they apply for transfers to other divisions. The terms, decided by the Judges Conference in each court, vary in different divisions. For example, family court judges in the Taipei District Court are required to stay no less than three years.

\(^{38}\) Taking Taipei District Court as an example, the Judge Conference may disapprove a judge's application for transfer, if he or she has more than eight delayed cases. Disapproval may substantially affect a judge's application for promotion to higher levels of courts. Additionally, an individual evaluation shall be conducted on a judge if his or her delayed cases are gross and deemed in severe violation of the rules of case management or other duties. Delayed cases may also influence a judges' annual assessment, which may affect the yearly bonus (equal to one to two months remuneration). The annual assessment also affects the qualification of candidate of members of the Judicial Personnel Review Committee, which is in charge of all judges' appointments, removals, transfers etc. See Judges Act §30, 74, Rule for Election of Members of Judicial Personnel Review Committee §3.

\(^{39}\) Although assessment of BIP is not required, except at judges’ discretion, at least substance healing treatment and mental health therapy cannot initiate without expert’s examination, since judges have no professional knowledge to decide whether they are necessary. See supra note 33.
orders, the case length is four months. Generally speaking, in DV cases each court session lasts less than half an hour, and sessions occur within two to a few weeks of each other. However, the treatment provider’s evaluation of the offender’s substance addiction or mental health issue may take anywhere from a few weeks to two months, and the offender’s absence or request for a deferral of the court session can add to the case length. Time-consuming assessments and uncertainty related to session continuance do not inspire discretion in favor of BIPs. In combination with heavy caseloads, speedy trial requirements discourage judges from requiring offenders to undergo assessment for and treatment of substance abuse- and mental health treatment.

The questionable effectiveness of BIPs is another factor that prevents judges from ordering offenders to participate in these programs. (F1-4) Taiwan has not only borrowed from the U.S. in terms of the legal aspects of DV prevention; but it has also borrowed from the U.S. Duluth model, such that the Duluth model has become the most widely used BIP model in Taiwan. Yet the effectiveness of BIPs has been disputed in the U.S. and there is lack of prevailing evidence showing the positive impact of BIPs on preventing future DV. In addition, some victims do not believe that the BIP can change offenders’ violent behavior patterns and thus request the court to repeal the BIP order, which then allows offenders more time to work and earn money for their family. The lack of clear and convincing evidence that BIPs can reduce recidivism and prevent the risk of future violence means that judges are less inclined to order DV offenders to enroll in BIPs.

2. BIP Ordered Only Rarely by Criminal Procedure

As mentioned above, the prosecutor or criminal court may order offenders to BIPs when they are released post-arrest; when they receive deferred prosecution; or as a condition of probation or parole. Statistics show that from 2005-2014 147 BIPs were ordered in connection with deferred prosecution and 61 BIPs were ordered as a condition of probation. (There are no data on the number of BIPs ordered upon release or as a condition of parole; these numbers are assumed to be even lower.) Cases of deferred prosecution seldom include BIPs because this

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40 See Regulation of the Case Closure Term in Juvenile and Family Court §3 Paragraph 1 Item 6.
41 See Chapter I. B. 5. b. Questionable Effectiveness.
43 Shih-Chi Lin et al., supra note 33, at 208-209.
44 See Chapter IV. B. 2. Offender Accountability and Program Mandates.
45 Domestic Violence Prevention Act §15, Paragraph 2.
46 Interview with a social worker, January 19, 2015.
47 The statistics is specifically provided during an interview with the Deputy of the Department of Prevention Rehabilitation and Protection, Ministry of Justice, January 21, 2015. Additionally, in an interview with a probation officer with nine years of experience, she stated that she had never seen a DV case with BIP on condition of deferred prosecution.
48 In fact, the number of cases with BIPs could be less than 61 because the statistics is classified by item of the BIPs, not by case. For instance, when the offender is ordered to undergo psychological counseling and treatment for alcohol abuse, it counts two items in the statistics but actually one case. See Judicial Statistics, Judicial Yuan, available at http://www.judicial.gov.tw/juds/report/Sf-20.htm (last visited March 24, 2015).
disposition is limited to misdemeanor cases and typically requires the offender’s apology along with the victim’s forgiveness. When the DV offender commits a misdemeanor but refuses to apologize, prosecutors tend to prosecute rather than render deferred prosecution as contingent on the BIP. (P1)

Budget constraints and case-closure deadlines are additional factors that prevent prosecutors from ordering BIPs. (P2, P3) Another factor in the lack of BIPs in criminal courts may be a tendency toward leniency for DV offenders. Because the criminal court system does not contain specialized DV courts or divisions that focus on DV, criminal DV cases are distributed evenly to all criminal judges and thus judges tend to consider DV as relatively minor in comparison with the other cases they see. (C1) In addition, criminal court judges have few DV-related continuing-education requirements and rarely obtain training in DV. Thus, another reason criminal judges do not order BIPs is that they are not aware of or familiar with these. Finally, those judges who wish to order BIPs are often discouraged from doing so due to a lack of connections and resources. (C2, S1)

3. No BIP Monitoring in Family Court

Although probation officers monitor offenders participating in the BIPs ordered by prosecutors and the criminal courts, there is no BIP monitoring within the family court system.

The family courts do assign evaluators to offenders participating in family-court-ordered BIPs; however, the evaluator does not function as a supervisor. Most evaluators also serve as the program’s counselors; mental health therapists; drug- and alcohol addiction specialists; or course instructors. Unlike the probation officer, who has the authority to report compliance or noncompliance to prosecutors or the criminal court, the evaluator simply records participants’ attendance; evaluates their attitude, response to treatment, and recidivism risk; and then reports these findings to an administrative agency for further consideration. It is also worth noting that the evaluator may experience role conflict when s/he is also providing counseling or therapy for the person s/he is evaluating.

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49 A defendant’s apology is an important factor taken into consideration in deferred prosecution. See Code of Criminal Procedure §253-1.

50 According to the Judge Code, judges are required to attend classes no less than 40 hours each year. DV training courses are usually assigned by the Department of Juvenile and Family Department and held in the Judge Academy each year. Most of participants of DV training courses are family court judges. Criminal court judges are rarely seen in these DV classes. A study shows that either a therapist (87%) or a professional team (13%) is in charge of the evaluation and referral to treatment program of BIP bases on protection order. See supra note 39, at 212.

52 The “Center for Prevention of Domestic Violence and Sexual Assault” is the agency of the local government in charge of the prevention of domestic violence.

53 In the words of a psychiatrist in an interview, “A therapist is supposed to build a relationship with the client, but an evaluator should keep neutral. Their roles are different and should not be played by one person.” December 5, 2014.
4. Lenient Disposition for BIP Noncompliance in Criminal Court

BIP noncompliance is a crime that can receive a sentence up to three years.\(^{54}\) Although the crime is a misdemeanor, unlike DV crimes, the victim’s accusation is not required for the crime to be prosecuted. In turn, because prosecution is less likely to take victim’s wishes into consideration, BIP non-compliance occurs more frequently (66.0%) than DV crimes (44.1%).\(^{55}\) (Higher non-compliance rates also indicate that BIP non-compliance is more easily identified than crimes of DV.\(^{56}\))

From 1999 to 2008, in the decade after Taiwan’s Domestic Violence Prevention Act took effect, the most frequently-used sentences for BIP noncompliance included jail stays of less than six months (38.7%) and short-term jail stays (55.9%).\(^{57}\) These sentences amount to nearly 95% of all sentences for BIP non-compliance. Moreover, because BIP non-compliance is a misdemeanor, both sentence types can be converted to fines.\(^{58}\) In other words, although BIP non-compliance is a violation of a family court order, the criminal court’s most frequent response to such crime is a fine. In this approach, DV crimes are viewed as highly similar to misdemeanor crimes committed by strangers. (F5)

Fines are not a problem for those who can afford them. It is also worth noting that a certain number of fines are actually paid by victims in response to the offender’s request or threats.\(^{59}\) The criminal court’s leniency toward BIP non-compliance does little to encourage offenders to complete the programs and also fails to facilitate the implementation of therapeutic policy in DV prevention.

5. BIP Effectiveness as Questionable

a. Overview

From 1999 to 2008 483,394 DV cases were reported in Taiwan.\(^{60}\) Of the 234,251 cases reported to police, fewer than 15% of the victims made a criminal complaint;\(^{61}\) 32,268 cases

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\(^{54}\) Supra note 27-29.

\(^{55}\) The rates of prosecution are based on statistics from 2001 to 2008. See Ai Mei Wei, The Response to and the Current State of Domestic Violence in Criminal Justice System, 6 (1) ASIAN JOURNAL OF DOMESTIC VIOLENCE AND SEXUAL OFFENSE 135, 154 (2010).

\(^{56}\) Id.

\(^{57}\) A short-term jail sentence is less than 60 days and can be extended no more than 120 days. See Penal Code §33.

\(^{58}\) Penal Code §41.

\(^{59}\) Interview with a senior social worker for DV victims and a lawyer. January 19 and 28, 2015.

\(^{60}\) Supra note 33, at 150.

\(^{61}\) Most of the DV victims choose to simply apply for a civil protection order rather than making criminal accusations against offenders. See Id. The resources of DV reports other than police are demonstrated in Table 6, and the victim autonomy in family and criminal procedure will be discussed in Table 12-14 and related description.
(fewer than 7% of reported cases) were prosecuted; and 18,881 cases (fewer than 4% of reported cases) resulted in a guilty verdict.\textsuperscript{62} Very, very few of these latter cases included orders for BIPs.

With regard to family court proceedings, one-third (160,575) of the reported DV cases included applications for protection orders from 1999 to 2008.\textsuperscript{63} Protection orders were granted in 94,742 (fewer than one-fifth) of reported cases,\textsuperscript{64} and of these latter cases, fewer than one-fifth included orders for BIPs. That is, nothing is done about the majority of the reported DV offenders.

The majority of Taiwan’s BIPs adopt the Duluth Model, which assumes that DV originates in men’s power and control over women; DV is learned; and DV can be unlearned given the proper intervention.\textsuperscript{65} Generally speaking, BIPs include cognitive education, parenting education, psychological counseling, mental health therapy, treatment for drug or alcohol addiction, and any other treatment or counseling deemed necessary.\textsuperscript{66} Most BIPs include 12- or 24-week courses of cognitive- or parenting education and may also include an alcohol-education component.\textsuperscript{67} The court can also order assessments to determine the need for mental health- or addictions treatment.\textsuperscript{68}

BIP fees vary from county to county. Most cognitive education-, alcohol education-, and parenting courses are free.\textsuperscript{69} Psychological counseling, mental health therapy, and treatment for drug or alcohol addiction are either free or paid for in large part by mandatory national health insurance or local government subsidies.\textsuperscript{70}

b. Questionable Effectiveness

In a nationwide empirical study evaluating the effectiveness of all BIPs initiated in January 1999-October 2005,\textsuperscript{71} surprisingly, offenders participating in BIPs had higher recidivism (16.6\%) than did DV offenders as a whole (12.8\%).\textsuperscript{72} A similar conclusion was drawn in smaller study of 70 high-risk DV offenders sentenced in Kaohsiung between 2000 and 2005.\textsuperscript{73} In this

\textsuperscript{62} Id.
\textsuperscript{63} Id. at 155.
\textsuperscript{64} Id. at 158.
\textsuperscript{65} Supra note 33.
\textsuperscript{66} Supra note 25.
\textsuperscript{67} THE MINISTRY OF INTERIOR, PROMOTING COURTS TO ORDER BIPS, 13, 2010.
\textsuperscript{68} Domestic Violence Prevention §14, Paragraph 3.
\textsuperscript{69} Supra note 67, at 14-21.
\textsuperscript{70} Id.
\textsuperscript{71} The study is sponsored by the Ministry of Interior, Executive Yuan. The data are retrieved from the main official resources, the “system of domestic violence cases” and the “system of domestic violence and sexual assault” are managed by the Ministry of Interior. See supra note 65.
\textsuperscript{72} Id. at 82.
\textsuperscript{73} Kaohsiung has a population of 1.54 million. In the study, all victims were contacted by telephone. There were 179 offenders sentenced to a protective order with mandatory treatment by the Kaohsiung District Court during the study period. Offenders who had died, moved to another city, did not attend treatment or live with their partners were excluded because it was far
study a three-month follow-up found treated offenders to have significantly higher recidivism (58.6%) than non-treated offenders (45.0%).

Some studies show DV treatment to have a positive impact, but their measures and samples are insufficient to yield convincing conclusions. For example, offenders in a 2012 study reported that their violent and/or controlling behavior decreased significantly as a result of BIP completion; and the majority of victims reported increases in their quality of life. Only 46 offenders and 8 victims participated in the research, however; moreover, offenders’ self-reports may be unreliable, and the link between victims’ quality of life and offenders’ behavior is also unclear. Clearly, this study’s findings cannot be generalized to the broader population.

BIP effectiveness may be undermined as a result of challenges that limit providers’ ability to provide treatment. In a 2007 study of all (63) Taiwanese facilities implementing court-ordered BIPs, more than 25% of facilities framed their most significant challenge in terms of low compensation for treatment. Personnel shortages, increased workloads, and a reluctance to engage with clients were additional challenges confronting treatment personnel; and more than 40% of facilities listed inability to pay for treatment and client absences as obstacles presented by clients. More than 40% of offenders in this study had BIP attendance rates of lower than 75% and dropout rates of over 25%. Conversely, nearly one-fifth of offenders had a less probable that violence would recur. Therefore, 109 offenders ordered to BIPs were enrolled in the study. Of this study group, 39 offenders were unreachable or the victims rejected to participate; thus, 70 offenders were investigated. See Shih-Chi Lin et al., Domestic Violence Recidivism in High-Risk Taiwanese Offenders after the Completion of Violence Treatment Programs, 20 (3) Journal of Forensic Psychiatry & Psychology, 458, 461 (2009).

According to offenders’ declaration in the study, the number of violent incidents reduced from 11.50 times to 1.33 times a year, and the power control from 16.86 times to 6.07 times. Yi-Ching Chen et al., Treatment Effectiveness of Marital Violence Offender: Preliminary Findings, 8 (2) ASIAN JOURNAL OF DOMESTIC VIOLENCE AND SEXUAL OFFENSE, 17, 42 (2012).

87.5% of victims claim that their lives are getting better, and 62.5% of victims believe they feel their lives are enjoyable. Id. at 45.

For instance, the victim might feel better and safer as long as the protection order has not expired. See Id.

Shih-Chi Lin et al., supra note 33, at 208-217.

Id. at 213.

More specifically, the attendance rate during 51-75% in treatment plan is 21.4%, the attendance rate during 26-50% in treatment plan is 11.9%, and the attendance rate during 0-25% in treatment plan is 7.1%. See Id., at 212.

Specifically, 26-50% offenders’ dropout rate is 38.1%, 51-75% offenders’ dropout rate is 1%,
completion rate of lower than 50% (and more than 90% of offenders had no post-treatment follow-up).

All of the obstacles described here are intertwined and can reciprocally impact each other. Low treatment fees contribute to personnel’s reluctance to participate in treatment; and personnel shortages may lead to increased workloads and vice versa. (Personnel shortages also contribute to superficial program completion estimates, such that completion is based simply on participant attendance as opposed to a substantive evaluation of treatment effectiveness.)

C. Conflict between Closing Cases and “Doing More”

Family law procedure allows judges more discretion than does civil procedure. Family court judges can re-direct cases to mediation, merge jurisdictions, merge trial proceedings, and also, when “necessary,” appoint a guardian ad litem or family investigator. Family court judges can also ask the local government to direct social workers to visit clients and report their findings to the court.

In DV cases, orders for BIP participation occur at the judge’s discretion; and judges can also order assessments to determine the need for mental health- or addictions treatment or refer parties to additional services when these are deemed to be necessary. Some active and enthusiastic judges go so far as to explore opportunities to collaborate with educational agencies or non-governmental organizations in order to best meet the needs of the parties. But it goes without saying that when judges exercise their choice to “do more,” they spend more time and energy on cases.

As described earlier, the Judicial Yuan sets standards for case length based on the type and complexity of each case; and case closure deadlines impact judges’ motivation to address the broader, non-legal issues that contribute to DV as “delayed cases” negatively impact promotions, transfers, annual evaluations, and qualification for membership to self-disciplinary committees.

and 75-100% offenders’ dropout rate is 1%. See Id.

84 See Id.
85 Id. at 214.
86 See Code of Family Procedure §29.
88 See Code of Family Procedure §41.
89 See Code of Family Procedure §15, 18; Civil Code §1055-1.
90 For instance, counselors in the Taiwan Community Counseling Association, which is supervised by Pei-Li Wu, professor of Department of Educational Psychology and Counseling, National Taiwan Normal University, have been collaborating with the Taipei District Court Family Division for more than ten years. The collaboration between the Association and the Family Division was originally connected by the family judge Nan-Yuan Peng. Counseling provided by the Association is financially supported by the court, in full, in order to provide psychological services to parties emotionally involved in family cases referred by judges.
91 These rules include Rule for Court Case Term and Rule for Juvenile and Family Court Case Term.
92 Supra note 38.
Delayed cases are a significant concern for judges and the legal system’s emphasis on speed and efficiency discourages judges from “doing more.”

Most judges search for a balance between closing cases quickly vs. doing more for offenders and victims. Some judges focus only on the legal issues, stating that they were not trained to be “social workers.” These judges do not refer clients to services; instead, they render their decisions quickly; they have fewer delayed cases; and they experience less pressure from court administrative personnel. Conversely, some judges focus on more than legal issues, choosing also to work as problem-solvers. When possible, they exercise their choice to connect clients with services. And although more of these judges’ cases are pending or in a delayed status, they are appreciated by clients and respected by some colleagues.

Clearly, the “speedy” approach to the legal process vs. “doing more” for clients reflect different values. But when most judges are inclined to go with the former approach, those focused on problem-solving face even more pressure. Moreover, these two perspectives create disparities in court decision-making; and these not only impact individual parties; they also impact the prediction of court decisions along with the fair allocation of court resources. When combined with an administrative process wherein new cases are distributed to judges on a random basis, such disparities essentially subject court cases to a lottery: Case outcomes are determined not only by the legal issues but also by the judge’s personal preferences and values.
Chapter II. Domestic Violence in U.S. Problem-Solving Courts

Taiwan has transplanted substantial and procedural legal designs in DV from the U.S., but the court system is not included. Due to the PSC including DV Court's effectiveness which has formed the international problem-solving court movement, it might be possible to find a solution to the Taiwan DV problematic practice through analyzing reasons for PSC's success. This study’s literature review provides an overview of 1) the origins of specialized domestic violence courts, namely, Problem-Solving Courts (PSCs); 2) the current specialized Domestic Violence Courts (DV Courts), and 3) Integrated Domestic Violence Courts (IDV Courts), which are a streamlined, next-generation version of the current DV courts. PSCs include all specialized courts and provide a broad framework from which to view the similarities and differences between DV courts and other PSCs. As I introduce and describe the PSC, I address both its successes and limitations; thus, a background is provided that enables an analysis as to whether PSCs can provide a helpful alternative to the above-mentioned problems in the Taiwan family legal system, and, if so, whether the Taiwan system might be successful, overcoming challenges that have occurred in the U.S. In addition, the experiences of the regions that have adopted PSCs may reflect the challenges the Taiwan family legal system might encounter, enabling Taiwan to be better prepared for its own adoption process.

A. Origin of the Domestic Violence Courts: Problem-Solving Courts (PSCs)

In the last two decades, the rise of PSCs in the U.S. has resulted in unparalleled court innovation. As of December 31, 2009, there were 2,459 Drug Courts and 1,189 other PSCs in the country. Advocates perceive PSCs to be a “dramatic wave of court innovation” and a “revolution” in the legal system, and this may not be an overstatement.

1. Core Elements

In spite of the different settings of the various PSCs, they share the following principles:

- Redefining goals: Instead of focusing only on the correct application of law and precedents, PSCs are intended to make a difference in the lives of the victims, defendants, and neighborhoods.

- Making the most of judicial authority: PSCs undertake continuous judicial monitoring of offender compliance, extending judicial involvement in cases after court decisions are rendered.

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93 Drug Courts include adult, DWI, juvenile, family, tribal, campus, reentry, federal and veteran drug/treatment courts.
94 Other PSCs includes truancy, mental health, domestic violence, child support, reentry, community, homeless, prostitution, gun, parole violation, and gambling courts.
96 John Feinblatt, Greg Berman, and Derek Denkla, Judicial Innovation at the Crossroads: The Future of Problem-Solving Courts, 15 Court Manager 28 (2000).
• Putting problems in context: PSCs address the behind-the-scene problems that brought a defendant to court, considering the impact on victims and the community.

• Forming creative partnerships: PSCs collaborate with treatment providers and integrate social services and non-legal experts within the legal process.

• Rethinking traditional roles: PSCs encourage prosecutors, attorneys and public defenders to work together to change defendants’ behavior patterns, with the leading judge acting as a convener, broker and coordinator.97

2. The Rise of the Problem-Solving Court

PSCs have emerged as a result of the American public’s general dissatisfaction with the U.S. criminal justice system.

a. Dissatisfaction with the Criminal Justice System

“[N]o civic institution has experienced a greater loss of public faith in recent years than the American criminal justice system.”98 Problems include expensive and overcrowded jails and prisons; increasing numbers of caseloads in courts; repeating offenders cycling through the “revolving doors” of the legal system; expedited case management and the assembly-line, “McJustice” phenomenon; the win-at-all-costs attitude of trial advocates; rigid procedural restrictions and minimum sentencing guidelines; and exhaustion and job dissatisfaction among judges.99 Yet problems associated with the legal system are only a reflection of the larger society’s ills.100 The legal system exists because of social problems and “cannot restrict the flow of such problems into the courtroom.”101 Along with other disappointed members of other branches of government,102 judges feel a responsibility to improve their relevance in society.103

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98 Id. at 3.
100 DAICOFF, THE ROLE OF THERAPEUTIC JURISPRUDENCE WITHIN THE COMPREHENSIVE LAW MOVEMENT, 466.
101 Pamela Casey & David B. Rottman, Therapeutic Jurisprudence and the Emergence of Problem-Solving Courts, NAT’S INST. JUST. J. 12, 13 (1999).
103 BERMAN, Supra note 97, at 3.
and courts are placed on the front lines to address and respond to social problems such as substance abuse, family breakdown, and mental illness. ¹⁰⁴

b. Administration Support and Funding

In 2000, the U.S. Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) passed a joint resolution advocating “the broad integration over the next decade of the principles and methods employed in problem solving courts in the administration of Justice.” ¹⁰⁵ Later the American Bar Association endorsed “the continued development of problem solving courts” and encouraged “law schools, state, local and territorial bar associations, and other organizations to engage in education and training about the principles and methods employed by problem solving courts.” ¹⁰⁶ In 2004, the CCJ and COSCA encouraged each state “to develop and implement an individual state plan to expand the use of the principles and methods of problem-solving courts into their courts.” ¹⁰⁷

3. Models

There is no fixed definition as to what constitutes a PSC. Generally, PSCs expect legal actors, including judges, attorneys, and public defenders, to work as problem solvers rather than case processors. ¹⁰⁸ For those who practice problem-solving justice, “a case is a problem to be solved, not just a matter to be adjudicated.” ¹⁰⁹

The four basic PSC models include the Drug Court, Community Court, Domestic Violence Court, and Mental Health Court. The first PSC was a drug court implemented in Miami, Florida, in 1989. ¹¹⁰ While PSC models vary from location to location, they share the same team-oriented, multidisciplinary, and therapeutic approach.

a. Drug Court

Drug courts provide offenders with an intense, judicially-monitored treatment program and an alternative to adjudicative processes, and include counseling sessions, alcoholic/narcotic groups, acupuncture treatment, and/or other treatments that may be advised by treatment providers. Clients return to the court regularly to report their progress and submit urinalysis tests, and they interact directly with the judge in the courtroom. Clients receive praise, prizes, and applause for compliance, while they receive sanctions such as community service and short-term jail time for noncompliance. Their success in the program leads to dropped charges or an

¹⁰⁴ ROTTMAN & CASEY, supra note 101.
¹⁰⁵ NOLAN, supra note 1, at 7.
¹⁰⁶ Id.
¹⁰⁷ Id., at 8.
¹⁰⁸ BERMAN, supra note 97, at 5.
¹⁰⁹ Id.
¹¹⁰ Greg Berman and John Feinblatt, Problem-Solving Courts: A Brief Primer, 23 LAW & POL’Y 125, 126 (2001).
expunged record, along with a graduation ceremony that includes expressive and emotional testimony and speeches.  

b. Community Court

Community courts target low-level offenses such as prostitution, illegal vending, public drinking, disorderly conduct, graffiti, shoplifting, noise ordinance violations, farebeating, loitering, and vandalism. Community courts impose community service sanctions, for example, picking up trash in local parks, sweeping streets, feeding the homeless, sorting recyclables, or landscaping or removing snow from public sites; or they may direct participants to programs including “quality-of-life” programs, health-related programs, drug and alcohol treatment, general equivalency diploma classes, or job training. Short-term jail periods are imposed on defendants who fail to comply with the alternative sanctions.

c. Domestic Violence Court

While focusing on the victim’s safety and the offender’s accountability, DV courts provide both victims and offenders with therapeutic services. Judges, as multidisciplinary team leaders, cooperate with lawyers, probation officers, treatment providers, representatives from victims’ advocate organizations, battered women’s homes, and sexual assault units. Victims are referred to services and counseling, while defendants are required to attend BIPs including batterer counseling, anger management classes, or drug/alcohol treatment programs (they may also spend time in jail under judicial supervision). Compliant offenders are rewarded with praise and the appropriate lifting of restrictions, while sanctions for noncompliance include more frequent reviews, electronic home confinement, participation in work crews, community service, or jail.

d. Mental Health Court

The criteria for participation in mental health court include 1) the committing of only minor crimes, such as trespassing, shoplifting, disorderly conduct, petty theft, urinating in public, or drug abuse; and 2) diagnosis of an Axis I mental illness (e.g., schizophrenia, bipolar disorder, major depression) or presence of organic brain injury, head trauma, or developmental disability. Mental health courts may offer treatment instead of adjudicative processes (pre-plea), or they may offer treatment as a condition of probation or sentence deferral (post-plea). Participants receive encouragement and praise from the judge and applause from the courtroom.

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111 NOLAN, supra note 1, at 11-12.
112 Id. at 12-14.
when they make progress; and noncompliance results in sanctions such as a reprimand from the judge, a more restrictive and structured treatment setting, or jail.\textsuperscript{115}

e. Other PSCs

Other PSCs include reentry courts, homeless courts, driving-under-the-influence (DUI) courts, teen courts, gambling courts, truancy courts, prostitution courts, or combinations of any of the PSCs described here.\textsuperscript{116} In addition, the problem-solving approach has extended to civil cases, for example, in unified family courts and integrated domestic violence courts. Problem-solving principles have been applied to conventional courts in part because judges in PSCs influence judges in conventional courts; these judges may also incorporate problem-solving concepts when they return to practice in conventional courts.\textsuperscript{117}

4. Theoretical Foundation

PSCs emerged as legal practitioners called for a new response to problems within the legal system, a response that amounts to a “pastiche” of good ideas and strategies. Such strategies and approaches include alternative dispute resolution, the victims’ movement and restorative justice, problem-oriented- and broken-windows policing, therapeutic jurisprudence, and juvenile-justice processes.\textsuperscript{118} Among these five precursors, the predominant theoretical bases utilized by PSCs derive from the restorative justice and therapeutic jurisprudence movements.

a. Restorative Justice (RJ)

During the 1960s and 1970s, victims organized as a political constituency, blasting the criminal justice system for focusing on defendants while neglecting victims’ voices; battling to raise public awareness; pushing for legislative change; and establishing hundreds of advocacy organizations. In response, Congress passed the Victims of Crime Act in 1984, creating the Office for Victims of Crime to provide ongoing funding for victim support programs.\textsuperscript{119}

RJ, an outgrowth of the victims’ movement, is a victim-centered response to crime that allows those directly involved (the victim, the offender, and the community) to have direct dialogue about the crime and repair the harm caused by it. In contrast to retributive justice, RJ emphasizes support for victims, offender accountability, community-building, reparation for victims’ losses, offender reintegration, and public safety. Programs may include victim-offender

\textsuperscript{115} Id. at 57.
\textsuperscript{116} NOLAN, supra note 1, at 20-22. See also C. West Huddleston et al., Painting the Current Picture: A National Report on Drug Courts and Other Problem-Solving Court Programs in the United States, National Drug Court Institute, Bureau of Justice Assistance, vol. 1, no. 2 (2005).
\textsuperscript{117} BARBARA BABB AND JEFF KUHN, MARYLAND’S FAMILY DIVISIONS PERFORMANCE STANDARD 5.1: A THERAPEUTIC, HOLISTIC, ECOLOGICAL APPROACH TO FAMILY LAW DECISION MAKING, in WINICK & WEXLER EDs., JUDGING IN A THERAPEUTIC KEY, 125-27.
\textsuperscript{118} BERMAN, supra note 97, at 39.
\textsuperscript{119} Id. at 43-46.
mediation, family group conferencing, reparative probation, sentencing circles, and community-restitution programs.\textsuperscript{120}

PSCs have benefited from the victims’ movement and RJ. First, the focus on victim safety and community welfare has been directly applied to DV- and community courts. Second, PSCs have been funded by organizations that were set up in response to the victims’ movement, such as the U.S. Department of Justice Office for Victims of Crime and the Office on Violence Against Women. Third, PSCs have imported from the victims’ movement the concept of stakeholder participation and assurance of a role for service providers in the justice process. Lastly, PSCs have adopted the political flexibility of the victims’ movement, whose allies range from feminists to law-and-order conservatives: Actors ranging from pro-rehabilitation liberals to pro-order-maintenance conservatives have aided PSCs across the political spectrum.\textsuperscript{121}

b. Therapeutic Jurisprudence (TJ)

TJ, developed in the late 1980s, derives from mental-health law and is “the use of social science to study the extent to which a legal rule or practice promotes the psychological and physical wellbeing of the people it affects.”\textsuperscript{122} TJ has since been applied to a broader range of legal concerns, including health care, family law, tort reform, sentencing guidelines, and jury instructions.\textsuperscript{123}

Many practitioners within drug, DV, and mental health courts employ TJ as a lens with which to assess court procedures and as a rationale for reforms. Others argue that TJ and PSCs are a “less than perfect fit”: not all PSCs intend to change the behavior of offenders as TJ does; and some PSC elements, such as increasing accountability for offenders on bail, are not primarily therapeutic. Regardless, TJ provides a strong theoretical foundation for the PSC: it is outcome-oriented, multidisciplinary, highlights empirical research, and reminds practitioners to maintain a perspective that goes well beyond the cases in front of them.

c. Restorative & Therapeutic Justice (RTJ)

RJ and TJ have many similarities. Both RJ and TJ share a commitment to empathy for those involved in the legal process.\textsuperscript{124} Both are committed to offender accountability as a means to heal all parties and prevent future victimization.\textsuperscript{125} Both utilize problem-oriented adjudication\textsuperscript{126}, and

\textsuperscript{120} Id.
\textsuperscript{121} Id.
\textsuperscript{122} DAVID B. WEXLER & BRUCE J. WINICK, LAW IN A THERAPEUTIC KAY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE 769 (Durham: Carolina Academic Press, 1996).
\textsuperscript{123} Id. at 49-52.
\textsuperscript{124} See John Braithwaite, RESTORATIVE JUSTICE AND THERAPEUTIC JURISPRUDENCE, 38 CRIM. L. BULL. 244, 244 (2002).
\textsuperscript{125} Id. See also David Wexler, THERAPEUTIC JURISPRUDENCE IN A COMPARATIVE LAW CONTEXT, 15 BEHAVIORAL SCIENCE AND THE LAW 233, 236 (1997).
\textsuperscript{126} Id. Braithaite, supra note 125, at 246. See also Susan Daicoff viewed RJ and TJ as part of a more comprehensive law movement including preventative law, procedural justice, facilitative mediation, transformative mediation, holistic law, collaborative law, creative problem solving
are committed to reforming access to justice without undermining traditional legal values.\textsuperscript{127} Finally, both have an interest in integrating normative and explanatory theories,\textsuperscript{128} and both use evidence-based research to evaluate individuals’ experience of the legal process.\textsuperscript{129}

There are a few distinctions between RJ and TJ. While TJ focuses on therapeutic vs. anti-therapeutic effects, RJ is more broadly focused on process and values.\textsuperscript{130} While RJ proposes that stakeholders’ perspectives take precedence over those of the professionals providing therapy or treatment,\textsuperscript{131} TJ does not share this assumption.\textsuperscript{132} TJ also includes therapeutic models that RJ lacks.\textsuperscript{133} It may be that certain desirable outcomes (for example, victim recovery, individual and community well-being, crime prevention) would be better achieved via integration of TJ and RJ within a single framework.\textsuperscript{134}

5. Evaluation

While one purpose of justice is to sustain public order by controlling crime, another is to secure individual rights by protecting due process.\textsuperscript{135} The PSC experiment is a relatively new one, and the main outcome concerns fall into two categories: effectiveness and fairness. Many evaluation studies, most conducted by the Center for Court Innovation, are regularly published and ongoing. However, PSCs are often evaluated in terms used to evaluate conventional courts, while the effectiveness of outcomes and case processing receive less attention.\textsuperscript{136}

a. Effectiveness

PSC research that extends beyond conventional measures expands the domain of justice system effectiveness by addressing effects on victims, offenders, and communities. Although the criteria for the success of PSCs vary, generally speaking, a change in offenders’ behavior and the prevention of recidivism are two essential, common indexes.\textsuperscript{137} In addition, even though the

\textsuperscript{127} Id. Braithaite, at 254.
\textsuperscript{128} Id. at 267.
\textsuperscript{129} Id. at 244.
\textsuperscript{130} Id. The modalities of the process include family group conferences, healing and sentencing circles, restorative probation and many other forms. The values can be categorized by priority as constraining values, maximizing values and emergent values. Id. at 246-253.
\textsuperscript{131} Id. at 249.
\textsuperscript{132} Bruce Winick argued that paternalism can be anti-therapeutic. BRUCE WINICK, The Jurisprudence of Therapeutic Jurisprudence, in LAW IN A THERAPEUTIC KEY 653 (DAVID B. WEXLER & BRUCE WINICK EDVS., 1996).
\textsuperscript{134} Id.
\textsuperscript{136} Supra note 97, at 151-152.
\textsuperscript{137} Id. at 153-154.
innovative PSC incurs huge costs and requires sizeable investments in research, technology, training, social services, etc., the cost of not implementing them is even higher: indifference to and neglect of victims’ voices; continued, repeated, and cyclical criminal offenses; and continued decline of public trust in the judicial system.\footnote{138} A study suggests that “every dollar spent on drug courts yields ten dollars in cost savings from reduced incarceration, victimization, and crime”.\footnote{139}

i. Drug Court

A study of six New York drug courts shows that drug-court graduates recidivate 71 percent less than offenders prosecuted in conventional courts. The evidence is overwhelming: drug courts are one of the few criminal justice interventions that have proven effective in reducing criminal behavior. The research suggests that offenders mandated to treatment last longer than other clients; treatment changes behavior; judicial monitoring makes a difference; and drug courts save money\footnote{140}. Other beneficial impacts include the more than 2,100 drug-free babies born to mothers in drug-court programs; in addition, the on average 30 percent higher employment rate for graduating offenders increases personal income tax contributions and reduces public welfare and hospitalization costs\footnote{141}.

ii. DV Court

Most DV Court research takes the form of process evaluations rather than experimental studies. Findings include the following: 76 percent of victims in a South Carolina court rated case handling as excellent or good; BIPs as currently configured have modest but positive effects on violence prevention; and the evidence suggests that rigorous court monitoring may have more of an effect on recidivism than batterer-reeducation programs\footnote{142}.

iii. Community Court

A study of the Midtown Community Court conducted by the National Center for State Courts represents the most wide-ranging research on community courts. Its findings indicate that the community court’s alternative sentencing practices result in reduced "walks," reduced use of short-term jail sentences, improved compliance with court orders, and reduced street crime such as prostitution, unlicensed vending, and graffiti\footnote{143}. A follow-up evaluation found improvements

\footnote{138}Id. at 13.
\footnote{139}This study is an intensive examination of investment costs and benefits resulting from the operation of a single court. Data were collected in a manner that allowed costs and benefit to be assessed both overall and agency-by-agency, and the value of less intensive approaches in providing similar estimates. SHANNON M. CAREY & MICHAEL W. FINIGAN, A DETAILED COST ANALYSIS IN A MATURE DRUG COURT SETTING A COST-BENEFIT EVALUATION OF THE MULTNOMAH COUNTY DRUG COURT (2003).
\footnote{140}Michael Rempel et al. The New York State Adult Drug Court Evaluation: Policies, Participants and Impacts, report submitted to the New York State Unified Court System and the U.S. Bureau of Justice Assistance, October 2003.
\footnote{141}Id.
\footnote{142}BERMAN, supra note 97, at 158-163.
\footnote{143}MICHELE SVIRIDOFF ET AL., DISPENSING JUSTICE LOCALLY: THE IMPLEMENTATION AND
in the neighborhood's quality of life, shortened arrest-to-arraignment times, reduced use of jail, and the value of cleanup work by community-service work crews. Finally, Sviridoff concludes that, “It is likely that the dollar value of unmeasured benefits (e.g., improved quality of life, reduced recidivism for completing drug treatment) is greater than the dollar value of unmeasured ‘add-on’ costs.”

iv. Public Perceptions

In a study of more than 500 criminal courts, judges overwhelmingly agreed that the bench should be involved in reducing drug abuse among defendants; that there is a need for more information about past violence when deciding bail and sentences in DV cases; and that judges should be more involved, with community groups, in addressing neighborhood safety and quality-of-life concerns. A survey revealed that the majority of residents would be willing to pay more taxes to keep their community court in operation. Another survey suggests that PSCs contribute to improved perceptions of justice.

b. Fairness

Critics of PSCs have raised concerns about judicial paternalism, adversarial processes, and the social control of judicial authority. These same critics question the independence and neutrality of the judiciary and the separation-of-powers doctrine. Drug courts have the longest history in the PSC movement; therefore, they have been the most studied and analyzed. Generally speaking, research on drug courts draws conclusions that apply to other PSCs. McCoy, based on her review of the entire literature of state-sponsored reports and non-state sponsored research, has identified these themes:

- The need to relieve docket overloads and high expenditures in the criminal justice system, as a result of the War on Drugs and overuse of incarceration.
- A new emphasis on therapeutic approaches to drug addiction, including the use of twelve-step modes combined with close supervision.
- The desirability of structural alternatives designed to mitigate the “assembly-line justice” tendencies of standard adversarial criminal courts.
- The potential of RJ models to engage victims in restoring both offenders and communities.
- The need to improve the severity of mandatory sentencing in drug cases.

145 SVIRIDOFF ET AL., supra note 144, at 9-10.
146 Id. at 166-168.
147 Id. at 117, 125, 174.
149 Id. at 1518.
Obviously, some of these themes appear to be in tension with one another. However, this is not necessarily so. For example, the first theme shows a utilitarian and cost-conscious rationale, while those following it are more offender-centered and therapeutic, although linked with objectives (rehabilitation, reduced recidivism, less reliance on incarceration) that are cost-effective from a broad perspective.\textsuperscript{150}

Generally, the literature reveals varying ideological strains that have shifted over time as drug courts have developed. In the beginning, court administrators attempted to reduce caseloads and incarceration costs; and judges were keen to avoid harsh War-on-Drug policies. Therefore, initial responses focused on streamlined case management and the diversion of appropriate defendant groups.\textsuperscript{151} The social work approach developed slowly through the 1990s, as therapeutic rhetoric gradually overtook management rationales.\textsuperscript{152} Then, Hora, Schma, & Rosenthal linked drug courts with TJ academic theory, facilitating debates about drug courts that have spanned multiple disciplines.\textsuperscript{153}

Based on sociological fieldwork, Nolan argues that insofar as drug courts redefine justice as treatment, they open the door to judicial coercion in the name of therapeutic efficacy.\textsuperscript{154} In the law review, Casey depicts the history of juvenile courts as a cautionary tale for drug courts, pointing to similar risks of a “legitimacy crisis” due to issues of unfairness, coercion, and non-neutrality.\textsuperscript{155} From a practitioner’s viewpoint, Quinn points to legal and ethical problems she faced as a drug court defender, including split loyalties between the team and the client, and the tendency of the team to downplay the right to counsel at crucial procedural moments. She also presents the lack of attention to defense perspectives in drug court literature.\textsuperscript{156}

Meanwhile, defenses of drug courts are plentiful, but most take a therapeutic or policy viewpoint and insufficiently clarify legal issues.\textsuperscript{157} Articles that address normative issues are mainly theoretical. Among these analytical defenses, Dorf and Fagan argue that drug courts are better positioned than mainstream courts to protect rights because drug court monitoring promotes both efficacy and accountability in decision-making.\textsuperscript{158} Dorf further describes drug

\begin{thebibliography}{5}
\bibitem{150} Id.
\bibitem{151} Id. 1518-1519.
\bibitem{152} Id. 1519-1520.
\bibitem{156} Mae C. Quinn, \textit{An RSVP to Professor Wexler’s Warm Therapeutic Jurisprudence Invitation to the Criminal Defense Bar: Unable to Join You, Already (Somewhat Similarly) Engaged}, 48 B.C. L. Rev. 539 (2007).
\end{thebibliography}
courts as manifesting new legitimacy criteria that blur inter-branch boundaries in response to social needs.  

In addition to the theoretical critiques and defenses, Meyer’s monograph, one of the practitioner-oriented publications sponsored by the national drug court association, featured constitutional issues and “best legal practices.” Also of note are federally funded reports by Goldkamp et al. and Farole and Cissner. Both reports insert defendants’ views and use focus groups as assessment tools. Farole and Cissner, based on group discussion with clients in six sites nationwide, found that the judge’s role is central, court sessions play a therapeutic function, and structured rewards and sanctions are key motivators. Their research also found, based on group discussions with clients and staff at three New York sites, that staff are aware of clients’ motives and perceptions, clients perceive staff positively, and one unaddressed concern is lack of clarity about the role of defense counsel. Other themes worth noting include the following:

- Many clients do not fully appreciate what they agree to when entering drug courts.
- Most clients perceive the drug courts’ rules as fair.
- Clients do not perceive defense attorneys as important to drug court operations.
- Courtroom appearances, especially interactions with the judge, have a powerful effect on client motivation and compliance.

In addition to discussion groups among practitioners, Lane presents transcribed courtroom scenarios from observations of three PSCs to illustrate due process issues. He concludes that PSCs show improvements over “assembly-line” courts, while proper safeguards can mitigate due-process problems. Lane’s study insightfully analyzes the empirical data to address essential issues; however, a weakness is his failure to observe the courtroom scenarios or conduct the group discussions in person.

In contrast, Malkin’s ethnographic study of a New York community court included observation of the court’s operations, attendance at community meetings, and interviews with defendants, personnel, and local residents. Based on the empirical data on citizen perspectives,

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162 Farole & Cissner, supra note 159.
Malkin uses the community court as a focal point for the formulation of community justice theory.\textsuperscript{165}

Focusing on broader sociolegal phenomena, Mirchandani’s study of a Utah DV court includes courtroom observations, content analysis of newspaper accounts and taped legislative debates, and in-depth interviews with legal professionals and other court personnel. She argues that the court structure enables the complementary pursuit of two theoretically divergent goals: technocratic justice and social justice.\textsuperscript{166} Mirchandani’s research design is tailored to her purpose, and her analysis links the data to theoretical frameworks. Nevertheless, her data lacks direct contact with clients. She notes that further study is needed to determine whether her findings apply to other PSCs and other client experiences.\textsuperscript{167}

6. Foreign Regions’ Legal Borrowing from U.S. Problem-Solving Courts

Keeping my focus in mind, I would now like to address the adoption of U.S. PSCs by various importing regions. These importers’ experiences may provide practical lessons for Taiwan and can help predict how Taiwan family courts might best modify and localize PSCs.

a. International Problem-Solving Court Movement

The Red Hook Community Justice Center,\textsuperscript{168} established in April 2000 in New York, has become a model for community courts both domestically and internationally. The first international legal borrowing took place in England: After British officials visited the Red Hook Community Justice Center, the Liverpool Community Justice Centre, which provides a variety of services to solve offenders’ problems, was launched in September 2005.\textsuperscript{169} Later, Australian officials drew inspiration from the Red Hook Center. Staffs from the Center for Court Innovation were invited to present on the problem-solving approach in Australia; and the Neighborhood Justice Centre was opened in Victoria in March 2007.\textsuperscript{170} International development of community courts continues to spread to Dublin, Ireland; Glasgow, Scotland; and Vancouver, British Columbia, Canada.\textsuperscript{171}

Shaping the international PSC movement, other PSC models, including drug, mental health, and DV courts, have been transplanted internationally as well.\textsuperscript{172}

Along with the transplantation of legal processes, other U.S. cultural products will export to the receiving countries as well, in ways which could challenge or change the legal culture of those countries.\textsuperscript{173} Therefore, to ensure a better fit with their local culture in a legal context, the

\textsuperscript{165} Id. at 1578.
\textsuperscript{167} Id. at 412.
\textsuperscript{168} The Red Hook Community Justice Center provides court-monitored intervention for a variety of low-level crimes, including petty theft, drug offenses, prostitution, and illegal vending.
\textsuperscript{169} NOLAN, supra note 1, at 3.
\textsuperscript{170} Id.
\textsuperscript{171} Id. at 3-4.
\textsuperscript{172} Id. at 4.
\textsuperscript{173} Id.
receiving countries should take care to trim or modify those artifacts best suited to the atmosphere of the U.S.\textsuperscript{174}

b. Five Importing Regions

U.S. PSCs have been transplanted to varying degrees in England, Wales, South Africa, Canada, Scotland, New Zealand, Australia, Ireland, Bermuda, and Jamaica, among other regions.\textsuperscript{175} Among these importing regions, the most extensive importers include England, Canada, Australia, Scotland, and Ireland.

i. England\textsuperscript{176}

England has adapted American models to establish three types of problem-solving courts: drug courts, DV courts, and community courts. Britain’s PSCs are different from U.S. PSCs as a result of structural factors, including a huge lay magistrate system, a centralized probation service, and a top-down political system. In addition, cultural factors make certain behaviors unacceptable in British courts, for example, applause for those graduating from treatment, tearful testimonies by successful defendants, or hugging between the judge and defendant at graduation ceremonies.

In short, the three types of PSCs in England share these features in common: First, U.S. problem-solving models inspired and modified English innovation. Second, in contrast to the bottom-up movement in the U.S., English courts have garnered initiation and support from the central government in a top-down orientation. Third, unlike judges in American models, judges or magistrates in English courts are unable to impose intermediate sanctions, and they are also less involved in ongoing judicial monitoring and the adoption of therapeutic and expressive approaches.

ii. Canada and Australia\textsuperscript{177}

TJ provides the underlying philosophy of PSCs in Canada and Australia. The leading scholar David Wexler’s speech in Victoria in 2002 was well received by magistrates and echoed what they had already done in courts. On the other hand, both Canadian and Australian scholars and practitioners reflect critically on TJ in PSCs, expressing concerns that some values guarded in traditional courts (for example, certainty, reliability, impartiality, and fairness) might be lost in legal innovation.

As with the “top-down” movement in the U.K., both countries expect more legislative direction in guiding PSC practice. However, judicial deference to the legislature plays a more influential role in Australia than in Canada. As in England, Canadian and Australian PSC operation depends on government funding and direction. Also, as in England, and in contrast to the abstinence approach in the U.S., Canada and Australia adopt the harm reduction or harm

\textsuperscript{174} Id. at 6.
\textsuperscript{175} Berman, \textit{supra} note 97, at 10.
\textsuperscript{176} Nolan, \textit{supra} note 1, at 4-75.
\textsuperscript{177} Id. at 76-108.
minimization approach. A prominent example is that drug courts in both counties use methadone as a treatment component. Such an approach not only directly affects these countries’ public health systems; it affects definitions of treatment success as well.

As compared to the UK, judges and professional magistrates in Canadian and Australian PSCs have more authority and discretion in imposing short stints in jail as a sanction, and they are also more involved in judicial monitoring. Not surprisingly, there are fewer theatrical courtroom scenes in both countries compared to the U.S.

The presence of aboriginal peoples plays a significant role in distinguishing the Canadian and Australian cultures from the American and British cultures. Among the uniform features of these aboriginal courts is TJ, which intertwines with RJ in practice.

iii. Ireland and Scotland\textsuperscript{178}

Sharing similar cultures and legal habits, Scotland and Ireland initiated their first PSCs in 2001. As of 2007, only a few PSCs operated in Scotland, and only one drug court operated in Ireland. Obviously, PSC development in these two countries has occurred at a much slower pace than in the other main importing countries.

In the process of legal borrowing, neither Scotland nor Ireland embrace TJ as the core philosophy applying in PSCs. These countries also emphasize the impact of PSCs in countries other than the U.S., and emphasize their differences, especially those of English PSCs, from other legal systems.

Ireland and Scotland are especially concerned with appropriate judicial conduct in the courtroom. Exceedingly emotional behavior is regarded as improper.\textsuperscript{179} In addition, “fundraising by judges” is a judicial activity that is unacceptable to Ireland and Scotland. As in other non-U.S. countries, both Ireland and Scotland employ the philosophy of harm minimization or harm reduction. Methadone maintenance has played a primary role in their drug courts. Regarding the treatment that occurs in drug courts, as in England, programs tend to be more clinical and medical than therapeutic in approach.

There are differences in the PSCs in Ireland vs. Scotland. First, Scotland shows more concern about court formality and the due process rights of offenders. Second, in contrast to the absence of lawyers in the Irish drug court, the defense agent plays a role in the Scottish drug court. Third, the interim sanction of bail revocation/short-term stints in jail has been used less frequently in Scotland than in Ireland. Fourth, as compared to Scotland, the Irish drug court has more tolerance for courtroom behavior similar to that in American courts, such as using the client’s first name and shaking the client’s hand, applauding in the courtroom, rewarding defendants with small gifts, and holding graduation ceremonies.

\textsuperscript{178} Id. at 109-35.
\textsuperscript{179} In Scotland, there is no graduation ceremony with hugs, applause, fanfare, or tearful testimonies. Instead, the sheriff will make the offender’s progress brief, thank him for his efforts, and wish him well in the future. See GILL McIVOR ET AL., THE OPERATION AND EFFECTIVENESS OF THE SCOTTISH DRUG COURT PILOTS, SCOTTISH EXECUTIVE SOCIAL RESEARCH, 64 (2006).
c. Law and Culture

The organic metaphor conveys the need for adoption/importing practices that account for the relationship between the law and society. Globalization in business and economics make legal transplantation more possible because the world becomes more and more similar. Nevertheless, every legal system is a “unique product of a particular complex of determining factors”: “Every culture has its particular law, and every law its particular cultural life”; and “Law varies directly with culture.” The emergence of PSCs in the U.S, for example, is associated with TJ and RJ theory.

According to the 2007 Pew Global Attitudes survey, more than half of those surveyed in 37 of 47 countries viewed the processes of Americanization negatively. 67% of those surveyed in both Canada and Britain viewed the spread of American ideas and customs negatively; by contrast, 74% of Canadians and British admired U.S technology and science, and 73% of Canadians and 63% of British appreciated American movies, music, and television. Regarding these inconsistent attitudes, the survey report concluded that although “large proportions in most countries think it is bad that American ideas and customs are spreading to their countries,” there is still “near universal admiration for U.S. technology and a strong appetite for its cultural exports in most parts of the world.” In the context of PSC transplantation, importers have shown similarly paradoxical concerns: while they would like to borrow the American legal innovation, they are also suspicious of some of its characteristics.

For example, while the five importers described above are interested in American PSCs, they are not very comfortable with American boldness and enthusiasm. Not only do they look to examples in other countries outside the U.S. and emphasize the influences of these other countries, but they also highlight the need for adaptation—that is, for the choosing of selective elements most applicable to the local scenario—in the transplantation process. Nevertheless,

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180 Nolan, supra note 1, at 33.
183 Id.
185 Id., at 102,103.
186 Id. at 6.
187 Norlan, supra note 1, 159. According to Norlan, advocates of PSCs make use of at last three strategies to cope with the dilemma: 1) The Anti-American Pitch- to sell the court programs in anti-American terms; 2) Affinity with other Countries- to highlight related developments in other countries; 3) Emphasizing Adaptation- to emphasize the process of adaptation. See Norlan, supra note 1, at 159-167.
188 Id. at 160.
189 Id. at 162-165.
190 Some countries are against the theater, emotionalism, and physical contact, graduation ceremonies, prize-giving, clapping, a total-abstinence treatment philosophy, and judicial fundraising. In some cases, they do not accept therapeutic jurisprudence and the self-solving group
because “law is a product of culture,” it is impossible to exclude Americanism from the imported American-grown legal innovation.

In short, by adjusting the American model, the five regions described here have accepted the “evolutionary” traits of PSCs, while rejecting these courts’ “revolutionary” traits.

In practice, legal borrowing is more of a combination of both globalization and localization, in other words, “glocalization” or “difference-within-sameness.” As Hsin-Huang Hsiao describes how the process of globalization triggers localization in contemporary Taiwan, “Globalization also involves the promotion or facilitation of local difference and diversity – the rise of local heterogenization.” It is not surprising that any legal innovation deriving from the process of globalization would provoke at least some resistance from judges and other personnel in top-down cultures. Data collection and evaluation, which can’t be completed without an administration’s assistance, will justify a new policy to be implemented in this regard.

d. American Exceptionalism

Even though the U.S. and the above importing regions are all categorized as Anglo-American systems, the TJ effects of PSCs vary from each other. The influence of TJ is more marked in the U.S., Canada, and Australia than it is in England, Scotland, and Ireland. While the magistrate system in England limits the operation of TJ in PSCs, the greater flexibility and power enable American judges in PSCs to enlarge TJ’s application. The other four fall between the two extremes. The difference between the American legal accent and the legal accents of the five regions leads to different dispositions in PSCs. More specifically, American dispositions are distinguished by enthusiasm, boldness, and pragmatism, and the other regions are characterized by moderation, deliberation, and restraint.

- Enthusiasm vs. Moderation

format of treatment modes. See NORLAN, supra note 1, at166.


192 NORLAN, supra note 1, at 177.

193 Philip Bean, Drug Treatment Courts, British Style: The Drug Treatment Court Movement in Britain, 37 SUBSTANCE USE & MISUSE, 1595-1614.

194 ROLAND ROBERTSON, GLOCALIZATION: TIME-SPACE AND HOMOGENEITY-HETERGENEITY, in GLOBAL MODERNITIES, 462 (Mike Featherstone et al. eds, 1995).

195 Hsin-Huang Michael Hsiar, Coexistence and Synthesis: Cultural Globalization and Localization in Contemporary Taiwan, in MANY GLOBALIZATIONS: CULTURAL DIVERSITY IN THE CONTEMPORARY WORLD, 49 (2002). Contrary to Homogenization, Heterogenization is “the local rejection of the dominant global culture and the reassertion of indigenous practices and commitments to local identities.” NORLAN, supra note 1, at 24.

196 NORLAN, supra note 1, at 136.

197 Id.

198 Id.
Visitors of American PSCs who interview judges in PSCs can be impressed by their commitment to and personal belief in the innovative programs. Some judges and advocates believe they are vested in something with historical significance. The PSC movement is described as “the future of the law,” “the future of justice,” “a remarkable transformation in the role of the courts,” and “a revolution in jurisprudence.” Not only do they display a religious-like commitment to PSCs, but they are also eager to spread the “good news” to their skeptical colleagues and the rest of the world. Nevertheless, not only might such a feature in U.S. PSCs not be embraced by imported PSCs, but it might frighten some non-American judges as well.

In contrast to American enthusiasm, one of the characteristics of the non-U.S. regions is moderation. Imported problem-solving courts are regarded as one attempt, among other solutions, to deal with social problems that are brought to courts, rather than as a revolutionary remedy. For instance, Schneider viewed Canadian mental health courts as a part of but not a complete solution. Scottish officials have similar views that PSCs are part of but not all of the answer. Irish officials and judges also expressed that drug courts are not a panacea for all drug offenders, but a part of the criminal justice system. Australian criminologist Arie Freiberg’s preference for using “problem-oriented” rather than “problem-solving” methods expresses his less optimistic view regarding results than those held by American advocates. Green agrees with Freiberg’s point on “problem-oriented” procedures and thinks that England and Wales are more realistic about what courts may achieve.

While the goal of drug treatment in the U.S. is abstinence, it is more moderate in other importing regions: harm reduction or harm minimization. Moreover, methadone is more likely to be used in treatment in importing PSC regions; whereas, it is either forbidden or much less used in the U.S.

● Boldness vs. Restraint

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199 Id. See National Drug Court Month Field Kit, National Association of Drug Court Professionals 15 (2007).
200 Id. at 137-38.
201 Berman & Feinblatt, supra note 110, at 15; GREG BERMAN AND JOHN FEINBLATT, JUDGES AND PROBLEM-SOLVING COURTS 22, Center for Court Innovation (2002).
202 For instance, an Irish judge says that American PSC advocates “might be slightly naïve to assume that our sense of enthusiasm would match their sense of enthusiasm.” See Norlan, supra note 1, at 139.
207 NOLAN, supra note 1, at 148.
208 Id.
Based on Glendon’s classification of the types of judges, American PSC judges tend to the romantic, while the other five regions’ judges tend to the classical. American judges in PSCs are bold in their role-playing, and they are not afraid to use their increased power and discretion to solve problems. American Problem-solving court judges have greater discretion than those in conventional criminal courts. They may impose a variety of sanctions, such as community service, participation in anger management classes, and short periods in jail. Compared to other regions importing problem-solving courts, American judges are unique in the variety of sanctions they can impose. The characteristic of more power and authority given to judges makes for a more inquisitorial than adversarial form of adjudication.

According to Glendon’s typology, restraint can be categorized into three types: structural, interpretive, and personal. The three can be found in the non-U.S. PSC judges. In terms of structural restraint, PSCs, particularly in England and Wales, are reluctant to initiate programs without executive and legislative approval. For instance, without legislative basis, courts would not bring defendants back for judicial review, reward participants, impose intermediate sanctions for noncompliance, or terminate programs. With regard to interpretive restraint, non-U.S. judges either make efforts to justify new programs related to existing law, or they constantly consult how to utilize greater discretion and leverage after the passage of legislation gives them expanded authority. Judges in non-U.S. regions realize they can simply “use the tools that government” gives them and are limited by statutory law with regard either to diversion programs or to imposing intermediate sentences. As to personal restraint, even

209 In her book, Mary Ann Glendon identifies judges as two types: classical judges and romantic judges. While the former strives for “modesty, impartiality, restraint, and interpretive skill”, the latter is “bold, creative, compassionate, result-oriented, and liberated from legal technicalities.” MARY ANN GLENDON, A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY, 118 (1996).

210 NOLAN, supra note 1, at 139.

211 Judge Cindy Lederman reflects her role as a problem-solving court judge. She said, “I’m encouraging. I’m making judgment calls. I’m getting very involved with families. I’m making clinical decisions to some extent, with the advice of experts.” Rather than a “referee or spectator”, it is a role towards a “participant in the process”. Compared to the conventional criminal court, the innovative role might be at risk. “I have much greater opportunities, I think, to harm someone than I would if I just sat there, listened, and said guilty or not guilty.” See Id. at 139-140.

212 Id. at 141.


214 Supra note 208.

215 NOLAN, supra note 1, at 151-52

216 Id. at 152-53.

217 Interpretive restraint refers to the limits of judicial deference to the constitution, statues, and precedents. Id. at 153.

218 Id. at 154.

219 Id. at 153-54.

220 Personal restraint refers to the limits judges identify themselves to be fair, neutral, and unemotional. Id. at 154.
though judges in non-U.S. regions can act with more discretion, they still hesitate to exercise this discretion for fear of imposing disproportionate sanctions to what offenders commit or they consider as judicial reserve. Further, most of the judges in the five non-U.S. regions resist engaging in activities that express emotion, such as hugging, clapping, holding graduation ceremonies, or interacting in an excessively personal manner, and view these as inappropriate judicial behavior. This manner reveals the judicial mind in a local legal culture.

- Pragmatism

Like other technocratic efficiency-oriented models of government institutions in the twentieth-century, the problem-solving court movement is deeply pragmatic. Regardless of the theory of legal pragmatism, a number of PSC judges believe the problem-solving approach derives from practical rather than philosophical considerations. Advocates argue that PSCs are more effective than the alternative and claim that treatment is cheaper than jail, that these courts reduce the recidivism rates, and that they address the offenders’ underlying problems. The remarkable efficacy and problem-solving capabilities of these courts, which sometimes seem to outweigh other common law restraints, has caused concerns about movement away from the principles of the criminal justice system. Further, pragmatism is such an American orientation that its transferability is debatable according to the literature.

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221 Id. at 154-155.
222 A number of American judges in problem-solving courts engage in some uncommon judicial behaviors beyond traditional roles that may be considered as inappropriate, even by their colleagues. For instance, judges, especially in drug courts, might offer hugs at clients’ treatment graduation, allow parties to visit their chambers, attend community meetings regularly, visit clients at their working place, lobby Congress for funding, connect various resources to support treatments or programs, promote courts through media, and even raise funds for the court’s programs. See Id. at 140, 156.
223 Id. at 154.
225 Id. at 144.
226 Id.
227 Judge Stanley Goldstein once told drug court judges; “As long as whatever you do is designed to get them off drugs and put them back out on the street in a position where they can fight using drugs, whatever you do to accomplish that is fine.” A New York judge also said, “Our job is to make sure justice is done. Our job is also to punish, but what’s the point of punishing if it doesn’t work. […] When they developed the common law, they didn’t have these problems. […] But we do now, so let’s deal with it.” Ellen Schall similarly argued, “The reason we got into problem-solving courts is because it wasn’t working for a judge to sit there and process.[…]It wasn’t a legal success. It wasn’t a social success. It wasn’t working.” Id. at 145.
228 Casey, supra note 153, at 1502.
229 For instance, Posner argues that philosophical and adjudicative pragmatisms are American dispositions that “may not travel well to other countries.” See Richard A. Posner, Pragmatic Adjudication, in THE REVIVAL OF PRAGMATISM: NEW ESSAYS ON SOCIAL THOUGHT, LAW AND CULTURE, 250 (Morris Dickstein ed. 1998).
B. Specialized Domestic Violence Courts (DV Courts)

1. Overview

The origin of DV courts is multiple. As early as the 1970s, the feminist and battered women’s movements promoted the notion of DV not as a private matter but as a crime, which brought about the enactment of federal and state laws requiring greater awareness of battered women and consistent enforcement. Consequently, pro-arrest policies, evidence-based prosecution, and specialized police and prosecution units arose in response. In 1994, the passage of the Violence Against Women Act sped up the criminal justice system’s response to DV, including its establishment of federal pro-arrest laws, funding for victim services, and other measures. Some courts agree that the service provision promotes victim participation in the legal process.

These innovations gave rise to a significant increase in DV cases in the criminal courts. In the 1990s and early 2000s, specialized courts, known as problem-solving courts, emerged to deal with cases which involved an underlying problem. More than 3,000 problem-solving courts have been established. These include drug courts, mental health courts, community courts, and DV courts. All models seek positive impacts on defendants, victims, and communities and share some practices such as referral to community-based programs, ongoing compliance monitoring, and collaboration between justice and community partners. Nevertheless, unlike drug or mental health cases, there are victims in DV cases, and victims are under the threat of violence.

236 See Id.
237 BERMAN & FEINBLATT, supra note 97; Pamela Casey & David Rottman, Problem-Solving Courts: Models and Trends, 26 JUSTICE SYSTEM JOURNAL (2005).
238 Donald Farole et al., Applying the Problem-solving Model outside of Problem-solving Courts, 89 JUDICATURE 40-42 (2005); Robert Wolf et al., Planning a Domestic Violence Court: The New York State Experience, Center for Court Innovation (2004).
continuous violence by offenders. Thus, in the problem-solving process and in a way that greatly differs from other problem-solving courts, DV courts regard victim safety and offender accountability as higher priorities than offender rehabilitation.  

There are more than 200 DV courts throughout the U.S. More than 150 corresponding programs have arisen globally. It is noteworthy that nearly half of the DV courts in the U.S. are located in New York and California. Due to various policies, DV courts don't follow a single model; however, they do share a significant similarity in goals, concerns, and benchmarks used to gauge their success, which are all specialized features of DV courts not found among other problem-solving courts.

The most prominent goals of DV courts are victim safety and offender accountability. Recidivism deterrence, offender rehabilitation, and effective administration of justice are also important objectives DV courts expect to achieve. The index of successful DV courts includes providing sufficient resources for intensive supervision of offenders, services for victims, and intervention programs for offenders. Keys to reach these goals include building strong collaboration among the judiciary, prosecution, victim advocates, probation, and law enforcement. Additionally, dedicated and experienced judges and court personnel who have been trained and retrained are indispensable as well.

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240 “Domestic violence courts” here are defined here as courts that handle domestic violence cases on a separate calendar or assign domestic violence cases to specialized judges or judicial officers. While most of them followed the “problem-solving court” movement, some have operated over 30 years. More than 150 domestic violence courts emerged since the last national study in the U.S. in 2000. Up to 2009, while they can be found in 32 states, 18 states have no domestic violence courts. See Melissa Labriola et al., A National Portrait of Domestic Violence Courts, Center for Court Innovation, iv-v, ix (2009); Susan Keilitz, Specialization of Domestic Violence Case Management in the Court: A National Survey, National Center for State Courts (2000).

241 Labriola et al., supra note 239, at iv. There are more than 50 in Canada, nearly 100 in England. Samantha Moore, Two Decades of Specialized Domestic Violence Courts, Center for Court Innovation, 2 (2009), Center for Court Innovation.

242 Up to 2009, the majority are in New York (63) and California (34). Id. at v.

243 Id. at iv-ix.

244 Id.

245 Id. at v.

246 The expectation of the effective administration of justice includes efficiency of case processing, consistency of dispositions and sentences cases, and correct application of statutes. Id. at vi.

247 Id. at ix.

248 Id. at viii.

249 Id.
A national empirical research study conducted in 2009 provides an overall portrait of DV courts in the U.S.\(^{250}\) Firstly, with regard to victim services and safety, victim advocates worked at or collaborated with nearly 80% of the DV courts.\(^{251}\) A majority of advocacy services included accompanying victims to court, safety planning, explaining the criminal justice process, providing housing referrals, facilitating prosecution, and counseling.\(^{252}\) Close to 90% of courts surveyed issue a temporary order of protection or a restraining order at a first appearance either in the hearing or before defendants reach the court.\(^{253}\) At sentencing, more than 80% of courts often or always impose a final order of protection prohibiting or limiting contact with the victim.\(^{254}\) Surveyed stakeholders thought that a number of courts do not provide sufficient safety measures such as separate seating areas, escorts, and childcare.\(^{255}\)

Secondly, the majority of offender assessments were not conducted by courts, but by prosecution staff, probation, or the staff of BIPs or other outside programs.\(^{256}\) Less than half of the surveyed courts always or often conducted the assessments.\(^{257}\) The most common types of offender assessments were of drug and alcohol dependence and mental health issues. Some courts assess an offender’s risk of repeat violence, background characteristics, service needs, and history of victimization.\(^{258}\) While one third of courts surveyed ordered 75% to 100% of offenders to participate in a BIP, more than one third of courts ordered less than a quarter of the offenders to programs.\(^{259}\)

Thirdly, more than half of the surveyed courts often or always ordered offenders to probation supervision.\(^{260}\) More than half of the courts reported that they often or always mandate offenders to return to court post-disposition for monitoring, and 15% of courts sometimes do so.\(^{261}\) It shows disparities in terms of the frequency of judicial monitoring and of the practices implemented at judicial hearings, such as reviewing program reports, restating responsibilities, praising compliance, or sanctioning noncompliance.\(^{262}\) More than 75% of courts always or often

\(^{250}\) Id. at vi.
\(^{251}\) Id.
\(^{252}\) Many advocacy services are employed by the prosecutor’s office. Most of them provide services such as accompanying victims to court (80%), safety planning (79%), explaining the criminal justice process (79%), providing housing referrals (73%), facilitating prosecution (64%), and counseling (56%). See Id.
\(^{253}\) Id.
\(^{254}\) Id.
\(^{255}\) The stakeholders’ survey reported that most courts do not provide sufficient safety measures such as separate seating areas (60%), escorts (50%), and childcare (76%). See Id.
\(^{256}\) Id. at vii.
\(^{257}\) 11% of surveyed courts reported they sometimes conducted assessment. Id.
\(^{258}\) The percentage of reported courts access offender’s risk of repeat violence, background characteristics, service needs, and history of victimization are 40%, 40%, 34%, and 26% respectively. Id.
\(^{259}\) 44% surveyed courts ordered less than a quarter of the offenders to programs. Id.
\(^{260}\) 62% of the surveyed courts often or always ordered offenders to probation supervision. Id.
\(^{261}\) Id. at viii.
\(^{262}\) Id.
impose sanctions for failure to comply with court mandates. The most common responses to noncompliance with mandates are verbal admonishment, immediate return to court, and increased court appearances. The less common sanctions include jail and revoking or amending probation.

It is notable that state statutes governing mandatory sentences of DV offenders have impacts on DV courts’ orders of protection, BIPs, and compliance monitoring. For instance, with statutes governing the sentencing of DV offenders, California’s courts are more likely than other states to impose final protection orders that prohibit or limit contact with the victim, or that sentence offenders to BIPs, probation, or judicial monitoring.

2. Application of Theoretical Foundation to DV Courts

   a. Therapeutic Jurisprudence

      TJ is the study of using an interdisciplinary approach to seek law’s healing potential. It explores the law’s therapeutic and anti-therapeutic impacts on people involved in the legal system, and it expects legal changes to increase the former and decrease the latter without diminishing other legal values.

   i. Pros

      With regard to DV, TJ is interested in how legal actors—police, prosecutors, defense lawyers, judges, and other court personnel—can play their roles in ways that advance the offenders’ rehabilitation and victims’ healing. TJ believes that DV should be treated differently than stranger violence because the repetitive nature of DV imposes ongoing threats and long lasting trauma on victims. Consequently, handling these cases in a specialized DV court may provide better therapeutic advantages for victims, batterers, and their families than

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263 See Id.
264 The surveyed reported that verbal admonishment (83%), immediate return to court (73%), and increased court appearances (59%) are the most common responses to noncompliance with mandates. Id.
265 The percentages of reported courts imposing revoking or amending probation, or jail are 37% and 29% respectively. Id.
266 Mandatory sentences contain at least some categories of DV offenses, such as required minimum periods in custody, minimum probation terms, BIPs, fines, community service, firearm relinquishment, or protection orders. See Id. at vi-viii.
267 Id. at vi-viii.
269 Id.
271 Id. at 37-39.
doing so in non-specialized courts. A specialized DV court is expected to mandate offenders to a BIP to promote their rehabilitation and more effective monitoring, while also referring victims and their family to resources that would provide timely assistance. This multidisciplinary approach mirrors the essence of TJ.

Firstly, through coordinating case management by linking the case to any other pending cases, the specialized DV court provides greater opportunity and efficiency for victims by allowing them to address all issues related to DV as “one stop shopping.” Instead of dealing with cases in a fragmented way, judges in the specialized DV court can develop expertise and strengthen their skills in adjudication and disposition by dealing with all aspects of DV issues. This is especially so in the scenario of many unrepresented offenders and victims.

Secondly, the court’s periodical monitoring of the offender’s compliance with court orders holds offenders accountable and increases their compliance. Judges can effectively monitor whether abusers follow court orders, including their participation in mandated treatment programs, by imposing sanctions after having issued protective orders, accepted diversion, or plead guilty with probation carrying various conditions, and sentencing alternatives. Moreover, to foster offenders’ progress in the process of monitoring, the court can use strategies, such as offering praise and encouragement in response to offenders’ compliance and sanctions in response to their non-compliance.

Thirdly, the specialized DV court can function as a facilitator of offender rehabilitation. This occurs when the court requests that offenders complete a BIP with a rehabilitative approach. Nevertheless, psychotherapy, counseling, and educational approaches cannot be

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272 Id. at 33, 35-45.
274 Id. at 78. See also Randall B. Fritzler & Lenore Simon, Creating a Domestic Violence Court: Combat in the Trenches, 37 CT. REV. 37: 28-39 (2000); Pamela Casey & David B. Rottman, Therapeutic Juresprudence and the Emergence of Problem-Solving Courts, NAT’S INST. JUST. J. 13 (1999).
275 Karan et al., supra note 272, at 72; Fritzler & Simon, supra note 273 at 37.
276 Karan et al., supra note 272, at 72.
277 Id. at 72-78; Fritzler & Simon, supra note 273, at 37.
278 When violations are found, the court can impose immediate sanctions including more frequent reviews, electronic home confinement, work crews, alternative community service, more restrictive terms of probation, more intensive treatment, or actual jail time. Fritzler & Simon, supra note 273, at 37.
279 The judge’s active role in the process of monitoring has been utilized generally in drug courts. See generally Hora et al., supra note 151.
281 Many batterers’ intervention programs adopt the Duluth Model, which emphasizes the connection between DV and power control, such as intimidation, isolation, and coercion.
effective without the participants’ willingness, cooperation, and motivation.®282 Rather than a paternalistic approach, the court can use diversion, probation, or a lessened sentence to motivate offenders and help them recognize that their participation and rehabilitation are in their interests.®283 If the court can treat the offenders with dignity and respect, give them voices in good faith, and provide procedural justice, the court can generate the offenders’ voluntarily choice.®284 By reducing the negative feelings often produced by judicial coercion, the court can increase offenders’ genuine motivation to participate in rehabilitative programs and thereby achieve therapeutic effects.

ii. Cons

Some psychologists have criticized TJ.®285 Gutheil believes that, rather than provides a healing, the legal process “arrests people” and prevents them from moving to the next stage.®286 Terr believes that, although a court can function educationally, a therapist’s office offers a better place than a court to repair the family.®287

In addition, the rehabilitative model raises challenges to fundamental principles of justice. Practices such as probation parole and a separate juvenile justice system characterized by

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®286 Tom Gutheil is co-founder of the Program in Psychiatry and Law at Harvard. Id. at 319.
®287 Lenore Terr is a psychologist working with victims of trauma. Id. at 208.
individualized treatment, unfixed sentences, and unmanageable judicial discretion were seen as inconsistent, disproportionate, and unfair.288

It is worth noting that PSCs could be susceptible to abuses similar to those that occurred during the establishment of rehabilitative juvenile delinquency courts. A Minnesota public defender, observed that “juvenile court really was the first problem-solving court.”289 As to DV court, many attorneys worry that “the emphasis on protecting victims has made courts too quick to lock up defendants.”290

Judges often warn defendants that noncompliance may result in more serious sanctions than would be experienced in a traditional criminal court.291 They recognize that the courts are more demanding than traditional courts; however, they view these coercive interventions as a “restructuring of the defendant’s lifestyle” rather than as punishment,292 even though the role of the judiciary in promoting lifestyle change is questionable.293 Additionally, relabeling sanctions does not make therapeutic practices less punitive. One DV judge interprets substantial periods in jail as “constructive intimidation” to motivate defendants.294 To avoid further contact with the criminal justice system, a TJ perspective enables defense attorneys “to more completely represent their clients.”295

Another issue for critics of the rehabilitative ideal is the injustice of indeterminacy. Unlike previous rehabilitative practices, for instance, indeterminacy of the court is not related to the length of sentence but rather to the judge-led court program.296 Clients may be asked to sign a waiver form permitting the court to keep them in the program for an uncertain period.297 As

292 Hora et al., supra note 151 at 439, 523.
293 The American Friends Service Committee argued, “The whole person is not the concern of law. Whenever the law considers the whole person it is more likely that it will consider factors irrelevant to the purpose of delivering punishment.” See American Friends Service Committee, supra note 287.
295 Hora et al., supra note 151, at 439, 523.
296 Nolan, Redefining Criminal Courts, supra note 293, at 1541, 1557.
297 Id.
relapses are allowed to extend the periods of the program, indeterminacy in the courts often results in longer sentences.\textsuperscript{298}

Critics argue that in order to participate in the treatment, defendants have to relinquish the presumption of innocence and their trial rights protected by the Constitution.\textsuperscript{299} Typically, the defendants sign forms waiving constitutional rights including the right to trial by jury, the right to a speedy trial, the right to a preliminary hearing, and the requirement of probable cause for a search and seizure.\textsuperscript{300} As was a concern with the juvenile courts of the twentieth century, rehabilitative justice can lead to violations of individual rights.

Moreover, certain features of DV courts can be observed through the lens of the prevalence of TJ. First, the rehabilitative justice is supported based on program efficacy and fiscal utility.\textsuperscript{301} Second, therapeutic experts are given greater authority based on their particular kinds of knowledge.\textsuperscript{302} Third, the roles of all courtroom practitioners are reformed to comply with therapeutic threads.\textsuperscript{303} In the era of TJ, when justice can be enacted as “just treatment,” any disagreement based on “just deserve” fades.

b. Restorative Justice

RJ is a concept that “may refer to an alternative process for resolving disputes, to alternative sanctioning options, or to a distinctly different, ‘new’ mode of criminal justice organized around principles of restoration to victims, offenders, and the communities in which they live.”\textsuperscript{304} Compared to standard criminal justice,\textsuperscript{305} RJ features repairing harm, listening to victims, deliberative democracy, egalitarian procedure, and informal social control.\textsuperscript{306}

Some literature views TJ as focusing the therapeutic effects of the legal system on offenders rather than victims.\textsuperscript{307} By contrast, RJ is equally if not more concerned with victims and the

\textsuperscript{300} See Nolan, \textit{Reinventing Justice}, supra note 152, at 199.
\textsuperscript{303} Nolan, \textit{Reinventing Justice}, supra note 152, at 206-7.
\textsuperscript{306} Id. at 267.
\textsuperscript{307} See C. Quince Hopkins, \textit{Tempering Idealism with Realism: Using Restorative Justice Processes to Promote Acceptance of Responsibility in Cases of Intimate Partner Violence}, 35
effects of crime on the community. For victims and the community, RJ attempts to achieve physical, emotional, and sometimes financial restoration. Unlike traditional rehabilitation’s belief in personality change, the theory presumes that offenders can become law-abiding citizens by means of acts and relationships rather than treatment.

Braithwaite’s “reintegrative shaming” theory predicts that RJ should be more effective in reducing DV offences than standard criminal justice. He distinguishes integrative shaming from stigmatic shaming by differentiating the condemnation of acts from the condemnation of actors. The permanent stigma of identifying someone as a criminal, he suggests, is a cause of rather than a cure for re-offending. By contrast, integrative shaming under a “family” model helps offenders accept responsibility for causing harm by condemning their conduct, rather than by expelling them from the family.

Feminist critics raised special concerns about RJ in DV cases. First, the victim may fear being present in the face-to-face conference setting, and the power and control dynamics may affect the victim’s ability to speak up and protect her interests. Second, the conference may create more opportunities for further violence against victims. Third, apologies are overvalued and reconciliation with the offenders should not be encouraged in the court system. These concerns are always kept in researchers’ minds to shape their research designs and evaluations.

References:

Harv. J.L. & Gender 311, 331 (2012)


Lawrence W. Sherman, Domestic Violence and Restorative Justice supra note 304, at 267-69. Id. at 269.


Id.

The family model is based on the response to everyday infringement within a household, such as a child beating a sibling or an adult stepping on a carpet with muddy boots. These offenses may not demand punishing actors but require condemning acts. See Id.

Id.


Id. 58-60; Frederick & Lizdas, supra note 314, at 39; Donna Coker, Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking, 47 UCLA L. Rev. 1, at 85-88 (1999).

See IV. C. Attempt toward Restorative Justice.
In addition, feminists have been cautious regarding new approaches to applying RJ to DV family violence that they believe bring offenders and victims together at the risk of forcing victims to forgive or reconcile with their batterers. Due to the paucity of empirical research testing their concerns, it is impossible to decide either for or against them.

Empirical research shows that in addition to the cessation of violence, what the victims want most is, not to punish batterers, but to express what they have gone through and to have the offender recognize, if not apologize for, wrong acts.

In his study of Navajo Peacemaker court’s handling of DV cases, Coker demonstrates that the benefits of RJ may not be achieved when the victims’ participation is coerced and in the absence of safety screening.

In a Canadian project, the findings of the Pennell and Burford research are promising and provide responses to feminists’ previous concerns. Firstly, no violence in the conferences was reported. That is, the concern that offenders would make use of the conference for further abuse was not born out by experience. Secondly, post-conference statistics indicate a significant reduction in both partner and child abuse. The result produces significant evidence supporting the positive impact of applying RJ, the reduction of DV. Thirdly, the study evaluated some offenders’ controlling behaviors that concerned feminists and found reductions in all studied behaviors. The finding that, in an average one-year follow up, controlling behaviors, including domination of the conversation, control of economic resources, emotional abuse, minimization of his violence and transference or refusal of responsibility, were reduced. Lastly, the study

322 Coker, supra note 316, at 77-80, 103-07, 111.
324 Violence in the study families was not deterred, but was reduced about a half (from 233 to 117 events). In contrast, violence of the comparison families increased from 129 to 135 events. See Id. at 145-50.
325 Id. at 146, 149-50.
326 Domination of the conversation and control of economic resources of study groups reduced from 4 to 2 and 4 to 0 incidents. In contrast, the comparison group stayed at 2 incidents of the former, and increased from 3 to 4 incidents of the latter. Regarding emotional abuse, men who were belittling or condescending reduced from 5 to 3 and 4 to 2. Similarly, the comparison group increased from 0 to 1 incident of the former, and stayed 3 incidents of the latter. Furthermore, offender’s minimization of their violence, transference of responsibility or refusal to accept responsibility reduced from 8 to 3; while the comparison increased from 4 to 6. See Id. at 141-42, 146.
measured offenders’ attachment to traditional gender roles such as expecting or demanding their partners serve them. It also found marked reduction in the study group but not in a comparison group. As a result, feminist concerns that RJ would not improve the underlying patriarchal perception is not supported by evidence.

A meta analysis examining twenty-two studies including thirty-five RJ programs was conducted in Canada in 2001, which demonstrated that satisfaction rates for victim-offender mediation were higher than for group conferencing. The authors attributed this to the greater number of people in conferencing and the smaller number of people in victim-offender mediation; they surmised that due to the larger numbers involved, it would be harder for the former to receive satisfaction. Additionally, most of victims and offenders were more satisfied with RJ programs than with the traditional justice system. While the restitution compliance of program participants was higher, the recidivism rates were lower in these RJ programs.

In 2007, the Smith Institute published the assessment of RJ in the UK and other countries. The “Dove Project,” which supports 600 conferences per year, applied the model of family group conferencing to DV cases. The project had showed significant reductions in family violence compared to those families not participating RJ program.

3. Evaluation

Based on the above goals that DV courts are designed to reach, the literature’s evaluation of DV courts can be placed in the following categories: efficient case processing, coordinated response, informed decision-making, offender accountability, reduced recidivism, and victim safety and services. Generally, these indications can be viewed through the lens of TJ and seen to provide more therapeutic impacts on parties and stakeholders than non-therapeutic ones.

a. Efficient Case Processing

Comparative analyses of misdemeanors in DV courts and non-specialized courts in Minneapolis, Manhattan, and San Diego show that DV courts do have shorter case processing time. By contrast, a study of a felony DV court in Brooklyn reported that case processing took

327 While the study group reduced the traditional concept from 3 to 1, the control group stayed at 5 throughout the study. Id.
328 See C. Quince Hopkins, supra note 319, at 308.
330 Id.
331 Id.
333 Id. at 52.
334 Id.
335 Moore, supra note 240.
336 In San Diego research indicated 74% reduction (from 57 to 15 days) in the number of days to
longer after specialized DV courts were established. The authors attributed the outcome to the greater attention given by specialization to each serious felony, however, it may be too speculative to conclude this based upon only one study for a felony program.

b. Coordinated Response

A number of DV courts have used strategies to promote collaboration between the court and community stakeholders. Studies show that such collaboration contributes to greater access to victim services, more information sharing by probation and program providers with judges, and better evidence development by the prosecution. Additionally, stakeholder participation in the process of forming court protocols may generate understanding and consensus, particularly for those who otherwise have doubts about court policies.

disposition in a DV court. Studies in misdemeanor court in Manhattan and Minneapolis show significant reduction in DV case processing time compared to non-specialized courts. In Minneapolis, the average length of time was reduced by nearly a week from case filing to case resolution. In Manhattan, only 14% of DV cases were resolved within 5 weeks before the DV court was implemented, compared with 24% after the inception of DV court. See L. Angene, Evaluation Report for the San Diego County Domestic Violence Courts, San Diego Superior Court (2000); D. Eckberg and M. Podkopacz, Domestic Violence Court in Minneapolis: Three Levels of Analysis. Presentation, American Society of Criminology Annual Meeting. Chicago, IL. (2002); Richard Peterson, The Impact of Manhattan’s Specialized Domestic Violence Court, New York City Criminal Justice Agency, Inc. (2004).


338 Id.


341 Amanda Cissner, Process Evaluation of the Brooklyn Youthful Offender Domestic Violence Court, Center for Court Innovation (2005); Steketee et al., supra note 338. While the defense bar can raise fundamental objects to the DV model, it can also increase cooperation once the bar is incorporated. See Labriola et al., supra note 239.
c. Informed Decision-Making

The majority of DV courts have one or two dedicated judges. Stakeholders interviewed stated that having dedicated judges enables them to be more familiar with the parties and the facts of the case they hear from beginning to end. Research indicates that judicial decision-making may benefit from dedicated judges’ intensive training and experience in confronting the particular challenges of DV cases. Moreover, most DV courts have a project coordinator, administrator, resource coordinator, program compliance monitor, or case manager on staff, all of whom help collect timely case information for judges and court partners. Studies suggest that dedicated staff may enhance the knowledge and decision-making not only of judges, but also of attorneys, probation officers, service providers, and stakeholders.

d. Offender Accountability

The findings conflict in terms of the impact on convictions and sentencing in DV courts; however, they consistently conclude that DV courts are more likely to mandate offenders to a variety of special conditions. These include BIPs, substance abuse treatment, and other types of programs; special bail conditions; drug testing; intensive probation supervision; and judicial status hearings to verify program compliance. Additionally, research indicates that increased use of judicial monitoring significantly raises the likelihood and severity of penalties for

342 A survey conducted in 2009 found that 84% of DV courts have one or two dedicated judges. Labriola et al. supra note 239.
344 The unique challenges include fearful and reluctant victim witnesses, and offenders who deny, justify their behavior, or attempt to manipulate the system. See Henning and Klesges, supra note 338; Steketee et al., supra note 338.
345 38% of DV courts have a project coordinator or administrator; 45% have at least one dedicated resource coordinator, program compliance monitor, or case manager. See Labriola et al., supra note 239.
346 Nora Puffett and C. Gavin, Predictors of Program Completion and Recidivism at the Bronx Misdemeanor Domestic Violence Court, Center for Court Innovation (2004).
347 See Keilitz, supra note 239; Steketee et al., supra note 338, MacLeod & Weber, supra note 342.
348 While three studies found relationship between DV courts and increased conviction rates, the other three found no. See John Goldkamp et al., The Role of Drug and Alcohol Abuse in Domestic Violence and Its Treatment: Dade Country’s Court Experiment, Final Report, National Institute of Justice (1996); Robert Davis et al., Increasing Convictions in Domestic Violence Cases: A Field Test in Milwaukee, 22 THE JUSTICE SYSTEM JOURNAL 61-72 (2001); Eckberg & Podkopacz, supra note 335 (former); Angene, supra note 335; Newmark et al., supra note 336; Peterson, supra note 335 (latter). Regarding sentencing, in states where there are no mandatory sentencing laws, studies have linked DV courts to a greater and a lesser use of sentences with different study designs. See A. Visher et al., Reducing Intimate Partner Violence: An Evaluation of a Comprehensive Justice System - Community Collaboration, 7(4) CRIMINOLOGY AND PUBLIC POLICY, 495-523 (2008) (greater); Robert Davis et al., Id.; Peterson, supra note 335 (lesser).
349 Angene, supra note 335; Harrell et al., supra note 338; Newmark et al. supra note 336.
noncompliance. Moreover, studies found that intensive probation monitoring in DV courts leads to the positive effects of a decreased rate of new offenses owing to incarceration when probation was revoked, and secondary prevention through frequent contact between victims and offenders. Further, early noncompliance is the stronger predictor of program failure. Offenders with substance use or abuse problems are also less likely to complete their mandated programs and at a higher risk for subsequent recidivism.

e. Reduced Recidivism

The literature is ambiguous about the relationship between DV courts and recidivism deterrence. The recidivism reduction may be associated with effective treatment or monitoring. Concerning the treatments, while some studies didn’t find lower rates of re-offence produced by offenders who were mandated to BIPs, other studies show that BIPs yield no or extremely modest effects. Moreover, the literature has little agreement on the effectiveness of

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350 ADELE HARRELL ET AL., THE EVALUATION OF MILWAUKEE’S JUDICIAL OVERSIGHT DEMONSTRATION. URBAN INSTITUTE (2006); Harrell et al., supra note 338.
351 Harrell et al., supra note 349.
353 Puffett and Gavin, supra note 345.
354 Id.
355 Some studies concluded small to significant reductions in re-arrests in San Diego, Lexington County, South Carolina, and Massachusetts. See Angene, supra note 335, Angela A. Gover et al., Combating Domestic Violence: Findings from an Evaluation of a Local Domestic Violence Court, 3 CRIMINOLOGY AND PUBLIC POLICY, 109-132 (2003); Harrell et al., supra note 338. Two studies of Milwaukee DV courts produced mixed results. The first study implied positive results in re-arrest rates and victim reports of re-abuse, but the sizes were too small to be statistically significant. See Davis et al., supra note 347. The second study found that the DV courts reduced the one-year re-arrest rate, but it was because offenders were more likely to be re-incarcerated on probation revocations rather than behavior change. See Harrell et al., supra note 349.
one type of BIPs—such as cognitive-behavioral, couples, psychodynamic, humanist, multicultural and fatherhood-oriented programs—over another.358

In regards to court monitoring, a study in Brooklyn indicates that mandating BIPs reduced recidivism because of ongoing court control but not because of the programs themselves.359 Another study in the Bronx has not found significant decreases in the recidivism rates of offenders who were mandated to judicial monitoring.360 The authors attributed the outcome to the lack of any vigorous form of monitoring in the Bronx.361 That is, it implies that there is the possibility for strong court control to result in reduced recidivism.

While the results are inconclusive regarding whether DV courts reduce recidivism, the literature has found factors to predict recidivism. A few research studies suggest a strong relationship between criminal history and re-arrest for DV.362 Additionally, studies indicated that younger defendants yielded higher rates of re-arrest.363 Another study attributed recidivism to having more charges filed on the current arrest and then not being processed in the DV court.364

f. Victim Safety and Services

Many DV courts collaborate with victim service providers to offer victims immediate services and advocacy.365 Generally, victims are connected to advocates, who provide support including assistance with safety planning, linkage to appropriate community resources, the provision of legal information and case updates, and court accompaniment throughout the court proceeding.366 Studies support the claim that DV courts are more likely than non-specialized courts to link victims to services.367


359 Davis et al., supra note 355.
360 Labriola et al. supra note 239.
361 Id.
362 Eckberg & Podkpacz, supra note 335; Goldkamp supra note 347; Gover et al., supra note 354; Newmark et al., supra note 336; Peterson, supra note 335.
363 Newmark et al., supra note 336.
364 Gover, supra note 339.
365 Newmark et al., supra note 336.
366 M. Bell & L. Goodman, Supporting Battered Women Involved with the Court System: An
Studies indicate victims have positive views of DV courts. A few studies concluded that most victims were more satisfied with their cases dealt with by DV courts not only in terms of the outcomes but also in terms of the perceptions of fair treatment, judge’s caring and understanding, victim advocates, and personal motivation to end the relationship.

One study noted that victims who received service in DV courts did not have higher perceptions of safety than those who did not receive service. The authors attribute this outcome to the unmet needs for services such as assistance in finding a job, strengthening social networks, and linkage to crisis services. This suggests that victim satisfaction is related to the types of services they receive. Such findings recommended that courts link victims to additional service providers after the cases have been disposed.

It should be noted that one study indicated that 40% of victims found the DV court experience embarrassing and would not return to court if they experienced another incident of DV. Additionally, while victims showed high satisfaction regarding how they were treated by judges and advocates, they were greatly unsatisfied with their treatment at the hands of police and prosecutors. Such unsatisfactory treatment included being shown a lack of due respect and dignity. The author suggests improving training among all justice units interacting with victims is in need.


1. Overview

While most DV courts hear only criminal cases, some states have adopted a new model, “Integrated Domestic Violence Court” (IDV Courts), that hears all cases involving the same DV


367 For instance, the rate of victims connected to services increased from 55% to 100% after the Brooklyn felony DV court opened, and from very few to 56% after the Shelby, Tennessee DV court opened. See Harrell et al., supra note 338; Henning and Klesges, supra note 338; Newmark et al., supra note 336.

368 Eckberg & Podkopacz, supra note 335; Harrell et al., supra note 338; Henning and Klesges, supra note 338.

369 Eckberg & Podkopacz, supra note 335; Harrell et al., supra note 338.

370 Harrell et al., supra note 338; Gerald Hotaling & Eve Buzawa, Victim Satisfaction with Criminal Justice Case Processing in a Model Court Setting, National Institute of Justice (2003).

371 Henning & Klesges, supra note 338; Hotaling and Buzawa, supra note 369.

372 Visher et al., supra note 347.

373 *Id.*

374 *Id.*

375 Hotaling and Buzawa, supra note 369.

376 Harrell et al., supra note 338.

377 *Id.*
offender and family members. Under traditional court structures, a family involved in DV may have different cases pending in different courts at the same period. This results in inefficiencies for the court system and litigants, inconsistent or conflicting orders, and piecemeal solutions because the family’s whole story is fragmented at different court hearings. As a result, the “One Judge, One Family” model, IDV Courts, emerged to lay all the issues of a single family before one judge. IDV courts are particularly established to advance goals including victim safety and defendant accountability; informed judicial decision making; consistent handling of all matters involving the same family; efficient use of court resources; and a concentration of social services that include DV and child victim advocacy agencies.

As early as the 1990s, an idea of unified family courts and a “one family- one judge” system, in which one single judge hears all cases involving the same family, had been supported by the American Bar Association. United family courts are generally considered as a separate court dealing with all family law issues effectively and efficiently to minimize all families’ court appearances.

The national movement started with New York State when Chief Judge Judith Kaye announced the state’s first IDV court in 2001 along with a plan to establish IDV courts statewide within years. In New York State, families with DV cases may have criminal, family (civil) and matrimonial (divorce) disputes that have DV as an underlying issue. By using the “one family-one judge” concept and a more comprehensive case processing system to handle such cases, the model of IDV courts aims to ensure consistency of judicial orders, enhance offender accountability, promote victim safety, and integrate social services to victims and their families. More specifically, the goals of IDV courts can be laid out as follows:

- Informed judicial decision-making based on comprehensive and current information on multiple matters involving the family;

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378 For instance, New York, Florida, and several other states have experimented with IDV courts. See Goldkamp, supra note 347; Steketee et al., supra note 338.
379 Integrated Domestic Violence Courts: Key Principles, Center for Court Innovation.
380 Id.
385 Id.
• Consistent handling of multiple matters relating to the same family by a single presiding judge;
• Efficient use of court resources, with reduced numbers of trips to court and speedier dispositions;
• Linkage to social services and other resources to address comprehensively the needs of family members;
• Promotion of victim safety through elimination of conflicting orders and decisions;
• Increased confidence in the court system by reducing inefficiency for litigants and by eliminating conflicting orders;
• Coordinated community response and collaboration among criminal justice and child welfare agencies and community-based groups offering social services and assistance to DV victims and their children.

Criminal DV cases is the elementary requirement that determines eligibility for entry into the IDV court, along with related cases in at least two of the three areas of the law.\textsuperscript{387} These inter-related cases serve as the core of the IDV Court’s jurisdiction.\textsuperscript{388} Litigants have no options either to go to IDV Court or stay out of it.\textsuperscript{389} IDV Courts apply to each case the substantive and procedural law that would have applied in the original court of the case.\textsuperscript{390}

Currently, there are more than 42 IDV Courts in operation statewide, and through August 2014 New York’s IDV courts have handled over 163,969 cases and served more than 31,079 families.\textsuperscript{391}

2. Evaluation

The existing research on IDV courts is limited. In 2006, a quantitative study was conducted to examine the impact of the IDV courts with regard to case processing, case outcomes, subsequent case filing, and rearrests.\textsuperscript{392} It compares outcomes of IDV court cases to similar cases that were dealt with in traditional family and criminal courts in New York State from 2006 to May 2007.\textsuperscript{393} The findings can be analyzed by comparing to family court cases and criminal court cases respectively as follows.

\textsuperscript{387} Id., available at https://www.nycourts.gov/courts/problem_solving/idv/key_principles.shtml (last visited April 1, 2015)
\textsuperscript{388} Id.
\textsuperscript{389} Supra note 383.
\textsuperscript{390} Id.
\textsuperscript{391} Id.
\textsuperscript{392} See Shani Katz & Michael Rempel, The Impact of Integrated Domestic Violence Courts on Case Outcomes, Center for Court Innovation, 2011.
\textsuperscript{393} The data included cases filed from IDV court inception (2006 or early 2007) through May 2007. The family court analysis collects data filed from nine New York State counties including Broome, Chautauqua, Dutchess, Niagara, Oneida, Orange, Oswego, Rockland, and Steuben. The criminal court analysis collects data from six of the nice counties (omitting Dutchess, Niagara, and Steuben for reasons of sample size). See Id. at iii.
In the family court analysis, IDV cases made more court appearances and took a longer time than family court cases. This was due to the time that proceeded the appearances in family courts before cases were transferred to IDV courts. Other research has found that the same-day scheduling of family, criminal, and matrimonial matters consistently leads IDV court litigants to fewer total trips to the courthouse. In addition, in terms of case outcomes, IDV cases were significantly more likely to be settled or withdrawn and less likely to be dismissed than cases in family courts. These findings are consistent with previous studies. The much higher rate of settlement may indicate that IDV court is more likely than family courts to assist litigants in shaping mutually acceptable resolutions for families without court decisions. Furthermore, there is no significant difference between IDV courts and family courts in the number of subsequent filings made within one year of the initial filing.

With criminal analysis, as with family matters, case processing takes longer in IDV courts than in criminal courts. However, the difference is not statistically significant, and, as the family matters, the reason for this arose, in large measure, from the nearly 1.5 months elapsed between the arrest and the IDV court transfer. Furthermore, regarding case outcomes, there is no significant difference in dispositions or sentences, except for the greater use of probation and the correspondingly lesser use of time served for sentences in the IDV court. Additionally, approximately one-third of both IDV and criminal courts were re-arrested and one-quarter were re-arrested for DV. No significant difference is indicated.

394 Comparison family court cases are limited to family offense cases and custody / visitation cases among families that also had a family offense case. Id.

395 The average of court appearances in IDV courts compared to Family courts is 6.1 v. 3.1; and the time from flinging to disposition is 136 v. 70. See Id. at iv.

396 The average of elapsed times of court appearances is 2.4 and the days is 37. See. Id.

397 Amanda Cissner et al., The Suffolk County Integrated Domestic Violence Court: Policies, Practices, and Impacts, Center for Court Innovation (2011); Picard-Fritsche et al., The Erie County Integrated Domestic Violence Court: Policies Practices, and Impacts, Center for Court Innovation (2011); Amy Mennerich et al., The Potential Cost Effectiveness of Trial Court Restructuring in New York State, Center for Court Innovation (2005).

398 The rates of cases settled or withdrawn in IDV Courts and family courts are 58% v. 34%, and the dismissal rate are 15% v. 29% in family offense and 4% v. 17% in custody / visitation cases. See Katz & Rempel, supra note 391, at iv.

399 Cissner et al., supra note 396; Picard-Fritsche et al. supra note 396; Mennerich et al., supra note 396.

400 See Katz & Rempel, supra note 391, at iv.

401 Id.

402 The average case processing times in IDV courts and criminal courts are 256 and 219 days. Id.

403 Id.

404 The average use of probation in IDV courts and criminal courts are 21% and 7%, and sentences are 7% and 21%. Id.
Chapter III. Domestic Violence Legal System in Taiwan

A. Initiation of the Domestic Violence Prevention

Chinese traditional sayings like “do try to reconcile the husband and wife and do not give advice that would lead to the separation of the couple,” “it is typical for the husband and wife to fight at one end of the bed and to reconcile at the other,” and “family quarrels must be settled behind the closed doors” show that family disputes may be settled down and made up quickly before others try to fight for either of the spouses. Hence, it is difficult to realize the extent of violence against women because the problem is usually kept hidden.406

Before the Domestic Violence Prevention Act (hereinafter the Act) was enacted, the victims of DV could only rely on the Penal Code and Civil Code, which did little to deter DV. First, the Penal Code, which can be resorted to in cases of personal injury, usually inflicts penalties on offenders by means of fines, which have restricted conditions when the injury is severe.407 Second, the Civil Code, which can be applied to claim damages and divorce and which has no measures to change or improve the offenders’ cyclical violent behavior pattern, let alone the economically vulnerable victims’ lack of legal advice, can hardly produce evidence or withstand lengthy litigation. Moreover, owing to the high threshold of divorce and the traditional concepts mentioned above that are rooted in Taiwanese minds,408 even if the DV victim could win a civil case claiming damages, it would certainly not fulfill the requirement for divorce.409 Instead, the victim would be blamed for tearing the family apart by bringing family disputes before the public.

In addition to the limited capacity criminal and civil schemes have to deter DV, a critical DV event along with an international proclamation contributed to enacting the “Domestic Violence Prevention Act.” The case involved Ms. Den who was accused of murder in 1993 because she couldn’t endure her husband’s severe and continuous violent acts against her and her family.410 It triggered the enormous discussion on undisclosed DV in Taiwan. Coupled with the “Declaration on the Elimination of Violence against Women” by the United Nations in 1993, the Ministry of the Interior expressed the intention” to ensure the safety of the family” and made it

407 See Penal Code § 277-278, 10 IV.
408 The requirements for divorce are based on the fault of the spouse. The one who claims a divorce should prove his/her lack of fault or lesser fault than the their spouse’s. See Civil Code § 1052.
409 For fulfilling the requirement of divorce, the victim of DV has to produce evidence to prove that the other spouse’s abuse has made living together intolerable, or that serious events, through no fault of the victim’s, have made it difficulty to maintain the marriage. See Civil Code, § 1052 I (3), II.
the goal of the ministry’s social welfare policy in response to the “International Year of the Family” in 1994.\textsuperscript{411} Further, Legislator Yuan proposed the Executive Yuan to amend and enact laws and regulations to ensure women’s rights of equality, including the prevention of DV.\textsuperscript{412} In such an atmosphere of both domestic and international expectation, High Court Judge Kao drafted the first “Domestic Violence Prevention Act” in Asia, based mainly on the blueprint of the 1994 “Model Code on Domestic and Family Violence” in the United States.\textsuperscript{413} In order to foster collaboration among related departments across different authorities in order to better prepare them for the task,\textsuperscript{414} many provisions of the Act went into effect one year after its promulgation in June 1998.

B. The Domestic Violence Prevention Act

1. Purview

There are seven chapters, sixty-six articles in the Act. According to the definition, “domestic violence” means any illegal physical, mental, or economic harassment, control, threat, or other infringements among family members.\textsuperscript{415} In other words, it includes physical injuries, mental mistreatment, economic domination, and other unjust offenses. In respect to the scope of “family members,” it includes spouses and ex-spouses; those who currently have or used to have de facto relations as husband and wife; those who have relations between the head of a family and his or her family members, or relations between family members; those who currently have or used to have lineal blood relations or lineal relations by marriage; those who currently or used to have relations within four degrees of collateral relation by blood or by marriage, and their minor children.\textsuperscript{416} That is, the protected range covers ex-husbands, ex-wives, partners or ex-partners with intimate relations, people living together without relations either by blood or by marriage.

\textsuperscript{411} See WAN-I LIN, SOCIAL WELFARE IN TAIWAN, 421.
\textsuperscript{412} See Legislature Bulletin, Vol. 83, Session 14, 143.
\textsuperscript{413} Other legislative references of DV include New Zealand, Australia, the UK, the territory of Guam, and state laws of the United States such as California, Pennsylvania, Massachusetts, Washington, etc. See FENG-HSIEN KAO, supra note 409, at 75.
\textsuperscript{414} The reasons for enacting the Law indicated that “The Law is meant to police domestic violence in a proper fashion and to integrate governmental and social resources such as judiciary institutions, the police, health care, education, social workers, and social assistance so as to establish a comprehensive prevention and cure system that could provide immediate and comprehensive protection for the victims of domestic violence”. See the reasons for enacting the Domestic Violence Prevention Act, available at http://taiwan.yam.org.tw/womenweb/hvdraft/3.txt (last visit February 23, 2015).
\textsuperscript{415} Domestic Violence Prevention Act §2.
\textsuperscript{416} In the amendment taken into effect in February 2016, one year after promulgation, victims of domestic violence have expanded to boy or girl friends. Those who are over sixteen years old and have intimate relationships with current or former partners may apply for protection orders when their current or former partners impose illegal physical or mental infringements on them. Domestic Violence Act §3, 63-1.
2. Application

There are three types of civil protective orders: emergent, temporary, and regular.\(^{417}\) The victims,\(^ {418}\) the prosecutors, the police officers, or the agencies in charge at the county or municipality level are eligible for the application of the temporary or ordinary protective orders.\(^ {419}\) In addition, excluding victims, the persons or agencies mentioned above can apply for the emergent protective orders, when victims are exposed to immediate infringement, via speech, facsimile, or any other electronic means at any time during the day, night, or holiday.\(^ {420}\)

There are some special proceedings necessary for the court to review DV cases before issuing protective orders. The court may conduct the investigation of the facts on its own initiative\(^ {421}\) and interrogate separately if necessary.\(^ {422}\) In the matter of protection orders, court hearings should not be open to the general public,\(^ {423}\) nor should mediation or reconciliation be.\(^ {424}\) Upon an applicant or victim’s request of confidentiality regarding the victim’s residential address, the interrogation should be conducted in secret, and the transcripts and related information should be sealed and not allowed to be disclosed.\(^ {425}\) During the court hearing, the victim’s relatives, social workers, and psychologist can accompany him or her, and express their opinions.\(^ {426}\) Before concluding the hearing, the court may hear opinions from local government agencies or social welfare institutions.\(^ {427}\)

3. Civil Protection Order

When the court receives an application for a regular protection order, the court shall conduct its review immediately.\(^ {428}\) If the court determines that DV was sustained, it shall issue the regular protection order, including one or more of the following measures upon the application and its own initiative, when necessary:

(a) The respondent will be prohibited from inflicting DV on the victim, witness children or

\(^{417}\) Domestic Violence Prevention Act §9.

\(^{418}\) If the victim is a minor, a physically or mentally handicapped person, or a person having practical difficulties in appointing an agent to apply for the order, his or her legal representative or his or her collateral relatives by blood or marriage within three degrees may apply for the temporary or ordinary order on behalf of him or her. Domestic Violence Prevention Act §10, paragraph 1.

\(^{419}\) Domestic Violence Prevention Act §10, paragraph 1, 2,3

\(^{420}\) Domestic Violence Prevention Act §12, paragraph 1.

\(^{421}\) Domestic Violence Prevention Act §13, paragraph 2.

\(^{422}\) Id. The separate interrogation can be made outside of the court, based on the petition or ex officio. It can also be done by any technical device which transmits volume and images, or under acceptable means of isolation. See Domestic Violence Prevention Act §13, paragraph 3.

\(^{423}\) Domestic Violence Prevention Act §13, paragraph 5.

\(^{424}\) Domestic Violence Prevention Act §13, paragraph 7.

\(^{425}\) Domestic Violence Prevention Act §13, paragraph 3.

\(^{426}\) Domestic Violence Prevention Act §13, paragraph 4.

\(^{427}\) Domestic Violence Prevention Act §13, paragraph 6.

\(^{428}\) Domestic Violence Prevention Act §13, paragraph 8.
teenagers, or any particular family member.

(b) The respondent will be prohibited from harassing, contacting, stalking, communicating with, mailing, or from engaging in any other unnecessary correspondence.

(c) The respondent will be ordered to move out of the victim, witness children or teenagers, or any particular family member’s domicile or residence and to refrain from using, profiting from, or disposing of property belonging to the domicile or residence.\footnote{429}

(d) The respondent will be ordered to keep a distance from the domicile or residence, the school, the workplace or other places where the victim, witness children or teenagers, or any particular family members frequently visit.\footnote{430}

(e) The respondent will be ordered to limit his or her use of an automobile, motorcycle or other items necessary for their livelihood, profession or education, and can be ordered to hand over such items.

(f) The court can assign the interim child custody to one or both parties and, if necessary, require a party to hand over their children.\footnote{431}

(g) The respondent will have his or her visitation of their children limited with regard to time, place, or methods, or be prohibited from having any visitation if necessary.\footnote{432}

(h) The respondent will be ordered to pay the rent for the victim’s residence as well as spousal or child support.

(i) The respondent will be ordered to pay the victim’s or any other family member’s damages for medical expenses and expenses incurred through counseling and shelters as well as other property losses.

\footnote{429} Such a protection order remains effective even though the victim, witness children or teenagers or any other particular family member give consent to the respondent to live in the domicile or residence. \textit{See} Domestic Violence Prevention Act §17.

\footnote{430} Such a protective order remains effective even though the victim, witness children or teenagers or any other particular family member give consent to the respondent to stay in the domicile or residence. \textit{Id.}

\footnote{431} In the matter of the child custody, the offender of the DV is assumed to be against the best interest of the child when he or she is the custodial parent. \textit{See} Domestic Violence Prevention Act §43. With regard to the interim child custody and visitation, the court should take the best interest of the child into consideration, and, if necessary, the court can consult children or social workers’ opinions. \textit{See} Domestic Violence Prevention Act §14.

\footnote{432} If the court orders visitation prior to the DV, victims, children, governmental agencies, social welfare institutions or stakeholders can request the court to modify the visitation based on the best interest of the child. \textit{See} Domestic Violence Prevention Act §44. When the court allows an offender of the DV visits his or her children, it can order one or more of the following measures to ensure the safety of the victims and children: (a) The handover of children shall be made at a specific and safe location. (b) The visitation shall be supervised, by a third party, agency, or group, and under certain conditions. (c) The visitation shall be on the condition that the respondent has completed the batterer’s intervention program or other specific counseling. (d) The offender should pay for the cost incurred from the visitation. (e) No overnight stay is allowed. (f) The offender shall pay for a deposit to guarantee his safe and timely return of the children. (g) The court can order any other conditions to ensure children, victims, and any other family member’s safety. \textit{See} Domestic Violence Prevention Act §45, paragraph 1.
(j) The respondent will be ordered to complete a BIP.\textsuperscript{433}
(k) The respondent will be ordered to pay for the attorney’s fees.
(l) The court can prohibit the respondent from checking on the victim and his or her interim
custodial children’s household registration, school enrollment, and income sources or
related financial information.
(m) The court can order any other measures necessary to protect the victim, witness
children or teenagers, or any other family member.\textsuperscript{434}

The term of the regular protection order is no longer than two years.\textsuperscript{435} Before the regular
protection order expires, its extension can be requested for up to two years each time.\textsuperscript{436}

Regarding emergent and temporary protection orders, without a court hearing, the court can
issue measures the same as the above (a) to (f), (l), (m) of the regular protection order.\textsuperscript{437} When
the court thinks the victim is in immediate danger of DV, the court should issue an emergent
protection order, which can be transmitted by fax or other electronic means, within four hours of
receiving the application.\textsuperscript{438}

4. Criminal Procedures

The Act authorizes the police to arrest any party accused of committing DV or of breaching
a protection order.\textsuperscript{439} If the accused party has not committed a violation or breached an order, the
police officers are still able to detain him or her, when the acting officer has strongly suspects
that the accused party has committed DV and will continue to pose a threat and to expose family
members to the danger of having their physical or mental health or their personal freedom
infringed.\textsuperscript{440} However, if the police officer is not able to acquire an arrest warrant, the suspect is
to be released.\textsuperscript{441}

\textsuperscript{433} Batterer’s Intervention Program includes cognitive education, parenting education,
psychological counseling, mental therapy, rehabilitation for drug or alcohol addiction, or any
other treatment or counseling. The court can order the respondent, excluding cognitive education
and parenting education at its discretion, to take experts’ examination of whether to receive
batterer’s intervention program. See supra note ____.
\textsuperscript{434} Domestic Violence Prevention Act §14.
\textsuperscript{435} Domestic Violence Prevention Act §15, Paragraph 1.
\textsuperscript{436} Domestic Violence Prevention Act §15, Paragraph 2.
\textsuperscript{437} Domestic Violence Prevention Act §16, Paragraph 1,3.
\textsuperscript{438} Domestic Violence Prevention Act §16, Paragraph 4.
\textsuperscript{439} The “breaching of the protective order” is limited to one of the following court-ordered
measures: (a) Prohibition from inflicting DV. (b) Prohibition from engaging in harassment,
contacting, stalking, communication, mailing, or any other unnecessary correspondence. (c)
Moving out of the domicile or residence (d) Keeping a distance from the domicile or residence,
the workplace, the school, or other specific places. (e) Completion of a Batterer’s Intervention
Program. Domestic Violence Prevention Act §61
\textsuperscript{440} Domestic Violence Prevention Act §29, Paragraph 2.
\textsuperscript{441} Id.
If the court or the prosecutor decides not to arrest the suspect but asks him or her to deposit a guarantee that someone will be responsible for the future acts of said suspect, to restrict the suspect’s residence, or even to release the suspect, it may impose one or more of the following measures: refrain from inflicting DV; move out of the domicile or residence; refrain from harassment, contact, stalking, communication, mailing, or any other unnecessary correspondence; or follow any other protective measures required by the court or the prosecutor. These measures can also be ordered as conditions of offenders’ probation or parole. With regard to the deferred prosecution, the prosecutor may request that the suspect, within a certain period of time, complete drug or alcohol addiction treatment, psychotherapy, counseling, other appropriate treatments and/or that s/he comply with the necessary order to ensure the victim's safety.

5. Preventions

The Act prevents victims from being hurt by the accused party in certain ways. It authorizes police officers to take necessary measures, when necessary, to protect the victim and to prevent DV. For instance, prior to the issuance of the emergent protective order, the police can guard the victim’s domicile or residence or take other measures needed to protect the victim or any family members. In addition, they can escort the victim and his or her children to a shelter or a place for medical treatment, or they can inform the victim about the rights, remedies, and services available to him or her. Moreover, the police can also make inquiries of and admonish the accused party, or visit the victim and family members to provide safe measures as needed.

If medical personnel, social workers, educational workers, child care workers, police officers, immigration workers, or any other enforcement officials responsible for the prevention of DV have knowledge of DV while on their duties, they shall, within twenty-four hours, report to the local government agency in charge of the matter. The government agency should respond immediately and evaluate whether there are witness children or teenagers involved. It may decide to conduct a visit or investigation on its own or through other agencies or organizations. The Act also requires that health agencies formulate and promote educational programs for the purpose of preventing DV.

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442 Domestic Violence Prevention Act §31, Paragraph 1.
443 Domestic Violence Prevention Act §38, 39.
445 Domestic Violence Prevention Act §48.
446 Id.
447 Id.
448 Id.
449 Domestic Violence Prevention Act §50, paragraph 1.
450 Domestic Violence Prevention Act §50, paragraph 3.
451 Id.
452 Domestic Violence Prevention Act §53.
C. Domestic Violence Prevention and Family Court

When the Act was enacted in 1998, the protection order was created to immediately prevent victims from further DV. The contents of the protection order were mixed, including prohibiting assault, ordering the offender to stay away, vehicle and property delivery, temporary child custody, overseen visitation, and BIPs. At first, there was no indication in the Act of which court—criminal, civil, or family—should issue the mixed effects of the protection order.\(^{453}\)

Ultimately, protection order issuance falls on family court in practice. There is no document recording the reason why family court “wins”; however, it signals that people tend to emphasize “domestic” more than “violence.” In other words, people view DV as more a family issue than a crime. On the other hand, it turns out that such a legal arrangement is a localized mechanism that better prevents DV in Taiwan. As the statistics shows, less than 20% of DV reported cases apply for a civil protection order. Nearly one-fourth of DV victims withdraw their request for a civil protection order after filing application. Simply put, 10% of reported cases obtain civil protection orders.\(^{454}\) It can be surmised that, due to the victim’s lack of willingness, the efficacy of DV prevention would be lower if the legal arrangement regarding the issuance of protection orders and BIP focused on criminal court instead of family court. After all, the concept of DV is an imported term, which has a tremendous impact on Chinese society by challenging the traditional view that the “law cannot enter into the family.” Especially for those who do not seek for divorce, categorizing protection order application as a family issue, along with the “no complaint, no accusation” practice in criminal proceedings, enlarges victim autonomy and encourages victims to disclose DV that has been hidden for years.\(^{455}\) Without a victim’s willingness to disclose DV, measures to stop DV, including immediate service to victims and preventative treatment for offenders, cannot be utilized.

A series of legislative efforts demonstrate the legislative branch’s determination to prevent DV. The legislature initially enacted the Act to allow the court to issue a mixed protection order including BIP, and then clarified that protection orders are categorized as family cases in the Code of Family Procedure and require that family court set up a family service center to provide needed assistances including services for victims.\(^{456}\) That is, the legislature has finally chose family court, not criminal court, to issue the vast majority of protection orders, order offenders to BIPs, and provide victims with services necessary to help them reach the therapeutic goal of DV prevention.

\(^{453}\) Not until 2012 did the enactment of “Family Procedure Code” define “protection order” cases as a type of family case. See Code of Family Procedure §2.

\(^{454}\) Ai Mei Wei, supra note 55, at 157.

\(^{455}\) Before Family Procedure Code announced that all family cases are not open to the public in 2012, DV was one of few types of cases that were not open to public in proceedings. See Domestic Violence Prevention Act §13. In addition to traditional Taiwanese women, foreign brides typically endure DV in marital relationship before they acquire legal status in Taiwan. See supra note 14.

\(^{456}\) See The Juvenile and Family Court Organization Act § 19-1.
Chapter IV. Comparisons of Domestic Violence Case Handling between Domestic Violence Courts in the U.S. and Taiwanese Courts

A. Court and Case Process

1. Specialized Courts

   a. U.S.

   Because of feminists’ and battered women activists’ efforts in the 1970s, DV in the U.S. has been recognized a widespread social problem rather than a private matter.\textsuperscript{457} Along with social advocacy movements that provide needed services to DV victims\textsuperscript{458} a series of legal responses reverberated nationwide.\textsuperscript{459} Specialized DV courts, along with the PSCs or specialized court movements starting with a judge-led program,\textsuperscript{460} are increasingly a means of response in the criminal justice system.\textsuperscript{461}

   Criminal DV courts, that docket DV cases separately and assign at least one dedicated judge or judicial officer, have spread throughout the majority of states.\textsuperscript{462} Victim safety and offender accountability are common goals for DV courts despite the lack of national supervision or of a network among these specialized courts.\textsuperscript{463} Nevertheless, there is great diversity in the DV court model and daily practice, including how courts are set up, what a typical case looks like, how state statutes are applied, and how cases are identified for transfer to DV courts.\textsuperscript{464}

   Additionally, DV courts as defined above could be criminal courts or civil courts.\textsuperscript{465} Some states like New York and Florida are experimenting with IDV courts in which a single judge can hear both criminal and civil cases involving the same defendant and family members. Although

\textsuperscript{457} Labriola et al., supra note 239, at 2.
\textsuperscript{458} The community-based services for victims include shelter, safety planning, financial assistance, and counseling. Id. At 79.
\textsuperscript{459} Early legal responses contained the provision of civil orders of protection, mandatory arrest policies, and the development of state statute requiring certain cases processing or sentences for DV, such assault, harassment, and stalking. See Id.
\textsuperscript{460} NORLAN, supra note 1.
\textsuperscript{461} Id.
\textsuperscript{462} As of 2009, there are 208 confirmed DV courts in 32 states that have specialized DV calendar or dedicated judge. Nearly half DV courts are in New York (63) and California (34), and one-fifth DV courts are in Florida (14), Michigan (13) and North Carolina (11). The remaining 73 DV courts are located in 27 other states and Guam. Labriola et al. supra note 239, at iv, v.
\textsuperscript{463} Id. at 79-80.
\textsuperscript{464} While some DV courts use the type of offense defined by statute as the determining factor, others use a court definition of a relationship between the defendant and the alleged victim. See Id. at 79-80.
\textsuperscript{465} Id. at 5.
BIPs can be considered in the family law context in some states; nonetheless, literature on the specialized civil or family DV court regarding BIP is rare.

b. Taiwan

In contrast, not until 1993, with the enactment of the “Domestic Violence Prevention Act” in Taiwan, was there any indication that the legal system took DV seriously and was employing a new strategy to prevent DV and secure victim safety. Like judges involved in the PSCs movement, the Act was drafted by a high court judge in a way rarely seen before. In response to both international and domestic pressure, the judge-drafted law took the 1994 Mode Code on Domestic and Family Violence in the U.S. as a blueprint and took some other foreign legislation into consideration as well.

The DV protection order is categorized as a non-contentious family matter in the Code of Family Procedure. Consequently, family courts have the exclusive jurisdiction over the application for DV protection orders. The legal order of priority is the Code of Family Procedure (such as closed trial proceedings), the Non-Contentious Code (such as requirements for appeal), and the Code of Civil Procedure (such as disqualification of judges and litigation aid).

Family cases in Taiwan were originally dealt with by civil court judges. Compared to other civil cases, family cases comprised a small amount of a civil judge’s caseload. Due to an increase in family cases and increased awareness of the need for professional family judges, Judicial Yuan amended rules in 2001 to request all district courts, high courts, and their branches set up the Family Division consisting of specific family judges or at least assigning specific judges to handle family cases. Meanwhile, the Domestic Violence Center, supported by a non-

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466 While there are eight states that judicial officers consider batterer intervention programs only in the criminal law context (California, Delaware, Kansas, New Hampshire, Oregon, Tennessee, West Virginia, Wisconsin), there are three states that judicial officers consider batterer intervention programs only in the family law context (Alaska, Michigan, Nebraska), and seven states that judicial officers may consider batterer interventions in both the criminal and family law contexts (Arizona, Florida, Indiana, Maine, Massachusetts, Rhode Island, Texas). See Menu of State Batterer Intervention Program Laws, Centers for Disease Control and Prevention 3-5, available at http://www.cdc.gov/phlp/docs/menu-batterer.pdf (last visited May 3, 2015.)

467 In order to echo the United Nations’ “Declaration on the Elimination of Violence against Women” in 1994, the Ministry of Interior announced that 1994 was “International Family Year” and the main focus on the social welfare policy was to promote the establishment of a family with security, health, and happiness. Meanwhile, Ms. Deng’s case of murdering her husband after her husband’s long-term serious DV on her and her family was being tried. It aroused the media's and the public’s attention on DV. See supra note 409.

468 See FENG-HSIEN KAO, supra note 412.

469 Code of Family Procedure §3.

470 Criminal protective measures are initiated by criminal courts, not by application. See Domestic Violence Prevention Act §38.


472 See Rules for Annual Judicial Affairs Distribution of Civil, Criminal, Administrative, and
government organization, has been located in each District Court since 2002 and has provided victims and their family with counseling and legal services. 473

The first Juvenile and Family Court was established in southern Taiwan, Kaohsiung, in 2012, and three more similar courts will be built in northern, central, and eastern Taiwan in the future. 474 The advantage of the independent family court system is not only its independent budget and court personnel that won’t be swallowed by the majority of civil units, but also its more functional facilities that can take its mission and purpose to deal with family cases including DV into consideration as part of the new family court building’s design process. 475 Additionally, the Family Service Center, which enlarges the scope of family service and integrates the original Domestic Violence Center, has been set up in each District Court since 2013 and offers services and referrals to all parties and their families as well as to DV victims. 476

2. Case Identification
   
a. U.S.

   The types of cases eligible for DV courts depend on charges and on the parties’ relationship. Most DV courts hear both misdemeanor and felony cases, 477 and a quarter of courts hear ordinance violations. More than one third of DV courts hear civil protection or restraining orders as well as criminal cases. 478 In addition to intimate partner violence, the majority of DV courts hear cases involving intimate partners who do not live together and are of the same sex. 479 More than half of the DV courts hear non-IPV cases, such as those involving elder abuse, child abuse, or violence between relatives and roommates. 480

   In addition to state statute and written policies, the clerk’s interpretations of eligibility criteria plays a role in eligibility for the DV court. 481 For instance, when cases are identified by the resource coordinator in New York, the arraignment judge adjourns cases for a next court hearing in the DV court. Prosecutors play a role in case screening as well. More than half of the


473 See http://www.38.org.tw/List_1.asp?id=905
474 See supra note 6.
475 For instance, some special facilities were designed for the Kaohsiung Juvenile and Family Court including a communication courtroom, a video courtroom, a mediation room, an examination room, a children examination room, an observation (one-way mirror) room, a litigant room, and a nursing room. Further, there is a special exit for DV victims to leave safely to avoid offenders’ blocking the way.
476 The Juvenile and Family Court Organization Act §19-1.
477 Labriola et al., supra note 239, at 40.
478 Nearly half of the courts that hear civil protection or restraining orders are IDV courts in New York. Id. at 40
479 Id. at 40.
480 Id.
481 See Id. at 42.
prosecutors file at least three-quarters of identified DV cases.\textsuperscript{482} Nearly three-quarters of the prosecutors often or always file a case even if the victim is unwilling or unable to assist the prosecution.\textsuperscript{483}

b. Taiwan

The legal mechanism to deal with DV can be divided on two tracks in Taiwan: criminal charges in criminal court and a civil protection order in family court. Criminal charges of DV handled by a criminal court seemed little different than stranger crimes. Moreover, even though prosecutors or criminal courts might order DV offenders not to abuse or to stay away from victims as a condition of bail, deferred prosecution, or probation, the order is neither defined as a “criminal protection order” in statute nor does it constitute a crime to violate a protection order when such an criminal order is not compliant.\textsuperscript{484} In addition, social resources for victim service and BIPs vested in civil protection orders are mainly handled by the family court. Therefore, in the legal transplant of the DV legal system from the U.S. to Taiwan, through localization, policies to deter DV fall to the family legal system rather than the criminal legal system.

DV Cases are clearly identified by statute. On the one hand, protection order application is adjudicated exclusively by the family division of the district court or the family court. On the other hand, criminal offences related to DV are handled by the criminal division of the district court. Criminal procedure in DV cases is mostly the same as in stranger crime cases except for some special measures, orders, and programs, which are rarely used in practice.

3. Case Disposition

a. U.S.

Nearly three-quarters of the DV court judges issue temporary criminal protection or restraining orders at the first DV court appearance.\textsuperscript{485} Further, the percentage of victims receiving temporary protection orders has increased in most DV courts since the specialized courts opened.\textsuperscript{486} Generally, courts will ask the prosecutor or a victim advocate before orders are modified or terminated. Even though judges might ask the victim directly when orders are

\textsuperscript{482} Id. at 42.
\textsuperscript{483} Crawford v. Washington (2004) in the Supreme Court excluding “excited utterances” heard by police officers as hearsay influenced prosecution strategies when a DV victim disagrees to testify. Id.
\textsuperscript{484} Protection orders that constitute a crime when they are violated are limited to civil temporary protection orders and civil ordinary protection orders. See Domestic Violence Prevention Act §61. In addition, when a criminal order regarding DV issued by prosecutor or criminal court is violated, the deferred prosecution or probation will be revoked. See Domestic Violence Prevention Act §32, 38.
\textsuperscript{485} Labriola el al, supra note 239, at 42.
\textsuperscript{486} The data are concluded from the respondents by the prosecutor survey. See Id. at 43.
requested for modification or dropped by the victim, it is still hard to confirm that the victim acts voluntarily without duress or coercion.\textsuperscript{487}

On average, it takes five months from the arrest of a DV offender to when the case is disposed of.\textsuperscript{488} In addition, most of the prosecutors believe that the adoption of the “vertical prosecution” policy,\textsuperscript{489} the resources available for victim outreach during prosecution, and the expertise of judges handling DV cases have increased with the inception of DV courts.\textsuperscript{490}

Some DV courts adopt a pretrial diversion model, thereby providing a more favorable disposition in response to compliance. This varies with the court policy. For instance while pretrial diversion is used in up to 60\% of DV cases in some courts, other courts use a special case processing mechanism for first-time offenders.\textsuperscript{491}

b. Taiwan

In 2014, about 60\% of the applications for the civil protection order were approved. On average, it takes less than 40 days to close a case.\textsuperscript{492} Judges usually ask victims’ opinions when they apply for modification or extension of the protection order but not in the case of withdrawal which makes nearly one-fourth of applications (Table 1). While victims’ autonomy is well ensured, their willingness is hardly affirmed.

| Table 1 Case Disposition of the Civil Protection Order (2014) |
|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Month/Year      | Case Close      | Issuance        | Repealed        | Withdrawn       | Others          |
| 1/2014          | 1,553           | 933             | 220             | 362             | 38              |
| 2/2014          | 1,425           | 848             | 220             | 326             | 31              |
| 3/2014          | 1,977           | 1,200           | 277             | 457             | 43              |
| 4/2014          | 1,799           | 1,090           | 245             | 440             | 24              |
| 5/2014          | 2,076           | 1,262           | 329             | 462             | 23              |
| 6/2014          | 1,836           | 1,148           | 251             | 414             | 23              |
| 7/2014          | 2,157           | 1,373           | 279             | 470             | 35              |
| 8/2014          | 2,065           | 1,234           | 272             | 520             | 39              |
| 9/2014          | 1,290           | 1,290           | 258             | 478             | 33              |
| 10/2014         | 2,281           | 1,359           | 269             | 564             | 53              |
| 11/2014         | 2,019           | 1,249           | 276             | 457             | 37              |

\textsuperscript{487}Id.
\textsuperscript{488}Id.
\textsuperscript{489}The “vertical prosecution” indicates that the same prosecutor will be dealing with a case from filing to disposition. Keeping the same prosecutor throughout a case can not only help the prosecutor’s better knowledge of case details but also increase victim’s willingness to support the prosecution for increasing victim trust and confidence when having the same contact with victims. See Id.
\textsuperscript{490}Id.
\textsuperscript{491}Id.
\textsuperscript{492}Regular protection orders take about 50 days to make a decision, whereas the temporary orders take around 20 days. See Judicial Statistics, available at http://www.judicial.gov.tw/juds/report/sf-33.htm (last visited November 25, 2015).
Criminal orders can be made by prosecutors or criminal courts. Prosecutors can issue orders to, for instance, stay away or move out or impose other measures to ensure victim safety as the condition(s) of an offender’s release or deferred prosecution. Similarly, criminal courts can order offenders to refrain from harassment, contact, stalking, communication, mailing, or any other unnecessary correspondence or to follow any other protective measures as conditions of the offender’s bail, probation, or parole.

Compared to civil protection orders, criminal orders are seldom issued by prosecutors and rarely by criminal courts. While 14,365 civil protection orders were issued in 2014 by family division or court, the numbers of prosecutor orders to protect victims or prevent offenses or deferred prosecution in the last ten years were 385 and 759, which make up 25% and 50% of the total number of deferred prosecutions respectively (Table 1, 2). In the same period, the number of criminal courts ordering defendants on probation to refrain from DV was 405 or 11% of defendants on probation, which is about 13% of DV defendants found guilty in last ten years.

Table 2 Protective Orders as Conditions in DV Deferred Prosecution (2005-2014)

<table>
<thead>
<tr>
<th>Year</th>
<th>Deferred Prosecution (A)</th>
<th>Orders to Protect Victims (B)</th>
<th>Orders to Prevent Reoffending (C)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Rate (B/A)</td>
<td>Number</td>
</tr>
<tr>
<td>2005</td>
<td>100</td>
<td>10</td>
<td>10%</td>
</tr>
<tr>
<td>2006</td>
<td>120</td>
<td>20</td>
<td>17%</td>
</tr>
<tr>
<td>2007</td>
<td>86</td>
<td>9</td>
<td>10%</td>
</tr>
<tr>
<td>2008</td>
<td>112</td>
<td>43</td>
<td>39%</td>
</tr>
<tr>
<td>2009</td>
<td>159</td>
<td>80</td>
<td>50%</td>
</tr>
<tr>
<td>2010</td>
<td>99</td>
<td>65</td>
<td>33%</td>
</tr>
<tr>
<td>2011</td>
<td>84</td>
<td>44</td>
<td>24%</td>
</tr>
<tr>
<td>2012</td>
<td>210</td>
<td>39</td>
<td>19%</td>
</tr>
<tr>
<td>2013</td>
<td>202</td>
<td>40</td>
<td>20%</td>
</tr>
<tr>
<td>2014</td>
<td>159</td>
<td>35</td>
<td>22%</td>
</tr>
<tr>
<td>Total</td>
<td>1,531</td>
<td>385</td>
<td>25%</td>
</tr>
</tbody>
</table>

493 Domestic Violence Prevention Act §31, Code of Criminal Procedure Code§ 253-2,
494 Domestic Violence Prevention Act §31, 38, 39.
495 In addition to BIPs, conditions of deferred prosecution include apologizing to the victim; making a written statement of repentance; pay to the victim an appropriate sum as compensations for property or non-property damages; paying a certain sum to governmental account or a designated non-profit or local self-governing organization; performing forty to two-hundred-and-forty-hour community service to a designated non-profit, local self-governing organization, or community; complying with the necessary order for the protection of the victim's safety; complying with the necessary order for the prevention of recommitting the offense. Code of Criminal Procedure §253-2.
Note: Orders to protect to victims and orders to prevent reoffending could be issued to the same offender in the same case.
Source: Department of Prevention, Rehabilitation and Protection, Ministry of Justice

Table 3 Convicted DV Defendant, Probation, and Criminal Court Order (2005-2014)

<table>
<thead>
<tr>
<th>Year</th>
<th>Convicted DV Defendant (A)</th>
<th>Probation (B)</th>
<th>Criminal Court Order to Refrain from DV on Probation (C)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Rate (B/A)</td>
<td>Number</td>
</tr>
<tr>
<td>2005</td>
<td>2,018</td>
<td>245</td>
<td>12%</td>
</tr>
<tr>
<td>2006</td>
<td>2,296</td>
<td>273</td>
<td>12%</td>
</tr>
<tr>
<td>2007</td>
<td>2,397</td>
<td>266</td>
<td>11%</td>
</tr>
<tr>
<td>2008</td>
<td>2,653</td>
<td>331</td>
<td>12%</td>
</tr>
<tr>
<td>2009</td>
<td>2,621</td>
<td>380</td>
<td>14%</td>
</tr>
<tr>
<td>2010</td>
<td>3,101</td>
<td>401</td>
<td>13%</td>
</tr>
<tr>
<td>2011</td>
<td>3,195</td>
<td>410</td>
<td>13%</td>
</tr>
<tr>
<td>2012</td>
<td>3,284</td>
<td>383</td>
<td>12%</td>
</tr>
<tr>
<td>2013</td>
<td>3,240</td>
<td>417</td>
<td>13%</td>
</tr>
<tr>
<td>2014</td>
<td>3,280</td>
<td>425</td>
<td>13%</td>
</tr>
<tr>
<td>Total</td>
<td>28,085</td>
<td>3,531</td>
<td>13%</td>
</tr>
</tbody>
</table>

Source: Judicial Statistics

4. Case Sentencing
   a. U.S.

   DV courts are inclined to make greater use of protection orders, program mandates, intensive probation, and other special conditions than non-specialized courts. State statutes mandate specific DV sentences including mandatory minimum prison sentences, minimum probation terms, BIPs, fines, community services, firearms relinquishment, and protection or restraining orders.496

   With regard to types of sentencing and sentencing conditions, the great variation from state to state shows that DV courts have not come to a closer consensus in this regard. While nearly half of responding courts reported that they often or always order a BIP (45%), a similar percentage of courts stated they rarely or never impose a similar program (53%).497 In addition, there is no significant difference in the percentage of court imposed program mandates, including substance abuse or mental health treatment, which were rated as often or always (34%), sometimes (38%), or rarely or never doing so (28%).

496 For instance, in California, when a person is sentenced to probation for a DV crime, the terms of probation include a 52-week BIPs, restitution, and fines. In Mexico, offenders convicted of DV are required to participate in and complete a DV offender treatment or intervention program. In South Carolina, convicted DV offender must be imprisoned for a minimum of one year. See Labriola et al., supra note 239, at 44.
497 Id.
On the other hand, two sentencing conditions have shown similarities in DV courts: protection orders and probation supervision. An advanced analysis shows that the most used sentences, protection/restraining orders and probation, are more affected by state statutes than imposing a BIP is.\textsuperscript{498}

Further, various factors, including statutory requirements and court goals and policies, are found to be associated with the practice of sentencing and sentencing conditions. DV courts with a mandatory sentencing statute are more likely to sentence offenders to probation, incarceration, or a BIP.\textsuperscript{499} Moreover, while courts that view offender accountability as more important are more likely to impose protection orders and mandate probation, courts that view rehabilitation as more important are more likely to mandate BIPs and probation.\textsuperscript{500} In addition, courts that rate the goal of applying statutory requirements correctly and consistently as more important are more likely to use BIPs, whereas courts that rate the goal of efficiency as more important are less likely to use BIPs.\textsuperscript{501} Further, courts hearing felony cases are more likely to sentence offenders to incarceration or issue an order of protection, and less likely to impose fines than others.\textsuperscript{502}

b. Taiwan

Criminal orders are rarely issued by criminal courts as the condition of probation, not to mention mandating defendants to BIPs. From 2005 to 2014, only 11\% of DV defendants found guilty were under supervised probation (Table 4). In addition, 61 defendants out of 28,085 defendants who were found guilty, in the last ten years, were ordered to BIPs, which include educational and psychological consultation, mental therapy, drug/alcohol addiction rehabilitation, or any other consultation and treatments.

<table>
<thead>
<tr>
<th>Year</th>
<th>Convicted DV Defendant (A)</th>
<th>Supervised Probation (B)</th>
<th>Mandated BIP</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Rate (B/A)</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>2,018</td>
<td>206</td>
<td>10%</td>
</tr>
<tr>
<td>2006</td>
<td>2,296</td>
<td>223</td>
<td>10%</td>
</tr>
<tr>
<td>2007</td>
<td>2,397</td>
<td>217</td>
<td>9%</td>
</tr>
<tr>
<td>2008</td>
<td>2,653</td>
<td>255</td>
<td>10%</td>
</tr>
<tr>
<td>2009</td>
<td>2,621</td>
<td>323</td>
<td>12%</td>
</tr>
<tr>
<td>2010</td>
<td>3,101</td>
<td>345</td>
<td>11%</td>
</tr>
<tr>
<td>2011</td>
<td>3,195</td>
<td>355</td>
<td>11%</td>
</tr>
<tr>
<td>2012</td>
<td>3,284</td>
<td>325</td>
<td>10%</td>
</tr>
<tr>
<td>2013</td>
<td>3,240</td>
<td>376</td>
<td>12%</td>
</tr>
<tr>
<td>2014</td>
<td>3,280</td>
<td>374</td>
<td>11%</td>
</tr>
<tr>
<td>Total</td>
<td>28,085</td>
<td>2,999</td>
<td>11%</td>
</tr>
</tbody>
</table>

Source: Judicial Statistics

\textsuperscript{498} Id. at 45.
\textsuperscript{499} Id. at 46.
\textsuperscript{500} Id.
\textsuperscript{501} Id.
\textsuperscript{502} Id. at 47.
Types of sentencing of DV offenders, including death penalty, life imprisonment, sentence of imprisonment, short-term imprisonment, and fines, are the same as for stranger crimes. In the last ten years, short-term imprisonment, which is less than 60 days of imprisonment and may extend to up to 120 days, makes up nearly 60% of sentencing types for all DV offenders. The second most common sentence is less than one year of imprisonment. Along with short-term imprisonment, both constitute nearly 90% of DV sentencing (Table 5). Both the sentences of imprisonment and of short term imprisonment can be commuted to a fine in the case of a misdemeanor when deemed appropriate.

Table 5 Convicted DV Defendant and Types of Sentencing (2005-2014)

<table>
<thead>
<tr>
<th>Year</th>
<th>Convicted Defendant</th>
<th>Death Penalty</th>
<th>Life Imprisonment</th>
<th>Sentence of Imprisonment</th>
<th>Short term Imprisonment &lt; 60 days (It may extend up to 120 days)</th>
<th>Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>&lt; 1 year</td>
<td>1-10 years</td>
<td>&gt; 10 years</td>
</tr>
<tr>
<td>2005</td>
<td>2,018</td>
<td>2</td>
<td>6</td>
<td>704</td>
<td>124</td>
<td>18</td>
</tr>
<tr>
<td>2006</td>
<td>2,296</td>
<td>1</td>
<td>10</td>
<td>735</td>
<td>192</td>
<td>23</td>
</tr>
<tr>
<td>2007</td>
<td>2,397</td>
<td>3</td>
<td>3</td>
<td>799</td>
<td>169</td>
<td>26</td>
</tr>
<tr>
<td>2008</td>
<td>2,653</td>
<td>0</td>
<td>10</td>
<td>822</td>
<td>223</td>
<td>22</td>
</tr>
<tr>
<td>2009</td>
<td>2,621</td>
<td>1</td>
<td>10</td>
<td>800</td>
<td>220</td>
<td>24</td>
</tr>
<tr>
<td>2010</td>
<td>3,101</td>
<td>2</td>
<td>6</td>
<td>878</td>
<td>234</td>
<td>26</td>
</tr>
<tr>
<td>2011</td>
<td>3,195</td>
<td>3</td>
<td>5</td>
<td>931</td>
<td>271</td>
<td>25</td>
</tr>
<tr>
<td>2012</td>
<td>3,284</td>
<td>0</td>
<td>6</td>
<td>958</td>
<td>271</td>
<td>20</td>
</tr>
<tr>
<td>2013</td>
<td>3,240</td>
<td>2</td>
<td>9</td>
<td>898</td>
<td>275</td>
<td>17</td>
</tr>
<tr>
<td>2014</td>
<td>3,280</td>
<td>0</td>
<td>5</td>
<td>816</td>
<td>272</td>
<td>25</td>
</tr>
<tr>
<td>Total</td>
<td>28,085</td>
<td>14</td>
<td>70</td>
<td>8,341</td>
<td>2,251</td>
<td>226</td>
</tr>
<tr>
<td>Rate</td>
<td>100%</td>
<td>0.04%</td>
<td>0.25%</td>
<td>30%</td>
<td>8%</td>
<td>0.8%</td>
</tr>
</tbody>
</table>

Source: Judicial Statistics

B. Therapeutic Jurisprudence Application

1. Victim Safety and Services

   a. U.S.

   Many DV courts in the U.S. recognize that the work of victim advocates is essential in promoting victim safety and view deterred recidivism as a significant indicator of victim.

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503 See Penal Code §33.

504 In an offense that carries a maximum principal punishment of not more than five years’ imprisonment, if the offender is sentenced to imprisonment for not more than six months or short-term imprisonment, the punishment may be commuted to a fine at a daily rate of 1000-3000 NTD. This provision does not apply to the cases in which the commutation of the pronounced punishment as imposed is manifestly of little corrective effect, or when the legal order cannot be maintained. See Penal Code § 41, Paragraph 1.
There is a link between DV courts encouraging victims to seek services and having victim advocates working with the courts.

The approaches to advance victim safety are diverse among DV courts. While most courts consider that victims may need to attend hearings for different reasons, a number of courts discourage victims from visiting the courthouse to attend hearings for the reason of victim safety.

The literature confirms that DV courts can promote victim safety by making advocates more accessible for victims.

Victims’ perceptions concerning the fairness of case processing may affect their willingness to cooperate with the prosecution of a DV offense. Some studies were conducted to compare victims’ perceptions of DV court with their perceptions of conventional criminal courts. Four of five studies found victims to be more satisfied with the process in a DV court than in a non-specialized court. In addition, victims felt that there were treated fairly and that the judge cared about and understood their situation. They were also satisfied with the advocates’ assistance. Nevertheless, one study reported that 40% of victims found the court experience embarrassing and stated that they would not return to court if they experienced another incident of DV. Moreover, their positive perception of the court process was not absolutely interpreted as a sense of increased safety. The authors attributed the result to unmet needs that were more than advocates in DV court could provide, such as employment, supportive social networks, and intensive crisis services.

The most common mechanism for improving victim safety is the presence of dedicated victim advocates in the courtroom. A large majority of DV courts have one or more dedicated advocates working with victims. Generally, the three most common services provided by

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505 Labriola et al. supra note 239, at 80.
506 Id.
507 Id.
508 Harrell et al., supra note 338; Henning & Klesges, supra note 338; Newmark et al., supra note 336. For instance, after the Brooklyn felony DV court opened, connecting victims to advocates increased from 55% to 100% (Newmark et al., supra note 336). Since Shelby DV court initiated, the percent of victims linked to advocated rose from almost zero to 56%.
509 Eckberg & Podkopacz, supra note 335; Angela A. Gover, supra note 339; Angela A. Gover et al., supra note 354; G. Hotaling & E. Buzawa, supra note 369. One study did not find the outcome. See Davis et al., supra note 347.
510 Eckberg & Podkopacz, supra note 335; Harrell et al., supra note 338; Henning & Klesges, supra note 338.
511 Eckberg & Podkopacz, supra note 335; Harrell et al., supra note 338.
512 Harrell et al., supra note 338; Hotaling & Buzawa, supra note 369.
513 Hotaling & Buzawa supra note 369.
514 Visher et al., supra note 347.
515 Id.
516 Labriola, supra note 239, at 48.
517 Id.
victim advocates are explaining the criminal justice process, accompanying victims to court, and making safety planning.518 Most victim advocates are employed either by a prosecutor’s office or by an outside nonprofit agency.519 While the former focuses more on obtaining victims’ cooperation with prosecution, the latter assists victims to achieve their goals and continues to work with victims even when their cases are over.520 The difficulty of establishing contact with victims, as well as the number and types of advocates working with the court affect the services that victims receive.521

Protection or restraining orders have been used as an important legal tool to protect victim safety. Almost all DV courts regularly issue a criminal protection or restraining order at some point in handling DV cases.522 A large majority issue a temporary order either at a defendant’s first appearance or prior to the first appearance in the DV court.523 While in most of the courts victims will receive copies of the orders at the court or in the mail from the court clerk, prosecutor’s office, or victim advocate, nearly one-third of courts request that victims make a trip to court to pick up a copy.524

DV courts are faced with the challenge of addressing victim safety at the courthouse. The most common reason for victims to come to court is to request or modify an order of protection or to testify.525 To protect a victim’s physical safety at the courthouse, a majority of courts provide separate waiting areas for victims and segregated seats within the courtroom. Some courts provide safety escorts to victims prior to or after court proceedings, or childcare for victims and witnesses during the proceedings, but many do not for a lack of staff, space or resources.526

Some additional measures are taken in DV courts to increase victim safety. For instance, one court connects victims with advocates before they request that a protection order be dropped.527 Another prosecution unit linked with a DV court works with community-based and governmental organizations such as DV shelters or child protective services by creating a safe space away from the court for victims and advocates to meet.528

518 Other services provided to victims include housing needs, civil protection orders application, and counseling. Id at 49.
519 Most of prosecutors work with one or more of each type of service provider in the DV court context. Id.
520 Id.
521 Id. at 48
522 Id.
523 Id.
524 Id.
525 Id 50.
526 Id 50-51.
527 Id at 51.
528 Id at 51-52.
b. Taiwan

The following governmental statistics provide the picture of the current situation of service for DV victims from different perspectives.

First, the resources for reporting DV could come from a hotline, prevention center, social agency, labor agency, education agency, police agency, judicial system, clinic, hospital etc.\(^{529}\) From 2005 to 2014, the most frequent reporting units were police station, hospital, and hotline. More than two-thirds of reported cases are from police stations and hospitals, and nearly one-fifth from hotlines (Table 6). It is noted that reports from hospitals, unlike those from police stations and hotlines, might be against the victim’s willingness to report.

Table 6 Resources of the DV Reports (2005-2014)

<table>
<thead>
<tr>
<th>Year</th>
<th>Hotline 113</th>
<th>Prevention Center</th>
<th>Social Agency</th>
<th>Labor Agency</th>
<th>Education Institution</th>
<th>Police Station</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>R(%)</td>
<td>N</td>
<td>R(%)</td>
<td>N</td>
<td>R(%)</td>
</tr>
<tr>
<td>2005</td>
<td>7,950</td>
<td>12.03</td>
<td>230</td>
<td>0.35</td>
<td>2,822</td>
<td>4.27</td>
</tr>
<tr>
<td>2006</td>
<td>7,743</td>
<td>10.93</td>
<td>219</td>
<td>0.31</td>
<td>2,939</td>
<td>4.15</td>
</tr>
<tr>
<td>2007</td>
<td>9,465</td>
<td>12.33</td>
<td>240</td>
<td>0.31</td>
<td>3,361</td>
<td>4.38</td>
</tr>
<tr>
<td>2008</td>
<td>14,129</td>
<td>16.78</td>
<td>269</td>
<td>0.32</td>
<td>3,704</td>
<td>4.40</td>
</tr>
<tr>
<td>2009</td>
<td>14,949</td>
<td>15.75</td>
<td>500</td>
<td>0.53</td>
<td>3,900</td>
<td>4.11</td>
</tr>
<tr>
<td>2010</td>
<td>21,543</td>
<td>19.10</td>
<td>593</td>
<td>0.53</td>
<td>4,747</td>
<td>4.21</td>
</tr>
<tr>
<td>2011</td>
<td>22,560</td>
<td>19.26</td>
<td>495</td>
<td>0.42</td>
<td>4,472</td>
<td>3.82</td>
</tr>
<tr>
<td>2012</td>
<td>24,243</td>
<td>18.06</td>
<td>561</td>
<td>0.42</td>
<td>5,257</td>
<td>3.92</td>
</tr>
<tr>
<td>2013</td>
<td>30,196</td>
<td>19.78</td>
<td>719</td>
<td>0.47</td>
<td>5,704</td>
<td>3.74</td>
</tr>
<tr>
<td>2014</td>
<td>25,821</td>
<td>19.31</td>
<td>704</td>
<td>0.53</td>
<td>5,143</td>
<td>3.85</td>
</tr>
</tbody>
</table>

Judicial System | Sanitary Facilities | Clinic | Hospital | Others | Total |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>N</td>
<td>R(%)</td>
<td>N</td>
<td>R(%)</td>
<td>N</td>
<td>R(%)</td>
</tr>
<tr>
<td>69</td>
<td>0.10</td>
<td>61</td>
<td>0.09</td>
<td>51</td>
<td>0.08</td>
</tr>
<tr>
<td>92</td>
<td>0.13</td>
<td>54</td>
<td>0.08</td>
<td>35</td>
<td>0.05</td>
</tr>
<tr>
<td>106</td>
<td>0.14</td>
<td>123</td>
<td>0.16</td>
<td>25</td>
<td>0.03</td>
</tr>
<tr>
<td>127</td>
<td>0.15</td>
<td>113</td>
<td>0.13</td>
<td>36</td>
<td>0.04</td>
</tr>
<tr>
<td>192</td>
<td>0.20</td>
<td>166</td>
<td>0.17</td>
<td>50</td>
<td>0.05</td>
</tr>
<tr>
<td>244</td>
<td>0.22</td>
<td>181</td>
<td>0.16</td>
<td>83</td>
<td>0.07</td>
</tr>
<tr>
<td>480</td>
<td>0.41</td>
<td>297</td>
<td>0.25</td>
<td>211</td>
<td>0.18</td>
</tr>
<tr>
<td>879</td>
<td>0.65</td>
<td>606</td>
<td>0.45</td>
<td>218</td>
<td>0.16</td>
</tr>
<tr>
<td>1,899</td>
<td>1.24</td>
<td>204</td>
<td>0.13</td>
<td>278</td>
<td>0.18</td>
</tr>
<tr>
<td>588</td>
<td>0.44</td>
<td>238</td>
<td>0.18</td>
<td>280</td>
<td>0.21</td>
</tr>
</tbody>
</table>

Note: One reported case could contain more than one victim.
Source: Ministry of Health and Welfare

\(^{529}\) See Domestic Violence Prevention Act §50.
Second, Table 7 demonstrates the types of DV that occurred during 2008 to 2014. It shows that half of victims had an intimate relationship with offenders. Further, more than 85% of the victims of intimate relationships were female, while a little more than 10% are male. (Table 8) Further, approximately 70% of victims are non-aboriginal Taiwanese, and about 15% of victims are aboriginal Taiwanese, mainland Chinese, and people from other countries, each totalling 5% respectively (Table 9). These aboriginal Taiwanese numbers reflects the need for knowledge of different cultures. For instance, aboriginal tribes might have particular disciplines, and DV is usually related to alcohol abuse. Additionally, the number of victims from mainland China and South Eastern Asia correlates to the social wave of foreign brides in the last two decades.  

These foreign brides often choose to stay in the marriage, when DV occurs, rather than to divorce before acquiring Taiwanese identification. That is, not until after getting a Taiwanese ID would they rather apply for a civil protection order, to keep safe while living with their offenders, than request a divorce or accuse their husbands of being criminals.

Table 7 Types of DV (2008-2014)

<table>
<thead>
<tr>
<th>Year</th>
<th>Intimate Relationship</th>
<th>Children Protection</th>
<th>Elders Abuse</th>
<th>Others</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>R%</td>
<td>N</td>
<td>R%</td>
<td>N</td>
</tr>
<tr>
<td>2008</td>
<td>43,042</td>
<td>57.06</td>
<td>16,989</td>
<td>22.52</td>
<td>2,176</td>
</tr>
<tr>
<td>2009</td>
<td>47,908</td>
<td>57.22</td>
<td>17,336</td>
<td>20.70</td>
<td>2,548</td>
</tr>
<tr>
<td>2010</td>
<td>54,921</td>
<td>55.63</td>
<td>21,734</td>
<td>22.02</td>
<td>3,122</td>
</tr>
<tr>
<td>2011</td>
<td>49,894</td>
<td>52.99</td>
<td>23,986</td>
<td>25.48</td>
<td>2,910</td>
</tr>
<tr>
<td>2012</td>
<td>50,615</td>
<td>51.44</td>
<td>27,936</td>
<td>28.41</td>
<td>3,090</td>
</tr>
<tr>
<td>2013</td>
<td>49,633</td>
<td>45.08</td>
<td>34,855</td>
<td>31.66</td>
<td>3,115</td>
</tr>
<tr>
<td>2014</td>
<td>49,560</td>
<td>51.81</td>
<td>17,837</td>
<td>19.59</td>
<td>2,851</td>
</tr>
</tbody>
</table>

Note: Intimate relationship includes marital, divorced, and cohabited couples.
Source: Ministry of Health and Welfare

Table 8 Sex of the DV Victim of the Intimate Relationship (2008-2014)

<table>
<thead>
<tr>
<th>Year</th>
<th>Male</th>
<th>R%</th>
<th>Female</th>
<th>R%</th>
<th>N/P</th>
<th>R%</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>3,604</td>
<td>8.37</td>
<td>38,950</td>
<td>90.49</td>
<td>488</td>
<td>1.13</td>
<td>43,042</td>
</tr>
<tr>
<td>2009</td>
<td>4,428</td>
<td>9.24</td>
<td>43,046</td>
<td>89.85</td>
<td>434</td>
<td>0.91</td>
<td>47,908</td>
</tr>
<tr>
<td>2010</td>
<td>5,287</td>
<td>9.63</td>
<td>49,163</td>
<td>89.52</td>
<td>471</td>
<td>0.86</td>
<td>54,921</td>
</tr>
<tr>
<td>2011</td>
<td>5,672</td>
<td>11.37</td>
<td>43,562</td>
<td>87.31</td>
<td>660</td>
<td>1.32</td>
<td>49,894</td>
</tr>
<tr>
<td>2012</td>
<td>6,512</td>
<td>12.87</td>
<td>43,492</td>
<td>85.92</td>
<td>611</td>
<td>1.21</td>
<td>50,615</td>
</tr>
<tr>
<td>2013</td>
<td>5,824</td>
<td>11.73</td>
<td>43,112</td>
<td>86.86</td>
<td>697</td>
<td>1.40</td>
<td>49,633</td>
</tr>
<tr>
<td>2014</td>
<td>6,009</td>
<td>12.12</td>
<td>42,903</td>
<td>86.57</td>
<td>648</td>
<td>1.31</td>
<td>49,560</td>
</tr>
</tbody>
</table>

Source: Ministry of Health and Welfare

531 An abused foreign bride may stay in Taiwan after divorced if s/he either obtains the (civil) protection order issued by the court, or s/he, subject to court divorce, has a minor child with registered permanent residence in Taiwan. The civil protection order may be requested for extension after it expires in two years. See Immigration Act §31, Domestic Violence Prevention Act §15.
Table 9 Nationality of the DV Victims of the Intimate Relationship (2008-2014)

<table>
<thead>
<tr>
<th>Year</th>
<th>Taiwan</th>
<th>Mainland China</th>
<th>Hong Kong / Macaw</th>
<th>Foreign Countries</th>
<th>Stateless</th>
<th>N/P</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
<td>Case Closed (Total)</td>
<td>Issuance</td>
<td>Repealed</td>
<td>Withdrawn</td>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>---------------------</td>
<td>----------</td>
<td>----------</td>
<td>-----------</td>
<td>-------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>18,376</td>
<td>11,586</td>
<td>1,999</td>
<td>4,151</td>
<td>1,739</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>18,607</td>
<td>11,820</td>
<td>1,989</td>
<td>4,354</td>
<td>1,863</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>20,028</td>
<td>12,276</td>
<td>2,412</td>
<td>5,673</td>
<td>2,045</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td>19,730</td>
<td>11,679</td>
<td>2,429</td>
<td>5,056</td>
<td>2,078</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td>20,737</td>
<td>12,769</td>
<td>2,553</td>
<td>5,469</td>
<td>2,372</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td>23,492</td>
<td>14,225</td>
<td>3,030</td>
<td>5,217</td>
<td>2,014</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>23,063</td>
<td>14,296</td>
<td>2,866</td>
<td>5,217</td>
<td>2,078</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2012</td>
<td>22,447</td>
<td>13,976</td>
<td>3,044</td>
<td>5,056</td>
<td>2,348</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td>22,639</td>
<td>14,044</td>
<td>2,943</td>
<td>5,056</td>
<td>2,348</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td>23,428</td>
<td>14,365</td>
<td>3,167</td>
<td>5,469</td>
<td>2,348</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Judicial Statistics

<table>
<thead>
<tr>
<th>Year</th>
<th>Reported Case Closed (C)</th>
<th>Issuance</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>11,586</td>
<td>63.04</td>
</tr>
<tr>
<td>2006</td>
<td>11,820</td>
<td>65.42</td>
</tr>
<tr>
<td>2007</td>
<td>12,276</td>
<td>61.29</td>
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<tr>
<td>2008</td>
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<td>59.19</td>
</tr>
<tr>
<td>2009</td>
<td>12,769</td>
<td>62.03</td>
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<tr>
<td>2010</td>
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<td>60.55</td>
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<td>61.99</td>
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<td>62.03</td>
</tr>
<tr>
<td>2014</td>
<td>14,365</td>
<td>61.32</td>
</tr>
</tbody>
</table>

Source: Judicial Statistics
### Table 13: Number of DV Cases/Defendant at Different Stages of Criminal Proceedings (2005-2014)

<table>
<thead>
<tr>
<th>Year</th>
<th>Reported Cases to DV Prevention Center (A)</th>
<th>Cases Admitted in Police Office (B)</th>
<th>Cases Admitted in Prosecutor’s Office (C)</th>
<th>Cases of Prosecution (D)</th>
<th>Admitted Cases of Final Judgment (E)</th>
<th>Enforcement of Convicted Defendants¹ (F)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>62,310</td>
<td>27,548</td>
<td>2,743</td>
<td>1,719</td>
<td>1,687</td>
<td>1,453</td>
</tr>
<tr>
<td>2006</td>
<td>66,635</td>
<td>27,950</td>
<td>3,114</td>
<td>2,110</td>
<td>1,992</td>
<td>1,656</td>
</tr>
<tr>
<td>2007</td>
<td>72,606</td>
<td>30,582</td>
<td>3,149</td>
<td>2,182</td>
<td>2,105</td>
<td>1,718</td>
</tr>
</tbody>
</table>

Source: Ministry of Health and Welfare & Judicial Statics

Fourth, in the last decade, the yearly reported DV cases have doubled (Table 13). From 2005 to 2014, 940,964 DV cases from hotlines and all other kinds of agencies throughout Taiwan were reported to the DV prevention center of the local government. Nevertheless, less than 40% of cases were admitted to police stations. Only around 10% of DV cases dealt with in police stations were sent to a prosecutor’s office (Table 14). Nearly two thirds of cases admitted in a prosecutor’s office were prosecuted, or half of defendants were prosecuted. It is worth noting that close to 80% of prosecuted defendants were guilty, but nearly 25% defendants were not prosecuted due to victim withdrawal, and more than 15% of defendants were pronounced “Case not Entertained” mainly due to victim withdrawal after prosecution (Table13, 14).

Victim withdrawal may not imply that a victim is free from danger. In addition to reasons why victims do not leave offenders, such as lack of financial independence, the desire to protect children from being hurt, or learned helplessness, Taiwanese victims may have more cultural constraints related to maintaining family harmony, constraints that would require them to fight against the social view that the DV is a shame not to be spoken of aloud. Along with adopting the principle of “no accusation without complaint” in misdemeanors, only 5% of defendants in cases admitted in a police office or 2% of defendants in cases reported to the DV prevention center were declared guilty and taken into custody.

---

534 Code of Criminal Procedure §303.
Note 1. The number of “Enforcement of Convicted Defendants” should be more than “Enforcement of Guilty Cases.”
Source: Department of Health and Welfare, Ministry of Interior, Ministry of Justice

Table 14: Disposition of Defendant in Prosecutor Office and Criminal Court (2005-2014)

<table>
<thead>
<tr>
<th>Year</th>
<th>Defendant in Prosecutor Office</th>
<th>Defendant in Criminal Court</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Case Close</td>
<td>Withdrawal</td>
</tr>
<tr>
<td></td>
<td>(A) N</td>
<td>(B) N</td>
</tr>
<tr>
<td></td>
<td>N</td>
<td>R% B/A</td>
</tr>
<tr>
<td>2005</td>
<td>3,678</td>
<td>1,797</td>
</tr>
<tr>
<td>2006</td>
<td>4,544</td>
<td>2,237</td>
</tr>
<tr>
<td>2007</td>
<td>4,336</td>
<td>2,279</td>
</tr>
<tr>
<td>2008</td>
<td>4,682</td>
<td>2,467</td>
</tr>
<tr>
<td>2009</td>
<td>5,310</td>
<td>2,704</td>
</tr>
<tr>
<td>2010</td>
<td>6,360</td>
<td>3,227</td>
</tr>
<tr>
<td>2011</td>
<td>6,590</td>
<td>3,292</td>
</tr>
<tr>
<td>2012</td>
<td>7,074</td>
<td>3,544</td>
</tr>
<tr>
<td>2013</td>
<td>7,152</td>
<td>3,431</td>
</tr>
<tr>
<td>2014</td>
<td>7,512</td>
<td>3,643</td>
</tr>
<tr>
<td>Total</td>
<td>57,238</td>
<td>28,621</td>
</tr>
</tbody>
</table>

Note 1: The reason of “Case Not Entertained” by criminal court is mainly caused by victim’s withdrawal of misdemeanor which may be initiated in prosecution only upon complaint or request.
Source: Ministry of Justice

Fifth, the center for DV services located in each family court is the main provider of DV victim services. The staff and social workers of these victim service centers in each court are trained and provided by a non-profit organization and financially supported by local government. These DV centers established in 2003 have been integrated into the Center for Family Services since 2013. Unlike in the U.S., there is no victim advocate employed by the prosecutor’s

535 The Center provides services including emotional support, counseling prior to divorce mediation, parental education, family counseling, parenting coordination, accompanying court/mediation session, legal counseling, welfare counseling/referral etc. Available at
Prosecutors may refer victims to the Center for Family Services, which are mostly situated in the next building. It is noted that involving victims in prosecution is not deemed a prosecutor’s concern because the victim’s willingness is the premise required to prosecute a misdemeanor under “no prosecution without victim’s complaint.”

The most used types of victim services may not require the highest expenditure of the service budget. Counseling, the service most frequently provided for DV victims, constitutes nearly two-thirds of victim service (Table 15). Psychological counseling and legal aid are the second most frequently used services, but each constitutes less than 10%. Additionally, none of the other services, such as shelter, prosecution accompaniment, court accompaniment, clinic visits, economic support, employment services, school services, children’s issues, interpretation services, or referral to substance control, has more than 3.5% of the volume of victim services. On the other hand, two-thirds of the yearly expenditure goes to victim’s shelter. Emergency life support costs less than 10% of the budget. Other services, such as living support, accident support, rent support, medical support, rehabilitative support, attorney fee support, litigant fee support, children living support, children education support, and daycare support, account for less than 4% of expenditures respectively (Table 16).

Table 15 Types of Services for DV Victims (2006-2014)

<table>
<thead>
<tr>
<th>Year</th>
<th>Counseling</th>
<th>Shelter</th>
<th>Prosecution Accompany</th>
<th>Court Accompany</th>
<th>Clinic</th>
</tr>
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<tbody>
<tr>
<td>N</td>
<td>R%</td>
<td>N</td>
<td>R%</td>
<td>N</td>
<td>R%</td>
</tr>
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<td>2006</td>
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<td>11,636</td>
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<td>249,399</td>
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<td>12,015</td>
<td>2.88</td>
<td>987</td>
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<td>283,923</td>
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<td>14,632</td>
<td>3.06</td>
<td>1,047</td>
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<td>15,093</td>
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<td>1,434</td>
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<td>1,957</td>
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<td>17,565</td>
<td>1.92</td>
<td>1,752</td>
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<td>64.21</td>
<td>20,467</td>
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<td>1,559</td>
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<td>64.29</td>
<td>18,549</td>
<td>1.64</td>
<td>1,256</td>
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Legal Aid | Economic Support | Psychological Counseling | Employment Service | School Service

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<tr>
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<th>R%</th>
<th>N</th>
<th>R%</th>
<th>N</th>
<th>R%</th>
<th>N</th>
<th>R%</th>
<th>N</th>
<th>R%</th>
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<td>-</td>
<td>9,047</td>
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<td>1,671</td>
<td>0.59</td>
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<td>-</td>
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<td>4,472</td>
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<table>
<thead>
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<th>N</th>
<th>R%</th>
<th>N</th>
<th>R%</th>
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<th>R%</th>
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<th>R%</th>
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<td>1,633,394</td>
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</table>

Source: Ministry of Health and Welfare

<table>
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<th>Year</th>
<th>N</th>
<th>R%</th>
<th>N</th>
<th>R%</th>
<th>N</th>
<th>R%</th>
<th>N</th>
<th>R%</th>
<th>N</th>
<th>R%</th>
<th>Total</th>
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Table 16 Expenditure of Services for DV Victims (2006-2014)

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<th>Year</th>
<th>N</th>
<th>R%</th>
<th>N</th>
<th>R%</th>
<th>N</th>
<th>R%</th>
<th>N</th>
<th>R%</th>
<th>N</th>
<th>R%</th>
<th>Total</th>
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<td>Referring to Substance Control</td>
<td>Others</td>
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<td>N</td>
<td>R%</td>
<td>N</td>
<td>R%</td>
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<td>R%</td>
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<td>0.03</td>
<td>230</td>
<td>0.02</td>
<td>144,057</td>
<td>12.77</td>
<td>1,127,819</td>
<td></td>
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</tr>
<tr>
<td>NTD</td>
<td>R%</td>
<td>NTD</td>
<td>R%</td>
<td>NTD</td>
<td>R%</td>
<td>NTD</td>
<td>R%</td>
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<tr>
<td>48,935</td>
<td>0.0</td>
<td>163,500</td>
<td>0.1</td>
<td>2,029,515</td>
<td>1.5</td>
<td>2,899,806</td>
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<td>266,250</td>
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<td>0.2</td>
<td>2,136,713</td>
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<td>292,309</td>
<td>0.1</td>
<td>416,614</td>
<td>0.2</td>
<td>4,037,423</td>
<td>1.6</td>
<td>3,227,275</td>
<td>1.3</td>
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<td>142,149</td>
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<td>584,149</td>
<td>0.2</td>
<td>5,189,862</td>
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<td>6,032,019</td>
<td>1.9</td>
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<tr>
<td>517,535</td>
<td>0.2</td>
<td>455,058</td>
<td>0.1</td>
<td>4,799,743</td>
<td>1.4</td>
<td>2,720,963</td>
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<td>153,339</td>
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<td>9,653,538</td>
<td>2.4</td>
<td>10,690,720</td>
<td>2.6</td>
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<td>756,476</td>
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<td>241,411</td>
<td>0.1</td>
<td>16,669,667</td>
<td>4.3</td>
<td>19,863,206</td>
<td>5.1</td>
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<tr>
<td>1,383,616</td>
<td>0.3</td>
<td>750,610</td>
<td>0.2</td>
<td>15,121,193</td>
<td>3.2</td>
<td>23,344,719</td>
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<td>1,081,270</td>
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<td>276,316</td>
<td>0.1</td>
<td>19,049,700</td>
<td>3.6</td>
<td>30,838,057</td>
<td>5.8</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Ministry of Health and Welfare

2. Offender Accountability and Program Mandates

   a. U.S.

   Many DV courts in the U.S. define offender accountability as showing offenders that DV is taken seriously by the court and that noncompliance with program mandates will lead to immediate and certain results. Probation monitoring and judicial monitoring of offenders are primarily considered useful mechanisms to advance offense accountability.

   DV Courts take action to reach goals they value. When courts view offender rehabilitation as more important, they are more likely to use a BIP or probation; courts that take offender accountability as their objective are more likely to use judicial monitoring and impose penalties like jail sanctions for noncompliance.

   Regarding BIP, while more than half of responding courts said they always or often mandate BIP, more than 40% reported they rarely or never order them. Moreover, there is a wide diversity in the form of judicial monitoring, frequency of judicial monitoring, and the content of judicial review hearings.

   i. Offender Assessment and Programs

   The important features of a DV court, compared to a general criminal court, are the use of assessment and program mandates specially designed for DV offenders. Probation departments or BIPs usually conduct assessments that are provided to help courts to make decisions, and programs are often ordered as part of a sentence.

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536 Labriola et al., supra note 239, at 80.
537 Id.
538 Id.
539 Id.
540 Most of courts use some form of judicial monitoring, while some do not. The frequency of judicial monitoring varies from twice per month to four times per year. Judges use different kinds of surveillance, communication, and sanctioning strategies during review hearings. See Id.
541 Id. at 53.
In practice, nearly half of offenders in DV courts are assessed.\textsuperscript{542} The assessments are mainly used to determine the type of program or intervention that the court should order, to guide decisions about the intensity of probation or judicial supervision, and to determine the type or length of the sentence.\textsuperscript{543} The most commonly used types of evaluation include drug and alcohol abuse, mental health, socio demographic background, and risk of repeated violence. In addition, assessments of defendant service needs, victimization of the defendant, and risk of lethality are used but less frequent.\textsuperscript{544}

Most assessments of substance abuse and mental illness are conducted as a component of the intake process by probation or by the BIP.\textsuperscript{545} While some of the offender assessments for drug and alcohol abuse are done informally, some are referred to a substance abuse program for further evaluation.\textsuperscript{546} When BIP do not address both DV and substance abuse issues, substance abuse can be a reason for the BIP to reject a defendant’s participation and to refer him or her back to the court for appropriate services.\textsuperscript{547}

Prosecutors often conduct an assessment of risk to determine the intensity of outreach to the victim by the victim advocate, how much the case should be expedited, and which position the prosecutor should take regarding any pretrial release conditions.\textsuperscript{548} When classifying cases as high or low risk, they usually employ a list of factors including past criminal violence, repeat DV arrests, use of weapons, facts of the current case (e.g. severity of injuries), prior order of protection history, and threats and violations of prior orders.\textsuperscript{549} Probation can use the assessment of the risk of reoffending and of lethality to determine intensity of supervision as well.\textsuperscript{550}

Regarding the instruments of assessment, some courts use Spousal Abuse Risk Assessment (SARA), Domestic Violence Inventory (DVI), and Jacquelyn Campbell’s Danger Assessment as standardized tools.\textsuperscript{551} On the other hand, while some probation departments or the BIP use a state-issued form to assess mental health and substance abuse, some derivations of the lethality assessments are unknown.\textsuperscript{552}

Compared to general criminal courts, DV courts are more likely to mandate completion of a BIP as part of a sentence.\textsuperscript{553} However, in an empirical survey, 44\% of DV courts ordered fewer than a quarter of offenders to BIPs.\textsuperscript{554} As mentioned above, court goals of rehabilitation and correctly and consistently applying statutory requirements are positive both factors for DV courts

\textsuperscript{542} Id.
\textsuperscript{543} Id.
\textsuperscript{544} Id.
\textsuperscript{545} Id.
\textsuperscript{546} Id. at 54.
\textsuperscript{547} Id. at 53-54.
\textsuperscript{548} Id. at 54.
\textsuperscript{549} Id. at 54-55.
\textsuperscript{550} Id. at 55.
\textsuperscript{551} Id.
\textsuperscript{552} Id.
\textsuperscript{553} Id.
\textsuperscript{554} Id.
to use BIP. Courts emphasizing case processing efficiency are less likely to order BIP as part of a sentence.\textsuperscript{555}

A large majority of DV courts never or rarely use BIP before a guilty plea or conviction as pretrial diversion or a condition of pretrial release.\textsuperscript{556} In some particular situations in some jurisdictions, programs can be used as a condition of pretrial diversion. For instance, when the victim agrees and it is a first offense or when an assessment demonstrates there is a need, defendants with mental health illness are charged with misdemeanors.\textsuperscript{557}

The most valued reason for ordering defendants to BIPs from three fourths of DV courts is holding defendants accountable, even though what that means varies from acknowledgement of responsibility to compliance with the court order.\textsuperscript{558} With the latter, courts may not pay much attention to what defendants have learned. More than half of courts view BIPs as a tool for monitoring offenders, and nearly half consider programs as a treatment or rehabilitation.\textsuperscript{559} Other than BIPs, alcohol or substance abuse treatment and mental health treatment or counseling are the most commonly ordered programs for DV offenders, followed by parenting class and anger management.\textsuperscript{560}

The following will explore which policy characteristics of DV courts could be linked to greater use of court supervision and increased responsiveness to defendant noncompliance. Issues that will be focused on include whether the court employs court supervision and the frequency of that monitoring, and whether the court responds to noncompliance with sanctions, such as imposing jail time. Possible correlates that will be taken into consideration include the state where the court is located, size of jurisdiction, case volume, existence of state statutes, court goals, and intervening policies such as the use of program mandates, orders of protection, and specific supervision practices.\textsuperscript{561}

\textbf{ii. Supervision and Court Responses to Noncompliance}

The literature indicates that specialized DV courts are more likely to involve intensive supervision, imposing sanctions such as probation revocation and jail for offenders’ noncompliance of court-ordered conditions.\textsuperscript{562} Nevertheless, only a few courts have been examined, and the outcomes can hardly be widely representative of practices throughout the U.S. Regarding supervision and responses to noncompliance, Labriola’s empirical research in 2009 provides a broader portrait of DV courts nationwide.

\textsuperscript{555} Id.
\textsuperscript{556} “Pretrial diversion” indicates that a defendant’s participating in a program may result in avoiding or delaying the usual dispositional process. Defendant’s completion of the program leads to bypassing the court process or to receiving a more favorable case outcome such as the dismissal of charges. \textit{See Id.} at 56.
\textsuperscript{557} Id.
\textsuperscript{558} Id. at 57.
\textsuperscript{559} Id. at 58.
\textsuperscript{560} Id. at 58-59.
\textsuperscript{561} Id. at 66.
\textsuperscript{562} Angene, \textit{supra} note 335; Harrell et al., \textit{supra} note 338; Newmark et al., \textit{supra} note 336.
Nearly two thirds of DV courts always or often mandate offenders to probation, especially when there are statutory sentencing requirements. Offenders usually meet with the probation officers twice a month, but frequency can range from weekly to every three months. Probation often requires offenders to attend substance abuse or mental health treatment when the court does not mandate such programs.

A large majority of probation officers routinely contact victims when offenders are ordered to probation. The most common reasons for contacting victims are to elicit information and to ask them about the offender’s compliance with protection orders. Other reasons include alerting victims to offenders’ noncompliance, offering services or referrals to counseling, shelter, or a hotline. Sometimes victims initiate contact with probation because of offenders’ violation of conditions of probation or to access information about services.

With regard to the communication between probation and the court, nearly half of the courts receive reports from probation regularly, and fewer than half only receive them upon the filing of a probation violation when courts mandate offenders to probation. Some probation departments have a dedicated officer attending all court sessions, which is an effective way to exchange information with the court.

The interaction between a convicted offender sentenced to probation and a probation officer usually begins with an intake assessment for substance abuse and mental health, a review of terms and conditions, and assignment to a probation officer. The intake assessment along with the lethality assessment are used to determine the appropriate program referral and/or level of supervision. A social service staff member might meet with the offender to ensure the offender is ready for program participation.

a) Court Supervision

Court supervision, including regular hearings before a judicial officer for compliance monitoring, usually takes place after a conviction but sometimes occurs in a pretrial diversion program.

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563 Labriola el al., *supra* note 239, at 60.
564 Id.
565 Id.
566 Id.
567 Id.
568 Id. at 61.
569 Id.
570 Id.
571 Id.
572 Id.
Compared to Rempel’s study in a single jurisdiction of a DV court, Labriola’s research using a national-wide survey and 15 on site courtroom observation better determines the prevalence or typical nature of judicial monitoring of DV offenders.

In the survey, more than three-quarters of courts bring the defendants back to court for compliance monitoring. Two-thirds of courts, at least sometimes, hold a regular compliance review more than once every three months. Half of these courts conduct monitoring on a separate compliance calendar rather than mixing with judicial hearings for adjudication. Almost two-thirds of those courts that monitor at least sometimes have adopted one of the following features: First, the judge or judicial officer conducts basic surveillance or judicial interaction with the defendant. Second, the judge uses court supervision to increase the offender’s information about and understanding of the requirements of the sentence. Third, the judge praises compliance, admonishes, or imposes sanctions for noncompliance.

In general, none of the judge’s actions in compliance hearings are used by more than half of the studying courts. A best or recommended practice model for such a hearing has not emerged.

b) Enforcement of Noncompliance

More than three-fourths of DV courts always or often impose sanctions in response to noncompliance with court orders. The most common responses are verbally admonishing defendants, ordering the defendants to return to court immediately, and ordering more frequent court appearances in the future. The large majority of DV courts revoke probation or impose

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573 Rempel’s study found that the judicial surveillance in the sample DV court was superficial, simple, and ineffective to deter recidivism. Compared to Rempel’s finding in DV court, drug and mental health courts routinely use court supervision to remind offenders of the responsibilities and the consequences of noncompliance, impose interim or final sanctions in response to noncompliance, and motivate offender to make progress through individualized conversational interactions. See Id., at 62.
574 Id.
575 Id.
576 Id.
577 “Surveillance and interaction” are defined as conversing directly with defendant in court (47%), reviewing report submitted by program or probation (46%), or reviews any re-arrests or alleged violations of court orders (40%). Id.
578 “Information and understanding” (reinforcing requirements) include reiterating program attendance responsibilities (43%), explaining the consequences of future noncompliance with court orders (42%), or reitering restrictions on contact with the victim (35%). Id.
579 “Sanctions and incentives” are defined as admonishing defendant for noncompliant behavior (45%), praising compliant behavior (40%), and imposing concrete sanctions for noncompliant behavior (39%). Id.
580 Id. at 63.
581 Id. at 64.
jail time for some noncompliance.\textsuperscript{582} Nearly two-thirds of DV courts have a written protocol that prescribes a schedule of sanctions when defendants are not compliant with court orders.\textsuperscript{583}

Some prosecutors may regularly appear on compliance calendars, whereas other prosecutors may be involved in other ways, such as having access to probation or service provider reports.\textsuperscript{584} Approximately two-thirds of prosecutors often or always are involved in shaping the court’s response to noncompliance. In addition, the vast majority of prosecutors commonly file a charge of violation or probation on the recommendation of the probation department or at their own discretion based on a review of the information provided by the probation.\textsuperscript{585} However, there is nearly one-fifth noncompliance depending on probation officers’ discretion as to what behavior constitutes a violation.\textsuperscript{586}

Since probation officers may be the first or only agency officials to be aware of noncompliance after disposition, they may largely determine which violations are heard in the DV court, unless the court regularly hears directly about offender behavior on routinely scheduled review sessions.

c) Factors Associated with Supervision and Greater Responses to Noncompliance

Some factors are found to be greatly associated with greater use of court supervision.\textsuperscript{587} The more highly courts value the goal of accountability and penalizing noncompliant offenders, the more likely they are to require judicial monitoring, the more frequently they are to require it, and the greater their response to noncompliance.\textsuperscript{588} In addition, courts that view fostering expertise in judges as more important or that receive reports from probation regularly, are more likely to engage in judicial monitoring, use monitoring more frequently, and use jail as a sanction for noncompliance.\textsuperscript{589} Nevertheless, state sentencing requirements are not found to have a positive relationship to promoting the frequency of judicial monitoring or greater response to noncompliance.\textsuperscript{590}

iii. Reduced Recidivism

Research regarding recidivism evaluation in DV courts has had mixed outcomes. In the ten quasi-experimental studies in DV courts, three have showed significant reductions in re-

\textsuperscript{582} Id.
\textsuperscript{583} Id. at 65.
\textsuperscript{584} Id.
\textsuperscript{585} Id. at 66.
\textsuperscript{586} Id.
\textsuperscript{587} Id.
\textsuperscript{588} Id. at 66-67.
\textsuperscript{589} Id. at 67.
\textsuperscript{590} Id.
arrests, five have found no reductions or increases in recidivism, and two produced mixed results.

The effect of reduced recidivism may result from therapeutic programs or preventive mechanisms. BIPs, the most used therapeutic treatments, have been found no or extremely modest effects on offenders in recent studies. In terms of the correlation between reduced recidivism and courts’ increased monitoring and increased consequences for noncompliance, few studies have been conducted on this subject and even fewer of them have used experimental quasi-experimental methods. A quasi-experimental study was conducted in the Bronx but found no significant difference in re-offending rates between offenders mandated to judicial monitoring and those who were not. The authors attributed this to the lack of rigorous judicial monitoring implemented in Bronx. As a result, whether or not strong judicial monitoring promotes reduced recidivism remains questionable.

b. Taiwan

i. Offender Assessment and Programs

Compared to BIP ordered by a criminal court, family division or court has a much higher rate of BIP for DV offenders. In the last five years, more than one-fifth of protection orders from a family court have mandated offenders to BIPs (Table 17). In addition, the great gap between a BIP issued by family court and criminal orders can be observed from the number of treatments and items of BIP. In the last three years, the number of BIP ordered by family court is on average around 4,000. In contrast, BIP ordered by a prosecutor for deferred prosecution and criminal court for probation and parole are on average 10 respectively (Table 18). In 2014, the number of treatments by BIPs ordered by family court is 3,948; whereas, the number ordered by prosecutors for deferred prosecution and by criminal court for probation and parole are only 10, 5, and 18 respectively (Table 19). Thus, empirical researches regarding BIP always focus on orders from family court because orders from criminal court or a prosecutor have never been statically significant.

Table 17 Mandated BIP of Civil Protection Order (2005-2014)

591 Angene, supra note 335; Angela A. Gover et al., supra note 354; Harrell et al. supra note 338. 592 Harrell et al., supra note 338; Henning & Kesges, supra note 338.
593 The first study produced reduction in both re-arrest rates and victim reports of re-abuse, but the sizes were too small to be considered statistically significant. See Davis et al., supra note 347. The second study found that the one-year re-arrest rate reduced in the DV court, but the result was because the offenders were more likely to be re-incarcerated on probation revocations rather than they were to commit new crimes See Harrell et al., supra note 349.
594 E.g., Babcock et al., supra note 356; Bennett and Williams 2004; Feder & Wilson, supra note 356; Peterson, supra note 356.
595 Labriola et al., supra note 239 at 10.
596 Labriola et al., supra note 355.
597 The authors noted that the court appearances were at most monthly, judicial interactions with the offenders were neither clear nor probing, and sanctions for noncompliance were not consistent. See Id.
<table>
<thead>
<tr>
<th>Number/Year</th>
<th>Civil Protection Order (A)</th>
<th>Mandated BIP (B)</th>
<th>Rate (B/A)%</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>11,586</td>
<td>811</td>
<td>7.00</td>
</tr>
<tr>
<td>2006</td>
<td>11,820</td>
<td>815</td>
<td>7.00</td>
</tr>
<tr>
<td>2007</td>
<td>12,276</td>
<td>1,151</td>
<td>9.38</td>
</tr>
<tr>
<td>2008</td>
<td>11,679</td>
<td>1,364</td>
<td>11.11</td>
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<tr>
<td>2009</td>
<td>12,669</td>
<td>2,000</td>
<td>15.79</td>
</tr>
<tr>
<td>2010</td>
<td>14,225</td>
<td>2,602</td>
<td>18.29</td>
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<tr>
<td>2011</td>
<td>14,296</td>
<td>3,138</td>
<td>21.95</td>
</tr>
<tr>
<td>2012</td>
<td>13,967</td>
<td>3,303</td>
<td>23.65</td>
</tr>
<tr>
<td>2013</td>
<td>14,044</td>
<td>3,241</td>
<td>23.08</td>
</tr>
<tr>
<td>2014</td>
<td>14,365</td>
<td>3,226</td>
<td>22.46</td>
</tr>
</tbody>
</table>

Source: Judicial Statistics

Table 18 Number of Items of BIP

<table>
<thead>
<tr>
<th>Number of Items of Court Mandate BIP</th>
<th>Civil Protection Order</th>
<th>Criminal Probation</th>
<th>Criminal Parole</th>
<th>Deferred Prosecution</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>3,108</td>
<td>3</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>2012</td>
<td>4,160</td>
<td>6</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>2013</td>
<td>4,189</td>
<td>3</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>2014</td>
<td>3,948</td>
<td>5</td>
<td>18</td>
<td>10</td>
</tr>
</tbody>
</table>

Source: Ministry of Health and Welfare

Table 19 Types and Number of BIP (2014)

<table>
<thead>
<tr>
<th>Mandated BIP in 2014</th>
<th>Civil Protection Order</th>
<th>Criminal Probation</th>
<th>Criminal Parole</th>
<th>Deferred Prosecution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Educational Consultation</td>
<td></td>
<td>2,574</td>
<td>5</td>
<td>12</td>
</tr>
<tr>
<td>Cognitive Education</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alcohol Education</td>
<td></td>
<td>603</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Parental Education</td>
<td></td>
<td>50</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Psychological Consultation</td>
<td></td>
<td>169</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Mental Therapy</td>
<td></td>
<td>242</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Addiction Rehabilitation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alcohol</td>
<td></td>
<td>258</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Drug</td>
<td></td>
<td>31</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Other Consultation and Treatments</td>
<td></td>
<td>21</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>3,948</td>
<td>5</td>
<td>18</td>
</tr>
</tbody>
</table>

Source: Ministry of Health and Welfare

According to the statute, assessment is under a judge’s discretion.\(^598\) On average, more than half of offenders are assessed before being ordered to attend mandated programs. (Table 21) In practice, mental illness and alcohol/substance abuse must be assessed by doctors before a court mandates offenders to treatments within the BIPs.

\(^598\) Domestic Violence Prevention Act §14.
Table 20 Mandated BIP and Assessment (2011-2014)

<table>
<thead>
<tr>
<th>Number of Offenders of Mandated BIP</th>
<th>Civil Protection Order</th>
<th>Criminal Probation</th>
<th>Criminal Parole</th>
<th>Deferred Prosecution</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011 Total</td>
<td>1,998 (100%)</td>
<td>2</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Without Assessment</td>
<td>685 (34.28%)</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>2012 Total</td>
<td>2,313 (100%)</td>
<td>5</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Without Assessment</td>
<td>641 (27.71%)</td>
<td>0</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>2013 Total</td>
<td>2,922 (100%)</td>
<td>1</td>
<td>9</td>
<td>0</td>
</tr>
<tr>
<td>Without Assessment</td>
<td>1,399 (47.88%)</td>
<td>1</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>2014 Total</td>
<td>2,798 (100%)</td>
<td>3</td>
<td>14</td>
<td>0</td>
</tr>
<tr>
<td>Without Assessment</td>
<td>1,104 (39.46%)</td>
<td>3</td>
<td>13</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Ministry of Health and Welfare

In 2012, an intimate partner violence lethality assessment instrument in Taiwan “Taiwan Intimate Partner Violence Danger Assessment” (TIPVDA) was developed and provided to practitioners nationwide for female victims attacked by male offenders.\(^{599}\) The TIPVDA is a questionnaire consisting of 15 items, scaled as a pool of potential predictors, for victims to respond to when being interviewed by police officers, social workers, or health care providers.\(^{600}\)

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\(^{599}\) In addition to reviewing literature, existing danger assessment instruments, and archival information of 80 femicide and attempted femicide cases, the study employed 773 samples of intimate partner victims who asked for help from 51 police stations and hospitals in 22 cities and counties throughout Taiwan. See Pei-Ling Wang, *The Development and Validation of Taiwan Intimate Partner Violence Danger Assessment (TIPVDA)*, the Domestic Violence and Sexual Assault Prevention Committee, Ministry of Interior, 2012.

\(^{600}\) The fifteen questions include: 1. Has he ever had violent behavior that makes you unable to breathe? 2. Has he ever been physically violent towards children? 3. Has he ever beaten you while you are/were pregnant? 4. Has he ever threatened you with knife, gun, weapons, or dangerous materials such as wine bottles, iron, bat, sulphuric acid, gasoline and so on? 5. Has he ever threatened to kill you? 6. Has he ever said words like “Let’s die together when breaking up, getting divorced, applying for protection order, and so on.” or “Dying together when you want to die.”? 7. Has he ever stalked, overseen, or harassed you or asked someone to do so? 8. Has he ever sexually abused, or intentionally hurt your sex organ, including kicking, beating, knocking, or using stuff to attack your sex organ, breast, or anus? 9. Is he drunk more than four days a week? 10. Has he been physically violent towards to non-family members, such as friends, neighbors, or colleagues, and so on? 11. Is he financially strained, such as going bankrupt, closing business, being credit debtor, owing huge debt, or unemployed, and so on? 12.
The index’s high category is when the TIPVDA score is above 8 or when the victim views themselves situated in a very dangerous situation even though the score is under 8. The empirical results suggest that TIPVDA was administered reliably and have shown significant evidence of the concurrent, discriminant, and criterion-related validity of the instrument. Nevertheless, a follow-up study of the instrument to determine its evaluating validity is needed for further research.

ii. Program Facilities

Most of the BIPs employ the Duluth Model based on feminist theory. The model stresses that violence is learned and originates from men’s power and control over women. Thus, violence can be unlearned through cognitive education that develops equal and mutual treatment between men and women. Overall, the “one size fits all” model does not work well with different types of DV such as female offenders. In addition, a low rate of court mandated BIP and a lack of supervision and follow-up were also detrimental to the effectiveness and evaluation of BIP.

In 2007, an empirical study on all facilities implementing BIP admitted by the official authority in Taiwan has provided a picture of BIP in practice in Taiwan. Nearly one-third of these facilities are regional hospitals, one-fourth are psychiatric hospitals, and one-fifth are medical centers (Table 23). Two-thirds of facilities have developed specialized teams for treating DV offenders. The specialized treatment teams mainly consisted of doctors, psychologists, and social workers. While these teams mostly focus on clinical practice, one-fifth of them have developed research on their work (Table 23).

The majority of case managers are social workers, one third of them are psychologists, and the fewest are doctors. On average, a case manager has more than three-years of experience working on DV. More than 95% of case managers are psychiatric professionals with more than eight-years experience working in psychiatry. All of the personnel of the specialized treatment teams have been specially trained for their work. The main reasons for engaging in the programs is if it is an assigned task or out of personal interest. A few of them have other reasons such as trying out a new activity to broaden their professional skills or protecting victims from further harm (Table 22).

Has he ever responded intensively because you asked for help from the police officers or social workers, or went to hospital to examine a wound or applied for protection orders? 13. Does he recently believe you have an affair? 14. Do you believe he will kill you? 15. Has his violent behavior got more and more serious in the past year? See Id.

601 See Id.
602 Id.
603 Shih-Chi Lin et al., supra note 33.
604 There were 63 facilities registered to implement BIPs throughout Taiwan in 2007, 5 of them terminated BIP programs and 43 facilities or 74.1% were responsive to the study. See Id. at 208-17.
605 Id. at 210.
Table 21 Comparison of BIP Facilities Responding to Questionnaire (n=43) and Total Facilities (n=58) as to Type of Institution and Regional Location

<table>
<thead>
<tr>
<th>Item</th>
<th>Study facilities</th>
<th>Total facilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of facility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medical center</td>
<td>9 20.9</td>
<td>10 17.2</td>
</tr>
<tr>
<td>Regional hospital</td>
<td>14 32.6</td>
<td>15 25.9</td>
</tr>
<tr>
<td>Local hospital</td>
<td>5 11.6</td>
<td>7 12.1</td>
</tr>
<tr>
<td>Psychiatric hospital</td>
<td>10 23.2</td>
<td>12 20.7</td>
</tr>
<tr>
<td>Clinic and counseling center</td>
<td>5 11.6</td>
<td>14 24.1</td>
</tr>
<tr>
<td>Location of facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northern Taiwan</td>
<td>17 39.5</td>
<td>26 44.8</td>
</tr>
<tr>
<td>Central Taiwan</td>
<td>9 20.9</td>
<td>11 19</td>
</tr>
<tr>
<td>Southern Taiwan</td>
<td>13 30.2</td>
<td>16 27.6</td>
</tr>
<tr>
<td>Eastern Taiwan</td>
<td>3 7.0</td>
<td>4 6.9</td>
</tr>
<tr>
<td>Off-shore island</td>
<td>1 2.3</td>
<td>1 1.7</td>
</tr>
</tbody>
</table>

Table 22: Personnel and Management Decisions in Facilities Responsible for Providing Mandatory Treatment for DV Offenders (n=43)

<table>
<thead>
<tr>
<th>Items</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specialized teams for treating DV offenders</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>32</td>
<td>74.4</td>
</tr>
<tr>
<td>No</td>
<td>11</td>
<td>25.6</td>
</tr>
<tr>
<td>Personnel on tem (n=32)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Doctors (average per institution)</td>
<td>29 (1.81)</td>
<td>90.6</td>
</tr>
<tr>
<td>Psychologists (average per institution)</td>
<td>26 (1.22)</td>
<td>81.3</td>
</tr>
<tr>
<td>Social workers (average per institution)</td>
<td>30 (2.13)</td>
<td>93.8</td>
</tr>
<tr>
<td>Nurses (average per institution)</td>
<td>6 (0.38)</td>
<td>18.8</td>
</tr>
<tr>
<td>Occupational therapists (average per institution)</td>
<td>1 (0.03)</td>
<td>3.1</td>
</tr>
<tr>
<td>Mission of specialized DV treatment team*(n=32)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clinical practice</td>
<td>31</td>
<td>96.9</td>
</tr>
<tr>
<td>Research</td>
<td>6</td>
<td>18.8</td>
</tr>
<tr>
<td>Reasons for engaging in the program*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assigned task</td>
<td>35</td>
<td>81.4</td>
</tr>
<tr>
<td>Personal interest</td>
<td>25</td>
<td>58.1</td>
</tr>
<tr>
<td>New activity</td>
<td>10</td>
<td>23.3</td>
</tr>
<tr>
<td>To protect victims</td>
<td>4</td>
<td>9.3</td>
</tr>
<tr>
<td>Other</td>
<td>1</td>
<td>2.3</td>
</tr>
</tbody>
</table>

Note: *indicates multiple choices.

Regarding the content of programs, more than three-fours of facilities provide psychological counseling and cognitive education, and nearly two-thirds provide substance abuse.

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606 Id.
607 Id. at 211.
healing. The average number of workers involved in cognitive education and substance abuse healing are 2.71 and 2.63 respectively. There are only 1.37 workers engaged in psychiatric treatment because personnel are limited to psychiatric doctors. In addition, a vast majority of facilities have written protocols and provide rooms for individual or group treatments. However, only half of the facilities offer career training, and less than one-fifth of the facilities provide personnel with instruction regarding safety measures.

With respect to attendance, nearly 60% of facilities have more than 75% attendance rates, and one-fifth of them have less than 50% attendance rates. In addition, more than 90% of facilities have a lower than 50% dropout rate, and nearly 60% of them have a lower than 25% dropout rate. Moreover, more than half of the facilities have a 76-100% completion rate, and 80% of the facilities have a greater than 50% completion rate. Furthermore, nearly 70% of the facilities evaluate offenders based on protection orders and most of the evaluation is made by a therapist rather than by a specialized team. More than 90% of facilities do not follow up after the treatment. (Table 23)

Table 23: Evaluation and Follow-up Post DV Offenders’ Treatment Plan (n=42)

<table>
<thead>
<tr>
<th>Item</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>DV offenders’ attendance rate in treatment plan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>76-100%</td>
<td>25</td>
<td>59.4</td>
</tr>
<tr>
<td>51-75%</td>
<td>9</td>
<td>21.4</td>
</tr>
<tr>
<td>26-50%</td>
<td>5</td>
<td>11.9</td>
</tr>
<tr>
<td>0-25%</td>
<td>3</td>
<td>7.1</td>
</tr>
<tr>
<td>DV offenders’ dropout rate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>76-100%</td>
<td>1</td>
<td>2.4</td>
</tr>
<tr>
<td>51-75%</td>
<td>1</td>
<td>2.4</td>
</tr>
<tr>
<td>26-50%</td>
<td>16</td>
<td>38.1</td>
</tr>
<tr>
<td>0-25%</td>
<td>24</td>
<td>57.1</td>
</tr>
<tr>
<td>DV offenders’ completion rate for treatment plan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>76-100%</td>
<td>21</td>
<td>50.0</td>
</tr>
<tr>
<td>51-75%</td>
<td>13</td>
<td>31.0</td>
</tr>
<tr>
<td>26-50%</td>
<td>7</td>
<td>16.7</td>
</tr>
<tr>
<td>0-25%</td>
<td>1</td>
<td>2.4</td>
</tr>
<tr>
<td>Evaluation and referral to treatment program(^a) (n=43)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Based on Protection Order</td>
<td>30</td>
<td>69.8</td>
</tr>
<tr>
<td>By therapist</td>
<td>26</td>
<td>60.5</td>
</tr>
<tr>
<td>By professional team</td>
<td>4</td>
<td>9.3</td>
</tr>
<tr>
<td>Post-treatment follow-up</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>4</td>
<td>9.3</td>
</tr>
<tr>
<td>No</td>
<td>39</td>
<td>90.7</td>
</tr>
</tbody>
</table>

Note: \(^a\) indicates multiple choices.

\(^{608}\) Id.
\(^{609}\) Id.
\(^{610}\) Id.
\(^{611}\) Id. at 212.
With regard to the difficulties confronted while executing treatment, the three greatest obstacles presented by clients are their denial and defensive attitude, inability to pay for treatment, and absences. The three greatest challenges confronting treatment personnel include personnel shortages, increased workload, and lack of willingness to participate. Moreover, low treatment fees and lack of laws or their enforcement are the most frequent challenges confronted by facilities and those outside of facilities respectively. (Table 25)

Table 24: Difficulties Confronted While Executing Treatment for DV Offenders

<table>
<thead>
<tr>
<th>Item</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safety concerns while executing treatment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Always</td>
<td>1</td>
<td>2.3</td>
</tr>
<tr>
<td>Often</td>
<td>6</td>
<td>14.0</td>
</tr>
<tr>
<td>Sometimes</td>
<td>18</td>
<td>41.9</td>
</tr>
<tr>
<td>Not at all</td>
<td>18</td>
<td>41.9</td>
</tr>
<tr>
<td>Obstacles presented by clients</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denial and defensive attitude</td>
<td>28</td>
<td>65.1</td>
</tr>
<tr>
<td>Inability to pay for treatment</td>
<td>20</td>
<td>46.5</td>
</tr>
<tr>
<td>Absences</td>
<td>18</td>
<td>41.9</td>
</tr>
<tr>
<td>Inappropriate interaction between clients</td>
<td>9</td>
<td>20.9</td>
</tr>
<tr>
<td>Disobedience of therapeutic rules</td>
<td>8</td>
<td>18.6</td>
</tr>
<tr>
<td>Silence or refusal to talk</td>
<td>8</td>
<td>18.6</td>
</tr>
<tr>
<td>No problem</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Challenges confronting treatment personnel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personnel shortages</td>
<td>22</td>
<td>51.2</td>
</tr>
<tr>
<td>Increased workload</td>
<td>20</td>
<td>46.5</td>
</tr>
<tr>
<td>Lack of willingness to participate</td>
<td>18</td>
<td>41.9</td>
</tr>
<tr>
<td>Inadequate training</td>
<td>12</td>
<td>27.9</td>
</tr>
<tr>
<td>Difficulty changing unworkable plans</td>
<td>11</td>
<td>25.6</td>
</tr>
<tr>
<td>Excessive record-keeping</td>
<td>10</td>
<td>23.3</td>
</tr>
<tr>
<td>Poor understanding of treatment plans</td>
<td>7</td>
<td>16.3</td>
</tr>
<tr>
<td>No problem</td>
<td>4</td>
<td>9.3</td>
</tr>
<tr>
<td>Challenges confronting facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low treatment fees</td>
<td>11</td>
<td>25.6</td>
</tr>
<tr>
<td>No therapeutic equipment</td>
<td>2</td>
<td>4.7</td>
</tr>
<tr>
<td>Nonsupport from the commissioner</td>
<td>2</td>
<td>4.7</td>
</tr>
<tr>
<td>Lack of cooperation from administrative staff</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>No problem</td>
<td>26</td>
<td>60.5</td>
</tr>
<tr>
<td>Challenges outside of facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lack of law/law enforcement</td>
<td>16</td>
<td>37.2</td>
</tr>
<tr>
<td>Lack of cooperation from police</td>
<td>7</td>
<td>16.3</td>
</tr>
<tr>
<td>Lack of cooperation from DV prevention center</td>
<td>3</td>
<td>7.0</td>
</tr>
<tr>
<td>No problem</td>
<td>20</td>
<td>46.5</td>
</tr>
</tbody>
</table>

Note: * indicates multiple choices.

612 Id. at 213.
In short, BIP in Taiwan is a mix of educational models advocated by feminists and cognitive behavior models of personal psychological phase. The specialized team for DV offenders mainly consists of social workers, doctors, and psychologists. Nevertheless, personnel shortages are a common challenge faced by the majority of the facilities. In addition, most of programs are additional work for therapists, thus an increased workload and lack of willingness to participate are frequent challenges confronting treatment personnel. This shows that more personnel are needed to execute BIPs in Taiwan.

Further, the most common obstacles presented by clients are their denial and their defensive attitude and absences. These results match the findings in a previous study that more than half of DV offenders deny their violence.\textsuperscript{613} It shows that the patriarchal culture correlates to male power and control. Thus, the defensiveness and denial of DV offenders are inevitable when their authority is challenged by court enforcement.\textsuperscript{614} In addition, offenders’ high rate of absence demonstrates their carelessness and lack of willingness to attend BIPs along with their minimal expectation regarding the effectiveness of court intervention.\textsuperscript{615} Obviously, therapists should be trained to be able to cope with clients’ challenges. However, nearly one-third of the facilities report the inadequate training for treatment personnel to be a problem. Therefore, strengthening personnel training and support consistently is important to promoting BIP.

Moreover, the vast majority of dropout rates are 0-25% and 26-50%, 57% and 38% respectively. The dropout rate indicates that the programs have invested money and personnel in clients with no or little motivation. Therefore, in order to reduce resource waste, it is vital to classify and screen motivated clients and then include them in appropriate groups or individual therapy.\textsuperscript{616}

Lastly, current evaluation of BIP stresses a shorter attendance and faster completion rather than a substantial therapy process and a focus on effectiveness. Fewer than 10% of clients evaluated by a professional team and lower than 10% with post-treatment follow-up have demonstrated the challenge of personnel shortage. Lack of evaluation and follow-up could put victims in more danger because they might believe they are safe because of offenders’ completion of BIP. Further research is needed on the effectiveness of BIP in reducing the frequency and severity of violence.

\textsuperscript{615} Wang & Huang, \textit{supra} note 33.
\textsuperscript{616} For instance, anti-social clients with anti-social personality are not appropriate to attend educational counseling group. See Jeffrey Richards et al., \textit{Understanding Male Domestic Partner Abusers: Trends and Issues in Crime and Criminal Justice}, 1-6 (2004). Australian Institute of Criminology.
iii. Enforcement of Noncompliance

Unlike misdemeanors, noncompliance with protection orders does not require a victim complaint as a prerequisite to prosecution. When a victim’s willingness or withdrawal is not taken into consideration, more than 90% of non-compliant defendants are convicted (Table 25).

Sentencing for noncompliance with a protection order, including BIP, tends to be lenient. More than 95% of convicted defendants are sentenced to short terms (less than 60 days) or less than six months, most of which can be converted to fines. See Penal Code §41. That is, while most of the protection orders and BIPs are issued by family court, criminal court does not consider such noncompliance with protection orders or BIPs to be a crime as deserving of punishment as others that land defendants in jail. In other words, DV offenders may pay for noncompliance with protection orders or BIPs. This is not an effective way for offenders to comply with court orders when they can afford it, not to mention that a number of fines are paid by victims at the request of or under threat from offenders.

Table 25: Sentencing for Noncompliance of the Civil Protection Order (Including BIP) (2005-2014)

<table>
<thead>
<tr>
<th>Year</th>
<th>Prosecuted Defendant (A)</th>
<th>Enforcement of Final Judgment of DV Convicted Defendants</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Total</td>
</tr>
<tr>
<td></td>
<td>N (B)</td>
<td>R % (B/A)</td>
</tr>
<tr>
<td>2005</td>
<td>815</td>
<td>95.58</td>
</tr>
<tr>
<td>2006</td>
<td>1,113</td>
<td>94.16</td>
</tr>
<tr>
<td>2007</td>
<td>1,173</td>
<td>91.47</td>
</tr>
<tr>
<td>2008</td>
<td>1,429</td>
<td>93.56</td>
</tr>
<tr>
<td>2009</td>
<td>1,393</td>
<td>94.90</td>
</tr>
<tr>
<td>2010</td>
<td>1,718</td>
<td>93.02</td>
</tr>
<tr>
<td>2011</td>
<td>2,067</td>
<td>88.87</td>
</tr>
<tr>
<td>2012</td>
<td>2,029</td>
<td>93.54</td>
</tr>
<tr>
<td>2013</td>
<td>1,965</td>
<td>92.67</td>
</tr>
<tr>
<td>2014</td>
<td>1,887</td>
<td>89.61</td>
</tr>
<tr>
<td>Total</td>
<td>15,598</td>
<td>92.35</td>
</tr>
</tbody>
</table>

Source: Justice of Ministry

iv. Reduced Recidivism

Notably, a case-control study examined all DV offenders’ recidivism after completion of treatment programs between 2000 and 2005 in Kaohsiung, the second largest city in Taiwan. See Penal Code §41. Supra note 59. Shih-Chi Lin et al., supra note 73.
The study enrolled 70 high-risk DV offenders under protection orders and a court-ordered BIP (study group) and 231 low-medium risk DV offenders under protection orders only. The result did not provide evidence that the treatment had a positive effect on recidivism reduction, particularly within the first three months after treatment. The overall recidivism rate of the offenders ordered by court to receive treatment did not significantly differ at the six-month and the nine-month follow-ups from the recidivism rate of DV offenders who did not receive treatment. In contrast, the treated offenders had a significantly higher recidivism rate than the non-treated offenders at three-month follow-up. This may indicate that offenders have a higher risk of DV recidivism in the treatment group as compared to those in the control group.

Reasons for the cessation of violence are complicated and should not be attributed only to treatment. It has been estimated that around one-third of men who have committed violence against their spouses reduced their violence for reasons other than treatment or the intervention of the legal system. One study showed that only 5% of the decrease in DV recidivism was attributed to treatment. Arrest, criminal justice intervention, civil protection orders, and the empowerment of victims may lead to reduced recidivism.

The selection bias could be a reason for the study’s finding. The control group may not be the same as the study group. Participants were assessed by specialists or at least by the risk assessment before judges made decisions. Those who were thought to be at a higher risk for recidivism were more likely to be ordered by judges into treatment; conversely, those who were at a relatively low risk for recidivism may not be ordered into treatment. That is, untreated high-

---

620 The treatment format was group therapy based on the Duluth model with elements of cognitive-behavioral therapy. All batterer treatment groups were run in two psychiatric hospitals and the group leaders, including psychiatrists, psychologist, and social workers who had completed batterer treatment training held by the Domestic Violence and Sexual Assault Prevention Center. Treatment included discussion of gender relationships and gender roles, the nature of DV, control and choice, the adverse effects of violence, original and current family relationship, conflict in and reconstruction of intimate relationships, coping with stress, effective coping with conflict situations, and violence prevention. The treatment lasted 12-18 weeks. See Id. at 462.

621 Id. at 464. Feder and Wilson conducted a meta-analysis of four randomized experimental trials and concluded that there was no positive effect of batterer treatment programs on recidivism. Feder & Wilson, supra note 356.

622 See Barry D. Rosenfeld, 12 Court-ordered Treatment of Spouse Abuse, CLIN PSYCHOL REVIEW 205-226, 1992.

623 Babcock et al., supra note 356.

risk offenders ordered to treatment (study group) may have a higher recidivism rate than untreated low-risk offenders without treatment (control group).625

Nevertheless, the treated offenders showed greater improvement than the non-treated offenders in lowered physical violence from the three-month to six-month and six-month to nine-month follow-ups. It is possible that the treatment had some effect in lowering DV in some way. However, it is notable that wives’ psychological aggression is an important predictor of later physical aggression between themselves and their husbands.626 Thus, engaging psychologically highly aggressive females in the treatment process may help reduce DV recidivism.

The typology and personalities of the offenders may contribute to the effectiveness of BIP. Different types of DV offenders, such as family-only (FO), low-level antisocial (LLA), generally violent and antisocial (GVA), and dysphoric or borderline batterers (DB), have been found to have different recidivism rates.627 The study assumed that BIP might yield more advantages for FO and LLA offenders than for GVA and DB offenders.628 Thus, personally-tailored treatments may provide more benefit than the current “one-size fits all” programs. Moreover, personalities may also play an important role in the effect of treatment. For instance, one study indicates that borderline, antisocial, or avoidant personalities responded less favorably to treatment.629 In addition, offenders with a dependent personality have been found to be more suited to psychodynamic treatment, and offenders with higher antisocial or hypomanic personalities may benefit more from feminist cognitive-behavioral therapy (CBT).630 Failure to take different types of offenders into consideration in models of intervention can result in less positive outcomes.631 In short, the more individually-tailored treatments are, based on assessments of typology and personality, the more positive outcomes of these treatments can be expected.

Another factor affecting treatment’s effects is an offender’s willingness. It has been found that higher group cohesion in treatment is an indicator of reduced future abuse.632 Treatment can hardly benefit participants against their will.633 A study shows that the more sessions that are

625 Shih-Chi Lin et al., supra note 73, at 466-67.
627 It has been shown that the recidivism rates of the four types of offenders are 40% of FO, 23% of LLA, 7% of GVA and 14% of DB. Holtzworth-Munroe A, et al., Do Subtypes of Maritally Violent Men Continue to Differ Over Time? 71 JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY 728-40 (2003).
628 Id.
629 Richards, J.C., et. al., supra note 615.
630 Saunders, supra note 357.
631 E. W. Gondolf, Batterer Programs: What We Know and Need to Know, 12 JOURNAL OF INTERPERSONAL VIOLENCE, 83-98 (1997).
633 Rosenfeld, supra note 621.
completed, the better the outcomes of reduced recidivism.\textsuperscript{634} For those offenders in court mandated treatment, completion is not due not to willingness but to court orders, and thus their will is rarely taken into consideration or assessed. This may provide an explanation for the negative results in the studies of the effectiveness of court-ordered treatment.

Alcohol abuse was a significant variable in predicting recidivism. Lin et al. reported that offenders in Taiwan who abused alcohol were twice as likely to re-offend than those who did not.\textsuperscript{635} Alcohol abuse may affect treatment effects and increase recidivism.\textsuperscript{636} Thus, merging alcohol treatment with BIP is helpful in reducing DV recidivism.

C. Attempt on Restorative Justice

1. U.S.

a. Types of Restorative Justice Applied in Domestic Violence

Unlike the traditional retributive philosophy of criminal justice systems, RJ is defined as a “process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.”\textsuperscript{637} While in the traditional criminal system, the offender may be held accountable by means of the imposition of punishment;\textsuperscript{638} in RJ, the offender may be held accountable not only by taking responsibility but by making amends. In addition to involving the community, RJ focuses on the harm done to the victim by the crime rather than on the offender’s violation of law that imposes punishment.\textsuperscript{639}


\textsuperscript{635} Shih-Chi Lin et. al., \textit{supra} note 73, at 496. Fals-Stewart and Gilchrist et al.’s studies have found the link between the alcohol abuse and DV. See William Fals-Stewart, \textit{The Occurrence of Partner Physical Aggression on Days of Alcohol Consumption: A Longitudinal Diary Study}, 71 JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY 41-52 (2003). (Male-to-female violence was 8 to 11 times more likely to occur in a day on male offender who consumed alcohol than those who did not.) \textit{Elizabeth Gilchrist, Domestic Violence Offenders: Characteristics and Offending Related Needs} (2003), available at http://webarchive.nationalarchives.gov.uk/20110218135832/http:/rds.homeoffice.gov.uk/rds/pdfs2/r217.pdf (last visited November 25, 2015) (73% of their 336 male participants in treatment had used alcohol before their violence).


\textsuperscript{637} HOWARD ZEHR, \textit{THE LITTLE BOOK OF RESTORATIVE JUSTICE} 37 (2002).


\textsuperscript{639} \textit{Id.} at 254-255.
The RJ models most commonly used in DV cases include Victim-Offender Mediation/Dialogue, Family Group Conferencing, Restorative Justice Circles, and Victim Impact Panels.

- Victim Offender Mediation/Dialogue

Victim Offender Mediation/Dialogue aims at allowing the victim and the offender to meet in a way that gives the victim the opportunity to state the effects of the crime and to hold the offender accountable.™ A trained mediator usually facilitates the victim-offender dialogue in order to reach mutual agreements on healing the victim’s harm and holding the offender accountable.™ This dialogue is most widely used in the U.S.™ It was supported by the American Bar Association in 1994.™

- Family Group Conferencing

Family Group Conferencing involves a larger group of participants including family members of both the victim and the offender, members of the community, and any other stakeholders.™ The participants may include institutional representatives, such as police officers, probation officers, and school officials, to facilitate agreements.™ The process is family centered and different from a “blame-placing approach”.™ The community is encouraged to involve themselves and is viewed as a support resource.™ This model was developed and legislated in New Zealand in 1989.™ In 1990, the Family Unity Model was developed in Oregon.™

- Restorative Justice Circles

As with Family Group Conferencing, participants include victims, offenders, family members, community, and other interested people.™ A “talking piece” is passed around to make sure every participant has an opportunity to speak about the reasons for the offense, the impact

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641 Id. at 358, 361-62.
644 Id.
645 PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE, FAMILY GROUP CONFERENCING, DECISION-MAKING AS A PRACTICE WITH FAMILIES EXPERIENCING SEXUAL ABUSE AND DOMESTIC VIOLENCE 1 (March 2005).
646 Id.
647 Id.
649 PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE, supra note 644.
650 Zehr, supra note 636, at 51.
of the offense, and the possible healing approach for the victims. In a criminal scenario, participants may include a judge and a prosecutor who can address issues of sentencing.

- **Victim Impact Panel**

  A Victim Impact Panel is an arrangement of victims meeting with offenders but not in relation to their own crimes. It provides an opportunity for victims to express the pain caused by the offense in a way which may help offenders realize the impact of their crime on victims. Through the explanation by victims with whom offenders have had no contact, offenders may understand the impact of their own behavior and are more likely to avoid re-offending.

  Victim voluntariness should be the premise of all RJ participation. They may undergo re-victimized in the process without healing well and need preparation prior to the process. Any coercion into participation may undermine the victim’s safety during the process.

  To assess a DV victim’s readiness for the RJ process, victims should be evaluated and screened. In addition, offenders should be allowed to go through RJ only when they are willing to be responsible for their behavior. If an offender lacks an attitude of accountability, the victim will be re-traumatized.

  The extent of the involvement of the community may vary in different models. For instance, Victim-Offender Mediation/Dialogue has much less community involvement than Restorative Justice Circles. Nevertheless, the whole RJ process is planned to support the victim and to hold the offender accountable.

  **b. Challenges for Restorative Justice in Domestic Violence**

  There are special challenges in applying RJ to DV cases because the relationship between the victim and the offender is typically different than in other crimes and can be expected to continue.

  Firstly, victim safety is a consistent issue for DV that typically involves a cyclical behavior pattern. Face-to-face conferencing may provide the opportunity for future violence against the

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654 *Id.*
657 ZEHR, *supra* note 654, at 198.
658 *Id.* at 191, 194.
Secondly, isolation from family and friends is a common strategy employed by the offender, and because the offender may threaten to hurt those close to the victim, it may be hard to get family or friends involved in the process. Thirdly, DV victims can be easily frightened because of the imbalance of power dynamics that has been existent. The offender may manipulate the conference process, and the victim may give up what they really need out of concern for their safety or for fear of the offender’s revenge after the conference. Fourthly, as mentioned above, the effectiveness of BIT is disputable or, at the most, is moderate. Thus, it is not persuasive to maintain the RJ approach that employs BIT as an agreement between the victim and the offender.

c. Potential Benefits to Domestic Violence Victims

For some DV victims, their involvement in RJ may prove beneficial. Victims’ motivations to be involved in RJ include 1) obtaining restitution; 2) holding the offender accountable; 3) avoiding the court process; 4) helping the offender change; and 5) seeing that the offender is punished. 

Researches about victims involved in RJ have shown higher satisfaction rates. For instance, a study in Oregon indicated that 80% of victims have reported their satisfaction with the RJ process. In a meta-analysis study, compared to traditional court process, victims in 12 out of the 13 programs had significantly higher satisfaction in RJ process. It is notable that the only negative result was at the post sentence entry point. Another study showed that victims

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660 Id.
661 Id. at 293.
662 Id.
663 Id. at 303.
668 Id.
considered the RJ process to be fairer than traditional criminal justice systems, which brought more satisfaction to them.\textsuperscript{669}

Victims who have participated in RJ also experience less emotional trauma. A study used a standard psychological post-traumatic stress symptoms (PTSS) test to assess victims in 137 randomly assigned cases.\textsuperscript{670} It demonstrated that immediately after the cases and six months later victims in an RJ process scored lower than those who only went through the court process.\textsuperscript{671} Moreover, it took 50\% longer for those who had not participated in an RJ process to return to work.\textsuperscript{672}

The Nation Institute of Justice report found DV victims’ high dissatisfaction with the typical court system.\textsuperscript{673} Their dissatisfaction, which as linked to having little control of the process and the outcome, resulted in a lack of willingness to report future violence to the police.\textsuperscript{674} Some victims may just want to stop the violence but not to leave the offenders or put them in jail.\textsuperscript{675}

Offenders who participate in an RJ model have a significantly higher rate of compliance in paying restitution compared to those who do not participate.\textsuperscript{676} A study showed that 81\% of offenders who were in Victim-Offender Dialogue complied with the agreement, but that only 57\% of offenders in the court process complied.\textsuperscript{677}

d. Special Consideration in Domestic Violence

In applying RJ to DV cases, special considerations must be taken for the intrinsic imbalance of family dynamics and the offenders’ cyclical behavior pattern. First, the circumstances during which the process takes place should be noticed. For instance, for safety reasons, the victim may not be willing to meet the offender in a face-to-face setting. Measures should be taken to help the victim feel more comfortable in an RJ process, particularly when the offender is out of custody.\textsuperscript{678} Second, assessment and preparation for the restorative process are essential. The screening assessment is to ensure that the victim is ready for involvement in the process and that the offender is prepared to be responsible for their behaviors. Each party should receive an

\textsuperscript{669} While 80\% of victims participating in the Victim-Offender Dialogue thought the process was fair, only 37\% thought the traditional criminal justice system was fair. See Mark S. Umbreit et al., \textit{supra} note 663, at 29, 31.
\textsuperscript{670} \textit{Sharman \& Strang}, \textit{supra} note 331, at 64.
\textsuperscript{671} \textit{Id}.
\textsuperscript{672} \textit{Id}.
\textsuperscript{674} \textit{Id.} at 16-17.
\textsuperscript{675} \textit{Id}.
\textsuperscript{676} Jeff Latimer et al., \textit{supra} note 666, at 137.
\textsuperscript{677} Umbreit et al., \textit{supra} note 663, at 31.
orientation for the process to prepare them with talking points and inform them of issues that other parties may raise. Third, the facilitator of the RJ should be well trained both in the restorative process and in DV mediation skills. Moreover, persons who facilitate RJ must be sensitive to conditions and able to redirect terminate any part of the conversation that may make victims feel unsafe or uncomfortable. Fourth, both victims and offenders need support during the process. The victims may be blamed for their victimized experience and the offenders’ power and control may be strengthened by members of their families and community respectively. Thus, both the victims and offenders require advocates to support them, the victims for what they have undergone and the offenders to help them change their beliefs and violent behavior.

e. Evaluation of Restorative Justice Models

Three models have demonstrated that RJ may benefit both victims and offenders: Surrogate Victim/Offender Dialogue Program, Family Group Conferencing, and Circle Sentencing. The outcomes of these three models support the finding of victim healing and offender transformation.

The first model is the Domestic Violence Safety Dialogue (DVSD, formerly known as Domestic Violence Surrogate Dialogue), which was founded as a pilot program in 2000 in Hillsboro and became a non-profit in 2006. The victims of DV are scheduled to meet with offenders whom they have never met before. All victims and offenders are required to be in therapy. A therapist may determine if the program is appropriate for his or her client and refer them to the program accordingly. For victims to be deemed a good match for the program, they must have expressed their answers to questions about manipulation, children, their roles in the relationship, or even just have acknowledged their inner strength via the act of telling an abuser to their face what has happened to them. Offenders must have shown that they feel good about giving back to the community, that they realize they have harmed, and that they would like to be accountable for their actions. Further, to change their violent pattern, they must be able really to hear the impact their violence has had on their victim. Outcomes are based on victim report, which assure that the effects of the process are empowering and healing.

The second model is Family Group Conferencing (FGC), which is called the Family Group Decision Making Project and led by Joan Pennel of Newfoundland and Labrador, Canada, and later of North Carolina State University. The cases were selected from child maltreatment and concurrent DV cases referred by Child Welfare, Adult Probation and Parole, and Youth

\[679\] Id.
\[680\] Id.
\[681\] Id.
\[682\] The program is co-sponsored by the Washington County Community Corrections and the Center for Victim Services. It is currently housed in Portland, Oregon. See Domestic Violence Safe Dialogue Homepage, http://www.dvsdprogram.com (last visited July 16, 2015).
\[683\] Id.
\[684\] Id.
\[685\] Id.
\[686\] Burkemper & Balsam, supra note 677, at 130.
The conference participants included the victim, offender, and their family and friends, as well as institutional representatives. A lot of preparation prior to the conference focuses on safety planning, i.e. on developing support systems both for the victim and the offender. The plan aims at establishing family support to help the victim to live free from violence and take care of the children, and the offender to stop the abuse. It has to be endorsed by the institutional representatives.

After a one-to two-year conferencing follow up with the families, the data indicated that FGC significantly reduced child abuse and DV. Incidents of child maltreatment and DV were cut in half, while the comparison group increased. Further, the study measured the imbalance in family dynamics, such as the abuser’s domination of the conversation, control of economic resources, emotional abuse, minimization of violence, transference of responsibility for the violence to the victim, and refusal to accept responsibility for the abuse. The outcomes showed that the above incidents indicated that there was reduced power control post-study, while in the comparison group it increased or remained constant.

The third model is Circle Sentencing (CS). It can be used in criminal cases with survivors who want to participate and offenders who admit guilt and articulate a desire to change. The model includes the survivor and offender, their family members and supporters, and a prosecutor. The group determines consensually the sentence the offender should receive and what the offender needs to do to repair the harm; later this must be approved by judge. Additionally, the follow-up meetings may oversee compliance and healing circles to support the survivor. It was found that twenty-five DV cases have been handled since the program’s inception and 95% of the offenders in these cases have not re-offended.

2. Taiwan

   a. Restorative Justice in Chinese Society

   Traditional Chinese philosophy favors the development of RJ. Confucian ideology, one of the essential cores of Chinese culture over thousands years, stresses the importance of harmony

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690 Id. at 133.
691 Id. at 140.
693 Based on Child Welfare files, child protection events reduced from 233 to 117 after conferencing, and the comparison group rose from 129 to 165. Regarding family abuse, the incidents reduced from 84 to 34 versus an increase in the comparison group from 45 to 52. Pennell & Burford, *Feminist Praxis*, supra note 318, at 145-48.
694 Id. at 142, 146 (2000).
695 Id.
696 Judy Brown, *From Court to the Community*, in RESTORATIVE JUSTICE AND FAMILY VIOLENCE (HEATHER STRANG & JOHN BRAITHWAITE EDs., 2002).
in human relationships. Ethics are prior to law. With regard to dispute resolution, such a culture
of social control values private reconciliation over public punishment.\textsuperscript{697} Traditionally, people
would rather exhaust all alternative dispute resolutions before requesting official judgment.\textsuperscript{698}
Such a preference for nonofficial mediation in Chinese culture provides a beneficial foundation
for the communicative process of RJ in Taiwan.\textsuperscript{699}

A 2009 empirical study of Taiwanese concepts of dispute resolution offers evidence that
the judicial system is the last resort to resolve problems. The study employed the telephone
interview to contact and gather data from more than 1,500 people.\textsuperscript{700} The findings of what kind
of disputes had better not be resolved in the court system include the following. Firstly, more
than 80\% of people surveyed considered financial disputes between relatives and support for
parents to be the sort of conflict that had better not to resort to court system. Secondly, more than
60\% people interviewed believed both marital matters and succession disputes had better not to
file lawsuits. Thirdly, more than 50\% of people surveyed thought custodial disputes had better
not be resolved in courts.\textsuperscript{701} In short, disputes among relatives had better adopt resolutions
outside the court system.

Further, it was found in the study that the main reasons for not going to court to solve
problems were: 1) It costs too much time and money; 2) It might split up relationships; 3) It is
unpleasant to go to court. Other reasons included the belief that, “Problems can’t be resolved by
court decisions,” and also the concerns of those who “Do not want to make it public.” In other
words, choosing alternative dispute resolution methods instead of the court system can be
attributed to considerations of cost, relationship endurance, and privacy, as well as to doubts
about court efficacy.\textsuperscript{702}

People’s lack of strong faith in legal officials may affect their use of the legal system.
According to Table 26, more than 50\% of studied groups considered that judges and policemen
were not very fair or not fair and that prosecutors were a little better (45\%). That is, around half
of people do not believe that legal officials including judges and prosecutors could be fair.\textsuperscript{703} The
reasons for long-term distrust of the legal system can be traced to historical social divisions due
to social strata, the colonial period, and martial times.\textsuperscript{704}

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<th>Very fair</th>
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<td>Table 26 People’s Views towards Legal Officials’ Work</td>
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\textsuperscript{698} Id.
\textsuperscript{699} Id.
\textsuperscript{701} Id. at 40.
\textsuperscript{702} Id. at 40-41.
\textsuperscript{703} Id. at 32-33.
\textsuperscript{704} See generally Duan Lin, \textit{Taiwan’s Law and Society}, in \textit{TAIWAN SOCIETY} 349-70, (Jenn-hwan Wang ed. 2002).
b. The Development of Restorative Justice

It takes a mere ten years from the concept of RJ first being raised in a paper to the formulation of an overall governmental policy. In 2002, Professor Sheu brought “Restorative Justice” to the public’s attention in a seminar held at Taipei University.705 While the apology and reimbursement applied in deferred prosecution, summary judgment, and plea bargaining are measures subordinate to economically employed judicial resources, they also provide the criminal system with the framework of RJ in practice.706 In 2006, a study indicated that more than 80% of defendants were satisfied with the process and results of deferred prosecution, while also having strong feelings about the shame rebuilding and restoration.707 Since then, the Ministry of Justice has announced that RJ is added to the judicial reform to promote human rights and victim protection.708 Following the United Nations’ “Basic principles on the use of restorative justice programmes in criminal matters,” eight prosecutor offices first tried to implement the restorative process in 2010. Two years later, RJ has been implemented thought out all of the prosecutor offices in Taiwan in 2012.709

The existing measures which deviate from the traditional court system and include restorative goals provide a localized basis for the implement of RJ in Taiwan. Firstly, mediation hosted by one to three mediators both in the local county court encourages victims and offenders to reach mutual agreement mostly via face-to-face meetings. Certain civil cases, family cases, and civil cases attached to criminal cases qualify for mediation proceedings.710 Secondly, diversion has replaced prosecution as the principle in delinquency. An apology, a written statement of repentance, and reimbursement are used so as to correct undue juvenile behavior.711 Thirdly, defendants are asked to be accountable for their behavior, attend an intervention program, or pay reimbursement tor victims as a condition of deferred prosecution, acquiring summery proceedings, and sentence bargaining. These proceedings offer chances for the victims’ participation and dialogue with defendants even though they are not used often in practice.712 Fourthly, to pay for medical, educational, and living expenses, certain victims may request reimbursement supported by prosecutor offices. In deferred prosecution, summary decision, or

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Note: “Not fair” includes undue implementation, bribery, dropping cases, lack of neutrality etc. Source: Taiwan Database for Empirical Legal Studies (2009).

705 Lan-Ying Huang, supra note 696.
706 Id.
708 Lan-Ying Huang, supra note 696, at 12.
709 Id at 12-14.
710 Id at 14-15.
711 Id at 15-16.
712 Id. at 20-21.
sentence bargaining, the monies are collected from resources such as the defendants’ wages.\textsuperscript{713} Fifthly, according to an amendment of the Penal Code in 2008, defendants committing misdemeanors may be eligible to serve in community service instead of in jail.\textsuperscript{714} This provides defendants the chance to return to the community with a corrective and educational function.

Localized skills developed in RJ may reflect cultural traits. For instance, the Chinese culture values human relationships, saving face, the middle way, and the collective. The facilitator should recognize the clients’ location on the spectrum. For instance, the more traditional the client is, the more the client needs a face saving gesture and consideration in the form of an apology. By contrast, the more modern the client tends to be, the more equal respect the client prefers.\textsuperscript{715} Moreover, compared to western people, the Chinese are shyer and more reticent to reveal their true feelings. The facilitator is expected to recognize clients’ body language, and to elicit clients’ emotions and expression of sensitivity when necessary.\textsuperscript{716} Because the Chinese stress human relationships, it is helpful to have a visit prior to the meeting to build a trusting relationship between the facilitator and the clients.\textsuperscript{717}

c. Restorative Justice in the Prosecutor’s Office

The current RJ model is based on “Victim Offender Mediation.” The goal of RJ is to offer a safe environment for victims, offenders, their families, and the community to express their interests and their need to reach consensus and agreement, to restore feelings, and to repair their loss.\textsuperscript{718} The process may help these related individuals to express themselves through dialogue, clarify case facts, listen to other’s feelings, raise questions, and receive answers. More specifically, the process may help offenders become aware of their mistakes; have the opportunity to apologize to victims, their families and community; take responsibility; transform their ability to recognize the need to improve their relationship with victims, families and community; reduce the chances of re-offending; and finally return to the community.\textsuperscript{719} The process assists victims, on the other hand, to have the right to voice their experience and feelings, ask questions, express their needs, understand offenders, and participate in the process of decision-making in order to reduce their negative emotions and heal their pain.\textsuperscript{720}

The principles of handling and screening cases eligible for the RJ process are as follows\textsuperscript{721}:

- The RJ process, on a voluntary basis, applies to any period of criminal proceedings, including prosecution, court proceedings, and probation.

\textsuperscript{713} Id., at 21.
\textsuperscript{714} See Penal Code §41.
\textsuperscript{715} HOWARD H. IRVING, FAMILY MEDIATION: THEORY AND PRACTICE WITH CHINESE FAMILIES (2002).
\textsuperscript{716} Id.
\textsuperscript{717} Id.
\textsuperscript{718} Id.
\textsuperscript{719} Id.
\textsuperscript{720} Id.
\textsuperscript{721} Id.
Misdemeanors and delinquency get priority in RJ applications. Other cases eligible for RJ should be ordered based on the types and results of crimes, and on the clients’ characteristics. Child abuse is excluded from RJ. DV cases should be evaluated by the local “Center for Prevention of Domestic Violence and Sexual Assault.”

The requirements for offenders include that they have the intention of admitting mistakes and taking responsibility; and that they have the capacity to communicate without barriers such as substance abuse or mental illness; and that they have no felony records.

While applying the RJ process, the original process of prosecution, trial proceedings, probation, etc. still continue. The effect of the statement, agreement, and implementation of the agreement of RJ is at the prosecutors’ discretion. These effects may include civil settlement, deferred prosecution, and plea-bargaining.

d. Evaluation and Challenges

An investigation conducted in 2011 collected data from the eight prosecutor offices that were implementing RJ from mid February to April. More than 70% of prosecutors and probation officers had the willingness to refer cases to the RJ process, and more than 60% of them had the willing to evaluate whether cases were suitable for dialogue and to provide case information. Most of offenders and victims were positive about how RJ amended the traditional criminal court system, supported clients, solved problems via dialogue, reduced hostility and conflicts, sped up the process, completed agreements, and gave the feeling that justice had been served. The existing criminal and civil system has provided the framework for RJ, including mediation in civil and family cases, conditions for deferred prosecution or probation, and plea-bargaining. Experienced mediators in family and civil cases provide human resources for facilitators of RJ.

Nevertheless, there are challenges when implementing RJ in Taiwan.

Firstly, insufficient RJ training leads to misunderstandings or different interpretations of RJ. Fewer than half of prosecutors and probation officers attended RJ training courses and seminars. More than 40% of interviewees did not realize well enough or at all how the RJ process should operate. Due to the lack of a full understanding of RJ, practitioners either hesitated to refer cases or were unable to explain correct concepts to their client. The facilitators might simply use their original way, based on their prior experience, to process RJ. Some of the prosecutors even indicated that the RJ process overlapped with mediation and refused to refer cases to RJ. Clients who cannot recognize that RJ is different from mediation may have less inclination to participate in RJ when they have had a negative attitude toward or experience in mediation. Such a

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722 Lan-Ying Huang, supra note 704, at 374.
723 Id. at 374-75
724 Id. at 375.
725 Id. at 377.
misunderstanding in implementing the RJ process may produce the crisis that replaces restorative goals with negotiation.\textsuperscript{726}

Secondly, some of the existing working protocols of the tradition criminal court system may create obstacles in RJ. For instance, while prosecutors are used to work independently, the RJ model requires that they network with related agencies such as correction departments, social welfare organizations, foundations, prisons, and courts. The traditional court system is more rigid and assesses work efficacy by means of a quantitative index; however, the RJ process values creativity, flexible methods, and subjective feelings. Moreover, the traditional court system used a less empirical assessment than the one that which RJ values and uses for its evaluation and correction. Further, the traditional court system used to develop a policy from the planning stage to the implementation stage. This top-to-bottom bureaucratic model not only isolates planners and implementers, but also is detrimental to the full communication and cooperation that RJ requires.\textsuperscript{727}

Thirdly, the fact that criminal proceedings do not lay stress on victim participation undermines the implementation of RJ. The goals of the criminal legal system are focused much more on making offenders accountable than on making things right for victims or on restoring community, which is something RJ also stresses. Even though criminal proceedings offer victims chances to express their opinions, nonetheless, their participation is not required but rather is enforced at a prosecutor’s or judge’s discretion. Lack of a mechanism to facilitate a victim’s participation in the proceedings not only leads to their voices being neglected but also results in there being difficulties in consulting them and determining their willingness to participate in RJ.\textsuperscript{728}

Fourthly, current indexes that measure work efficacy emphasize quantity in a way that does not encourage RJ. The Ministry of Justice set up indexes measuring work efficacy that not only affects prosecutors’ promotions and transfers, but also how they understand their roles in the criminal legal system. Current indexes basically stress the value of speedy disposition and correct outcomes such as the number of pending and delayed cases, rates of appealing and of sustaining. Thus, prosecutors view their roles as “investigating crimes and prosecuting criminals,” and “finding facts and applying laws,” rather than ensuring victim satisfaction, crimes prevention, or the promotion of social harmony which RJ facilitates. Since around half of prosecutors think that RJ may neither save resources of the criminal legal system nor reduce their workload, they may not be enthusiastic to implement the restorative process.\textsuperscript{729}

Fifthly, professional RJ facilitators from non-governmental organizations are inadequate. RJ requires collaborative, professional, experienced, and well-trained facilitators in local organizations. Nevertheless, eligible facilitators are insufficient in number and mostly located in unban areas. Employing and training existing mediators might be an economic solution; however, unlike RJ facilitators, mediators are specialized in particular areas and have their roles

\textsuperscript{726} Id. at 376-77.
\textsuperscript{727} Id. at 377-78.
\textsuperscript{728} Id. at 378-79.
\textsuperscript{729} However, the majority of prosecutors and probation officers believe that RJ may increase the degrees of victims’ satisfaction. See Id. at 380.
in related statutes.\textsuperscript{730} A consensus has not been formed on how these mediators in RJ change their original role to the role of facilitators and how they can standardize the supervision of their work.

Sixthly, unlike arbitration or mediation, there is no binding effect of the RJ agreement. Arbitration and mediation outside the court are typical sorts of alternative dispute resolution (ADR). Both have the same binding effect as a final court decision.\textsuperscript{731} Agreements reached in RJ are supposed be viewed similarly in ADR; however, while there is no binding effect in RJ, clients may have less motivation to reach an agreement that can’t be directly enforced.

e. Suggestions

- Making agreement in RJ process enforceable

Since the agreement between the victim and offender is made in front of the facilitator that is designated and overseen by the prosecutor’s office or the court, the effect of the agreement should hold no less than an agreement made in front of the arbitrator and mediator in the arbitration or mediation process. Once the enforceable effect of the agreement made in the RJ process can be made into a statute like arbitration and mediation, it may motivate victims and offenders to employ RJ as a powerful ADR process.

- Training stakeholders, making localized operating manuals, and setting up professional certification of facilitators

Nearly half of the interviewees have not trained in RJ courses and do not realize how RJ is supposed to operate. Training is important to make all stakeholders have the same goals. Transplanted RJ manuals should be localized and adjusted to Taiwanese ADR and its legal system. Making the manual fit the local system may help guide all stakeholders to be on the same page. Professional certification of facilitators helps maintain the professional level of facilitators and to disqualify unsuitable facilitators. Further, bringing the value of the RJ concept to legal or citizen education may encourage reflection upon retributive criminal proceedings and a reconsideration of why RJ is an alternative.

- Developing the mechanism of supervision and evaluation

Before RJ facilitators are well-trained and the process is maturely operated, a supervision mechanism for the RJ process may prevent mistakes and misoperation. Additionally, the prosecutors, officers, and courts employing RJ are expected to provide a friendly environment for researchers to conduct studies of RJ. Researchers can hardly obtain data regarding the RJ process for further analysis and evaluation without support from prosecutors, officers, or courts; for, most of the processes are undocumented or undisclosed.

\textsuperscript{730} Mediators are categorized and specialized in different areas such as consumption, sexual harassment, labor and management, public disaster, medical, investment etc.

\textsuperscript{731} See The Arbitration Law of ROC §27, the Township and City-Administrated Mediation Act §27.
D. Conclusion

1. U.S.

Although there is great diversity in the DV court model and daily practice in the U.S., victim safety and offender accountability are common goals. Generally, accountability means showing the offenders that the court takes DV seriously and that noncompliance with the program will result in certain consequences. Probation monitoring and judicial monitoring are significant tools for promoting offender accountability.

In addition to victim advocates’ work in the courts and prosecutors’ offices, the enforcement of protection orders are viewed as important for victim safety. Recidivism prevention is a significant indicator of victim safety.

The associations between court goals and practices are found in empirical research studies. Courts that view accountability as more important are more likely to impose jail sanctions, use judicial monitoring to facilitate offenders’ compliance, and use jail as a sanction for noncompliance. In addition, for courts that view victim access to services as important are more likely to have a dedicated victim advocate working in or with the court. Courts that value offender rehabilitation are more likely to order a BIP or probation at sentencing.

The diversity of court policies and practices can be seen in many of their aspects. The differences among DV courts include how cases are identified for transfer; how often courts order BIPs; how courts employ judicial monitoring, sentencing; and compliance strategies; whether courts discourage victims from attending court to protect victims; and how much courts provide or connect victims with services. This diversity is owing to differences of resources including staffing and case volume, statutory requirements, stakeholders’ preferences, or local needs of victims and offenders.

Overall, many courts attribute their success to their identification of cases for transfer, adequate staffing and other resources, identification of local stakeholders, and establishment of clear and effective protocols. In addition, judges’ and staff’s knowledge and sensitivity to the dynamics of DV, which should be achieved through special training, are important factors as well. Further, cooperation and coordination with outside agencies, especially BIPs, local police, probation departments, and victim advocates, contribute to their success.

In terms of challenges, the most difficult one is how to involve victims in prosecution. Additionally, a lack of time and resources for victim services and effective offender monitoring are frequently mentioned as challenges by DV courts.

Regarding special concerns raised by feminists, researches about victims involved in RJ have shown positive satisfaction rates. Taking into special consideration concerns about power and control dynamics, the outcomes of RJ models support findings that victims heal and offenders undergo transformation.
2. Taiwan

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Chapter V. Recommendations

A. Taiwanese Integrated Family Court (IF Court) is a helpful alternative to the Taiwanese family legal system to better ensure DV victim safety and offender accountability.

With the intention to find solutions to the problems of the DV legal system in Taiwan, I propose that Taiwanese Integrated Family court (IF court), modified from IDV court, with intensive judge training and clear TJ and/or RJ guiding, would be helpful to resolve current DV problems that are caused by family and criminal courts handling DV separately; most of the issuance of protection orders and BIPs is in family proceedings, and DV crimes are in criminal proceedings. By modifying court jurisdiction and coordinating DV policies in judicial leadership, IF court may promote DV victim safety, offender accountability and rehabilitation, and reduce judges’ internal tension. Taiwanese IF court is defined as family court, which currently handles family matters including issuing civil protection orders in family procedures, and extends its jurisdiction to noncompliance with protection orders and DV misdemeanors in criminal procedures. Ideally, family and DV matters in the same family will be dealt with by one family court judge.

1. Taiwanese IF court may reduce costs to parties, re-victimization, the sapping of court resources, and the inconsistency of court decisions when a DV victim requests a civil protection order and accuses the offender of committing crimes at the same time.

Currently, if DV victims seek legal protection, they must first meet the judge to request a civil protection order in family court. If they wish to accuse the offender of committing a crime based on the same DV event, after going to the police station and prosecutor’s office, they go to another building—criminal court—to meet another judge. It goes without saying that if they could go to the same court to meet one judge, when family and criminal session procedures are combined into one, it would save not only victims’ time, energy, and money, but also the time, energy, and money of all other involved parties including offenders, witnesses, experts, and stakeholders. Attorney fee might be reduced too. The risk of re-victimization could be lowered by reducing the repeated telling of what victims have gone through. Moreover, fewer courtrooms and less staff are needed when separate DV cases are consolidated. DV victim services can be concentrated, and resources can be employed more economically and efficiently. Even though evidence rules are different in family procedure and criminal procedure, when witness testimony is evaluated by the same judge in the same court session, there is less likelihood of diverse or inconsistent judgments or of different interpretations of the same witness testimony as would happen in front of different judges. Protection orders being issued by the same judge may lower the possibility of conflicting judgments. Additionally, as the findings in the specialized DV courts in the U.S., a specialized judge in IF court can be expected to respond more quickly and appropriately than traditional criminal judges when setting a condition to secure a victim’s safety and make an offender accountable in a criminal procedure when the DV offender is on bail, probation, or parole.

732 It is expected that IF court may apply TJ and/or RJ in DV cases. Misdemeanor, which stresses victim autonomy under “no prosecution without complaint”, would encounter less challenge than felony in the initiation of IF court.

112
2. Intensive training and the establishment of coordinated judicial administrative rules for judges in Taiwanese IF court may increase the rate of BIP, which may also help research that evaluates and promotes the effectiveness of BIP.

The main reason for the rarity of BIPs in criminal court is that judges are not well trained in DV, and thus criminal judges fail to treat DV differently than stranger crimes. Not only are there few DV training courses arranged by the criminal administration, but conventional criminal judges also believe that, compared to other crimes, DV and violations of protection orders are private or minor matters between family members. Traditionally, criminal court judges are trained to focus on evidence rules and due process law. They are used to cutting a series of DV events into pieces and evaluating them separately. They pay less attention to the cyclical pattern of DV and do not view criminal court as having a role in crime prevention or problem-solving. As a result, BIPs, which have therapeutic goals and preventive functions, do not raise criminal court judges’ many concerns.

In contrast, DV is viewed as a decisive issue among family matters and treated particularly in family court. In addition to giving rise to protection orders, DV can be an important reason for divorce, reimbursement, and also a determining consideration in judging custody and visitation. Unlike criminal court judges, family court judges are regularly provided with DV courses and trained to looking at family issues, including DV, as a whole, family court judges have a greater capacity to explore deeper reasons of a family scenario and more willingness, from the perspective of problem solving or prevention, to avoid further family or DV issues happening in the future. Since the rate of BIPs issued by family court judges is much greater than the rate of BIPs ordered by criminal court judges, it can be reasonably expected that IF court judges, basically family court judges with intense DV training, will increase the rate of BIPs in criminal procedures, particularly in criminal cases without concurrent civil protection orders. Further, IF court judges have more opportunity to coordinate BIPs in family and criminal procedures, especially to set an appropriate conditions on probation when the offender does not comply with a protection order in a family procedure.

Although family court judges are more likely to order BIPs than criminal court judges, the rate of BIPs in family procedures is still relatively low, less than one-fourth. As mentioned above, reasons for the low rate of BIPs among civil protection orders in family procedures are different from those in criminal procedures. In short, the instability of family court judges due to their heavy caseloads is the top reason. Simply establishing IF court will not improve the questionable effectiveness of BIPs, which also plays an important role in discouraging judges

733 In the Taiwanese legal system, DV is classified as a family matter rather than a criminal matter. In addition, DV policy is led by the Family and Juvenile Department, not the Criminal Department, Judicial Yuan. Most of resources supporting DV are arranged in family court, not in criminal court. As a result, it is not surprising that the Family and Juvenile Department is in charge of DV training courses, which criminal court judges are not forbidden to but are rarely seen to attend.  
734 See Civil Code §1052, 1056; Domestic Violence Prevention Act §43.  
735 Even though the effectiveness of BIPs is disputable, the issues focus more on the possible obstacles to hinder BIPs’ effectiveness and how to remove these obstacles to maximize the effectiveness, rather than on claiming to stop BIPs and send DV offenders back to jail.
from ordering more BIPs. However, certain accompanying systematic changes in the new IF court, such as allocating more judges and resources in IF court to reduce caseload, locating IF court in a place with convenient transportation and/or providing housing benefit, and giving IF court judges equal opportunity to be promoted, may help improve the frequent mobility of family judges. Modifying the terms of case closure encourages judges to order offenders to take part in experts’ examinations of BIPs and mandate that offenders participate. Once rates of BIPs increase, it may further help promote research and evaluation of BIPs that would advance the effectiveness of these programs.

3. Taiwanese IF court judges can better make use of criminal BIP, probation officer monitoring, and make appropriate disposition for DV offender’s noncompliance to BIP.

As statistics show, family court judges are more willing to exert their discretion to order DV offenders to BIPs within a protection order. However, cases are out of their hands once they issue protection orders. Offenders’ noncompliance is reported by the evaluator in the BIPs to the administrative center of DV prevention that may in turn report it to the prosecutor’s office that can prosecute offenders when necessary. In contrast, criminal court judges can set as a condition of probation the monitoring of offenders by probation officers. Once the offender does not comply with the BIPs, the probation officer will report to the prosecutor in charge of implementing sentencing and then apply to the criminal court to repeal probation and put the offenders in jail. However, criminal court judges very rarely order DV offenders to participate in BIPs or even issue protective measures. That is, while family courts take up the responsibility of DV prevention by issuing BIP within a protection order, they do not have the weapons to cope with noncompliance of a BIP. On the other hand, criminal courts have weapon to enforce compliance, but they rarely use them because they don’t think they have to.

IF court judges, consisting of current family court judges, are more likely to order BIPs and protective measures in criminal proceedings than criminal judges because they are better trained in DV prevention. They may also coordinate BIPs both in family procedures and criminal procedures to make a better disposition. For instance, if BIP is ordered in a family proceeding and strict monitoring is found necessary, IF court judges may still, in a family procedure, order criminal BIPs, that don’t conflict with former BIPs, to make use of as a monitoring mechanism in criminal proceedings.

Historically, judges were required to transfer from one court to another every a few years to stay unacquainted with local people to sustain neutral position. As a result, most courts in Taiwan have provided judges with almost-free apartments except courts in Taipei city, which are located in the most expensive capital area. Accommodation close to Taipei city center is relatively unaffordable for judges. As a result, it is very encouraging for judges to stay in courts in urban area like Taipei city if they may use court-offered apartments like other cities. This view has been taken into consideration in the plan for establishing the northern Family and Juvenile Court located close to Taipei city.

Even senior probation officers do not have experiences to monitor DV offenders, based on interviews with a senior probation officer and prosecutors.

Regarding misdemeanors, while victims request stricter monitoring on BIPs in the family
counseling, is not necessary with a misdemeanor, IF court judges may choose simply to issue the BIPs within a protection order in family not criminal proceedings.

In addition, IF court judges are expected to make a more appropriate disposition than criminal court in sentencing. IF court judges, compared to family court judges, are better trained in DV and more capable of viewing a series of familial violent events as a whole rather than separating them into pieces. They are aware and concerned more about victims’ learned helplessness, offenders’ power and control, family dynamics, and how DV affects witnessing children. As a result, IF court judges are more competent in perceiving how sentencing may affect future dynamics and potential violence within a family.

Further research is still required to determine whether judicial review has a link to promoting BIP noncompliance to prevent DV in the Taiwanese legal setting, and how it should be localized, such as by authorizing a Judicial Affairs Officer or Investigation Officer for Family Affairs to monitor offenders in BIP or in a civil protection order, or an IF judge to monitor DV felony criminals in BIP.

4. Clear problem-solving (TJ &/or RJ) policies and setting guidelines for Taiwanese IF courts to use in exerting discretion in DV cases may help moderate internal tension among judges.

As mentioned above, family court judges experience two kinds of pressure. On the one hand, they are asked by the court administration to do “quick,” in other words, to terminate cases as soon as possible. On the other hand, they are expected to do “good” for cases that are more than legal issues and are encouraged to initiate their discretion and to connect those involved to more services and resources “when necessary.” Beyond the legal issues, in DV cases, it is at a family court judge’s discretion whether, for instance, to request that the offender take the examination, whether to order the offender to attend BIPs, what kind of BIPs the offender should participate in, whether to hear the victim separately from the offender to avoid emotional suffering, and whether to refer victims to further therapeutic, financial, or legal services. It seems that those judges who do “good” rather than “quick” receive much more pressure from the procedure, for fear of re-offending but refuse to file complaints in the criminal procedure, its

procedure, for fear of re-offending but refuse to file complaints in the criminal procedure, its seems that there is no mechanism to fulfill victims’ wishes due to the principle of “no complaint, no accusation” in criminal procedure. Victim’s subjective feelings are an important factor in risk assessment; however, it is debatable whether it is appropriate that the monitoring systems in BIPs in family and criminal procedure should be different simply depending on victims’ autonomy in choosing different procedures, but not on the objective indexes of possible re-offending danger.

Judicial Affairs Officer and Investigation Officer for Family Affairs are new positions created to assist judges in 2007 and 2012 respectively. As to family cases, the former is mainly to deal with non-contentious cases and execution of compulsory instances, and the latter is mainly to investigate specific matters which judges assign. See Court Organization Act 17-2, Code of Family Procedure §18.

Even though most of the victims will be connected to social workers when they report to the police office, there are still some victims requesting protection orders by themselves without police or social workers’ assistance.
court administration for having more pending and delayed cases than those judges who do “quick” rather than “good” receive for less initiating their discretion to order the offender to BIPs and the victim to victim services. In other words, judges’ disharmony comes from how much in the way of “therapeutic effects” they would like to devote time and resources to.

IF courts will increase the possibility of judge’s discretion because judges will be authorized to be more flexible in coordinating both BIPs and victim services in criminal and family proceedings while dealing with DV related criminal cases, civil protection orders, and other family cases in the same family. Establishing IF court may not by itself reduce disharmony among judges. Nevertheless, along with the new IF court model, taking the following measures is helpful in streamlining the therapeutic approach and reducing the pressure and frustration afflicting those judges who are trying to do “good”: appropriately limiting discretion on some conditions, setting clear guidelines for discretion, and offering a new interpretation of “delayed cases” when initiating discretion.

Firstly, BIP is not supposed to be discretionary. The types of BIP for a DV offender are supposed to be discretionary, but not whether to order BIP or not. While the law entitles judges to discretion, there should be a reason to believe that a judge’s discretionary decision is a necessary process, without which a certain legal effect may not be bad. According to the Domestic Violence Prevention Act, when a protection order is approved, it is at a judge’s discretion to decide whether the offender should participate BIPs. Nevertheless, if the premise of DV is that it is “cyclical and learned” and BIPs are designed to end the cycle of violence and make the offenders unlearn violence, in what situation may the judge, on the one hand, issue the protection order to prevent further DV, but, on the other hand, not consider that BIPs should be ordered together? If the problem is that not all judges believe BIPs are effective means of preventing DV, then either the BIPs should be modified to be more effective and then the judges trained to realize how BIPs may help DV prevention, or BIPs should be removed from the therapeutic regime due to their ineffectiveness. In other words, when DV is identified and the protection order is approved, giving judges the discretion either to order BIPs or not doesn’t seem a necessary mechanism but, on the contrary, giving them this discretion confuses therapeutic policy. That is, disparity among judges can be avoided by doing away with unnecessary and confusing discretion.

Secondly, it is important to eliminate unnecessary discretion and set clear guidelines for demanding discretion. Currently, it is at a judge’s discretion to decide which type of BIPs the offender should attend and whether the offender should take an examination before BIPs are ordered. According to the Domestic Violence Prevention Act, BIPs include cognitive education, psychological counseling, mental therapy, substance healing treatment, and other treatments. None are legal concepts that judges have learned from legal education. Compared to cognitive education and psychological counseling, experts suggest that mental therapy and substance healing treatment cannot be ordered without taking an examination. In fact, judges are incompetent to mandate mental therapy and substance healing treatment without experts’ opinions. As a result, the Act is not supposed to authorize judge discretion about whether to request that offenders take the examination, but requires the judge, before mandating mental

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742 Supra note 7-9, 25-26.
743 Supra note 39.
therapy or substance healing treatment, to order offenders to take the examination. That is, the judge should not have the discretion to decide whether to ask offenders to take the examination before the judge orders mental therapy or substance healing treatment. Such discretion not only generates inconsistency but also cause unnecessary disharmony because of different views on this issue.

With regard to ordering cognitive education and psychological counseling and to determining the length and frequency of client participation, whether judges are competent enough to exert such discretion is also questionable. Even though it is believed that judges are capable of exerting their discretion without an expert’s examination, judges need guidelines to direct them in how to exert the discretion in ordering these two. Without clear directions, it is impractical to expect judges to make appropriate and consistent decisions about the length and frequency of cognitive education and psychological counseling that offenders should receive since judges receive no such a professional training as part of their legal education.

Thirdly, there is developing a new interpretation of “delayed cases.” One way to encourage judges to exert their discretion is to eliminate the possibility of making cases delayed when exerting this discretion. As mentioned above, in order to promote speedy trials, judicial administration sets rules regarding expected case closure terms so that judges terminate cases. The length of the term is based on the type and complexity of the cases. Cases that can’t be terminated in the expected term become “delayed cases.” The number of delayed cases is calculated, recorded, and distributed monthly to judges within in the same court, and is reported to the Judicial Yuan regularly as part of public statistics. The control of “delayed cases” not only causes “silent competition” among judges, but may also affect judges’ yearly benefits, promotions, transfers, and even qualifications as candidates for membership in the self-disciplinary committee when serious.744

Since the number of delayed cases influences judges in many respects, the “speedy trial” policy makes judges try their best to terminate cases as soon as possible. Nevertheless, exerting discretion is an obstacle to speedy trial. For instance, the term of a civil ordinary protection order is four months;745 however, the examination of alcohol or drug addiction generally takes a few weeks to one month, and a mental health examination might take longer. Unlike consecutive court sessions in the U.S., it takes two weeks to one month to arrange a next court session in Taiwan, and each case takes less than half an hour in each session.746 That is, on average, the judge is expected to close a DV case within three to four sessions including any substance and mental health examination; otherwise it becomes a delayed case. The more complicated the case, the more pressure the judge is under to close it in time, and the less incentive the judge has to exert discretion regarding examinations which take additional time. In short, under the speedy trial policy, judges tend to be stricter in interpreting the phrase “necessary to take pre-trial examination.”

744 Supra note 38.
745 The term of emergency and temporary protection orders is two months. See Regulations of Trial Case Term of Juvenile and Family Court 3, Paragraph 1, Item 6.
746 Taking Taipei District Court as an example, generally, each session contains about 6-10 cases in the morning or afternoon session in family division. Every judge has two to three sessions each week.
In order to encourage judges to exert their discretion to request offenders to take an examination and then order them to participate in substance abuse healing and mental therapy within BIPs, the speedy trial policy should be compromised. The court administration is supposed to eliminate possible pressures affecting judges when they would like to “do more.” For instance, one solution to this problem is to extend the expected term of DV cases or to deduct the length of examination in the original term. That is, exerting discretion should not be related to the crisis of “delayed” cases. In this way, it may shorten the gap between judges who would like to do more and those who wouldn’t.

Fourthly, there is clarifying and streamlining problem-solving for TJ and/or RJ policies. Like BIPs for DV offenders, victim services and referrals are examples of TJ. Victims may request civil protection orders without reporting to the police and without an attorney or social workers’ assistance.747 How much judges will refer victims to services is discretionary. Some of these discretions are written in statute. For instance, judges may arrange for the victim to be separated from the offender in hearings “when necessary,” or they may assign a social worker to accompany the victim during the court session “when necessary.”748 Some of them are written in the regulation. For instance, the judge may let the victim leave the court building before the offender “when necessary” or provide video or single-sided mirror for victims “when necessary.”749 Some of them are not written, but judges can connect individuals to further services by means of, for instance, referrals to a court service center for psychological counseling, making a safe plan, legal aid, parental education, etc.

It is not surprising that how much DV victims and offenders receive therapeutic benefits depends on their luck, given the huge disparity among judges in exerting discretion and interpreting the phrase “when necessary.” Clarifying TJ policy and developing clear guidelines for exerting discretion may help judges work together on the same page. One example of such a clarification would be, in a written statute or regulation, illustrating concrete conditions instead of using abstract words like “when necessary” when applying rules. Moreover, the court administration should create new indexes that support judges’ exerting discretion in mandating therapeutic approaches better than the current index which only encourages a speedy trial.

In addition to TJ, the initiation of the RJ process is discretionary as well. Since has become a policy extending to all prosecutors’ offices including those involved with DV cases, it also influences family proceedings of civil protection orders and related family matters based on DV issues. RJ only putting DV prosecution into action without supportive concurrent family proceedings and follow-up criminal proceedings is not complete. It can be expected that in RJ implementation the IF court may better streamline policies in DV cases across family and criminal trial courts along with a “one family, one judge” policy. Nevertheless, since RJ in DV cases are not full fledged in practice, many issues require further research, such as how general RJ principles should be modified in DV cases, how RJ policies could be coordinated in prosecution, family and criminal trial proceedings in IF court, and how to make detailed

747 In civil proceedings, a legal representative is only required in the law review, not in the trial court. Self-representative is common in family courts.
748 Domestic Violence Prevention Act §13
749 Enforcement Rules for the Domestic Violence Prevention Act §10.
guidelines for IF judges to implement RJ in DV cases at different stages of proceedings to reduce the gap in discretion.

B. Potential challenges to the Process of Establishing Taiwanese IF Courts

1. Challenges to U.S. Problem-Solving Courts

The crisis of legitimacy of the juvenile court experience provides PSCs with an example of the intersection between treatment and punishment. While, in theory, the courts were expected to act in the best interests of the child, in reality, the courts used their vast discretion to deprive children of liberty without due process.\textsuperscript{750} The Supreme Court rescued juvenile courts by imposing procedural protections on juvenile justice systems that had devolved from rehabilitative ideals to punitive criminal systems.\textsuperscript{751}

Just as the juvenile courts were established in response to injustices identified in the way that children were treated, PSCs were created as an alternative to criminal systemic dysfunction caused by a vast increase in cases, long prison sentences required by the sentencing mechanism, and specific social problems. Critics warn that PSCs are treading the same path as the juvenile courts,\textsuperscript{752} and could experience a decline in the level of legitimacy.\textsuperscript{753}

\textsuperscript{750} See David S. Tanenhaus, \textit{The Evolution of Juvenile Courts in the Early Twentieth Century: Beyond the Myth of Immaculate Construction}, in \textit{A Century of Juvenile Justice} (Margaret Resenheim et al. eds., 2002)
\textsuperscript{751} In \textit{In re Gault}, a juvenile was removed from his family and mandated to a state institution without being informed of the charges against him. The Court held that juveniles were entitled to due process rights: -the right to notice of the charges, the right to counsel, the right to confrontation and cross-examination, and the privilege of not being required to self-incriminate. See 387 U.S. 541 (1966).
\textsuperscript{752} Casey, \textit{supra} note 153, at 1517. When the treatment theory is applied, the punishment theory interprets it as unfair, unpredictable, non-neutral, indeterminate, and lacking legitimacy. As a result, an experimental PSC model, such as is used in the Juvenile Intervention Court in New York, is raised to increase legitimacy. The model involves segregating adversarial and collaborative processes. That is, the defendant should be informed that he will be terminated from the program and should be given the reasons for the termination. That is, the attorneys and judges of the collaborative treatment court should be separated from the attorneys and judges in the traditional adversarial court. Moreover, to promote legitimacy, PSC should be enacted legislatively instead stemming from the judicial branch. Further, PSCs require increasing levels of transparency in the decision making process by providing reasons for the decision. Lastly, treatment decisions should be included in appellate review. See Casey, \textit{supra} note 153, at 1509-1518.
\textsuperscript{753} Jerome Bruner depicts three elements of legitimate decision-making bodies as ritualism, fairness and neutrality. 48 P.3d 110, 144, Ch. 2.
a. Fairness

A treatment is not judged by its fairness, deservingness, or proportion, but by its efficacy.\textsuperscript{754} Conceptions of liability, fault, guilt, and fairness do not exist in a treatment regime.\textsuperscript{755} Additionally, punishment is used to press treatment. If treatment does not work, the punishment follows.\textsuperscript{756} Because they employ the treatment model, PSCs are perceived as unfair.

b. Deterioration of the Adversarial Process

PSCs advocate a collaborative process, apart from the traditional adversarial model, where all interested parties work towards a common goal. The court becomes an active player on the treatment team. The therapeutic regime requires that attorneys concede the protective deterrent they provide for their clients.\textsuperscript{757} While removing the traditional functions of attorney,\textsuperscript{758} the PSC judge is unable to remain neutral.\textsuperscript{759}

c. Coercion

While proponents of PSCs claim coercion to be important to motivate success in treatment,\textsuperscript{760} the possibility for arbitrariness and abuse remains.\textsuperscript{761} Rights can be waived; however, the process of waiver is protected by rigid procedures to ensure that the waiver is knowing, voluntary and intelligent.\textsuperscript{762} Under the threat of a sentence, the decision to enter a treatment court is susceptible to coercion.\textsuperscript{763} The punitive interim measures used irrelative to treatment are subject to the criticism that they border on being cruel punishment.\textsuperscript{764}

\begin{footnotesize}
\item[754] Casey, \textit{supra} note 153, at 1496.
\item[755] \textit{Id}.
\item[756] The punishment after a failed treatment is often much heavier than the punishment without initiation of treatment. See Morris Hoffman, \textit{The Denver Drug Court and Its Unintended Consequences}, in \textit{DRUG COURTS IN THEORY AND IN PRACTICE} 82-83 (James D. Nolan, ed. 2002)\textsuperscript{757} The therapeutic model of criminal justice faces barriers of the fourth, fifth, sixth, eight, and fourteenth amendments. U.S. \textit{CONST.} amends. IV (random drug testing), V (self-incrimination), VI (counsel), VIII (cruel and unusual punishment), XIV (equal protection). Casey, \textit{supra} note 153, at 1497.
\item[757] To begin with, the initiation of taking an action depends on counsel. Then, the issues are identified and facts and arguments are developed to support a perspective that advantages the client. Moreover, the attorney also keeps an eye on fair procedures with which judges should comply. See Lon Fuller, \textit{The Forms and Limits of Adjudication}, 92 \textit{HARV. L. REV.} 382-85.
\item[758] Casey, \textit{supra} note 153, at 1498.
\item[759] Peggy Fulton Hora, et al., \textit{supra} note 151, at 475-76.
\item[760] Dorf, \textit{supra} note 157.
\item[762] Casey, \textit{supra} note 153, at 1499.
\item[763] \textit{Id}.
\end{footnotesize}
d. Neutrality

PSCs depend on the judges’ involvement to promote treatment progress. The judge in PSC is actively involved and a participant in the treatment team. The judge, having a stake in the treatment’s progress, cannot be recognized as disinterested in the outcome. Thus, the role of the PSC judge is decidedly not neutral. As long as the lack of neutrality is central to challenges, a loss of legitimacy for the PSCs will result.

e. Legislative Mandate

In some states, the PSCs are created by judges with no legislative endorsement. The lack of legislation undermines the authority of the court in two ways. First, it is a diminishment in the democratic accountability of the functions of the court. Second, it makes it impossible to check the moves of the judiciary when the court becomes responsible for both the enactment and the enforcement of the governing rules and procedures. The constitutional system of checks and balances cannot function in this regard because there is no branch to check the declaration of power by the court.

These U.S. challenges do not apply to the current DV disposition in family and criminal proceedings in Taiwan for the reasons explained below.

Firstly, mandatory offender treatment ordered by family court is not an issue of unfairness or coercion as it is in criminal proceedings. In family proceedings, the treatment participant is viewed as a DV offender, not a criminal. The offender is not standing at a crossroads of punitive or therapeutic options. More specifically, the offender does not face the threat of sentencing until his noncompliance to a protection order. As a result, personal rights protected by the Constitution in criminal proceedings do not apply in this regard. Neither is a waiver form used, nor is fairness an issue in family proceedings. A family judge’s discretion regarding mandatory treatment, whether it is examined by an expert’s experiment or not, is authorized by the statute. More specifically, such a therapeutic model in family proceedings for a DV offender is endorsed by the legislature.

Secondly, therapeutic BIP within criminal protective orders is very rare in practice, and DV offenders in criminal proceedings are not treated harder than other criminals. Protective orders

765 In the juvenile courts, the absence of neutrality was challenged in the Lindsay case. In the drug court, a concurring opinion in the Alexander case notes that the treatment judge, as an interested party, should not adjudicate the issue of termination from the treatment program. See Lindsay v. Lindsay, 257 Ill. 328, 332 (1913); 48 P.3d at 115.
766 For instance, The New York Criminal Procedure Law was amended to permit judges at arraignment to adjourn cases to a drug court, but there is no statute governing the structure of the court. See Casey, supra note 153, at 1501.
767 Id. at 1501-02.
768 Id.
769 Noncompliance of mandatory treatment within a protection order is a crime. Violation of a protection order constitutes a misdemeanor which can be sentenced up to three years. Domestic Violence Prevention Act §61.
may be issued by criminal court as a condition of probation or parole. Current criminal judges do not view DV differently from other crimes; that is, DV is simply a crime occurring between family members. Additionally, criminal proceedings for DV offenders are the same as for stranger criminals. Treatments like substance abuse healing or mental therapy, regulated in the Penal Code not the Domestic Violence Prevention Act, are for all defendants of all types of crimes. The therapeutic and correctional policy in probation is endorsed by the legislature. That is, DV offenders do not face a harder situation than other criminals except that supervision at probation is required and not at a criminal court judge’s discretion.

Thirdly, because neither Taiwanese family proceedings nor criminal proceedings adopt an adversarial system, there is no concern about the deterioration of the adversarial system while operating in TJ. Generally, family court judges may when necessary initiate investigations and consider facts that parties do not disclose. Family judges are not expected to be silent referees. Because a legal representative is not required, the judge’s more active role in obtaining the fuller picture of family matters is viewed as promoting “the principle of equality of arms in civil procedure law” especially when only one party’s lack of a legal representative or when issues of child custody or visitation are involved. In addition, family court judges are encouraged to promote settlement at any stage of the proceeding. They are used to directly asking questions of parties when necessary even though attorneys are present. Judges’ communicative expression to both parties is not considered a lack of neutrality, but rather is seen as a more communicative and concerned style. Regarding criminal proceedings, as with a continental system, criminal proceedings basically adopt an inquisitorial system mixed with a modified adversarial system. The adversarial system has never been fully applied in criminal proceedings either.

In short, judicial action in TJ in DV is authorized by the legislature in Taiwan. Unlike the U.S. or PSC imported regions, specialized DV proceedings in Taiwan are arranged in family court due to the country’s unique cultural perspectives on marriage, family, and DV. Both victim service and BIP within a protection order in family proceedings are demonstrations of TJ in DV. Regarding DV in criminal proceedings, treatments for defendants may be ordered at deferral prosecution, probation, and parole; however, they are not exclusively for DV offenders, but for all defendants accused of all types of crimes. That is, DV defendants are not treated differently from defendants in criminal proceedings for other crimes resulting from substance addiction or mental health problems, except that supervision on probation and parole are required for DV offenders. Therefore, challenges in the U.S. involving fairness, neutrality, and deterioration of

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Plea bargaining is not included here. First, unlike the U.S., plea bargaining in Taiwan only limits in sentencing, types of crimes cannot be negotiated. The defendant should confess all facts that the prosecutor discovers. Second, plea bargaining is only a sentencing suggestion provided by an agreement between the prosecutor and the defendant, judge has the final discretion on sentencing and probation. See Code of Criminal Procedure §455-2.

See Table 3, 19.


Domestic Violence Prevention Act §10.

LIAN-GONE CHIU, THEORY ON PROCEDURAL INTEREST, 250, fn. 166, 2005.

Code of Family Procedure §23-36.

the adversarial process of PSCs are not raised in the Taiwanese DV legal system. In addition, Taiwanese appellant court can review both factual and legal issues. As a result, both family protection orders and criminal protective orders, including BIPs, can be reviewed by appellant court, which also deepens the legitimacy of the implementation of TJ in DV prevention.

Lastly, since the proposed IF court does not change the original family and criminal proceedings, the above challenges do not apply to the IF court either.

2. Challenges to Imported Problem-Solving Courts
   
a. Top-down political system

   The PSC movement in the U.S. has been a judge-led grassroots effort. In contrast, the other importing regions incline to rely on the direction of other branches of government. Some non-U.S. judges, appointed for a lifetime, attribute American judges’ boldness to needing selling points to compete for reelection; however, the nonelected American judges, compared to judges in countries that have judicial review, exercise their powers of constitutional review more frequently and more boldly than judges elsewhere.

   Unlike the American grassroots manner, court establishment in other regions is a top-down process, which has been shown to be more cautious and deliberative in terms of judges’ willingness to go beyond legislative limits, and in terms of their choice whether to initiate programs and/or expand PSCs. For instance, in Scotland and Australia, it takes a long time to go through legislative discussion and debate regarding the advantages and disadvantages before PSC is established. In England, Canada, and Ireland, the court initiation has to wait for the executive branch’s financial support. In addition, unlike the American “just do it” manner - the non-U.S. judges are unwilling to start the court until all services are located. Further, working groups, especially in Scotland and Ireland, study and analyze court programs in other countries before they start a court, something that is not usually seen in the U.S. approach.

   More like non-U.S. regions, the initiation of the court is a deliberately legislative process in Taiwan. Establishing a new type of the court requires first amending the Code of Court Organization, which regulate the personnel, jurisdiction, case types and distribution of all kinds of courts. It usually begins with the drafting of the highest judicial administration, Judicial Yuan, and then needs to be approved by the legislative branch. Fighting for the budget in the congress is the most difficult stage, which could be pending for years. The personnel and services should

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777 Nolan, supra note 1, at 143.
778 For instance, an Australian judge see themselves “as part of the system rather than as competing for reelection.” A Scottish problem-solving court official stated that as some U.S. judges are elected, they “almost need to have their unique selling points of something that will set them apart.” Id.
780 Id. at 149
781 Id.
782 Id.
783 Id. at 149-50.
be ready or at least in an active planning stage before the operation of the court. It is a typical top-down approach.

Whether the Taiwanese IF court should go through the legislative process depends on whether it would operate in the Juvenile and Family court or in the family division within the district court. In the former, it is necessary to modify the Code of Court Organization to increase the types of cases that the IF court may handle. In the latter, no amendment of the Code is needed. The idea behind an integrated family division is to expand family cases to include misdemeanors and violations of civil protection orders, which originally are dealt with by the criminal division. That is, it reduces the range of the criminal division cases to increase the range of the family division cases in the same court. Since no new case types are added in the district court, there is no need to amend the Code.

b. Judge’s Assent

The structural, interpretive, and personal restraints in non-U.S. PSCs are all found in Taiwan. Lacking legislative authorization, Taiwanese judges would not initiate programs, request DV offenders back for ongoing judicial review, impose sanctions for noncompliance, or terminate programs. In addition, Taiwanese judges are limited by statutes and try to interpret new programs included in the existing law; otherwise they would operate with expanded authority after the passage of legislation. Further, even though legislation gives them the authority, most Taiwanese judges are either reluctant to act with more discretion, or they continuously check administrative guidelines and precedents concerning how to utilize their discretion. Moreover, judges hesitate to express their emotions in order to keep their identification fair and neutral. Interacting in an exceedingly personal manner would be considered improper judicial behavior.

As recommended, to establish a modified IDV court or a Taiwanese IF court, taking the structural and interpretative restraints into consideration, the first step is to get legislative or administrative authority for family court or division to broaden the case types that family court/division judges can deal with. Currently, the contents of BIPs, the sanctions for noncompliance, and the termination of BIPs are authorized by the statute; however, a number of judges are not active in exerting their discretion to initiate the programs while issuing civil protection orders, or on the condition of plea bargaining, probation, or parole. Considering judges’ personal restraint, making clear guidelines for discretions or even eliminating unnecessary discretion would be helpful to reduce differences among judges’ uses of discretion to reach better therapeutic efficacy.

While judicial review is a significant feature of the programs in PSCs, judges in Taiwan do not have the authority to bring DV offenders back to court for judicial reviews due to lack of

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784 Domestic Violence Prevention Act §14, 15, 16, 61.
785 Judge Judy Harris Kluger, a former community court judge in Midtown, recalls the power entitled to PSC judge, “I’ve found that we as judges have enormous psychology power over the people in front of us. It’s not even coercive power. It’s really the power of an authority figure and a role model. You have power not only over that person, but over their family in the audience, over all the people sitting in that courtroom.” Judge Rosalyn Richter, who was a former Midtown community court judge, recalls a meeting in which, “Defendants said that
legislative authority. Only criminal probation officers may require offenders return to court for follow-up. 786 No judges in family or criminal courts are involved in judicial review after issuing protection orders or protective measures with or without BIPs. Compared to convicted DV defendants on supervised probation, it seems unbalancing that DV offenders under a civil protection order do not have to undergo any monitoring. After all, this is not because they are less likely to reoffend but because the victims choose not to file accusations as part of a criminal procedure. Victim autonomy is not the same as the voluntary willingness of victims. 787 While judges do have more psychological power over the parties, their family, and all the people sitting in the courtroom, 788 whether judicial review can also be operated effectively by other judicial officers besides judges needs further research. 789

3. Challenges to Taiwanese IF courts

a. Importing a Common Law System into a Civil Law System

As a civil law system, Taiwan has been borrowing legal concepts from the U.S., the common law system, in the establishment and interpretation of its legal system, since the 1980s. As the martial period was closing in 1987 and more and more Taiwanese Justices and scholars graduated from U.S. law schools, U.S. law had a profound influence on constitutional interpretation and on the legislating of both procedural and substantial law. 790 For instance, the most frequent foreign precedents applied by justices in their interpretation of the Constitution during the fifth session (1985-1994) were from the U.S. 791 Through competition and integration with the U.S. theory of tripartite standards of review since 2003, the Constitutional Court has received and localized the principle of proportionality. 792 Moreover, from a modified adversarial system, the hearsay rule, plea-bargaining, speedy trials, and the right to counsel, to the upcoming lay people’s participation, each of the mechanisms in the criminal procedural system has been carefully compared to and localized from the corresponding U.S. legal system mechanisms in the process of Taiwanese law-making and interpretation. 793 In addition, the board of directors’ duty

having a judge monitor what they were doing affected them almost as much as having a sentence over their heads.” See Nolan, supra note 1, at 140.

786 Rehabilitative Disposition Execution Act §2, 3, 64.

787 The reasons that victims do not accuse the offenders of committing crimes could be wishing staying in relationship, being frightened that the offenders will take revenge on them, or being threatened. In fact, it is rare that DV offenders come back the court for probation officers’ review because BIPs are rarely issued by the criminal court. See Table 3, 19.

788 Nolan, supra note 1, at 140.

789 Judges have been overloaded in Taiwan. In addition, there are new judicial personnel assisting judges, such as Judicial Affairs Officers, Investigation Officers for Family Affairs, who may be considered to replace judges in charge of judicial monitoring. Supra note 739.

790 Tay-Sheng Wang, Jurisprudence of Post-war Taiwan Shaped by Four Generations, 40 NTU L. J. 1367, 1405 (2011).

791 Id. at 1405-06.


793 See generally Jaw-Perng Wang, Developments in the Law in 2011: Criminal Procedure Law,
to make informed business judgments, breach of fiduciary duty, and piercing the corporate veil in the Corporate Act, and the independent director, substantive regulation, and misappropriation theory in the Securities and Exchanges Act are all examples of legal transplantation from the U.S. Taiwan’s financial legal development has been influenced by the trends of globalization and localization, because of which the related U.S. financial system can not be ignored. Further, certain interpretations of the Fair Trade Act, Intellectual Property Law, and Consumer Protection Act are all borrowed from U.S. legal ideas as well.

As to DV, the Taiwanese Domestic Violence Prevention Act was mainly a legal transplant from the Model of Domestic Violence Law in the U.S. It has been localized and merged into the Taiwanese legal system for more than fifteen years. It provides a good example showing that legal transplantation may occur from a common law system to a civil law system and include input that is both substantive and procedural in the same act. Regarding proposed IF court, it extends the legal transplant from the DV law to DV court organization. That is, it localizes IDV court in the U.S. and enlarges the jurisdiction of the original Taiwanese family court in a way that breaks up the deeply rooted Taiwanese concept of borders between family court and criminal court and leads to the view of DV as an unique legal profession. Thus, there is no change even related to the essence of the procedural and substantive legal system in the proposed Taiwanese IF court.

b. Family Court judges against Required Criminal Expertise and Increasing Caseloads

The IF court expects that judges’ expertise in both family and criminal procedures may challenge the current policy of viewing family and criminal as two non-consolidated professional fields. Unlike U.S. judges, who practice law for a certain period of time, Taiwanese judges are not required to do this prior to becoming judges. The main avenue to becoming a judge is to pass

41 NTU L.J. 1576-99; Criminal Procedure, 39 NTU L.J. 123-42, Speedy Trial from the US Perspective, 177 TAIWAN LAW REVIEW, 91-104.
797 See Ming-Yan Shieh, Recent Achievements and Judicial Practice of Intellectual Property Law in Taiwan, 39 (2) NTU L. J. 199, 207 (2010).
the very competitive national examination that requires only graduation from law school. To make up for inexperienced young judges, Judicial Yuan requests trial courts to set up certain professional divisions positions to classify cases for judges and to professionalize judges. Judges with specified requirements may apply for professional certificates which make them more competitive to be chosen for related divisions. That is, judicial policy tends to classify cases assigned to specific divisions which are then dealt with by certain judges with a professional certificate. Current professional certificates are divided into two main streams: civil and criminal, which are recognized as insupportable professionals to each other. Obviously, family professionals are classified as part of the civil stream, not the criminal stream. Nevertheless, the idea that IF court expects judges familiar with both family and criminal professionals may be a challenge to the existing classification of judicial professionals.

Moreover, the idea of IF court to require that judges deal with family and criminal cases both may lessen judges’ willingness to stay in family court. Judge transfers between courts and divisions are held every year. While the main reasons for judges to transfer between courts are receiving a promotion and moving, the transfer of judges between divisions within the same court is mainly caused by personal interest and caseload. Generally, the judge’s professional stream can be categorized as civil, criminal, and administrative. Each stream or category has its sub-categories. For instance, under the civil stream, there are sub-streams classified as civil, labor, engineering, medical, international trade, and family professionals. Judges in the same court compete for their seats based on their professional certificate, training, and seniority. In recent years, the civil stream has been more popular than the criminal stream; however, the

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799 For instance, in the Taipei District Court, the biggest trial court in Taiwan, there are specialized divisions such as labor, summary, engineer and family divisions; and specialized positions such as consumer debt, medical, intellectual property, election, insolvency, international trade, and commercial maritime positions in the civil stream. Regarding the criminal stream, in addition to the juvenile division, there are specialized positions such as sexual assault, intellectual property, finance, medical, aboriginal, and military positions in the same court.

800 The certificates make judges more competitive when they intend to stay in related divisions and apply for professions such as Intellectual Property Court, Juvenile and Family Court, and the upcoming Commercial Court.

801 Currently, Intellectual Property Court demonstrates an exceptional example of a combination of civil, criminal, and administrative jurisdiction into one trial court, which breaks the boundary of the traditionally professional classification of judges. However, civil and administrative procedures are similar and the types of criminal cases in intellectual property cases are limited. In contrast, types of crimes in DV misdemeanor cases are much broader and very different than family procedure. Thus, it can be expected that the challenge of the initiation of the IF court would be higher than the Intellectual Property Court.

802 See Rule of Annual Judicial Affairs Distribution for Judges in Civil, Criminal, Administrative and Specialized Professional Cases §5. Additionally, each court has its own sub-rule on judicial affairs distribution for Judges made by its Judge Conference.

803 Generally, the amount of caseload in civil division is higher than criminal division. However, criminal division judges undertake more psychological pressure in decision-making and consume more time and energy in cross-examination, not mention criminal court judges have to take turns on night-shift duty in some courts.
family division is always the last division to be fully filled-in.\textsuperscript{804} Therefore, before measures are taken to reduce caseloads and increase family judges’ benefits and promotion,\textsuperscript{805} the IF court, which requires family court judges to deal with more than family cases, may not attract new judges’ interest to apply for but discourage current family court judges to stay.

\footnote{804}{Family cases are notorious for having emotional parties, the most self-representing parties, and a heavy caseload. As a result, the reason that some judges are allocated in family divisions is that they fail to compete for seats in other divisions. As such, they are reluctant to stay in the family division any longer and may leave whenever possible. \textit{Supra} note 34-36.}

\footnote{805}{For instance, allocating more judge seats in IF court to decrease workload, and creating more seats in high court for IF court judges’ promotion. \textit{See} p. 115.}
Conclusion

Rampant social problems in the U.S. triggered the rethinking of what role the court should play beyond resolver of legal problems. Ten years later an incident of serious DV sparked a challenge to how the Taiwanese government should view the traditional concept that “law cannot enter into family.” The idea of a PSC was created and specialized DV courts and their variations, IDV courts, have developed to dig into the deeply rooted problems that brought people to courts in the U.S. Taiwan imported the concept of DV mainly from the U.S. and passed the prevention act to treat DV differently from stranger crimes. The empirical study, which disclosed the success and effectiveness of U.S. PSC’s, got other regions’ attention and then led to the formation of the international PSC movement. Localized DV case process in Taiwanese family court has brought to light problems that call into question the effectiveness of DV prevention.

PSC has a perfect link to the existing theoretical foundation: TJ and RJ. In the U.S., the overall effectiveness of PSCs is promising, and this promise leads to the ever increasing number of PSC established nationwide and spread over different continents. Nevertheless, in DV courts, the outcomes in terms of efficacy of BIP are mixed, and judicial monitoring connecting it with recidivism reduction is questionable. Moreover, the challenges of a therapeutic approach given the traditional criminal values of fairness, adversarial process, and neutrality have raised concerns regarding personal rights protected by the Constitution. RJ is timidly applied in DV cases because of the unique intrinsic difference between unbalancing power control dynamics and feminists’ upholding victim’s safety as a priority. In Taiwan, therapeutic efficacy is hindered by victim autonomy mixed with cultural boundaries, unclear guidelines along with inappropriate administrative control that obstruct a judge’s ability to exert discretion, and inconsistent policies in family and criminal proceedings and judge training. Similar to the legal transplant of DV and BIP, RJ was imported, localized, and then soon became an overall policy throughout all prosecutor offices. In some ways, American judges’ accent on a “just do it” mentality can be seen in Taiwanese judicial leadership in the process of legal borrowing.

The proposed IF court, modified from IDV court, is an attempt to provide a helpful alternative to the Taiwanese family legal system in order to advance DV victim safety and offender accountability and rehabilitation. How BIPs should be localized to unique Taiwanese culture and to what extent judicial monitoring might be legally borrowed both require further research. What can be expected is that the challenges to a coercive therapeutic approach in criminal proceedings in the U.S. could become a potential issue of BIP in Taiwanese family proceedings in the future.
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<tr>
<th>Number</th>
<th>Interviewee's Position</th>
<th>Statement</th>
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<tr>
<td>F1</td>
<td>Former Family Court Judge</td>
<td>1: “When I was a family court judge, I felt my own negative emotion was intensified due to parties’ high emotion in the courtrooms...it was much worse than in criminal courtrooms. There were insufficient numbers of judges in the new Kaohsiung Juvenile and Family Court due to insufficient application for these positions. Judges in my court also had little willingness to deal with family cases... The family caseload is heavy. Family judges are in the minority in district courts so they have difficulty competing for court resources.”</td>
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<td>2: “It is less likely to be promoted from family court because high court judges have less opportunity to evaluate the written judgments of family court judges.”</td>
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<td>3: “A family court background could be a hindrance for judges who would like to adjudicate other types of cases.”</td>
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<td>4: “It is doubtful that BIPs are necessary or helpful. How is it that education and psychological counseling can change one’s behavior?”</td>
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<td>F2</td>
<td>Judge in the southern Juvenile and Family Court</td>
<td>1: “Compared to the caseload of the criminal and civil courts, the family court caseload is the heaviest.”</td>
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<td>2: “The court is not popular with judges. The main reason it does not attract judges is the location. It is located in the suburbs and transportation is inconvenient.”</td>
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<td>3: “Judges in family court may have passion in the first few years. But when they burn out and would like to transfer to administrative or civil courts, it is difficult to compete with other judges because family court judges are less senior and less experienced in these other areas. This becomes a warning for judges who have a desire to work with family cases; they fear that they could be stuck in family court and have no option to leave.”</td>
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<td>F3</td>
<td>Judge in the northern Family Court</td>
<td>“Compared to criminal or civil court, there is a greater need for judges in family court to stay longer because family matters go beyond legal judgments and family court requires experienced judges who are familiar with the available resources. However, not many judges want to stay in family court.”</td>
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<tr>
<td>F4</td>
<td>Judge in the northern Family Court</td>
<td>“Judges cannot ignore administrative control of case length. The judge gets a notice if a case is likely to be delayed, and then gets another notice when the case enters delayed status. Delayed cases...”</td>
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|   |   | disclosed and distributed to all judges in monthly statistics. If a judge has delayed cases, the president of the court will politely request that s/he attends to these. Delayed cases are a pressure on judges. Every judge is competing with the other. No one wants to be the one with the highest number.”  

F5 | Family court Presiding Judge | “Criminal court judges have a very different view of DV cases. These judges don’t think that offenders should be put in the jail just because they don’t complete classes. In some cases the criminal court will place the non-compliant offender on probation, which provides even less incentive to complete the program.”  

P1 | Prosecutor | “Deferred prosecution is not commonly rendered in DV cases. If the case is a misdemeanor, the prosecutor will obtain the offender’s confession and the victim’s forgiveness before deferring prosecution. If the victim forgives the offender, s/he usually withdraws the accusation at the same time and no disposition is required. If the case is a felony, it is not appropriate for deferred prosecution even should the offender apologize.”  

P2 | Prosecutor | “The BIP examination is paid for by the prosecution office. Their budget is limited, unless the case is a felony, in which case one can request financial support from the high prosecution office…The BIP examination takes about half a year, sometimes longer. Prosecutors worry that examination leads to case delays… Nowadays, prosecutors only work with agencies that can submit their examination reports within a specified time.”  

In the words of another prosecutor, “When needed, I might apply for summary judgment and suggest that the court require offenders to receive treatment, because the court system has more resources available for BIPs.”  

P3 | Prosecutor | When needed, I might apply for summary judgment and suggest that the court require offenders to receive treatment, because the court system has more resources available for BIPs.”  

C1 | Criminal Court Judge | “DV crimes are too broad to require specialized divisions … Most DV crimes are misdemeanors and involve persons that are family members. I hesitate to put offenders in jail and am thus inclined to provide sentencing that is commutable to fines….Since offenders and victims are family and likely live together, heavier sentencing may affect not only the defendants but also other family members.”  

C2 | Criminal Court Judge | “Judges are not familiar with how to initiate BIPs… They may ignore them…. DV training is very limited… Judges tend to evaluate DV offenses separately rather than see a serious of events as a whole.” “For DV misdemeanors, judges tend not to order BIPs. First, finding the appropriate medical agencies takes
time, and the examination process takes time. And if the offender refuses to take the exam, this is even more time-consuming. The BIP prolongs the case proceedings. Why spend so much time on a DV misdemeanor?"

| S1 | Social Worker | “Even though criminal judges would like to do more with their DV cases, most judges don’t know how to use or connect with the available resources. DV cases are only a small part of their workload; they do not handle DV cases often.” |