



Brooklyn Defender Services
177 Livingston St, 7th Fl
Brooklyn, NY 11201

Tel (718) 254-0700
Fax (718) 254-0897
info@bds.org

TESTIMONY OF:

**Meghan Downes, Associate Director of Social Work
Family Defense Practice**

BROOKLYN DEFENDER SERVICES

Presented before the

**New York City Council
Committee on Women and Gender Equity**

Oversight Hearing on Barriers to Accessing Survivor Services in New York City

My name is Meghan Downes and I am the Associate Director of Social Work in the Family Defense Practice at Brooklyn Defender Services (BDS). BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. Many of the people we serve have experienced a history of violence, exploitation and abuse that has directly or indirectly led to their involvement in the legal system. We thank the Committee and Chair Cabán for the opportunity to testify today about the barriers survivors face in accessing services in New York City.

For over 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. We represent approximately 25,000 people each year who are accused of a crime, facing loss of liberty, their home, their children, or deportation. We also provide a wide range of additional services for our clients, including civil legal advocacy, assistance with educational needs of our clients or their children, housing and benefits advocacy, as well as immigration advice and representation.

Nearly all of the people we represent have experienced or witnessed violence at home, in their neighborhoods and communities, or at the hands of the state. For many, experiences of violence and exploitation are a direct cause of court involvement. Instead of receiving services, many victims of domestic violence (DV), intimate partner violence (IPV), and other gender-based violence (GBV)—particularly Black and brown women and girls—are punished for their survival and response to trauma.¹ As public defenders, we see this firsthand when victims of violence face the removal of their children, are charged for self-defense or self-medication, are denied legal

¹ Malika Saada Saar, The sexual abuse to prison pipeline: The girls' story, Center for Poverty and Inequality, Georgetown University Law Center, 2019, Available online at <https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2019/02/The-Sexual-Abuse-To-Prison-Pipeline-The-Girls-Story.pdf>.



entry to the country when facing abuse, are charged with crimes committed under coercion or as a result of trafficking, and more. We are also witness to a system that attempts to draw a binary line between victims and perpetrators, abusive partners and complaining witnesses, often failing to acknowledge the complex histories of people charged with doing harm.

The pipeline of victims into the criminal legal, family court, and immigration systems has had a chilling effect on people experiencing DV. We know that many New Yorkers, particularly Black and brown women, do not always seek services when experiencing violence due to fear of becoming entangled in the legal system themselves, or of causing system involvement for their families.

Barriers to Seeking Services

In our 25 years of practice, BDS has identified numerous barriers people face in accessing victim services in New York City. For many of the people we serve, the first time they have disclosed that they are a victim of gender-based violence is when they have become enmeshed in the legal system. Many of the people we serve indicate they have not previously reported their experiences of gender-based violence because they fear they will not be believed. Others have attempted to involve law enforcement but were not believed or were asked to prove they had been harmed and were retraumatized by the process. This is particularly true for people living with substance use disorders or mental illness. **The people we serve report feeling most safe discussing experiences of gender-based violence in programs with a harm reduction model, where they feel they can openly and confidentially share information with peers and providers without fear of NYPD or other system involvement.**

- **Parents seeking services are subject to surveillance and the removal of their children**

BDS' Family Defense Practice (FDP) has been representing parents and other caregivers in child abuse and neglect cases in Family Court since 2007. For many people we serve, experiencing DV was a direct entry point into the family court system. Most of the people we represent are people of color living in poverty, raising their children in homeless shelters or public housing, and in highly policed neighborhoods, making them vulnerable to government surveillance. New York's Administration for Children's Services (ACS) is the city agency that investigates, surveilles, and can remove a child from their home.

When a parent seeks help from a DV advocate, counselor, or law enforcement, their disclosure may trigger a mandated report to the Statewide Central Register of Child Abuse and Maltreatment (SCR) and an investigation by ACS. Most of the parents we serve are fearful that seeking support in response to DV may lead to a knock on their door from a child welfare worker. While the law in New York states that a child cannot be removed from their home because their parent is experiencing domestic violence, ACS frequently uses allegations of DV to closely monitor and surveil families for long periods of time.

Once in court, families often face prolonged separation and years of supervision by ACS. The fear of this intervention has been shown to prevent people from seeking care.² Unfortunately, that fear is warranted. Parents who are victims of DV are more likely to have their child removed and placed into the foster system during their case.³

To address this pipeline of victims into the family court system, BDS has specialized services to work with parents through two city Council funded initiatives. First, DOVE funding supports a social worker in our Family Defense Practice and enabled us to develop a specialization to provide supportive case management and crisis intervention services for victims of DV with family regulation system involvement. This has also allowed us to build relationships with other grantees in support of DV victims who are being investigated by ACS. Concurrently, we have been able to educate other service providers, specifically mandated reporters, on the human impact of reporting suspected abuse or neglect and the rights parents have at each step in the process.

Funded by the City Council Family and Guardianship Support initiative, our Right to Family Advocacy Project provides advocacy to parents during the initial stages of an ACS investigation with the goal of avoiding court filings that have a harsh impact on families. Our team of attorneys and social workers works closely with victims to safety plan, access emergency services, find temporary housing and childcare arrangements, refute false allegations, and help inform parents of their rights at early stages of an ACS investigation. Without our support, most parents under ACS investigation would undergo these frightening investigations without an advocate.

Parents experiencing DV should not have to be worried about losing custody of their children or being subject to long and invasive investigations and court proceedings. Access to emergency and long-term supportive services should not come with the risk of family surveillance or separation.

- **Victims of violence fear police and legal system involvement**

The majority of cases of domestic or intimate partner violence are never reported to law enforcement.⁴ Nationally, less than half of DV and IPV victims reported an offense to police and only one-quarter of victims of rape or sexual assault reported an offense.⁵ There are many reasons people choose not to go to the police when experiencing violence, including fear they will not be believed, fear of arrest, fear of losing their children and fear their partner will be arrested or harmed.

² Ellen Devoe and Erica Smith, Don't take my kids: Barriers to service delivery for battered mothers and their young children, 2008, *Journal of Emotional Abuse*, Available online at https://www.tandfonline.com/doi/abs/10.1300/J135v03n03_06.

³ Carrie Lippy, et al., The impact of mandatory reporting laws on survivors of intimate partner violence: Intersectionality, help-seeking and the need for change, 2020, *Journal of Family Violence*, Available online at <https://link.springer.com/article/10.1007/s10896-019-00103-w#ref-CR13>.

⁴ Rachel E. Morgan, Ph.D., and Barbara A. Oudekerk, Ph.D, Criminal Victimization, 2018, Bureau of Justice Statistics, September 2019, NCJ 253043, available at: <https://www.bjs.gov/content/pub/pdf/cv18.pdf>

⁵ *Id.*

When people who have experienced violence do report harm, they risk arrest and prosecution. Women are the fastest growing population in the U.S prison system. Studies show that most incarcerated women have experienced some form of abuse or trauma in their life.⁶ Oftentimes, it is this experience that has led them, either directly or indirectly, to become involved in the criminal legal system. Police officers are often unable or unwilling to investigate an incident, leading to the arrest of the victim or both parties. This is particularly true for LGBTQ+ people who experience IPV.⁷

- **Victims fear negative immigration consequences and deportation**

For immigrant New Yorkers, fear of system involvement leading to negative immigration consequences and deportation is a barrier to accessing services. Victims fear that if police respond to an incident their information may be shared with ICE. Abusive partners may also threaten to call ICE on their partners, weaponizing the system to evoke fear of deportation and family separation.⁸

Under the Trump administration, federal policy changes limited the ability of migrants escaping DV in their country of origin to seek asylum in the United States. The policies were overturned in June 2021,⁹ restoring more pathways to asylum and citizenship for DV victims, however the chilling impact of this legislation—and other anti-immigrant policies—cannot be understated or undone quickly. People who are victims of trafficking, victims of crimes, and those who are already lawful permanent residents continue to express concerns to our staff about seeking assistance. This confusion and fear deterred many of the people we represent and their families from obtaining important services that would have provided much needed stability, particularly during the COVID-19 pandemic. Even after being advised that seeking assistance would not impact a pending immigration case, people we serve still report being too fearful of negative consequences to access assistance.

Barriers to Victim Services

When people experiencing violence do seek services, they often face barriers to appropriate interventions and support to meet their needs.

⁶ Elizabeth Swavala, Kristine Riley and Ram Subramanian, Overlooked: Women and jails in an era of reform, *Vera Institute*, 2016, Available online at <https://www.vera.org/downloads/publications/overlooked-women-and-jails-report-updated.pdf>.

⁷ David Hirschel and Philip McCormack, Same-sex couples and the police: A 10-year study of arrest and dual arrest rates in responding to incidents of intimate partner violence, *Violence Against Women*, 2020, Available online at <https://doi.org/10.1177/1077801220920378>.

⁸ Adriana Carranca, She was forced to marry in Bangladesh. In Brooklyn, she made her escape, 2019, *New York Times*, Available online at <https://www.nytimes.com/2019/04/12/nyregion/muslim-abuse-womens-shelter.html>.

⁹ Katie Benner and Miriam Jordan, U.S. ends policy limiting asylum for gang and domestic violence survivors, 2021, *New York Times*, <https://www.nytimes.com/2021/06/16/us/politics/asylum-domestic-abuse-gang-violence.html>.

- **Domestic violence and abusive partner interventions are one-size-fits-all**

While gender-based violence interventions should restore agency to victims, court mandated programs are often prescriptive and disempower victims in making decisions about their families. Most programs focus on separating people who have been harmed from abusive partners, without the acknowledgement that victims may not be ready to or want to end the relationship with the person doing harm. Orders of protection often prevent partners from engaging in couples counseling, working toward reunification, or making amends.

Abusive partner intervention programs routinely fail to address the history of trauma faced by people who are accused of doing harm. Often, this trauma contributes to violence in the home. These programs also rarely address issues of poverty, housing instability, or financial stress that exacerbate conflict. Supporting people by addressing their complex histories and trauma must be a central part of any DV programming that also serves to resolve criminal and family court cases.

- **New Yorkers experiencing homelessness are shut out of the shelter system**

New Yorkers experiencing homelessness are both deterred from entering shelter and prematurely kicked out of shelter because of DHS' domestic violence screening and reporting policies. DHS' No Violence Again (NoVA) DV screening process flags shelter applicants with any history of DV and precludes families or couples with a history of DV from being placed together in shelter. DHS uses the same NoVA screening standard liberally and often without regard for a family's current circumstances. This means families or couples with a history of a domestic incident reports (police reports made in response to domestic incidents) who choose to stay together, who may have engaged in services to address the underlying DV or conflict in the relationship or have been ordered to stay together by a Family Court are almost routinely denied shelter as a family. DHS' NoVA policy effectively bars victims of DV entering shelter from making informed decisions about their families and who they choose to live with. This has long-term repercussions on a persons' housing stability; families who are separated in shelter are not eligible for their proper voucher size and are therefore less able to secure permanent housing.

Similarly, DHS screening and reporting policies label individuals as victims of DV who would not identify themselves as such. Once labeled as a victim of DV, individuals are subject to permanent restrictions on their shelter eligibility and household composition. DHS creates a permanent incident report of any alleged DV incident that occurs in shelter. These reports are frequently based merely on hearsay notes from shelter staff and consist entirely of allegations of raised voices or verbal arguments. The resident often has no knowledge that a report has been made and has no opportunity to contest its content. The report then becomes a permanent record of DV history and will prevent the family from living together if they try to reenter shelter in the future.



DHS screening and reporting policies should prioritize the preferences and choices of DV victims. New Yorkers experiencing homelessness should not have to face compulsory family separation based on a past history or mere allegation of DV if they choose to enter shelter.

- **Orders of protection have devastating collateral consequences**

Every day, New Yorkers are kicked out of their homes and rendered homeless without advanced notice and minimal due process because of temporary orders of protection (TOPs) issued by criminal court judges. These orders, issued as a matter of course in virtually every case involving a witness, require the person charged to stay away from the witness' home and place of business. Those subjected to a TOP are often left homeless and thus at a heightened risk of re-arrest. The practice impacts certain already marginalized people at a disproportionate rate: victims of gender-based violence, teenagers and young people that get into altercations with parents, and LGBTQ+ people.

While well-intentioned, the one-size-fits-all nature of these orders is often problematic. TOPs are issued shortly after arrest when judges have little information about cases, and thus are forced to rely almost entirely on the unverified representations of law enforcement. Unlike in many other states, there is no statutory due process to protect the liberty interests of people subject to TOPs.

To remedy this, we ask the City Council to support and urge the State Legislature to pass the Promoting Pre-Trial (PromPT) Stability Act S.2832b (Ramos)/A.4558b (Quart), which gives charged parties the right to a hearing to determine whether a full TOP is necessary and appropriate during the pendency of a criminal proceeding. This would codify a recent decision by the First Department, *Crawford v. Ally*, which held that such hearings are necessary to comport with due process after Shamika Crawford, a Black mother and victim of intimate partner violence from the Bronx, was arrested after her partner weaponized the system against her.

- **Language access and cultural competency**

Both victims of violence and people who have caused harm struggle to find free, culturally competent services in their preferred language. In Brooklyn, there is a lack of programs in Bengali, Uzbek, Mandarin and Creole even though these are languages frequently spoken in Brooklyn. This has a devastating impact for people who are mandated by the court to complete programs to resolve their cases or have their children returned.

Conclusion

BDS looks forward to working with the Council, this Committee and our community partners to address these gaps in service provision, specifically for victims with criminal legal, family court, or immigration system involvement. We thank this Committee and Chair Caban for the opportunity to testify today. If you have any additional questions, please reach out to Kathleen McKenna, Senior Policy Social Worker at kmckenna@bds.org.