

National Clearinghouse for the Defense of Battered Women

# Victimized Again:

How the Reentry Process Perpetuates Violence  
Against Survivors of Domestic Violence

By Courtney Cross, Esq.

October 2013

*The very structure of community supervision can compel an individual to remain in an unsafe home by stripping her of other viable options; it can also exacerbate violence against her.*

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By Courtney Cross, Esq.

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This Monograph was written by

**Courtney Cross, Esq.**

for the

**National Clearinghouse for the Defense of Battered Women**

125 S. 9<sup>th</sup> Street, Suite 302

Philadelphia, PA 19107

Tel: 215/251-0010 or 215/903-0111, ext. 3

[ncdbw.org](http://ncdbw.org)

*We accept collect calls from women in prison or jail.*

## Forward

We know that most women reentering their communities after serving time in jail or prison are survivors of some form of trauma – sometimes they were harmed when they were children, sometimes as an adult, and sometimes both. We also know that all women in jail or prison (and men, too) experience the trauma of being incarcerated. We knew that when we were looking at reentering women, we were looking at trauma survivors.

But what – if anything – was particular about reentering victims of battering by an (adult) intimate partner? We were thrilled when we got a grant from the Office on Violence Against Women (U.S. Department of Justice) to address women’s reentry issue for victims of violence by their intimate partners. We started our project doing a thorough literature search. There was relatively little information about or programming for reentering women, especially compared to information about and programming for men; but to be clear, there was not a ton of information about and programming for men, either. Compared to women? Yes, there was a lot of information and programming. Compared to the need? No, there was not enough information or programming for men. Not even close! And there was next to nothing for women. And, not surprisingly, we found next to nothing specifically about or for victims of intimate partner abuse and reentry.

I was visiting a friend and colleague in New York City when the phone rang late at night. My friend said, “Oh, you really have to meet Courtney Cross. She’s doing reentry work with victims of battering in D.C.” I almost fell off my chair; I just couldn’t believe it. I had recently learned about Our Place, D.C., a now defunct reentry program for women in D.C., while at a conference. I loved what I heard about the holistic services offered, including legal services for victims of intimate partner violence; services provided it turned out, by Courtney Cross. I knew I had to talk with Courtney.

Courtney and I talked. Courtney talked about how the very structure of community supervision can compel a survivor to remain in an unsafe home by stripping her of other viable options and it can also exacerbate violence against her. Not only are women coerced by the requirements of community supervision to return to and stay in violent environments, the very fact that they are even on community supervision exposes them to a new layer of abuse. She talked about how abusers often use the very processes of reentry and community supervision against reentering women. She explained how reentering women’s realities are defined by lack of positive options and confined by community supervision’s abundance of limitations.

What Courtney had to say was important that others hear it, so asked her to do a webinar for us. She agreed. On June 3, 2013, Courtney and her then coworker, Katrina Cheshier, presented an excellent webinar titled the same as this Monograph, ***Victimized Again: How the Reentry Process Perpetuates Violence Against Survivors of Domestic Violence***. A recording of the webinar (that also launches the PowerPoint) can be accessed from our website at [ncdbw.org](http://ncdbw.org) (go to ‘resources’ and then look for reentry webinar recordings).

I asked Courtney to expand and write up what she and Katrina presented in their webinar. She did and the result is this Monograph.

## **Audience**

This Monograph is designed for practitioners, particularly those working in community-based battered women's organizations and those working in women's reentry organizations. It is our hope that it will help them learn more about the experiences and realities of reentering domestic violence survivors. It is not intended to be a primer about battering and the possible effects of battering, except in the context of reentry. Rather, it assumes some knowledge about the realities of battering and what victim/survivors experience.

## **Some Notes about Language**

### ***Client***

We understand that many community-based advocates choose not to call the women they work with "clients;" in fact they actively resist using that label (believing it creates a distancing "us" and "them" dynamic and is overly clinical). We tried to come up with alternative language for "client," but did not find a term that worked well for the purposes of this Monograph. We have therefore chosen to use the word "client" throughout.

We hope our terminology does not create insurmountable barriers that prevent even one advocate from utilizing this Monograph.

### ***Returning Citizen:***

Labels can often stigmatize people and create barriers between those using the labels and those being labeled. Many incarcerated and formerly incarcerated women have objected to the term "offender" and, as a result, we do not use it at the National Clearinghouse. We believe it is critical that individuals not be defined by their crime/alleged crime. Instead, we use – and encourage the use - of terms such as "returning citizen," "reentering woman," "person returning from jail/prison," or "formerly incarcerated woman."

Courtney Cross, the Monograph's author, uses "returning citizen."

## **Acknowledgements**

Thanks to Katrina Cheshier who co-presented the webinar upon which this Monograph is based. Katrina and Courtney presented the webinar with the same title as the Monograph in early June. At the time of the webinar, Katrina was a Case Manager at Our Place, D.C., and provided valuable information and insights to the webinar presentation. Additional thanks Quetita Cavero, National Clearinghouse for the Defense of Battered Women Staff Attorney, for her help with this Monograph and the webinar, as well.

We hope this Monograph not only increases your understanding of the complex experiences of reentering women, but also enhances your compassion and desire to work effectively on their behalf.

*Sue Osthoff*

Director

National Clearinghouse for the Defense of Battered Women

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**National Clearinghouse for the Defense of Battered Women**

125 S. 9<sup>th</sup> Street, Suite 302

Philadelphia, PA 19107

Phone: 215/351-0010 or 800/903-0111, ext. 3

Fax: 215/351-0779

[ncdbw.org](http://ncdbw.org)

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## Introduction

All women returning to their communities after being in jail or prison face numerous challenges and obstacles that can make their reentry process very difficult. Returning female citizens, who are (or were) in abusive relationships, often face many extra challenges and complications. Survivors on probation, parole, or supervised release (collectively known as “community supervision”) must not only attempt to rebuild their lives while navigating an often-volatile home life, but must do within the limitations and requirements placed on them by community supervision. Too often, domestic violence services advocates do not offer effective advocacy for these survivors because they are uncomfortable working with women with criminal histories, unaware of the components of community supervision, and/or uninformed about how domestic violence and domestic violence legal remedies interact with the reentry process. Similarly, community reentry providers may not screen for domestic violence and may not recognize the affects domestic violence can have on clients’ compliance with the terms of their supervision.

The perspectives, real-world examples, and recommendations in this Monograph come from my own experience as a staff attorney at a holistic social and legal services organization serving currently and formerly incarcerated women in the District of Columbia (also referred to here as “D.C.” or “the District”). By working as part of an interdisciplinary team to combat the challenges of incarceration and reentry, I gained up-close exposure to clients’ myriad non-legal as well as legal needs and learned the importance of understanding the intersecting systems that shaped returning female citizens’ realities and possibilities. In my capacity as an attorney, I represented returning female citizens in civil protection order hearings and family law matters; I also represented incarcerated women who allegedly violated their community supervision in revocation hearings in front of the United States Parole Commission. I provided advocacy and advice for both incarcerated and formerly incarcerated women on issues ranging from public benefits and housing to sentence reduction and expungement. From this position on the frontline of women’s reentry in the District, I frequently collaborated with other community reentry advocates and defense attorneys as well as with domestic violence organizations. This combination of direct representation, informal advocacy, and outreach and community education underscored the necessity of acquiring both the breadth and depth of knowledge necessary to engage with a client in addressing her needs while understanding the outside forces affecting her behavior, choices, and goals.

The purpose of this Monograph is not to insist that community organizations serving returning citizens suddenly provide holistic services to this client base (although this can be a very effective model). Rather, the goal is to illuminate some of the complex realities of returning female citizens being abused by individuals with whom they live—especially intimate partners. By providing specific examples of the ways in which the reentry process can perpetuate, aggravate, and be affected by domestic violence, my goal is to encourage individual service practitioners to seek a more comprehensive understanding of their clients’ individual situations. While not every description and definition in this Monograph is equally applicable to both domestic violence and community reentry providers, my hope is that the entire discussion will nonetheless help both types of service practitioners to have more information

about the systems and circumstances that interfere with their clients' personal agency and independence.

Because of the growing number of women entering the criminal legal system and returning to their communities after incarceration, it is important to recognize the effects that domestic violence has on their pre- and post-incarceration lives. This Monograph focuses on how the structure and substance of community supervision perpetuates violence against women by pressuring them to enter unstable homes and denying them flexibility and options needed to respond effectively to domestic violence. Further, because the conditions of release imposed on returning citizens by community supervision are so strict, survivors must often choose between violating their community supervision (and risk reincarceration) and endangering their safety. It is unsurprising that in this environment, abusers frequently exploit survivors' status as returning citizens by engaging in reentry-specific forms of violence. When faced with violence at home, returning female citizens (for whom abuse is often one of many obstacles) may find traditional domestic violence advocacy approaches inadequate. For service providers, it is important to both respect the priorities of and continue to provide individual advocacy for all survivors who decide not to leave their abuser, call the police, or seek a protection order— including returning female citizens.

## Background

We begin by briefly examining both the trends in the numbers of incarcerated women over the past 30 years as well as the rates of past physical and sexual abuse among women in jails and prisons in the United States. Understanding the size of those with traumatic histories within the population of incarcerated women underscores the need for service providers to offer informed, client-centered advocacy to members of this growing population.

According to a 2013 study by The Sentencing Project, from 1980 to 2010, rate of growth of women in prison increased by 646% compared to 419% for men.<sup>1</sup> While the rate of incarcerated women has grown more than the rates of incarcerated men in recent years, the actual number of incarcerated men continues to be much larger than the number of incarcerated women making it difficult to accurately compare “growth rates” of incarcerated men and women. Suffice it to say, the growth rates of both men and women in prison is very large. As of 2011, women made up 25% of the total population of individuals on probation and 11% of the total population of individuals on parole or supervised release.<sup>2</sup> Because women are less likely to be involved in “serious crime”<sup>3</sup> they are more likely to receive shorter terms of incarceration or probation-only sentences. Even those women who have not served any jail

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<sup>1</sup> Marc Mauer, *The Changing Racial Dynamics of Women's Incarceration* (The Sentencing Project, 2013), 9. Retrieved from [http://www.sentencingproject.org/doc/publications/rd\\_Changing%20Racial%20Dynamics%202013.pdf](http://www.sentencingproject.org/doc/publications/rd_Changing%20Racial%20Dynamics%202013.pdf).

<sup>2</sup> Laura Maruschak & Erika Parks, *Probation and Parole in the United States* (Bureau of Justice Statistics, 2012). Retrieved from <http://www.bjs.gov/content/pub/pdf/ppus11.pdf>.

<sup>3</sup> Jennifer Schwartz & Darrell Steffensmeier, *The Nature of Female Offending: Patterns and Explanation*, (Jones and Bartlett Publishers, 2007), 67. Retrieved from [http://www.jblearning.com/samples/0763741159/ch2\\_female\\_offenders\\_2e.pdf](http://www.jblearning.com/samples/0763741159/ch2_female_offenders_2e.pdf)

time prior to being placed on community supervision are nonetheless impacted by both their conditions of release and the direct and collateral consequences of having a criminal conviction.

Against this backdrop of growing female incarceration and reentry, we turn to an examination of the correlation between domestic violence and incarceration of women. Although government-sponsored studies tend to find rates of prior abuse among incarcerated women to be around 50%, studies using more in-depth research methods find much higher rates (as high as 95% of incarcerated women reporting prior victimization).<sup>4</sup> In 2011, the National Clearinghouse for the Defense of Battered Women released a report summarizing several studies' empirical findings on this relationship.<sup>5</sup> One such study performed by Bradley and Davino found that in sample of 65 incarcerated women, "86.2% of the participants reported a history of childhood sexual abuse, 50.6% reported a history of childhood physical abuse, 67.7% reported a history of sexual assault in adulthood, and 84.6% reported a history of physical abuse in adult relationships."<sup>6</sup> Further, 43% of the women reported having been victimized by all four types of abuse (both physical and sexual abuse in childhood and adulthood) only 5% of the sample did not report any abuse.<sup>7</sup>

Despite these staggering figures showing the correlation between victimization and incarceration among women, it is not uncommon for survivors with criminal records to receive fewer services (and worse treatment) than other survivors who don't have criminal records.<sup>8</sup> For example, I was told by multiple pro bono coordinators at large law firms that they did not want to devote their firm's resources to representing petitioners in protection order cases when the petitioner was formerly incarcerated. One coordinator specifically said that her firm was not interested in representing women who were not "obvious" victims. Within this group of survivors with criminal histories, women whose charges or convictions are direct consequences of their abuse may be more likely to be treated as "real victims" by some services providers. Examples of this kind of direct relationship between abuse histories and criminal charges include women arrested due to being forced or coerced by an abuser to commit crime whose involvement in the criminal legal system is not directly related to abuse have similarly endured violence in the past and may face violence-based challenges to successful reentry.

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<sup>4</sup> The discrepancies in the rates of past abuse reported are most likely due to different research methodologies. Not surprisingly, the more in-depth the study and the more in tune the researchers are in how to ask about different forms of abuse, the higher the numbers then to be. There is good reason to believe, based on the understanding of the different methods, that the more in-depth studies have more accurate results.

<sup>5</sup> National Clearinghouse for the Defense Of Battered Women, *Abuse History Among Incarcerated Women* (2011) [hereinafter NCDBW]. Available at: [http://www.ncdsv.org/images/NCDBW\\_AbuseHistoryAmongIncarceratedWomen\\_updated\\_5-20-2011.pdf](http://www.ncdsv.org/images/NCDBW_AbuseHistoryAmongIncarceratedWomen_updated_5-20-2011.pdf)

<sup>6</sup> NCDBW, p. 2.

<sup>7</sup> NCDBW, p. 2.

<sup>8</sup> See, e.g., Jamie Schram & Dan Mangan, "NYPD Cops Ordered To Run Criminal Checks On Domestic-Abuse Victims," *New York Post*, (March 15, 2013).

Many women struggle with pre-incarceration abuse and trauma regardless of whether that abuse is directly linked to their arrest.<sup>9</sup> Further, the experience of incarceration can affect all women, regardless of the existence or nature of previous trauma. While incarcerated, women may experience physical, sexual, and/or emotional abuse at the hands of correctional staff. Independent from the possibility of abuse committed by staff, by virtue of incarceration, all prisoners face continuous and intentional deprivation always of liberty and, often, of meaningful medical, psychological, educational, and spiritual services. In the District of Columbia, for example, individuals serving felony sentences (including parole or supervised release violation sentences) are incarcerated in Bureau of Prisons facilities across the country due to D.C.'s lack of its own prison. These incarcerated individuals therefore have extreme difficulty obtaining family visits, individualized programming, and D.C.-specific reentry planning services. Depending on a person's background and length of detention, these experiences while incarcerated can aggravate or trigger previously-existing trauma and cause new psychological harm. After incarceration, new and old trauma alike risks being exacerbated by the stressors of reentry.<sup>10</sup>

## **Community Supervision Perpetuates Violence Against Returning Female Citizens**

The length of the reentry process is undefined because the direct and collateral consequences of arrests and convictions can affect citizens throughout the span of their lives making overcoming these obstacles a lifelong challenge for many. While criminal records can affect every aspect of an individual's life – employment, housing, political enfranchisement, family, health, community standing, to name a few – this Monograph focuses primarily on one primary structure of the reentry process itself, that being community supervision. Community supervision typically consists of parole, supervised release (a more recent variation of federal parole in which an individual is sentenced to a specific amount of incarceration rather than a range), probation, and pre-trial supervision. In D.C., time in a halfway house is usually considered incarceration rather than community supervision (but you should check what it is considered in your jurisdiction). Depending on the type of community supervision and the underlying conviction, supervision can last anywhere from a few months to a lifetime. It should also be noted that a defendant can be sentenced to community supervision without any accompanying incarceration or it can follow a lengthy sentence, including sentences for previous violations of community supervision.<sup>11</sup>

Community supervision regulations differ by jurisdiction. This Monograph references and relies on the process in place in the District of Columbia. Although I believe the examples provided here are

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<sup>9</sup> The Substance Abuse and Mental Health Services Administration defines trauma as "Individual trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or threatening and that has lasting adverse effects on the individual's functioning and physical, social, emotional, or spiritual well-being," available at <http://www.samhsa.gov/traumajustice/traumadefinition/definition.aspx>

<sup>10</sup> For a discussion of the trauma of incarceration and its relationship with the reentry process, see Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment* (2001) available at <http://aspe.hhs.gov/hsp/prison2home02/haney.htm>

<sup>11</sup> For basic information on community release, see the Bureau of Justice's Bureau of Justice Statistics, *Probation and Parole in the United States*, 2011 (2011) available at <http://www.bjs.gov/content/pub/pdf/ppus11.pdf>

generalizable, they are not necessarily directly applicable in every jurisdiction. Individuals working with returning citizens in any capacity should always familiarize themselves with the rules and practices surrounding their jurisdiction's community supervision. The brief discussion below provides an overview on the community supervision and violation process in D.C..

For an individual convicted of a crime in the District to be released from a prison, jail, or halfway house on community supervision, she must first provide a stable home address and have it approved by the supervising agency, here the District's Court Services and Offender Supervision Agency ("CSOSA"). Because many returning female citizens were either homeless prior to incarceration or living in unstable homes,<sup>12</sup> they will often provide addresses to previously volatile homes in order to have their release plans pre-approved. It is difficult to have homeless shelters pre-approved as a home for returning women in D.C. because many shelters cannot guarantee beds to an incarcerated person in advance – if a returning female citizen cannot get in line at a homeless shelter early enough in the day to obtain a space upon her release, she will not be able to stay there. It is also challenging to have domestic violence-specific housing pre-approved because many of these programs' intake processes require an in-person interview with the woman at the shelter in order to be approved. Facilitating this process is difficult for all reentering citizens, but it is nearly impossible for clients in federal prisons across the country. In D.C. this means many prisoners serving felony sentences and parole or supervised release violation sentences as well as federal sentences cannot access these options. Further, many anti-domestic violence shelter programs require that the violence is recent and the danger is imminent in order for someone to be eligible for a shelter bed. For many reentering women, this time period has elapsed during their incarceration.

Upon release, returning citizens in D.C. sign a boilerplate release certificate listing numerous general and specific requirements that they must comply with while in the community.<sup>13</sup> For all returning citizens, these requirements are extremely onerous – they not only limit returning citizen's behavior and location but also require flexible schedules and accessibility to transportation. For returning female citizens who enter (or end up in) abusive homes, these conditions of release can and do endanger their safety (by making it both harder for victims to leave and by exposing them to reentry-specific forms of abuse) and their liberty (if they choose to prioritize safety over compliance with their conditions of release).

If a D.C. woman wants to return or be transferred to a jurisdiction outside of the District, she must typically return to D.C. first and have her community supervision officer ("CSO") submit an application to transfer to the desired jurisdiction. In practice, the requested jurisdiction looks for a record demonstrating substantial compliance before accepting the transfer through a process called the Interstate Compact. For women who are newly returned, who are out of compliance (even if due to abuse), or who have a record of non-compliance, it is unlikely that they will be able to transfer their

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<sup>12</sup> See, e.g., CHI. COALITION FOR THE HOMELESS, UNLOCKING OPTIONS FOR WOMEN: A SURVEY OF WOMEN IN COOK COUNTY JAIL 1, 7 (2002), (finding that a majority of women detained in Cook County jail had been homeless prior to their arrest.

<sup>13</sup> This certificate is provided in the regulations for the U.S. Parole Commission, found at 28 CFR 2.203, <http://federal.eregulations.us/cfr/section/title28/chapter/part2/sect2.203?selectdate=11/1/2011>

supervision quickly, if at all. Until a returning female citizen's supervision has been accepted by another jurisdiction, she must remain compliant in the District.

In the District Of Columbia, when a woman on community supervision violates the terms of her release, she risks having her supervision officer submit a violation report to her sentencing judge (if she is on probation) or the U.S. Parole Commission (if she is on supervised release or parole). While her sentencing judge can decide to issue an order requiring her to come back to court on a certain date, the U.S. Parole Commission typically issues a violation warrant and instructs the U.S. Marshals to pick the alleged violator up and detain her at the women's jail pending a hearing.<sup>14</sup> Depending on the nature of her violation, her first hearing in front of the Parole Commission could be anywhere from days to months after she arrives back at the jail. Often women who have been arrested on a new criminal charge while on community supervision do not go in front of the Parole Commission until after their new criminal charge has been resolved. Even if their criminal judge hearing the new criminal case releases them on personal recognizance, the Parole Commission can and does hold them at the jail until their violation allegations have also been resolved. Even if the charges are dropped or the survivor is acquitted of the new charge, she typically remains at the jail awaiting her revocation hearing. At that hearing, she may still be found to have violated her community supervision and receive a new sentence (or "hit") based on technical violations (failure to fulfill condition(s) of community supervision) or based on a finding that she committed the "crime" for which she was acquitted of in criminal court.<sup>15</sup> In D.C., the length of time she can be re-sentenced to is based on a calculation involving the original offense for which she received community supervision, the severity of the new allegations, and the woman's history of interactions with the criminal system.<sup>16</sup>

Because the violation process gives a great deal of discretion to a returning citizen's supervision officer, its implementation can feel and be extremely arbitrary. Also, many people do not know when an alleged violation report has been submitted and may stop reporting to their mandatory meetings out of fear that they will be taken into custody ("stepped back") there. For example, it is unclear how many times a returning citizen can have a urine sample come back positive for drugs, miss a scheduled meeting, or commit any other technical violation before her supervision officer takes action. What actually occurs can differ greatly based on who an individual's supervision officer is and how that

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<sup>14</sup> If you do not live in D.C., you probably will be primarily working with (or already work with) women reentering from jail or from state prison and will not be dealing with the U.S. Parole Commission or U.S. Marshals (unless, perhaps, if you are working with a woman convicted of a federal crime). Parole boards and corrections departments establish regulations and policies for disposition of parole violators, guided by state statutes so it is important to learn the process and people involved in parole and probation revocation in your state's systems. See, e.g., National Conference of State Legislators, *Probation and Parole Violations: State Responses* (2008) available at <http://www.ncsl.org/print/cj/violationsreport.pdf>

<sup>15</sup> In the revocation context, the burden of proof to find a violation has occurred is a "preponderance" standard (or a lower standard than used in criminal court). Individuals who appear in front of the Parole Commission can be violated (sent back to jail or prison) for behavior which would not meet the "beyond a reasonable doubt standard" used in criminal court.

<sup>16</sup> Information on this complicated equation can be found throughout the Code of Federal Regulations applying to supervision of District prisoners, parolees, and supervised releasees, found at 28 C.F.R. §§ 2.70—2.220.

supervision officer perceives that individual's personal circumstances and compliance. This ongoing unpredictability causes many returning citizens a great deal of anxiety. When a returning woman is facing similar unpredictability at home by an abusive partner who also has great power over her, it often makes it much more difficult for her to comply with the conditions of her release.

## **Interactions between Community Supervision and Domestic Violence**

A close reading of some of Washington, D.C.'s general conditions of release demonstrate how the inflexibility of the requirements make it difficult for women to both comply with the conditions *and* to respond to the violence and control they are experiencing at home, often forcing women to decide whether to remain in an unsafe environment or risk leaving and having their supervision violated and going back to jail or prison.

What follows are a few examples of some of the conditions of release and how they may create additional barriers or danger for survivors.

### ***You must not leave the Washington, D.C. metropolitan area without the written permission of the officer supervising you.***

In an emergency, a returning female citizen cannot flee violence without prior approval. Even with approval to temporarily leave Washington, D.C. or live outside of D.C., she must continue to report to her community supervision officer ("CSO") and drug test in D.C. until the lengthy process of having supervision transferred to another jurisdiction is completed successfully, which is not guaranteed. Getting supervision transferred is very difficult to do without a demonstrated record of compliance, so if the emergency occurs soon after her release she may not be able to get the transfer. Additionally, if she does get temporary approval to leave D.C., having to report in D.C. will be problematic for most survivors, who may not feel comfortable returning to the District or may not have the resources to commute.

### ***You must meet with the officer supervising at such times and in such a manner as that officer directs.***

If the survivor does decide to leave the registered address to escape abuse and moves to an unapproved address somewhere from which she cannot get to her supervision officer's office, she is out of compliance. If her abuser lives nearby or is providing transportation to the survivor's CSO's office, it will be harder for the survivor to leave her abuser even if that is what she wants to do.

### ***You must permit the officer supervising you to visit your place of residence.***

This requirement can aggravate violence against the survivor if her abuser does not want a CSO 'snooping' during scheduled or pop-up visits—this is especially true for abusers who may be engaging in illegal activities in their homes. Even for a woman who manages to leave her abuser

and finds a new place to live, if she cannot get approval for the new address, she must still have access to and return to her abuser's approved home to complete home visits with her CSO and collect supervision-related mail.

***You must permit the officer supervising you to confiscate any material that officer believes may be contraband and that is in plain view in your possession, including in your residence.***

This condition can again exacerbate violence if a CSO is confiscating the abuser's possessions. Further, if the survivor is forced or feels obligated to replace any confiscated items, she may resort to illegal behavior to obtain the items or resources necessary to do so.

***You must submit to a drug or alcohol test whenever ordered to do so.***

The survivor may rely on her abuser for transportation to her testing location, where she must initially go twice a week until she has provided several weeks of consistently negative tests, at which point the amount of tests she takes per week can be reduced. Again, if she is considering leaving her abusive partner, she must relocate to an area where she will still be able to test or she risks being violated. While some abusers support (or insist upon) a survivor's sobriety, others may expose her to drugs and alcohol or demand that she use or sell them. Finally, survivors who self-medicate with drugs or alcohol in response to trauma risk being violated for positive drug tests even when their drug or alcohol usage is directly related to domestic violence.

***You must notify the officer supervising you within two days of (A) an arrest or questioning by a law-enforcement officer, (B) a change in your residence, or (C) a change in your employment.***

This requirement, considering a survivor's previous experience with the police, can make a returning female citizen hesitant to call police because she does not want to be seen as causing trouble by either the police or her CSO, and she cannot risk being arrested along with (or instead of) her abuser. Because this condition only gives her two days to leave and establish new address after leaving, she may not be able to obtain a permanent residence that her CSO will approve, in which case she may end up returning to her abuser, who often is more angry (because she left) and may become increasingly controlling and otherwise abusive. Regarding employment, a survivor may not want to tell her CSO that she lost or quit her job due to abuse. Without knowing that an abuser, for example, called a survivor's workplace incessantly or followed her to work every day, a CSO may interpret a string of brief employment as the survivor being chronically irresponsible or unproductive, rather than in danger.

***You must not violate any law and must not associate with someone else who is violating the law.***

This condition can limit a survivor's possible living situations if she believes family members or friends may engage in illegal behavior including drug use or weapons possession. She is also aware of the fact that a mere arrest caused by being at the wrong place or with the wrong people

at the wrong time will probably result in a violation report being submitted – even if the arrest does not lead to any charges against her or she is acquitted. .

***You must not drink alcohol to excess and must not illegally use or possess a controlled substance. You must not frequent a place where you know a controlled substance is illegally used or distributed.***

This condition can again limit places where the survivor can stay if she chooses to leave her abuser. This is especially true if she worries that returning to certain neighborhoods may trigger her own relapse or put her in contact with individuals using drugs. It should be noted that a survivor’s choice to remain clean is distinct from the requirement that she do so, but both can place the same pressures on her to stay out of certain areas or away from certain people. With her options thus limited, a survivor may feel compelled to return to and stay with her abuser.

***You must not associate with a person who has a criminal record without permission from the officer supervising you.***

In Washington, D.C., where there can be over 1100 adult arrests in a week,<sup>17</sup> it is difficult, especially in low-income areas where police presence is high, to even discern in advance who may have a criminal record. However, a CSO will have access to this information when approving (or disapproving) a home address. This provision can easily prohibit association with family and friends, and will preclude many of their homes from being options, even if they are planning to take in the survivor upon her release or when she leaves her abuser.

In addition to these boilerplate requirements, a judge or the U.S. Parole Commission may also impose specific requirements unique to that individual. These specific requirements often pose the same difficulties as their general counterparts. For example, a stay-away order from a specific person, address, or city block can prohibit a returning citizen from living with specific individuals who are willing to take her in. Assigned mental health and/or addiction treatment require that the returning citizen attend even more meetings to which she must arrange her own transportation. Again, if her abuser is providing transportation to the meetings, funding for public transportation, or a place to live from which she can get to all of her required appointments, her options for relocation are further limited.

Even though the conditions listed above (among others) are required conditions of release, some supervision officers take certain provisions more seriously than others. As a result, someone on community supervision (or “on papers” as it is often called in the community) can never be sure when her supervision officer is going to use their discretion and decide “enough is enough” and submit violation paperwork. For example, many supervision officers in D.C. will sanction an

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<sup>17</sup> JUSTICE POLICE INSTITUTE, D.C. CRIME AND ARREST STATISTICS: KEY FACTS AT2 (2009) (reporting that, during a one-week period in August, there were over 1250 arrests of adults and minors combined.).

individual with multiple positive drug tests but will not violate her, yet she will be violated when she does not test at all. Similarly, failure to report to a supervision officer is taken very seriously, especially when someone has missed enough meetings to be deemed a loss of contact. Yet, there is often no definitive predictor of when violations will actually result in a violation report being submitted. A new arrest, however, typically guarantees that the supervision officer will initiate the violation process – and will, at that point, include in her report every instance in which the returning citizen has not complied with their supervision.

Unfortunately, survivors often experience similarly arbitrary (and often similarly punitive) decision-making by their batterers at home. Survivors' familiarity with this level of problematic unpredictability does not make them better equipped to comply with their supervision officer's demands. Rather, capricious and often contradictory commands coming from both inside and outside their homes can aggravate their trauma and create an extremely chaotic and oppressive environment.

### **Reentry-Specific Forms of Abuse**

As described above, the very structure of community supervision can compel an individual to remain in an unsafe home by stripping her of other viable options; it can also exacerbate violence against her. Not only are women coerced by the requirements of community supervision to return to and stay in volatile environments, the very fact that they are even on community supervision exposes them to a new layer of abuse. We saw above how some of the general conditions of community supervision can exacerbate abuse – especially those in which abusers feel their own behaviors or home come under outside scrutiny. It is also true that abusers often use the very process of reentry and community supervision against a returning female citizen.

What follows are real-life examples of returning female citizens being abused by someone with whom they live – while this is typically an intimate partner or spouse, it can also include other family members, friends or acquaintances, or roommates. These examples typically include two general types of abuse:

- 1) where the abuser uses the returning citizen's status on community supervision (and vulnerability to reincarceration) to manipulate the survivor, or
- 2) where the abuser intentionally jeopardizes the survivor's ability to comply with her supervision to exert control over her.

Examples of manipulation include:

- A husband falsely telling a survivor's supervision officer that she does not reside with him because he did not want her to continue living with him;
- A roommate threatening to tell a survivor's CSO that she is using drugs unless she has sex with him;

- A boyfriend pretending to call the police every time the survivor refuses to meet his demands;
- A relative threatening to have a survivor locked up again if she did not allow the relative to continue using the survivor's public benefits.

Examples of abusers using a survivor's community supervision to exert their dominance include:

- A boyfriend blacking a survivor's eyes so she was too embarrassed to report to her CSO;
- A boyfriend buying drugs for a survivor specifically so she would not leave the apartment to drug test or report;
- A boyfriend frequently telling a survivor he called her supervision officer in order to scare her;
- A husband sitting outside of a survivor's workplace and calling her repeatedly until she lost her job and became financially independent on him;
- A husband refusing a survivor access to his car when it was time for her to report;
- A roommate following a survivor to her meetings with her CSO to make sure she didn't mention the abuse;
- A girlfriend locking a survivor in her apartment and refusing to let her out to attend required meetings;
- A co-parent threatening to get custody of the kids when the survivor gets locked up again.

In these situations, threats by the abusive partner to call the police or CSO are terrifying to survivors even if they have not been out of compliance because they have so much to lose. For survivors who have been away from their children, threats to take away custody or terminate parental rights can be equally devastating – as they can for women who have never been incarcerated. Although both sets of categories of abuse describe above exploit the survivor's status as a returning female citizen, they are also manifestations of the abuser exerting power and control over the survivor – textbook 'domestic violence,' albeit in a context not always acknowledged or understood by some advocates. The abuser is often an intimate partner but this form of abuse can be – and unfortunately often is-- perpetrated by anyone who is aware of the survivor's situation. Because returning female citizens (including those not on community supervision) face a plethora of challenges to reintegrating back into the community, they may be dependent on individuals who intentionally jeopardize their ability to remain in the community. This reality is especially true for women who must comply with community supervision but is also true for women whose criminal history interferes with their ability to get employment or stable housing, and/or women struggling with physical or mental health challenges or addiction. Advocates who understand these additional risks can be critical resources to returning citizens by helping them strategize about how to best increase safety and minimize risks.

## **The Reentry Process Undermines Traditional Responses to Domestic Violence**

Women on community supervision are especially vulnerable to abuse and manipulation because, in addition to the many challenges all survivors face when deciding how to respond to abuse, their array of choices are inherently diminished by the terms of their supervision. We must not forget, however, that the many obstacles posed by the reentry process are not the only difficulties returning female citizens face. The challenges of the reentry process exist on top of – and often augment – the systemic barriers created by greater forms of systemic oppression, such as poverty. While not all formerly incarcerated women come from or return to underserved communities, the many who do end up facing a surplus of rules and requirements while usually having little or no access to community resources, including appropriate social and legal services.<sup>18</sup> The reality of a returning female citizen experiencing abuse is, in large part, defined by the paucity of opportunities for all reentering citizens and confined by community supervision’s abundance of limitations. This backdrop and cumulative constraints often render traditional responses and remedies to domestic violence inapposite – and sometimes detrimental -- mechanisms for achieving returning female citizen’s goals.

Poverty, however, is not the only systemic impediment to successful reentry. It is impossible to ignore racial biases when discussing the lack of services in low-income communities. According to law professor Jane Aiken, “the cause of many poor people’s situation is not solely class but also the racial pecking order and race-related indifference, which plays a role in our unwillingness to do what is necessary to improve the lot of the poor.”<sup>19</sup> It is important to recognize that the inaccurate assumption that we live in a post-racial society perpetuate institutional inequality by wrongly convincing us that we do not need to actively oppose the structures and processes infected by white privilege. We cannot, for example, ignore or overlook the racial disparities in arrests, incarceration, and sentencing because it is so central to our understanding of the realities of such a large number of returning citizens. Nor can we ignore the ongoing devastating impact of historical and structural racism on communities of color across this nation when working with reentering citizens. As service providers, it is not enough to simply acknowledge the ways in which race, poverty, and reentry intersect. Rather, we must work hard to assist reentering women impacted by racism and poverty while also incorporating their voices, experiences, and expertise into our work and the larger anti-domestic violence and reentry movements.

Against this context, we now turn our focus to what is sometimes an uneasy relationship between abuse faced by returning female citizens and traditional remedies to domestic violence.

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<sup>18</sup> See, e.g., Sasha Abramsky, *Toxic Prisons: New Research Shows Precisely How the Prison to Poverty Cycle Does Its Damage*, Slate (October 8, 2010) available at

[http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2010/10/toxic\\_persons.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2010/10/toxic_persons.html)

<sup>19</sup> Jane Aiken, *Striving to Teach “Justice, Fairness, and Morality,”* 4 CLINICAL L. REV. 1 at FN 71 (1997).

*Why doesn't she just leave?* This is often the first question service providers ask upon learning about a survivor's volatile home environment. As we have seen, returning female citizens face an abundance of challenges created by the structure of their community supervision – many of which make relocating an arduous process in terms of both finding a safe location and having that new residence approved by a supervision officer in a timely manner. Before even reaching the barriers to relocation imposed by supervision housing approval, a returning female citizen experiences the same challenges as all survivors – deciding if she wants to leave and whether leaving is in her (and her family's) best interest and, if so, determining how to do so safely.

Even at this initial threshold (when a woman is questioning whether, not where, to go), community supervision affects a survivor's decision. If the abusive individual is facilitating her compliance with supervision, she may not be willing to turn down this stability and risk being sent back to jail or prison. As is true for other survivors, her financial dependence extends beyond housing and sustenance for herself and her children (if she has them and they are with her), to include transportation to and from her many required appointments. For women on community supervision, these obligations might include in a given week, multiple meetings with her supervision officer, multiple drug tests, addiction and mental health counseling, community service, court dates, mentorship meetings, benefits appointments, and job interviews. Other survivors who are not on community supervision may also have lots of appointments that they are encouraged to attend (especially for those survivors receiving public benefits or involved with the child welfare system). Like many survivors, women under supervision may also be unwilling to disrupt her children's lives and must consider the possibility of being separated from them again if she cannot comply with her supervision.

If a returning woman citizen does decide to leave her abusive partner (or another person abusing her), she will find her options narrowed by her conditions of release. As described in greater detail above, stay-away orders might preclude entire city blocks where family and friends willing to take her in live, or criminal records of friends and family may negate their offers. The location of possible new residences coupled with lack of financial resources might make it impossible for her to attend her required appointments, or her criminal record might prevent her from being eligible to enter a housing program.<sup>20</sup> If she does choose to relocate despite these obstacles, she risks having her supervision violated or experiencing new abuse and manipulation. An arrest may also result in the survivor being cut off from the financial support on which she relies.

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<sup>20</sup>The reentry process can pose several obstacles to being eligible for housing programs including transitional housing programs, domestic violence housing programs, and long-term addiction or mental health housing. For example, when a woman first returns to the community, she has no way to document her clean time (not using illegal substances) and many programs require proof showing an applicant has been clean for a specific period of time. A woman may lack identification or proof of residence, which can also render her ineligible.

*Why doesn't she press charges?* Like leaving, the decision to call the police and report the abuser is extremely complicated for most survivors, especially those who are financially dependent on their abusers. Often if the abuser is arrested, the survivor is essentially evicted from the abuser's home (assuming she is not on the lease). If the abuser is arrested in government-subsidized housing, whether or not the survivor is on the lease, they may be in jeopardy of losing the apartment. This is especially true if the abuser is arrested for a crime of violence or drugs or if the police find contraband during the arrest.

For returning female citizens, these concerns are compounded by both their history with law enforcement and their concerns about being arrested themselves. Some survivors – including those who have not been previously arrested — have been treated unfairly by police in the past and believe they will receive the same treatment if they call the police. For example, some survivors have called the police on their abusers and have had the police simply give their abusers a warning to cool off. Or they are sometimes told that if they call the police one more time, both parties would be arrested. This threat is not uncommon when the same officers are called to the same residence multiple times and is frequently carried out against same-sex parties. Further, if the survivor has engaged in any illegal behavior (drug use, prostitution, etc.) prior to a violent episode, she may not want to call the police for fear of the information about illegal behavior getting back to her supervision officer. Even if she has been complying with her community supervision, she may worry that her abuser will retaliate against her for calling the police by telling them or her CSO that she is out of compliance.

*Why doesn't she get a protection order?* In most jurisdictions, survivors can choose to pursue civil remedies independent of the criminal legal system. That is, she does not need to involve the police in order to seek a protection order against her abuser.

If granted, these orders can typically provide remedies to the survivor that she deems necessary, and a survivor can tailor her requested remedies to best address her own individual situation. For example, she can request that the abuser not harass, assault, threaten, or stalk her; that the abuser not come within 100 feet of any combination of her, her children, her workplace, her home, her vehicle, or her children's school; that the abuser not contact her at all or only contact her through certain methods about certain topics; that she be granted temporary custody and/or child support; that she be compensated for property stolen, destroyed, or damaged by the abuser, for medical costs related to the violence, and for other expenses incurred because of the violence; that the abuser be ordered to vacate her or their residence; and/or that the abuser enter into domestic violence or family violence counseling, drug and alcohol treatment, and/or parenting classes.<sup>21</sup>

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<sup>21</sup> These remedies are specifically available to all survivors through the District's civil protection order process.

With protection orders in Washington, D.C., a judge may also grant any other remedies requested and deemed appropriate. Because a survivor can pick and choose among the remedies, she can design an order as restrictive or broad as she sees fit -- including the ability to remain living with the respondent (the abuser) after the judge enters an order. Survivors can also request modifications to change the provisions if they are not effective. They also can report violations to the police and, in some jurisdictions, directly to the courts. Judges' perceptions of the facts (and the parties) can also determine what remedies are included in a protection order. Although a survivor can identify the remedies she believes are necessary for herself and her family, a judicial officer has the final say. Here again, a survivor risks having her agency undercut by a state actor with only a cursory understanding of her needs.<sup>22</sup>

Although civil protection orders were designed specifically for survivors to be able to flexibly and proactively address their own situations, a returning female citizen may not feel comfortable initiating or following through with the process. Like many survivors, if she is financially dependent on her abuser, then the very act of asserting herself by filing against him may result in her being kicked out of her home, cut off financially, or retaliated against. Her interactions with the criminal legal system may also affect her interest in this civil process. In the District, if a survivor has an open arrest warrant, she risks being arrested at the courthouse when she is trying to file a petition for a protection order. Some reentering survivors are aware (or suspect) that there are warrants out for them and take great pains to avoid going anywhere where they might be picked up. Other survivors may have no idea that a warrant has been issued against them. For example, I represented a client who tried to file for a protection order but was taken into custody for failing to appear at her last criminal court date. I worked with another client who was unaware that her supervision officer had filed a violation report against her and was picked up on a violation warrant and held in jail until she saw the U.S. Parole Commission several months later. In the latter example, the client was immediately detained when she went to file for a protection order and not released until after she served over eight months in prison – her family had no idea what had happened to her and we had to scramble to find a new home for her daughter so she was not put into foster care. As service providers, we must inform clients of these risks and be able to help them determine if they are in danger of being detained if they attempt to assert their rights.

Similarly, a survivor may know that she has violated the terms of her release by associating with her abuser, being in a certain location, or engaging in illegal activities. In Washington, D.C., a survivor seeking a protection order must swear under oath that what she alleges in her petition is true. If she is swearing to behavior that violates the terms of her release, she risks being violated or having her admissions used against her. This possibility is especially true if, as is possible in D.C., a woman

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<sup>22</sup> In Washington, D.C., judges in the domestic violence unit of Superior Court are given both parties' criminal records at the commencement of the case. What effects this information may have on their interpretation of the case is open to speculation.

on probation's sentencing judge also hears her protection order case. Her supervision officer may also obtain a copy of her petition and see the potential violation activities there.

A survivor may also have open criminal or family law cases that would be affected by oral or written testimony in a civil protection order case. If she was arrested for an incident that she is basing her petition for a protection order on, her petition itself and any testimony in the civil case may be used to impeach her in the criminal case. In a situation like this, it is critical that her defense attorney helps her decide the most effective way to proceed. Before filing for a protection order, a survivor should be encouraged to discuss the abuse and potential remedies with her defense attorney so they can come up with a strategy that minimizes these risks and does not jeopardize her liberty. This remains true even if the open case against her is not directly related to an incident of abuse. If the survivor has open cases regarding her parental rights, custody, or eviction, any of her attorneys, civil or criminal, in these cases should also participate in the strategizing. These attorneys are best suited to advise the survivor of possible consequences and options.

A survivor's decision on whether and how to proceed may also be affected by the process itself. If she finds herself in front of a judge who has viewed her negatively before, she may fear another bad outcome, or she may suspect that the judge will not find her credible because of past behaviors. For clients who associate the courthouse with incarceration, fines, losing children, or being evicted, they may not be able to overcome their apprehension in returning to assert their own rights. Some survivors have gone through the process before and have been treated poorly because of their criminal record. Others have gone through the process and had the protection order violated and not enforced and, as a result, they believe court orders to be ineffective and/or unenforceable either systematically or personally. Some survivors have been incarcerated after defending themselves and/or fighting back against their abuser after the abuser repeatedly ignored the order against him, also making them question the efficacy of protection orders.

A survivor's misperception of what qualifies as domestic violence and what relationships are eligible for a protection order may lead her to believe that she cannot seek one. Some survivors do not think what they are going through qualifies as domestic violence because the relationship is not sexual, both parties are women, the parties do not consistently live together, the other person has only gotten violent a few times, the abuse only consists of threats without any physical violence, the survivor has fought back, or the survivor herself was arrested. Some survivors, including some young survivors, may also be so accustomed to certain levels of abuse that they may feel little hope about the possibility of changing their situation. All of these misperceptions can be addressed through community education and effective client counseling. Because the legal concept of domestic violence differs from many people's perceptions of domestic violence (i.e., in Washington, D.C. it does include violence between roommates but it often does not include purely emotional abuse), survivors can definitely benefit from being informed of their rights generally and having chances ask questions about their specific circumstances in order to determine if their relationship

is covered by civil protection orders in their jurisdiction and to explore options on how best to respond.

## Conclusion

Many, if not most, women with a criminal histories (be they minimal or extensive, non-violent or violent) are survivors of trauma, and can be re-victimized at any time. After experiencing abuse, they should be eligible for the services and benefits afforded to all survivors. A survivor's past (or future) arrests do not negate the fact that she has been abused and may be in need of services and support. Service providers should not allow even an extensive rap sheet get in the way of recognizing a returning female citizen's experiences of abuse and trauma. In fact, a history of incarceration is often, unfortunately, a reliable indicator of trauma (either pre- or during incarceration). For example, drug-related convictions can be evidence of self-medicating, solicitation may be a woman's only means of financial support or may be something she is coerced into doing; even convictions related to acts of violence s may be related to self-defense. Even when such behavior is not obviously related to the violence they have experienced, it is nonetheless often informed by experiences of trauma and abuse.

Only by understanding the enormous challenges returning female citizens face can we recognize how hard reentering women must work to determine and achieve their goals, be they domestic violence-related or otherwise. In order to successfully advocate with and for individual returning female citizens, service providers need to understand how community supervision shapes a returning citizens' ability (or seeming inability) to respond to abuse, as well as how traditional approaches to domestic violence can interfere with community supervision and vice versa. As service providers and advocates, we must recognize and respect the many competing obligations that all survivors — including returning female citizens — are forced to balance.

Many in the general public and some service providers believe that a survivor must place her physical safety above all other of her concerns. As a result, they tend to have a difficult time understanding why a survivor may choose not to leave her abuser, call the police, or obtain a protection order. As advocates and service providers, it is critical that we validate a survivor's choice to prioritize her liberty over her immediate physical safety; and we can only do this when we understand how and why she reached this decision. As we have seen, the traumatization of incarceration, coupled with family separation or beginning the reentry process anew, are legitimate factors affecting survivor's choices. Choosing to stay in a volatile home in order to avoid risking reincarceration or the added challenges of homelessness reflects a survivor's carefully considered options rather than what might be perceived as indifference or an unwillingness to "do what is good for her."

Similarly, we must respect a survivor's decision to risk her liberty in order to leave her abuser. While going back to jail may initially seem like the worst and/or most destructive outcome, it is the survivor who can best weigh her limited options and make the decision to leave or to stay. It's important to remember that one of our key roles of service providers is to provide clients with all the information necessary to make their own decisions and then to assist them in achieving their goals. If, for example, a survivor is aware that leaving her home and filing for a protection order will both render her unable to comply with her supervision and that she will be admitting to several violations in her protection order petition, she may decide that the jail time she might incur from violating her probation is far less risky than if she were to stay and end up using a weapon against her abuser.

Rather than being process-specific or outcome-driven, we can provide the most effective services to returning female citizens and survivors by being committed to a client-centered approach in which their goals are paramount. If we see ourselves as facilitators of our clients' choices, it follows that part of our role requires that we have a broader comprehension of the legal and social systems and structures that affect clients' decision-making. Inherent in this way of working is also the recognition that clients are drawing from a wealth of knowledge and information in choosing how to proceed. While a survivor appearing to do nothing to protect herself, dropping her court case, or refusing to press charges against her abuser may seem irrational and uninformed to an outsider, when we consider all of the forces and actors injecting competing concerns into her decision-making process, we are able to see her as an engaged, strategic, and rational agent.

We must also remember that domestic violence is something that survivors are able to reprioritize on a day by day (even hour by hour) basis. If they are in a safe place or the violence has subsided, they can focus on other obligations. This is not to say, however, that if a survivor does not choose to directly address the abuse, our work is done. Instead, we can focus our services and advocacy on those arenas that she believes will best enable her to achieve goals. If she does not want to leave, it's important to help her engage in safety planning. Like all survivors, a returning female citizen can benefit from actively planning emergency responses to escalating violence. Alongside traditional considerations, she must also take into consideration how her supervision might be affected by implementing her plan. Advocates can have ongoing conversations with survivors about opportunities for harm reduction.

Be creative in collaborating with people who can meet the needs of a returning female citizen. Emphasize your willingness to help a returning female citizen achieve her goals however she thinks is best. If your local anti-domestic violence program does not already take into account being on community supervision (or having an arrest record) in their safety planning process, continue to work with them in developing these safety strategies. If the program says "We don't work with perpetrators," urge them to adopt services that include all survivors of domestic violence, and not just some, and to consider changing their policy (if there is one). Strategies that may assist

survivors and returning citizens alike to gain independence include identifying training or employment opportunities , applying for benefits, finding housing options, discussing family law options including filing for divorce or custody, and making sure to give tailored referrals for outside assistance.

In order to best serve any client, it is critical that we acknowledge and understand the full range of challenges she is facing. We must respect her agency and ability to prioritize her critical needs for herself and her family. As service providers, our actions can positively or negatively affect a survivor's return to the community – and her ability to remain in the community – so we need do everything we can to be a positive force. We can only do this by understanding the complex choices returning citizens are sometimes forced to make, especially given how little support is available to them. The more people who understand how community supervision can – and does – revictimize survivors, the more people there will be to work together *with* returning female citizens as they reenter and remain in their communities. We hope this *Monograph* not only increases your understanding of the complex experiences of reentering women, but also enhances your compassion and desire to work effectively on their behalf.