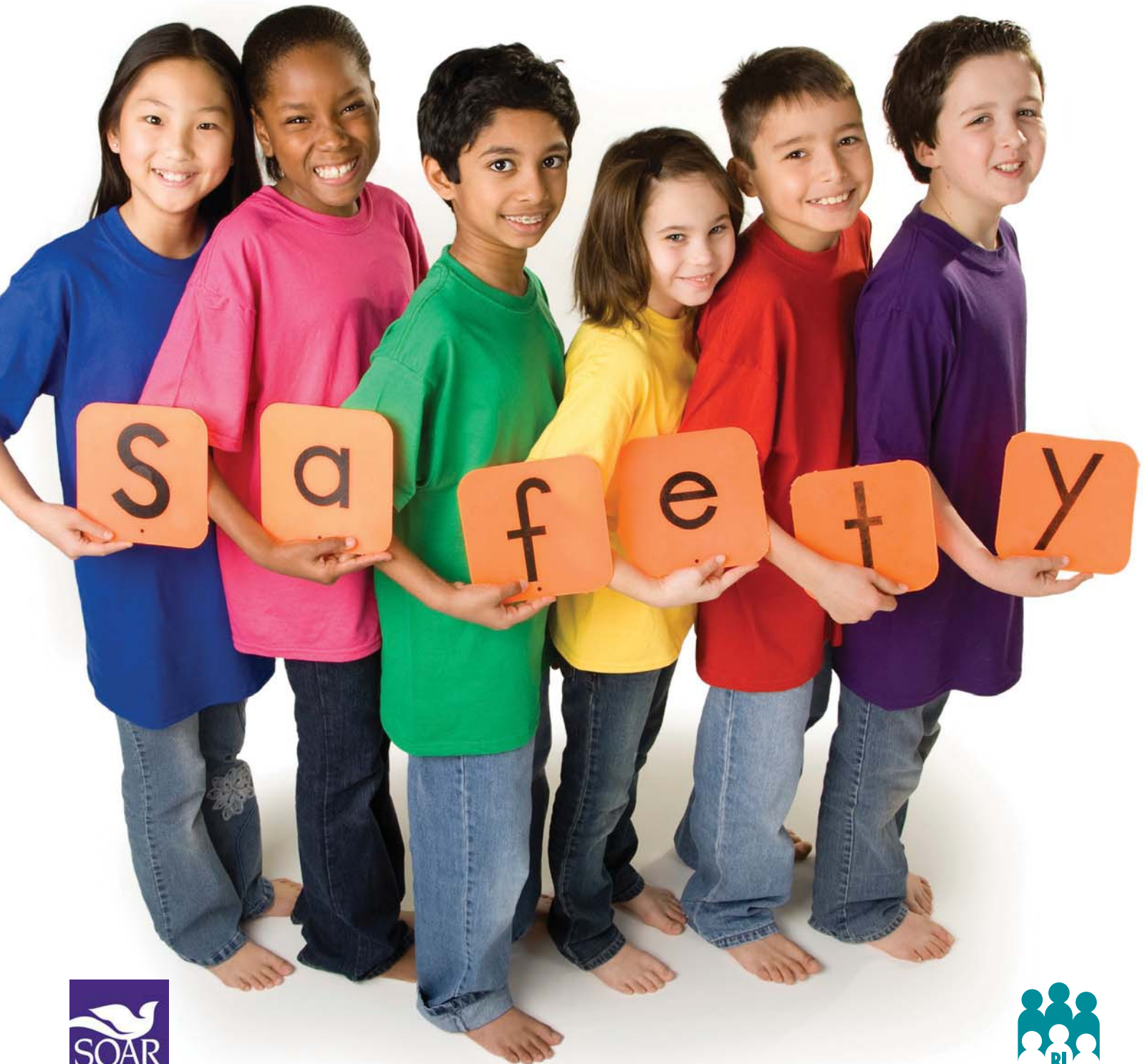


# SAFETY FOR CHILDREN

A report on the impact of Rhode Island's custody system on victims of domestic violence and their children.



SISTERS  
OVERCOMING  
ABUSIVE  
RELATIONSHIPS



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## ACKNOWLEDGMENTS

**Custody and Visitation Advisory Committee** Our special thanks to the members of the Advisory Committee for their guidance and dedication to this project.

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**Funders** This project was made possible with support from: The Women’s Fund of Rhode Island and The Presbyterian Committee on the Self-Development of People.

## OUR SPECIAL THANKS

We would like to thank the many agencies that collaborated with us on this project: the Blackstone Valley Advocacy Center, Center for Hispanic Policy and Advocacy, Children’s Friend and Service, Domestic Violence Resource Center of South County, Elizabeth Buffum Chace Center, Latino Leadership Institute, Rhode Island Legal Services, Roger Williams University School of Law, Rhode Island Family Court, Sojourner House, Women’s Center of Rhode Island and the Women’s Resource Center of Newport and Bristol Counties.

Our thanks and gratitude to the staff of the Rhode Island Coalition Against Domestic Violence for their help and support throughout this process, especially Deborah DeBare, Zulma Garcia, Lucy Rios, Chris Wilhite, Sheila French and Jessica Seitz. Additional thanks to pro bono designer CJ Emery, and the students who assisted with data gathering and research: Brooke Ashley, Kathryn Winters, Matthew Wirick, Jillian Taylor and many others.

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MARCH 2010

## PREFACE

For too many victims of domestic violence, a life free of abuse and injustice is not a reality even after they leave the abusive relationship. In their quest for freedom, they turn to the courts in search of safety and to community agencies for support. Many of them quickly learn that the tools the system makes available are insufficient to maintain their safety and their children's well-being. Too often victims endure lengthy and excruciating child custody and visitation cases. Throughout the process, they feel re-victimized and trapped in a system that is not always aware of the dynamics of power, control and abuse that characterize domestic violence cases. For many children, the consequences are increasingly devastating as the violence continues to be part of their lives. Many of the members of SOAR<sup>1</sup>, who are all survivors of domestic violence, have firsthand knowledge of the Family Court system. Their struggles inspired the Child Custody and Visitation Solutions Project.

The purpose of the Child Custody and Visitation Solutions Project was to examine the system through different perspectives, assess the needs of survivors and their children, and propose solutions that could provide safety for victims of domestic violence and their children. To gain a broad and diverse view of the system's strengths and gaps, SOAR reached out to judges, attorneys, survivors and advocates for help. Partners in this project included staff from the Rhode Island Family Court, Rhode Island Legal Services, Roger Williams University School of Law, Family Service of Rhode Island, the Blackstone Valley Advocacy Center, the Elizabeth Buffum Chace Center, the Domestic Violence Resource Center of South County, Sojourner House, the Women's Center of Rhode Island and the Women's Resource Center of Newport and Bristol Counties.

For the past two years, survivors and collaborators have been working together to examine the system from different perspectives. 101 survivors were surveyed about their personal experiences with the custody process. Focus groups consisting of survivors and interviews with judges, attorneys and mediators were also conducted. The gathered data allowed us to examine the barriers and gaps that are cited in this report. The success in creating collaborations will help to propel the proposed solutions. However, real success will come only when survivors and their children find safety and support. We hope this report will help shed light on this issue while creating awareness and gaining support from the community and local officials.

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<sup>1</sup> SOAR, Sisters Overcoming Abusive Relationships, is a task force of the Rhode Island Coalition Against Domestic Violence.

# INTRODUCTION

Improving the conditions of the child custody and visitation process for victims of domestic violence has been a goal for SOAR members since the group came together in 1989. Over the years, SOAR members participated in many initiatives to accomplish this goal. However, in 2007, it was evident that despite the many years that had passed, this goal was still relevant. It was clear to SOAR members that it was important to create solutions to the problems victims consistently encountered in the system. These solutions needed to address the problems experienced by victims and the work needed to be a collaborative effort. As a result, the Child Custody and Visitation Solutions (CCVS) Project was launched to assess the effect of the custody and visitation process on domestic violence victims and their children and to create solutions to improve the system.

The importance of a collaborative process and community leadership led to the creation of the Child Custody and Visitation Advisory Committee (CCVAC). The purpose of the committee was to foster collaboration among survivors, advocates, judges, attorneys and other members of the Family Court system. The role of the Advisory Committee was to guide the process and to facilitate the examination of the system's response to victims and their children. In addition, the Advisory Committee served as an expert panel to develop proposed solutions and recommendations.

In order to get the input from those directly affected by the process, the CCVS project collected data from different sources. The data contained in this report was gathered from May to October 2008, and was collected through different methods including a 66 question survey, four focus groups, five key informant interviews, case reviews and research. The target audience for the survey and focus groups were victims of domestic violence who were currently or had been previously involved in child custody and visitation cases in Rhode Island. The key informant interviews were conducted with members of the court and legal professionals. The case review consisted of an overview of 200 court cases with an in-depth review of ten.

After the data was collected, each member of the CCVAC received a package of data to review in order to identify the main issues and to brainstorm possible solutions. The Committee identified three main priorities: changes in child custody and visitation policy and legislation, an increase of advocacy and services and general education of professionals and victims. After identifying the priorities, the full Committee divided into three subcommittees to discuss and craft final recommendations. The full Advisory Committee approved the final recommendations in August 2009.

This report, prepared by SOAR, explains the process, the findings and the recommendations of the Child Custody and Visitation Solutions Project.

# METHODOLOGY

## THE PLANNING PROCESS

### The Formation of the Child Custody and Visitation Advisory Committee

The Child Custody and Visitation Advisory Committee (CCVAC) was established in 2007 with the following objectives:

- To create community ownership over the improvement of the custody and visitation process
- To assemble a group of experts to guide the process and to be a source of information
- To allow for collaboration between the different parties involved in the process: victims, attorneys, judges and advocates
- To guide the CCVS project

To form the Committee, SOAR reached out to experienced members of various professions involved in different aspects of the child custody and visitation process. To gain an understanding of the effect of domestic violence on children, the Committee included Child Advocates from the six domestic violence agencies in Rhode Island. The Child Advocates also brought their experience working with children during the child custody and visitation process. All six member agencies sent a representative to the Advisory Committee. The input of the Child Advocates was crucial because it highlighted the needs of children.

SOAR also invited the Rhode Island Family Court staff to participate including mediators, supervised visitation facilitators and other staff. The Committee was interested in gaining their insight into the system and an understanding of the issues these individuals encounter on a daily basis. The participation of the Family Court in this project was critical because it provided access to court case reviews and allowed for interviews with judges. In addition, during the analysis and creation of the recommendations, their knowledge of the system brought a unique perspective to the discussions that took place.

SOAR also invited attorneys to participate in the project to give a legal perspective. These individuals contributed legal knowledge and professional experience working in child custody and visitation cases.

SOAR elected three representatives to participate in the project. All three SOAR representatives were survivors who had gone through, or were currently going through, the process. The survivors highlighted the critical issues to steer the Committee. Their passion was apparent and helpful. The Rhode Island Coalition Against Domestic Violence also sent representatives to the project and provided the staff support.

The formation of the CCVAC was a success in and of itself. It created opportunities for collaboration between parties normally at opposite ends of the spectrum. The collaboration between survivors and different legal professionals allowed for the exchange of ideas and viewpoints. The commitment of the CCVAC members was evident by the amount of time they dedicated to the project. By the time the recommendations were created at the end of a two-year period, close to twenty meetings had been held. Most of the CCVAC members went out of their way to help the project, each contributing in different ways. Court staff helped gain access to judges and court records, attorneys helped in the legal research, a law professor provided students for research and advocates organized focus groups and collected surveys.

### ***Creation of the Data Gathering Tools***

In order to gain a full perspective of the system, the CCVAC determined that it was important to gather information from multiple sources. The Committee determined that the main focus of the data collection would be to identify the effects of the court process on victims and their children. Since the project was solution-oriented, each target audience was asked to provide possible solutions. After setting the main focus, the SOAR staff prepared the final questions and the Advisory Committee approved them. The data gathering tools used during this project were as follows:

### ***Victim Survey***

The questionnaire contained 66 questions divided into eight sections: 1) Qualifying Questions, 2) Personal Information, 3) Economic Information, 4) Legal Representation, 5) Custody and Visitation, 6) Judges, 7) The Court Process, 8) Additional Feedback. Most of the questions were multiple choice, with questions at the end where respondents could answer in essay form. Some of the multiple choice questions allowed respondents to select more than one answer. The survey's target population was domestic violence victims who had ever been involved in a child custody and visitation case in Rhode Island. The first three qualifying questions asked the respondents if they were survivors of domestic violence, if they had ever been involved in a child custody or visitation case in Rhode Island and if they had ever filled out the survey before. If the respondent answered "No" to the first two questions, or "Yes" to the third, they were screened out of the survey.

Most of the statistical and quantitative data was taken from the survey answers. All percentages in this report come from the survey data. Some data limitations include that the victims were self-identified and that some survey respondents left some questions unanswered.

The survey was distributed through different agencies. While they were distributed in paper form, there was also an option of completing an online version posted on the SOAR website and the Rhode Island Legal Services website. The most effective method of distribution proved to be through SOAR members who reached out to fellow survivors. From May to October 2008, a total of 101 surveys were collected.

### ***Focus Groups***

The project held four focus groups of survivors. The targeted audience for the focus groups was the same as for the survey and participants were screened by advocates or the SOAR Coordinator. The goal of the focus groups was to explore the different experiences the survivors had during the process. 18 survivors participated in the focus groups.

### ***Key Informant Interviews***

The key informant interviews consisted of interviews with one Family Court judge, one magistrate, one mediator and two family law attorneys. The interviews with the judge and the magistrate were conducted by law students from Roger Williams University School of Law. The other three interviews were conducted by the staff of SOAR. These interviews focused on identifying the strengths and gaps of the system and gaining an awareness of how domestic violence is understood by different professionals.

The limitation of the key informant interviews lies in the small sample size. Family Court has a total of 12 judges, six magistrates and two mediators. Because of this limitation, the information collected through the key informant interviews was qualitative data.

### ***Case Reviews***

The case reviews were conducted in October 2008 by one SOAR member, the SOAR Coordinator and one member of the Rhode Island Coalition Against Domestic Violence staff. The cases were randomly selected from divorce or miscellaneous actions filed in 2006 in the Providence Family Court. The reviewers selected cases from the year 2006 in an effort to find cases that had reached their final disposition, or where enough time had lapsed to detect any patterns of post final judgment filings.

There was an initial review of 204 randomly selected cases. In this initial stage, cases were reviewed to ascertain the following information: 1) the filing date of the complaint and date of the final disposition, 2) the number of minor children involved in the case, 3) the identity of the plaintiff and the defendant, 4) whether the parties were represented by counsel, or if the litigants were pro se, and 5) whether domestic violence was alleged in the case.

## METHODOLOGY (CONTINUED)

Of the 206 cases initially reviewed, 26 were determined to involve domestic violence. Of those, ten were randomly selected for an in-depth review to evaluate the potential impact of the proceedings on victims of domestic violence and their children. The ten cases were carefully reviewed with an emphasis on evaluating the potential impact on the following victim related issues: physical and emotional safety of the victim, financial stability of the victim and safety and well-being of the minor children.

The Providence Family Court clerk's office was extremely accommodating and permitted the reviewers unrestricted access to the files. However, the project was burdened with other limitations. Despite unlimited access to actual files, much of the information within the files was confidential and therefore concealed. Furthermore, the reviews were limited to the information filed with the Family Court clerk. There was no access to the court transcripts and therefore no way to account for the information from the actual hearings before the court. Other cases referenced an older case which was no longer located within the current files of the clerk and therefore inaccessible for review. Despite these limitations, the case review project ascertained valuable information.



# FINDINGS

## THE WELL-BEING OF CHILDREN

Despite the fact that for decades, factors such as “the best interest of the child” have been the pivotal element in deciding custody and visitation, children are still being negatively affected by the systemic gaps that exist. They continue to be in harm’s way and often become victims themselves. Frequently, children continue to witness abuse during visitation exchanges. Also, without the protection of the non-abusive parent, children may become prime targets of abuse. The research demonstrates that the failure to protect children does not lie in just one system, the problem is multi-dimensional.

Our research showed that the impact to children could be classified into two major areas:

- Children continue to experience violence and abuse
- Children’s lives are severely impacted

### **Children and Violence**

In an overwhelming majority of the cases reviewed, violence continued to be a part of children’s lives even as their victimized parent sought safety. 89% of the survey respondents stated that their children witnessed domestic violence before or during the custody and visitation process. National research shows that witnessing domestic violence puts children at higher risk of behavioral, social, emotional and cognitive problems that could negatively affect their future.<sup>2</sup> However, what is more alarming is the high incidence of abuse suffered by the children. According to the Rhode Island survey respondents: 71% of the children were abused by the abusive parent and many of these children suffered more than one type of abuse (*Figure 1*). Moreover, 53% of this abuse happened during visitation. Not surprisingly, 75% of the children expressed fear of the abusive parent. Despite this, 58% of the cases of survey participants were decided in favor of joint custody.

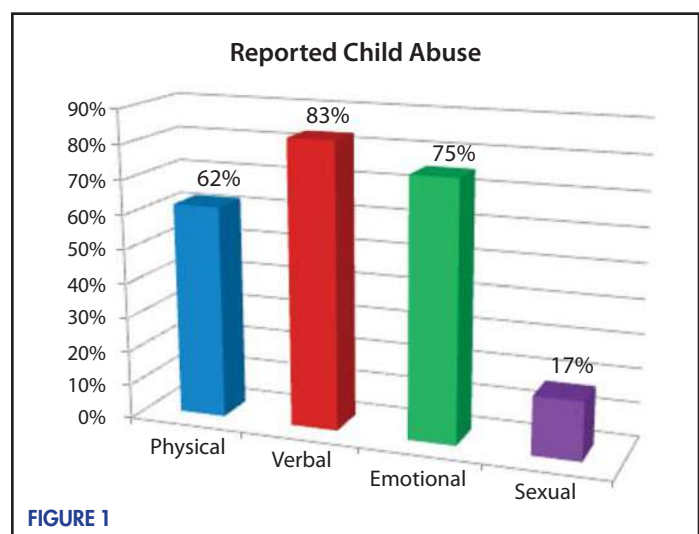


FIGURE 1

<sup>2</sup>Carlson, B. E. (2000). "Children exposed to intimate partner violence: Research findings and implications for intervention" *Trauma, Violence, and Abuse*, 1.4 (2000): 321 to 340. Web, November 2009.  
Edleson, J. L. "The overlap between child maltreatment and woman battering." *Violence Against Women* 5.2 (1999): 134 to 154.

Many victims considered supervised visitation as one way to achieve safety for their children. However, most agreed that the system needs improvement. In focus groups, many survivors expressed their frustration at not being able to obtain supervised visitation. *"I want my child to have contact with both parents, I just want it to be safe."*<sup>3</sup> Supervised visitations was requested in 51% of the survey respondents' cases. According to the survey respondents, the courts granted 81% of the petitions for supervised visitation. Most of the victims used the Family Court Supervised Visitation Program (Figure 2). The lack of information and distrust of this service, evident in the focus groups, may be the reason for the low percentage

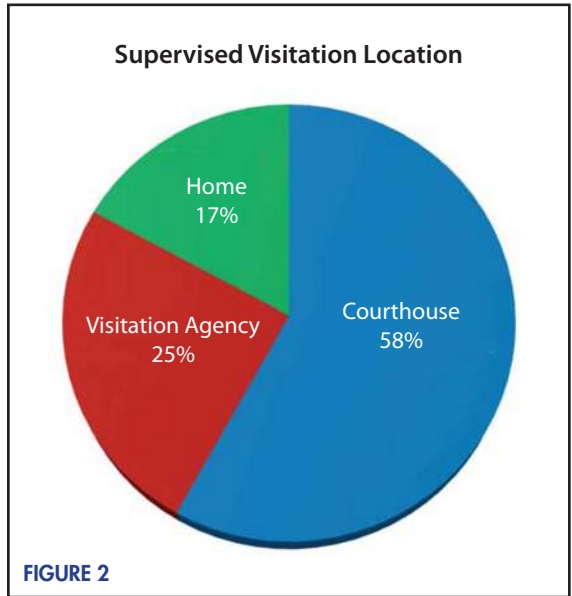


FIGURE 2

of requests. Some survivors also did not know they had the option of requesting supervised visits. Others were dissuaded from pursuing this option due to negative information they received from people they know; *"...I have been with people who have told me that court appointed supervisors turn their faces to things and side with the batterer. I know that stuff happens, then the kid leaves out of the supervised visits terrified. Even if I had court supervision would it be any different?"*<sup>4</sup>

The survey showed that survivors who were able to access the supervised visitation programs were not content with this service. 50% of the survivors were not satisfied with the location where the supervised visitations took place. Furthermore, 75% were unsatisfied with the supervision itself. The most frequent explanation for their dissatisfaction was "lack of proper supervision." The "ability of the abuser to manipulate the system" was the second most frequently cited reason. Victims stated that abusers manipulated the system by modifying their abusive behavior to acts that would not necessarily be noticed by supervisors: verbal and emotional abuse during visits, threats to the other parent and sometimes even physical abuse when supervisors are not looking. Victims were also concerned by the relationship that abusers sometimes developed with the professionals responsible for the supervision, as they believed it could affect their neutrality in the case.

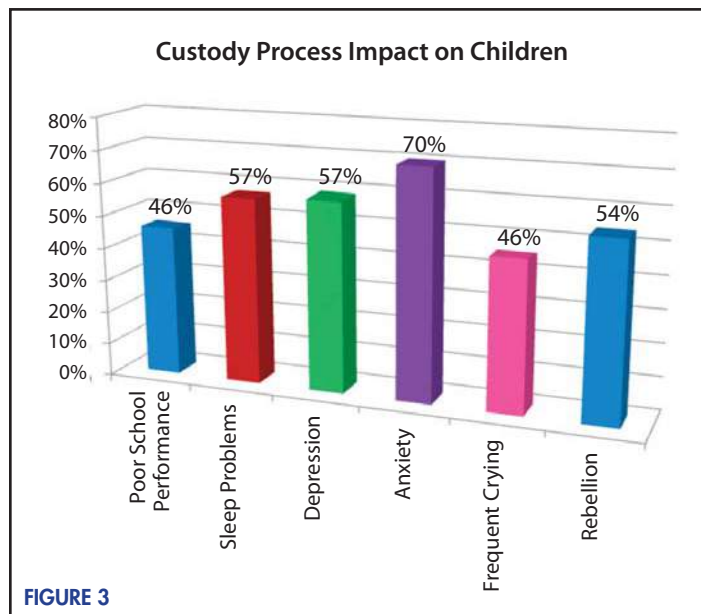
<sup>3</sup> "CCVS Focus Group," Sisters Overcoming Abusive Relationships, Warwick, RI 06/18/08.

<sup>4</sup> "CCVS Focus Group," Sisters Overcoming Abusive Relationships, Warwick, RI 06/18/08.

Those survivors who were unable to obtain supervised visitation expressed anguish over the lack of safety for their children. *"I lived in a house with a man who threatened to kill me so many times I lost track, and I was having to hand my four or five year old child over to him to go on a visit... that was unsafe."*<sup>5</sup> Alarming, some survivors resorted to supervising the visits themselves *"...because there was nobody, I have no family basically... there was no one else to do the visit. I was scared to death during a lot of these visits. But it's like you are between a rock and a hard place. If there is no one to do it but you, at least you are there to take the brunt of the violence rather than having him take it out on the kid. It's a no win situation."*<sup>6</sup>

### **Custody and Violence: Long Lasting Consequences**

In custody and visitation cases, the children can be exposed to violence and tension between the parents, and can additionally become the center of the tension and violence. As a survivor stated *"...they (the children) feel like they are walking on eggshells, almost as if they are now in the abusive relationship, and they cannot divorce themselves from their father. It puts the kids in an abusive situation they don't have the skills to deal with."*<sup>7</sup> According to our survey, the majority of children suffered some negative emotional and/or psychological consequences from the process (Figure 3).<sup>8</sup> At least two different parents referred to suicidal behavior by their children *"(my) five-year-old said she didn't want to live, life was too difficult."*<sup>9</sup>



**FIGURE 3**

<sup>5</sup> "CCVS Focus Group," Sisters Overcoming Abusive Relationships, Warwick, RI 06/18/08.

<sup>6</sup> "CCVS Focus Group," Sisters Overcoming Abusive Relationships, Warwick, RI 06/18/08.

<sup>7</sup> "CCVS Focus Group," Sisters Overcoming Abusive Relationships, Warwick, RI 06/18/08.

<sup>8</sup> "CCVS Survivor Survey," Sisters Overcoming Abusive Relationships, Warwick, RI 2008.

<sup>9</sup> "CCVS Survivor Survey," Sisters Overcoming Abusive Relationships, Warwick, RI 2008.

## FINDINGS (CONTINUED)

The minimization of violence in the custody and visitation process has a negative impact on children. 73% of the survey respondents reported domestic violence in Family Court, and of those, Family Court took action in only 64%. However, 82% of the focus group participants felt as if the violence in their cases was minimized or filtered out of the case.<sup>10</sup> *“He (the child) would come home with burns and concussions and everything else, but I am the crazy one.”*<sup>11</sup> It is important to point out that in many cases the remedies available through the court were not effective in providing adequate safety for the children and the victims as demonstrated in the survey findings.

Another area of concern was evidenced by the fact that there were very few cases citing alleged domestic violence in the complaint, even when there was a valid restraining order in effect or abuse was mentioned later in the case. Failure to have domestic violence raised before the court from the onset impacted the process in the subsequent months and years. In addition, the court’s response to abuse appeared to protect the parent but not necessarily the children, demonstrating inadequate understanding of the risks facing the children. The court’s lack of recognition of the impact of violence on children is also evident in some court decisions, for example, *“Pettinato vs. Pettinato.”*<sup>12</sup> This landmark case provides *“the best interest of the child”* guidelines for Rhode Island. This case law does not mention domestic violence or abuse as a factor to consider in *“the best interest of the child.”* Even though it may seem that abuse considerations are implicit in the text, the silence about this topic in that case law contributes to the court’s ongoing minimization of the effects of domestic violence on children.

The lack of services for children who witness abuse is also of major concern. Recent state budget cuts have dramatically reduced the availability of services for this population. It is important to prioritize services that will provide safety and emotional well-being for children, as these services would increase the likelihood of a better life for the children and a reduction in future incidents of violence.

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<sup>10</sup> “CCVS Focus Group,” Sisters Overcoming Abusive Relationships, Warwick, RI 2008.

<sup>11</sup> “CCVS Focus Group,” Sisters Overcoming Abusive Relationships, Warwick, RI 08/07/08.

<sup>12</sup> *Pettinato vs. Pettinato*, 582 A.2nd 909 (R.I. 1990).

## FINANCIAL IMPACT

Even under the best circumstances, child custody and visitation cases have an undeniable financial impact on the lives of parents and children. In cases where domestic violence is present, the adversarial nature of the court process is magnified and provides for a long, drawn out affair in which the parents' funds are drained by legal fees. Despite the courts' efforts to regulate the length of the process, abusers continue to use the system to further control and intimidate their former partners. Several survivors reported in their interviews that they were dragged back to court for innumerable motions and hearings. Each hearing forced them to take time off work to attend court proceedings or different case related appointments. Survivors also reported having to modify their work schedules to accommodate their abuser's for visitation purposes. In addition, the limited availability of free or state sponsored legal services increases the likelihood that survivors will incur excessive legal fees and substantial debt in order to protect themselves and their children.

For the purpose of this report, we classified the impact of these cases on the financial well-being of victims and their children into three major areas:

- The victims' ability to support themselves and their children
- The victims' ability to effectively protect their rights and to utilize all available legal resources
- The long lasting consequences of the overall process: debt and poverty

### **Victimization and Poverty**

For most survivors, the main source of income at the beginning of their child custody and visitation cases was employment (*Figure 4*).

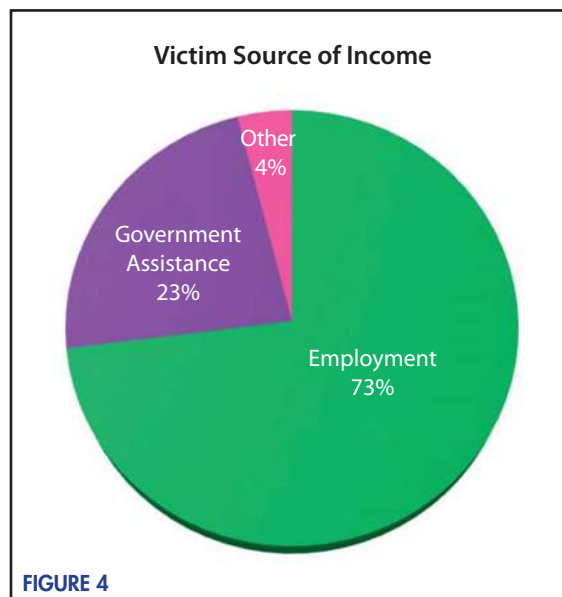
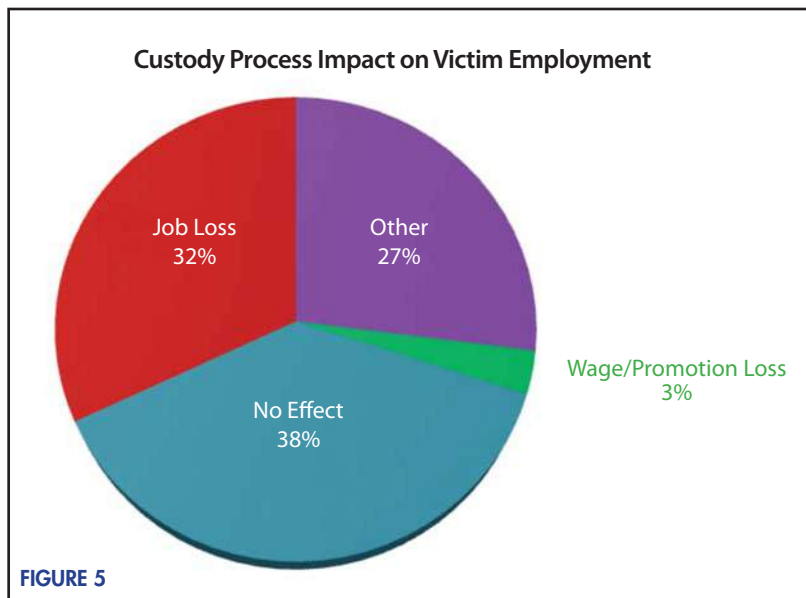


FIGURE 4

## FINDINGS (CONTINUED)

However, about a third of those employed lost or left their job as a direct consequence of the custody case, while another third perceived that the custody case had some negative consequences related to their employment, ranging from being treated differently to losing a promotion (Figure 5). The great amount of time and attention many survivors have to dedicate to court related affairs could explain these statistics. *"I am not even allowed to be at work. One, because of the physical time, and two, I can't go in and function with all this stuff going on... I'm not working."*<sup>13</sup> The case reviews showed that most cases had a final disposition in approximately one year. However, they also revealed that subsequent miscellaneous motions kept different proceedings going. Most survivors believed that it will not be over until the children reach adulthood. Several of the survivors we interviewed were involved in custody disputes that lasted years; one woman's case lasted almost 17 years.



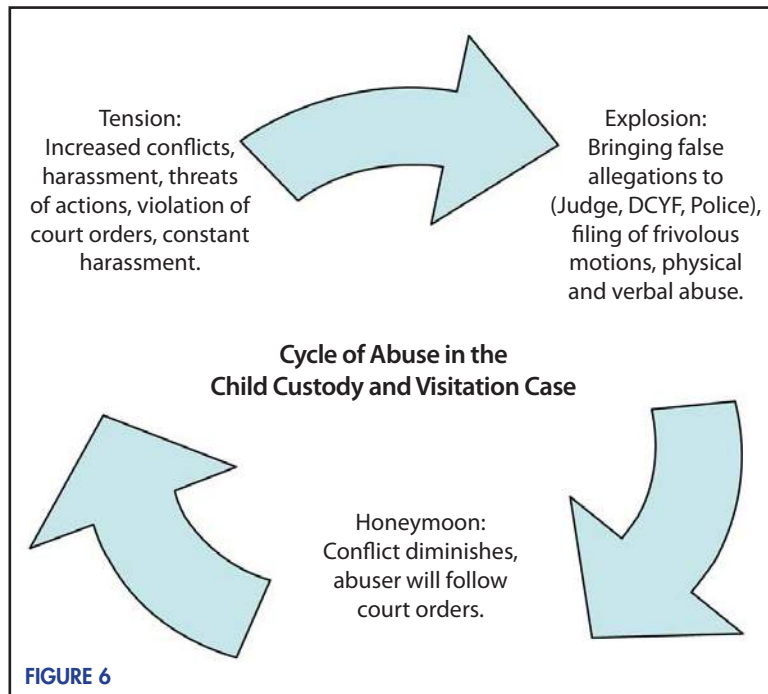
For many survivors, the court process resembled "The Cycle of Violence in Abusive Relationships,"<sup>14</sup> which contains three phases: (Figure 6)

- "The tension phase," manifests itself by the escalation of conflict, with an increase in contact, harassment and in some cases even stalking behavior.
- "The explosion phase," where the abuser uses the court system as a tool to harass or harm the victim. This is done by filing motions or threatening to do so, calling the police or other authorities and in some cases harming the victim or the children.
- Then, in "the honeymoon phase," the tension diminishes, court orders are respected, contact lessens. This cycle is generally accompanied by other forms of mental and physical abuse and intimidation, directed towards the victims and/or the children. Similar to the "Cycle of Violence," there are emotional elements tied to each one of these phases.

<sup>13</sup> "CCVS Focus Group," Sisters Overcoming Abusive Relationships, Warwick, RI 10/09/08.

<sup>14</sup> The Cycle of Violence was identified by Lenore Walker in 1979. The cycle illustrates the pattern of violence that takes place in an abusive relationship.

Victims also conveyed that the emotional consequences of the cases took a high toll on their emotional health, which in turn affected their job capabilities and performance. *“I, after all these years, had to take a leave and TDI for these past weeks, so I’m not working. I had two classes left to get my Bachelors; I was supposed to graduate in December... I was at Family Court so much I had to drop out.”*<sup>15</sup>

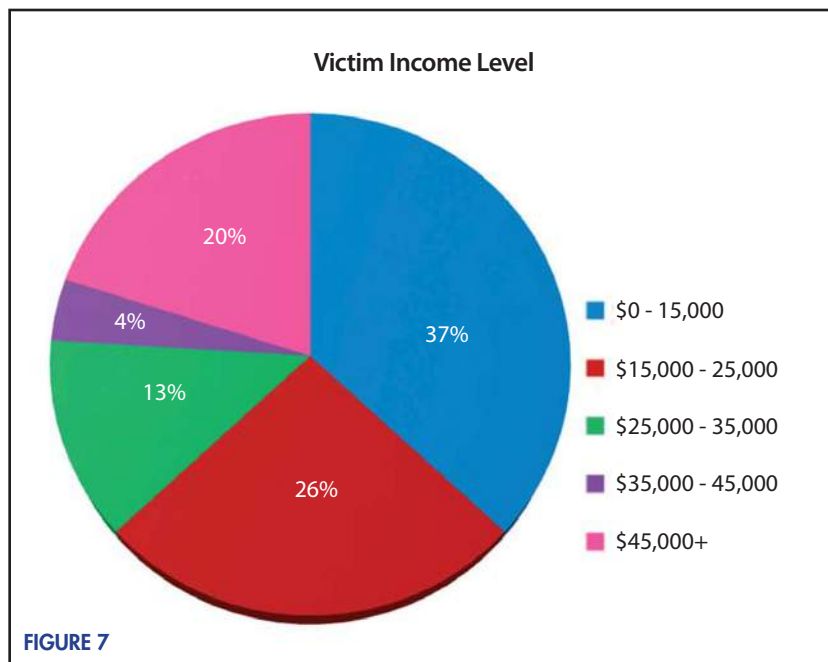


It is imperative to recognize that with separation and divorce the financial conditions of the parents often dramatically change. Without the help of a second income, parents, especially those who have primary custody, will have to provide for all household needs. However, in many custody and visitation disputes, a scheduling preference is given to the parent who was the primary breadwinner during the marriage. This poses a disadvantage to many mothers, especially those who were stay at home moms. Many focus group participants complained that their need to support themselves was not always taken into account when deciding custody or visitation arrangements. *“Visitation went by his (work) schedule, it changes every week. I have a profession but had to take a part-time job and clean houses because I couldn’t work at an office because I never have the same schedule... All the bills are on top of me.”*<sup>16</sup> Participants reported that the lack of enforcement of child support only worsened the situation. Several participants stated that the payment of back child support was deferred to mediation which resulted in a payment of a lesser amount.

<sup>15</sup> “CCVS Focus Group,” Sisters Overcoming Abusive Relationships, Warwick, RI 10/09/08.

**Financial Barriers and the Access to Services**

Even though most survivors surveyed were employed (Figure 4), most were living in poverty. According to the Rhode Island Poverty Institute, a parent with two children needs to make \$52,800 to subsist without resorting to public assistance.<sup>17</sup> 76% of the survivors interviewed made less than \$35,000 a year (Figure 7). Consider that one third of these survivors have paid more than \$25,000 in legal fees, which represents 71% of their insufficient income.



<sup>16</sup> "CCVS Focus Group," Sisters Overcoming Abusive Relationships, Warwick, RI 08/07/08.

<sup>17</sup> "The 2008 RI Standard of Need." The Rhode Island Poverty Institute at Rhode Island College of Social Work, 2008. Web, Oct. 2009. <http://povertyinstitute.org>.



In addition, the limited availability of free or state-sponsored resources impacted the ability of victims to seek and receive adequate and affordable services. Few participants were able to access the services of guardians ad litem, custody evaluators, counseling and other resources that could have assisted in providing safety for themselves and their children. In one of the judicial interviews, the magistrate expressed that *“A person cannot have a custody evaluation unless the person requesting one can pay for the service.”*<sup>18</sup> The financial inability to access such resources brings an unfair disadvantage to low-income victims. This burden could greatly affect the outcome of their cases and negatively impact their safety and the safety of their children.

Most of the survivors interviewed believed that money was an essential critical tool in the court case because they needed money to hire attorneys and access services. The high cost of attorney fees was seen by most of them as a barrier. *“Having a good lawyer is essential in the process and having the money to pay for a good lawyer is essential. If you do not have money you cannot do this. You’ve got to find the money somewhere.”*<sup>19</sup> Many of the survivors sold assets or incurred debt in order to pay their legal fees. Others resorted to pro-se representation which currently constitutes an issue of concern in the legal field. This concern is based on the fact that on many occasions, pro-se representation<sup>20</sup> creates an unlevel playing field. In most cases, a professional attorney would have the advantage of training and experience over even the most prepared pro-se party. At the same time, it is important to acknowledge that the financial sacrifice that some survivors undertake does not always pay off. *“I pay thousands of dollars... and he (the attorney) did everything opposite to what I wanted.”*<sup>21</sup>

The financial barriers that survivors encountered discouraged many of them from bringing up issues or forced them into accepting deals that were unfavorable to themselves or their children’s best interests. As an example, in one case a woman’s abuser owed \$8,000 in back child support payments. The judge ordered mediation, which she accepted to avoid further hearings on the issue that would have cost her more money. The parties spent two days in mediation with the abuser decreasing the financial offer. At the end of the second day, the fee owed to her attorney for the time spent during mediation approached \$6,000. When the abuser sent the offer of paying \$2,000 or to continue the mediation the next day, she accepted knowing that it would be more cost effective for her.<sup>22</sup> At the end, the \$2,000 went directly to her attorney to pay for the mediation, and she was left \$4,000 in debt. None of the money could be applied to the needs of the children as it was consumed by unnecessary court proceedings.

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<sup>18</sup> “Judicial Interviews” Interview One, pg. 7, Sisters Overcoming Abusive Relationships, Providence, RI 06/08.

<sup>19</sup> “CCVS Focus Group,” Sisters Overcoming Abusive Relationships, Warwick, RI 06/18/09.

<sup>20</sup> A party representing him/herself.

<sup>21</sup> “CCVS Focus Group,” Sisters Overcoming Abusive Relationships, Newport, RI 05/17/08.

<sup>22</sup> “CCVS Focus Group,” Sisters Overcoming Abusive Relationships, Warwick, RI 10/09/08.

### ***Debt and Poverty***

The combination of the victims' low income and limited services is a perfect breeding ground for abusive and coercive behavior by abusers. In many cases, abusers start frivolous motions with the intention of harassing their victims. On the other hand, it is important to understand that victims see the system as a tool to keep themselves and their children safe. This hope of safety makes them consider their legal expenses a necessity and prompts them to sacrifice their financial stability to access legal services.

The danger of the poverty cycle created by the system is that it puts children and victims at risk and restricts their chances in the future. *"We are going through difficult things like not having the money to pay bills or buy things in the house."*<sup>23</sup> The end result is that the individual cost of custody and visitation becomes a social cost that could have been avoided if the proper protection mechanisms had been working within the system.

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<sup>23</sup> "CCVS Focus Group," Sisters Overcoming Abusive Relationships, Warwick, RI 06/18/08.

## SAFETY OF THE VICTIM

There is a common misconception that domestic violence will stop when the victim leaves the relationship. However, the fact is that the act of “leaving” is the second most dangerous time in the victim’s life.<sup>24</sup> This fact is no different for those victims who have children in common with their abuser. Most of them struggle to find safety for themselves and their children after they leave the relationship. Victims approach systems<sup>25</sup> seeking safety for themselves and their children. In their search, victims find many obstacles: the lack of abuser accountability, limited availability of services, and statutes and policies that do not reflect the dynamics of abuse.

Our research showed that victims’ safety was impacted in the following ways:

- Victims continued to suffer abuse and live in fear
- Victims were put at risk by the systemic minimization of domestic violence

### Re-Victimization

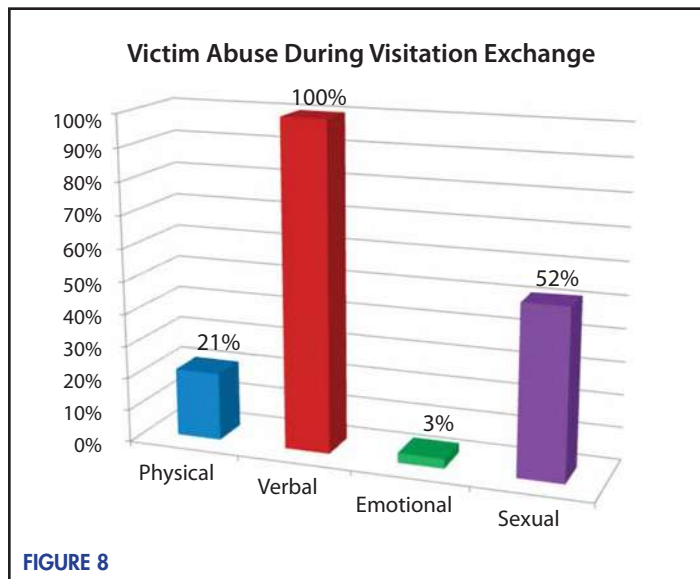


FIGURE 8

The level of re-victimization reported by participants in this research was incredibly high. 76% of the victims reported being abused during the visitation exchange. Most of them suffered more than one type of abuse (Figure 8). The testimonials of focus group participants reflected the safety struggles. “(During the custody process) two times he assaulted me, the first time it was really bad and it happened in front of my daughter.”<sup>26</sup> It is of grave concern that many of the

<sup>24</sup> “Women are more likely to be victims of homicide when they separate from their husbands. 65% of intimate homicide victims had physically separated from the perpetrator prior to their death.” Florida Governor’s Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, p.47, 1997.

<sup>25</sup> Systems: government, institutions, non-profits.

<sup>26</sup> “CCVS Focus Group,” Sisters Overcoming Abusive Relationships, Warwick, RI 08/07/08.

victims in the focus groups described actions that could be characterized as stalking,<sup>27</sup> which exacerbates safety concerns.<sup>28</sup> Victims chronicled being followed, harassed, threatened and assaulted even in cases with a valid restraining order in effect. Some of the intimidation took place inside the courthouse. *"I was getting harassed while I was at the courthouse. I couldn't get into one of the courtrooms one day... because he put (an object) right to the door..., blocking the whole door and gave me that look. They give you the look you know darn well to back off."*<sup>29</sup> The harassment also took place inside the courtrooms. *"I have criminal restraining orders and an ex parte order. So he comes and sits next to me... (when) we have to leave then he walks down to the end and stands at the parking lot until we get in the car and take off."*<sup>30</sup> Another victim talking about her court experience said, *"If I move to the corner he moves, if I move over here, he moves over there. If I'm upstairs he walks up and down the stairs."*<sup>31</sup> Unfortunately, victims are not able to report these incidents to the Capitol Police or the Sheriffs, who are present in the court houses. The State Police has jurisdiction but not physical presence in the court houses, which in many cases delays or dissuades victims from reporting the abuse.

The under-funding of victims' services in Rhode Island highly affects victims' safety. For example, due to a lack of funding, there are not enough programs providing safe visitation and visitation exchange, which could prevent the high level of abuse during exchanges. Many other states and cities around the country provide Safe Exchange Programs for victims of domestic violence. In these specialized centers, the pick-up and drop-off can be done without interaction between the parents, therefore reducing the opportunities for further victimization. A judge interviewed during this project expressed that one of the main barriers to providing services was lack of funding. *"The Supreme Court funds resources of the Family Court, such as mediators to supervise visitation, with an annual \$100,000 grant. For example, those who supervise the exchange are paid \$15 an hour with no benefits from the grant money. It is easy to see that the \$100,000, which also funds rehabilitation programs like Batterers' Intervention, does not go far."*<sup>32</sup> Cuts in funding were the main reason for closing some services that attempted to de-centralize the current supervised visitation program. According to the survey respondents, most of the child

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<sup>27</sup> RI General Laws § 11-59-2 **"Stalking prohibited.** – (a) Any person who: (1) harasses another person; or (2) willfully, maliciously, and repeatedly follows another person with the intent to place that person in reasonable fear of bodily injury, is guilty of the crime of stalking."

<sup>28</sup> 76% of femicide victims had been stalked by the person who killed them. 85% of attempted femicide cases involved at least one episode of stalking within 12 months prior to the attempted femicide. Stalking Resource Ctr., The Nat'l Ctr. for Victims of Crime, Stalking Fact Sheet, [http://www.ncvc.org/src/main.aspx?dbID=DB\\_Intimate\\_Partner\\_Femicide122](http://www.ncvc.org/src/main.aspx?dbID=DB_Intimate_Partner_Femicide122) (citing Judith McFarlane et al., 3 Homicide Studies 300-316 (1999)).

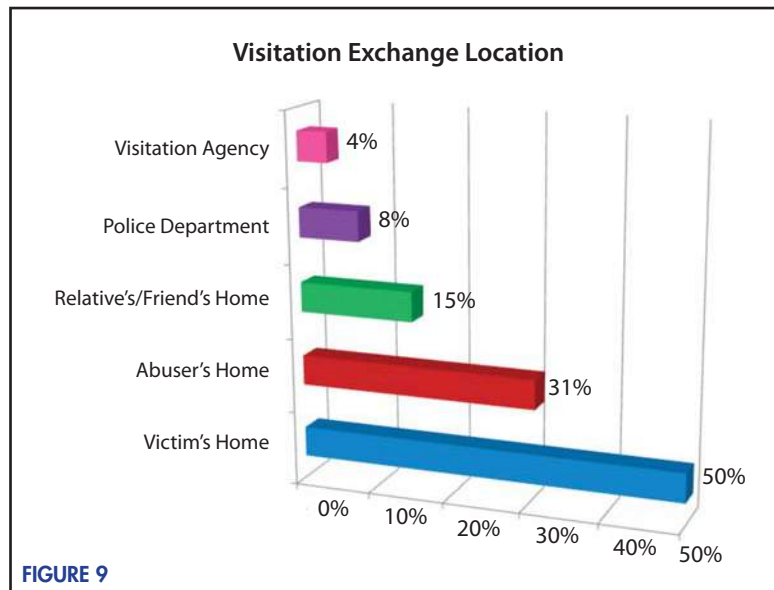
<sup>29</sup> "CCVS Focus Group," Sisters Overcoming Abusive Relationships, Warwick, RI 10/09/08.

<sup>30</sup> "CCVS Focus Group," Sisters Overcoming Abusive Relationships, Warwick, RI 08/07/08.

<sup>31</sup> "CCVS Focus Group," Sisters Overcoming Abusive Relationships, Warwick, RI 06/18/08.

<sup>32</sup> "Judicial Interviews," Interview Two, pg 4, Sisters Overcoming Abusive Relationships, Providence, 08/08.

exchanges took place at one of the parents' homes (Figure 9). Other programs are restricted in their services, for example the Rhode Island Family Court Domestic Violence Advocacy Program is restricted to providing services only in restraining order cases; the Court Advocacy Program, which is administered by the member agencies of the Rhode Island Coalition Against Domestic Violence, has no funding to provide dedicated court advocates in Family Court. Furthermore, the services that are provided in District Court have recently been cut due to state budget cuts.



### **Minimization of Violence**

82% of the focus group participants said that domestic violence was either minimized or filtered out of the custody and visitation cases. Some victims described feeling ignored by the court's decision after reporting their abuser's past history, *"I feel like the court dismissed my concerns about the safety and did not take them seriously despite the fact that he has a very well-documented history of violent behavior."*<sup>33</sup>

The Family Court took action in 64% of the cases with reported domestic violence. In most cases, the action taken by the court was to grant a restraining order. However, the restraining orders granted in these proceedings are treated as a civil matter. They do not have criminal enforceability and are only enforceable through the filing of contempt motions. The lack of criminal enforceability affects safety, *"I have a permanent restraining order in my divorce decree. I have recently found out that because it is a Family Court restraining order, the police will not enforce it."*<sup>34</sup> Because of the lack of criminal enforceability, victims suffer intimidation and harassment

<sup>33</sup> "CCVS Focus Group," Sisters Overcoming Abusive Relationships, Warwick, RI 06/18/08.

<sup>34</sup> "CCVS Focus Group," Sisters Overcoming Abusive Relationships, Warwick, RI 06/18/08.

and cannot always rely on the protection of police enforcement. This lack of criminal enforceability increases the risk of victimization and takes away a protection that otherwise would have been available to them due only to the fact that they are involved in a child custody and visitation case. To enforce these orders, victims have no other option than filing contempt motions, increasing the cost of the proceedings. However, survivors cited numerous examples of being unsuccessful in the contempt motions they put forward. In one case, a victim brought up more than six contempt motions and only one was ever heard and then it was dismissed. *“Not once was he ever held accountable for one single violation of an ex-parte order throughout the years (since 2002).”*<sup>35</sup> As it stands today, the restraining orders generated from custody and visitation cases provide very little to no protection for victims of domestic violence. Furthermore, all restraining order petitions, even the ones filed under the domestic violence calendar, are referred back to the custody and visitation judge making it impossible for victims to obtain criminally enforceable restraining orders. While it is clear that all contact should not be criminalized, it is important to discern the severity of each case, to provide real protection for victims and to bring accountability for the violation of these orders.

The underreporting of domestic violence in Family Court is detrimental to victims’ safety. During the review of cases, it was evident that in most of the cases, the abuse was not directly reported. *“The lawyer said the judge doesn’t want to hear that (the abuse); this is about the kids.”*<sup>36</sup> Studies conducted in different states confirm that there is a tendency to omit the reporting of violence. A study by the Harborview Injury Prevention and Research Center in Seattle found that in 48% of divorce cases, there was no mention of the abuse despite a well-documented history of domestic violence.<sup>37</sup> Even though as a legal strategy, filing for no-fault divorce may appear more simple, it is important for professionals and victims to understand the consequences of this strategy. Not reporting the abuse jeopardizes victims’ safety by restricting their access to services and remedies that could be available to them. It is also important for judges, attorneys and professionals within the Family Court system to learn to recognize signs of domestic violence and to adopt and use proper tools for screening domestic violence cases. Proper identification of cases involving domestic violence will help reduce the incidence of domestic violence and the re-victimization of victims and their children.

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<sup>35</sup> “CCVS Focus Group,” Sisters Overcoming Abusive Relationships, Warwick, RI 10/09/08.

<sup>36</sup> “CCVS Focus Group,” Sisters Overcoming Abusive Relationships, Warwick, RI 10/09/08.

<sup>37</sup> Kernic et al. from the Harborview Injury Prevention & Research Center in Seattle, studied at divorce cases, including both those with a documented, substantiated, and/or alleged history of domestic violence, and those without. The study found that in 47.6% of cases with a documented, substantiated history, no mention of the abuse was found in the divorce case files. - *Id.* at 1005. Kernic et al., “Children in the Crossfire: Child Custody Determinations Among Couples With a History of Intimate Partner Violence.” *Violence Against Women*, Vol. 11, No. 8, (2005): 991-1021, 1013, Web.

The lack of consideration about domestic violence in many procedures and policies is detrimental to victims and can put them in a disadvantaged position. For example, it is important to understand that *"parties will bring their marital conflict resolution styles into the divorce and custody negotiation."*<sup>38</sup> If a victim has a pattern of conceding to the abuser's demands, then he/she is more likely to continue this pattern during the custody case. This tendency puts domestic violence victims at a disadvantage in mediation and/or any other proceeding in which the victim may have to confront the abuser. The addition of questions regarding domestic violence on the "Family Service Sheet" that is currently being used in Family Court would allow victims to disclose the violence. Adoption by the Family Court of clear screening and specific procedures when domestic violence is alleged is an indispensable step towards closing this gap.

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<sup>38</sup> Bryan, Penelope Eileen, *"Women's Freedom to Contract at Divorce: A Mask for Contextual Coercion."* Buffalo Law Review, Fall 47 (1999): Web. October 2009.

## RECOMMENDATIONS

The CCVAC recognizes that effective implementation of the proposed recommendations requires a community approach. Due to the complexity of the issues outlined in this report, one system alone cannot make all the changes that are needed. For example, court services cannot increase without increasing state funding. For this reason the CCVAC intentionally crafted the recommendations not as mandates for one system, but as an open invitation for the Rhode Island community. Policy makers, organizations, government and the public in general can identify ways in which they can contribute to be a part of the solution. As it takes a village to raise a child, it will also take a village to keep him/her safe.

Based on the data gathered, the CCVAC created recommendations to help protect victims of domestic violence and their children:

- 1.** Coordinate court services and information sharing strategies within the court system to reduce fragmentation and provide continuity and consistency in cases involving domestic violence.
- 2.** Implement court protocols that ensure the safety of victims and their children in custody and visitation cases.
- 3.** Utilize statutes and policies to prevent abusers from using the court system to further victimize domestic violence victims and their children.
- 4.** Create programs that provide information about parental rights, education about the court process, and advocacy services for victims.
- 5.** Recommend changes to the Rhode Island General Laws to create a clear custody standard and guidelines to be followed in domestic violence cases.
- 6.** Create specialized safe visitation centers and safe exchange programs throughout the state.
- 7.** Develop collaboration among all stakeholders to increase victims' access to: a) affordable and competent legal representation, b) Guardians Ad Litem and other resources that benefit children who are impacted by domestic violence.
- 8.** Expand the Rhode Island Family Court Domestic Violence Program and other court services to provide case management, information, referrals and advocacy with child custody and visitation in all cases where domestic violence has been identified.
- 9.** Establish specialized domestic violence courtrooms in all counties.
- 10.** Educate attorneys about domestic violence to enhance representation of domestic violence victims and to protect children in divorce and child custody and visitation cases.



- 11.** Increase judicial awareness of the ongoing impact of domestic violence and the court process on victims of domestic violence and their children, to increase the number of times special safety considerations are ordered in cases involving domestic violence.
- 12.** Strengthen domestic violence education for professionals who are involved in the custody and visitation process, including but not limited to mediators, Guardians Ad Litem, Family Court Investigative Unit, supervised visitation facilitators and mental health professionals.



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