No. 127169

IN THE SUPREME COURT OF ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, *Respondent-Appellant*, v. ANGELA J. WELLS, *Petitioner-Appellee*.	On Appeal from the Illinois Appellate Court Third Judicial District, No 3-18-0344 There on appeal from the Circuit Court of the Tenth Judicial Circuit, Peoria County, Illinois, No. 01 CF 344, Hon. Paul Gilfillan, Judge Presiding

BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS, ET AL. IN SUPPORT OF PETITIONER-APPELLEE

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INTEREST OF AMICI CURIAE

The American Civil Liberties Union of Illinois ("ACLU of Illinois") is a statewide, nonprofit, nonpartisan organization with more than 60,000 members dedicated to the protection and defense of the civil rights and civil liberties of all Illinoisans. The ACLU of Illinois is committed to ensuring that all people are treated with fairness and dignity. The ACLU of Illinois works to reform the state's criminal legal system by reducing the number of people in Illinois prisons, challenging dangerous detention conditions, focusing on rehabilitation, removing barriers to employment and education, treating substance abuse and mental illness as public health issues, eliminating racial bias, and rolling back excessive fines and fees. The ACLU of Illinois also challenges policies and practices that undermine safety and opportunity for women, including those that facilitate or perpetuate gender-based violence and harassment. In furtherance of these commitments, the ACLU of Illinois was a proponent of the bill in the Illinois General Assembly that became Public Act 099-0384 (2015) and its resulting amendments to the Illinois Code of Civil Procedure § 2-1401(b-5) ("Section (b-5)"), the law at issue in this case.

Ascend Justice is a non-profit organization based in Chicago, Illinois whose mission is to empower individuals and families impacted by gender-based violence or the child welfare system to achieve safety and stability through legal advocacy and system reform. Formerly known as the Domestic Violence Legal Clinic, Ascend Justice has served survivors of gender-based violence with free legal services for more than forty years. Since 2005, Ascend

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Justice attorneys and volunteers have worked from offices inside the Cook County Domestic Violence Courthouse, providing onsite legal assistance to tens of thousands of survivors seeking Orders of Protection. Ascend Justice also offers the holistic legal advocacy necessary for survivors of gender-based violence to become safer and more independent, ranging from representation in child custody and support cases, immigration, housing, employment and consumer matters, and family defense issues. In recognition of the criminalization of survivors of gender-based violence, as well as the high proportion of incarcerated women who are survivors of gender-based violence, Ascend Justice launched a project to serve incarcerated survivors in 2021.

The Illinois Coalition Against Domestic Violence ("ICADV") is a not-for-profit organization founded in 1978 by twelve local domestic violence programs with the vision to eliminate violence against women and children, and to promote the eradication of domestic violence across the state of Illinois. ICADV is a membership organization representing the interests of over fifty domestic violence service provider agencies and community partners that provide direct services to domestic violence survivors. Last year, ICADV member service providers collectively served 40,508 adult survivors of domestic violence and 7,111 child witnesses. ICADV's mission is to build networks of support for and with survivors, and advance statewide policies and practices that transform societal attitudes and institutions to eliminate and prevent domestic

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abuse. ICADV leads on legislative issues affecting domestic victims and agencies in Illinois and worked to pass the Illinois Domestic Violence Act in 1982. ICADV has an interest in preserving the intent of state statutes designed to support all survivors of domestic violence.

The Illinois Prison Project ("IPP") is a non-profit organization that fights for and with incarcerated people and their loved ones to end mass incarceration in Illinois through advocacy, public education, and legal representation of thousands of needlessly incarcerated people. IPP sees first-hand how experiences of trauma, including domestic violence and other forms of gender-based violence, create pathways to prison for its clients, especially women. IPP's Women & Survivors Project is nationally recognized for its expertise in post-conviction advocacy for incarcerated gender-based violence survivors. As attorneys for incarcerated survivors, IPP has seen the ways that survivors who were convicted decades in the past—before modern advances in the legal, psychological, and sociocultural understandings of domestic violence—have been repeatedly left behind as society continues to evolve. IPP advocates for all survivors, including those behind bars.

Legal Action Chicago is a not-for-profit law and policy organization with a mission to promote justice and opportunity for people living in poverty. Legal Action Chicago is a subsidiary of Legal Aid Chicago, which, for 50 years, has provided high quality civil legal services to Cook County residents living in poverty, serving about 35,000 people each year in a range of areas of law.

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Legal Aid Chicago has been committed to domestic violence advocacy for survivors since the 1970's. In addition to providing community education and advice, Legal Aid Chicago represents survivors of domestic violence in divorce, parentage, allocation of parental responsibilities, immigration, housing, and public benefits cases. Legal Action Chicago represents the interests of the same clientele and deploys expertise and experience in complex litigation and policy advocacy. Among its clients, Legal Action Chicago has seen the impact of mass and prolonged incarceration on individuals, families and communities as it perpetuates poverty, blocks opportunity, disrupts relationships, and exacerbates disparate racial outcomes. Legal Action Chicago works for sentencing reforms, early release policies, and reasonable alternatives to incarceration.

The Legal Aid Society of Metropolitan Family Services ("LAS") has offered free legal assistance to under-resourced populations for over 130 years. LAS is part of Metropolitan Family Services ("MFS"), a non-profit agency that delivers services related to education, economic stability, and emotional wellness; together, LAS and MFS offer comprehensive support to clients throughout Cook and DuPage Counties. LAS currently provides a variety of legal services, including representation of survivors of domestic violence in divorce and parentage cases and in requests to obtain orders of protection in both civil and criminal courts. In addition, LAS regularly advocates for policy and legislation that addresses domestic violence and related issues. Through direct

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services and systemic advocacy, LAS works to improve the legal system's response to domestic violence and supports the expansion of remedies available to survivors of abuse.

Life Span was established more than 40 years ago to provide comprehensive services to victims of domestic and sexual violence in Cook County, Illinois. Life Span's core services include criminal court advocacy, counseling, and legal representation in protective order, family law, and immigration cases. Life Span also has a specialized program providing counseling, advocacy, and legal services to survivors of sex trafficking who have experienced domestic or sexual violence. Life Span has supported thousands of victims navigating the criminal legal system as both complaining witnesses and as defendants. Life Span uses the experience and knowledge gained from working with individual clients to inform our systemic advocacy, providing the criminal court with education about the dynamics of domestic violence, the effects of trauma, and the often problematic response of police, prosecutors, defense counsel, and judges. Life Span has seen that victims who are charged with crimes often face tremendous barriers to justice in the criminal system. Many times, the complexities of their circumstances are not understood and inaccurate assumptions are made by criminal courts, resulting in unjust outcomes. Based on decades of work to positively impact the treatment of victims in the criminal legal system, Life Span has a strong interest in this case.

Mujeres Latinas en Acción, founded in 1973, is a bilingual/bicultural

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agency that empowers Latinas by providing services which reflect their values and culture and by being an advocate on the issues that make a difference in their lives. Each year, the organization serves nearly 2,000 community members through gender-based violence and leadership development programming. Mujeres believes that systems of oppression can be challenged through community engagement and collective leadership, and that the voices of those most impacted by issues such as domestic and sexual violence must remain at the forefront.

The Network: Advocating Against Domestic Violence ("The Network") is a collaborative membership organization of over 40 service providers dedicated to improving the lives of those impacted by domestic violence through education, public policy and advocacy, and the connection of community members to direct service providers. As an organization working in this field for over 30 years, The Network has worked with the community and legal systems to shift the understanding of domestic violence and its impact on survivors. The Network strongly supports survivors being given the opportunity to present the evidence of the impact of their experiences with domestic violence as part of a criminal case. Due to the lack of historical understanding of these issues, those who were not given the opportunity to present that evidence before should be given that opportunity now.

The Shriver Center on Poverty Law ("Shriver Center") has a vision of a nation free from poverty with justice, equity and opportunity for all.

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The Shriver Center provides national leadership to promote justice and improve the lives and opportunities of people with low income, by advancing laws and policies, through litigation, and legislative and administrative advocacy. The Shriver Center is committed to economic and racial justice, which includes a history of pursuing economic and racial justice for domestic violence survivors and criminal justice-involved individuals.

The Women's Justice Institute ("WJI") is an organization centered around reforming criminal justice policies and procedures for women. Founded in 2014, WJI advocates for laws, policies, and procedures that are gender-based and trauma-informed. The WJI is currently researching ways in which the women's prison population could be reduced by at least 50% in the next ten years, starting with community-based solutions. Through this work, the WJI has discovered that there are five main pathways which lead to incarceration of women; these pathways include lack of housing, unsupported families, insufficient economic and educational opportunity, poor healthcare, and gender-based violence. In light of the role of gender-based violence in the incarceration of women, the WJI advocates for laws that recognize that women are often incarcerated for their acts of surviving domestic abuse. Members of the WJI previously worked to draft and pass Public Act 099-0384. Given the WJI's interest in promoting trauma-informed laws that recognize the criminalization of survivors of gender-based violence, the WJI has a strong interest in this case.

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SUMMARY OF THE ARGUMENT

Amici curiae submit this brief to advocate for an expansive interpretation of Illinois Code of Civil Procedure § 2-1401(b-5) ("Section (b-5)"). Section (b-5) is a provision specifically designed by the Illinois legislature for the express purpose of remediating unjust sentences served by countless survivors of domestic violence. Illinois is at the forefront in this regard—only two other states, New York and California, have taken similar steps to remediate the injustice inherent in many sentences currently on the books.[1] Indeed, the Illinois legislation was considered a "landmark moment," with Illinois "leading the nation in creating a way for incarcerated survivors to return to court." *See* Annie Sweeney, '*We Are Not Monsters': Women in Illinois Prisons Who Allege They Were Victims of Domestic Violence See Their Struggle in Film*, Chicago Tribune, June 19, 2022, https://www.chicagotribune.com/news/criminal-justice/ct-logan-illinois-domestic-violence-law-failing-20220619-f5rgmokh7bf6de235nb5heglpy-story.html.

Sadly, since it went into effect in 2016, Section (b-5) has been misapplied by lower courts in a manner that has stymied the intent of the Illinois legislature. According to some estimates, only ***four individuals*** have benefitted from Section (b-5) in the more than six years since its passage. *Id.* By contrast,

[1] *See* Domestic Violence Survivors Justice Act, ch. 31, § 1, 2019 N.Y. Laws 144, 145–46 (codified as amended at N.Y. Penal Law § 60.12(1)); Act of Sept. 30, 2012, ch. 803, 2012 Cal. Stat. 6437 (codified as amended at Cal. Penal Code § 1473.5); Act of Sept. 30, 2012, ch. 809, 2012 Cal. Stat. 6454 (codified as amended at Cal. Penal Code § 4801).

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50% or more of incarcerated women reported having been physically or sexually abused before their imprisonment, which translates to well over ***six hundred*** women currently incarcerated in Illinois. *See* Beth E. Richie, *Understanding the Links Between Violence Against Women and Women's Participation in Illegal Activity* 19-20 (2003), https://www.ojp.gov/pdffiles1/nij/grants/199370.pdf; Illinois Department of Corrections, Prison Population Data Sets (March 31, 2022), https://www2.illinois.gov/idoc/reportsandstatistics/Pages/Prison-Population-Data-Sets.aspx (as of March 31, 2022, there were 1,224 women incarcerated in Illinois).

This brief explains the evolution in societal and legal norms and understandings regarding domestic violence that animated passage of Section (b-5), in order to explain why the incorrect and intolerably narrow reading of the statute adopted by certain lower courts flatly contradicts the provision's fundamental purpose. This violates basic principles of statutory construction under Illinois law. *See O'Connell v. County of Cook*, 2022 IL 127527, ¶¶ 21-22. For survivors to receive the unique and important benefit afforded by the legislature, this Court must take a broader view, and reject the State's arguments that Section (b-5) relief is only available to those who apply for it within two years of their date of sentencing and/or those who were sentenced after a trial.

I. Many women currently incarcerated, *particularly* those incarcerated well before the passage of Section (b-5), were sentenced during an era when society and the law accepted domestic violence as the cost of a marriage or

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partnership. Until far too recently, this system of belief allowed perpetrators of violence to enjoy impunity while victims were often blamed, shamed, and even criminalized for their own victimization. Women have always constituted the overwhelming majority of victims of this violence; women of color are particularly vulnerable. However, views have evolved significantly in recent years as a result of better understandings of victimization and trauma—though society has struggled to erase all vestiges of this past. We now recognize, in a way that simply was not understood in the years prior to the passage of Section (b-5), why a domestic violence survivor would be hesitant to disclose abuse, and how abuse can in some instances be inextricable from the crimes for which survivors have been sentenced.

II. As understanding of domestic violence and its impact on victims has evolved in the last few decades, lawmakers have begun to enact legislation designed to protect violence survivors and punish their abusers. While these statutes marked a welcome change in societal understanding surrounding domestic abuse, they have not been a panacea, and early judicial interpretations in some cases undermined their purpose and effectiveness. That is what is occurring in Illinois with respect to Section (b-5).

III. The Illinois legislature plainly intended to continue the work of rectifying the historic failures in the social and legal treatment of survivors of domestic violence when it adopted Public Act 099-0384 in 2015, which added

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Section (b-5) to the Illinois Code of Civil Procedure. In order to effect that intent, and correct prior overly cramped interpretation of the statute, this Court should apply Section (b-5) in a manner consistent with its text and underlying purpose, and hold that long-time incarcerated survivors are allowed to present their case for resentencing. Similarly, and contrary to the State's position, the Court should hold that Section (b-5) affords a path for relief to survivors even if they—like the vast majority of criminal defendants—entered a negotiated guilty plea instead of proceeding to trial.

Section (b-5) allows survivors whose crime was related to the abuse they suffered to petition for resentencing if they were unaware of the mitigating nature of evidence of domestic violence at the time of their original sentencing hearing, and if they could not have learned of its significance sooner through diligence. The Court should give full effect to the statute and require the lower courts to weigh the evidence in favor of resentencing that such individuals are able to present, without imposing unsupported barriers. Courts need not grant petitions in all cases, for instance when the court finds that the movant's participation in the offense was not "related to . . . previously having been a victim" of domestic abuse (*see* 735 ILCS 5/2-1401(b-5)(2)), or where the movant is not able to present evidence of abuse that is "material and noncumulative to other evidence offered at the sentencing hearing," or that "is of such a conclusive character that it would likely change the sentence imposed by the trial

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court" (*see* 735 ILCS 5/2-1401(b-5)(5)). But if Section (b-5) is to function as intended, it must be interpreted to permit survivors sentenced more than two years prior to its passage, at a bare minimum, to bring their case before the court. It is these survivors, those silenced, blamed and shamed for surviving their own abuse at a time in our social and legal history when the dynamics of domestic violence were not properly understood, who would benefit the most from Section (b-5)'s merciful intent.

ARGUMENT

Intimate partner violence[2] is a nationwide issue touching every state and demographic in our country. This brief outlines the history of the social and legal treatment of domestic violence that animated the addition of Section (b-5) to the Illinois Code of Civil Procedure in 2015 and must inform interpretation of its scope when Illinois' well-settled principles of statutory construction are properly applied. As this Court recently reiterated:

> The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent. . . . When interpreting a statute, it is proper to consider the reason for the law, the problem sought to be remedied, the goals to be achieved, and the consequences of construing the statute one way or another. . . . [A]lthough a court should first consider the language

[2] The statute at issue in this case refers to "domestic violence as perpetrated by an intimate partner," defined as "a spouse or former spouse, persons who have or allegedly have had a child in common, or persons who have or have had a dating or engagement relationship." 735 ILCS 5/2-1401(b-5). Although not all domestic violence is intimate partner violence, the dynamics and impact of such violence are largely the same. In this brief, *amici* use the terms "domestic violence" and "intimate partner violence" interchangeably unless otherwise noted.

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> of the statute, a court must presume that the legislature, in enacting the statute, did not intend absurdity or injustice. When a literal interpretation of a statutory term would lead to consequences that the legislature could not have contemplated and surely did not intend, this court will give the statutory language a reasonable interpretation. A statute should be interpreted so as to promote its essential purposes and to avoid, if possible, a construction that would raise doubts as to its validity.

O'Connell, 2022 IL 127527, ¶¶ 21-22 (internal quotation marks omitted).

Attitudes toward domestic violence survivors have evolved in recent decades, driven largely by developments in understanding victimization and trauma. *See* Part I, *infra*. Recent reforms were enacted to remediate the historical legal response to domestic violence, but in some instances unduly restrictive judicial interpretations have undercut the broad remedial legislative intent. *See* Part II, *infra*. The history of these social and legal advances both highlights the need for, and affirmatively supports, an expansive interpretation of the availability of Section (b-5) relief. *See* Part III, *infra*.

I. SOCIAL AND LEGAL UNDERSTANDING OF DOMESTIC VIOLENCE AND ITS IMPACT ON SURVIVORS HAS EVOLVED IN RECENT DECADES.

Each year, intimate partners rape or physically assault women in the United States nearly five million times. U.S. Dep't of Just., *OJP Fact Sheet: Domestic Violence* (Nov. 2011), https://bit.ly/3w9bnd7. At least one out of every three female murder victims is killed by her husband or boyfriend. Off. for Victims of Crime Training & Tech. Assistance Ctr., *Intimate Partner Violence* 1 (2012), https://bit.ly/2QOnnAO.

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While intimate partner abuse affects all social, ethnic, and racial groups, Kathryn E. Litchman, *Punishing the Protectors: The Illinois Domestic Violence Act Remedy for Victims of Domestic Violence Against Police Misconduct*, 38 Loy. U. Chi. L.J. 765, 774 (2007), this violence is inflicted most frequently on women who are immigrants, minorities, or living in poverty. *See* Lisa Young Larance et al., *Understanding and Addressing Women's Use of Force in Intimate Relationships: A Retrospective*, 25 Violence Against Women 56, 59 (2019), https://journals.sagepub.com/doi/10.1177/1077801218815776 ("Black women experience higher rates of intimate partner homicide than their White counterparts."); Jamila K. Stockman et al., *Intimate Partner Violence and Its Health Impact on Disproportionately Affected Populations, Including Minorities and Impoverished Groups*, 24 J. Women's Health 62, 75 (2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4302952/ (discussing "the disproportionate rates of [intimate partner violence] among ethnic minority women (i.e., Black, American Indian or Alaska Native, Hispanic/Latina), and those who are marginalized (i.e., immigrant women)").

Women of color, and Black women in particular, like the Appellee Angela Wells, suffer more severe effects from intimate partner violence. *See* Stockman et al., *supra*, at 63 ("The psychological impact of [intimate partner violence] on ethnic minority women includes higher rates of depression, post-traumatic stress disorder (PTSD), low self-esteem, and suicidality as compared to their counterparts who have not experienced [intimate partner violence],

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and in some instances, as compared to White women with [intimate partner violence] experiences."); Krim K. Lacey et al., *The Mental Health of US Black Women: The Roles of Social Context and Severe Intimate Partner Violence*, BMJ Open, 1 (2015), https://bmjopen.bmj.com/content/5/10/e008415 (concluding that severe physical intimate partner violence is the factor that showed "the most consistent associations" with mental health issues in Black women, including anxiety disorders, post-traumatic stress disorders, substance and alcohol abuse disorders, suicide ideation and attempts, and any overall mental disorders).

In addition to harming the actual victims, intimate partner violence also negatively impacts the community at large by imposing an immense burden on often underfunded social and legal programs. *See* Betsy Tsai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 Fordham L. Rev. 1285, 1326-27 (2000). "With the effects of domestic violence ranging from emergency room expenses, costs to employers from missed days of work, and government funds expended in providing for homeless battered women and children in foster care," preventing intimate-partner violence "is critical to the overall mental and financial health of individuals in our society." *Id.* at 1326-27; Stockman et al., *supra*, at 63 ("An estimated $5.8 billion is spent annually as a result of medical and mental health costs and loss of productivity associated with [intimate partner violence]").

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Understanding the harms caused by domestic violence—and how the Illinois legislature intended to combat these through the law at issue in this case—requires examination of our nation's past social, cultural, and legal views on domestic abuse in light of what we now know.

A. Intimate Partner Violence Was Deemed Socially and Legally Acceptable Throughout Much of History.

American views toward women, and the roles they were expected to play in society, were largely inherited from England. One such view, the concept of "coverture," derived from English common law, which held that "[u]pon marriage, a woman's legal identity was merged into that of her husband." Emily J. Sack, *Confronting Domestic Violence Head On: The Role of Power in Domestic Relationships*, 32 T. Jefferson L. Rev. 31, 33 (2009). From the country's founding, American law under coverture "recognized the legal right of a husband to 'chastise' his wife." *Id.*

By the mid-19th century, states began granting women the ability to hold property in their own right. "As the laws of coverture disappeared, so too did the rationale for recognizing the husband's 'right of chastisement.'" *Id.* at 33-34. Nevertheless, intimate partner violence remained commonplace and acceptable within American society, and so the legal justifications for not punishing it shifted: "preservation of the family unit and promotion of domestic harmony required that the law not interfere in spousal relations." *Id*. The North Carolina Supreme Court, for instance, opined in 1874 that:

> [i]f no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the

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> husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive.

State v. Oliver, 70 N.C. 60, 61-62 (1874).

Thus, even with the husband's "right of chastisement" technically gone, cultural understandings held firm. "[L]egal authorities continued . . . to treat wife beating more favorably than other instances of assault and battery and remained extremely reluctant to enforce criminal or civil penalties for marital violence." Jill Elaine Hasday, *Contest and Consent: A Legal History of Marital Rape*, 88 Cal. L. Rev. 1373, 1390 (2000); *see also* Reva B. Siegel, *"The Rule of Love": Wife Beating as Prerogative and Privacy*, 105 Yale L.J. 2117, 2118 ("[F]or a century after courts repudiated the right of chastisement, the American legal system continued to treat wife beating differently from other cases of assault and battery."); Marc Tran, *Combatting Gender Privilege and Recognizing a Woman's Right to Privacy in Public Spaces: Arguments to Criminalize Catcalling and Creepshots*, 26 Hastings Women's L.J. 185, 190 (2015) ("[D]omestic violence was long considered an inappropriate area for state intervention, as evidenced by a failure to criminalize and enforce laws once they were adopted."). On the eve of the modern feminist movement in the mid-20th century, though the legal justifications permitting controlling and abusing women had changed, women were nonetheless still subjected to the same domestic violence that had been prevalent for hundreds of years prior.

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B. The Views of Society and the Legal System Toward Domestic Violence Have Lagged Behind Other Modern Landmarks of Progress.

The feminist movement of the 1960s and 1970s produced real change for many women in America, such as increased job opportunities and the hope of employment and education without sex discrimination. *See, e.g.*, Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, 42 U.S.C. 2000e *et seq*. (1964). But many of the underlying cultural biases about domestic violence discussed above remained largely unchanged. One scholar wrote in 2000 that "[m]uch of the behavior that would be labeled 'domestic violence' today would fall well within the range of acceptable, if not recommended, behaviors that male household heads might have engaged in a few decades ago." Alissa Pollitz Worden, *The Changing Boundaries of the Criminal Justice System: Redefining the Problem and the Response in Domestic Violence*, 2 Crim. Just. 215, 220-21 (2000).

In some ways, the increasing freedoms that women began to enjoy perversely made it harder for victims to find support and justice: "[t]he reform of divorce and marital property laws contributed to the erroneous view that all wives could safely leave their marriages and support themselves by working outside the home." Carolyn B. Ramsey, *The Exit Myth: Family Law, Gender Roles, and Changing Attitudes Toward Female Victims of Domestic Violence*, 20 Mich. J. Gender & L. 1, 10 (2013). Changes in gender roles "created a 'why didn't she leave?' question that had rarely been asked when the dominant social assumption was that wives and mothers should not seek paid work." *Id.* at 28. The erroneous view that women could freely and safely leave an abusive

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setting accompanied a trend in psychology that blamed domestic violence on the victim, and "by the 1960s and 1970s, the widespread acceptance of such theories had contributed to the apathetic criminal justice response to domestic violence . . . ." *Id.* at 10, 30-31.[3]

A grassroots movement to establish shelters for battered women "marked the beginning of a community-level movement to redefine battered women as crime victims, and to reevaluate common family-based explanations for men's violent behavior." Worden, *supra*, at 221. Unintentionally, however, the term "battered women's syndrome" subtly encouraged the public to view the psychological impacts of domestic violence as a defect in the woman, rather than as an effect of her abuser's actions. *See, e.g.*, Sack, *supra*, at 41 ("Initial efforts to defend battered women who had harmed their abusers often relied on a theory of temporary insanity, diminished capacity or other mental defect. In this context, it is easy to see how battered women's syndrome would be viewed as a mental disorder, since it was introduced to help establish such a mental defect."); Ramsey, *supra*, at 32 ("Psychological theories dismissed women who stayed with their batterers as masochistic."). Furthermore, painting battered women as "passive and helpless victims" ironically "render[ed] allegations of abuse made by women who did not fit this stereotype less credible."

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[3] "When 'Beaten and Bruised' sought advice from Abigail Van Buren in 1962, for instance, the 'Dear Abby' columnist smugly retorted: 'A man who would repeatedly give his wife a crack across the jaw is sick. And a woman who would stick around for a repeat performance is sicker than the guy who hits her. Find a psychiatrist with two couches.'" Ramsey, *supra*, at 30.

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Sack, *supra*, at 42-43. The majority of women who introduced expert testimony on battered women syndrome actually had their convictions or sentences affirmed rather than thrown out. *Id.* at 44 (discussing study which found in 152 state court appellate cases involving battered women defendants, 63% of convictions or sentences were affirmed, even with expert testimony admissible in 71% of cases).[4]

C. Recent Developments in Understanding Victimization and Trauma Have Shifted Attitudes Towards Survivors of Domestic Violence.

Slowly, scientific research and grassroots activism have more recently begun to pull American attitudes towards a more accurate understanding of domestic violence and its impact on those who experience it. A better understanding of the psychological impacts of intimate partner violence has illuminated why many victims of domestic violence do not "simply leave" their abusers rather than engage in criminalized behavior, and why these same victims may not feel empowered to report the abuse or seek safety outside the relationship.

[4] Women who harmed their abusers in self-defense and later introduced evidence of domestic violence to explain their circumstances were sometimes accused of using the "abuse excuse" to get special treatment from the court. Sack, *supra*, at 43. As it turned out, abused women did get special treatment, just in the opposite way critics assumed—female victims of domestic violence who killed their abusers generally received longer sentences than men who killed their intimate partners. *Id.* at 44-45.

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1. The Long-Term Psychological Impacts of Intimate Partner Violence.

Through study of the long-term psychological effects of intimate partner violence, there is a better clinical understanding today of its uniquely corrosive effect on women, families, and communities. *See* Elizabeth Miller & Brigid McCaw, *Intimate Partner Violence*, 380 New England J. of Med. 850, 851-52 (2019), https://www.nejm.org/doi/full/10.1056/NEJMc1904412; *see also* Sack, *supra*, at 37; Tsai, *supra*, at 1326-27. It is now understood how the ongoing nature of domestic violence has lasting effects, and can cause severe mental and physical health issues throughout a survivor's life. Fiona Duxbury, *Recognising Domestic Violence in Clinical Practice Using the Diagnoses of Posttraumatic Stress Disorder, Depression and Low Self-esteem*, 56 British J. Gen'l Prac. 294, 294-97 n.4 (2006) https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1832239/ (citing Jacquelyn C. Campbell, *Health Consequences of Intimate Partner Violence*, 359 The Lancet 1331 (2002)).[5]

Psychologists now understand "the cycle of violence" set forth by Dr. Lenore Walker to "explain the state of mind of domestic violence victims." Sack, *supra*, at 39-40.

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[5] In one general practice study, PTSD was present in 35% of those in the study who had experienced domestic violence. Duxbury, *supra*, at 294 n.1 (citing A. Marais et al., *Domestic Violence in Patients Visiting General Practitioners – Prevalence, Phenomenology, and Association with Psychopathology*, 89(6) S. Afr. Med. J. 635 (1999)). Chronic PTSD in domestic violence survivors not only has negative mental health impacts for the individual, but it can also result in large social and health costs throughout the victim's life. *Id.* at 295 n.7 (citing R.C. Kessler et al., *Posttraumatic Stress Disorder in the National Comorbidity Survey*, 52 Arch. Gen. Psych. 1048 (1995)).

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> Based on interviews with domestic violence victims, Walker posited that most battering relationships did not involve continuous violence. Rather, such relationships went through a series of three phases that repeated themselves over time. First, in the tension-building phase, a battered woman knows that the abuser is going to use violence against her. Second, in the acute battering phase, the actual incident of violence occurs. Third, in the 'loving contrition' or honeymoon phase, the batterer apologizes profusely and promises not to become violent again. Because a woman in an intimate relationship wants to believe the abuser's promises, this honeymoon phase keeps her psychologically locked in to the relationship, hoping each time that the violence will end. Thus, she becomes trapped in this cycle of violence.

Id. at 39-40. Dr. Walker also illuminated the phenomenon now known as "learned helplessness":

> [T]he dynamic of power and control in a domestic violence relationship creates a situation that greatly undermines the battered woman's self-esteem and her sense of efficacy in being able to change her situation. In addition to constant undermining and humiliation, as well as restrictions on her freedom and movement, the unpredictability of the batterer's behavior conditions a battered woman into thinking she cannot escape—even when [the] opportunity presents itself.

Id. at 40.

This "learned helplessness" is a response to the pattern of coercive control practiced by abusers. Abusers engage in coercive tactics, including violence and intimidation, as well as control tactics including isolation, "to compel obedience indirectly by depriving victims of vital resources and support systems." Evan Stark, *Looking Beyond Domestic Violence: Policing Coercive Control*, 12 J. Police Crisis Negot. 199, 206-10 (2012),

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https://www.researchgate.net/publication/271937985_Looking_Beyond_Domestic_Violence_Policing_Coercive_Control ("Stark I"). Victims feel "all avenues of escape are closed" and normal coping mechanisms are replaced by "the unbearable anxiety that accompanies repeated violation of one's physical and psychological boundaries." Evan Stark, *Re-Presenting Women Battering: From Battered Woman Syndrome to Coercive Control*, 58 Alb. L. Rev. 973, 997 (1995) ("Stark II"). Learned helplessness "contributes to submissiveness and reluctance to leave an abusive relationship" and creates an expectation of reoccurring violence and loss of control. Neta Bargai et al., *Posttraumatic Stress Disorder and Depression in Battered Women: The Mediating Role of Learned Helplessness*, 22 J. Fam. Violence 267, 268 (2007), https://www.researchgate.net/publication/225697913_Posttraumatic_Stress_Disorder_and_Depression_in_Battered_Women_The_Mediating_Role_of_Learned_Helplessness/link/00b7d528cb6df172f3000000/download. Repeated abuse leaves women experiencing an "exaggerated sense of their assailant's control" which makes escape seem impossible. Stark II, *supra*, at 998; *see also* Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*, 167 U. Pa. L. Rev. 399, 413-14 (2019) ("[M]any women stay with their abusive partners in the aftermath of violent episodes" which tends to "occur in the context of relationships characterized by coercive control, a pattern of dom-

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ination that includes tactics to isolate, degrade, exploit and control the survivor"). Women will use tactics like "denial, numbing, or in extreme cases, proactive violence" to avoid the harm of repeated abuse. Stark II, *supra*, at 998.

These distorting factors can impact a survivor's decision-making and play a role in how she comes to engage in illegal activity. Angela M. Moe, *Blurring the Boundaries: Women's Criminality in the Context of Abuse*, 32 Women's Stud. Q. 116, 124 (2004) (one of the primary reasons cited by victims of domestic violence for committing crimes was "to keep an abusive relationship intact and/or to appease a batterer"). "[M]any battered offenders commit their crimes in the shadow of their batterer's actual or threatened violence." Laurie Kratky Dore, *Downward Adjustment and the Slippery Slope: The Use of Duress in Defense of Battered Offenders*, 56 Ohio St. L.J. 665, 703 (1995). Victims of intimate partner violence often act under a very real fear of retaliation. *See* Susan D. Appel, *Beyond Self-Defense: The Use of Battered Woman Syndrome in Duress Defenses*, 1994 U. Ill. L. Rev. 955, 975 (1994) ("A battered woman's intimate knowledge of her batterer may make her more aware of impending violence and the degree of that violence than an objective observer would be") (citation omitted); *see also* Hillary G. Harding & Marie Helweg-Larsen, *Perceived Risk for Future Intimate Partner Violence Among Women in a Domestic Violence Shelter*, 24 J. Fam. Violence 75, 84 (2009), https://www.researchgate.net/pub-

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lication/226575952_Perceived_Risk_for_Future_Intimate_Partner_Violence_among_Women_in_a_Domestic_Violence_Shelter (victims of domestic abuse predict the threat of future harm with relative accuracy).

These constructs demonstrate why it is simply false that all abused "wives could safely leave their marriages" or easily remove themselves from a coercive or violent situation and create their own safety elsewhere. Ramsey, *supra*, at 10. Victims of domestic violence are "afraid to leave, or worse, stay or return to their abusers thinking they have a better chance of controlling the level of violence while they are with them." Zanita E. Fenton, *Domestic Violence in Black and White: Racialized Gender Stereotypes in Gender Violence*, 8 Colum. J. Gender & L. 1, 46 n.188 (1998). And these fears are warranted: "It is estimated that a battered woman is 75 percent more likely to be murdered when she tries to flee or has fled, than when she stays." Sarah M. Buel, *Fifty Obstacles to Leaving, A.K.A. Why Abuse Victims Stay*, 28 Colo. Lawyer Oct. 28, 1999, at 19. *See also* Lisa R. Eskow, *The Ultimate Weapon?: Demythologizing Spousal Rape and Reconceptualizing Its Prosecution*, 48 Stan. L. Rev. 677, 687 (1996) (quoting Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 Mich. L. Rev. 1, 5-6 (1991)) ("[H]usbands' acts of physical and sexual violence escalate when their wives attempt to leave the

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marriage. These 'separation assaults'… reflect the abusive husband's 'quest for control'").[6]

2. Victims Often Do Not Disclose or Report Abuse.

Research has further demonstrated why "[c]ontrary to the criminal justice paradigm, victims seldom seek public confrontation or punishment for their abusive partners." Worden, *supra*, at 238. There are many reasons why a domestic violence victim may not disclose the abuse to trusted family or friends or to authorities. A major barrier to reporting domestic violence is a victim's overwhelming sense of shame, guilt, or inadequacy for what they have endured and fear that no one will believe them. Edna Erez, *Domestic Violence and the Criminal Justice System: An Overview*, 7 Online J. of Issues in Nursing (2002), https://ojin.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TableofContents/Volume72002/No1Jan2002/DomesticViolenceandCriminalJustice.aspx; *see also* Erin K. Jackson, *To Have and to Hold: Protecting the Sexual Integrity of the World's Married Women*, 49 U. Toledo L. Rev. 71, 74 (2017) (stating that as a woman experiences more abuse, "the more she experiences feelings of self-blame rather than feelings of anger directed at her husband"). Victims often also fear that if they do report,

[6] There are also formidable practical obstacles preventing domestic violence victims from leaving their abusers. In order to leave women must have a financial safety net, a safe place to go, and protection from the legal system in some form, either a restraining order or emergency protective order. *See, e.g.*, Hilary Mattis, *California's Survivors of Domestic Violence Employment Leave Act: The Twenty-Five Employee Minimum Is Not A Good Rule of Thumb*, 50 Santa Clara L. Rev. 1319, 1328 (2010).

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not only might the perpetrator retaliate against them, but authorities who disbelieve them might retaliate as well. Erez, *supra*, at 2. These same concerns lead victims to underplay the extent of their injuries when they do summon the courage to report their abuse. *Id.*

Even when victims do report their abuse to the police, such reports do not always end in intervention. Suzanne Tomkins, *20 Years of Domestic Violence Advocacy, Collaborations, and Challenges: Reflections of a Clinical Law Professor*, 22 Buff. J. Gender, L. & Soc. Pol'y 1, 11 (2014) ("Although domestic calls accounted for the highest category of 911 calls in urban settings across the United States, they represented the lowest in terms of arrest rates."). Black women in particular are less likely to be able to rely on law enforcement or other emergency services when facing domestic abuse. *See* Amanda L. Robinson & Meghan S. Chandek, *Differential Police Response to Black Battered Women*, 12 Women & Crim. Just. 29, 32 (2000), https://heinonline.org/HOL/Page?handle=hein.journals/wwcj12&id=139&collection=usjournals&index= ("Not only does substantial evidence demonstrate that women of color are more likely to suffer violence at the hands of their partners, but institutional remedies to the problem of domestic violence, such as those offered by public health agencies, social service agencies, and the criminal justice system, may be lacking"); Fenton, *supra*, at 53 ("[W]omen of color often have a lack of confidence in the system's ability to serve their needs.

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There is both a real and perceived lack of interest by the police in the complaints of black women.").

Finally, as noted above, it is now a well-documented fact that violence can escalate when a victim attempts to leave an abusive relationship, which may further deter victims from seeking outside assistance.

II. RECENT REFORMS ATTEMPTED TO REMEDIATE LEGAL RESPONSES TO DOMESTIC VIOLENCE BUT WERE INCOMPLETE, AND HAVE BEEN HAMPERED BY RESTRICTIVE JUDICIAL INTERPRETATIONS.

As science has improved general understanding of, and response to, domestic violence in this country, reformation of our legal system has begun. Melissa L. Breger, *Reforming by Re-Norming: How the Legal System Has the Potential to Change a Toxic Culture of Domestic Violence*, 44 J. Legis. 170, 172 (2017) (the legal system often mirrors "norms and themes in larger societal culture"). However, progress remains slow and inconsistent.

A. Changes Made to Federal and State Law Intended to Address the Problem of Domestic and Other Gender-Based Violence Prior to the Passage of Section (b-5) Marked a Welcome Shift in Attitude, But Gaps Remained.

In the 1970s and 1980s, advocates recognized the need to move from assisting individual women to seeking broader policy change, and began to demand an enlightened understanding of and response to survivors of domestic violence from the legal system. For example, it was clear that the legal system's response gravely misunderstood why victims of domestic violence would use force to protect themselves or their children or why women would find it difficult to leave an abusive relationship. Advocates recognized the need for judge,

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jury, and law enforcement education. Larance, *supra*, at 57; Ramsey, *supra*, at 32. Due to widespread activism and education, there were significant changes in arrest and prosecution policies for domestic violence, and an increase in services for survivors. By the mid-1990s, the country finally seemed poised to adopt dramatic reforms which would effectively reduce this public problem. Sack, *supra*, at 33. Congress and the Illinois General Assembly passed numerous reform initiatives that included the federal Violence Against Women Act, the Illinois Domestic Violence Act, the elimination of the marital rape exemption, the Illinois Victims' Economic Security and Safety Act, and the Illinois Justice for Victims of Sex Trafficking Crimes Act.

1. The Federal Violence Against Women Act

The federal Violence Against Women Act of 1994 ("VAWA") was the capstone of initial reform efforts at the national level. Congress enacted VAWA "[i]n response to the problems of domestic violence, sexual assault, and other forms of violent crime against women." *Brzonkala v. Va. Polytechnic Inst. & State Univ.*, 169 F.3d 820, 827 (4th Cir. 1999) (en banc), (citing Pub. L. No. 103-322, §§ 40001-40703), *aff'd sub nom. United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Casciano*, 124 F.3d 106, 110 (2d Cir. 1997) (VAWA is "designed to provide women nationwide greater protection and recourse against violence and to impose accountability on abusers."). "Congress's goal in enacting VAWA was to eliminate barriers to women leaving abusive relationships." *Lopez-Birrueta v. Holder*, 633 F.3d 1211, 1215 (9th Cir. 2011). The passage of VAWA was both a recognition of significant change as well as an

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initiation of further policy shifts related to domestic violence so that the country would make progress in its treatment of domestic violence survivors. Sack, *supra*, at 32-36. Perhaps VAWA's most important innovation (in theory) was that it created a private cause of action for victims of a "crime of violence motivated by gender" to sue the perpetrators for money damages in federal court (i.e. the "civil rights provision"). Caroline S. Schmidt, *What Killed the Violence Against Women Act's Civil Rights Remedy Before the Supreme Court Did?*, 101 Va. L. Rev. 501, 502-03 (2015).

VAWA's enactment occurred against a backdrop of vigorous opposition by federal and state judges, who objected that it would bring "private" matters into federal court. Sally F. Goldfarb, *Violence Against Women and the Persistence of Privacy*, 61 Ohio St. L.J. 1, 1 (2000). In fact, "[m]uch of the opposition to the civil rights provision took the form of assertions that federal courts should not interfere in the private, domestic sphere." *Id.* at 52. For example, "[i]n a particularly striking evocation of the ideology of legal nonintervention in the family, the Conference of Chief Justices, which represents the state judiciary, criticized VAWA's civil rights provision on the ground that it would conflict with the marital rape exemption." *Id.* "Similarly, lawyer Bruce Fein, who testified against the legislation, specifically objected to the fact that VAWA would interfere with a state's choice not to criminalize spousal rape—a choice that, according to Fein, states should be free to make based on 'local customs.'" *Id.*

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However, VAWA "in general, and the civil rights provision in particular, [was] designed to counteract the view . . . that domestic violence (and by extension, other forms of violence against women) are 'private' and therefore do not deserve legal redress." *Id.* at 46. During the hearings preceding VAWA's passage, "[a] great deal of emphasis was placed on state judicial systems' failure to adequately address violence against women." Schmidt, *supra*, at 521; *see also* Sally F. Goldfarb, *"No Civilized System of Justice": The Fate of the Violence Against Women Act*, 102 W.Va. L. Rev. 499, 507 (2000) ("Congress found that state laws were inadequate to redress violence against women."). Thus, VAWA provided extensive "federal funding . . . to the States to help them curtail violence against women through law enforcement efforts, education and prevention programs, and the maintenance of battered women's shelters." *Brzonkala*, 169 F.3d at 827 (citations omitted). It also criminalized interstate acts of domestic violence and the interstate violation of protective orders against violence and harassment, imposed sentencing enhancements for federal crimes motivated by gender animus, provided restitution to victims of violent crime against women, and amended the Federal Rules of Evidence to adopt a rape shield provision. *Id.*

Although VAWA's initial passage was a significant step in responding to the problem of domestic violence, it was not a panacea. As some commentators have observed, VAWA failed sufficiently to "address the needs of those whose lives are most marginalized," particularly in its early years. Jacqueline

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Mabatah, *Blaming the Victim? The Intersections of Race, Domestic Violence, and Child Neglect Laws*, 8 Geo. J.L. & Mod. Critical Race Persp. 355, 359 (2016) (citation omitted). For example, VAWA initially required states receiving grant funding to adopt mandatory arrest policies, requiring police to make an arrest in any case involving domestic violence when they had probable cause to do so. Leigh Goodmark, *Reimagining VAWA: Why Criminalization Is a Failed Policy and What a Non-Carceral VAWA Could Look Like*, Violence Against Women, at 1, 8-9 (2020), https://www.nyscasa.org/wp-content/uploads/2020/09/VAW-Crim-as-failed-policy-1.pdf. These mandatory arrest policies led to an increase in "dual arrests," where victims and their abusers were both arrested when domestic violence is reported. *Id.* at 8-9 ("[M]any women who are arrested under mandatory and preferred arrest laws have been subjected to abuse."). Instead of empowering women to report intimate partner violence, such policies may have dissuaded women from seeking help through state channels.[7] Moreover, these pro-arrest policies fueled by VAWA did not have a long-term deterrent effect and may even have exacerbated intimate

[7] Indeed, it is not clear whether VAWA made it more likely for victims of intimate partner violence to report: reporting rates have fluctuated since 1994, and in 2018, reporting was lower than at the time of VAWA's inception. Goodmark, *supra*, at 5-6. Furthermore, although rates of domestic violence dropped after VAWA was passed, this drop corresponded to a general decrease in all violent crime in the mid-1990s. Notably, during certain periods, rates of domestic violence decreased less than the drop in the overall crime rate. For example, between 2000 and 2005, violent crime fell 33%, while intimate partner violence fell 25%; from 2005-2010, violent crime fell 26%, and intimate partner violence fell 6%. *Id.* at 5.

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partner violence. *Id.* at 6; Abigail Higgins & Olufemi O. Taiwo, *How the Violence Against Women Act Failed Women*, The Nation, March 23, 2021, https://www.thenation.com/article/society/violence-against-women-act/ ("The research also showed that race and poverty played a role in the effectiveness of arrests;" pro-arrest policies "tended to backfire for unemployed men and in districts with higher Black populations—increasing rather than deterring violence for the most vulnerable.").

Over the years since its passage, Congress has continued to refine VAWA, demonstrating the continuing evolution of societal views in this area. For instance, in recognition of the track record of mandatory arrest policies, the 2013 reauthorization of VAWA removed references to mandatory arrests. Violence Against Women Reauthorization Act, Pub. L. No. 113-4 (2013). A reauthorization bill passed just this year made additional changes, for instance, among other things, increasing services and support for underserved populations, including culturally specific communities, LGBTQ survivors, individuals with disabilities, immigrant survivors, older adults, and victims in rural communities. Consolidated Appropriations Act 2022, Pub. L. No. 117-103, 136 Stat 49 (2022).

2. The Illinois Domestic Violence Act

Because of societal and judicial attitudes, as discussed further above, "abuse victims from the mid-1900s through the 1970s (and even into the 1980s) may have encountered a less sympathetic [legal system] response than their predecessors in the early twentieth century had." Ramsay, *supra*, at 32. Illinois

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first enacted legislation designed to combat these attitudes and protect victims of domestic violence in 1982. Terrence J. Brady, *The Illinois Domestic Violence Act of 1986: A Selective Critique*, 19 Loy. U. Chi. L.J. 797, 797 (1988). Four years later, prominent anti-domestic violence organizations called for comprehensive refinements to the law, leading to the Illinois Domestic Violence Act of 1986 ("IDVA").

The IDVA states that it "shall be liberally construed and applied to promote its underlying purposes," which include to "[r]ecognize domestic violence as a serious crime against the individual and society" and "that the legal system has ineffectively dealt with family violence in the past." 750 ILCS 60/102(1), (3); *see also In re Marriage of Young*, 2013 IL App (2d) 121196, ¶ 20 ("The Act is to be construed liberally to promote its purposes, which include supporting the victims of domestic violence to avoid further abuse and 'reduce the abuser's access to the victim . . . so that victims are not trapped in abusive situations . . . .'"). The IDVA likewise recognized that "although many laws have changed, in practice there is still widespread failure to appropriately protect and assist victims." 750 ILCS 60/102(3).

3. The Criminalization of Marital Rape

Spousal rape was not made a crime in all fifty states and the District of Columbia until 1993. Jessica Klarfield, *A Striking Disconnect: Marital Rape Law's Failure to Keep Up With Domestic Violence Law*, 48 Am. Crim. L. Rev. 1819, 1819 (2011). Illinois was one of the later states to change its law regarding marital rape. Illinois's marital rape exception remained in effect in some

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form until 1992, when it was struck down on Equal Protection grounds by the Second District Appellate Court. *See People v. M.D.*, 231 Ill.App.3d 176, 187–93 (2d Dist. 1994). The court in *M.D.* reviewed the traditional justifications for the marital rape exception, and emphatically disposed of them:

> The above archaic doctrines simply have no place in modern society, where the notions that a woman should be regarded as her husband's chattel and deprived of her dignity and recognition as a whole human being through the denial of a separate legal identity have been thoroughly rejected.

Id. at 189.

Following *M.D.*, the Illinois General Assembly finally amended 720 ILCS 5/12-18(c) in 1993 to remove the marital-rape exemption provision, although it kept a perversely severe reporting requirement that immunized spousal rapists unless their victim reported the rape within "30 days after the offense was committed." Public Act 88-421 (1993). That extra requirement was not deleted until 2004 by Public Act 93-958. And even today, "[t]he ambivalence of public attitudes toward martial rape is evident in . . . the lack of prosecution and even lower conviction rates" in domestic rape cases. Sack, *supra*, at 52.

4. The Illinois Victims' Economic Security and Safety Act

Intimate partner violence can have a devastating impact on victims' financial security in addition to their physical and emotional health, a problem that the legislation of the 1980s and 1990s failed to address. In 2003, Illinois finally took a step toward remediating this issue by enacting the Victims'

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Economic Security and Safety Act ("VESSA"), which prohibited employer discrimination against employees who are survivors of domestic or sexual violence and required employers to provide employees up to twelve weeks of protected leave to seek medical help, legal assistance, counseling, safety planning, and other assistance. 820 ILCS 180/5 *et seq*. VESSA recognized that a large proportion of domestic violence victims reported that they "lost a job due, at least in part, to domestic violence" and that women "who have experienced domestic violence or dating violence are more likely than other women to be unemployed, to suffer from health problems that can affect employability and job performance, to report lower personal income, and to rely on welfare." 820 ILCS 180/5(14)-(15).

5. The Illinois Justice for Victims of Sex Trafficking Crimes Act

A shared hallmark of both intimate partner violence and sex trafficking is the perpetrator's deliberate and concerted tactical deployment of power and control against their victim. The Illinois Justice for Victims of Sex Trafficking Crimes Act ("JVST"), passed in 2011, demonstrated progress in the legal system through a paradigm shift from treating trafficked persons as criminals to recognizing such persons as crime victims based on modern understandings of the ways in which sex traffickers abuse and control trafficked persons. *See generally* Rachel Johnson, *Criminalizing Victims: The Importance of Ending Felony Prostitution in Illinois*, 3 DePaul J. Women, Gender & L. 27 (2014). The

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JVST "allows Illinois courts to vacate a conviction for prostitution if the Petitioner can prove that the conviction occurred as a direct result of their sex trafficking victimization." Rachel Derham, *Justice for Victims of Sex Trafficking: Why Current Illinois Efforts Aren't Enough*, 51 J. Marshall L. Rev. 715, 718 (2018); *see also* Public Act 97-267 (2011). The JVST aimed to "help victims of sex trafficking who have been charged with prostitution by giving them the opportunity to clear their names." State of Ill., Press Release, *Governor Quinn Signs Bill to Help Sex Trafficking Victims Rebuild Their Lives—New Law Will Give Victims of Sex Trafficking a Chance to Appeal Prostitution Convictions* (Aug. 6, 2011). According to one of the JVST's co-sponsors,

> [v]ictims of human trafficking are often forced into prostitution and other crimes against their own will, and too many of them are being prosecuted as criminals . . . . When we have evidence that involuntary human trafficking was the cause of the crime, even though the victim may not have had the ability or representation to prove it during trial, we must do the right thing and reverse their conviction so they can move on with repairing their lives.

Id. (quoting Representative Karen Yarbrough).

Specifically, a criminal defendant may file a motion to vacate a conviction "under Section 11-14 (prostitution) or Section 11-14.2 (first offender; felony prostitution) . . . or a similar local ordinance," which the court "may grant . . . if, in the discretion of the court, the violation was a result of the defendant having been a victim of human trafficking." 725 ILCS 5/116-2.1(a), (b). If the court grants a defendant's motion, "it must vacate the conviction and

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may take such additional action as is appropriate in the circumstances." *Id.* 5/116-2.1(c).

B. In Some Instances, Courts Have Undercut Legislative Intent by Adopting Cramped Interpretations of Remedial Statutes.

While the groundswell of legislation in recent decades has been welcome, it is far from sufficient to address the longstanding legal and social issues surrounding domestic abuse. Moreover, in some instances, courts confronting remedial statutes in the years after their passage have interpreted those laws in extraordinarily narrow ways, blunting the robust impact the statutes were intended to create.

As an example, just six years after the passage of VAWA, the U.S. Supreme Court found the law's critical private-remedy "civil rights provision" unconstitutional for exceeding Congress' legislative authority. *See Morrison*, 529 U.S. 598. "Within the subtext of the opinion [in *Morrison*] . . . lies a systematic refutation of the existence and validity of the idea of violence against women." Jill Laurie Goodman, *The Idea of Violence Against Women: Lessons from* United States v. Jessica Lenahan*, The Federal Civil Rights Remedy, and the New York State Anti-Trafficking Campaign*, 36 N.Y.U. Rev. L. & Soc. Change 593, 621 (2012). Despite years of scientific research showing the unique and lasting trauma that intimate partner violence inflicts on women, *Morrison* "repeatedly characterized the acts of violence covered by the Civil Rights Remedy as no different from other violent felonies." *Id.*

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Similarly, the JVST has sometimes collided headlong with cultural reluctance to recognize the plight of abused women. Despite the clear intent behind the JVST and its discretionary grant of authority to "take such additional action as is appropriate under the circumstances," some Illinois courts have incorrectly interpreted the JVST narrowly to apply *only* to convictions for the single crime of "prostitution"—not for any other crime, like theft or underage drinking, that may also have been a result of having been a trafficking victim. *See* Derham, *supra*, at 719-20, 723 (comparing *People v. J.S.*, a case interpreting the JVST narrowly, with *People v. B.J.*, where the court construed its authority to include vacating a public indecency conviction). *Id.* at 724-26.

Such decisions have limited the intended remedial impact of legal reforms. This underscores why it is so crucial that this Court resoundingly reject that path, and adopt an expansive interpretation of Section (b-5) in line with its remedial purpose.

III. AN EXPANSIVE INTERPRETATION OF THE AVAILABILITY OF SECTION (B-5) RELIEF IS ESSENTIAL TO EFFECT THE LEGISLATIVE PURPOSE.

The path of prior social and legal efforts to understand and address domestic violence brings into singular focus the proper resolution of the question before the Court in this case. "The fundamental of statutory construction is to ascertain and give effect to the intent of the legislature." *Fumarolo v. Chi. Bd. of Educ.*, 142 Ill. 2d 54, 96 (1990). "Legislative intent can be ascertained from a consideration of the entire act, its nature, its object, and the consequences resulting from different constructions." *Id.*

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For remedial statutes like Section (b-5) particularly, "[i]t is a familiar canon of construction that the language of a remedial statute should be so interpreted as to promote the remedy." *Conard v. Crowdson*, 75 Ill. App. 614, 620 (3d Dist. 1897). "In the construction of remedial statutes the judicial eye is always 'kept single' to the legislative intent," *id.*, "in order that the remedy provided by [the statute] be advanced, not crippled." *Jackson v. Warren*, 32 Ill. 331, 341 (1863).

Public Act 099-0384—which added Section (b-5) to the relief from judgment statute—is properly understood as the most recent in a series of efforts by the Illinois General Assembly to countermand stubborn, persistent, and wrong-headed attitudes about intimate partner violence. In other words, the problem to be remedied was entrenched and outdated cultural norms by which victims are punished and abusers are protected. The pervasive and longstanding nature of this problem underscores that the General Assembly must have intended to provide courts with the maximum possible discretion to right past wrongs arising from intimate partner violence.

A. Section (b-5) Must Be Available to Survivors Sentenced More Than Two Years Before Its Adoption in Order to Serve Its Remedial Purpose.

As is evident from the pitifully small handful of individuals who have actually benefitted from Section (b-5) to date, the interpretation argued for by the State and adopted by many lower courts, which categorically excludes from relief survivors who were sentenced more than two years before the effective date of Section (b-5), has essentially foiled the intent of the statute rather than

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furthering it. In order to rectify this problem—and avoid the previous failures of some courts in adopting inappropriately limited interpretations of remedial statutes intended to benefit victims of abuse—the Court must interpret Section (b-5) as creating a stand-alone claim for resentencing not subject to the two-year limitation in 735 ILCS 5/2-1401(c). *See also* Brief and Argument for Petitioner-Appellee Angela J. Wells at Section B.2.

To interpret the statute otherwise closes the courthouse doors to precisely the individuals Section (b-5) was intended to benefit, based solely on an arbitrary cut-off date. By way of illustration, one of the few individuals who has benefitted from the application of Section (b-5) was incarcerated for her role in a robbery. *See* Docket No. 12CR2306902 (Ill. Cir. Ct. Cook County). Her abuser threatened her with a gun and forced her to participate in the offense. Despite the fact that she had photos of her injuries and hospital records, evidence of her abuse was never presented to the court, and the survivor received a longer sentence than her abuser. As a result of Section (b-5), this individual was released from prison after serving approximately 6 years and had the opportunity to rekindle her relationship with her child. *Id.* This result matches perfectly with the remedial intent of Section (b-5). But had this survivor been sentenced only two years earlier, under the interpretation argued by the State, she would have received no relief at all.

Any interpretation that, like the one argued by the State, would leave Angela Wells and others like her categorically without access to Section (b-5)'s

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legal recourse would be absurd and unjust, and an outcome squarely contrary to the legislative purpose of the Illinois General Assembly. *See O'Connell*, 2022 IL 127527, ¶ 22; *Nelson v. Artley*, 2015 IL 118058, ¶ 27 ("In construing a statute, we presume that the legislature did not intend absurd, inconvenient, or unjust results, and we will not, absent the clearest reasons, interpret a law in a way that would yield such results.") (citations omitted). It would be absurd to impose a time limitation on Section (b-5) petitions that was not stated explicitly in the provision itself because, as discussed above, domestic violence is not a problem that arose two years prior to the statute's passage. Indeed, Section (b-5) is aimed at overturning the legacy of centuries of acquiescence in the abuse of women. It is those long-incarcerated survivors like Ms. Wells, sentenced decades ago during a time in which mitigating evidence related to domestic violence by an intimate partner was not understood or favored, who have the greatest need for the opportunity to be heard that Section (b-5) provides. Likewise, it would be manifestly unjust to shut the courthouse doors to a survivor like Ms. Wells, because she is no less deserving of the opportunity to present this mitigating evidence than a woman sentenced in 2014. In fact, Ms. Wells and other long-incarcerated survivors like her were sentenced at a time when domestic abuse was not well-understood and have already served years (or even decades) of criminal sentences that Illinois lawmakers have since unanimously recognized may be too harsh. *See* Senate Vote, S.B. 209, 99th Gen. Assembly (Apr. 30, 2015), https://bit.ly/3saPBmo (51 to 0); House

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Roll Call, S.B. 209, 99th Gen. Assembly (May 25, 2015), https://bit.ly/3mvTC3w (106 to 0).[8]

B. Section (b-5) Must Be Interpreted to Allow Petitions by Survivors Who Negotiated Guilty Pleas in Order to Serve Its Remedial Purpose.

Finally, in this case, the State has adopted the surprising position that Section (b-5) should be interpreted to prohibit relief for survivors who negotiated guilty pleas. In doing so, the State reads a new, extra-statutory limitation into Section (b-5) that would restrict its application even further. To adopt the State's view would exclude from relief—with no basis whatsoever, and contrary to the manifest intent of the statute—the over 90% of individuals whose convictions are obtained through pleas. Ram Subramanian et al., *In the Shadows: A Review of the Research on Plea Bargaining*, Vera Inst. of Just. iii (2020), https://www.vera.org/downloads/publications/in-the-shadows-plea-bargaining.pdf; Brian A. Reaves, *Felony Defendants in Large Urban Counties, 2009 – Statistical Tables*, U.S. Dep't of Just. 22 (2013), https://bjs.ojp.gov/content/pub/pdf/fdluc09.pdf ("Nearly all convictions were the result of a guilty plea rather than a trial."). The high rate of convictions by plea has stayed steady since Ms. Wells was sentenced in 2001. Gerard Rainville & Brian A. Reaves, *Felony Defendants in Large Urban Counties*, 2000, U.S. Dep't of Just. 28

[8] A Section (b-5) petition does not raise the sort of evidentiary concerns that are typically put forward as creating a need for a defined statute of limitations. Where petitioners are not able to mount sufficient evidence of their abuse because of the passage of time, or for any other reason, they will not be able to meet the evidentiary burden already imposed by the statute.

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(2003), https://bjs.ojp.gov/content/pub/pdf/fdluc00.pdf (in 2000, 95% of state convictions obtained within one year of arrest were the result of pleas). The United States Supreme Court has recognized that "[c]riminal justice today is for the most part a system of pleas, not a system of trials." *Lafler v. Cooper*, 566 U.S. 156, 170 (2012). S*ee also Missouri v. Frye*, 566 U.S. 134, 143 (2012) (guilty pleas constitute 95% of state criminal convictions making them "central to the . . . criminal justice system"); *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010) ("Pleas account for nearly 95% of all criminal convictions."). This Court has also affirmed the integral role of pleas, even noting plea negotiations are "vital to and highly desirable for our criminal justice system." *People v. Evans*, 174 Ill. 2d 320, 325 (1996). The Court should reject the State's request to deny Section (b-5) relief to the vast majority of potential petitioners; those who have accepted pleas should not be categorically excluded from the remedial reach of Section (b-5).

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CONCLUSION

For the foregoing reasons, the Court should affirm the decision of the Appellate Court and remand Ms. Wells' case for further proceedings under 735 ILCS 5/2-1401(b-5).

Date: July 6, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 45 pages.

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No. 127169

IN THE SUPREME COURT OF ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, *Respondent-Appellant*, v. ANGELA J. WELLS, *Petitioner-Appellee*.	On Appeal from the Illinois Appellate Court Third Judicial District, No. 3-18-0344 There on appeal from the Circuit Court of the Tenth Judicial Circuit, Peoria County, Illinois, No. 01 CF 344, Hon. Paul Gilfillan, Judge Presiding

NOTICE OF FILING

TO: *See attached Certificate of Service*

PLEASE TAKE NOTICE that on the 6th day of July, 2022, I electronically filed with the Clerk of the Supreme Court of Illinois, the Brief of *Amici Curiae* American Civil Liberties Union of Illinois, *et al.* in Support of Petitioner-Appellee on behalf of *amici curiae* American Civil Liberties Union of Illinois, *et al.*

A copy is attached hereto and herewith served upon you.

Dated: July 6, 2022

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The undersigned, one of the attorneys for *amici curiae* American Civil Liberties Union of Illinois, *et al.*, certifies under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure that she caused a true and correct copy of the foregoing **Brief of *Amici Curiae* American Civil Liberties Union of Illinois, *et al.* in Support of Petitioner-Appellee** to be filed through the Illinois e-filing system on July 6, 2022 to the following counsel of record:

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