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AMENDING THE JUSTICE REINVESTMENT ACT TO PROTECT VICTIMS OF DOMESTIC VIOLENCE

MARGARET STRAKNA*

INTRODUCTION

America as a whole is experiencing a domestic violence epidemic,¹ and Maryland has not been immune to it.² In 2016 alone, there were approximately 31,175 reports of domestic violence in Maryland,³ and that figure only counts incidents reported to the police.⁴

The Maryland legislature has attempted to address these concerns in several ways;⁵ however, two recent pieces of legislation have

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¹ Joel Miller, *Maryland Expands Protections of Domestic Violence*, MENTAL HEALTH COUNSELORS ASS'N (May 20, 2015, 11:58 AM), <http://connections.amhca.org/blogs/joel-miller/2015/05/20/maryland-expands-protections-for-victims-of-domestic-violence> (noting that 25% of American women experience intimate partner violence).

² Patrick Madden, *Prince George's County Enlists Faith Community To Tackle Domestic Violence*, AM. UNIV. WAMU 88.5 (Feb. 9, 2018), <https://wamu.org/story/18/02/09/prince-georges-county-enlists-faith-community-tackle-domestic-violence/#.W8YAKS2lmqA> (“Roughly 50 people are killed each year in Maryland due to domestic violence”); Heather Mongilio, *In 2016, Carroll Has More Than One Domestic Violence Case A Day*, CARROLL CTY. TIMES (Dec. 18, 2016, 1:33 PM), <http://www.carrollcountytimes.com/news/health/ph-cc-yir-domestic-violence-2016-20161217-story.html> (reporting there were 16,817 domestic violence crimes in Maryland in 2014).

³ MD. DEP'T ST. POLICE, CRIME IN MARYLAND: 2016 UNIFORM CRIME REPORT 52 (2016), <https://mdsp.maryland.gov/Document%20Downloads/Crime%20in%20Maryland%202016%20Uniform%20Crime%20Report.pdf> [hereinafter 2016 UNIFORM CRIME REPORT]; Domestic violence is defined as “any crime committed . . . against a victim who is a person eligible for relief . . . or who had a sexual relationship with the suspect within 12 months before the commission of the crime.” *Id.* at 50.

⁴ Maryland law requires that any incident reports generated by Maryland State Police, while responding to domestic violence situations be provided to victims upon their request. MD. CODE ANN., FAM. LAW § 4-503.1(a) (2019) (“If an incident report is filed when a law enforcement officer responds to a request for help . . . the law enforcement unit shall provide a copy of the report to the victim on request.”). Between 2006 and 2015, only 56% of the United States’ estimated 1.3 million nonfatal domestic violence incidents were reported to police. U.S. DEP'T OF JUSTICE, NCJ 250231, POLICE RESPONSE TO DOMESTIC VIOLENCE, 2006-2015 1 (2017), <https://www.bjs.gov/content/pub/pdf/prdv0615.pdf>.

⁵ See *infra* Part II.

vastly changed the content of domestic abusers' criminal records.⁶ One of these laws requires that domestic violence convictions ("domestically-related crimes")⁷ be marked as such on the defendant's criminal record.⁸ The other, the Justice Reinvestment Act ("the Act"), gives people convicted of second-degree assault—the most commonly charged crime in domestic violence situations⁹—the opportunity to petition for that conviction to be expunged.¹⁰ The Justice Reinvestment Act requires a longer waiting period prior to expunging domestically-related crimes than comparable non-domestic crimes,¹¹ but the Act does not prohibit defendants from petitioning the court to modify their sentence to probation before judgement,¹² which would allow the person to expunge their record far earlier than the fifteen years required under the Act.¹³

There has been no precedent thus far which addresses this loophole.¹⁴ This lack of guidance creates a strong potential for inconsistency in how courts handle balancing the legislature's desire to label domestic abusers as such against the legislature's desire to

⁶ See *infra* Part III.

⁷ As defined under Maryland law, "domestically-related crimes means a crime committed by a defendant against a victim who is a person eligible for relief . . ." MD. CODE ANN., CRIM. PROC. § 6-233(a) (2019). Victims eligible for relief include "(1) the current or former spouse of the respondent; (2) a cohabitant of the respondent; (3) a person related to the respondent by blood, marriage, or adoption; (4) a parent, stepparent, child, or stepchild of the respondent or the person eligible for relief who resides or resided with the respondent or person eligible for relief for at least 90 days within 1 year before the filing of the petition; (5) a vulnerable adult; (6) an individual who has a child in common with the respondent; or (7) an individual who has had a sexual relationship with the respondent within 1 year" before the commission of the crime. MD. CODE ANN., FAM. LAW § 4-501(m) (2019).

⁸ See H.D. 1146, 2012 Leg., 430th Sess. (Md. 2012) (codified at MD. CODE ANN., CRIM. PROC. § 6-233 (2019)); see also *infra* Part II-B.

⁹ See 2016 UNIFORM CRIME REPORT, *supra* note 3, at 53.

¹⁰ See S. 1005, 2016 Leg., 436th Sess. (Md. 2016).

¹¹ See MD. CODE ANN., CRIM. PROC. § 10-110(c) (2019).

¹² If a defendant pleads guilty or no contest or is found guilty of a crime, a judge may defer disposition until the completion of a period of probation if the judge believes doing so would serve the best interests of the defendant and the public welfare, so long as the judge gets written consent from the defendant. See MD. CODE ANN., CRIM. PROC. § 6-220(b)(1) (2018).

¹³ If a defendant receives a sentence of probation before judgment, they are placed on probation for a specified period of time with reasonable conditions and are never convicted of the crime in question if they complete the probation successfully. CRIM. PROC. § 6-220(b)(1), § 6-220(g). Any violation of probation means the court "may enter judgment and proceed as if the defendant had not been placed on probation."

§ 6-220(f).

¹⁴ See generally Ellen Mugmon, *Justice Reform Bill Needs Work*, BALT. SUN (Mar. 29, 2016, 1:34 PM), <https://www.baltimoresun.com/news/opinion/readersrespond/bs-ed-reform-letter-20160329-story.html> (calling upon Maryland legislators to engage in necessary reform of the Justice Reinvestment Act).

eventually let rehabilitated defendants move on from past decisions.¹⁵ Since this balance is left entirely up to the discretion of individual judges, inconsistencies may lead to allegations that judges are not acting impartially in determining the more important goal.¹⁶ It is imperative that this loophole be closed. The Justice Reinvestment Act should be read as prohibiting any action which would logically lead to the Justice Reinvestment Act's 15-year expungement waiting period for domestically-related crimes being circumvented.¹⁷ In order to make this last, the Justice Reinvestment Act should be amended to codify the prohibition against allowing these offenders to modify their sentence to probation before judgement so soon.¹⁸ This prohibition is necessary due to the purpose and language of the Justice Reinvestment Act¹⁹ and the fact that doing otherwise would be severely against the public interest.²⁰

Part II of this paper traces how Maryland historically has approached the problem of domestic violence²¹ and recent legislation that affects how domestic abusers are treated by the justice system.²² Part III-A argues that interpreting the Justice Reinvestment Act as allowing early alteration of a domestic abuser's criminal record would go against the purposes of the Act.²³ Part III-B argues that such a reading would go against the public interest²⁴ due to the public's need for notice of an offender's dangerousness²⁵ and the physical, emotional, and mental stress offenders inflict on victims and their children.²⁶ Finally, Part III-C explains why amending the Justice Reinvestment Act is the best way to ensure the Act is interpreted appropriately in the future.²⁷

¹⁵ See Daniel A. Farber, *The Rule of Law and the Law of Precedents*, 90 MINN. L. REV. 1173, 1177–78 (2006).

¹⁶ *Id.* at 1179–80.

¹⁷ See *infra* Part III-C.

¹⁸ *Id.*

¹⁹ See *infra* Part III-A.

²⁰ See *infra* Part III-B.

²¹ See *infra* Part II-A.

²² See *infra* Parts II-B, II-C.

²³ See *infra* Part III-A.

²⁴ See *infra* Part III-B(1).

²⁵ See *infra* Part III-B(2).

²⁶ See *infra* Part III-B.

²⁷ See *infra* Part III-C.

II. MARYLAND'S DOMESTIC VIOLENCE LEGISLATION

A. *Domestic Violence Criminalization*

Maryland does not have a dedicated statute criminalizing domestic violence.²⁸ Instead, the vast majority of domestic violence incidents are charged as second-degree assault.²⁹ This is the opposite of what most states have done.³⁰ As of 2011, thirty-five states had established a law or laws explicitly criminalizing domestic violence.³¹ According to the Maryland Legislature:

Enactment of a crime of domestic violence by a state tends to highlight how this type of offense is regarded as an especially serious infraction, compared to other assault and battery type offenses, as states are likely to impose more stringent penalties and attach additional conditions that are not typically applied to an assault and/or battery offense.³²

This means Maryland is behind the times in addressing domestic violence.³³

²⁸ JENNIFER K. BOTTS, DEP'T LEG. SERV., H.B. 1146 FISCAL AND POLICY NOTE 2 (2012), http://mgaleg.maryland.gov/2012rs/fnotes/bil_0006/hb1146.pdf.

²⁹ See MD. NETWORK AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE LEGISLATION PASSED IN MARYLAND, 1980-2017 1 (2017), https://mnadv.org/_mnadvWeb/wp-content/uploads/2017/06/LEGISHISTORY80-17.pdf (noting second degree assault is the "most common domestic violence crime"); UNIFORM CRIME REPORT, *supra* note 3, at 53.

³⁰ BOTTS, *supra* note 28, at 2.

³¹ *Id.* For example, Virginia charges domestic violence as "Assault or Battery Against Family or Household Member," a Class 1 misdemeanor, while Utah has an entire category of "Domestic Violence Offenses" which can be felonies or misdemeanors depending on the circumstances. See HOW STATES ADDRESS DOMESTIC VIOLENCE IN SELECTED AREAS, DEP'T LEGIS. SERVS. 16-17 (2012), <http://dls.maryland.gov/pubs/prod/CourtCrimCivil/Domestic-Violence-Report.pdf>. Most states have also "established enhanced penalties for repeat offenders." BOTTS, *supra* note 28, at 2.

³² BOTTS, *supra* note 28, at 2.

³³ *Id.*

B. *Domestically-Related Crimes*

In 2012, Maryland passed the first of two major bills which partially address this disparity between its laws and those of other states.³⁴ House Bill 1146 modified the Maryland Code of Criminal Procedure to specify that certain crimes must be marked as “domestically-related” on the defendant’s criminal record.³⁵ This is done by placing a label on their Record of Arrest and Prosecution (“RAP sheet”).³⁶ The law applies to any crime where the offender-victim relationship qualifies the victim for a protective order.³⁷ Persons eligible for a protective order in Maryland include the respondent’s cohabitative spouse or ex-spouse, any person they have a child in common with, relatives by blood, marriage, or adoption, and parents.³⁸ Any current cohabitant not falling into one of those categories and any stepparent, parent, child, or stepchild of the respondent who lived with the respondent for at least ninety days in the preceding twelve months is also eligible for relief.³⁹ Persons eligible for relief regardless of past or present cohabitation with the respondent include vulnerable adults under the respondent’s care, regardless of their relationship, and sexual partners from the preceding year.⁴⁰

C. *Justice Reinvestment Act*

Unfortunately, a new law was passed in 2016 containing a loophole that threatens the protections afforded under the domestically-related crimes statute.⁴¹ The Justice Reinvestment Act is a comprehensive

³⁴ See H.D. 1146, 2012 Leg., 430th Sess. (Md. 2012).

³⁵ *Id.* (codified at MD. CODE ANN., CRIM. PROC. § 6-233 (2019)).

³⁶ GOVERNOR’S OFF. CRIME CONTROL & PREVENTION, DOMESTIC VIOLENCE PROGRAM 3 (Dec. 18, 2014), [http://dlslibrary.state.md.us/publications/Exec/GOCCP/FL4-516\(a\)_2014\(1\).pdf](http://dlslibrary.state.md.us/publications/Exec/GOCCP/FL4-516(a)_2014(1).pdf) (“The Department of Public Safety and Correctional Services (DPSCS) has created a special Domestically Related Crime “hot file” on Maryland’s Criminal Justice Dashboard so that whenever a police officer searches an offender’s name through the Dashboard, the officer will receive an alert if that offender’s name is in the Domestically Related Crime “hot file”. Since January 1, 2013, 527 offenders have been adjudicated by the court as having committed domestically related crimes. This finding is noted on their RAP sheets.”) [hereinafter 2014 DOMESTIC VIOLENCE PROGRAM].

³⁷ MD. CODE ANN., FAM. LAW § 4-504(a) (2019); see also FAM. LAW § 4-501(i), (m) (2019).

³⁸ § 4-501(m).

³⁹ § 4-501(m)(2), (4).

⁴⁰ § 4-501(m)(5), (7).

⁴¹ S. 1005, 2016 Leg., 436th Sess. (Md. 2016); see CRIM. PROC. § 6-233.

reform of Maryland's criminal justice system.⁴² It largely prioritizes funding for treatment programs and seeks to reduce incarceration of nonviolent offenders.⁴³ One way the Act does this is by listing crimes defendants can petition the court to expunge once a specified period of time has passed without additional convictions since they completed their sentence—for most crimes, ten years.⁴⁴

The Justice Reinvestment Act creates a problem for domestic violence victims by allowing defendants convicted of second-degree assault to petition the court for expungement of that conviction.⁴⁵ The Justice Reinvestment Act contains a provision extending the typical amount of time offenders must wait to have their conviction expunged after completion of all aspects of their sentence (ten years)⁴⁶ to fifteen years in cases where the crime is marked domestically-related.⁴⁷ There is no prohibition, however, against defendants petitioning the court for a modification of their sentence to probation before judgement.⁴⁸ Getting a sentence modified to probation before judgement would allow the defendant to have the charge expunged in less than fifteen years.⁴⁹ In fact, it would allow for immediate or near immediate expungement.⁵⁰

III. ANALYSIS

A. *Purposes of the Justice Reinvestment Act*

The stated purposes of the Justice Reinvestment Act make it clear that the Maryland legislature intended for domestic violence to still carry an additional penalty beyond that of other, similar crimes.⁵¹ Therefore, the Justice Reinvestment Act should be modified to specify that its

⁴² Natalie Jones, *Legislation Would Update Justice Reinvestment Act*, CAPITAL NEWS SERV. (Feb. 5, 2019), <https://cnsmaryland.org/2019/02/05/legislation-would-update-justice-reinvestment-act/>.

⁴³ *Id.*

⁴⁴ See S. 1005, 2016 Leg., 436th Sess. (Md. 2016); 2016 Md. Laws, Ch. 515.

⁴⁵ See *id.* As mentioned previously, second-degree assault is the most “frequent type of domestically related crime reported.” 2016 UNIFORM CRIME REPORT, *supra* note 3, at 53.

⁴⁶ MD. CODE ANN., CRIM. PROC. § 10-110(c)(1) (2019).

⁴⁷ § 10-110(c)(2).

⁴⁸ See *supra* note 13 and accompanying text; see generally S. 1005, 2016 Leg., 436th Sess. (Md. 2016).

⁴⁹ See MD. CODE ANN. CRIM. PROC. § 6-220(b)(1), (g) (2018).

⁵⁰ See CRIM PROC. § 6-220(b)(1), (g); see also CRIM PROC. § 6-232(a).

⁵¹ The Justice Reinvestment Act singles out crimes marked as domestically-related for a longer waiting period prior to expungement eligibility. See CRIM. PROC. § 10-110(2); see also *supra* notes 46–47 and accompanying text.

provisions cannot be used to circumvent the waiting periods it requires prior to expungement.

I. Recidivism

When the Maryland legislature passed the Justice Reinvestment Act in 2016, one of the key purposes for the Act was to reduce recidivism.⁵² Allowing domestic abusers to thwart the Justice Reinvestment Act's loophole may actually frustrate efforts to reduce recidivism.⁵³

Domestic abusers have a troublingly high rate of reoffending.⁵⁴ One study found that in the six months following sentencing, over one-third of offenders assault their partner again.⁵⁵ Non-physical reoffending is even more common.⁵⁶ In the same time period, 80% of offenders threatened their partner, 65% controlled their partner, and 60% of victims once again became fearful for their safety and the safety of their children.⁵⁷ Domestic violence also has a strong correlation with other crimes and socially unacceptable behaviors like pickpocketing and theft from the offender's employer.⁵⁸ In one study, "seventy-six percent of domestically violent men reported engaging in one or more concurrent deviant acts."⁵⁹ By allowing offenders to have their sentence modified to allow expungement earlier than the Justice Reinvestment Act allows, the state is essentially removing any marker indicating that the offender was a domestic abuser. Rehabilitated offenders certainly should get a chance to move on from their past indiscretions, but they should not get this second chance through expungement and removal of the "domestically-related" marker until the justice system has had more time to

⁵² See *Hearing on S. 1005 Before the S. Committee on Judicial Proceedings*, 2016 Leg., 436th Sess. (Md. 2016) (statement of Sen. Thomas Miller, President, Maryland State Senate), available at <http://mgahouse.maryland.gov/mga/play/89173763-337d-45d4-b13c-5cc5db203630/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&PLAYFROM=5993000>.

⁵³ See generally Kirk R. Williams & Amy Barry Houghton, *Assessing the Risk of Domestic Violence Reoffending: A Validation Study*, 28 L. & HUMAN BEHAV. 437 (2004).

⁵⁴ *Id.* at 449.

⁵⁵ *Id.*

⁵⁶ See *id.* (noting that "other forms of aggression or maltreatment, although not physically violence, were more common").

⁵⁷ *Id.*

⁵⁸ William D. Norwood et al., *Domestic Violence and Deviant Behavior*, in VIOLENCE AGAINST WOMEN AND FAMILY VIOLENCE: DEVELOPMENTS IN RESEARCH, PRACTICE, AND POLICY II-8-1, II-8-5, II-8-6 (Bonnie S. Fisher ed., 2004).

⁵⁹ *Id.* at II-8-6. The study qualifies "deviant behavior" as illegal or socially proscribed behavior ranging anywhere from minor offenses like petty theft up to serious crimes like arson. *Id.* at II-8-5.

become convinced the offender will not recidivate.⁶⁰ Keeping an abuser's record marked as domestically-related may have a high chance of helping law enforcement and the judiciary make more well-informed decisions about disposition based on the person's probability of committing other offenses.⁶¹

Some might argue that the increased domestic violence rate in Maryland since enactment of the domestically-related crimes law⁶² is evidence that the law does not work as a deterrent of abuse, but a large portion of the increase is attributable to the fact that more relationships were included in figures about domestic violence prevalence starting in 2013.⁶³

2. *Data Use to Manage Criminal Justice Involvement*

One of the other important purposes of the Justice Reinvestment Act is to better use data to manage criminal justice involvement.⁶⁴ The domestically-related crimes law already accomplishes this in the area of domestic violence,⁶⁵ therefore, the Justice Reinvestment Act should not be used to have domestic violence convictions removed early.

The domestically-related crimes law increases both officer and systemic accountability.⁶⁶ Marking records of repeat domestic violence offenders puts officers and other justice system professionals on notice during any future incidents that the person has previously been convicted of a domestic violence charge, and in the case of further domestic incidents, that this person has a pattern of abusive behavior.⁶⁷ This

⁶⁰ “Statistically, it's not unusual to see recidivism in domestic violence cases, or even people who are charged in more than one domestic violence case in a year.” Mongilio, *supra* note 2.

⁶¹ See GOVERNOR'S OFF. CRIME CONTROL & PREVENTION, MARYLAND'S COMPREHENSIVE STATE CRIME CONTROL & PREVENTION PLAN 2015-2017 26-27 (2015), <https://goccp.maryland.gov/wp-content/uploads/crime-plan-2015-2017.pdf>.

⁶² See 2016 UNIFORM CRIME REPORT, *supra* note 3, at 51-52.

⁶³ *Id.* (including data on ten different relationships, in addition to husband, wife, and cohabitant).

⁶⁴ See Bridget Lowrie, *Stop Asking Which Came First, the Jail or the Criminal – Start Reinvesting in Justice in Maryland*, 47 U. BALT. L.F. 99, 100 (2017).

⁶⁵ See *supra* Part II-B.

⁶⁶ See MARYLAND'S COMPREHENSIVE STATE CRIME CONTROL & PREVENTION PLAN 2015-2017, *supra* note 61, at 27 (discussing the “domestic violence risk assessment tools” used to “identify victims of domestic violence”).

⁶⁷ *Id.*; see GOVERNOR'S OFF. CRIME CONTROL & PREVENTION, DOMESTIC VIOLENCE PROGRAM (Dec. 31, 2016), <http://goccp.maryland.gov/wp-content/uploads/domv-annual-report-2016.pdf> (discussing the “tag” which attaches to an offender's conviction or probation before judgment on a crime that is domestically related).

forces criminal justice officials, like judges and law enforcement officers, to confront the fact that the person may be a repeat offender.⁶⁸

The domestically-related marker allows judges to have better data available to them when sentencing and allows court commissioners to determine more appropriate bail amounts and release conditions based on the person's history.⁶⁹ Domestically-related markers help state's attorneys advocate on behalf of victims and the public, because they can identify the person as a continuing threat and make the argument that imposing a harsher sentence would promote public safety.⁷⁰ Community supervisors have a vastly more accurate picture of what level of supervision the offender may need when they know the person has been convicted of domestic abuse.⁷¹ These supervisors are alerted to the person's possible need for particular resources,⁷² such as abuser intervention programs.⁷³ This benefits the victim, the public, and the offender.

All of these factors demonstrate the domestically-related marking law's ability to give criminal justice officials better data on which to base decisions.⁷⁴ These tangential benefits of the domestically-related crimes statute force the many actors in the criminal justice system to recognize that domestic violence is a serious problem and make these officials more accountable for protecting the safety of victims and the general public;⁷⁵ it is much harder to treat a second or subsequent offense like a first offense if the defendant's record clearly marks them as recidivist. Allowing the Justice Reinvestment Act's loophole to be exploited would rob victims and citizens of this important systemic accountability.

⁶⁸ 2014 DOMESTIC VIOLENCE PROGRAM, *supra* note 36, at 5 (noting that the notation means "repeat domestic violence perpetrators are no longer anonymous to the system").

⁶⁹ *Id.* at 3, 5.

⁷⁰ *Id.* at 5.

⁷¹ *Id.* at 1.

⁷² *Id.*

⁷³ Abuser intervention programs hold offenders accountable and teach them new, non-violent skills to use in relationships. See *Abuser Intervention Programs*, HOUSE OF RUTH, <https://hruth.org/get-help/abuse-intervention-programs/> (last visited May 8, 2019).

⁷⁴ 2014 DOMESTIC VIOLENCE PROGRAM, *supra* note 36, at 5; see MARYLAND'S COMPREHENSIVE STATE CRIME CONTROL & PREVENTION PLAN 2015-2017, *supra* note 61, at 27.

⁷⁵ See 2014 DOMESTIC VIOLENCE PROGRAM, *supra* note 36, at 5.

B. Against the Public Interest

One of the conditions that the Justice Reinvestment Act places on expungement of criminal records is that doing so must be “in the interest of justice”⁷⁶ and based on “the nature of the crime, the history and character of the person, and the person’s success at rehabilitation.”⁷⁷ Allowing domestically-related crimes to be expunged earlier than the Justice Reinvestment Act intended would go against the public interest due to the serious impact domestic violence has on the health of victims and their families, as well as the risk to public safety.

1. Domestic Violence Has a Serious, Long-Term Impact on the Health of Victims and Their Families

Domestic violence is widely known to be a public health problem;⁷⁸ some have even gone so far as to call it a “weapon of terror.”⁷⁹ Allowing the Justice Reinvestment Act to be circumvented would only make this problem worse for those victimized by domestic abuse.

Victimization is widespread; approximately 22.1% of women and 7.4% of men in America have experienced intimate partner violence during their lifetime.⁸⁰ When this abuse occurs, it often leads to a whole host of physical and mental health challenges for the victim.⁸¹

⁷⁶ CRIM. PROC. § 10-110(f)(2)(iv).

⁷⁷ § 10-110(f)(2)(iii).

⁷⁸ See LINDA L. DAHLBERG & JAMES A. MERCY, CTR. DISEASE CONTROL & PREVENTION, THE HISTORY OF VIOLENCE AS A PUBLIC HEALTH ISSUE 1 (2009), https://www.cdc.gov/violenceprevention/pdf/history_violence-a.pdf; Michelle M. Vine et al., *To Disrupt and Displace: Placing Domestic Violence on the Public Agenda*, 20 CRITICAL PUB. HEALTH 339, 339 (2010).

⁷⁹ See Vine et al., *supra* note 78, at 339.

⁸⁰ PATRICIA TJADEN & NANCY THOENNES, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN, NAT’L INST. JUST. iv (2000), <https://www.ncjrs.gov/pdffiles1/nij/183781>; see also Vine et al., *supra* note 78, at 340 (noting that in 1998, U.S. and Canadian population-based surveys found 25-30% of women reported “lifetime prevalence” of physical assault). The terms “domestic violence” and “intimate partner violence” are often used interchangeably and mean essentially the same thing. *Domestic or Intimate Partner Violence*, U.S. DEP’T HEALTH & HUMAN SERV., <https://www.womenshealth.gov/relationships-and-safety/domestic-violence> (last visited May 8, 2019).

⁸¹ See RELATIONSHIPS, SAFETY, AND VIOLENCE, U.S. DEP’T HEALTH & HUMAN SERV. 2 (May 15, 2017), <https://www.womenshealth.gov/files/documents/fact-sheet-relationships-safety-violence.pdf>.

Physical injuries are extremely common in abused women.⁸² 22-35% of injuries treated in emergency rooms on female patients are sustained during a domestic assault.⁸³ These injuries do not just impact the victim in the short-term; victims often experience chronic physical health problems like degenerative musculoskeletal disorders, gastrointestinal diseases, and cardiovascular distress, as well as having an increased risk of contracting HIV and other sexually-transmitted diseases.⁸⁴ Victims also experience a wide range of mental effects as a result of their abuse, including an increased risk of PTSD, depression, anxiety, and other psychiatric issues.⁸⁵

The problem does not stop there, though; domestic violence often escalates to the point of becoming deadly.⁸⁶ Every day, three women in the United States are killed by a current or former intimate partner.⁸⁷ Between July 2016–June 2017, there were forty-six domestic violence-related deaths in Maryland alone,⁸⁸ thirty-one of which were victims and

⁸² See *Policy Statement, 9211(PP): Domestic Violence*, 83 AM. J. PUB. HEALTH 435, 458 (1993) (explaining domestic violence is the leading cause of injury for women). Roughly 41% of female victims and 14% of male victims are physically injured as a result of the violence. PREVENTING INTIMATE PARTNER VIOLENCE, CTR. DISEASE CONTROL & PREVENTION (2017), <https://www.cdc.gov/violenceprevention/pdf/ipv-factsheet.pdf>.

⁸³ *Coburn v. Coburn*, 342 Md. 244, 251 n.3 (1996) (citing Nancy Gibbs, *'Til Death Do Us Part*, TIME MAG. (Jan. 18, 1993), <http://content.time.com/time/magazine/article/0,9171,977464,00.html>)).

⁸⁴ “[S]tudies have found an association between IPV [intimate partner violence] and increased risk for . . . musculoskeletal/neuromuscular conditions, . . . gynecological and urinary conditions, . . . respiratory conditions, . . . gastrointestinal disorders, . . . cardiovascular conditions, . . . sexually transmitted infections, . . . cancer, . . . diabetes, . . . [and] other physical health symptoms” CURRENT EVIDENCE: INTIMATE PARTNER VIOLENCE, TRAUMA-RELATED MENTAL HEALTH CONDITIONS & CHRONIC ILLNESS, NAT’L CTR. DOMESTIC VIOLENCE, TRAUMA & MENTAL HEALTH 5 (2014), http://www.nationalcenterdvtraumamh.org/wp-content/uploads/2014/10/FactSheet_IPVTraumaMHChronicIllness_2014_Final.pdf.

⁸⁵ *Id.* at 1–4; RELATIONSHIPS, SAFETY, AND VIOLENCE, *supra* note 81, at 2.

⁸⁶ PREVENTING INTIMATE PARTNER VIOLENCE, *supra* note 82, at 2 (noting that “40% of female homicide victims in the U.S. are killed by an intimate partner”).

⁸⁷ *Domestic Violence Research*, TURNAROUND, <https://turnaroundinc.org/educate/domestic-violence/domestic-violence-research/> (last visited May 8, 2019).

⁸⁸ *Get the Facts*, MD. NETWORK AGAINST DOMESTIC VIOLENCE, <https://mnadv.org/resources/get-the-facts/> (last visited May 8, 2019).

five were merely bystanders.⁸⁹ One-third to one-half of all female homicide victims are murdered by a male intimate partner.⁹⁰

We cannot allow this epidemic⁹¹ to continue. Victims should be able to feel safe in their homes and in their lives in general.⁹² Although marking the records of domestic abusers cannot take away victims' pain and trauma, the legal system can take a stand against the cycle of domestic violence by refusing to let abusers shed their label sooner than the Justice Reinvestment Act intended.⁹³ Victims are likely to suffer long-term effects of the violence.⁹⁴ These effects, both physical and mental, may even be lifelong.⁹⁵ If the health of the victim is likely going to be affected for years to come, it does not seem fair that their abuser may have the chance to walk away from their actions (at least legally) soon after completing their sentence.

Domestic violence affects the health of more people than just the victim.⁹⁶ It also has important, serious implications for the victim's family.⁹⁷ Specifically, it severely impacts victims' children.⁹⁸ A large portion of children who are exposed to domestic violence become victims

⁸⁹ 46 *Marylanders Lost Their Lives to Domestic Violence Last Year*, MD. NETWORK AGAINST DOMESTIC VIOLENCE (Feb. 12, 2018), <https://mnadv.org/46-marylanders-lost-their-lives-to-domestic-violence-last-year/>. "Of the 15 abusive partners who lost their lives, 11 men completed suicide-murder or attempted murder-suicide . . ." *Id.*

⁹⁰ *Coburn v. Coburn*, 342 Md. 244, 251 n.3 (1996) (citing Nancy Gibbs, 'Til Death Do Us Part, TIME MAG. (Jan. 18, 1993), <http://content.time.com/time/magazine/article/0,9171,977464,00.html>)).

⁹¹ Miller, *supra* note 1.

⁹² Victims of domestic violence often experience feelings of fear for their own safety and that of their children. *Dynamics of Abuse*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/dynamics-of-abuse> (last visited May 8, 2019).

⁹³ See *infra* Part III-C.

⁹⁴ See generally *Effects of Domestic Violence*, JOYFUL HEART FOUND., <http://www.joyfulheartfoundation.org/learn/domestic-violence/effects-domestic-violence> (last visited May 8, 2019) (describing the physical, mental, and emotional effects of abuse).

⁹⁵ Liz Neporent, *Domestic Abuse Has Long Term Health Impact, Survey Says*, ABC NEWS (Nov. 5, 2013, 12:37 PM), <https://abcnews.go.com/Health/domestic-abuse-long-term-health-impact-survey/story?id=20778233>.

⁹⁶ Kathryn Seifert, *Domestic Violence Harms All Family Members*, PSYCH. TODAY (Oct. 30, 2012), <https://www.psychologytoday.com/us/blog/stop-the-cycle/201210/domestic-violence-harms-all-family-members> (describing the impacts of domestic violence on children).

⁹⁷ *Id.*

⁹⁸ See U.S. DEP'T HEALTH & HUMAN SERVS., *EFFECTS OF DOMESTIC VIOLENCE ON CHILDREN*, <https://www.womenshealth.gov/relationships-and-safety/domestic-violence/effects-domestic-violence-children> (last visited May 8, 2019).

of physical violence themselves,⁹⁹ and children who witness one parent abusing the other are at the greatest risk of perpetuating violent behavior from one generation to the next.¹⁰⁰ Domestic violence is also one of several adverse childhood events known to significantly increase a person's likelihood of developing serious health problems like diabetes, heart disease, and mental health challenges.¹⁰¹

Domestic violence often does not stop with the assistance of the legal system,¹⁰² so it is essential for the health and wellbeing of victims' children that the legal system's lasting effect on everyone impacted by a domestic incident not be weakened. Just like a child is impacted by domestic violence regardless of whether they personally are victimized, they too can derive benefits from their parent's abuser having a domestically-related crime mark on their record. When a child witnesses violence in their home, they learn to deceive, solve their problems with violence, and often believe that abusive behavior is normal.¹⁰³ Prohibiting abusers from shedding their past sooner than the Justice Reinvestment intends would send the opposite message.

2. *The Public Deserves Notice of Offenders' Dangerousness*

Domestic abusers are highly likely to reoffend.¹⁰⁴ Modifying abusers' sentences far earlier than the Justice Reinvestment Act intends puts both victims and the public at risk due to the inherent deprivation of an important notice regarding the offender's dangerousness.¹⁰⁵

⁹⁹ See Monica N. Modi et al., *The Role of Violence Against Women Act in Addressing Intimate Partner Violence: A Public Health Issue*, 23 J. WOMEN'S HEALTH 253, 254 (2014) ("Between 45% and 70% of children who are exposed to domestic violence are also victims of physical abuse.").

¹⁰⁰ *Id.*

¹⁰¹ Leah K. Gilbert et al., *Childhood Adversity and Adult Chronic Disease: An Update from Ten States and the District of Columbia*, 2010, 48 AM. J. PREVENTATIVE MED. 345, 346 (2015).

¹⁰² See Seifert, *supra* note 96 ("Someone (the gardener) needs to stop the violence (pull the weeds out of the garden), improve family relationships and problem solving (turn up the soil), and support the healthy growth of all family members (add nourishment). The Court is the weed destroyer and the counselor or social worker is the support system that gives the family the help it needs to become strong and healthy.").

¹⁰³ Brenda Branson, *The Impact of Family Violence on Children*, FOCUS ON THE FAMILY CANADA (2000), <https://www.focusonthefamily.ca/content/the-impact-of-family-violence-on-children>.

¹⁰⁴ See *infra* Part III-A(1).

¹⁰⁵ See generally *Intimate Partner Violence*, NAT'L INST. JUST. (Mar. 30, 2017), <https://www.nij.gov/topics/crime/intimate-partner-violence/pages/welcome.aspx> (describing the violent impacts of domestic violence and the dangerousness of abusers).

When the “domestically-related” crime label is given to an offender, the public is served with an important notice: that the person whose record they are examining has abused a partner in the past.¹⁰⁶ Without that label, the public may not become aware of what the person has done. In Maryland, the only assaults that are considered violent crimes are those charged as first-degree assaults.¹⁰⁷ This means that most domestic violence situations are not being treated as violent crimes.¹⁰⁸ Domestic abuse is undoubtedly a violent crime;¹⁰⁹ it is exceedingly important that the public be aware the person they are dealing with has a history of violence so that they can take precautions and enact safeguards to protect themselves.

C. Amending the Justice Reinvestment Act is the Best Way to Ensure the Proposed Interpretation Persists

The most appropriate way to ensure that the Justice Reinvestment Act is not interpreted in the future as allowing abusers to seek (and inadvertently receive) early expungement would likely be to amend the Act. A provision should be added making it clear that abusers cannot petition the courts for a modification of their sentence in domestically-related cases to probation before judgement if doing so would allow the defendant to circumvent the Act’s fifteen year waiting period prior to expungement of such crimes.

Adding this new provision seems to be the best option for closing the Act’s loophole. It would be the most direct way of perpetuating the proposed interpretation and would be consistent with how the Justice Reinvestment Act’s drafters envisioned the first few years after the Act’s enactment going.¹¹⁰

Specifically, adding a provision to the Justice Reinvestment Act which codifies the prohibition on modifying domestically-related

¹⁰⁶ See *supra* Part III-B(2).

¹⁰⁷ See MD. CODE ANN., CRIM. LAW § 14-101 (2018).

¹⁰⁸ Second-degree assault is the most commonly charged crime in domestic violence situations. See MD. NETWORK AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE LEGISLATION PASSED IN MARYLAND 1980-2017 1 (2017), https://mnadv.org/_mnadvWeb/wp-content/uploads/2017/06/LEGISHISTORY80-17.pdf (noting second degree assault is the “most common domestic violence crime”); UNIFORM CRIME REPORT, *supra* note 3, at 53.

¹⁰⁹ See *Intimate Partner Violence*, *supra* note 105.

¹¹⁰ See Part II-C.

sentences prior to the expiration of the Act's fifteen-year waiting period for expungement would be the most direct and efficient way of ensuring the prohibition continues. Another feasible alternative would be to eventually establish judicial precedent, but this option is less favorable. The judicial precedent route would be purely reactionary; this route would require Maryland legislators to not address a known problem with the Act until something happens rather than fixing the problem as soon as possible.

The drafters of the Justice Reinvestment Act were well aware that they were not putting forth a finished, perfect product.¹¹¹ During a Senate Judicial Proceedings Committee hearing discussing the possibility of passing the Act, Senate President Thomas "Mike" Miller, a member of the Justice Reinvestment Advisory Board, acknowledged that multiple judges had reached out to the Board with concerns about various parts of the Act.¹¹² He also assured the committee, however, that all of the judges' concerns could be addressed by amending the Act.¹¹³ This demonstrates that amending the Act is appropriate because it was the legislature's intention;¹¹⁴ the originally enacted Act appears to have been a first attempt framework at criminal justice reform to get the state started, with fine-tuning expected to eventually occur. This proposed amendment is an example of that fine-tuning.

Alternatively, modifying the Maryland Criminal Code may be helpful. Currently, offenses marked as domestically-related are ineligible for shielding.¹¹⁵ Modifying the Maryland Criminal Code to allow shielding of domestically-related crimes after the defendant completes their sentence but before the Justice Reinvestment Act allows for expungement would represent a significant balance between the purposes of the Justice Reinvestment Act and the domestically-related crimes statute. One of the stated purposes of the Justice Reinvestment Act is to make it easier for offenders to eventually move on from their past without it affecting their ability to do things like go to school or get a job.¹¹⁶

¹¹¹ *Hearing on S. 1005 Before the Senate Committee on Judicial Proceedings*, *supra* note 52.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *See id.*

¹¹⁵ CRIM. PROC. § 10-302(a). Shielding is the process of asking the Maryland courts to remove a conviction or judgment from public view while still allowing it to be visible to law enforcement and other authorized individuals. § 10-302(b).

¹¹⁶ *See* Michael Dresser, *Hogan Signs Bill to Overhaul Maryland Criminal Justice System*, BALT. SUN (May 19, 2016, 7:09 PM), <http://www.baltimoresun.com/news/maryland/politics/bs-md-justice-reinvestment-20160518-story.html>.

We can accomplish this purpose while still continuing to provide a level of accountability to judges and law enforcement officers by allowing shielding of these convictions.¹¹⁷

CONCLUSION

The Justice Reinvestment Act needs to be interpreted as prohibiting domestic abusers from having their sentences in “domestically-related” crimes amended in such a way that they could seek expungement of the charge earlier than the Justice Reinvestment Act intended. This is necessary because doing so would remove the “domestically-related” label from the offender’s record. The language and purposes of the Justice Reinvestment Act suggest that this loophole is neither intentional nor advisable. Additionally, allowing the loophole to stand and be exploited would be severely against the public interest. Therefore, the Justice Reinvestment Act should be amended to specifically state that its provisions are not intended to allow offenders to modify the sentences they receive in “domestically-related” cases until the Act’s fifteen-year waiting period to expunge such charges has expired.

¹¹⁷ See CRIM. PROC. § 10-302(a); *supra* Part III-A(2).