



<http://www.pfwj.org/>

## **New Jersey Can Do More to Protect Victims of Domestic Violence**

On June 13, 2017, Anishalee Cortes was murdered in Roselle by her abuser despite, according to news reports, doing everything right. When she was assaulted and threatened with a gun, Anishalee went to police, filed criminal charges, and obtained a Final Restraining Order. Her abuser was arrested and charged for these acts of domestic violence, but he was released from jail pending trial. Just two months after his release, while the criminal charges were still pending, he shot and killed Anishalee and himself. We can prevent such tragedies in the future.

The murderer was released under New Jersey's recent criminal justice reform law, which abandoned the old monetary bail system because it considered only the accused's ability to pay in determining who would be released and who would stay in jail pending trial. The system had a disproportionate effect on New Jersey's lower income population and effectively punished poverty. The new system, which went into effect on January 1, 2017, is based on three goals identified in the New Jersey Constitution: to "reasonably assure the person's appearance in court when required, or *protect the safety of any other person or the community*, or prevent the person from obstructing or attempting to obstruct the criminal justice process." This constitutional mandate to protect the safety of "any other person" provides an opportunity to do more to protect victims of domestic violence. We urge the courts to take advantage of this opportunity by adopting a risk assessment tool that specifically addresses domestic violence.

The new law requires that a pre-trial risk assessment be conducted using a validated, objective risk assessment instrument. The court has adopted such an instrument, called a Public Safety Assessment or PSA, to assist in determining when it is safe to release defendants awaiting trial. However, the particular PSA adopted, while useful in many cases involving danger to the community *in general*, does not address the unique dangers facing domestic violence victims like Anishalee Cortes, as the state constitution contemplates.

Domestic violence has its own unique set of risk factors that do not apply to other types of crime, so we need to reach past the PSA as the sole risk assessment tool to incorporate a *domestic violence risk assessment* tool that would be used by the courts to make detention decisions in domestic violence cases. There are validated and objective risk assessment tools that do just that. These tools hone in on abusive behaviors known to have a high risk of lethal or near lethal violence, e.g., access to firearms; a history of strangulation, threats to use firearms or threats to commit suicide. We applaud the Attorney General's recent adoption of a tool for law enforcement to assess the risk of re-assault by an abuser. It's a good start. But only if the judiciary also adopts a domestic violence tool that more broadly addresses the unique risks to a

victim and places it on par with the PSA in making detention decisions will domestic violence victims be protected.

Adding a domestic violence risk assessment tool to the PSA can be done without amending the law. As the Court recently stated in a press release, “The PSA . . . is not a static instrument, and we have always envisioned that we would rely upon our actual experiences in New Jersey to make further refinements or adjustments to these tools.” New Jersey’s actual experiences have made clear – that domestic violence carries unique risks to the victim. Indeed, the New Jersey Supreme Court Ad Hoc Committee on Domestic Violence also recognized this. In its 2016 report, the Committee recommended that there be a *system-wide coordinated process for assessing risk and danger in domestic violence cases*. The adoption of a domestic violence risk assessment tool by the judiciary, as we recommend, is consistent with that recommendation.

To protect victims like Anishalee Cortes, we need to identify and detain abusers who pose a significant danger to their victims (and, indeed, perhaps others because we now know that so many mass shooters have had a history of domestic violence). Using a domestic violence risk assessment tool to determine the *specific risk to a victim* pending trial would go a long way toward doing just that.

Michele C. Lefkowitz is Director of Legal Programs and Jane M. Hanson is Executive Director of Partners for Women and Justice ([www.pfwj.org](http://www.pfwj.org)), a non-profit law firm providing free legal assistance to victims of domestic violence.