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No. 22-1232
IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

STEVEN TAYLOR, administrator for the estate of VANESSA TAYLOR, deceased, Plaintiff-Appellee,	)	Appeal from the Circuit Court of Cook County
v.	)	No. 18 L 3145
CITY OF CHICAGO, Defendant-Appellant.	)	The Honorable Israel A. Desierto, Judge Presiding

Legal Aid Chicago, Ascend Justice, Chicago Alliance Against Sexual Exploitation, Chicago Appleseed Center For Fair Courts, Chicago Council Of Lawyers, Illinois Coalition Against Domestic Violence, Land Of Lincoln Legal Aid, The Legal Aid Society Of Metropolitan Family Services (LAS), Life Span, Mujeres Latinas En Accion, The Network: Advocating Against Domestic Violence, Resilience, Prairie State Legal Services, Inc., and Sarah's Inn's Amicus Brief In Support Of Plaintiff-Appellee

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POINTS AND AUTHORITIES

PAGE

750 ILCS 60/102(3) 9

750 ILCS 60/304(a)(1, 4-7) 9

750 ILCS 60/304(a) 10

750 ILCS 60/102(1) 10

750 ILCS 60/102(5) 10

I. The IDVA imposes a duty of care whenever a reasonable officer would consider a family or household member to be endangered by an abuser's behavior, regardless of the abuser's apparent mental state or the family or household member's ability to self-identify as a victim. 11

750 ILCS 60/102(5) 11

A. The Illinois General Assembly expressly intended the IDVA to be construed broadly. 13

Sanchez v. Torres, 2016 IL App (1st) 151189 14

750 ILCS 60/102 13

750 ILCS 60/102(1, 3-4, 6) 13

B. A victim of abuse is entitled to protection under the Act regardless of whether responding officers believe the abuser is suffering from a mental health crisis. 14

Moore v. Green, 219 Ill. 2d 470 (2006) 14

People v. Valdez, 2022 IL App (1st) 181463 ..... 15, 16

750 ILCS 60/102(5) 14

750 ILCS 60/103(14)(iii) 15

720 ILCS 5/6-2(a) 15

720 ILCS 5/6-2(e) 15

720 ILCS 5/6-2(c) 16

Stephen J. Morse & Morris B. Hoffman, *Criminal Law: The Uneasy Entente Between Legal Insanity and Mens Rea: Beyond Clark v. Arizona*, 97 J. Crim. L. & Criminology 1071 15

C. The General Assembly deliberately chose to make mandatory police response provisions *not* dependent on the victim invoking them. This reflects a broader recognition of the nature of domestic violence as a crime. 17

Sneed v. Howell, 306 Ill. App. 3d 1149 (5th Dist. 1999) 17

750 ILCS 60/102(3) 17

House Debate, HB 2409, at 86 (May 23, 1986) 17

1. The legislature passed the IDVA against a background of increased recognition that to provide appropriate protection, police response cannot depend on the victim's stated wishes, "cooperation," or apparent lack thereof. 18

Fenton v. City of Chicago, 2013 IL App (1st) 111596 20

Sanchez v. Torres, 2016 IL App (1st) 151189 20

750 ILCS 60/102(3) 20

750 ILCS 60/102(5) 20

U.S. Commission on Civil Rights, *Battered Women: Issues of Public Policy* (1978) 18

U.S. Commission on Civil Rights, *Under the Rule of Thumb: Battered Women and the Administration of Justice* (1982) 18, 19, 20

2. It is generally well recognized that domestic violence victims may not self-identify and assert their need for safety, giving rise to the need for mandatory police procedures that do not depend on the victim's statements or actions. 20

State v. Townsend, 186 N.J. 473 (2006) 20, 21, 22

State v. Borelli, 629 A.2d 1105 (Conn. 1993) 21

State v. Searles, 680 A.2d 612 (N.H. 1996) 21, 22

State v. Frost, 577 A.2d 1282 (N.J. Super. 1990) 21

United States v. Johnson, 860 F. 3d 1133 (8th Cir. 2017) 21

750 ILCS 60/304 23

750 ILCS 60/304(a) 23

II. The IDVA's mandatory police response provisions do not require police officers to choose between responding appropriately to an abuser's mental health crisis and protecting victims of domestic violence from further abuse—they can and must do both. 24

Calloway v. Kinkelaar, 168 Ill. 2d 312 (1995) 24

Fenton v. City of Chicago, 2013 IL App (1st) 111596 25

750 ILCS 60/304(a) 25, 26

750 ILCS 60/304(a)(1-7) 25, 26

405 ILCS 5/3-606 26

STATEMENTS OF INTEREST OF THE AMICI CURIAE

Amicus curiae **Legal Aid Chicago** (formerly LAF) is a not-for-profit corporation that provides high quality civil legal services to Cook County residents living in poverty, serving about 35,000 people each year. Legal Aid Chicago has been committed to domestic violence advocacy for survivors since the 1970's, long before the enactment of the Illinois Domestic Violence Act ("IDVA"). In addition to providing community education and advice, Legal Aid Chicago represents survivors of domestic violence in divorce, parentage, custody, immigration, housing, and public benefits cases. Legal Aid Chicago advocates strengthening protections available to survivors of domestic violence, and understands the vital role that law enforcement plays on the front lines of ensuring victim safety. Having represented thousands of individual survivors of domestic violence in legal disputes with abusers, Legal Aid Chicago has developed unique insight into the particular dynamics that underlie violent familial and intimate relationships. Legal Aid Chicago has also developed profound appreciation for the importance of effective police enforcement, and understands the need for clear rules to guide police in their interactions with victims and offenders.

This case requires this Court to interpret the scope of the IDVA provision governing mandatory police response to domestic violence. Legal Aid Chicago has a strong interest in ensuring that this Court decides this important case with the most informed background possible. Legal Aid Chicago is well equipped to assist the Court in understanding the legislature's purpose in

enacting mandatory police response provisions in the IDVA, because Legal Aid Chicago understands the nature of the problem such provisions address. Domestic violence affects victims' interaction with law enforcement in unexpected ways, a phenomenon the legislature intended to address in the IDVA, and one that Legal Aid Chicago can help this Court to understand.

Amicus curiae **Ascend Justice** is a 501(c)(3) non-profit organization based in Chicago, IL. Ascend Justice's mission is to empower individuals and families impacted by gender-based violence or the child welfare system to achieve safety and stability through holistic legal advocacy and system reform.

Formerly known as the Domestic Violence Legal Clinic, Ascend Justice was founded in 1982 and has served survivors of gender-based violence with free legal services for more than forty years. Since 2005, Ascend 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 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.

Amicus curiae the **Chicago Alliance Against Sexual Exploitation** (CAASE) is a not-for-profit that opposes sexual harm by directly addressing the culture, institutions and individuals that perpetrate, profit from, or support such harms. CAASE engages in direct legal services for survivors of sexual assault, prevention education, community engagement, and policy reform. One of CAASE's primary purposes is ensuring that victims' and survivors' rights are respected and upheld, including their right to safety.

Amicus curiae **Chicago Appleseed Center for Fair Courts** works to improve the judicial process for unrepresented litigants in the domestic relations and domestic violence divisions of the Cook County courts and to seek alternative interventions to create community safety. Chicago Appleseed Center for Fair Courts works as a collaboration partner with the Chicago Council of Lawyers to create equitable access to justice.

Amicus curiae **Chicago Council of Lawyers** is the first public interest bar association in Cook County and is dedicated to improving the quality of justice in the legal system by advocating for fair and efficient administration of justice. The Chicago Council of Lawyers is a leader in the movement to reform the Chicago Police Department to better serve the needs of the community, including victims of domestic violence. The Chicago Council of Lawyers works as a collaboration partner with the Chicago Appleseed Center for Fair Courts to create equitable access to justice.

Amicus curiae 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. Currently, ICADV funds fifty-five domestic violence programs across the state of Illinois, and last year ICADV member service providers collectively served 40,490 adult survivors of domestic violence and 7,364 child witnesses. ICADV's primary purposes are to provide state leadership as the voice for survivors of domestic violence and the programs that serve them, change fundamental and societal attitudes and institutions that promote, tolerate, or condone domestic violence, and ensure that women and children have knowledge of and access to all services and opportunities endeavoring to promote these services locally. 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 the Illinois Domestic Violence Act to provide comprehensive safety for survivors in Illinois.

Amicus curiae **Land of Lincoln Legal Aid** is a non-profit whose mission is to provide free high quality civil legal services to low-income and senior residents in 65 counties of central and southern Illinois in order to obtain and maintain their basic human needs. Through advice, representation, advocacy, education, and collaboration, Land of Lincoln seeks to achieve justice for those whose voices might otherwise not be heard, to empower individuals to advocate for themselves, and to make positive changes in the communities it serves. For 50 years, Land of Lincoln has represented

thousands of domestic violence survivors in seeking Orders of Protections, Civil No Contact Orders and Stalking No Contact Orders. We provide training on the Illinois Domestic Violence Act, the Stalking No Contact Order Act, and the Civil No Contact Order Act, to pro bono volunteers, and community education directly to survivors and as well as community partners. With our long history, we are very familiar with the experiences of persons escaping from domestic violence and their interactions with law enforcement, and the vital role the Illinois Domestic Violence Act plays in ensuring the safety of survivors. We are very interested in ensuring that the provisions of the IDVA designed to protect victims of domestic violence and provide them with information, resources, and safety are enforced to the fullest extent possible.

Amicus curiae **The Legal Aid Society of Metropolitan Family Services** (LAS) has been providing free legal services to low-income residents in the metropolitan Chicago area for 129 years. LAS is a part of Metropolitan Family Services (MFS), a non-profit social service organization. Together, we are able to provide wraparound services, including social services, counseling, financial assistance, legal advice and representation, through community centers located in Cook and DuPage Counties. LAS was one of the first legal service programs to provide representation in the area of family law, and currently has fifteen attorneys who exclusively provide direct legal representation to survivors of domestic violence in family law matters and in actions to obtain orders of protection in civil and criminal cases. As an agency that represents victims of domestic violence, LAS has a special interest in matters that could impact the

ability of victims to be aware of their rights and access the remedies available to them under the law.

Amicus curiae **Life Span** was established more than forty years ago to provide comprehensive services to survivors of domestic and sexual violence in Cook County, Illinois. Life Span's core services include advocacy, counseling, and legal representation in order of protection cases, civil no contact cases, family law, and immigration cases. In addition to its direct service work, Life Span has trained judges, prosecutors, mental health professionals, advocates and attorneys throughout Illinois and across the country on domestic and sexual violence, trauma and complicated family law/domestic violence litigation strategies and techniques. Life Span engages in systemic and policy advocacy aimed at improving meaningful access to legal remedies and legal relief for victims of domestic violence. Based on decades of work to positively impact the treatment of survivors in the civil and criminal legal systems, Life Span has a strong interest in this case.

Amicus curiae **Mujeres Latinas en Accion** (Mujeres), founded in 1973, is a bicultural nonprofit organization that is dedicated to providing social service and advocacy services centered around promoting non-violence, and supporting survivors of domestic and sexual violence through financial empowerment, civic engagement, leadership, and parenting programs. Through the programs Mujeres offers, survivors are able to recover from violence, become financially independent, and use their experience to advocate for change. Mujeres is the longest standing Latina-led organization in the country, and helps survivors heal

from the violence they experienced through crisis intervention, individual and group counseling, therapy programs, and legal and medical advocacy. Because of its focus on Latina/x survivors, Mujeres works with many survivors who also identify as immigrants and children of immigrants. Mujeres is one of Chicago's three rape crisis centers and Illinois' only culturally specific rape crisis center. Through its work with survivors, Mujeres is familiar with law enforcement response to incidents of domestic and sexual violence and what survivors need from law enforcement in times of crisis.

Amicus curiae **Prairie State Legal Services, Inc.** (PSLS), a nonprofit legal aid organization, provides free legal services to low income persons and those age 60 and over who have serious civil legal problems and need legal help to solve them. PSLS has eleven offices serving 36 counties in northern and central Illinois. For 44 years, representing survivors of domestic and sexual violence has been a major focus of PSLS's work. In 2021, PSLS assisted over 15,000 clients, over 2300 of whom sought help for domestic and/or sexual violence. PSLS primarily helped them in cases filed under the Illinois Domestic Violence Act (IDVA), 750 ILCS 60/1, et seq. In addition to representing clients, PSLS provides training on the IDVA and the Civil No Contact Order Act as well as other support for pro bono volunteers, community organizations, and agencies serving survivors of domestic and sexual violence. Through its long history of advocating for survivors of violence PSLS has become very familiar with the experiences of persons needing the protections available under the IDVA.

Amicus curiae **Sarah's Inn** is a nonprofit domestic violence agency

working to improve the lives of those impacted by domestic violence and break the cycle of violence for future generations. Since 1980, Sarah's Inn has approached domestic violence as a societal issue that demands a holistic response. We are committed to programming that responds appropriately to the needs of those families already impacted by violence, as well as working proactively to prevent violence for future generations. Our Intervention services include emergency support (24-hour crisis line, emergency transportation and housing assistance); individual and group counseling and advocacy; life skills (financial literacy, parenting skills, etc.); legal advocacy; and children/teen, individual, and group counseling. Our goal through all services is to assist victims of domestic violence to find safety, utilize their legal rights through protections under the law, effectively process the trauma of their experience, and establish a violence free and sustainable life for themselves and their children.

Sarah's Inn views domestic violence as a problem that will not be remedied merely through intervention efforts, but as an issue requiring a coordinated community response. Our Training and Education Program maximizes reach by creating a network of skilled bystanders to appropriately intervene as first responders and community advocates. Sarah's Inn is a certified training site through the Illinois Certified Domestic Violence Professionals, professional first-responders, such as law enforcement, social service providers, healthcare professionals and hospitals, faith-based and community-based organizations to build a safety net in the community and to promote non-violence. Additionally, our *Together Strong* Prevention Project provides school-

based educational programming for youth in order to prevent future relationship violence by educating and engaging youth so that they will pursue non-violence and cultivate healthy relationships throughout their lives. All of our prevention programming aligns with Illinois Social and Emotional Learning (SEL) standards, and promotes anti-bullying and healthy relationship development.

Sarah's Inn is deeply interested in ensuring that the provisions in the IDVA designed to protect victims of domestic violence and provide them with information and safe access to the full panoply of their legal rights and social and community services are maintained and enforced to the maximum extent possible.

STATEMENT OF FACTS

Amici adopt the Plaintiff-Appellee's Statement of Facts.

ARGUMENT

After far too many lives were needlessly lost, the Illinois Domestic Violence Act expressly recognized domestic violence as a serious crime with potentially fatal consequences, and sought to address what had been a "widespread failure to appropriately protect and assist victims." 750 ILCS 60/102(3). The IDVA addressed this failure in part by requiring police officers to take an active role in protecting and empowering victims with resources, information, and other avenues to safety — and to arrest the abuser "where appropriate" — whenever an officer "has reason to believe that a person has been abused." *Id.*, 60/304(a)(1, 4-7). When that standard is met, the IDVA provides that law enforcement officers "*shall* immediately use *all reasonable means* to

prevent further abuse." *Id.*, 60/304(a) (emphasis added).

Additionally, the IDVA recognizes that domestic violence extends beyond the direct victim — it is not, as was previously thought, a private matter to be resolved between individuals. *See id.*, 60/102(1). In keeping with this view, the IDVA deliberately avoids placing the burden of enforcing its provisions solely on victims of violence. *See id.*, 60/102(5); 60/304(a). Instead, it charges the broader community with a shared responsibility in protecting and assisting victims. *See id.*, 60/102(1). The IDVA's mandatory police response provisions are part of that shared responsibility. The protective provisions of the IDVA can only serve their stated purpose of protecting and assisting victims of domestic violence, however, if they are adequately enforced — something that cannot happen if courts construe the provisions to exclude domestic violence situations involving a perpetrator who may be experiencing a mental health crisis. For the following reasons, this Court should reject the City's attempts to rewrite the IDVA and thereby overturn the jury's reasonable verdict in this case.

First, the IDVA's mandatory police response provisions are triggered whenever there is reason to believe an abuser's behavior endangers family or household members; they do not depend on the victim's self-identification or directives or the responding officers' assessment of the abuser's mental state. The City's argument that Ms. Taylor was not an "abused" person in need of protection simply because officers had reason to believe that the abuser's violent and dangerous behavior was the result of a mental health crisis finds no support in either the text or the purpose of the Act.

Second, law enforcement officers need not choose between responding appropriately to an abuser's mental health crisis and fulfilling their duty to immediately use all reasonable means necessary to protect victims of domestic violence from further abuse under the Act. When officers make a decision not to arrest an abuser who is acting violently and dangerously toward family and household members, but instead to transport him to a hospital for mental health treatment, they are not relieved from their duty to take all other reasonable measures to protect the abuser's household and family members from further abuse. Under such circumstances, a jury may certainly find that failure to take steps to ensure a mentally ill abuser's involuntary admission — or even to provide the victim with domestic violence resources or transportation to a safe place away from the abuser — constitutes willful and wanton misconduct.

I. The IDVA imposes a duty of care whenever a reasonable officer would consider a family or household member to be endangered by an abuser's behavior, regardless of the abuser's apparent mental state or the family or household member's ability to self-identify as a victim.

The legislature expressly called for liberal construction of the IDVA to effect its purposes as a victim-centered statute intended in part to "[c]larify the responsibilities and support the efforts of law enforcement officers to provide immediate, effective assistance and protection for victims of domestic violence." 750 ILCS 60/102(5). The City's arguments on appeal and the construction it urges do the opposite, undermining the IDVA's language and purpose. The City argues that the officers owed Ms. Taylor no duty of care under the IDVA — despite the evidence that the abuser's conduct posed an extreme and immediate

danger to her — because the abuser was "not in his right mind" at the time, and therefore incapable of acting with at least a "conscious awareness or disregard of the possible harm" to the victim. (Op. Br. 30-31.) According to the City, an individual deemed by police officers to be suffering from a mental health crisis lacks the mens rea required to commit an act of abuse as it is defined in the IDVA, and therefore, anyone endangered by such an individual — even if the danger is certain and immediate — is not a victim of "abuse" to whom police owe a duty under the Act. (*Id.* at 27-32.) Thus, the City argues, because the abuser "was out of touch with reality," and because Ms. Taylor asked for an ambulance rather than requesting her abuser's arrest, the IDVA imposed no duty "to override [her] stated wishes . . . and treat . . . [Ms. Taylor] as the victim of abuse." (*Id.* at 32.) In other words, in the City's view, Ms. Taylor's status as a person the IDVA exists to protect depended on Ms. Taylor's ability to identify herself as a victim, on the mental health status of her abuser, and on the officers' judgment about that status. (*Id.* at 30-32.)

This Court must reject the City's contorted view of the circumstances under which a duty to protect is invoked under the IDVA. The IDVA does not condition officers' mandatory duty to protect victims of abuse on either the perpetrator's mental stability or the victim's self-identification as a victim of domestic violence in need of support. Instead, the IDVA, by both its language and purpose, imposes a duty on law enforcement officers whenever there is reason to believe that an abuser's behavior endangers family or household members. The objective evidence presented at trial overwhelmingly supported a finding that the

abuser's behavior endangered Ms. Taylor — it is difficult to imagine an abusive situation more obviously dangerous, and certainly life-threatening, to the victim and everyone around her, than that to which the officers were called in this case. Nor would compliance with the IDVA's duties have resulted in "override" of the victim's stated wishes. The IDVA requires the provision of resources, information and support to victims at a moment of extreme volatility and chaos, when victims may not be able to comprehend the danger they face. Those requirements exist to permit victims to understand their situation clearly, make appropriate decisions, and obtain safety.

A. The Illinois General Assembly expressly intended the IDVA to be construed broadly.

Section 102 of the IDVA provides that it must be "liberally construed and applied to promote its underlying purposes." 750 ILCS 60/102. The specific underlying purposes include "[r]ecogniz[ing] domestic violence as a serious crime against the individual and society which . . . promotes a pattern of escalating violence"; recognizing that "although many laws have changed, in practice there is still widespread failure to appropriately protect and assist victims"; "[s]upport[ing] the efforts of victims of domestic violence to avoid further abuse by promptly entering and diligently enforcing court orders which prohibit abuse and, when necessary, reduce the abuser's access to the victim"; and "[e]xpand[ing] the civil and criminal remedies for victims of domestic violence; including, when necessary, the remedies which effect physical separation of the parties to prevent further abuse." *Id.*, 60/102(1, 3-4, 6).

The City's inappropriate focus on the mental state of the abuser and the

victim's "stated wishes" runs directly afoul of the IDVA's language and the legislature's instruction to construe the statute liberally. This Court should reject that approach and honor the intent of the legislature to increase protection for victims of domestic abuse. *See Sanchez v. Torres*, 2016 IL App (1st) 151189, ¶ 14 (IDVA "seeks to provide victims of domestic violence with the highest level of protection possible").

B. A victim of abuse is entitled to protection under the Act regardless of whether responding officers believe the abuser is suffering from a mental health crisis.

The duty of police officers under the IDVA to use all reasonable means to protect a victim of domestic violence from abuse does not depend, as the City claims, on the officers' assessment of whether the abuser is "in his right mind." (Op. Br. 31.) The IDVA's language fails to support imposing such a condition. Doing so would directly undermine the Act's express purpose to "provide immediate, effective assistance and protection for victims of domestic violence," 750 ILCS 60/102(5), and contravene the legislature's intent to define the persons subject to IDVA's protections broadly. *See Moore v. Green*, 219 Ill. 2d 470, 488-89 (describing the IDVA as beginning "with a broad statement of its purposes and a broad statement of the persons it protects") (citations omitted).

The IDVA's language does not support the City's argument — that because "abuse" requires "knowing" or "reckless" conduct, a perpetrator in mental health crisis cannot be committing abuse. (Op. Br. 29-32.) For instance, mental illness does not render a perpetrator incapable of "knowing," much less "reckless," conduct "which creates an immediate risk of physical harm" to a family or

household member. *See* 750 ILCS 60/103(14)(iii) (defining "physical abuse" for purposes of the Act). As scholars have observed,

> People with mental disorder are not automatons; rather, they are agents who act for reasons. Their reasons may be motivated by distorted perceptions and beliefs, but *they do form intentions and have knowledge of what they are doing* in the narrow, most literal sense. Thus, it is very uncommon for mental disorder to negate all mens rea, even if the defendant is profoundly delusional . . . .

Stephen J. Morse & Morris B. Hoffman, *Criminal Law: The Uneasy Entente Between Legal Insanity and Mens Rea: Beyond Clark v. Arizona*, 97 J. Crim. L. & Criminology 1071, 1096-97 (emphasis added). Courts thus recognize that "even the criminally insane defendant is often perfectly capable of forming the requisite intent to commit a crime." *People v. Valdez*, 2022 IL App (1st) 181463, at ¶ 161. To be found not guilty by reason of insanity, a defendant must prove by clear and convincing evidence that "at the time of such conduct, as a result of mental disease or mental defect, he lack[ed] substantial capacity to appreciate the criminality of his conduct." 720 ILCS 5/6-2(a). Indeed, a jury may not even consider "whether [a] defendant has met his burden of proving that he is not guilty by reason of insanity until and unless it has first determined that the State has proven the defendant guilty beyond a reasonable doubt of the offense with which he is charged." *Id.*, 5/6-2(e). This provision alone makes clear that a perpetrator can simultaneously be legally insane – *i.e.*, incapable of appreciating the criminality of his actions – *and* have the requisite "knowing" or "reckless" mental state to commit a crime. *See id.* Thus, while distorted perceptions or beliefs may impair a mentally ill abuser's ability to appreciate the criminality of his actions (and therefore possibly give rise to an insanity defense in a criminal

case),[1] they do not render an abuser incapable of conduct that constitutes "abuse" within the meaning of the IDVA. The City's emphasis on the "delusional" and "erratic" (Op. Br. 30) nature of the abuser's behavior in this case thus has no bearing on whether his actions met the definition of abuse and gave rise to a duty to Ms. Taylor under the Act.

Not only does the City's argument lack support in the language of the IDVA, it also simply defies common sense to suggest that a law expressly designed to enhance protections for victims of domestic violence would require police officers, who are neither lawyers nor psychiatrists, to decide whether a victim requires their protection under the Act based not on their assessment of the danger presented but instead on their lay impression of the abuser's mental condition. The IDVA's primary focus is assisting and protecting domestic violence victims from harm, and the danger posed by a perpetrator of domestic violence is in no way mitigated simply because the abuser is delusional or paranoid — the danger may, in fact, be starker in such cases. The City's claim that a person experiencing a mental health crisis is categorically incapable of possessing the mental state required to commit physical abuse, thereby absolving

[1] As explained above, the question whether mental illness prevented a defendant from appreciating the criminality of his conduct is entirely different from the question whether the conduct was, for example, knowing or reckless for purposes of determining whether a crime occurred. In Illinois, criminal defendants do not have an established right to introduce evidence of an impaired mental state to challenge the mens rea element of an offense. *See Valdez*, 2022 IL App (1st) 181463, ¶ 125. Moreover, the Criminal Code expressly provides that a perpetrator's mental illness short of "insanity" at the time of a criminal offense does not relieve him of criminal responsibility for the conduct. 720 ILCS 5/6-2(c).

officers of their duties to protect victims, must be rejected.

The evidence presented at trial amply supported a finding that the officers had reason to believe the abuser's conduct placed Ms. Taylor, a household member, in danger of immediate physical harm. That alone sufficed to create a duty to Ms. Taylor under the Act, regardless of whether the officers believed the abuser to be experiencing a mental health crisis. To hold otherwise would arbitrarily narrow the category of domestic violence victims entitled to protection under the Act, subjecting those victims to potentially lethal danger, when the legislature expressly intended the opposite.

C. The General Assembly deliberately chose to make mandatory police response provisions *not* dependent on the victim invoking them. This reflects a broader recognition of the nature of domestic violence as a crime.

The General Assembly enacting the IDVA recognized that law enforcement too often failed to respond effectively to domestic violence incidents. *See* 750 ILCS 60/102(3). To correct that situation and encourage proactive police intervention to protect victims in domestic violence situations, the legislature added the mandatory police response provisions. *Sneed v. Howell*, 306 Ill. App. 3d 1149, 1158 (5th Dist. 1999). This amendment was part of "a recognition that the victims of domestic violence were people who fell between the cracks." House Debate, HB 2409, at 86 (May 23, 1986) (statement of Rep. Greiman). The legislature intended to impose affirmative duties in those situations in which "the courts and . . . the system ha[ve] not provided the full measure of protection for victims of abuse, of domestic violence." *Id*. The City's position that a perpetrator's acute mental illness negates officers' protective duties under the IDVA not only

undermines the legislature's goal of providing comprehensive protection for victims of abuse, but also fails to understand and incorporate the reality of domestic violence and the experience of survivors.

1. The legislature passed the IDVA against a background of increased recognition that to provide appropriate protection, police response cannot depend on the victim's stated wishes, "cooperation," or apparent lack thereof.

The history of advocacy on behalf of victims, and the development of expert understanding of victim survival strategies and the effects of trauma resulting from domestic violence, provide important context for the legislature's enactment of the mandatory police response provision in the IDVA. In the late 1970s, shortly before the IDVA's initial passage, the plight of domestic violence victims became the subject of national attention. The U.S. Commission on Civil Rights ("Commission") had been studying the justice system's response to "battered women," as the problem was then called, in the mid-1970's, publishing reports in 1978 and 1982. *See* U.S. Commission on Civil Rights, *Battered Women: Issues of Public Policy* (1978) ("1978 Report"); U.S. Commission on Civil Rights, *Under the Rule of Thumb: Battered Women and the Administration of Justice* (1982) ("1982 Report"). The Commission introduced its 1978 Report with the recognition that "[m]any battered women report that, when they turn to the authorities for help, frequently it is to no avail." 1978 Report, ii. Police officers at the time routinely displayed an unwillingness to recognize domestic violence as a crime, and failed to protect its victims accordingly. *Id.* at ii-iii.

As the Commission recognized, in the years leading up to the IDVA, it was law enforcement policy not to "interfere" in domestic violence situations, and not

to arrest abusers, based upon the mistaken belief that the issue constituted a private matter, rather than a crime, and the parties would resolve their conflicts on their own. 1982 Report at 12, 14, 21. The Commission identified this attitude in the criminal justice system as a vestige of the common law view of women as the property of their husbands. *Id.* at 12.

According to the 1982 Report, police officers also failed to recognize that victims of domestic abuse often do not behave in the same way as victims of assault by strangers. *Id.* at 14-16. Testimony by police officers before the Commission revealed that they did not make arrests in domestic abuse cases because they believed that the victims would change their minds or reconcile with the abuser. *Id.* Police officers explained that they typically found domestic violence victims to be uncooperative or unwilling to complain or press charges. *Id.* at 15. Police officers also testified that victims of domestic assault "are often highly upset and unsure of what they want the responding officers to do," unlike other crimes where "the officer can expect willing cooperation and support from the victim." *Id.* at 13. Despite such apparently ambivalent behavior, the Commission reported, "experts advise that arrest of the assailant may be in the victim's best interest." *Id.* at 16 (quoting training materials on domestic violence from International Association of Chiefs of Police, stating that "[a]n assault cannot be ignored by the police regardless of the victim's attitude or motive for not cooperating").

Ultimately, the Commission called for law enforcement to abandon these misperceptions of domestic violence and policies of noninterference. 1982 Report

at 91-92; *see* Recommendation 3.4. Law enforcement could not expect victims of domestic violence to behave the same as victims of other crimes. The Commission concluded that police officers play a critical role in protecting domestic violence victims from their abusers, and that a victim's life can depend on police decisions and policies. *Id*. at 91.

During this same period, the late 1970's and early 1980's, Illinois experienced "a societally significant increase in injuries and deaths that stemmed from domestic disputes." *Fenton v. City of Chicago*, 2013 IL App (1st) 111596, ¶ 16, *citing* 750 ILCS 60/102. In response, the Illinois legislature passed the IDVA for the purpose of providing "victims of domestic violence with the highest level of protection possible." *Sanchez*, 2016 IL App (1st) 151189, ¶ 14. The IDVA calls for law enforcement "to provide immediate, effective assistance and protection for victims of domestic violence," and expressly recognizes that the legal system had previously failed to deal effectively with domestic violence. 750 ILCS 60/102(3), (5).

2. It is generally well recognized that domestic violence victims may not self-identify and assert their need for safety, giving rise to the need for mandatory police procedures that do not depend on the victim's statements or actions.

Victims of domestic abuse are known to exhibit counterintuitive behavior in their interactions with police officers. For example, victims may deny the abuser's responsibility for their injuries, *State v. Townsend*, 186 N.J. 473 (2006) (shortly before dying from injuries inflicted by her husband, and witnessed by her children, domestic violence victim falsely stated she had been struck by a car);

delay reporting an incident of abuse, *State v. Borelli*, 629 A.2d 1105, 1107, 1113 (Conn. 1993) (victim went to police station in the evening to report abuse that occurred the previous evening); minimize their injuries, *State v. Searles*, 680 A.2d 612, 615 (N.H. 1996) (victim told police at the scene that her abuser choked her, and displayed red marks on her neck, but testified at trial that she was hurt "a little bit"); and recant their initial charges, *Borelli*, 629 A.2d at 1114 (victim signed police statement describing horrific abuse, then recanted at trial and said the events had never happened). Victims of domestic abuse often seek to appease the abuser in volatile situations, and they may engage in other behaviors that seem to defy logic from an outsider's perspective. *See State v. Frost*, 577 A.2d 1282 (N.J. Super. 1990) (where victim stayed in the company of her abusive husband for hours after the assault, expert testimony was admissible to bolster the credibility of her statements made later in the day to the police).

These counterintuitive behaviors, and others like them, are so inconsistent with how victims of non-domestic assaults generally behave that, at trial, prosecutors and defense attorneys alike rely on expert testimony to explain them to juries. *See, e.g.*, *Borelli*, 629 A.2d at 1113 (expert testified that domestic violence victims' behaviors may "only make sense when you understand them from the standpoint of survival and safety"); *see also United States v. Johnson*, 860 F. 3d 1133, 1140 (8th Cir. 2017) (expert testimony admissible and helpful to jury where it explained how individuals generally react to domestic abuse, including not reporting the abuse and not attempting to escape from the abuser); *Townsend*, 897 A.2d at 327 (noting, "[w]e have no doubt that the ramifications of

a battering relationship are beyond the ken of the average juror"); *Searles*, 680 A.2d at 615 (expert testimony permitted when a victim tries to hide or minimize the effect of abuse, which may be incomprehensible to average people). In short, courts have repeatedly found that juries need to have experts explain the traits commonly exhibited by victims of abuse, because otherwise the victim's conduct falls beyond normal expectations of how crime victims behave.

Because a domestic abuser often lives with the victim or has access to the victim's home, enmeshes himself in the victim's life, prevents the victim from developing outside friendships and independent resources, and otherwise asserts power and control over the victim's actions, domestic violence poses an array of dangers that can make it difficult for victims to report the violence, access help, and assert their right to safety. In addition, domestic violence occurs in the context of family and other intimate relationships, and the victim may feel intense loyalty, powerful emotional attachment, or other forms of dependence on the abuser despite the abuse and the danger it poses. In this context, what may appear as pathological denial, self-effacement, or even "masochistic" behavior may actually stem from long-adapted strategic behavior that a victim uses to maximize short-term safety. Appeasing an abuser in a moment of extreme violence can be a victim's survival strategy. A victim of abuse may also have such a strong commitment to caring for family that, in the midst of a charged and volatile moment, she prioritizes what she perceives as her familial duties above

her own need for safety.[2]

The IDVA's mandatory police response provisions implicitly recognize that to effectuate the purpose of protecting victims of abuse, law enforcement personnel may not simply rely on a victim's denial of abuse, minimizing of abuse, or apparent loyalty to or concern for the abuser, actions that often reflect the victim's imperatives of placating — or at least not provoking — the abuser in the midst of crisis and protecting her family. For that reason, Section 60/304 does not condition the duty to use all reasonable means to prevent further abuse on the victim identifying herself as a victim or the situation she in is as "domestic violence," nor does it require the victim to specifically request arrest of the abuser or other protective measures. *See* 750 ILCS 60/304. Instead, the IDVA imposes duties whenever there is "reason to believe" a person has been abused, indicating that officers must evaluate the situation based on the objective facts presented and all the circumstances, not the victim's statements. *Id.*, 60/304(a).

In this case, responding officers witnessed Ms. Taylor's boyfriend threatening and actually deliberately preparing to cause a gas explosion in her home, making Molotov cocktails, and brandishing weapons. They inappropriately used Ms. Taylor to attempt to persuade him to cooperate and saw that she could not — and knew that to the extent she believed, as many victims do, that she was uniquely positioned to calm her violent partner, she was mistaken. By necessity,

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[2] Amici recognize that domestic violence affects people of all genders, but use female pronouns here because domestic violence most commonly impacts women.

the officers subdued the perpetrator with Tasers and handcuffed him. Whether or not Ms. Taylor expressly stated that she feared him, or that he had injured her before, under these circumstances any rational person would know that even if she claimed not to fear him, she *should* fear him and was in extreme danger at his hands. Notwithstanding the City's suggestion to the contrary, Ms. Taylor's statements regarding the abuser needing an ambulance and psychiatric help, her assertion that he would never hurt her, and her failure to "ask[ ] to have [the abuser] arrested" (Op. Br. 6-7), do not mean that Ms. Taylor was not an "abused" person to whom the officers owed a duty under the Act. Regardless of what Ms. Taylor *told* the officers, they certainly had reason to believe that she not only was a victim of abuse by a member of her household, but was still very much in danger. These circumstances more than suffice to trigger the mandatory police response provisions under the IDVA.

II. The IDVA's mandatory police response provisions do not require police officers to choose between responding appropriately to an abuser's mental health crisis and protecting victims of domestic violence from further abuse — they can and must do both.

The IDVA's mandatory police response provisions require officers to "immediately use *all* reasonable means to prevent further abuse." 750 ILCS 60/304(a) (emphasis added). As the Illinois Supreme Court explained in *Calloway v. Kinkelaar*, the content of these mandatory police response provisions, when read in the context of the Act's stated purpose, "reveal the General Assembly's intent to encourage *active intervention* on the part of law enforcement officials in cases of intrafamily abuse." 168 Ill. 2d 312, 324

(emphasis added); *see also Fenton*, 2013 IL App (1st) 111596 at ¶¶ 19-20 (failure to arrest an abuser may constitute willful and wanton misconduct under the Act).

The officers in this case may have understood that Ms. Taylor's abuser was experiencing a mental health crisis that required medical treatment at a hospital. But that belief in no way precludes a finding that the officers acted willfully and wantonly in failing to comply with the IDVA's mandatory police response provisions. Officers do not need to choose between responding appropriately to an abuser's mental health crisis and fulfilling the statutory duty to affirmatively and "immediately use all reasonable means" to protect victims of domestic violence from further abuse. 750 ILCS 60/304(a). They can and must do both.

Appropriate police restraint during a mental health crisis presents no inherent tension with an appropriate response to a co-occurring domestic violence crisis that fulfills the IDVA's mandate to prevent further abuse. The IDVA's mandatory police response provisions do not focus solely on arresting a perpetrator of domestic violence; they also require all other appropriate measures reasonable to ensure safety. *See id.*, 60/304(a)(1-7). The IDVA requires a range of responses designed to empower the victim with information and support to enable her to comprehend and deal effectively and realistically with the circumstances and to provide her with an avenue to safety. In this case, regardless of the psychiatric reasons for the abuser's aggressive and violent behavior, Ms. Taylor had the right to the mandatory protections of the IDVA, including receiving information and materials on domestic violence resources and a referral to an accessible service agency; assistance accessing a shelter or

other place of safety; advice about getting medical attention and preserving evidence, such as photographing her injury; and assistance obtaining an order of protection. *See id.* The police were required to provide her with those options and information, particularly given the obvious likelihood the abuser would eventually be returning to the home. Far from excusing the officers' failure to take any of these measures, Ms. Taylor's apparent inability to comprehend her own danger made the provision of resources and information all the more critical. The IDVA required this access to support, resources, and information to prevent the kind of tragic loss of life that occurred in this case.

Moreover, while the IDVA provides a list of certain protective actions police must take on behalf of domestic violence victims to fulfill their duty under the statute, that list is not exhaustive. Where, as here, officers decide not to arrest an abuser who is suffering from an apparent mental health crisis, they still have a duty to "immediately use *all* reasonable means" to protect victims from further abuse. 750 ILCS 60/304(a) (emphasis added).

In the case of an abuser who appears to be suffering a mental health crisis, an officer may petition for the abuser's involuntary admission (civil commitment) to a mental health facility. *See* 405 ILCS 5/3-606 ("A peace officer may take a person into custody and transport him to a mental health facility when the peace officer has reasonable grounds to believe that the person is subject to involuntary admission on an inpatient basis and in need of immediate hospitalization to protect such person or others from physical harm. Upon arrival at the facility, the peace officer may complete the petition under [405 ILCS 5/3-601]."). Indeed,

when an officer has decided to transport a dangerous abuser for medical treatment in lieu of arresting him, simply assuming or hoping someone else will file such a petition does not satisfy the IDVA. Actually filing such a petition, or at the very least ensuring that one will immediately be filed, certainly constitutes a reasonable means to protect victims from further abuse. And because it constitutes a reasonable means to protect a victim, the IDVA requires it.

In this case, even though the abuser's behavior obviously put Ms. Taylor in extreme danger, the officers made no effort whatsoever — much less an immediate one — to ensure that the abuser was involuntarily admitted for Ms. Taylor's protection after they decided not to arrest him. Instead, they simply dropped the abuser and Ms. Taylor off at a hospital together and considered the matter closed. Because the abuser presented an obvious and immediate risk to Ms. Taylor, a reasonable jury certainly could have found that the officers' decision to simply leave her at the hospital with the abuser — without taking any steps at all to provide Ms. Taylor with domestic violence resources and information, to arrange or provide transportation to a shelter or other safe place away from the abuser, or to ensure the abuser's involuntary admission — demonstrated an utter indifference to or conscious disregard for Ms. Taylor's safety, thus rising to the level of willful and wanton misconduct.

CONCLUSION

For the foregoing reasons, this Court should deny the City's appeal from the denial of its motion for JNOV or a new trial, and affirm the judgment.

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) 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 28 pages.

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CERTIFICATE OF SERVICE

I am an attorney and I certify that on February 24, 2023, I electronically filed the foregoing Amicus Brief with the Clerk of the Court for the Illinois Appellate Court, First District by using the Odyssey eFileIL system.

I further certify that the following parties will be served electronically through that system.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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