

# When Victims of Crime Become Defendants: Should Context Matter?



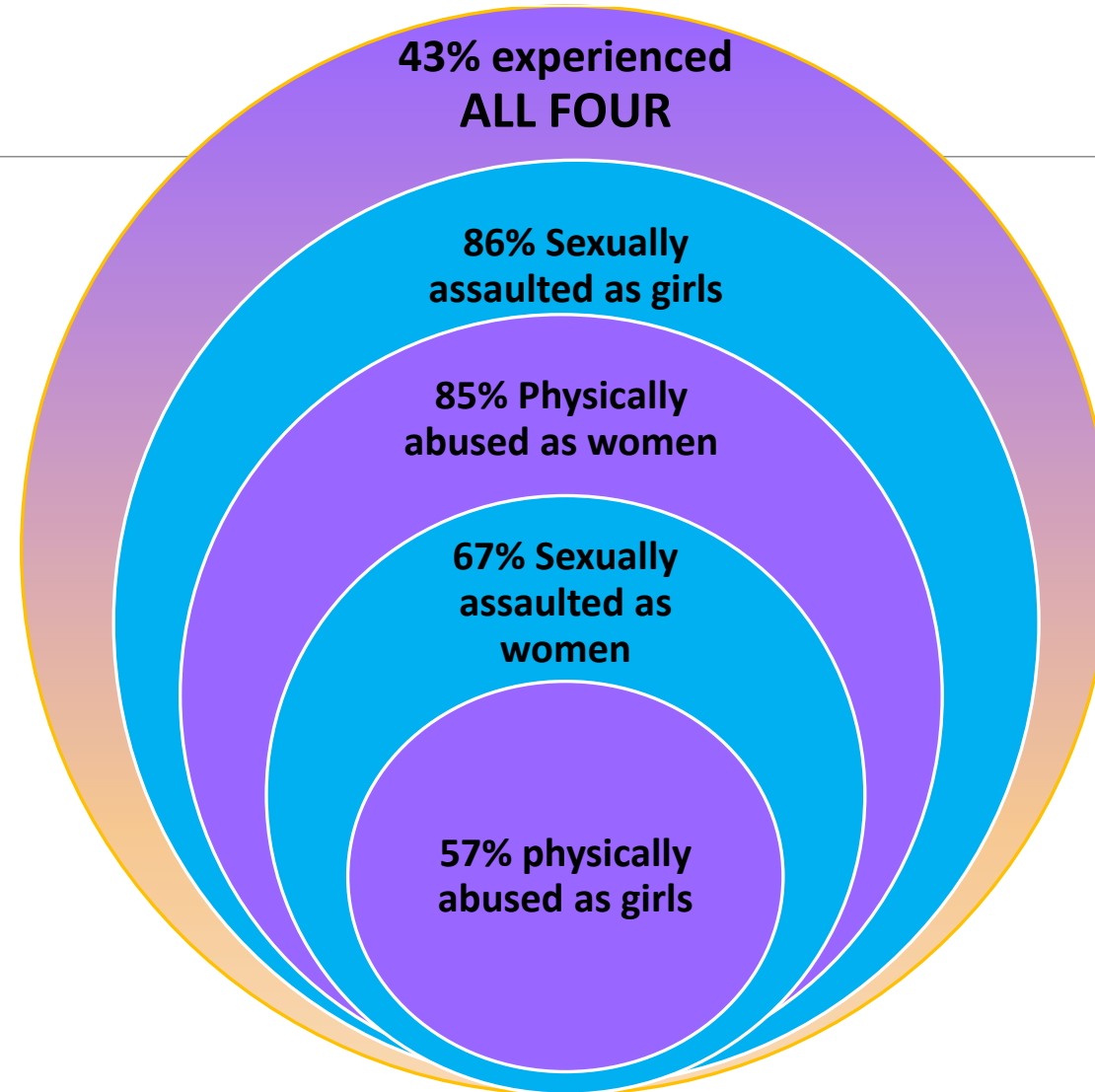
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“Equal protection guarantees not only that similar people will be dealt with in a similar manner, but also that people of different circumstances will not be treated as if they were the same.”

Joseph Tussman and Jacobus tenBroek, *The Equal Protection of the Laws*, 37 Cal. L Rev. 341. (1949)

# What Do We Know About Women in US Prisons?

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Bradley and Davino

# Incarcerated Women

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**Sexual assault:** An Ohio study of sexual assault histories of incarcerated women found that 70% had been sexually assaulted, **half** were sexually abused as girls, ***and 11% had been gang raped.***

(McDaniels-Wilson & Belknap, 2008, p. 1120)

**Trauma histories:** While all incarcerated people have higher rates of trauma and victimization, women's rates are found to be substantially higher than men's rates in multiple studies.

(Belknap & Holsinger, 2006; Desai, Arias, Thompson, & Basile, 2002; McClellan, Kubiak TRAUMA INFORMED CARE 9 Farabee, & Crouch, 1997; Messina & Grella, 2006; Payne, Gainey & Carey, 2005\_)

# Invisible in Plain Sight

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- Survivors who are arrested, charged and convicted are often never identified as domestic violence victims by police, prosecutors, advocates or defense counsel
- Some do not self-identify as survivors
- They are rarely served by traditional domestic violence and rape crisis programs

# How Did We Get Here?

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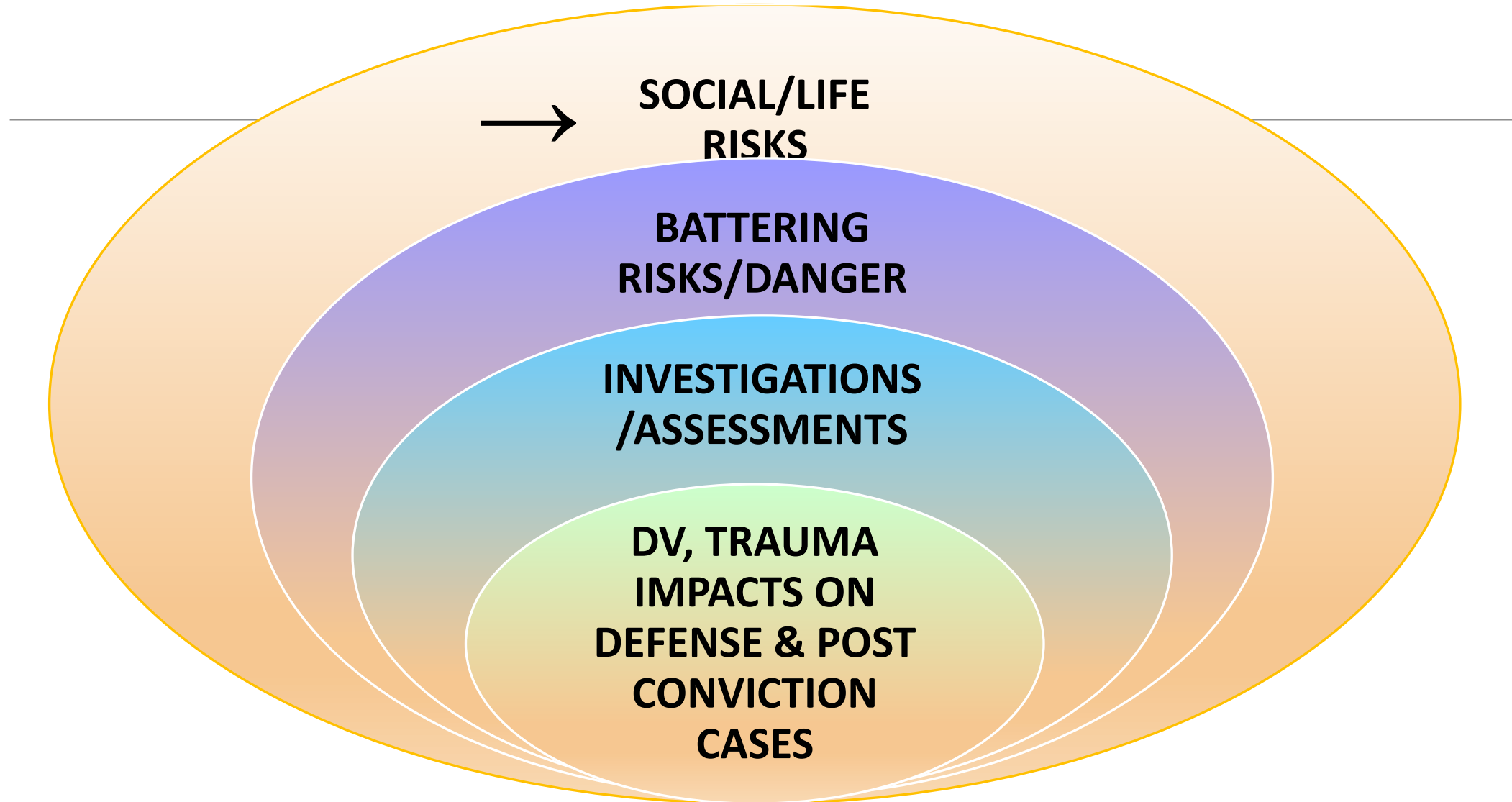
While home to only 5% of the world's women, the U.S. accounts for nearly one-third of the world's total incarcerated women. -Prison Policy Initiative, 2018

The majority of incarcerated women are crime victims; some of their trauma is directly related to the crime of conviction.



Picture is of women in a prison behind barbed wire

# Factors Leading to Victim Incarceration



# Framework for Understanding Danger

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## **BATTERER GENERATED RISKS**

**Physical and Sexual Assault**

**Psychological Abuse**

**Financial Abuse**

**Stalking**

**Child Abuse**

## **LIFE GENERATED RISKS**

**Poverty**

**Racism**

**Homophobia**

**Anti-immigrant bias/immigration law**

**Housing barriers (urban and rural)**

**Transportation barriers**

Source: Safety Planning with Battered Women: Complex Lives/Difficult Choices, by Jill Davies, Eleanor Lyon, & D. Monti-Catania, Thousand Oaks, CA: Sage, 1998.

Advocacy Beyond Leaving: Helping Battered Women in Contact with Current or Former Partners, by Jill Davies, Family Violence Prevention Fund, [www.endabuse.org](http://www.endabuse.org), 2009.



# Danger Increases Risk of Arrest for Survivors

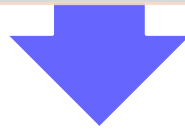
## Battering

Batterer Generated Risks + Life Generated Risks



## Barriers to Safety

Fewer options for safety



## Higher Homicide Risk

Higher Risk of Being Killed

Higher Risk to Commit Responsive  
Violence/Other Crimes

# Social/Life Risks - Racism

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**African American women experience domestic violence homicide at rates nearly three times that of white women** - Racial

and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003–2014, Petrosky, E., et. al., Morbidity and Mortality Weekly Report, Centers for Disease Control, 2017, at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5657947/>

# Social/Life Risks: Racism and Arrest Risk

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- Women of color experience higher conviction rates (78%) and longer sentences than all others charged with homicide. African-American women were convicted at a higher rate (80%) than all others (62%). The ratio of black women to white women convicted of killing their abusive partners is nearly two-to-one. (Michigan Women's Justice & Clemency Project, Hastings Women's Law Journal, 2007, (UCLA Women's Law Journal))
- Data indicates that at every juncture, people of color in the criminal justice system are not fairly treated: in rates of arrest, bail, charging decisions, findings of guilt and the imposition of punishment including higher rates of imposing the death penalty.

(Criminal Justice Fact Sheet. NAACP. <https://www.naACP.org/criminal-justice-fact-sheet/>, and Kearney, Gavin. Structural Racism in the Criminal Justice System; literature review. Battered Women's Justice Project. 2003. [https://www.bwjp.org/assets/documents/pdfs/structural\\_racism\\_criminal\\_justice\\_system.pdf](https://www.bwjp.org/assets/documents/pdfs/structural_racism_criminal_justice_system.pdf))

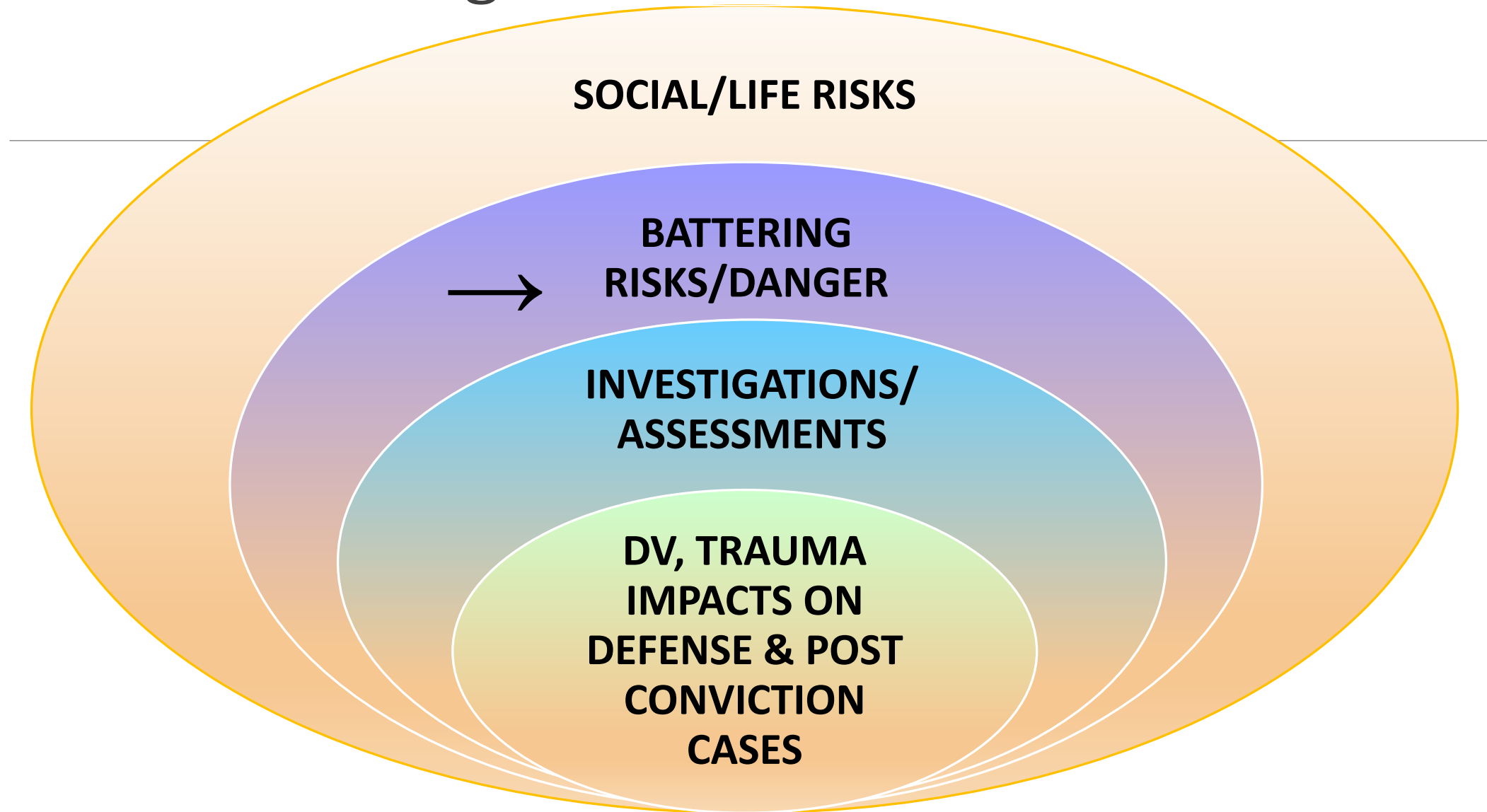
# Social/Life Risks: Poverty and Arrest Risk

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**Poverty:** One study found that 40% of incarcerated women had no job prior to incarceration and of those who had worked, two-thirds never earned more than \$6.50 an hour. Another study found that 80% had incomes of less than \$2,000 in the year before their arrest, and 92% reported incomes under \$10,000.

(Women in Prison Fact Sheet. Women in Prison Project of the Correctional Association of New York. March 2002 and Prison Activist Resource Center. Women in Prison. Available at: <http://prisonactivist.org/women/women-in-prison.html>.)

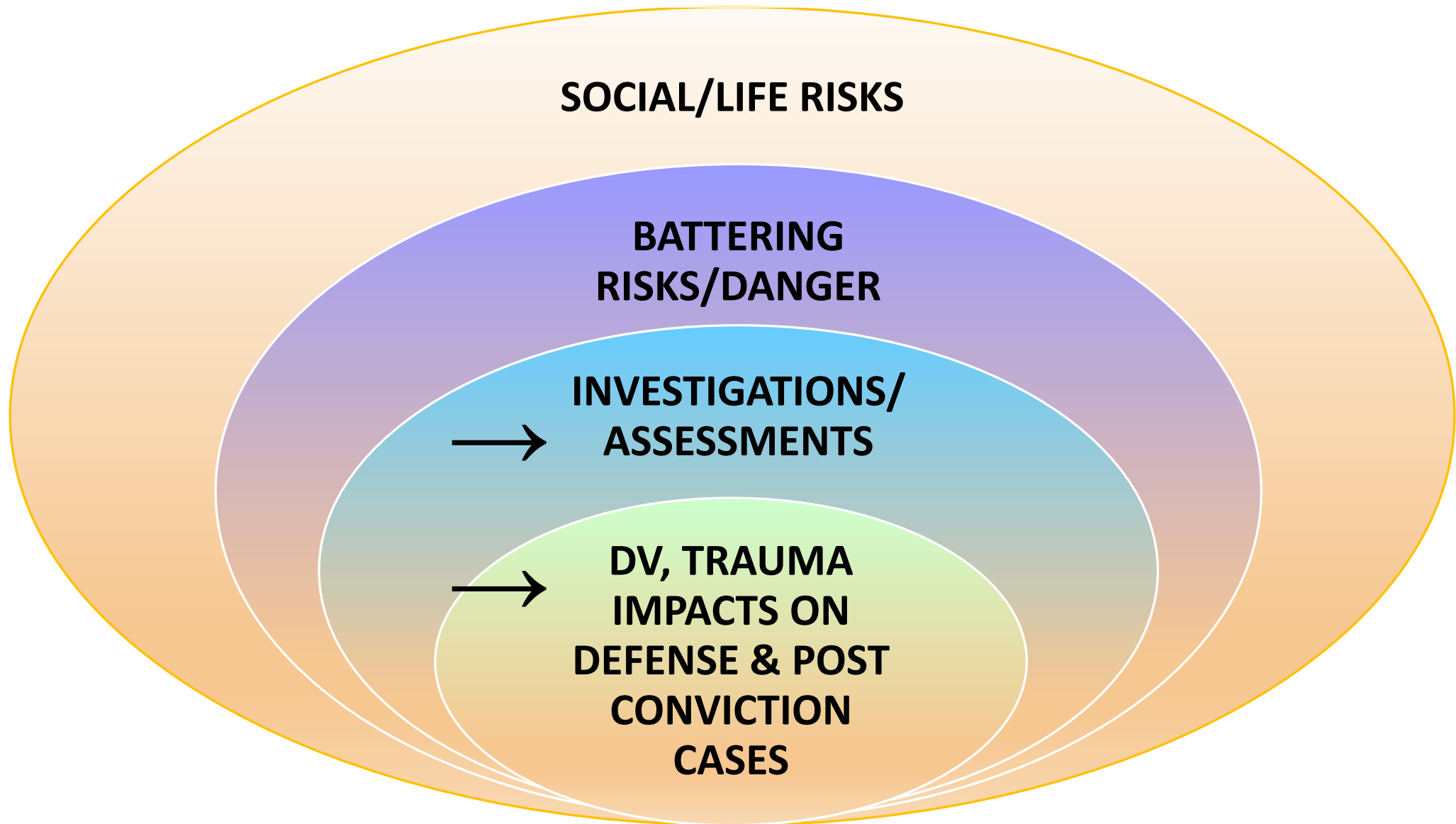
# Factors Leading to Victim Incarceration



# Battering/Victimization Pathways to Arrest

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- Killing/injuring abuser in self-defense, or to protect her children
- Child endangerment/"failure to protect" – punishing for "not enough" protection
- Parental kidnapping (fleeing with child to protect self/child) – punishing for "too much" protection
- Being forced/coerced into participating in a crime, conspiracy (drug deal, robbery, etc.)
- Perjury (recanting) or "false" claims of abuse/rape (ex. "Unbelievable", Netflix, Marie Adler)
- Drug crimes (self-medicating)
- Turning to criminal behavior for survival after trauma (theft, solicitation)
- Law enforcement investigations incomplete (especially in LGBTQ, women of color, strangulation, and women with prior convictions)



# Understanding Responsive Violence/Self Defense

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... The battered woman's *perception of viable options for stopping the violence and abuse by any means* is not only shaped by her own prior experience with violence, but also influences her future actions in response to violence. The perception or understanding of whether there are options available that would end the violence is based largely on what has actually been learned through experience. (not learned helplessness) (Dutton, 1993)

*“Ensuring that his victim is labeled as an offender is the abuser’s most significant and powerful instrument of self-preservation and protection from community intervention.”* (Pence, E. *At a Crossroads*, p. 113)



# Using what we know about trauma

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What are some impacts of trauma you have seen in victims, or in yourself from secondary trauma:

- Cognitive issues, can't think clearly, remember, explain things clearly
- Impatience, impulsivity or highly emotional
- Tangential thinking and talking
- This will be even more complicated if the survivor has a traumatic brain injury (TBI)

We see these **same impacts** when the battered woman is the suspect/Defendant.

# What Gets in the Way of Understanding Context?

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**Factor 1: DV dynamics of denial/minimization, self blame and trauma or traumatic brain injury** can lead to a wrong understanding of the case:

- Survivors may minimize the history of violence that caused fear of harm, may not identify as victim
- Traumatic memories are often fragmented, making it difficult for survivors to give a clear and consistent account of the incident or what lead up to it.
- If abuser is not deceased (or survivor believes they are not deceased), survivor may withhold information for future fear of retaliation from abuser.
- Trauma may cause survivors to express emotions that are inconsistent with accounts.

# What Gets in the Way of Understanding Context?

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## ***Factor 1 – battering and trauma continued***

***“No one ever asked me about this stuff before.”***

*(Clemency clients Ohio)*

- Defense counsel may not understand DV dynamics, may not ask about battering
- Trauma, TBI, taking responsibility and feelings of shame and guilt may impact the survivor’s ability to tell the story and assist in her own defense
- Feeling blame and guilt, and responsibility for children may lead survivors to make admissions and want to plead guilty

# What Gets in the Way of Understanding Context? (2)

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**Factor 2: Failing to formerly assess and understand the homicide risk the battered woman defendant was facing.**

Cases of women who kill/injury their partners and those who are killed by their partners often look very similar, i.e. both often contain high numbers of risk factors identified in Jacqueline Campbell's danger assessment tool ([www.dangerassessment.org](http://www.dangerassessment.org)).

# What Gets in the Way of Understanding Context? (3)

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## **Factor 3: Strangulation (in current or past incidents)**

- Not recognized as a life threatening act of violence creating reasonable fear of imminent harm
- Lack of visible injuries may obscure strangulation; real perpetrator may be only party with injury
- Strangulation effects impact brain functioning and result in panic and combativeness immediately following event
- **Tragic Refuge Clip**





# **“Tragic Refuge”**

Ohio Domestic Violence  
Network

YouTube

# What Gets in the Way of Understanding Context? (4)

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## **Factor 4: Gender and victim bias, stereotypes**

- “Why didn’t she leave”, “she could have left”, victim blaming
- Women lie, battered women lie more (Trauma/TBI intersect here: inconsistent emotions or accounts from fragmented trauma memory likely to be seen as evidence survivor is lying)
- Stereotypes of DV survivors having “learned helplessness”, as overly emotional or conniving, trying to get advantages in custody cases, “always” going back, etc. can frame how we understand this incident
- Gender of attorneys and detectives may impact how survivors respond to questioning, even if there is kindness
- Same level of violence from a stranger would be understood differently, so she’s angry and retaliating for the abuse(her victimization becomes seen as a motive)

***What’s often missing in non lethal cases, is how the abuser may be using the court system.***



# What Gets in the Way of Understanding Context? (5)

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## Factor 5: How LE investigations and advocacy are organized and focused

- Law enforcement is focused on whether there was a violation of a statute, i.e. the **“snapshot”, not the whole history leading up to the last incident, i.e. “the movie”**. (Even more so if their dominant aggressor statute does not compel/permit them to consider history and comparable level of fear)
- Law enforcement is often trained to **focus on evidence, i.e. who is more injured**
- Advocates are focused on assisting **survivors who can call the hotline** or come to the shelter – this excludes women who have been arrested. Their absence in lives of victim/Defendants impacts outcomes.
- Some **funding streams** may prohibit advocacy assistance to people charged with a crime, even if they are the victim.

# Conditions of Confinement & Trauma

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- The psychological impact of incarceration is substantial, even among those experiencing relatively short-term confinement in a jail. (Bosworth, Explaining U.S. Imprisonment, 2010)
- New authority in her life, tickets for “out of place” – living under more rules
- Strip searches/pat downs
- Poor health care, limited mental health care, poor food, difficult sleeping conditions, separation from and inability to protect their children, noise, rigid rules, control, slamming doors/yelling, verbal abuse by staff, and other triggers of trauma, and physical and sexual violence from other women and correctional staff are common.
- COVID rates

**Confinement has uniquely negative impacts on survivors of trauma and violence.**

# Impact of Successful Prosecution: See: [National Inventory of Collateral Consequences of Conviction](https://www.niccc.org/consequences)

DESCRIPTION:  ☒ Include Federal Consequences Export Clear Search

JURISDICTION  CONSEQUENCES  KEYWORDS  OFFENSE TYPE  DISCRETION  DURATION

Next Page » Matched 99 entries with 157 consequences

Title	Jurisdiction	Consequences	Keywords	Offense Type	Discretion	Duration
<b>ORC Ann. 3333.38</b> <a href="#">Discharge from state-supported higher education institution</a>	Ohio	Education	Education & schools Students & interns	Crimes of violence, including 'person offenses'	Mandatory/Automatic	Indefinite
<b>OAC Ann. 3301-42-01</b> <a href="#">Deny enrollment in adult public secondary education program</a>	Ohio	Education	Education & schools Students & interns	Any felony	Discretionary	Indefinite
<b>OAC Ann. 3356-7-44</b> <a href="#">Youngstown state university employee obligation to disclose conviction</a>	Ohio	Education Registration, publication & notification	Education & schools Teachers & instructors		Mandatory/Automatic	Indefinite
<b>OAC Ann. 3356-7-44</b> <a href="#">Background check for employment with Youngstown State University</a>	Ohio	Education Employment & volunteering	Education & schools Teachers & instructors	N/A (background check, general relief)	Mandatory/Automatic	Indefinite
<b>ORC Ann. 3314.19</b> <a href="#">Background check to serve as community school governing authority member</a>	Ohio	Education Employment & volunteering	Education & schools Teachers & instructors	N/A (background check, general relief)	Background Check	N/A (background check, general relief)

- Job Loss, future employment
- Licensure loss
- Custody Loss, possibly permanent parental rights termination
- Housing Loss, future housing barriers
- Immigration impacts
- More

# Impact of Prosecution

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Even when grand juries decline cases, or charges are later dismissed, the impacts of being charged can be far reaching, job loss, housing loss, including the removal of children for long periods of time, if not permanently.

When survivors are acquitted, they are often still identified with the crime, vilified in the media, and may spend over 100k for their defense.

# Post Conviction Justice is Elusive

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- Appeals typically fail. Clemency usually fails.
- Parole limitations.
- Prosecutors usually oppose parole, even when survivors have served years beyond plea offers made.
- Even when legal errors are identified and agreed to by prosecutors, appeal timeframes are often exhausted, there is no avenue for raising valid legal issues.
- Even when hindsight indicates justice was not served, there are often no remedies.

***“Knowing what I now know about the awful effects of spousal abuse, perhaps I would have considered a plea to a lesser charge.”***

— former prosecutor on case where battered woman has served 29 years on a 23 to life case.

# Realities of Violence Against Women Crimes

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“I just closed my eyes  
and pulled the trigger”

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NASHVILLE HOMICIDE SUSPECT – RAPE VICTIM



“I’M MORE AFRAID OF YOU THAN MY ABUSER”

VICTIM OF A DOMESTIC VIOLENCE HOSTAGE SITUATION

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The victim needs justice and safety

A solid orange horizontal bar at the bottom of the slide.



“A victim of domestic violence calls the crisis line for the first time on average after the fifth assault”

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NASHVILLE, TENNESSEE DOMESTIC VIOLENCE HOTLINE

A solid orange horizontal bar at the bottom of the slide.

The “duty of the prosecutor is to seek justice, not merely to convict.”

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*(ABA STANDARDS FOR CRIMINAL JUSTICE, P. 42 CROSSROADS)*

# Realities of VAW Crimes

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## Common characteristics of violence against women crimes

- Course of conduct vs. incident-based
- Multiple concurrent crimes
- Traumatic impact
- Minimization by victim
- Underreported
- Serial nature of perpetrators

# Realities of VAW Crimes

Commonly missed crimes in the context of violence against women

- Stalking
- Intimate partner sexual assault
- Strangulation
- Felony threats
- Weapons violations
- Kidnapping
- Witness Intimidation

# Realities of VAW Crimes

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Reasons co-occurring crimes are missed by officers

- Lack of training
- Lack of communication
- Language barriers
- Insufficient supervisor oversight
- Personal beliefs and/or biases
- Minimization

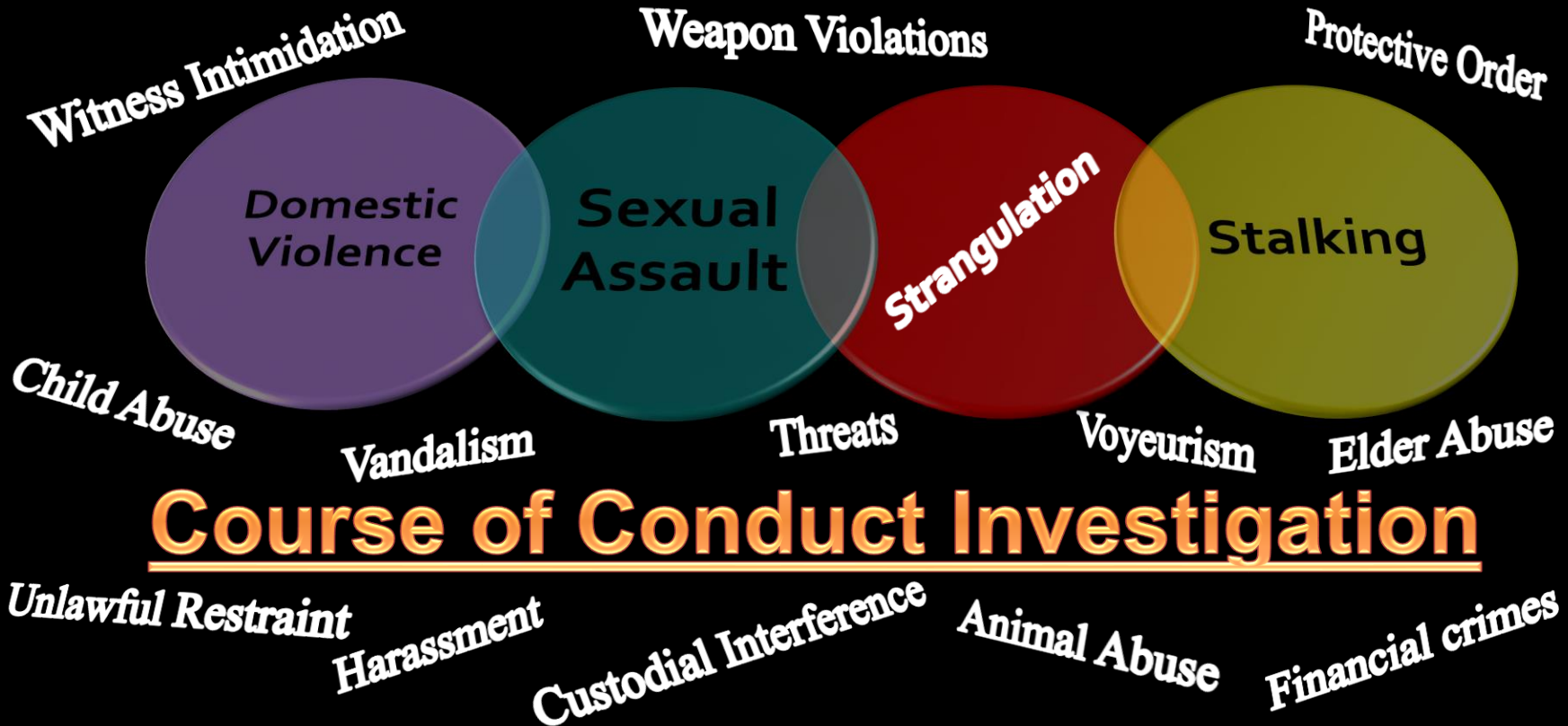
# Realities of VAW Crimes

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## Impact of missing co-occurring crimes

- Violence escalates/fatality
- Victim and officer safety compromised
- Liability issues
- Loss of community trust
- Recidivism/re-victimization
- Victim hesitation to report further incidents

# Interconnected & Co-Occurring



## Course of Conduct Investigation

# Realities of VAW Crimes

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Victims of VAW:

- Not going to be a “perfect” victim
- Often delay reporting crime
- Experience trauma because of the violence
- Are often threatened, afraid & reluctant
- May feel powerless to stop the violence
- May have vulnerabilities that perpetrator will exploit



# Realities of VAW Crimes

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Perpetrators of VAW:

- Plan their crimes
- Ensure there are no witnesses
- Are strategic and calculating
- Engage in “testing” to select victims
- Are often repeat offenders with a series of and/or multiple victims
- Escalate violence over time

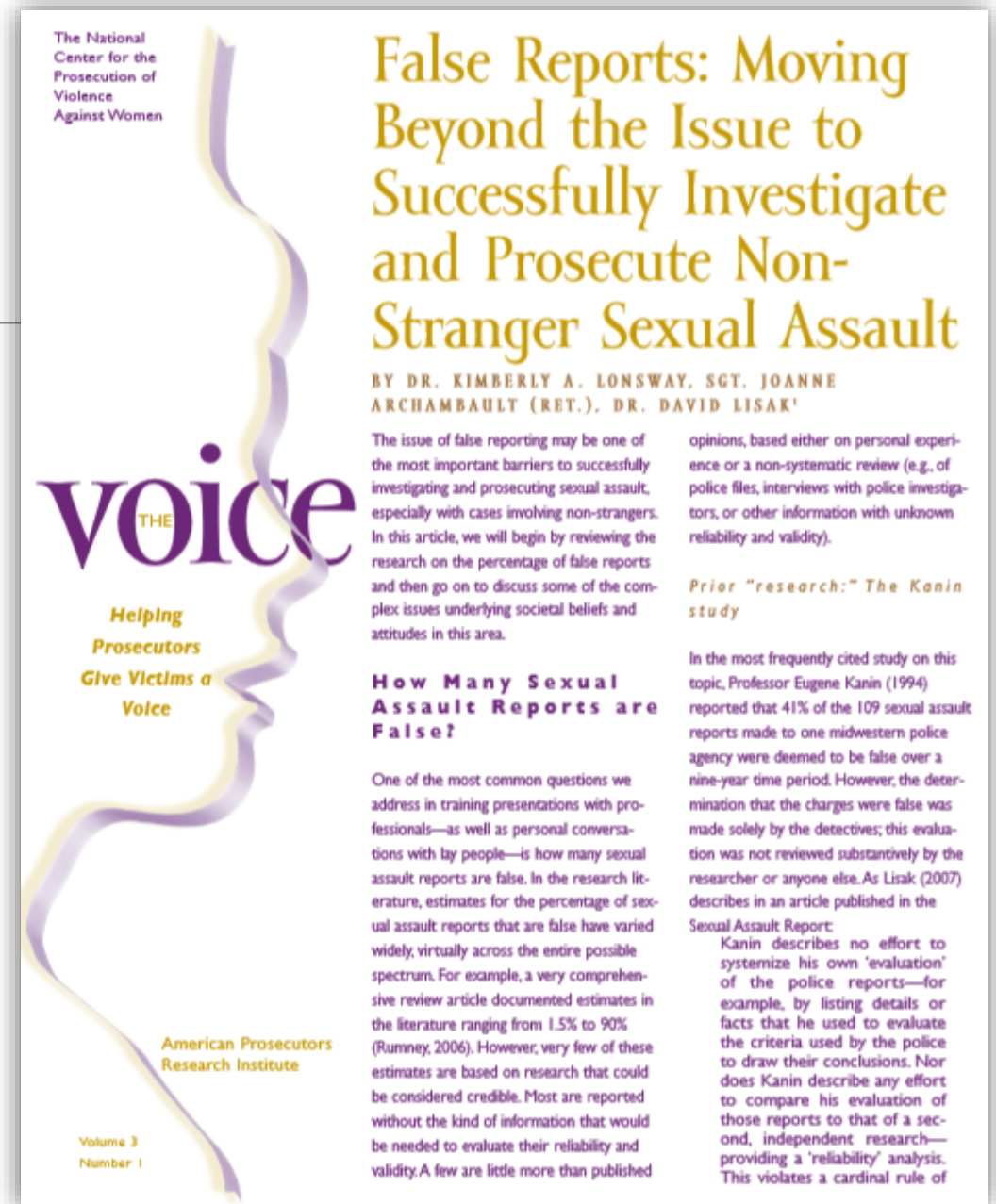
Do we recognize  
Gender Bias?

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# False Reporting: Recommended Reading

By Dr. Kimberly A. Lonsway, SGT Joanne Archambault (Ret), and Dr. David Lisak

Research Estimates the percentage of false reports begin to converge around 2% – 8%



# Identifying and Preventing Gender Bias in Law Enforcement

## Response to Sexual Assault and Domestic Violence



U.S. DOJ, December 2015:

Purpose: provide basic principles that if integrated into LEAs' **Policies, Trainings and Practices** — will help ensure that agencies' efforts to keep victims safe and hold offenders accountable are not undermined, either intentionally or unintentionally, by gender bias.

<http://www.justice.gov/opa/video/justice-department-issues-guidance-identifying-and-preventing-gender-bias-law-enforcement>

# DOJ: Key Principles in Gender Bias Prevention

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1. Recognize and address biases, assumptions, and stereotypes about victims
2. Treat all victims with respect, and employ interviewing tactics that encourage a victim to participate and provide facts about the incident
3. Investigate sexual assault or domestic violence complaints thoroughly and effectively
4. Appropriately classify reports of sexual assault or domestic violence

# DOJ: Key Principles in Gender Bias Prevention

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5. Refer victims to appropriate services
6. Properly identify the assailant in domestic violence incidents (predominant aggressor)
7. Hold officers who commit sexual assault/misconduct or domestic violence accountable (policies)
8. Maintain, review, and act upon data regarding sexual assault and domestic violence

# Trauma

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is characterized by the feelings of intense fear, helplessness, and loss of control. A hallmark of trauma is that it typically overwhelms an individual mentally, emotionally, and physically.

# Melissa Lucio

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In recent years, scientific research has revealed that “a history of negative/traumatic life events is associated with increased level of suggestibility, compliance, and false confession[,] . . . because trauma significantly reduces the resilience of the trauma victims to cope with interrogative pressure.”

**Innocence Project**



# Melissa Lucio

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Recent scientific evidence demonstrates the correlation between a history of trauma and a trauma survivor's heightened levels of suggestibility, meaning "vulnerability to external suggestion," and compliance, meaning "tendency to acquiesce to requests or demands"—both of which increase a person's risk of false confession. (Guarnera Dec.). Further,

**Innocence Project**



<https://www.cnn.com/videos/health/2017/10/09/sexual-assault-rape-victim-brain-animation-orig.cnn>

You should build  
a contextual picture  
of the crime.

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# The Invisible Injuries

## Strangulation & Traumatic

## Brain Injury

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**“Surviving victims of strangulation assault are 750% more likely of becoming a homicide victim.”**

- (Glass, et al, 2008).

# Strangulation: What Do We Know?

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SIGNIFICANT of chronic abuse: The act of strangulation symbolizes an abuser's use of Power and Control

POTENTIALLY LETHAL: It take very little force to cause a great deal of damage in a very small amount of time

HARD TO PROVE: Lack of resources (time, equipment, training), Non-participating victims, Public misinformation (bad jury pools), etc.

# Strangulation: SIGNIFICANCE

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Symbolizes an Abuser's use of Power and Control

If the victim is being strangled, she has probably been the victim of abuse for some time and the abuse is probably severe

- One study (written up in the Journal of Emergency Medicine) showed that 68% of women in one shelter had been strangled and each had been strangled over 5 times in her relationship
- Chicago study of 57 female DV homicide victims showed that 53% of them had previously been strangled by her partner

# Strangulation: SIGNIFICANCE

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So, what does that mean about a victim's ability to leave the abusive situation?

What does that mean about the victim's ability to cooperate with an investigation or with prosecution?

What does that mean needs to happen as quickly as possible after a Strangulation incident as been reported?

- **The BEST investigation possible!**



# Medical Information for Strangulation

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Obstruction of:

Carotid artery: Most common, 11 lbs of pressure for 10 seconds, unconsciousness, but regained in 10 seconds if pressure released

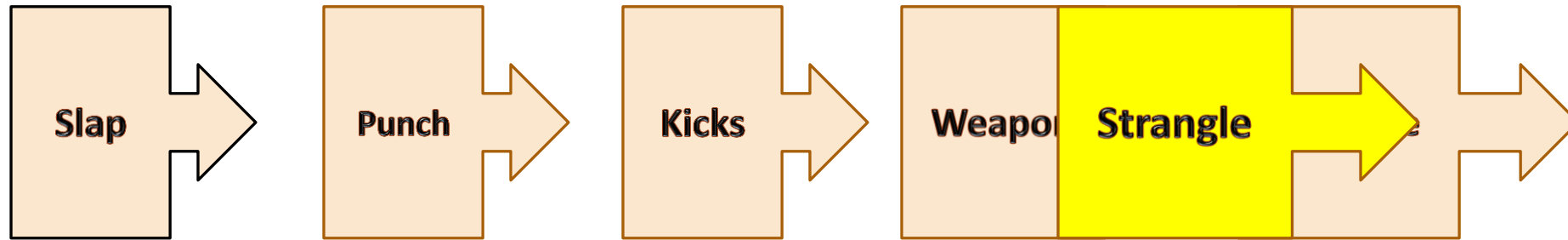
Jugular vein: Second most common, 4.4 lbs of pressure completely obstructs

Tracheal: 33 lbs of pressure, fracture of tracheal, and death

Brain death occurs if strangulation persists for 4 to 5 minutes

# Continuum of Violence

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# STRANGULATION

## SIGNS AND SYMPTOMS<sup>8</sup>

### NEUROLOGICAL

- Loss of memory
- Behavioral changes
- Loss of sensation
- Extremity weakness
- Headaches
- Fainting
- Urination
- Defecation
- Vomited
- Dizziness

### SCALP

- Petechiae
- Bald spots (from hair being pulled)
- Bump to the head (from blunt force trauma or falling to the ground)

### EYES & EYELIDS

- Petechiae to eyeball
- Petechiae to eyelid
- Bloody red eyeball(s)
- Vision changes
- Droopy eyelid

### EARS

- Ringing in ears
- Petechiae on earlobe(s)
- Bruising behind the ear
- Bleeding in the ear

### FACE

- Petechiae (tiny red spots, slightly red or florid)
- Scratch marks
- Facial drooping
- Swelling

### MOUTH

- Bruising
- Swollen tongue
- Swollen lips
- Cuts/abrasions
- Internal Petechiae

### CHEST

- Chest pain
- Redness
- Scratch marks
- Bruising
- Abrasions

### NECK

- Redness
- Scratch marks
- Finger nail impressions
- Bruising (thumb or fingers)
- Swelling
- Ligature Marks

### VOICE & THROAT CHANGES

- Raspy or hoarse voice
- Unable to speak
- Trouble swallowing
- Painful to swallow
- Clearing the throat
- Coughing
- Nausea
- Drooling
- Sore throat

### BREATHING CHANGES

- Difficulty breathing
- Respiratory distress
- Unable to breathe

## CONSEQUENCES<sup>7</sup>

### PSYCHOLOGICAL INJURY

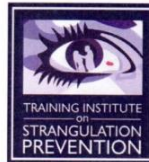
PTSD, depression, suicidal ideation, memory problems, nightmares, anxiety, severe stress reaction, amnesia, and psychosis.

### DELAYED FATALITY

Death can occur days or weeks after the attack due to carotid artery dissection and respiratory complications such as pneumonia, ARDS and the risk of blood clots traveling to the brain (embolization).

Today,  
**38 States**  
have legislation  
AGAINST  
STRANGULATION<sup>6</sup>

**VAWA 2013**  
added strangulation  
and suffocation to  
FEDERAL LAW



a program of Alliance for HOPE International  
101 W. Broadway, Suite 1770,  
San Diego, CA 92101  
1-888-511-3522

StrangulationTrainingInstitute.com

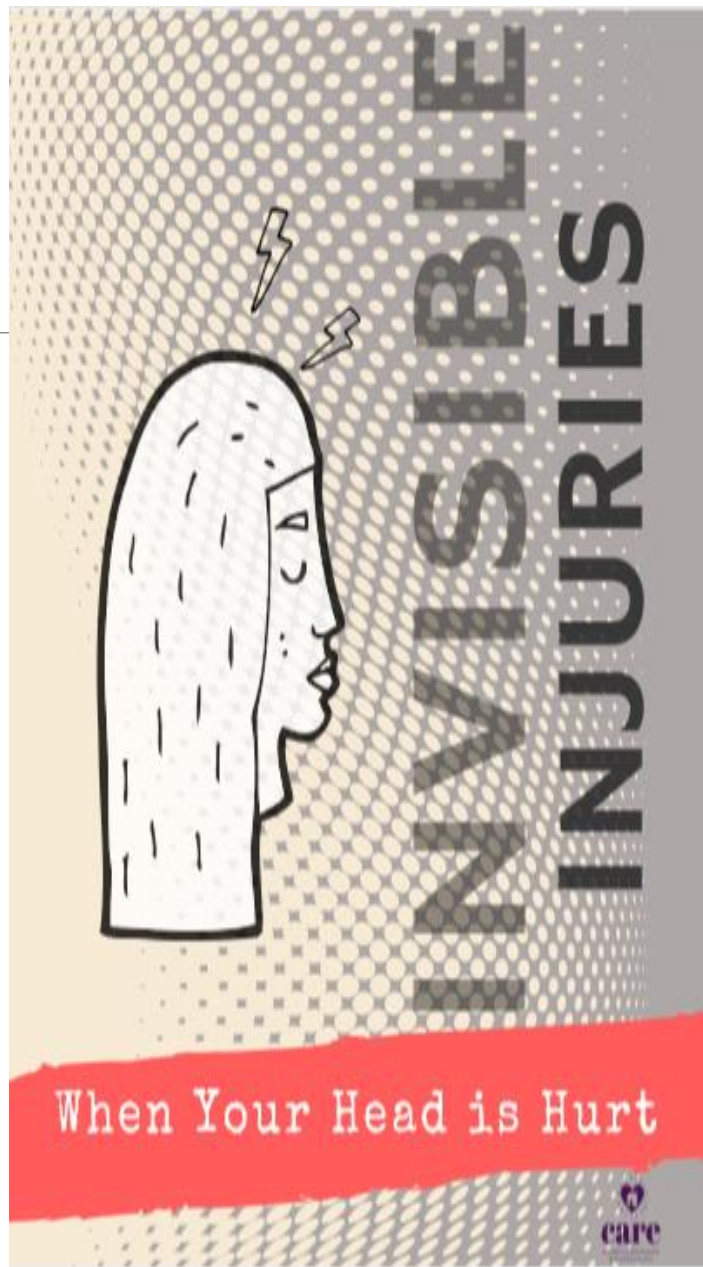
- <sup>1</sup> Strack, G.B., McClane, G.E., & Hawley, D. (2001). A review of 300 attempted strangulation cases: Part I: Criminal Legal Issues. *Journal of Emergency Medicine*, 21(3), 303-309.
- <sup>2</sup> Shields et al. (2010). Living victims of strangulation: A 10-year review of cases in a metropolitan community. *American Journal of Forensic Medical Pathology*, 31, 320-325.
- <sup>3</sup> Plattner, T. et al. (2005). Forensic assessment of survived strangulation. 153 *Forensic Science Int'l* 202
- <sup>4</sup> Wilbur, L. et al. (2001). Survey results of women who have been strangled while in an abusive relationship. 21 *J. Emergency Med.* 297.
- <sup>5</sup> Glass et al. (2008). Non-fatal strangulation is an important risk factor for homicide of women. *The Journal of Emergency Medicine*, 35(3), 329-335.
- <sup>6</sup> Mack, M. States with strangulation legislation. A product of the Training Institute on Strangulation Prevention. [www.strangulationpreventioninstitute.com](http://www.strangulationpreventioninstitute.com)
- <sup>7</sup> Funk, M. & Schuppel, J. (2003) Strangulation injuries. *Wisconsin Medical Journal*, 102(3), 41-45.
- <sup>8</sup> Taliaferro, E., Hawley, D., McClane, G.E. & Strack, G. (2009). Strangulation in Intimate Partner Violence. *Intimate Partner Violence: A Health-Based Perspective*. Oxford University Press, Inc.

# Traumatic Brain Injury

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81% of domestic violence survivors  
have suffered a head injury.

*Journal of Aggression, Maltreatment and Trauma*



The comprehensive resource on domestic violence

1855 E. Dublin Granville Road, Suite 301  
Columbus, OH 43229

800-934-9840 • [www.odvn.org](http://www.odvn.org) • [www.odvncares.com](http://www.odvncares.com)

[www.odvn.org](http://www.odvn.org)

# Witness Intimidation

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## Giles v. California (2008) DV- homicide

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Acts of domestic violence often are intended to dissuade a victim from resorting to outside help, and include conduct designed to prevent testimony to police officers or cooperation in criminal prosecutions. Earlier abuse, or threats of abuse, intended to dissuade the victim from resorting to outside help would be highly relevant to this inquiry, as would evidence of ongoing criminal proceedings at which the victim would have been expected to testify.

Supreme Court Associate Justice Antonin Scalia

# Lessons Learned from Civil Liability

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# Legislative Intent

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Legislative intent in state and federal law is to develop laws and procedures affording the maximum protection to the victim of domestic violence. Laws are designed to protect the victims who are vulnerable to the ongoing domestic abuse in their current relationship and to stop the violence at home.

# Victims Of Serial Rapist

## File Federal Lawsuit – Memphis

### 13,000 untested Kits

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Three victims of serial rapist Anthony Alliano filed a federal lawsuit against numerous parties.

The complaint alleges negligence, deprivation of the victims' civil rights, emotional distress, breach of contract, gross negligence, violation of equal protection, and violation of due process.

The suit says, "The City of Memphis, Shelby County and its agents have failed to timely submit, responsibly handle, and make due diligence on approximately 12,000 (an estimate of only the known untested rape kits as of this filing) sexual assault kits which is the subject of [a related case and class action filed before this honorable Court](#)."





## Detective can be sued, court rules

Probe of Sowell faulty, victims' families say

CORY SHAFFER  
cshaffer@cleveland.com

An Ohio appeals court ruled that the families of Cleveland serial strangler Anthony Sowell's victims can sue the Cleveland police detective who they say failed to properly investigate a 2008 sexual assault report against Sowell.

A three-judge panel at the 8th Ohio District Court of Appeals on Thursday reversed a portion of a Cuyahoga County judge's dismissal of a lawsuit filed against a Cleveland police sex crimes detective, her supervisors and a city prosecutor.

The court, in an opinion written by Judge Sean Gallagher, upheld the dismissal of the lawsuit against the supervisors and the prosecutor, but allowed the family members to pursue a lawsuit against Detective Georgia Hussein.

Judges Eileen A. Gallagher and Kathleen Keough concurred. The city plans to appeal Thursday's decision to the Ohio Supreme Court, spokesman Dan Williams said.

"This is a major victory," Terry Gilbert, whose law firm is representing family members of six of Sowell's victims, said. "This decision sends a message to detectives that they have to in good faith work a case."

Sowell was convicted in 2011 of murder and sentenced to death. His case is currently in the appeals process. The suit involves a Dec. 8, 2008, report from Gladys Wade, who ran up to a police car and told officers that Sowell had just attacked and raped her. Patrol officers tracked down Sowell and arrested him as they investigated, finding footprints, broken glass and droplets of blood in the yard outside of



The home of serial killer Anthony Sowell is seen in the background on the corner of East 123rd Street and Imperial Avenue in Cleveland on Nov. 6, 2009.

including photos of Wade's injuries and her clothing collected from the crime scene, before she took the case to assistant city prosecutor Lorraine Coyne. Coyne determined there was not enough evidence to file charges and released Sowell two days after his arrest. Hussein also knew that Sowell was a registered sex offender, but did not tell

neighbor who saw a woman fall from a window.

Several family members of the victims filed lawsuits in 2010 and 2011 alleging that Hussein failed to thoroughly investigate Wade's complaint, and if she had, police could have charged Sowell, held him in custody and prevented him from carrying out several of the murders. It also named Hussein's supervisors and

sented the detectives and Coyne argued in a December 2014 motion for summary judgment that they are immune from liability for criminal acts that Sowell committed after his release. Common Pleas Judge Nancy Fuerst agreed and granted judgment in favor of all of the detectives and Coyne. The appeals court on Thursday found that Fuerst should not have

## Failure to take Proper Actions to Protect

An Ohio appeals court ruled that the families of Cleveland serial strangler Anthony Sowell's victims can sue the Cleveland Police Department detective who they say failed to properly investigate a 2008 sexual assault report against Sowell.



**Investigation of the  
New Orleans Police Department**

United States Department of Justice  
Civil Rights Division

March 16, 2011

“...a systemic failure to investigate sexual assaults and domestic violence. We found also a pattern or practice of gender discrimination in the Department's under-enforcement and under-investigation of violence against women.

<https://www.justice.gov/opa/pr/departments-justice-releases-investigative-findings-involving-new-orleans-police-department>

INVESTIGATION OF THE  
BALTIMORE CITY POLICE  
DEPARTMENT



U.S. DEPARTMENT OF JUSTICE  
CIVIL RIGHTS DIVISION

August 10, 2016

“BPD’s Handling of Sexual Assault Investigations Raises Serious Concerns of Gender Bias.”

“BPD seriously and systematically under-investigates reports of sexual assault...”

<https://www.justice.gov/opa/file/883366/download>



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**Investigation of the  
Chicago Police Department**

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United States Department of Justice  
Civil Rights Division  
and  
United States Attorney's Office  
Northern District of Illinois

January 13, 2017

“...in (police perpetrated) sexual assault and domestic violence cases, we also found that investigators were quick to credit officers’ versions of events despite the availability or potential availability of additional evidence.”

<https://www.justice.gov/opa/file/925846/download>

Are we assessing for  
Lethality?

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# Why assess for lethality?

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- Reduces the likelihood of future harm to victims, officers, advocates and others
- Helps us recognize, understand and quickly interpret risk factors
- Helps transfer information across disciplinary lines and fosters collaboration
- Creates a focused approach for criminal justice intervention
- A more effective management of police power
- Promotes effective case management



# Women's use of force

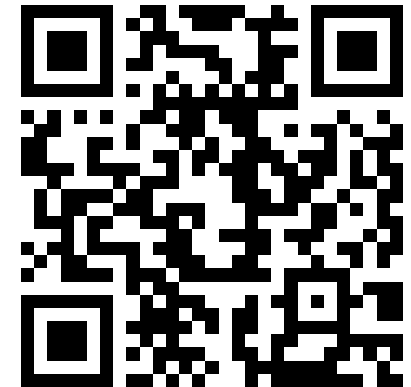
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## DETERMINING PREDOMINANT AGGRESSOR AND SELF-DEFENSE ROLL CALL TRAINING

PRESENTED IN COLLABORATION WITH THE INTERNATIONAL ASSOCIATION OF CHIEFS OF  
POLICE

### Presented in Collaboration with the International Association of Chiefs of Police

Domestic violence calls are some of the most dangerous and complicated scenes that officers encounter. Responding officers must understand the context of these crimes and conduct thorough, evidence-based investigation to determine if self-defense was present, who acted as the predominant aggressor, and who should go to jail. Arresting the wrong party can have devastating consequences not only for the victim, but for the criminal justice system's ability to hold the offender accountable.



# Context is Everything

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The Criminal Justice System is by design and necessity, incident focused

- What is the intent of the offender?
- What is the meaning of the act to the victim?
- What is the effect of the violence on the victim?
- What is the **context** of any given act of violence?
- Consider the particulars, how much violence, coercion or intimidation accompanying the violence

# Context is Critical

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Failing to distinguish one kind of domestic violence from another can:

- Endanger victims of ongoing violence
- Result in inappropriate responses by law enforcement, prosecutors and the court, advocates, and counselors
- Embolden perpetrators

# Is it reasonable?

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- A person who is being assaulted or is about to be assaulted may realize that they are no match for the violence that is about to be used against them and will often use a weapon or object as an “equalizer”.
- Consider the history/context/resistance

“Equal protection guarantees not only that similar people will be dealt with in a similar manner, but also that people of different circumstances will not be treated as if they were the same.”

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*(TUSSMAN, TENBROEK, 1949; P. 59 CROSSROADS)*

# A prosecutor can ask...

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In applying these discretion standards, Duluth Crossroads protocol suggested the following questions to help evaluate cases.

- What was the battered woman trying to accomplish?
- Is her abusive partner afraid as a result of her actions?
- Has she compromised his personal autonomy?
- Did her violence make her more or less vulnerable?
- Is she more dangerous or less dangerous than her batterer?
- Is she in more danger or less danger than her batterer?"

# Resistive Violence

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Part of a victim's broader strategy to stop (contain) the abuse:

- Negotiation
- Appeals to family and friends
- Appeasement
- Anger and hostility
- Separation
- Withdrawal
- Use of force



# Determining the Predominant Aggressor

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- Valid risk assessments help intervenors know who is at most risk of future harm
- In cases where both parties use illegal violence against the other, the predominant aggressor is the party who is clearly the more aggressive and potentially dangerous of the two.
- A predominant aggressor is not necessarily the first person to use aggression / violence
- Getting this right is a matter of public safety
- Predominant aggressors use coercive controlling violence and abuse

# It's a matter of:

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Who is dominant?

Who is creating the fear?

Who is in fear?

Who is more significant aggressor?

Who needs protection?

**It is not who started it.**



# Problematic criteria used to determine predominant aggressor

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Possible criteria officers should either not use or be sure to put in context.

- Who is the most irritating toward the officers?
- Who started the argument?
- Who used violence first?
- Who used violence last?
- Who was the most insulting to the other?
- Who is the drunkest?



# **ENHANCING COMMUNITY TRUST:**

## **Proactive Approaches to Domestic and Sexual Violence**

Agency Self-Assessment  
Community Assessment  
Sample Outreach Letter  
Action Planning Guide  
Additional Considerations  
and Resources



# Resources

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- Women's Experiences of Abuse as a Risk Factor for Incarceration: A Research Update - [http://vawnet.org/sites/default/files/materials/files/2016-09/AR\\_IncarcerationUpdate.pdf](http://vawnet.org/sites/default/files/materials/files/2016-09/AR_IncarcerationUpdate.pdf)
- Got Justice? Options for Prosecutors When Battered Women Fight Back - <https://drive.google.com/file/d/1zGpGD1i5OT6l6KyfXPVwfVmTsRJoCN98/view>
- At a Crossroads: Developing Duluth's Prosecution Response to Battered Women Who Fight Back - <https://www.bwjp.org/resource-center/resource-results/at-a-crossroads-developing-duluth-s-prosecution-response-to-battered-women-who-fight-back.html>
- Tragic Refuge (Documentary) - <https://www.youtube.com/watch?v=7R5BZvxJOfY&t=8s>
- Sin by Silence (Documentary) – [www.sinbysilence.com](http://www.sinbysilence.com)
- National Clearinghouse for the Defense of Battered Women – publications, webinars, documentaries list – [www.ncdbw.org](http://www.ncdbw.org)

# Contact Information

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