Victim-Defendants: An Emerging Challenge in Responding to Domestic Violence in Seattle and the King County Region

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Introduction and Background Information

> We were separated but he just decided to come over. He's American. I was new to this country and didn't know the law. He just walked in one night. He said he had come to pick up the kids. I told him I already had plans with the kids. He got very angry. He was calling me "Bitch," and cursing at me. He is 6'6". He's in the Marines and he's very strong. I started to go upstairs. He threw me hard into the railing. I hit his leg and tried to push him away.
>
> He called the police immediately. I was scared. My English was not good. I could not explain what was going on. The police came and asked me what happened. I said I had slapped my husband. I asked, "Can I explain, through a translator?" The officer said, "No, your English is fine." It was summer and it was hot. I had a T-shirt and shorts on. No shoes. The officer said, "Turn around." Then he cuffed me in front

> of my son. I said, "Can I have my shoes?" The police said "No." My son was three. He saw everything.
>
> They took me to jail without my shoes. There was a dirty floor, there was blood on the floor, somebody had peed on the floor. I was there barefoot. I was very worried about my son. In his memory something very bad happened. I felt like garbage. For all my life, it will be very sad. I will never forget it. - Tatyana

In King County, Washington, community and system-based [1] advocates throughout the region have expressed concerns that an increasing number of domestic violence survivors are being arrested and charged with domestic violence-related crimes. Survivors in this situation are often referred to as "victim-defendants." This study was initiated by the King County Coalition Against Domestic Violence to investigate and respond to these concerns. The project was supported by Seattle's Domestic and Sexual Violence Prevention Office through an Arrest Policies Grant, by the King County STOP Grant (Prosecution), and by a grant from the Horizons Foundation.

The focus of our study is domestic violence defendants who are also victims of ongoing abuse by an intimate partner. For clarity, we use the term "domestic violence survivor" for the person who is experiencing abuse, and "batterer" for the person who is responsible for the ongoing pattern of violence and coercive control. As the majority of survivors of domestic violence are women, this report focuses on women. However, our goal is to provide information that can help increase access to justice and support for all domestic violence survivors who are accused of committing DV-related crimes, men as well as women.

Over the past two decades, numerous efforts have been made at the federal, state and local levels to increase safety and justice for domestic violence survivors and criminalize domestic violence. These efforts include domestic violence-related legislation, policies, protocols and training programs, and development of specialized domestic violence units within city and county governments. The King County region is nationally recognized for its many domestic violence-related programs and training projects, which are described in Section 4. If a significant number of DV survivors are being arrested and charged with DV-related crimes in the region, this specialized criminal justice response, which the local advocacy community has supported, should be carefully reexamined.

We know from our interviews, our experience, and from national research that some domestic violence survivors do use violence against their battering partners (as discussed further in Section 1.3). Some use violence in self-defense, but are inappropriately arrested when the context of self-defense is either not recognized, or not acknowledged or documented by law enforcement. There are survivors who are arrested because of false accusations by their batterers. Other survivors initiate illegal acts of violence against their battering partners and are appropriately arrested. Those who are convicted are often sentenced to complete batterer intervention programs, which are not appropriate for survivors. There are many negative impacts of arrest and conviction that compromise the safety of survivors.

[1] We use the term "system-based advocates" to refer to domestic violence advocates who work within the criminal justice system. In some jurisdictions, these advocates are called "victim-witness liaisons."

This report contains information for practitioners and policy-makers in criminal justice and community-based agencies who share our goal of ensuring safety, justice, and support for domestic violence survivors who commit domestic violence-related crimes. Many of the issues we identified in the King County, Washington, region are reflected in other articles and studies, and are likely to be relevant to other jurisdictions around the country. Our hope is that this report will increase awareness for readers that there are domestic violence survivors among those domestic violence defendants who are arrested, prosecuted, and convicted, and that these defendants have unique safety concerns and service needs. We have provided some concrete recommendations for strengthening our domestic violence response throughout the system, so that ideally those survivors who use violence in self-defense or are falsely accused are not arrested, those who are arrested receive vigorous legal defense and comprehensive services, and those who do commit domestic violence-related crimes and are convicted or plead guilty do not receive the same sentences as those domestic violence defendants who are batterers.

Scope of the Study

There were four key questions we wanted to answer through this study:

1. To what extent are domestic violence survivors being arrested and charged with domestic violence-related crimes? Has there been an increase?

2. Why is it happening?

3. What are the impacts on survivors?

4. What can be done?

To answer these questions staff gathered information from the following sources:

- A review of the related research literature, and consultation with researchers and practitioners who are investigating and responding to the issue in other states and cities around the country.

- Available local data from criminal justice and community-based domestic violence agencies.

- Informal interviews with thirteen women who were arrested and charged for domestic violence-related crimes in the King County region and who reported experiencing ongoing abuse in their intimate relationships.

- A review of a small set[2] of case files from local jurisdictions in which each party had been identified by the police as the defendant in at least one incident and the victim in at least one other incident (These cases were not connected with the women who were interviewed).

[2]Incident reports and case filings on 12 sets of couples for whom 8 or more domestic violence-related incident reports had been generated within a 5-year period, and 25 individual incident reports on domestic violence defendants who had been identified as the victim in previous incident reports.

- Input from local law enforcement officers, jail staff, public defenders, prosecutors, judges, corrections and probation officers, community and system-based advocates, and batterer intervention providers.[3]

The report contains the following sections:

1. Introduction and Background Information: provides some background information about the definition of domestic violence, its prevalence in the US, and a brief summary of research on the differences between men's and women's use of violence.

2. Survivors of Domestic Violence Arrested and Charged with Domestic Violence Crimes: An Issue of Concern Nationally and Locally: provides a brief summary of available information from other states and counties identifying and analyzing the increase in women arrested for domestic violence-related crimes. To analyze the problem locally, staff reviewed the following sources:

   - Data on misdemeanor and felony domestic violence-related bookings in the King County Department of Adult and Juvenile Detention for all police agencies in the County.

   - Data from the Seattle Police Department's Domestic Violence Unit on "switch" cases, i.e. those cases where each member of the couple had been identified by the police as the defendant in at least one incident and the victim in at least one other incident.

   - Data from the King County Community Services Division compiled from women receiving services at community-based agencies for domestic violence survivors.

   - Results of an informal survey conducted by the Northwest Network, a Seattle-based agency that serves lesbian, gay, bisexual and transgendered domestic violence survivors.

   - A review of a sample of "switch" case files from the Seattle City Attorney's Office and the King County Prosecuting Attorney's Office.

3. Impacts of Arrest, Charges, and Conviction on Domestic Violence Survivors: briefly summarizes some of the impacts on survivors from national literature and from domestic violence survivors in the King County region who contributed to this report. The thirteen women who were interviewed for this report were referred to staff by local shelter and transitional housing programs, community advocacy and legal service programs, or were participants in a "victim-defendant" group. Interviews were informal and were conducted either in person or by phone. Excerpts from these interviews are in italics throughout this report. The names and identifying details of the survivors were changed.

4. Responding to Domestic Violence in King County: describes some of the specialized domestic violence services in the region that could collaborate to address the issue of "victim-defendants."

5. The Challenges in Responding to Domestic Violence Survivors Arrested and Charged with Domestic Violence-Related Crimes in the King County Region: describes some the reasons key

[3]Input from more than 30 key informants was incorporated into this report

informants gave as to why survivors are being arrested and charged, and describes some challenges faced by staff in criminal justice and community-based agencies. Input from law enforcement officers, jail staff, public defenders, prosecutors, judges, corrections and probation officers, community and system-based advocates, and batterer intervention providers was included in this section.

6. Recommendations: suggests some revisions to policies, procedures, training, community-based services, and state statutes that could decrease the number of domestic violence survivors who are arrested after acting in self-defense or because they are falsely accused, and are misidentified as the primary aggressor, hold accountable the battering partners of those domestic violence survivors who are arrested for acting in self-defense, and help increase appropriate intervention, services, and support for those domestic violence survivors who are correctly identified as the defendant in the specific incident, but are the victim of ongoing abuse in their relationships. Staff incorporated information compiled from local and national practitioners and researchers to develop recommendations.

Domestic Violence: Definition and Prevalence

> Popular conceptions of violent acts and those who commit them often reflect the notion that this is mindless, incomprehensible, unpredictable and unpatterned behavior enacted by the alcoholic, the mentally unstable, or the socially desperate. Such notions are less uncomfortable and less challenging than the notion that violence might be functional, intentional, and patterned…If violence is seen as intentional acts undertaken in order to achieve ends that are deeply embedded in the circumstances of daily life, it becomes an issue for all of us, may effect anyone, and is about daily life.[4]

Battering is comprised of a complex and often dangerous pattern of ongoing behavior that one person in an intimate relationship uses to dominate and control their partner. In addition to illegal violence and threats, batterers use a variety of non-criminal forms of abuse against their victimized partners, including social isolation, control of family finances, constant criticism, degradation, humiliation, threats to take custody of the children from the victimized partner, and many other tactics.[5] The batterer has a deep personal knowledge of the survivor's lifestyle, needs, and vulnerabilities, and unlimited access to the survivor, and the survivor's children, friends, and family members. The survivor is often terrified of the batterer, and cannot speak openly about this fear. For these and other reasons, domestic violence is often a very challenging crime for the criminal justice system to address.

Several national studies have determined that the majority of domestic violence survivors are women and the majority of batterers are men. The National Violence Against Women Survey (NVAWS),[6]

[4]Violent Men and Violent Contexts: R. E. Dobash, and R. P. Dobash, in Rethinking Violence Against Women, Sage Publications, 1998
[5]Described in When Men Batter Women, N. Jacobsen and J. Gottman, Simon and Schuster, 1998
[6]Extent, Nature and Consequences of Intimate Partner Violence: P. Tjaden and N. Thoennes, July 2000, US Department of Justice

interviewed 8,000 US women, and 8,000 US men about their experience as victims of violence. This study found that:

- Women experience more intimate partner violence than men: nearly 25% of surveyed women and 7.6% of surveyed men said they were physically assaulted and/or raped by a current or former spouse, cohabiting partner, or a date at some point in their lifetime. Based on these national statistics, approximately 220,000 female and 66,000 male residents of King County will be victims of violence by an intimate partner at some point in their lives.

- Women are more likely to be injured by an abusive partner than men. Forty-one percent of women who were physically assaulted by an intimate partner were injured during the most recent assault, compared with 19.9% of the men.

- Most intimate partner victimizations are not reported to the police. Only one-quarter of physical assaults, one-fifth of all rapes, and one-half of all stalkings perpetrated against female respondents by intimates were reported to the police.

The NVAWS describes prevalence of domestic violence in the general population. Other studies have investigated the impact of domestic violence and criminal justice interventions of specific populations.

A study of 150 women in a maximum security prison in New York State[7] found that 75% had experienced severe physical violence by an adult intimate partner. Another study by the Bureau of Justice Statistics[8] found that 57% of female prisoners in state prisons and 40% of female prisoners in federal prisons reported that they had been physically or sexually abused before serving their sentence. Most of the women who were abused (61% in state prison and 66% in federal prison) reported that their abusers were their current or prior husbands or boyfriends. By contrast, 16% of male prisoners in state prison and 7% of male prisoners in federal prison reported abuse. Most of these men were abused by family members. Only 3-7% reported abuse by wives, ex-wives, or girlfriends.

Women of color are disproportionately represented in the US prison system. Nearly two-thirds of the women confined in local jails and state and federal prisons are women of color.[9] At year-end 2000, Black, non-Hispanic women were three times as likely to be incarcerated in state or Federal prisons than Hispanic women, and six times more likely to be incarcerated than white non-Hispanic women.[10] As a result of institutionalized racism, the criminal justice system in the US has generally provided women of color with less protection than it provides to white women.[11] Based on the overall disproportionality of women of color who are incarcerated in the US, it is likely that women of color are also disproportionately represented among victim-defendants.

[7]Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women: A. Browne, B. Miller and E. Maguin, in International Journal of Law and Psychiatry, Vol. 22, Nos. 3-4
[8]Prior Abuse Reported by Inmates and Probationers, CW Harlow, Bureau of Justice Statistics, April, 1999
[9]Women Offenders: Bureau of Justice Statistics, Special Report, US Department of Justice, December, 1999
[10]Prisoners in 2000, Bureau of Justice Statistics, August, 2001, US Department of Justice
[11]A Feminist Critique of Mandatory Arrest: An Analysis of Race and Gender in Domestic Violence Policy M. Ruttenberg, in The American University Journal of Gender and the Law, Volume 2, Spring 1994

In lesbian, gay, bisexual, and transgender (LGBT) communities, the estimated rate of domestic violence is 20-35%, depending on the definition of domestic violence used. According to a study by the National Coalition of Anti-Violence Programs,[12] efforts to address domestic violence in these communities are hampered by many obstacles, including:

- Poor or inconsistent response by law enforcement, as police officers are likely to view violence between partners of the same sex as mutual or consensual abuse.
- Lack of accessible and sensitive services in the community, including lack of access to emergency shelter, medical treatment, financial assistance, and legal services that are available to heterosexual battered women.
- Survivors' fears of being outed: the abused partner may fear that disclosing the violence will endanger his or her relationships with family, friends, coworkers and others.

Survivors from communities of color and LGBT communities are especially vulnerable to arrest if responding officers fail to investigate the larger context in which violence has occurred.

Domestic violence can result in homicide. Since 1976, more than 30,000 women have been killed by their current or former intimate partners in the US. Between 30-50% of all female homicide victims are killed by their current or former male intimate partners. Less than 4% of male homicide victims are killed by an intimate partner.[13] Many studies have shown that women who kill their intimate partners do so in self-defense. In Washington State, over 300 domestic violence-related fatalities occurred between January, 1997 and August, 2002.[14] Data from domestic violence homicides highlights that battering is very dangerous. Given this reality, if for some survivors arrest limits access to the criminal justice system, we are concerned about the impact of arrest on their safety.

Domestic Violence Survivors Who Use Violence Against their Partners

> A woman who picks up a knife or throws heavy objects at her partner when he is approaching her, or holds a knife to his throat while he is asleep, would be considered the initiator of the violence if we view these acts stripped of their contexts. However, if we find out that in the first two situations he was screaming obscenities at her and she recognized the gestures that preceded physical abuse, while in the last one the woman had been severely battered for over 15 years, it may change our understanding of the cases.[15]

[12]Lesbian, Gay, Bisexual and Transgender Domestic Violence in 2000: A Report of the National Coalition of Anti-Violence Programs, 2001 Edition, New York City Gay and Lesbian Anti-Violence Project

[13]Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends or Girlfriends, L.G. Greenfield, Bureau of Justice Statistics, US Department of Justice, March, 1998

[14]Findings and Recommendations from the Washington State Domestic Violence Fatality Review, Washington State Coalition Against Domestic Violence: December, 2002

[15]Just Like Men? A Critical View of Violence by Women, S. Dasgupta, in Coordinating Community Responses to Domestic Violence, Lessons from Duluth and Beyond, M. Shepard and E. Pence, Volume 12, Sage Publications, 1999

This report focuses on domestic violence survivors who use violence against their battering partners. Some women do use violence to control their partners, but research has shown that this is a small percentage of women. Survivors (most of whom are women) do use violence in their relationships, but their purpose is different from that of batterers. Survivors use violence in self-defense, respond proactively to protect themselves, and to retaliate against a long history of abuse.[16]

There is a body of research that asserts that women are just as violent as men in intimate relationships. However, critical reviews of this literature found that its proponents counted individual acts of violence, and failed to account for the context in which the acts of violence occurred.[17] They did not include the motives of each partner for using violence, the rates of initiating violence, or the physical or psychological consequences of the violence to each partner.[18] Several other studies from clinical settings looked at couples where both the man and the woman were using violence.[19] They found that while the number of violent incidents committed by men and women appeared to be equivalent, more women suffered injuries. Women were more severely injured than men and were more likely to seek medical attention for their injuries.

A review of the literature on motivations for perpetrating partner violence (see Hamberger and Guse, below) found that

> "Women in clinical samples predominantly report using violence for purposes of self-defense and retaliation for prior violence. They inflict less injury and experience more fear. Men, in contrast appear to be motivated to use violence to dominate and control their partners and inflict more injury and fear."

Dasgupta[20] interviewed 32 women who were participating in an educational or treatment program for abusers. Many women had acted in self-defense, or to try to stop an escalating pattern of aggression. All the women in the study admitted to having physically assaulted their partners, but none of them expressed a motivation to terrorize or subjugate men.

The researchers Dobash and Dobash[21] describe the context of men's violence against female intimate partners as follows:

> Violent acts [by heterosexual men] occur within a context of conflict, intimidation, coercion and hostility. Once used, violence facilitates men's ability to control their partner through various forms of intimidating behavior as well as through subsequent

[16]A Framework for Understanding Women's Use of Nonlethal Violence in Intimate Heterosexual Relationships, S. Dasgupta, Violence Against Women, Volume 8, Number 11, November 2002

[17]This issue is discussed in detail in three issues of Violence Against Women, Volume 8, Numbers 11-13, November and December, 2002, and January, 2003

[18]Are Physical Assaults by Wives and Girlfriends a Major Social Problem: A Review of the Literature, D. Saunders, in Violence Against Women, Volume 8, Numbers 12, December, 2002

[19]See Men's and Women's Use of Intimate Partner Violence in Clinical Samples, Hamberger and Guse, Violence Against Women, Volume 8, Number 11, November 2002

[20]Just Like Men? A Critical View of Violence by Women, S. Dasgupta, in Coordinating Community Responses to Domestic Violence, Lessons from Duluth and Beyond, M. Shepard and E. Pence, Volume 12, Sage Publications, 1999

[21]Violent Men and Violent Contexts, in Rethinking Violence Against Women: R E Dobash and R P Dobash, Sage Publications, 1998

> acts of violence. The woman's life begins to alter in many ways. She may restrict her movements and suppress her opinions… At this point, women can be controlled through fear and anticipation as well as through direct action.

It is this context that often makes domestic violence very difficult to sort out in a brief conversation with each of the parties at the crime scene. In a study of 122 men who used violence against their female partners, the Dobashes found that men tend to describe their own use of violence by focusing on what the woman did to "cause it." They minimize, shift blame, and deflect responsibility for the violence. By contrast, women who are survivors of violence tend to blame themselves, minimize the extent of their injuries, or remain silent about the violence out of fear or shame.

These differences are significant for first responders and others who are making arrest and charging decision in domestic violence cases. As described in the Illinois State Police Academy's Training on "Quality Arrest Decisions at Domestic Violence Incidents," failure on the part of responding officers to identify the context in which the violence occurs can:

- Endanger victims of ongoing violence,
- Endanger officers responding to domestic violence-related calls for services,
- Empower perpetrators of ongoing violence,
- Put children at risk, and
- Result in improper police conduct.

When a domestic violence survivor has been accused of committing a domestic violence-related crime, it is important to investigate and record the larger context in which this crime has occurred. In determining this context, it would be helpful for officers to determine,[22] *Who is fearful of whom? Who is seeking to stop the violence? Who is seeking to avoid punishment? Who is at risk of future harm?* Specific recommendations for strengthening primary aggressor determination are listed in Section 6. When officers and prosecutors are knowledgeable about the complex dynamics of domestic violence, they are more likely to be able to identify which party is the batterer and which party is the survivor in the relationship. This information may help to guide some arrest and charging decisions.

Domestic Violence Survivors Arrested and Charged with Domestic Violence Crimes: An Issue of Concern Nationally and Locally

> One day I had been outside talking with some friends and when I came in, he was mad cause he doesn't like me talking to them. I just wanted to get out of the house

[22]"She Hit Me Too: Identifying the Primary Aggressor: A Prosecutor's Perspective," Gael B. Strack, San Diego Assistant City Attorney, from the author at gbs@sdcity.sannet.gov

> because I knew what was coming. I grabbed my backpack and headed for the door. He blocked my way.
>
> He's 6'1" and I'm 5'4". I tried to push him out of the way. He wanted to keep arguing and fighting. He wanted to keep me there. So I started pushing him to get past him. I just wanted to leave. He hauled off and slugged me in the face. Then he threw me on the couch and punched on me. I tried to get up, and he started slugging me on my back. My kids were in the room, watching the whole thing. He was smacking me around the living room. He threw me into the desk. I was on my back, pinned into the desk. I wanted to get free so I grabbed him by the throat, and left scratches on his neck. He let go of me. I picked up the phone and dialed 911. He grabbed it and hung up. When the officers got there, he told them that I had been smoking marijuana, and that I had assaulted him. He showed him the scratches on his neck, and I was arrested. - Kate

Mandatory arrest and pro-arrest policies were implemented in several states in the US to increase the likelihood of a more consistent criminal justice intervention in domestic violence cases. Prior to the passage of these laws, the policy of many law enforcement agencies nationally was to avoid making arrests in domestic violence cases. Even when arrests were made, domestic violence cases were rarely prosecuted.[23]

There are currently no national studies that demonstrate an increase in the number of domestic violence victims arrested for domestic violence-related crimes. Recent studies[24] describe an increase in the number and percentage of women arrested for domestic violence offenses in several states around the country. This is significant, because existing research on the prevalence of domestic violence indicates that the majority of domestic violence survivors are women (as described above). Anecdotal reports, and some initial studies indicate that many of the women arrested for domestic violence are domestic violence survivors.

After the implementation of mandatory or pro-arrest policies or laws, the percentage of women arrested for domestic violence crimes increased[25]

- in Connecticut from 11% in 1987 to 18% in 1997.
- in California, from 5% in 1987, to 17% in 1999.
- in Boulder County, Colorado, from 12% in 1997 to almost 25% in 1999.
- in Concord, New Hampshire, from 23% in 1993, to 35% in 1999.

[23]Domestic Violence: The Criminal Justice Response: E. Buzawa and C Buzawa, Sage Publications: 1996

[24]See Understanding the Context of Dual Arrest With Directions for Future Research, D. Hirschel and E. Buzawa, in Violence Against Women, Vol. 8, No. 12, December 2002

[25]Cited in The Paradox of Women Arrested for Domestic Violence: Criminal Justice Professionals and Service Providers Respond, S. L. Miller, Violence Against Women, Vol. 7, N. 12, December 2001

- in a Minnesota county from 13% in the first year after implementation of mandatory arrest to 25% in the second year.

The mandatory arrest law was passed in Washington State in 1984.[26] Data on the arrest rates of women for domestic violence crimes in Washington State are not available, as the State Patrol does not track domestic violence-related arrests by sex.

A 2001 study[27] evaluating the impact of mandatory arrest in New York City found that the arrest of domestic violence survivors was a significant problem which fell into two patterns: 1) dual arrest, where both the batterer and survivor were arrested, and 2) retaliatory arrest, where survivors were arrested as a result of an exaggerated or false complaint filed by an abuser, usually in retaliation for measures that the survivor took to protect herself or her children. The authors point out that "both the quantitative and qualitative data supported the possibility that women who experienced retaliatory arrest were partnered with potentially dangerous and manipulative batterers who are learning to use the law to their own advantage."

As part of an ongoing multi-site research project about women arrested for domestic violence, Miller[28] interviewed 37 criminal justice and social service providers in three Delaware counties, including police, defense attorneys, prosecutors, probation officers, treatment providers and shelter staff. Three themes emerged from her interviews, all three of which were also described at least in part, by participants in this King County, Washington, study (See Section 5).

- Mandatory Arrest/Lack of Context: Despite the increasing arrests rates of women, none of the respondents felt that women's use of violence was increasing. They stated that women's motives in using violence differed from men's motives, and that most of the time, women were trying get men to "stay away." They attributed this increase to changes in police policy, in that police were trained to automatically make an arrest on all domestic violence calls, rather than use their discretion. The police focus on the act of violence and not the context in which it occurs.

- Manipulation of Criminal Justice System by Domestic Violence Perpetrators: Respondents indicated that the increase in domestic violence-related arrests of women may be attributed to greater awareness on the part of their male perpetrators of how to use the criminal justice system to their advantage. All of the respondents who worked with male perpetrators reported that the men in treatment tell each other, "*Get to the phone first*." Many believed that the police did not take time to thoroughly investigate incidents, but tended to believe whichever party made the 911 call. This finding was also suggested by our review of cases in King County.

- Changes To and Experiences With the Criminal Justice System: Respondents in this study explained that police felt overburdened with excessive paperwork related to domestic violence cases and for that reason may be desensitized to the intricacies of intimate partner violence. In

[26]Revised Code of Washington, 10.31.00
[27]The Family Protection and Domestic Violence Intervention Act of 1995: Examining the Effects of Mandatory Arrest in New York City: A Report by the Family Violence Project of the Urban Justice Center, 2001
[28]The Paradox of Women Arrested for Domestic Violence: Criminal Justice Professionals and Service Providers Respond, Susan L. Miller, Violence Against Women, December, 2001

some cases police "took the easy way out" by arresting both parties. Respondents also noted that women were unfamiliar with the court process, and were eager to get the case over with and return home. Women were encouraged to plead guilty, and many women accepted a guilty plea without understanding the consequences of having a record.

Although dual arrest does not seem to be a significant concern in the King County, Washington region, many of the issues brought up by the respondents in Miller's study were echoed by respondents in this study, as described in Section 5.

In communities around the US, criminal justice and community-based agencies are beginning to recognize and address the problem of domestic violence survivors who are arrested for domestic violence-related crimes. Some of these responses are described below in the **Appendix A.**

Domestic Violence Survivors Arrested for and Charged with Domestic Violence Crimes: An Issue in King County

> I'll **never** call 911 again. I learned that the justice system does not work for me. I had photos taken of the bruises on my chest, arms and back. But I didn't take the case to trial. I didn't get a chance to be proven innocent because my 12-year old daughter was subpoenaed to testify against me in court. I pled guilty because I didn't want her to have to testify. And I wanted to get out of jail to be with my kids. - Trina

The domestic violence laws of Washington State were intended specifically to increase safety and justice for domestic violence victims as described in the Revised Code of Washington (RCW) 10.99.010:

> Intent: The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. The legislature finds that the existing criminal statutes are adequate to provide protection for victims of domestic violence. However, previous societal attitudes have been reflected in policies and practices of law enforcement agencies and prosecutors which have resulted in differing treatment of crimes occurring between cohabitants and of the same crimes occurring between strangers. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated.

Included in this law are requirements for officers to make a mandatory arrest in all domestic violence incidents where there is probable cause, and to arrest the primary physical aggressor. While the requirement to arrest the primary aggressor seems to have minimized the potential problem of dual arrests in the King County region, correct identification of the primary aggressor seems to be a significant challenge in some cases.

In response to questions asked for this report, representatives from local law enforcement, prosecution, defense, probation, corrections and community-based advocacy and batterer intervention

agencies all agreed that in the King County region, many domestic violence survivors are being arrested and charged with domestic violence crimes. Reports of individual domestic violence survivors and case reviews also indicate that it is an issue (as described in Section 3 below).

Available Data from the King County Region

> The arrest decision sometimes depends on how the officer feels. If the survivor has no visible marks and the batterer does, the officer might say, "I'm just taking the person with the visible mark. The court can sort it out." That's what happened to me. - Lucinda

There is no comprehensive data set for the region that can answer the question, "***What is the number of domestic violence survivors being arrested and charged with domestic violence crimes?***" Each police agency maintains its own arrest records, each City Attorney's office maintains its own prosecution records, and each court keeps its own case files. With one exception,[29] none of these agencies directly records the prior history of victimization of the parties who are arrested and charged. Even if a total number of individuals who were identified as both victims and defendants in domestic violence incidents were available from police and court records in the King County region, it would not accurately capture the number of domestic violence survivors arrested for domestic violence-related crimes. Survivors who have never reported their own victimization to the police but are arrested themselves would not be identified in the victim-defendant category.

However, the information available suggests that there is a significant and increasing number of domestic violence survivors being arrested and/or charged with domestic violence-related crimes in the King County region.

- The King County Department of Adult and Juvenile Detention (DAJD) provides the most comprehensive regional data set on all types of crimes, as that agency books suspects from all police jurisdictions in the County.[30] A comparison of the number of domestic violence-related jail bookings for adult female inmates between 1990 and 2000 demonstrates an increase, from 588 in 1990, to 1065 in 2000. Conversations with the screening supervisor and staff for the King County DAJD suggest anecdotally that many of these women are survivors of domestic violence.[31] A comparison of bookings for male inmates for the same years, shows an increase of from 3374 to 3702.

[29]The Seattle City Attorney's Office, described below

[30]The cities of Enumclaw, Auburn, Issaquah, and Renton in King County each have their own detention facilities that are used for some suspects.

[31]Personal communication with staff of the King County Department of Adult and Juvenile Detention: Teri Hansen, Maryann Morberly, and Karen Pohio.

Table 1. Domestic Violence Bookings

1990	% Total	2000	% Total	% Increase
Females	**Males**	**Total**		
588	15	1065	22	81%
3374	85	3702	78	10%
3962	100	4767	100	18%

Source: King County Department of Adult and Juvenile Detention

- Data provided by the Seattle Police Department's (SPD) Domestic Violence Unit allowed for a retrospective search for "switch" couples, that is, couples where each party had been identified by the police as the defendant in at least one incident and the victim in at least one other incident. In 2000, SPD filed incident reports on 3,634 couples with crimes of domestic violence, where the violence was between intimate partners (IPV).[32] Of these couples, 857 (23.5%) had one or more additional incident report(s) filed by SPD between 1995 and 2000; 820 were heterosexual couples, and 37 were same-sex couples. Of the couples with two or more incidents, 187 of the heterosexual couples and 12 of the same-sex couples had cases in which each party had been identified by the police as the defendant in at least one incident and the victim in at least one other incident.

- The King County Community Services Division (part of the County government) funds domestic violence agencies that serve survivors. Staff from this division compiled data from women receiving services in 15 community-based agencies serving domestic violence survivors between 1995-1999. Of 10,000 women served by these agencies, 6700 women reported having contact with law enforcement related to domestic violence. Of these, nearly 500 women reported that they were arrested as the suspect in the domestic violence incident. Screening protocols are in place at all of these agencies to ensure that clients meet specific service criteria. Services are provided only to those identified as domestic violence survivors.

- The Northwest Network of Bisexual, Trans, Lesbian & Gay Survivors of Abuse conducts an in-depth assessment with everyone seeking services at that agency. Those who are identified as survivors are provided services, and those who are identified as batterers are referred out to batterer treatment services. The agency director reports that in 1996, staff recorded that fifty callers who were assessed as domestic violence survivors reported that they had contact with law enforcement as a result of a domestic violence incident. Thirty-eight of these callers (approximately 75%) reported that they had been identified as the primary aggressor and arrested in the incident.

Between 1990 and 2000, there has been a significant increase in the number of women being booked in jail on DV-related charges, and based on anecdotal information, we are concerned that a many of these women are survivors of domestic violence.

[32]Source: Seattle Police Department's Domestic Violence Unit. Intimate partner violence was separated out from other types of domestic violence crimes.

Information from Case Reviews

For this report, staff reviewed a small set of police incident reports where the police identified each party at least once as the defendant, and at least once as the victim. The following issues emerged:

- In some cases, information from the previous incident reports or from the parties could inform arrest decisions. The following example is not an actual case but is a compilation of information based on a pattern observed with several couples.

  > David, who was both the victim and suspect in a mutual arrest with Erica in 2000, was the suspect in a total of six domestic violence incidents with three other women between 1991 and 1998. No charges were filed against David in any of these cases. In 2000, both David and Erica were arrested as suspects in a domestic violence case. Both parties reported to the police that the other party had assaulted them. Viewed in the context of information from all of the other incident reports documenting prior incidents in which David was the suspect, it seems likely that Erica is the survivor in the relationship and was acting in self-defense when she allegedly attacked David. In other cases reviewed, the batterer had a history of assaults against women in previous relationships. However, few of the police reports referred to this history, although it occurred in the same jurisdiction in which the survivor was arrested.

- In some incident reports, the responding officers documented that they had asked the parties about a prior history of domestic violence. Few reports noted which party was the victim and which party was the suspect in the previous incidents. In other incident reports, there was no information about whether or not the parties had been asked about the history.

- There are significant gaps in the information available to law enforcement officers, both within and between jurisdictions. In many law enforcement agencies, officers do not have access from their patrol cars to previous incident reports in their own jurisdiction. The incident reports from one jurisdiction are not generally accessible to officers from other jurisdictions. This information gap is a concern in cases where there have been multiple incident reports, but no charges filed (as information about charges and convictions are available on a statewide database). The reports from previous incidents could potentially provide valuable background information to inform the arrest decision.

- Domestic violence cases are often very difficult to prosecute, even in those jurisdictions that have the goal of proceeding without the victim (often referred to as "evidence-based prosecution"). Therefore, a batterer may have multiple domestic violence-related incidents (for which he may or may not have been arrested), but no domestic violence-related charges or convictions.

- Some of the batterers who are involved in "switch" cases engage in behaviors that indicate they may be at risk for seriously injuring or killing their partners, based on the research identifying

risk factors for domestic violence homicide.[33] Our case review highlighted the following behaviors of some of the abusive partners of domestic violence survivors.

- Threats to and endangerment of children,
- Violence against the survivor during pregnancy,
- A documented history of violence against a previous partner or multiple partners,
- Substance abuse issues,
- Strangulation attempts against one or more partners,
- Continued violent behavior despite previous sanctions imposed by the criminal justice system.

These behaviors are all indicative of a batterer who has the potential to kill his partner. Our case reviews indicated that some high-risk batterers may be setting up their partners to be arrested. After being arrested, it is unlikely that the survivor will call the police the next time that she is in danger, and she may have no other way to protect herself.

Our recommendations outlined in Section 6 provide some suggestions for addressing some of the concerns identified in the case reviews.

Impacts on Survivors

> My partner had jumped on me before and threatened to kill me. I went to the hospital because of my injuries. This time, I picked up a boxcutter to defend myself, I went to jail for felony harassment and I lost everything. They [the defense and the prosecutors] never looked at my hospital records. They never asked me anything about what happened. I lost my job, my apartment, my furniture, and my car. My baby was put in foster care when he was only six days old and I didn't see him again until he was six months old. Now I'm considered a felon and it's going to make it hard for me to get a job. - Paula

One of the most significant impacts of arrest for the survivor is increased danger from the batterer. In those cases where the batterer has successfully set up his partner to be arrested, the batterer is able to give a clear message that the survivor will only be further punished if she calls 911 for help. Use of violence by survivors often results in increased violence by batterers. The women interviewed by Dasgupta[34] reported that their defensive use of violence resulted in "swift retaliation from their partners, and the escalation of the violence they were already experiencing."

[33] Assessing Dangerousness: Violence By Sexual Offenders, Batterers and Child Abusers, Campbell, J., January 1995, Sage Publications

[34] See Dasgupta, ref. 15

The National Clearinghouse for the Defense of Battered Women summarized some of the impacts of arrests and convictions on domestic violence survivors:[35]

- Those who are arrested often make statements to the police or participate in early hearings without defense counsel, as they want to speed up the process and get home to their children. They are often concerned about the physical and emotional risks to their children.
- Battered women face pressure to take a plea, for several reasons. Some defense attorneys do not fully explore the woman's legal options, and encourage their clients to plead. Rapid resolution of the case may seem like a helpful option, because batterers often increase their violence and threats when their partner is a defendant in a criminal case. Many women can't come to court because of employment and childcare issues, or interference by the batterer.
- Arrest can result in significant financial burdens for battered women, due to court costs, mandated services, missed time at work, etc.

Conviction for a domestic violence crime can bar access to critical resources and rights for survivors, including,

- employment opportunities in childcare, counseling, teaching and healthcare.
- civil rights, including the right to vote, to serve on a jury, or to hold public office,
- access to public housing,
- welfare benefits: a conviction can affect eligibility,
- residency in the US. Conviction for certain types of crimes can result in deportation.

Information from Interviews with Survivors in King County

For this study, informal interviews were conducted with 13 women who were arrested for committing domestic violence-related crimes in the King County region. These women were referred to staff by community-based legal service and advocacy programs, or were participating in a group for "Victim-defendants" at the Ina Maka Family Program (described in Section 4.3). Interviews were conducted in-person or by phone.

The women interviewed responded to the specific questions highlighted below.

Why did you use violence?

Those women who used violence said they used it because:

- He was trying to grab my children from the car.

[35]The Impact of Arrests and Convictions on Battered Women, National Clearinghouse for the Defense of Battered Women, February, 2001

- He kicked my dog and I wanted to protect it.
- I didn't use violence but when the cops got there, I looked mad and crazy because he had just been hitting me.
- He was blocking my way. I was exhausted, and sick of his hours of verbal abuse. We had both been drinking. I wanted him to get out of the way.
- She was beating me with a broom stick, so I grabbed a boxcutter to protect myself.
- He was strangling me in the kitchen and I reached up and grabbed a knife to get him off me.[36]

Sarah's description of her relationship and the incident for which she was arrested illustrates some of the challenges of responding effectively to domestic violence survivors who are arrested. She did assault her husband and she broke the law. But in the larger context of her relationship, she is not a batterer. She is a survivor of domestic violence.

> The first time Bob hit me, my son was a year old. We'd been married 3 years. He broke my thumb. It was a control thing. I was confused...I thought "That won't happen again." But for years after that, he struck me and pushed me over and over. And my son would try to protect me by putting himself between us. Last summer, his sister moved out here and was living with us. We got in a terrible fight. She watched while he slammed me against the walls, ripped me by the hair, pulled me out of the car when I tried to get away, and then unplugged the phone. She just watched and didn't say anything. He had my wallet so I couldn't go anywhere.
>
> I was arrested last Spring...I don't watch what I say when I've been drinking...This time, he'd been drinking before he got home. He came home...We had dinner. We'd both been drinking. We got in this verbal argument. I was getting up to do the dishes and he wouldn't let me get to the sink. He was blocking it with his body. He was yelling the usual, screaming how STUPID my family is, how STUPID my brother is. I got so angry, I hit him on the head with a salad bowl...Afterwards, I started putting the kids to bed. The police arrived. He said, "She hit me, I have a bump on my head." I didn't say anything. (I'm 5'4", I'm 114 lbs). The police handcuffed me...the kids were watching. They worried all night long where I was. When Bob came to get me the next day from jail, he said, "You still haven't said you're sorry..."
> - Sarah

Sarah's husband used illegal violence against her many times in their relationship, but Sarah never called the police. The one time she used violence against him, he called the police and she was arrested. Although he is the batterer, she is the one who has an arrest record and a conviction.

Why do you think you were arrested?

[36]Three of the case files that were referred to us for review indicated that the survivors had picked up a knife in order to get the batterer to stop doing something to harm the survivor, her children or belongings.

All but one of the women reported that they were acting in self-defense, or defending their children or a family pet, but that the responding officers either did not take their statement, ignored it, or didn't believe it. Some said that the police had taken a statement from their abusive partner first, and believed him or her. Other responses included:

- The police ignored the statement of my children who witnessed it.
- When the cops came out to our house before I kept my mouth shut (so they didn't have information about her history as a victim).
- He (her abusive partner) lied and said I hit him.
- He told them that I was using marijuana and showed them where it was. So they believed him and arrested me for domestic violence.
- I was really afraid of the big police officer and I froze.
- He had the injury, so they arrested me.
- I could not explain what was going on. My English was not good at the time. I asked the police if I could have a translator, and he said, "No, your English is fine."
- My ex-husband is a firefighter. I called 911, but he went out to greet them, and introduced himself. He knew the officers. They stood outside with him, laughing and joking. They believed what he told them.

Latonya described several incidents in which her husband physically and emotionally abused her, stalked her, threatened her, and used their children to try to control her. She left the relationship, but frequently brought their children to her husband's apartment to visit. One afternoon she brought the children to see him, and they got into an argument. She described it as follows:

> He was trying to grab my son. He followed me all the way to the car, just going on about how he wanted the kids to stay with him. He had never asked to have the kids spend the night before. He never wanted to do anything with the kids. I'm yelling, "get away from me!" He was trying to take my son. I'm telling him to get away from me. I was putting the kids in the car and he's trying to get in. He said, "I'm going to take the kids." I pushed him a couple of times. I locked the car. He's talking calmly. He's making jokes about how fat I've gotten. I got home. I was still crying, still upset. This call comes in...someone asked me what happened in the parking lot. It was a police officer. He was citing me for domestic violence, for hurting my husband. He had called and said I had assaulted him, and he had a witness who said I was out of control.

Eventually, Latonya's case was dismissed. However, her narrative indicates that her husband intentionally arranged to have her arrested as part of the intensive and ongoing pattern of his abuse against her.

Why do you think you pled or were convicted?

Nine of the 13 women said they pled guilty to the domestic violence charges against them. Their reasons included,

- I pled guilty because I was told that it was the only way to get out of jail.
- I couldn't afford the court costs and neither could my family.
- I didn't want my daughter to have to testify against me.
- I didn't want to be in jail for my daughter's birthday.
- The prosecutor said they'd charge me with something worse and I'd do time in jail, so I pled guilty.
- I was new to this country and didn't understand how things work.

One of the women was convicted and served time in jail. Two had their cases dismissed, and the other had a case pending at the time of the interview.

What were the impacts of arrest/charges on you?

Several of the women interviewed said that because of their arrest they had:

- Lost jobs in nursing, teaching, and/or child care, or were afraid that they would lose their jobs or be unable to find work.
- Were concerned about the impact on their children of witnessing the arrest,
- Lacked confidence that the criminal justice system could offer them any future protection.
- Had a profound sense of frustration that they were identified as the perpetrator, when they had been victimized by their partners for many years.

All of the women said that they would never call the police again if they were being assaulted by their spouse or partner. If the response of these 13 women reflects the experience of many other victim-defendants, then arrest for a domestic violence-related crime clearly closes the door to future assistance from the criminal justice system for domestic violence survivors. In addition, arrest and conviction can bar access to housing, employment, and educational resources that are essential for survivors' ability to maintain their safety and independence from an abusive partner, and to provide for their children.

Loss of Custody and Impact of Survivors' Arrest on Children

The arrest of domestic violence survivors often has a negative impact on the outcome of contested custody, and may also have a negative impact on their children. According to national research,

many battered women face potential loss of child custody when they leave their abusive partner.[37] Batterers intentionally use child custody as a way to further abuse their partners. Many professionals, judges and others do not believe battered women's accounts of actual abuse of herself and her children, and accuse these mothers of "parental alienation." This label has been used by courts in many cases as a reason to remove custody from a woman who has reported domestic violence. However, if a battered mother fails to disclose the physical or sexual abuse of the children by the father, she may be viewed as failing to protect them, and lose custody for that reason. For batterers who want to remove custody from their partners, having the survivor arrested can be an effective tactic.

The Washington statute defining restrictions on custody (shown below) was developed to protect domestic violence survivors and their children, but when a domestic violence survivor is arrested, the provisions of this statute can be used in support of removing her children from her custody.

> The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense.

Many domestic violence survivors lose custody of their children after they are arrested. For example, Lynn lost custody of her 2-year old son to her abusive husband. Their case was heard in King County Superior Court. The following information was obtained from court records and police reports.

- Lynn's ex-husband described her as mentally unstable, said that she abandoned their son, that she has a history of perpetrating domestic violence, and that she withheld access to their son from him. He told the police who responded to his 911 call that she was possessed by the devil. He said that after they had separated she never tried to arrange for overnight visits with their son.

- Lynn reported to the court that during their marriage, her husband would repeatedly push, hit, and shove her.

- Lynn reported that he left the relationship for seven months, and during that time, had no contact with their son. The couple reunited, and soon afterwards, Lynn's husband pushed her. She called the police and he was arrested and charged with domestic violence. He was convicted, and was ordered to complete a batterer intervention program.

- When he got out of jail, he told her that if she ever had him put in jail again, he would kill her, or break both of her legs.

[37] Child Custody Disputes and Domestic Violence: Critical Issues for Mental Health, Social Service, and Legal Professionals, P. Jaffe and R. Geffner, in Children Exposed to Marital Violence, American Psychological Association, 1998

- Before his court date, he got angry and yelled at her and pushed her. She threw a book at him and he called the police. Lynn told them about his history of domestic violence, but reported afterwards she was afraid to say more because he had threatened to kill her. She was arrested. Under a deferred prosecution, she was ordered to participate in a domestic violence survivor's program. Her husband took their son and moved in with his parents.

- Lynn's ex-husband is a successful businessman. Lynn had been staying at home with their son, and is now a student.

- The Court granted residential custody to Lynn's ex-husband. She is allowed to visit her son twice a week, and on some holidays.

It is likely that Lynn's arrest and her husband's allegations of domestic violence and mental instability, combined with his higher income level and greater financial stability impacted the judge's decision to grant custody to her ex-husband.

Up to the time she was arrested, Lynn had been the primary caregiver for her 18-month old son. When she was in jail, her ex-husband took physical custody of their son, who did not see Lynn for several weeks, because she was restricted by a No Contact Order from contacting the father to arrange visitation. While we have no information on the impact on Lynn's son, it is likely that he was devastated by this sudden separation from his mother. Extended separation from a primary caregiver has a negative impact on most young children.

Children experience many negative impacts when their abused parent (usually the mother) is arrested. They may be placed in foster care while their parent is in jail or prison. The separation from their mother may heighten their sense of insecurity and anxiety following the violent incident.[38] Once the survivor has been labeled as the defendant, any future charges against the batterer may be dropped, increasing the probability that children will continue to be exposed to violence and associated risks in their homes. Ensuring that the actual perpetrator is the party who is arrested and prosecuted can help children learn that violence against an intimate partner is not acceptable, and that there are negative consequences for it.

Children are profoundly impacted by domestic violence, whether or not they are present when the violent events occur. They may experience long-term problems with physical, cognitive, and social development, depression, anxiety, aggression, suicide attempts, and an enduring belief that violence is appropriate in family and intimate relationships.[39] Children who live in violent homes are often survivors of physical abuse themselves. In a national survey of over 6,000 American families, researchers found that 50% of the men who assaulted their wives also abused their children.[40]

[38]Children Exposed to Violence: A Handbook for Police Trainers to Increase Understanding and Improve Community Responses, L. Baker and P. Jaffe, Centre for Children and Families in the Justice System, 2002.
[39]Children Exposed to Martial Violence: G.W. Holden, R. Geffner, and E.N. Jouriles, American Psychological Association, 1998
[40]In the Best Interest of Women and Children: A Call for Collaboration Between Child Welfare and Domestic Violence Constituencies, Susan Schechter and Jeff Edleson; www.mincava.umn.edu

Several of the women who participated in this study reported that their children observed the violent incidents for which the women were arrested, and witnessed their arrest. All of these women expressed concern about the impact on their children of witnessing both the violence and the arrest. We would like to have additional information on the impact of survivors' arrest on their children.

Responding to Domestic Violence in the King County Region

Many governmental agencies in the King County region have prioritized the issue of domestic violence, and have developed specialized programs to respond effectively to domestic violence-related crimes. The region has a broad range of community-based agencies serving domestic violence survivors and batterers. Extensive planning and resources have been dedicated to domestic violence training for staff of criminal justice and community-based agencies. Although few of the resources described below are currently designed to address the needs of domestic violence survivors who are identified as defendants in domestic violence cases, the region is well-positioned to improve the response to these survivors.

The City of Seattle and 26 cities in King County each have their own independent police departments, City Attorney's Offices (prosecutor), and courts. Unincorporated King County (areas that are outside of Seattle and other cities), and 13 contract cities are served by the King County Sheriff's Office, the King County Prosecutor's Office, and King County District and Superior Courts. Some of the smaller cities contract with the regional King County Sheriff's Office for law enforcement services, and/or with private law firms to provide their prosecution services. There are three public defender agencies. Some examples of government agencies that have developed specialized domestic violence units and programs are highlighted below.

Criminal Justice Agencies in the King County Region

The City of Kent: Family Violence Unit

The City of Kent, in South King County, formed a Family Violence Unit in 1997. This Unit is housed in one building and consists of a specialized domestic violence unit in the police department, two legal advocates housed in the police department, a domestic violence prosecutor, and a domestic violence Probation Officer. The Unit implemented Project Red Flag to respond to high-risk domestic violence offenders. This project has two components:

- The Chronic Offender Program consists of a database of domestic violence offenders who have five or more domestic violence-related cases in the City of Kent, or have exhibited potentially lethal behavior.

- The Red Flag Warrant Program locates and arrests offenders who have outstanding domestic violence warrants.

The City of Kent also has a community-based Domestic Violence Task Force comprised of community and system-based advocates, law enforcement, batterer intervention providers and others.

King County Government: Domestic Violence Response

King County government is home to a Domestic Violence Council, co-chaired by the County Executive, the Sheriff, and the County Prosecutor. The County has specialized Domestic Violence Units in the following departments:

- The Sheriff's Office has a team of domestic violence detectives to investigate misdemeanor and felony cases.

- The Prosecuting Attorney's Office has a specialized domestic violence unit, as well as domestic violence advocates, to assist victims with the court process in criminal cases and in filing for civil protection orders. The Domestic Violence Advocacy (victim-witness liaison) program has been recognized nationally as one of the pioneer court-based advocacy programs. Advocates from this program refer "victim-defendants" who are survivors to community-based domestic violence agencies.

- King County District Court, which handles misdemeanor crimes for unincorporated King County, has a specialized Domestic Violence court. This court consolidates all the domestic violence cases into domestic violence calendars that are heard by judges who have training and experience in domestic violence. District court also has specially-trained probation officers to monitor domestic violence offenders.

- The staff of Family Court Services, housed in King County Superior Court, conducts court-ordered evaluations in divorce and disputed custody cases where there are allegations of domestic violence. The social workers on staff have training in the dynamics of domestic violence and how to assess for the primary aggressor.

- The King County Department of Adult and Juvenile Detention employs staff to screen every suspect who is booked into the jail. As part of the screening, staff runs a booking history, and if there are concerns that the suspect is a domestic violence survivor, they also run a history on the alleged "victim" in the current case to see if he has previously been booked. When there are concerns about the suspect, the screening interview is sent to the domestic violence advocates in the Prosecuting Attorney's Office. These advocates inform the prosecutor that the suspect may be a domestic violence survivor. The screening supervisor notes that the interviews must be carefully worded so as not to suggest innocence or guilt on the part of the suspect.

The City of Seattle

The City's domestic violence efforts are coordinated through the Domestic and Sexual Violence Prevention Office in the Human Services Department, and the domestic violence Council, which is co-chaired by the Chief of Police and the Director of Human Services.

The City of Seattle has developed specialized domestic violence units within each of its criminal justice agencies.

- The Seattle Police Department has a team of domestic violence detectives who conduct follow-up investigations on both misdemeanor and felony cases. SPD has a Victim Support Team comprised of volunteer advocates who support victims at the crime scene.

- The Seattle City Attorney's Office has a Domestic Violence Unit comprised of prosecutors, system-based advocates, and support staff. Prosecutors review police reports which may result in the filing of misdemeanor charges of domestic violence or child abuse. Advocates assist victims through the criminal justice system, discuss safety planning, and make referrals to other programs for additional assistance. Each time the office receives new police reports, staff checks the database to determine whether either party has been the defendant or victim in a previous domestic violence case in the City of Seattle. The unit maintains historical files on each defendant, so that in cases where the parties were involved in a previous case, staff has access to the relevant history within the City of Seattle. This practice can help inform filing decisions, and is especially useful in victim-defendant and same-sex cases.

- Seattle Municipal Court has domestic violence court calendars, including a specialized calendar for reviewing requests to lift No Contact Orders. The Probation Department houses a specialized Domestic Violence Probation Unit. The staff of this unit have extensive domestic violence training, and follow some specific procedures for monitoring domestic violence offenders.

Since 1998, the City's successful applications to the Violence Against Women Office Arrest Program's grant have made available $4.6 million in enhancements to the regional domestic violence response.

Domestic Violence Training

There have been numerous training efforts in the region, including:

- **The Violence Against Women Act STOP Grant:** This federal grant funds training and equipment for law enforcement officers and prosecutors on responding to domestic violence and sexual assault, as well as advocacy services. Training topics for officers have included investigation and evidence collection in domestic violence cases, and identification of primary aggressor. With input from officers from several different agencies, the Law Enforcement training project has developed model protocols for responding to domestic violence cases. The protocols have been provided to all the law enforcement agencies in the County. The prosecution component of the grant has funded staff from several prosecutors' offices around the King County region to attend national conferences on a variety of issues related to prosecuting domestic violence cases, and to bring trainers to the Seattle/King County region.

- **Greater Puget Sound Domestic Violence Conference:** This annual conference is funded by the City of Seattle, King County, the City of Tacoma and the King County STOP grant. It has provided training for community- and criminal- justice based staff on a variety of topics, including recognizing and documenting strangulation and stalking crimes, working with domestic violence victims with disabilities, domestic violence in the workplace, and many other topics.

Services Offered by Community-Based Agencies to Domestic Violence Survivors Charged with Domestic Violence-Related Crimes

> These young ladies are paying a price because they don't want to get hit anymore. They are abused and assaulted over and over, and when they finally decide they are going to defend themselves, they get punished for it. - Pauline Little Owl, Seattle Indian Health Board.

In the King County region, there are currently two types of services offered to domestic violence survivors charged with domestic violence crimes:

- advocacy-based counseling and support through agencies that serve domestic violence survivors,
- intervention services through state certified batterer intervention agencies.

All of the agencies that serve domestic violence survivors offer access to advocacy, safety planning, access to shelter, housing and childcare, and other supportive services to all clients, including domestic violence defendants. The following agencies reported offering a service component that is focused specifically on addressing the needs of domestic violence defendants.

- **Asian Pacific Islander Women and Family Safety Center**
  - The Safety Center provides individual assessment to women who are domestic violence defendants, and explores the context in which they used violence. The Safety Center works with those who are assessed as the victim. For those women who are domestic violence defendants, the Safety Center provides information about the use of violence and its consequences, and asks women to explore other non-violent alternatives to safety. They also encourage women to explore root causes of their use of violence, and how this relates to the violence and abuse against them.
- **New Beginnings for Battered Women and Their Children**
  - New Beginnings offers individual advocacy and support groups to battered women charged with domestic violence crimes. Staff provides specific information on how to gather evidence for a defense attorney, and what to expect if the case proceeds. In some cases, the advocate talks directly with the woman's defense attorney.
- **The NW Network of Bisexual, Trans, Lesbian and Gay Survivors of Abuse**
  - The Network has developed a nationally-recognized assessment tool to assist with identifying the batterer in a violent relationship. For survivors who get services through the agency, Network staff directly address the use of violence through an open discussion and an exploration of value systems. Staff assists survivors in avoiding arrest by helping them understand the legal definition of self-defense, exploring options to using violence, and explaining the criminal justice response to domestic violence.

There are many other agencies in the region that serve domestic violence survivors from a broad range of cultural communities. These include the Abused Deaf Women's Advocacy Service, Chaya, which serves South Asian Women in crisis, Consejo Counseling and Referral Service which serves survivors from Mexico, Central and South America, the Refugee Women's Alliance which serves survivors from 12 different language communities, and the Seattle Indian Health Board. In addition, there are several community-based legal service programs that serve battered women.

Programs Offered in the King County Jail: Salvation Army's Catherine Booth House, and Seattle Indian Health Board

Staff from these two community-based programs provide domestic violence education groups to women incarcerated at the King County Department of Adult and Juvenile Detention. The groups offer information about safety planning, awareness of batterer tactics, the impact of domestic violence on children, educating domestic violence survivors that they may get arrested for defending themselves, and self-esteem building. Facilitators encourage women to go to shelter, support groups and/or counseling when they get out of jail.

Batterer Intervention Programs

In Washington State, batterer intervention programs are governed by the Washington Administrative Code,[41] which outlines specific requirements that programs must follow in order be State Certified. These requirements are intended to promote effective intervention to batterers, and include:

- Focusing the treatment on ending the perpetrator's physical, sexual and psychological violence, and holding the perpetrator accountable for the violence.
- Notifying the victim of the perpetrator's participation and progress in the program, providing the victim with information about community resources, and assisting the victim in safety planning.
- Obtaining releases from the perpetrator to exchange information with the victim and children, with probation and the court, child protective services, and other individuals and agencies.
- Requiring the perpetrator to participate in treatment for a minimum of twelve or more months, including a minimum of 26 weekly group sessions, and monthly contact with the program until the 12-month period is completed.

While all of these requirements are appropriate for holding batterers accountable, they can be dangerous to survivors, as discussed below.

The WAC also includes exceptions for those who have a history of victimization:

> A treatment program must consider issues relating to a participant's prior victimization when designing each treatment plan. The program must consider the appropri-

[41]Washington Administrative Code, 388-60

ateness of domestic violence victim services in lieu of perpetrator treatment for a participant who presents an extensive history of prior victimization.

There are more than 30 State Certified batterer intervention programs in the King County region. Therefore, when a domestic violence survivor is ordered to batterers treatment in the region, the service she receives will depend on the individual practices of the agency she attends.

Some programs will require her to enroll in the year-long batterer intervention program, while others will conduct a comprehensive assessment and if they determine that she is a domestic violence survivor will:

- Refer her to an agency that serves survivors, or
- Require her to complete a program that is designed specifically for female offenders, or
- Tell the court that she doesn't need any services.

There are a few programs in the region that are specifically designed for domestic violence survivors who are court-ordered to domestic violence treatment. The Ina Maka Family Program at United Indians of All Tribes offers a structured group program to domestic violence survivors who have pled guilty to or been convicted of domestic violence-related crimes. Staff conducts a detailed screening per the WAC, and documents that each participant has a history of victimization. The unique group curriculum includes topics related to understanding the origins of violence, types of abuse and their impacts, the impact of victim-defendant status, healthy coping skills, understanding oppression, and other relevant topics. Staff of the King County Coalition Against Domestic Violence visited this group twice and found the group culture to be positive and supportive to participants.

Those survivors who are required to attend a batterer intervention must participate in treatment that is intended to stop a person from committing an ongoing pattern of abuse and to increase victim safety. Participation in this type of program can further endanger a domestic violence survivor. For example, when programs notify the alleged victim (in the situation of a victim-defendant, the "victim" is the real batterer) of the survivor's participation in treatment, he can learn where and when he can find her. One social worker participating our study described a survivor who was being stalked by her batterer every time she attended her court-ordered batterer intervention program. Mandatory participation in batterer intervention for survivors can also provide opportunities for a batterer to sabotage the survivor's compliance with the court order by interfering with her attendance, or reporting false allegations of new acts of violence.

Domestic violence survivors are not batterers, even when they have used violence proactively. While the content of a relevant program for female offenders may be helpful to some women, the "Batterer" label written into the court order is inaccurate, and stays in her court file. It can be used by the batterer to humiliate her, to threaten her, to contribute to her loss of custody, and ultimately to deny her any legal protection from further abuse.

The Challenges: Responding to Domestic Survivors Identified as Suspects or Defendants in Domestic Violence-related Crimes in the King County Region

To compile information for this report, staff conducted individual interviews and informal focus groups with representatives of local criminal justice and community-based agencies. Respondents included representatives from law enforcement, detention, defenders, prosecution, court-based advocacy, judicial officers, probation, corrections, agencies serving domestic violence survivors, and agencies serving batterers. Respondents unanimously agreed that the arrest of domestic violence survivors is an issue in the King County region. Some of the key reasons they gave for why survivors are being arrested are listed below.

- Batterers are good at knowing how to use the system. This problem is most common with "frequent fliers," batterers who have been through the system and know how to set up the survivor to get arrested. They often assault their partners and then pretend to be the victim when law enforcement shows up. For example, a Seattle Police Department lieutenant referred to a case where the batterer actually stabbed himself in order to have the survivor arrested. The Supervising Attorney of the Seattle City Attorney's Domestic Violence Unit noted that she has seen instances where shortly after their release from jail, batterers call 911 to report alleged domestic violence crimes by their partner although there are no additional witnesses and or supporting evidence. In some cases the batterer will stop the physical violence so that he doesn't get arrested, but will use other threatening tactics to cause his partner to react or act in self-defense. Unlike the batterer, she often does not know the system.

- In some cases, the appearance or behavior of the parties affects the arrest decisions police make. For example, in some cases, the survivor appears to be the defendant because she is angry, frustrated, afraid, or seems uncooperative. Many batterers are manipulative and act like shocked victims. Police find the batterer more credible and arrest the survivor.

- Survivors are far more likely to be honest about their use of violence and accept responsibility and blame. Many survivors know that if they don't accept blame, then the batterer will direct more violence at them.

- Police may have difficulty determining the primary aggressor due to time constraints and other constraints at the crime scene.

- Domestic violence survivors sometimes violate the law by using violence that is not in self-defense, or by violating domestic violence-related orders.

There is an additional gap which may contribute to the charging and conviction of domestic violence survivors. Because community-based domestic violence advocates have formed strong alliances with staff in the prosecutors' office to support survivors who are the victim in a criminal case, there is very little communication between advocates and the defense community. Therefore, neither

group can consistently benefit from the expertise of the other, to the detriment of some victim-defendants.

The challenges listed below were described by the respondents to individual interviews and informal focus groups.

Challenges for Law Enforcement

As the first responders to domestic violence incidents, law enforcement officers in Washington State are required to determine whether there is probable cause for arrest, and in cases where there is, to make the often challenging decision of which party to arrest by determining the primary physical aggressor.

> When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence between the persons involved.

Officers face many barriers to accessing the history of the parties, including time constraints, lack of access to criminal history databases, lack of linkages between the various criminal history databases in the region, and the survivor's reluctance (for many valid reasons) to disclose previous documented and undocumented incidents. The information available to responding officers through a brief investigation of that single incident is in some cases insufficient to correctly identify the primary aggressor.

Contributors to this study from six[42] police agencies in King County identified the following additional challenges in identifying the primary aggressor:

- Agency policies and officer workloads may result in time constraints that discourage or prevent officers from conducting in-depth interviews, talking to witnesses, and accessing existing documents which would help to sort out which party is the primary aggressor.
- Officers have no access or limited access to criminal history databases at the time of arrest, which limits their ability to access the documented history of domestic violence (if any) between the parties.
- Some officers interpret the mandatory arrest law to mean that someone must be arrested at every domestic violence incident. Many officers, supervisors, and administrators do not believe that they are allowed to use their discretion and not make an arrest.

[42]Kent, Kirkland, King County, Seattle, Tukwila, University of Washington

- Officers are concerned with the possibility of civil liability if they fail to make an arrest. This concern seems to be endorsed by local agency policies, based on informal conversations with officers and managers.

- Officers may ask questions using specific legal terms that survivors don't connect with their own experiences. For example, a survivor may not identify her experience of abuse as an "assault," so the officers do not get the necessary history from her for determining the primary aggressor.

- Language barriers: responding officers don't have access to or don't use interpreters at the crime scene. When the batterer, the children, or other family members interpret, they may intentionally misidentify the survivor as the primary aggressor, or simply lack the knowledge of some of the terms being used by the officers. Therefore the officers may not get the information they need, or may get misinformation.

- There are many factors that may influence officers' decisions about which party to arrest, including demeanor of the parties, whether one of the parties has substance abuse issues, and whether one of the parties has outstanding warrants, or other arrests or convictions unrelated to domestic violence.

Challenges for Defense Attorneys

In the King County region, there has been little collaboration to date between community-based domestic violence advocates and the defense community. As described earlier, community-based advocates have a long history of collaboration with several of the prosecutors' offices in the region in criminal cases where the survivor is the victim. Therefore, there is no established communication channel between community-based advocates and defense attorneys. Defenders generally defend batterers in domestic violence cases. There is inconsistency in defense attorneys' level of knowledge of and access to specific information that could be helpful to defendants who are domestic violence survivors.

Some challenges to the defender community include:

- Limited understanding about the dynamics of domestic violence.

- Lack of knowledge/training about how to get a history of the defendant's experience of abuse and how to integrate this into her defense.

- Lack of time to investigate cases, access medical records, talk to court- or community-based advocates or spend time talking with the defendant.

- Lack of communication with community and system-based advocates on these cases.

- The adversarial nature of the court process prohibits prosecutors and defenders from consulting and working together to identify possible victim-defendant cases.

- In some jurisdictions, defenders have no information about the case until they get to court for arraignment.

As a result of the information gaps listed above, victim-defendants who contributed to this study felt that their defenders did not make clear to them the pros and cons of taking the case to trial, or the consequences of a guilty plea. Several reported that their defender had encouraged them to plead guilty at arraignment. It is not clear whether this practice is unique to victim-defendant cases. However, many domestic violence survivors may have valid defense claims and it is important these be carefully explored.

Challenges for Prosecution

Three jurisdictions in King County[43] have specialized domestic violence prosecution units, staffed by trained deputies. However, throughout the region, there are still many challenges for prosecutors in cases of domestic violence survivors who are arrested and/or charged with domestic violence crimes.

- There is no mandatory training for prosecuting attorneys on the dynamics of domestic violence, or on assessing for the primary aggressor in domestic violence cases.

- In most jurisdictions, there are no protocols in place for screening for the survivor status of domestic violence defendants, or procedures for prosecuting these defendants when they are identified.

- Time constraints may make it difficult for the prosecutor to compile all the relevant information, such as criminal history and police incident reports from other jurisdictions, medical reports, information from civil protection orders, and other information from outside agencies in a timely fashion.

- In most prosecutors'offices, the case histories of the two parties in a case do not get linked. Without this linkage, the deputy assigned to the case may fail to recognize that the current defendant was a victim in previous cases, and that the present case may therefore warrant further investigation.

- System-based domestic violence advocates are not allowed to communicate with victim-defendants, even those for whom they have previously advocated, as departmental policies require them to advocate for the victim in the current case, and to have no contact with the defendant. While victim-defendants have public defenders or in some cases private attorneys, they often have no one to advocate for them who understands the unique challenges and dangers of their situation.

- There is no formalized way for prosecution staff to access information about victim-defendants from sources such as community-based domestic violence agencies.[44]

[43] the King County Prosecuting Attorney's Office, the City of Seattle and the City of Kent

[44] Information about an individual victim-defendant's case should be provided to prosecutors with consultation from defense counsel.

Challenges for the Courts and Probation

- There are few specialized domestic violence probation units in the King County region. Probation officers may not be familiar with the needs and safety concerns of survivors who have been convicted.
- There is a lack of formal protocols within probation offices to assess whether a domestic violence offender has a history of victimization, and a lack of procedures for alerting the court when probation staff identifies an offender who has that history.
- Many courts do not ask probation to conduct domestic violence-related pre-sentence investigations, so sentencing recommendations may not reflect a victim-defendant's history of victimization.
- Domestic violence survivors who are convicted or plead guilty to domestic violence-related crimes may be sentenced to complete a batterer intervention program, participate in a support group for domestic violence survivors, or to complete a mental health assessment, and follow recommendations. There are limited community-based resources for victim-defendants to which probation counselors can refer when a court orders any of these services.

Challenges for Community-Based Advocacy Programs

Community-based advocacy programs could benefit from opportunities to discuss ways to talk about survivors' use of violence, and ways to support survivors who use violence. The issue is extremely complex.

- There are few supportive services offered in the community specifically for "victim-defendants."
- There is a limited amount of information provided to domestic violence survivors through community-based agencies about the risks and consequences of arrest, what to expect when 911 is called, and other information that, in some cases, could help to prevent arrest.
- Few advocates maintain linkages to jail staff or defense attorneys who therefore may not know where to refer a victim-defendant for supportive services in the community.
- Advocates may lack information/training about the court process, or the impact of arrest and conviction on victim-defendants.
- Agencies are overburdened and are facing budget cuts and reduced resources.

Challenges Across Systems: Crafting Appropriate Sentences and Providing Safe and Effective Services for Victim-Defendants

From an advocacy perspective, there are many practical and philosophical challenges around court-ordering a domestic violence survivor to participate in any kind of domestic violence services. If she was acting in self-defense, or to protect her children, the court order is, in effect, punishing her

for defending herself. If she was using violence proactively, or in retaliation for abuse, the order to batterer treatment can be problematic, as discussed in Section 4.2.

The advocacy community is currently engaged in a conversation about this difficult and complex issue. It would be useful for this community to develop some consensus on this issue, with input from victim-defendants. While judges in the region are committed to crafting appropriate sentences, the existing options that are currently available to judges are all problematic for many individual survivors, and for the advocacy community.

It is contradictory for a domestic violence advocacy program to accept a mandate for a domestic violence survivor to participate in a support group. Domestic violence advocacy programs are required by the Washington Administrative Code to "*focus on empowerment of the client through reinforcing the client's autonomy and self-determination*." Mandating participation in any program contradicts this requirement for reinforcement of autonomy and self-determination.

Any agency accepting a court-mandated client must provide notice to the court that the client is complying. Some courts require information on the quality of the client's participation in services. For agencies that serve domestic violence survivors, reporting to a court on an individual client's participation conflicts with the confidentiality policies that are in place to protect all program participants and staff. However, if an agency does not report to the court, the survivor may be viewed as "out of compliance" and required to serve jail time. This conflict can create a dilemma for agency staff who want to protect the confidentiality of all survivors who receive services, and at the same time want to support individual survivors who are court-mandated to services.

In the King County region, judges in some courts order victim-defendants to complete a mental health assessment and complete mental health treatment as part of the sentence. These orders are problematic in cases where the survivor has no related mental health issues, because they imply that the woman's status as a domestic violence survivor is in some way connected with a mental health problem. The rate of mental illness among domestic violence survivors is no higher than that of the general population, and mental illness on the part of the survivor is generally not the cause of the violence. Few mental health providers have specific training in assessing for domestic violence or in providing supportive services. Like the order to complete batterer treatment, the order to complete a mental health assessment can be used against the survivor in a number of ways, for example, it may contribute to her loss of child custody.

Although none of these options are completely appropriate for domestic violence survivors, they are all being ordered and provided. While domestic violence survivors who do commit crimes must experience some consequence from a criminal justice perspective, sentencing options that have no negative impacts on survivors should be explored.

Recommendations for Responding to Victim-Defendants

The arrest of domestic violence survivors for domestic violence-related crimes is a concern both locally in the King County region, and nationally. Local data and anecdotal information confirm that there are a significant number of domestic violence survivors being arrested for domestic viol-

ence crimes in the King County region. Arrest, even without conviction, often has a devastating impact on domestic violence survivors.

There are many institutional and staff resources in place both in the criminal justice system and the community in King County that could contribute to strengthening the response of the criminal justice system to domestic violence survivors who are domestic violence defendants, and increase the available support to these survivors from community-based agencies.

Our recommendations were developed from a review of promising practices compiled from national literature, conversations with researchers and practitioners from other cities and states around the country, as well as discussions with local criminal justice representatives and domestic violence advocates. Many of these recommended practices have been at least partially implemented by some agencies in our region.

The recommendations presented below reflect an ideal model for responding to victim-defendants in domestic violence cases. We know that in reality, all of the agencies involved are working at maximum capacity in the face of existing resource limitations and ongoing budget cuts. We recognize that system-wide implementation of all these recommendations may not be feasible, however, we encourage agencies to consider the recommendations, and implement those that are practical.

Leadership

In order to effectively reduce the number of domestic violence survivors who are improperly identified as the primary aggressor in domestic violence cases and to ensure safety for those domestic violence survivors who do commit domestic violence-related crimes, local leadership of criminal justice and community-based agencies would need to view this issue as a significant concern. The department heads of each relevant agency, including the Chief of Police, the City Attorney or County Prosecutor, the head of the relevant public defender agency, the Presiding Judge, the Directors of Probation and Corrections, and leaders from community-based domestic violence service providers would need to examine the gaps in each local jurisdictions, and the gaps between jurisdictions that allow batterers to manipulate the outcome of arrests. These leaders and policy-makers would need to lend their support to a collaborative effort to develop a coordinated response for these cases. This response would include comprehensive and ongoing training, revisions in arrest, charging, and sentencing policies, and changes to existing data systems to improve information flow. It would require leadership from the domestic violence advocacy community, and ongoing coordination between staff of criminal justice and community-based agencies, and a commitment of time and staff resources from all agencies.

While the training, policy, and procedural revisions suggested below may be helpful, it is unlikely that they will remain in place unless department heads and agency directors are willing and able to work together to institutionalize some changes throughout all components of the domestic violence response system.

Some key goals of this process would be to ensure that:

- Domestic violence survivors who act in self-defense are not arrested,

- Charges are dropped for those who are arrested while acting in self-defense,
- The batterers of those survivors who are defending themselves are held accountable for their threats and/or assaults that resulted in the need for self-defense, and
- Those domestic violence survivors who do commit crimes have access to vigorous and appropriate defense counsel, and supportive community-based advocacy.
- Those who are convicted receive sentences that do not compromise their safety.

Law Enforcement

In our ideal model, law enforcement agencies would be able to give their officers the time, training, resources, and support they need to correctly identify the primary aggressor in more complex cases.

Practices would include:

- Carefully evaluating domestic violence incidents for self-defense.
- Prioritizing accurate identification of the primary aggressor.
- Refraining from making mutual arrests in domestic violence cases.
- Using interpreters and/or the AT&T Language Line whenever one or both of the parties don't speak English or have limited English skills.
- Recognizing exceptional work by officers in making difficult primary aggressor determinations.
- Supporting officers in using their legal discretion in domestic violence cases where applicable under mandatory arrest law.

Training would include:

- Information about the dynamics of domestic violence and the tactics of batterers, with information about ways that batterers attempt to use the criminal justice system.
- Ways to evaluate whether one of the parties was acting in self-defense.
- Identification of defensive and of self-inflicted wounds.
- Recognition and documentation of strangulation attempts.
- Questions that would help to determine the context in which the crime was committed, including information about *Who is fearful of whom? Who is seeking to stop the violence? Who is seeking to avoid punishment? Who is at risk of future harm?*).
- Understanding the amount of discretion that is available to officers under the mandatory arrest law.

Resources would include:

- Access to all relevant criminal history databases and the time and agency support to look up the related history of the parties before making the arrest decision.
- The opportunity to consider the arrest history of the parties in the larger context of the violence in the relationship. For example, not everyone who has been arrested for a domestic violence-related crime is a batterer.
- Time and resources to use interpreters when necessary.
- Supervisory review of domestic violence cases with feedback and consultation.
- Assignment of follow-up detective (at agencies where this is not routine) in cases where there are questions or concerns about which party is the primary aggressor.

Defense Attorneys

To implement the ideal model, the defense bar would need to train their staff, including investigators and social workers (where applicable) in the dynamics of domestic violence, and support them in acquiring tools for defending domestic violence survivors charged with domestic violence-related and other crimes. Defenders would:

- Know how to assess for a history of abuse and integrate information from this history into the survivor's defense.
- Understand the ways in which the history of abuse is relevant to the survivor's legal defense.
- Understand the unique safety concerns of domestic violence survivors, and how these may impact victim-defendants' decisions about legal strategies and service needs.
- Fully assess the survivor's range of options, including negotiation with the prosecutor when appropriate, or going to trial (instead of taking a plea).
- Help the survivor to understand and evaluate her legal options.
- Develop relationships with community-based domestic violence advocates who can assist the defender in obtaining relevant information, and can support the survivor in court.
- Refer survivors to community-based agencies for advocacy and support.

One public defender agency[45] in the region has collaborated with a community-based domestic violence advocacy program to provide training for staff social workers in screening all domestic violence defendants for histories of abuse. Whenever a history of abuse is identified, staff compiles relevant medical and police records on the defendant, and flags the history of victimization for the

[45]The Defender Association

court. Social workers consult with attorneys on these cases. This practice can be beneficial in identifying and improving services to victim-defendants.

Prosecutors

Prosecutors would make domestic violence training mandatory for all staff, where feasible. At minimum, domestic violence training would be provided to all staff who are trying domestic violence cases.

Staff would be required to screen for domestic violence survivors among domestic violence defendants by:

- Obtaining a complete criminal history of the parties through all of the relevant criminal history databases.[46]
- Determining whether there are any "red flags" for a victim-defendant case, for example when one of the parties was the victim or defendant in a previous domestic violence case, when the defendant is in a same-sex relationship, is a limited-English speaker, or is female in a heterosexual relationship. While there are male victim-defendants, available information indicates that the majority of victim-defendants who are DV survivors are women. In cases when there are "flags," look further into the case to assess whether there are any indications that the alleged victim is actually the batterer.
- Evaluating whether there is a need for additional information about the context of the violence and the history of the parties, and in cases where there are no clear indicators that release of the suspect would jeopardize victim or community safety, delay the filing decision to allow additional time to gather information, when appropriate.
- Closely evaluate cases for potential lawful use of self-defense, and for components of self-defense that don't seem to rise to the level of lawful self-defense.
- In cases of self-defense, carefully consider whether prosecuting the case is consistent with the goals of justice. When there are some elements of self-defense, consider integrating this information into the disposition recommendations.
- Drop charges against those domestic violence survivors who were acting in self-defense or were not the primary aggressor.
- Encourage defense attorneys and community-based advocates (accompanied by a defense attorney) to communicate with the prosecutor's office about cases in which they believe the alleged defendant to be the victim/survivor.
- Recommend appropriate sentences for those survivors who have committed crimes, giving consideration to the survivor's safety.

[46]WASIS, Discis, Scomis, MCIS, NCIC, and others.

System-Based Advocates

System-based advocates, those advocates who work within the criminal justice system, (known in some areas as victim-witness liaisons) are not permitted to work with defendants, even if the defendant has been identified as the victim in a previous case, as their role is to advocate for the identified victim in the current criminal case. However, they can (and do) indirectly assist domestic violence survivors charged with domestic violence-related crimes by

- Working closely with law enforcement and the jail to identify victim-defendants.
- Ensuring that law enforcement and jail staff have the contact information they need to refer victim-defendants directly to community-based advocates.
- Flagging possible victim-defendant cases for the prosecutor (and the defender when possible) assigned to the case and consulting with the prosecutor about potential safety concerns.

Courts, Probation, and Corrections

- Ideally, all judicial officers, court, probation and corrections staff would receive training in the dynamics of domestic violence, the tactics of batterers, and key issues in assessing for domestic violence.
- Judges would have their staff check existing criminal histories on the parties to see how these might inform the current case. In Washington State, judges have access to a legislatively-mandated Domestic Violence database that is designed specifically for judicial use.
- Where resources allow, courts should order probation or corrections (in felony cases) to conduct domestic violence Pre-Sentence Investigations (PSI) on all domestic violence cases. If there are insufficient resources to do this in all cases, PSIs should be conducted on any case where the defendant may have a history of victimization by the alleged victim in the presenting case. The PSI should include specific questions about the history of victimization, and power and control issues in the relationship.
- When the case of a domestic survivor is going to be prosecuted, judges should craft sentences that integrate the safety needs of the individual survivor. In some cases, judges may consider alternatives such as deferred sentences, in which the survivor agrees to complete the conditions of sentence, after which charges are dropped.
- Judges, and probation and corrections officers should be aware of the risks to domestic violence survivors of being on probation or corrections supervision. For example, a batterer may use the probation condition as another way to abuse the survivor by using it to threaten her if she calls for help, by falsely alleging a probation violation to her probation officer, or by forcing her to commit an illegal act and then reporting it.

Batterer Intervention Programs

As most court-mandated batterers claim to be "the victim" when they begin a batterer intervention program, staff may reasonably become desensitized to that claim and may have difficulty identifying court-referred domestic violence survivors. Therefore, batterer intervention programs should ideally

- Provide training for their staff in victim-defendant issues.
- Carefully evaluate court-referred clients for indications that they are survivors of domestic violence.
- If there are indications that an individual is a survivor of domestic violence, programs should incorporate into the assessment in-depth questions that help determine which party in the relationship is engaging in a pattern of power and control, and which party is a victim of that pattern.
- For those court-mandated clients who are domestic violence survivors and not batterers, staff should clearly document to the court (with the survivor's permission) that individual is not a candidate for batterer intervention, as she or he is a domestic violence survivor.

Community-Based Advocacy Programs

Community-based agencies should develop and integrate comprehensive responses to domestic violence survivors who are charged with domestic violence-related crimes, as resources permit. Some areas to address include:

- Acknowledge in support group and individual work that many domestic violence survivors use violence. Advocates can provide information that could help prevent arrest of survivors by engaging in an open conversation about survivors' use of violence, its impacts, and alternatives.
- Ensure that advocates have a clear understanding of the scope and limitations of state confidentiality statutes, so that information disclosed by survivors about their own use of violence cannot be used against them in a criminal or civil case.
- Provide information to survivors about the criminal justice system. Inform survivors about the domestic violence laws, the potential consequences of arrest, and what they can do if they are arrested.
- Increase opportunities for early access to victim-defendants through relationships with local law enforcement and the jail.
- Collaborate with defense attorneys on the defense of domestic violence survivors. Get to know attorneys at local public defender agencies. Define together ways in which advocates can help defense attorneys, help the survivor prepare for trial, and provide other forms of support to her.

- When working with victim-defendants, investigate whether meeting bail is a constraint, particularly for those who are charged with felonies. If so, consider a revolving bail fund for victim-defendants.

- Understand that there may be potential negative consequences to survivor's case before sharing specific information about a victim-defendant with staff in the prosecutor's office. Ideally, any communication about a specific victim-defendant's case would happen in close consultation the defense attorney assigned to the case.

- If the survivor has an open criminal case, consult with a defense attorney about any other legal actions, such as obtaining a civil protection order.

In addition, the domestic violence advocacy community should develop some consensus on what mandatory conditions of sentence are appropriate for domestic violence survivors who have committed domestic violence-related crimes. Once this consensus is reached, community leaders should work with prosecutors, defenders, and the court to ensure that domestic violence survivors are being sentenced appropriately.

For Discussion: Considerations for Changes to the Washington State Statute

In order to reduce the number of domestic violence survivors who are being arrested, there are three possible areas for change in the language describing primary aggressor determination. These would require additional discussion and analysis before any attempt is made to promote legislative change.

- Adding a requirement to assess whether one of the parties was legitimately acting in self-defense, before making a primary aggressor determination.

- Revising the existing language to emphasize the need to consider the history of the parties from: "In making this [the primary aggressor] determination, the officer shall make every reasonable effort to consider (i) The intent to protect victims of domestic violence under RCW 10.99.010 (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence between the persons involved." to "In making this determination, the officer shall consider..."This revision could highlight to police agencies the need to provide sufficient time, relevant training and access to criminal history databases for officers who respond to DV cases.

- Many law enforcement agencies now focus on arresting the "predominant" rather than the "primary" aggressor, to increase the emphasis on identifying the batterer in the relationship, that is, the person who is the most dangerous, and most likely to cause fear and harm to the other party.[47] The Washington State statute could be changed from "the officer shall arrest the person who the officer believes to be the primary physical aggressor,"to the "predominant aggressor."

[47]St. Louis County Sheriff's Office Domestic Violence Handbook and Training Guide for Patrol Deputies, St. Louis County Sheriff's Office.

Appendix A: Accurate Identification of the Primary Aggressor

Communities Respond Across the US

In communities around the US, criminal justice and community-based agencies are beginning to recognize and address the problem of domestic violence survivors who are arrested for domestic violence-related crimes. Below are a few examples of responses in a variety of agencies that focus on increasing the accurate identification of the primary aggressor in domestic violence incidents, and on providing services to meet the needs of victim-defendants. This is a sample of programs, not a comprehensive list.

1. Law Enforcement: Law enforcement is charged with the often-difficult decision of determining the primary or predominant aggressor in a domestic violence incident. To respond to this challenge, some State Law Enforcement training academies as well as individual police agencies are providing officers with increased training and specific policies and procedures for identifying primary aggressor. Some examples include:

   - The California Commission on Peace Officer Standards has included specific training on the Identification of Primary Aggressor in all of their Domestic Violence Training Programs.[48]

   - The San Diego Police Department provides training on Primary Aggressor identification for all new recruits. The Department has instituted a program of mandatory training on Primary Aggressor Identification every two years for all officers. The Police Chief and all 1200 officers committed to participating in this training. The local police academy has incorporated primary aggressor training at the Advanced Officer's Training Program, which is provided quarterly, and added a four-hour class on the Identification of Primary Aggressor for all recruits. A veteran police officer, a prosecutor, and a physician, who focuses on identification of domestic violence-related injuries, teach the training.

   - The Colorado Springs Police Department has a Domestic Violence Enhanced Response Team (DVERT), which coordinates the efforts of criminal justice system representatives, victim advocates, and staff from human service agencies in responding to the most serious domestic violence cases in the area. Cases are referred to DVERT through local domestic violence agencies, the Department of Health Services, and others. Staff from the DVERT team compile all relevant information on criminal history, restraining orders, and advocacy, and coordinate efforts to promote victim safety. This information could help to inform arrest and charging decisions, and prevent the inappropriate arrest and charging of domestic violence survivors. A formal evaluation of the program found that there were improvements in collaboration, communication and networking among agencies, improvements in services to domestic violence survivors, and a reduction in recidivism by those batterers on the DVERT caseload.

[48]She Hit Me Too: Identifying the Primary Aggressor, Gael B. Strack, Assistant City Attorney, San Diego, CA

- The Illinois State Police Academy has instituted training on Primary Aggressor Identification for all state patrol cadets, and law enforcement recruits. Key to this training is a focus on the state's self-defense case law.

- At the Washington State Criminal Justice Training Academy, all police recruits receive 12 hours of training on domestic violence issues. Topics include an overview of the dynamics of domestic violence, information about the domestic violence law in Washington, investigating domestic violence cases, and collecting evidence for successful prosecution of cases. Training on identifying primary aggressor includes the intent of the law, the domestic violence history between parties, investigating claims of self-defense, and defense of others. Recruits participate in mock incidents in which they have to determine primary aggressor.

- State police academies in Delaware, Maryland, Louisiana, Tennessee and Texas also provide focused training in identifying primary or predominant aggressor.

2. Defense: A survivor's experience of abuse can be a strong element in her defense. Only a few agencies have focused specifically on defending battered women and other domestic violence survivors.

   - The National Clearinghouse for the Defense of Battered Women in Philadelphia, Pennsylvania, has been assisting battered women charged with crimes since 1987. The Clearinghouse works with battered women charged with any crime in which their abuse history is relevant to their legal defense. Staff work with the defendant and with members of the battered woman's defense team (i.e. defense attorneys, advocates and expert witnesses), to identify defense strategies, provide relevant case law, locate expert witnesses, and identify support networks.

   - The Women's Advocacy Project, in Austin, Texas, is a non-profit legal services organization that houses Battered Women Defendants' projects. This project provides training, case planning, and technical assistance to Texas trial lawyers who represent battered women in criminal actions. With funding through the Texas Bar Foundation, staff has developed a manual for Criminal Defense Lawyers on Defending Battered Women.

3. Prosecution

   - The Crossroads Program: The Crossroads Program in Duluth, Minnesota, was developed specifically to respond to domestic violence survivors charged with domestic violence-related crimes. To be eligible for the program, victim-defendants must apply to the City Attorney's Office. They must have a documented history of abuse by the complaining party, and should not have any pending or previously deferred charges or convictions under any state laws for assault or for gross misdemeanors. Applicants are screened by a probation officer who looks at several different factors including: the defendant's criminal history, her history of violent behavior, her history of victimization by the complaining party, the severity of the incident, the views of the complaining party, the circumstances and motives surrounding the use of violence, and the victim-defendant's willingness to participate in educational and counseling programs. The prosecutor reviews the probation officer's findings and determines whether

the woman can enter the program. Upon completion of all terms of the deferral agreement, charges are dropped.

- Mary Asmus, the Duluth City Attorney who developed the program, notes that it has some limitations.[49] For example, the requirement to have no criminal charges or convictions excludes many domestic violence survivors who have long-term histories of abuse. A victim-defendant who has a documented history of abuse, but also has a criminal history of drug-related crimes or prostitution, would be prosecuted for the domestic violence-related crime. Another challenge is the requirement to demonstrate a history of victimization. Many domestic violence survivors never report crimes committed against them to law enforcement or to healthcare providers.

- San Diego City Attorney's Office: In order to ensure that domestic violence survivors are prosecuted only in cases where they have clearly committed an offensive crime, the Assistant City Attorney requires all prosecutors to participate in extensive domestic violence-related training including the Police Academy training on identifying primary aggressor, a class on strangulation in domestic violence cases, the dynamics of domestic violence, and the impact on children. Prosecutors are also required to visit a domestic violence shelter and a batterer intervention class, and go on police "ride-alongs." In addition, 1-2 domestic violence-related courses are offered to prosecutors in the unit every month. Senior attorneys must review all domestic violence cases.

4. Domestic Violence Advocacy Responses

- The Safehouse Program in Ann Arbor, MI, works with local police agencies and the jail to identify domestic violence survivors who are arrested for domestic violence-related crimes. Every time the police arrest a woman for a domestic violence-related crime, they page Safehouse. Safehouse uses a network of trained volunteers who go into the jail and meet with women who are arrested. If they determine that the woman is a domestic violence survivor, they offer her a full range of domestic violence advocacy services, including consultation with her defense attorney.

5. State Domestic Violence Coalitions: Domestic violence advocacy groups in several other states and cities around the US have identified the arrest of domestic violence survivors as a serious concern, and are working to better understand the problem and develop responses.

- The Colorado Coalition Against Domestic Volence: Female Defendant Task Force: Comprised of advocates from several different organizations around the state, the Task Force is compiling information about advocacy programs for battered women charged with crimes. The Task Force also has a Criminal Justice Advocacy Committee comprised of representatives from all components of the criminal justice system. The Task Force has found that some jurisdictions in Colorado have a 50% female arrest rate, while others have a 0% female arrest rate.

[49]Effective Prosecutorial Response to Battered Women Defendants, Teleconference sponsored by the Battered Women's Justice Project, September 12, 2002

- The New Jersey Coalition For Battered Women: The New Jersey Coalition has a committee of domestic violence service providers who are currently reviewing information from member programs regarding women ordered into their programs for 'batterers treatment.' The Coalition has found that only a few counties in New Jersey are getting large numbers of women accused of battering, but most have seen a definite increase. The Coalition reports that unfortunately, programs feel pressured to offer either survivor or batterer treatment services to these women. A few programs send letters back to the court reporting that the woman is a survivor and thus not appropriately ordered into the abusers program.

- The Coalition is researching assessment tools to better help advocates weed out any survivors from those who are actually batterers and is working to develop some safeguards to keep courts from ordering survivors to batterer intervention programs. They are also planning to develop education for judges and prosecutors on this issue.

- The Oregon Female Defendants' Task Force: The Task Force is made up of domestic violence advocates from around the state of Oregon who share concerns about teen and adult women who are being arrested for domestic violence crimes. Since 1998, they have been gathering information and resources from across the country. The Task Force is developing a manual for a Coordinated Community Response to Females Charged with Partner Abuse, a companion manual to a protocol for male offenders developed by the statewide domestic violence Council.

Appendix B: Primary Aggressor/Victim-Defendant Project: Compiled Training Materials

The following materials were compiled by the project and are available for use in training.

For Law Enforcement:

Determining the Primary Aggressor, National College of District Attorneys, 11th Conference on domestic violence, Lt. Mark Wynn, Wynn Consulting, Inc.

(Written materials and overheads for use in presentations).

Domestic Violence Arrests, Beyond the Obvious: Improving Strategies in the New Millenium, California Alliance Against Domestic Violence, 2000. Includes segments on recognizing self-defense and identifying dominant aggressor. Printed instructor curriculum and video tapes.

Domestic Violence Investigation, includes section on determining **Primary Aggressor,**

Seattle Police Department Training Bulletin. (Written materials for use in training bulletins).

Domestic Violence: The Law Enforcement Response, Duluth Domestic Abuse Intervention Project and Law Enforcement Resource Center, by Ellen Pence and Michael Paymar, 1999-2000,

Duluth, MN. Instructor manual and video tapes. Includes sections on Establishing Self-Defense and Establishing Predominant Aggressor.

Responding to Domestic Violence and Sexual Assault: Instructor Curriculum, King County, WA STOP Grant Law Enforcement Training Project, 2001. Includes outline and Powerpoint presentation for instructors. Includes sections on primary aggressor, self-defense, identification of defensive wounds, and strangulation.

Strangulation Investigation: Domestic Violence Roll Call Training, from Prosecuting Attorney's Office, King County WA, 2001.

For Prosecutors:

Self-Defense, Rhonda Martinson, Staff Attorney, Battered Women's Justice Project.

"She Hit Me Too," Identifying the Primary Aggressor: A Prosecutor's Perspective, Gael B. Strack, San Diego Assistant City Attorney, www.sandiegodvunit.org; August 29, 2000.

Strangulation Investigation: Domestic Violence Roll Call Training, from King County Prosecuting Attorney's Office, 2001.

For Defenders:

Defending Battered Women: A Manual For Criminal Defense Lawyers, Women's Advocacy Project, Funded through the Texas Bar Foundation.

Moving Beyond Battered Women's Syndrome: A Guide to the Use of Expert Testimony on Battering and Its Effects. Manual produced by the National Association of Women Judges. State Justice Institute, May 1995.

When Battered Women are Charged With Crimes: A Resource Manual for Defense Attorneys and Expert Witnesses, National Clearinghouse for the Defense of Battered Women, September, 1996.

For Advocates:

Multiple articles from the National Clearinghouse for the Defense of Battered Women.

When Women Use Force: An Advocacy Guide to Understanding this Issue and Conducting an Assessment with Individuals Who Have Used Force, To Determine Their Eligibility For Services From A Domestic Violence Agency: Erin House, Legal Advocacy Coordinator, Domestic Violence Project/SAFE HOUSE, Ann Arbor, MI. Battered Women' Justice Project.

Working Effectively with the Police: A Guide for Battered Women's Advocates, by Jane Sadusky, Violence Against Women Online Resources, revised August, 2001.

For Probation and Corrections:

Pre-Sentence Investigations and Sentencing Recommendations for Domestic Violence-Related Misdemeanors: A Model for Correction Agencies, Arrowhead Regional Corrections, Duluth, MN. April, 1997.

For Batterer Intervention Programs

Assessment Tool, on Assessing for Primary Aggressor. Compiled and Adapted by The Northwest Network, 2002. Requires training in its use.

For Use in All Training Packets:

The Impact of Arrest and Convictions on Battered Women, National Clearinghouse for the Defense of Battered Women, February, 2001.

When Battered Women Are Charged With Crimes: Brief Overview and Recommendations, National Clearinghouse for the Defense of Battered Women.