A Toolkit for Systems Advocacy on Behalf of Victims of Battering Charged with Crimes

Sue Osthoff and Jane Sadusky

December 2016

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NATIONAL CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN
Working for justice for victims of battering charged with crimes

A Toolkit for Systems Advocacy on Behalf of Victims of Battering Charged with Crimes

by
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National Clearinghouse for the
Defense of Battered Women
Philadelphia, PA

December 2016

This project was supported by Grant No. 2008-TA-AX-KO33 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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Acknowledgments

This Toolkit includes the ideas and work of numerous people, including many we have had the pleasure to talk and collaborate with over many years. Thanks to all who have helped advance our thinking. We acknowledge the contributions of survivors of battering who have helped us better understand what it means to live with battering and then to end up as a defendant in the criminal legal system. Sincere thanks to all who have shared their experiences with us in person or through their contributions to research and personal writing.

We also thank the staff of the National Clearinghouse for the Defense of Battered Women, past and present. Current staff members Cindene Pezzell (Legal Coordinator) and Quetita Cavero (Staff Attorney) provided essential input and feedback. Our outside reviewers—Nancy Grigsby, Amalfi Parker Elder and Jesenia Santana—provided extensive and valuable guidance; their insights and suggestion were exceptionally helpful.

We also want to thank the Office on Violence Against Women for their attention to charged, incarcerated, and reentering victims of battering. That the Department of Justice recognizes this reality and problem is tremendously important on both symbolic and practical levels. Symbolically, it helps to legitimatize advocacy on behalf of charged, incarcerated, and reentering people. Practically, it provides needed and welcome leadership and resources by those of us in the field.

We hope this Toolkit increases your understanding of the complex experiences of victim defendants and enhances your – and your community's – compassion and desire to work effectively on their behalf.

Sue Osthoff and Jane Sadusky
December 2016

Sue Osthoff co-founded the National Clearinghouse for the Defense of Battered Women in 1987 and has been its Director since that time. She began working with victims of battering charged with crimes in 1984 when she coordinated the Self-Defense Program at Women Against Abuse in Philadelphia, which provided direct services to victims of battering charged with homicide or aggravated assault and to their attorneys.

Jane Sadusky is an independent researcher and writer on issues of violence against women. Based in Madison, WI, her work has included projects for the Battered Women's Justice Project, Praxis International, the National Council of Juvenile and Family Court Judges, state anti-domestic violence coalitions, and other organizations working to end gender-based violence.

About the National Clearinghouse for the Defense of Battered Women

Founded in 1987, the **National Clearinghouse for the Defense of Battered Women** (National Clearinghouse) provides specialized technical assistance and other resources to victims of battering and their defense teams in cases where a history of abuse is relevant to their legal claim or defense. This assistance can occur throughout the criminal legal process, from pre-trial preparation through the appeal. It can include identifying defense strategies, providing relevant case law and sample litigation materials, locating skilled expert witnesses if needed, and helping to identify support networks for victims who are facing trial or going through the appeals process.

The National Clearinghouse also provides trainings, develops resources, and advocates for improved public policy, as well as institutional and social change.

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Introduction – Advocacy on Behalf of Victims of Battering Charged with Crimes and the Role of a CCR

The Need

As advocates and other interveners, we often say that battered women are everywhere: in our workplaces, neighborhoods, places of worship, social clubs, schools, and homes. Yet we rarely talk about the victims of battering who are in squad cars after an arrest, in our local jails, in court facing criminal charges, on probation, in our prisons, or returning to our communities after incarceration. In many communities, these victims of battering are invisible, even to community-based advocacy organizations.[1]

When victims of battering are arrested, the context of battering in their lives too often disappears under the labels of "offender" and "defendant." Once charged with crimes, they are often denied the support and protection that the community has organized, such as shelter, legal advocacy, housing and employment assistance, and other valuable advocacy and services that contribute to increased safety and options.[2] Many victim defendants are unable to access these supports and services when they most need them.

> ***Battering:*** The pattern of ongoing violence, threats of violence, and coercive control aimed at limiting the liberty and freedom of an intimate partner
>
> ***Victim defendants:*** Victims of battering who have been criminally charged

Involvement in the criminal legal system usually creates and increases vulnerability while simultaneously blocking many avenues for assistance. For example, a victim of battering who is arrested and labeled a "domestic violence offender" may be ineligible for shelter, advocacy, support, or assistance in obtaining an order for protection; may be ordered to a batterer intervention program, subject to action by child protective services (and perhaps lose her children), or lose her housing. Sanctions imposed by the criminal legal system can become new tools for her abuser to expand coercive control over her life and may effectively block her ability to access any helpful community responses to subsequent acts of battering against her.

We challenge communities that have organized to respond to battering—and we challenge ourselves as advocates—to end the invisibility of victims of battering who are charged with crimes, incarcerated, and/or who have criminal records. **We believe that *all* victims of battering, including those facing criminal charges, should be part of their community's**

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[1] A community-based advocacy organization is an independent, usually nonprofit entity, in contrast to a program located in a governmental agency, such as a police department or prosecutor's office.

[2] While this Toolkit focuses on systems advocacy, we encourage a holistic understanding of the term *advocacy*. In the context of working to end battering, advocacy is defined as "the specialized practice of empowering and supporting victims and facilitating their safety, recovery, rights, and [self-determination] while also working to reform social institutions, public policy, and community norms." This definition comes from Praxis International and is used with their permission.

response to battering. We believe that *all* victims of battering, including victim defendants, deserve an effective and just community response that centralizes their ongoing safety and well-being.

The Toolkit: New Approaches and New Promise

Audience

Community-based advocates engaged in systems advocacy are the primary audience for the Toolkit. It is not designed to provide basic information about battering—it is not a "Domestic Violence 101" resource—nor is it a primer on how to start, manage, and sustain a coordinated community response. Such information can readily be found elsewhere, including in the Toolkit's links and references. Regardless of whether and to what degree your advocacy organization is currently involved with victim defendants, the discussion and tools included here will benefit your work on behalf of victims of battering overall. The Toolkit provides encouragement and support to assess your work with victim defendants and develop a plan of action for what your community can do to keep victims of battering out of the criminal legal system as defendants and better assist those who do become involved.

The Toolkit has been compiled to support thoughtful approaches and strategic change on behalf of victims of battering who are facing criminal charges, serving sentences, and/or reentering your community after jail or prison. It is our hope at the National Clearinghouse that the Toolkit will encourage your advocacy organization and community to create or further enhance safe, fair, and just responses to victim defendants as a key part of your response to domestic violence.

Overview

The Toolkit provides ideas, strategies, and techniques for addressing the need and challenges related to making victims of battering charged with crimes visible and central in a community's response to battering. It is organized in five sections:

1. *Advocacy on Behalf of Battered Women Charged with Crimes: Why It Matters*

   Section 1 presents the big picture: the connection between battering and women involved in the criminal legal system and the factors contributing to their over-representation among women defendants, while too often remaining invisible to advocates and interveners.

2. *Look Inward First: Advocacy for Victims of Battering Charged with Crimes*

   Effective systems advocacy on behalf of victims of battering charged with crimes requires a first step of self-assessment by community-based advocates. As advocates, we must get our own houses in order. What are we doing on behalf of victim defendants? Do victim defendants reach out to us? Do we reach out to them? What are the supports for and barriers to advocacy on behalf of victim defendants? Section 2 includes a self-assessment survey that can be adapted to examine current policy and practice in your organization.

3. *Prepare for Distinct Challenges*

   Section 3 identifies several distinct and interconnected challenges to system advocacy on behalf of victims of battering charged with crimes. It suggests strategies to help advocates and, ultimately, the community response address (1) the magnified risks related to battering for victim defendants, (2) the need to understand women's use of violence in context, (3) the criminal law as a problematic tool to address battering, and (4) how to welcome a defense-based perspective when systems advocacy has traditionally been so closely tied to prosecution.

4. *Changing Criminal Legal System Practice*

   Providing a safe, effective, and just response to *all* victims of battering, including those charged with crimes, starts with knowing what is happening in our communities. What do we know about victims of battering charged with crimes? What might we change to help minimize the number of victims getting arrested and provide a better response to those who are charged or incarcerated? Section 4 includes templates and tools for gathering the information that helps answer these questions. It also identifies specific actions at each step of the criminal case process that will help keep victims of battering out of the system as defendants in the first place and provide a safe, effective, and just response to those who do become involved.

5. *Resources and References*

   Section 5 recaps the various references and citations included throughout the guide. It provides links to specific publications and other tools available via the National Clearinghouse for the Defense of Battered Women. It also includes resources specific to coordinated community response and connections to jurisdictions working to address issues related to victims of battering charged with crimes.

Again, the Toolkit supports *systems advocacy* on behalf of victim defendants. It helps position advocates to influence CCR partners and criminal legal system agencies to adopt practices that keep victims of battering out of the criminal legal system as defendants and ensure that victims who are charged with crimes encounter knowledgeable interveners that can provide a "battering-informed response." A battering-informed response means that practitioners at every step of the way, from patrol officers to probation agents, are prepared and authorized to act in ways that identify battering and that reflect an understanding of the pervasive reach of battering in our society and the ways in which criminal legal system agencies can reduce that harm. This understanding includes recognizing and reducing the harm caused when victims of battering are charged and incarcerated.

How to Use the Toolkit

The Toolkit is a "big book" resource. It has been designed as a primary reference for systems change advocacy on behalf of victims of battering charged with crimes. The Toolkit is aspirational: namely, it reflects our ambition and goal of a safe, fair, and just response for *all* victims of battering. In other words, it is unlikely that your community will be able to put every recommended practice in place or use every step and tool included in this guide. But **we encourage you to start somewhere – both in using this Toolkit and doing work on behalf of victims of battering charged with crimes** (if you are not already doing so). We hope you'll use the Toolkit in a way that works for you. For example, you might page through, stop at a section, and think about how you might apply it in your community. Or, you might begin at page one and read to the end as a first step in developing a comprehensive plan for what your CCR might do. You might focus on learning as much as possible from victims of battering charged with crimes (Appendix 4-C) or try to establish some baseline data (Appendix 4-B). You can use the Toolkit's checklists and templates as-is or adapt them to a format of your choosing. At a minimum, however, we hope you will spend time with *Section 1 – Why It Matters* and with the advocacy organization survey in *Section 2 – Look Inward First*.

Systems Advocacy and Coordinated Community Response

Goals of Systems Advocacy

Systems advocacy seeks to change the ways that institutions respond to battering and other forms of domestic violence. The criminal legal system has been a primary arena for systems advocacy, often through what has come to be known as "coordinated community response" (CCR).

Since the idea of a coordinated community response emerged over thirty years ago, its fundamental principles have included centralizing safety and building a supportive infrastructure for *all* victims of battering.[3] For many communities, however, victim defendants present advocates and other interveners with a challenge to the principles of safety and support for *all* victims of battering.

The goals of systems advocacy on behalf of victims of battering charged with crimes include:

1. Eliminate unwarranted arrest, charging, and conviction of victims of battering for crimes related to their experiences of abuse.[4]

[3] Melanie F. Shepard and Ellen Pence, eds., *Coordinating Community Responses to Domestic Violence: Lessons from Duluth and* Beyond (1999).

[4] There may be times when victims of battering get arrested after a thorough investigation and the police believe that self-defense and other factors have been ruled out. However, we know that many victims of battering get arrested without a proper self-defense or dominant aggressor determination (in jurisdictions where dominant aggressor applies). We also know there are circumstances when arrests may not be needed or necessary for public safety. We struggled with how to say that we want to greatly reduce, or even eliminate, "bad" arrest decisions. We considered saying that we want to eliminate "inappropriate" arrests, but ultimately decided that the term *unwarranted* was as close as we could get. If you have other suggestions, please let us know.

2. Mitigate the negative impact of criminal legal system intervention on victim defendants.
3. Influence the development of crime and other public policies that minimally "do no harm" to victim defendants while balancing justice for victims *and* defendants in the criminal legal system.
4. Ensure that victim defendants' experiences of abuse are considered at all stages of the criminal legal process when relevant and helpful to a safe, fair, and just response.

The National Clearinghouse for the Defense of Battered Women (National Clearinghouse) is not arguing that victims of battering should never be arrested or held accountable in any way for criminal acts. Nor are we arguing that victims of battering should always "get a free pass." What we are insisting upon is a safe, fair, and just response that fully understands and acts upon the reality and context of battering.

Coordinated Community Response "CCR"

A united interagency response to battering, characterized by the overarching goals of safety for *all* victims of battering, accountability for batterers, and systemic change to intervene in ways that promote safety, fairness, and justice and prevent violence

Framework for Systems Advocacy

A safe, fair, and just response on behalf of victim defendants requires an understanding of the following features of the criminal legal system response:

- Reliance on the criminal legal system as the primary response to violence against women has left many victims of battering over-policed and under-protected. This has been particularly true for many women of color, immigrant women, lesbians, transgender and non-binary people, young women, sex workers, poor women, and other low-power, marginalized people.[5]

- Victims of battering from low-power and marginalized communities —i.e., people who live or are pushed outside the mainstream—are more likely to be criminalized than to have their rights protected.

- Once arrested, charged, and/or convicted, the direct and collateral negative consequences often extend far beyond the specific legal case or the terms of incarceration, probation, or parole. For example, many victim defendants experience ongoing and often increased coercion by their batterer and/or the batterer's family, such as threats to use probation status against her or make reports to police or child welfare if she does not comply with the batterer's demands. Victim defendants and their children often face myriad limitations, losses, and barriers that impede their ability to have a safe,

[5] For example, see the proceedings of the UCLA Law Review symposium, *Overpoliced and Underprotected: Women, Race, and Criminalization* (2012); Kimberlé W. Crenshaw with Priscilla Ocen and Jyoti Nanda, *Black Girls Matter: Pushed Out, Overpoliced and Underprotected* (2015); Beth Richie, *Arrested Justice: Black Women, Violence, and America's Prison Nation* (2012); and Center for American Progress and Movement Advancement Project, *Unjust: How the Broken Criminal Justice Systems Fails LGBT People* (2016).

> stable life. A conviction—and sometimes even an arrest alone—can impact employment, housing, education, voting rights, rights to be on Tribal lands, immigration status, parental rights, and freedom to travel.[6]

This Toolkit supports systems advocacy on behalf of victims of battering charged with crime as that advocacy occurs in the setting of a CCR or similar interagency response. It is a guide to help advocates and CCR partners make the kinds of structural changes in the criminal legal system response to domestic violence that can keep victims of battering out of the system as defendants in the first place and that support a safe, fair, and just response to those who do become so involved.

CCR and a Troubled Criminal Legal System

Centralizing safety and support for victims of battering charged with crimes is not necessarily easy to do. Making systemic change can be undeniably difficult. The poor fit between the incident-driven criminal law and the patterned nature of battering is one barrier, as discussed in *Section 3, Prepare for Distinct Challenges*. Add to this the many complex issues related to the current criminal legal system and the limitation of CCRs and the challenge grows.

A coordinated community response to domestic violence sits among many realities, including persistent violence against women and a criminal legal system characterized by disparity. Women continue to be beaten, raped, and brutalized, often with impunity. At the same time, one of the primary intervention options is a broken criminal legal system that largely rejects rehabilitation in favor of lifelong punishment, whether administered directly through incarceration ("mass incarceration" or "hyper-incarceration," as various commentators describe it) and other state controls or indirectly via the consequences of a criminal record.[7]

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[6] See the ABA National Inventory of Collateral Consequences of Conviction, an online database of the collateral consequences of criminal convictions contained in the laws and regulations of the federal, state and territorial jurisdictions of the United States. Also, see the National Employment Law Project's campaign, *Ensuring People with Convictions Have a Fair Chance to Work*.

[7] For an overview of the complex issues related to the criminal legal system, see the work of organizations such as the Sentencing Project and the Marshall Project. "Mass incarceration" refers to the current and historically extreme rates of imprisonment and other forms of correctional control that are overwhelmingly concentrated among young, African American men and women from neighborhoods facing significant disadvantages in employment, housing, education, health, and other aspects of a secure, stable life. The term was brought to wider public attention with the publication of *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (Alexander, 2010). Alexander emphasizes mass incarceration as the foundation of "the new caste system . . . of racial stigmatization and permanent marginalization" (p. 12). The term refers not only to the criminal legal system "but also to the larger web of laws, rules, polices, and customs that control those labeled criminals both in and out of prison. Once released, former prisoners enter a hidden underworld of legalized discrimination and permanent social exclusion" (p. 13). Other commentators prefer the term "hyper-incarceration," arguing that it more accurately captures the targeted versus generalized nature of an explosion in incarceration that is shaped by race, class, and place. See Donna Coker and Ajhané D. Macquoid, "Why Opposing Hyper-Incarceration Should Be Central to the Work of the Anti-Domestic Violence Movement," *University of Miami Race & Social Justice Law Review* (2015).

These realities place women of color, in particular, "between a rock and a hard place."[8] Women of color seek personal safety and well-being while living in places devastated by the direct and collateral consequences of widespread incarceration and the current and historical impact of racism embedded in community institutions. Many women of color—particularly those living where there has been a high level of community disinvestment, resulting in poverty, lack of opportunity, and diminished infrastructure and support—can simultaneously experience over-policing and under-protection.[9] The experiences of women and girls of color have been largely missing from most analyses of disparity in the criminal legal system, which primarily focus on what has been happening for men and boys or the general failings of the system.[10]

Coordinated community response as an approach to domestic violence-related crimes promised to shift the way in which the criminal legal system recognizes, understands, and responds to battering. CCR has promised that the safety and well-being of victims of battering will be central to the response. Yet the idea of coordinated community response has only partially fulfilled its promise, primarily because of the following limitations:

- "Community" is largely missing. What is called a coordinated *community* response is often dominated by government-based or social service agencies, with limited involvement or direction by community-based advocacy programs. Communities of color and other low-power, marginalized communities have been largely absent from the development and discussion of CCR.

- Most CCR-type entities focus primarily, if not exclusively, on the criminal legal system; only some involve the civil legal system and other institutions, such as health care, schools, and child welfare. Whether intended or not, this dominant orientation toward the criminal legal system implicitly endorses the methods of that system with little consideration of its harmful consequences.

- Many CCR-type entities have done little to acknowledge and address how the criminal legal system functions in marginalized communities in ways that contribute to racial, economic, gender, and other forms of disparity, both currently and historically. Understanding of and attention to the principle of intersectionality—i.e., to the reality that disadvantages or exclusions reflect the interactive and compounded factors of race, gender, sexuality, class, age, and other aspects of identity—has been limited (see *Section 1, Why It Matters*).

- The idea that arrest, prosecution, and punishment equal "offender accountability" tends to dominate CCR language and point of view. This broad-brush approach of "offender

[8] Rinku Sen, "Between a Rock & a Hard Place: Domestic Violence in Communities of Color," *Colorlines* (Spring 1999).
[9] See the proceedings of the UCLA Law Review symposium, *Overpoliced and Underprotected*.
[10] Kimberlé Crenshaw, "From Private Violence to Mass Incarceration: Thinking Intersectionally About Women, Race, and Social Control," *UCLA Law Review* (2011). See also Crenshaw with Ocen and Nanda, *Black Girls Matter*.

accountability" is not necessarily helpful to all survivors, and can be very harmful to some, particularly to victims of battering charged with crimes.[11]

When victims of battering are charged with crimes, all these realities collide: persistent violence against women, a criminal legal system characterized by disparity, intersecting factors of identity and risk, and the limitations of coordinated community response as it has thus far developed. Victim defendants not only lose what protection the criminal legal system might offer, they are drawn into the system's control, emphasis on incarceration, and long-term collateral impacts on safety and stability.

When we address the need presented with this Toolkit—that is, when we seek to change how we intervene in domestic violence-related crimes on behalf of *all* victims of battering—we immediately encounter the troubled U.S. criminal legal system, which for many people has been a system of coercion and oppression rather than as a system of protection and community safety.

In our work as advocates or as interveners, we must pay attention to the ways in which victims of battering become victim defendants and to the ways in which policy and practice contribute to over-policing and under-protection. We must pay attention *and* take preventive or corrective action.

Language and Definitions

When advocates and members of a CCR share language and definitions it helps ground their work in a common philosophy and understanding of battering. Seeking change on behalf of victims of battering charged with crimes often introduces new terms and meaning. The Toolkit is framed by specific definitions and ways of talking about battering, advocacy, and coordinated community response. The following terms are defined below:

- Domestic violence
- Battering
- Victims of battering
- Use of the terms "victim" and "survivor"
- Victim defendant
- Community-based advocacy
- Defense-based advocacy
- Coordinated community response
- Oppression-informed response
- Trauma-informed response

[11] For example, see Shamita Dasgupta and Patricia Eng, *Safety and Justice for All: Examining the Relationship between the Women's Antiviolence Movement and the Criminal Legal System* (2003). Also, the positions and publications of INCITE! and the papers published in conjunction with the UCLA Law Review Symposium, *Overpoliced and Underprotected.* See also Coker and Macquoid, "Why Opposing Hyper-Incarceration Should Be Central to the Work of the Anti-Domestic Violence Movement" (2015).

Domestic Violence and *Battering*

Domestic violence can include many kinds of actions, from a slap on the arm or push or shove to repeated beatings and strangulation to death.[12] Often the domestic violence that comes to the attention of the criminal legal system is what has come to be known as ***battering*** in intimate partner relationships: i.e., the systematic use of violence, the threat of violence, and other coercive behaviors to exert power, induce fear, and control and limit the autonomy of another. Battering is characterized by its ongoing pattern, as well as its negative impact on the victim, including the level of fear it produces; the risks it poses to physical and mental health, overall well-being, and liberty; and its potential for lethality.

The terms "domestic violence" and "battering" are often used interchangeably by advocates and members of a CCR. The terms are often used synonymously—or without clear distinction—in literature and materials related to coordinated community response and criminal legal system intervention. This lack of distinction between the two terms, however, sometime contributes directly to the ways in which victims of battering end up in the criminal legal system as defendants, especially if CCR members believe that any violence that happens in a domestic setting, particularly between intimate partners, is battering.

Not all domestic violence is battering. As explored further in *Section 3*, *Prepare for Distinct Challenges*, someone who hits his or her intimate partner is not the same as someone who batters a partner. Understanding this distinction and framing the criminal legal system response accordingly is fundamental to a response that maximizes safety and well-being for *all* victims of battering. We acknowledge that it can be difficult for the criminal legal system to build a contextualized understanding of intimate partner violence into its everyday practice. There are many reasons, including those discussed in *Section 3*, why it is challenging for an incident-based system to incorporate context into its case processing. Yet attention to context is one of the keys to developing a just response to victims in any community.

Exploring our assumptions about victims of battering is the first step in advocacy on behalf of victim defendants. If our images of victims do not include those who are charged, incarcerated, and reentering their communities, we will misunderstand the realities and complexities of many victims' experiences.

Victims of battering

The Toolkit primarily uses the term "victims of battering" to describe people who are battered. We use this term because it includes anyone who is battered by his, her, or their intimate partner. The term includes women, transgender or gender-nonconforming people,[13] and men[14] and recognizes that they all may be charged with crimes related to the abuse they have experienced.

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[12] The types of relationships included under the term "domestic violence" vary according to state or tribal laws; some include violence between any family members, from teenager to parent, sibling to sibling, adult child to parent, and intimate partner to intimate partner.

[13] A transgender person or gender-nonconforming person is defined as someone whose gender identity does not correspond to traditional gender roles, and/or whose gender identity is different from their birth-assigned sex.

[14] Most commonly, men who are battered are abused by a male partner, although sometimes by a female partner.

Historically, battering has been and remains most characteristic of men's dominance over women in intimate relationships, although more information is emerging about battering in same-sex relationships and the experiences of transgender persons. Most people charged with or convicted of crimes related to their experience of battering who contact the National Clearinghouse are women who have been battered by a male intimate partner. Therefore, the Toolkit generally refers to victims of battering and to victim defendants as "she" and to abusive partners as "he." While many, if not most, of the practices and strategies included in the Toolkit may apply to situations of battering regardless of gender identity or orientation, we acknowledge that most of our experience is from working with victim defendants who have heterosexual partners.[15]

Victim or Survivor

Many community-based advocates and practitioners in the field reject the term "victim" and choose the term "survivor" to describe someone who has been battered. The National Clearinghouse staff, as well, has disagreed internally about the best term to use. Some of us deliberately use "victim" (e.g., "victim of battering" or "victim defendant") because we recognize how quickly understanding of and empathy for a person's victimization can disappear when she gets arrested, especially for an alleged crime of violence. Others feel it is important to honor the resiliency of those who have, indeed, survived being battered and therefore use the term "survivor." But many at the National Clearinghouse remember the words of a criminal defense attorney who, with great animation, reminded us that it was not helpful to have people refer to her client, who was facing a murder charge, as the "survivor." Hence, National Clearinghouse staff typically use the term "victim of battering," as we do throughout the Toolkit.

Victim defendants

As used throughout the Toolkit, "victim defendant" means a victim of battering who has been criminally charged, whether or not the charges are directly related to current experiences of being battered. As discussed further in *Section 1 – Why It Matters*, research indicates that most incarcerated women have experienced emotional, physical, and/or sexual abuse as an adult or as a child or both, often involving severe levels of physical and sexual violence.[16] This reality calls for a broad understanding and definition of victim defendants as we pursue systems advocacy within a CCR on behalf of victims charged with crimes in our communities.

Victims of battering can become victim defendants under one or more circumstances, including (but not limited to):

- Charged with assault or homicide after defending themselves or their children against their batterer

[15] If you have information about working with LBTGQ victim defendants that you would recommend for the next edition of the Toolkit, please contact that National Clearinghouse.

[16] National Clearinghouse for the Defense of Battered Women, *Abuse History Among Incarcerated Women* (May 2011). For a review of research studies, see Melissa E. Dichter with Sue Osthoff, *Women's Experiences of Abuse as a Risk Factor for Incarceration: A Research Update* (July 2015).

- Coerced into criminal activity by their batterer (including charges related to economic or drug crimes)
- Charged with "failing to protect" their children from their batterer's violence and/or abuse
- Charged with parental kidnapping or custodial interference after fleeing with their children to protect themselves and/or their children
- Charged with perjury or false swearing after recanting a statement or testimony (often out of fear)
- Charged with crimes not necessarily or obviously directly related to their experiences of current victimization, such as battered women abusing substances in response to trauma or who are under pressure from their abusive partners to use illegal substances

The Toolkit does not use the term "offender" to refer to victims of battering charged with crimes, nor does the National Clearinghouse use it to refer to anyone charged with or convicted of a crime. Many victims of battering feel abandoned by the system that failed to protect them in the past, yet is now vigorously prosecuting them and labelling them an "offender." But victims of battering are not the only defendants who feel abandoned and unprotected. Among the many terms used to describe people who are charged with crimes or in prison—perpetrators, defendants, inmates, detainees, offenders—the term "offender" is especially problematic. People awaiting trial are by law presumed innocent; they have not been convicted of any offense. We realize that "offender" is a common label used in CCRs and in many advocacy organizations to refer to batterers (and not only those who have been arrested). But even for those who have been convicted, we find the term "offender" to be demeaning and an inaccurate reflection of their experiences. We encourage *people first* language[17] whenever possible in describing anyone arrested, charged, sentenced, or incarcerated. For example, instead of "inmates," we say women in prison or jail or women who are incarcerated.

Community-based advocacy

In the context of working to end battering, advocacy is defined as "supporting victims and survivors to secure safety, recovery, rights, and [self-determination] while also working to reform social institutions, public policy, and community norms that support battering and other forms of violence against women."[18]

Community-based advocacy is anchored in independent, community organizations, in contrast to victim support located in governmental agencies such as a police department or prosecutor's office. Community-based advocacy is characterized by and distinguished from system-based victim support in large part by the degree of confidentiality that it can offer and by its independence from the prosecutor or other governmental office and from the expectation to assist with moving the state's case forward.

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[17] Advocates working on behalf of people incarcerated or formerly incarcerated are challenging criminal legal system language that "turns an individual's record into an indelible brand." Instead of terms like "inmate" and "parolee," they use a people-first framework that acknowledges someone's involvement in the system without reducing them to that single aspect of identity, regardless of circumstances of the crime or improvements in their lives: e.g., *people* convicted of crimes . . . in prison . . . on parole. See commentary by Bill Keller: "Inmate. Parolee. Felon. Discuss" (The Marshall Project, April 2015).

[18] This definition of advocacy is from Praxis International.

Defense-based advocacy

Defense-based advocacy is the practice of extending community-based advocacy to victims of battering charged with crimes in ways that coordinate with defense teams to support creative and effective legal strategies that maximize opportunities for justice and help prevent further victimization of arrested, convicted, or incarcerated victims of battering. In addition to understanding the general tenets of criminal defense, the practice of defense-based advocacy requires that advocates (1) obtain the defense counsel's knowledge and consent prior to talking with a victim defendant, (2) avoid discussing the case with the prosecutor without the full knowledge and explicit permission of the defense attorney, and (3) redirect or avoid discussing the facts of the case with the victim defendant.

The National Clearinghouse acknowledges the dilemmas that advocates can face in determining how to best support an individual victim defendant without discussing the facts of the case or intervening directly with the prosecutor, particularly when defense resources are overburdened or difficult to reach. Following the standard of defense-based advocacy as defined here might not be possible when there is a high volume of misdemeanor cases or when a defense attorney has not been appointed to the case, for example. Nonetheless, we caution advocates against discussing the facts of the case in order to decrease the likelihood that a prosecutor will subpoena advocacy records and to avoid the information being used against the victim defendant. Short of practicing defense-based advocacy, there is still much that advocates can provide to help her clearly understand and more effectively navigate the criminal legal system process, as reviewed in *Appendix 3A, Understanding the Impact of Criminal Charges*.

Coordinated Community Response (CCR)

Coordinated community response or "CCR" is a term that has come into broad use since it emerged in the 1980s to describe the efforts underway in Duluth, MN, and elsewhere to change the criminal legal system's response to battering. For purposes of this Toolkit, we define a coordinated community response as *a united interagency response to battering, characterized by the overarching goals of safety for all victims of battering, accountability for batterers, and systemic change to intervene in ways that promote safety, fairness, and justice and prevent violence.*

Implementing a CCR involves eight core activities:[19]

1. Build shared underlying assumptions and a shared framework to guide practitioners who intervene in domestic violence cases.
2. Assist intervening agencies in developing and implementing policies and operating procedures that reflect the shared framework.
3. Monitor and track cases from initial contact through case closure to ensure accountability—both by individuals charged with crimes[20] and agency accountability.
4. Coordinate the exchange of information and interagency communication and decision-making related to domestic violence cases.
5. Ensure that victims and other at-risk family members have access to resources and services that offer safety and protection.
6. Utilize a combination of sanctions, restrictions, and rehabilitation services to hold batterers accountable and to protect victims from further abuse.
7. Undo the harm caused to children by the abusive actions of the battering parent toward the other parent and the children themselves.
8. Evaluate the coordinated community response from the standpoint of victim safety.

For basic information about coordinated community response (CCR), battering, & domestic violence:

- Battered Women's Justice Project http://www.bwjp.org
- The Duluth Model – Domestic Abuse Intervention Project http://www.theduluthmodel.org/
- Praxis International http://www.praxisinternational.org/
- VAWnet http://www.vawnet.org/

Not all community intervention efforts that characterize their work as a CCR include all the components outlined above, especially as the term CCR has come to mean almost any kind of interagency response focused on the criminal legal system. Some CCR entities have lost their focus on keeping the experiences of battered women and other victims of battering at the center of their work. Other CCRs have drifted toward prioritizing the system's needs for efficient case processing that emphasizes quick plea agreements, automatic no-contact orders, and a standard set of sanctions in domestic violence-related cases. As noted previously, few CCRs have been prepared to address the conflicting realities of widespread violence against women alongside a troubled criminal legal system that, many argue, functions less to secure justice and more to control and over-criminalize low-power and marginalized communities.

[19] Shepard and Pence, *Coordinating Community Responses*. For a similar discussion, see Connie Sponsler-Garcia "Creating an Intervention Project," in *Collaborating for Safety: Coordinating the Military and Civilian Response to Domestic Violence* (2010).

[20] "Offender accountability" is a term firmly embedded in the CCR literature. This Toolkit, again, rejects the use of the term "offender" and adapts language accordingly, unless quoting directly from a source.

Regardless of how developed its CCR, however, a community can and must begin to examine its response to victims of battering charged with crimes. The Toolkit prepares community-based advocates to lead that examination as a necessary first step to systemic change that secures a safe, fair, and just response.

Oppression-informed response

An oppression-informed response is the application of knowledge, policy, and practice that recognizes and ameliorates the structural, interconnected nature of oppression. An oppression-informed response is grounded in the principle of intersectionality. The principle of intersectionality was "initially conceived as a way to present a simple reality that seemed to be hidden by conventional thinking about discrimination and exclusion. This simple reality is that disadvantage or exclusion can be based on the interaction of multiple factors rather than just one. Yet conventional approaches to social problems are often organized as though these risk factors are mutually exclusive and separable. As a consequence, many interventions and policies fail to capture the interactive effects of race, gender, sexuality, class, etc. and marginalize the needs of those who are multiply affected by them" (*Intersectionality Primer*).[21]

Trauma-informed response

A trauma-informed response is the application of knowledge and policy and practice that recognizes and ameliorates the harmful physical, psychological and emotional impacts of trauma related to the violence, abuse, and other highly distressing life events and circumstances experienced by victims of battering charged with crimes. While a trauma-informed response seeks to repair harm and strengthen well-being on behalf of individuals, it also recognizes the many ways in which histories of oppression on a community and societal level impact trauma.

[21] The principle of intersectionality was coined and developed by Kimberlé Crenshaw. See *A Primer on Intersectionality,* African American Policy Forum.

Section 1 – Why It Matters

The Big Picture

When a victim of battering is charged with a crime, advocacy matters because being arrested—even if the charges are dropped early in the process—usually makes her life worse. New and often permanent risks to safety and well-being emerge when a criminal case moves forward. Once a victim is arrested (or even threatened with arrest), her batterer gets powerful tools for ongoing coercion and control. He may threaten to call or call the police or child protection services, prevent her from completing the conditions of her release or probation, or otherwise sabotage her efforts to comply with what has been required of her. Her children may remain in state custody after her release. Even without a criminal conviction, a victim may experience heightened risk and increased danger. If convicted, her criminal record can have long-lasting, harmful impacts on employment, economic security, housing, education, voting rights, immigration status, and other facets of a stable life.

Multiple studies indicate that between 71% and 95% of incarcerated women have experienced physical violence from an intimate partner. Many have experienced multiple forms of physical and sexual abuse in childhood and as adults.

See *Women's Experiences of Abuse as a Risk Factor in Incarceration*, Dichter & Osthoff, VAWnet, 2015

While we do not know exactly how many victims of battering are arrested each year or how many are currently under state control (i.e., in jail or prison or on probation or parole), we do know that the number of women getting arrested, convicted, and sentenced has increased dramatically during the past three decades. We also know that most incarcerated women are trauma survivors.

At the close of 2015, 1,249,900 women were in the US correctional population (i.e., on probation or parole, in state or federal prison, or in local jail)—of those 202,600 were incarcerated in jail or prison.[22] Since we know that people's eyes often glaze over when reviewing statistics, we want to encourage you to pause and really take in that number: at the end of 2015, *1.25 million* women were under state control; that's about the same number of people who live in Dallas, the ninth largest city in the United States. Women now comprise 19% of the total correctional population and 23% of the population on community supervision.[23] While incarceration rates overall have declined somewhat since 2008, the *rate* of women's incarceration continues to outpace the rate for men.[24]

Most incarcerated women have experienced abuse either as a child and/or as an adult. Estimates of incarcerated women who have experienced abuse range from 55% to as high as 95%. Surveys that ask limited questions and use unclear terms (e.g., being "abused") have generally reported

[22] Danielle Kaeble and Lauren E. Glaze, *Correctional Populations in the United States, 2015* (December 2016).
[23] Kaeble and Glaze, *Correctional Populations*.
[24] The Sentencing Project, *Fact Sheet: Incarcerated Women and Girls* (November 2015).

lower rates of abuse; while studies asking a more comprehensive set of questions and use behavior-specific (e.g., being "hit" or "forced to have sexual contact") report that *nearly all* girls and women in prison samples have experienced physical and sexual abuse throughout their lives, much of it at the hands of intimate partners. Multiple studies indicate that between 71% and 95% of incarcerated women have experienced physical violence from an intimate partner.[25]

A disproportionate number of women in the correctional system are women of color. African American women are 13% of the total US female population but represent over 30% of incarcerated women.[26] Females in the 30-to-35 age group have the highest overall rate of incarceration in state and federal prisons and black females have the highest rate among that group: 264 per 100,000 in comparison to the rates for white (163) and Hispanic (174) females.[27]

Incarceration rates for Native women have been rising—often greater than rates for Native men—and vastly outpace those for white women. For example, in South Dakota, approximately 9% of the population is Native, but Native people comprise 29% of people incarcerated and Native women are 35% of incarcerated females.[28] While Hispanic or Latina women make up 17% of both the US population and the female prison population,[29] their rates of incarceration are on the rise: up 28% between 2000 and 2010.

People who identify as lesbian, gay, bisexual, or transgender are incarcerated at twice the rate of American adults who do not identify as LGBTQ. Sixteen percent of transgender and gender non-conforming respondents to a national survey had spent time in jail or prison, in comparison to about 5% of all American adults, with higher rates for transgender women (21%) than transgender men (10%).[30]

Poverty is another part of the big picture in understanding the wide reach of the criminal legal system and its impact on victims of battering charged with crimes. Incarcerated people in all gender, race, and ethnicity groups earned substantially less prior to their incarceration than their non-incarcerated counterparts of similar ages and incarcerated women enter prison with some of the lowest incomes.[31] The long-lasting and negative impact of a criminal record on employment and education means that poverty remains a central experience and struggle for anyone who has been charged or incarcerated.

When victims become defendants, they experience complex and often magnified and overlapping risks to their safety and well-being. As noted above, for some victim defendants an arrest alone is enough for a batterer to more effectively coerce and dominate by threatening to

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[25] Dichter & Osthoff, *Women's Experiences of Abuse*.
[26] American Civil Liberties Union, Facts About the Over-Incarceration of Women in the United States (2015).
[27] E. Ann Carson, *Prisoners in 2014* (September 2015).
[28] For another example, in Montana, Native peoples are 6% of the population but 22% of incarcerated persons (Prison Policy Initiative, *State Profiles,* (2015). In Montana, Native women are 30% of female prisoners while Native men are 19% of male prisoners (Frank Smith, *Incarceration of Native Americans and Private Prisons,* retrieved October 16, 2015).
[29] E. Ann Carson, *Prisoners in 2013* (September 2014).
[30] Center for American Progress and Movement Advancement Project (MAP), *Unjust: How the Broken Criminal Justice System Fails LGBT People* (February 2016).
[31] Rabuy and Kopf, *Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned* (July 2015).

engage the criminal legal system, child protective services, or family court against her. For others, being arrested, prosecuted, and/or convicted may mean that they are shut out of ways to support themselves and their children. For women who are mothers, the connection with their children may be damaged or destroyed. When mothers are sent to jail or prison—and more than 61% of women in state prisons have a child under age eighteen[32]—their children often end up in the foster care system or in the sole care of the abusive partner and siblings are often separated from one another. Children with incarcerated mothers often face lifelong harm related to the trauma of separation and heightened emotional, psychological, and social risks.[33]

As is true for many survivors of battering, victim defendants have complicated needs related to safety, economic stability, and overall well-being for themselves and for their children. We know that victims of battering fill our jails and prisons. In other words, there are many victim defendants with many needs for advocacy. Yet too often CCR members—including some community-based advocacy programs—pay little or no attention to victim defendants. As a result, victim defendants are both over-represented in the criminal legal system *and* often invisible to advocacy.[34]

Why Victim Defendants Are Over-Represented *and* Invisible

Consequences of Emphasizing the Criminal Legal System Response

Since the 1970s, much remarkable work has been done in many communities to enhance and vastly improve the criminal legal system's response to battering. Early organizing efforts focused on improving the ways in which police, prosecutors, and the criminal courts responded to victims of battering and to those accused of causing them harm.[35] These communities worked to address the widespread fragmentation and lack of coordination—with interveners sometimes working at cross-purposes—which created problems for many victims of battering seeking assistance. Victims routinely faced unanswered or low-priority emergency calls to the police, refusal to remove or arrest the batterer, long delays in prosecution followed by abrupt dismissal of the charges, and overall lack of information about and input into what was happening in their own legal case.

In response to these conditions, many advocates and activists in the battered women's movement sought to have the criminal legal system treat an assault committed by an intimate partner with a level of attention and sanction similar to an assault committed by a stranger. Many advocates

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[32] The Sentencing Project, *Incarcerated Women and Girls.*

[33] Julie Symth, "Dual Punishment: Incarcerated Mothers and Their Children." *Columbia Social Work Review*, 3 (2012).

[34] For a discussion of this invisibility and the enhanced risks faced by victim defendants, see Courtney Cross, "Reentering Survivors: Invisible at the Intersection of the Criminal Legal System and the Domestic Violence Movement," *Berkeley Journal of Gender, Law, and Justice* (2016). [The] "structure of community supervision pressures them to remain in unsafe homes and also punishes them when the abuse they endure interferes with their ability to comply with the conditions of release. Because reentering survivors' criminal histories place them outside of the traditional conception of a 'real' victim of domestic violence, many domestic violence agencies deem them ineligible for services and assistance."

[35] Shepard and Pence, *Coordinating Community Responses.*

joined with system practitioners to seek increased arrests, prosecutions, convictions, and longer and/or specific sentences as a means of reinforcing goals of "victim safety and batterer accountability." Advocates and their allies crafted and implemented legal and policy reforms (such as warrantless arrests for misdemeanor crimes, mandatory arrest laws and policies, no-contact and stay-away orders, and enhanced sentences), trained law enforcement and criminal justice practitioners, and promoted the idea of coordinated community response.

It was clear to these early organizers and change agents that only when system-wide fragmentation was addressed would there be fundamental changes in law enforcement and court response to battering. Even if each individual agency was doing a good job, comprehensive change would only happen when all relevant public and private agencies coordinated their efforts. Therefore, advocates and their allies sought to increase coordination among criminal justice system agencies and between these agencies and community-based battered women's organizations.

Advocacy to strengthen criminal legal system attention to battering led to the creation of partnerships between anti-domestic violence organizations and law enforcement and prosecution agencies. These partnerships have spanned many years, creating a structural relationship that exists in many, if not most, communities today. Improved criminal legal system responses have contributed to increased safety for many victims of battering and their families.[36]

Not all victims of battering have benefited from this emphasis on reforming the criminal legal system response, however, and victim defendants are among those who have benefited the least. Indeed, reliance on the criminal legal system has likely resulted in *more* victims of battering being arrested and charged and made them largely invisible once they have been labeled as "offenders." Many advocates—particularly those working most closely with communities of color—have never supported such heavy reliance on the criminal legal system to deal with domestic violence.[37] Over-representation *and* invisibility are most acute for victim defendants who are most marginalized by intersecting forms of oppression related race, ethnicity, gender identity, sexual orientation, age, ability, class, and other aspects of identity and social standing. For example, LGBTQ people in the criminal legal system—most of whom are young, poor, and people of color—are more frequently incarcerated and treated more harshly, including much higher rates of solitary confinement and sexual assault. 24% of incarcerated transgender people report being sexually assaulted by another inmate, compared to 2% of all inmates.[38]

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[36] For examples and discussion, see Barbara J. Hart and Andrew R. Klein, *Practical Implications of Current Intimate Partner Violence Research for Victim Advocates and Service Providers* (December 2013). See also, Praxis International, *Research Supports the Intervention Strategies of the Blueprint for Safety* (October 2014).

[37] See, e.g., Dasgupta and Eng, *Safety and Justice for All: Examining the Relationship between the Women's Antiviolence Movement and the Criminal Legal System* (2003); positions and publications of *INCITE!* and UCLA Law Review Symposium, *Overpoliced and Underprotected*; Coker and Macquoid, "*Why Opposing Hyper-Incarceration Should Be Central to the Work of the Anti-Domestic Violence Movement*" (2015). See also, Beth E. Richie, *"How Anti-violence Activism Taught Me to Become a Prison Abolitionist"* (January 21, 2014).

[38] Center for American Progress and MAP, *Unjust: How the Broken Criminal Justice System Fails LGBT People* (February 2016).

Characteristics of Large, Complex Systems

Key factors that characterize how large institutions operate also contribute to the over-representation and invisibility of victim defendants in the criminal legal system.[39]

Use of Categories

Most of the time and resources in the criminal legal system go toward identifying, prosecuting, and sanctioning defendants or "offenders." An "offender" heads down one path and is the primary focus of the criminal legal system. A "victim" heads down another path and serves largely to help move the case against the defendant along as the primary witness to the crime. Advocates seeking to change the criminal legal system response have tried to increase the kind and quality of attention paid to victims of battering by helping practitioners in the system develop a better understanding of the dynamics and impacts of battering and increase their sensitivity. As discussed further in *Section 3 – Prepare for Distinct Challenges*, when a victim of battering is charged with a crime she becomes an "offender" in the eyes of the criminal legal system, setting in motion a process that is usually ill-equipped to recognize and account for the reality and impact of the battering in her life.

Context is everything . . .

- Not all violence between intimate partners is the same.
- Not everyone who uses violence against an intimate partner is a batterer.

Applying this understanding is essential to reducing the number of victim defendants and to providing meaningful services for those in the system.

Questions to help establish context:

1. Is this behavior part of an **ongoing pattern**?
2. Is this pattern of behavior **intended to instill fear**?
3. Is this pattern of behavior linked to **domination and control**?

Labels (categories) of "victim" and "offender" are often applied based on a single act or incident. Yet every person facing arrest or arrested for a domestic violence-related assault is not necessarily a batterer—nor are they necessarily guilty of something.

Fragmentation: Missing History and Context

The criminal legal system is incident-focused and concerned primarily with the specific, individual case in front of it and the determination of whether the defendant is guilty of a crime in that instance. This focus on a specific incident can work against discovering the true nature of

[39] The discussion in this section draws on analysis by Alex Wilson and Ellen Pence, "U.S. Legal Interventions in the Lives of Battered Women: An Indigenous Assessment," in *Institutional Ethnography as Practice,* Dorothy E. Smith, ed., (2006). See also, Thomas Peacock et al., *Community Based Analysis of the U.S. Legal System's Interventions in Domestic Abuse Cases Involving Indigenous Women – Final Report to the National Institute of Justice* (December 2002). Further discussion and resources related to Institutional Analysis are available through Praxis International.

battering, even in states where dominant aggressor statutes require law enforcement to consider the history of battering. (See *Section 3 – Prepare for Distinct Challenges*.)

Battering involves a pattern of actions and behaviors designed to create fear and limit a partner's freedom and autonomy. Understanding the cumulative effects of a batterer's actions—many of which are not illegal—means seeing the pattern. In other words, it means seeing the entire movie about what is going on in the relationship to truly understand what a victim of battering is experiencing. The criminal legal system is designed primarily to focus on a specific incident, however; it wants a snapshot, not the movie.

This focus on an incident and illegal act(s) makes it challenging to assess and understand the nature of the risk that might contribute to a victim-defendant's actions. Without system-wide change (see *Section 4 – Changing Criminal Legal System Practice*), it remains difficult to reach a contextualized understanding of partner violence. When the criminal legal system misses the elements of context related to a given act—namely, when the system fails to see the intent, history, meaning, and impact of the violence and its relevance—victims of battering become victim defendants.[40]

The criminal legal system is incident-focused and, like other complex institutions, it fragments peoples' broad, everyday experiences and lives into "a case." It further separates and divides the case into steps and sub-steps with specialists at each point (e.g., police, prosecutor, judge, probation agent, etc.). Beginning with a single call to emergency communications/911, multiple systems and agencies can quickly become involved in someone's life. A victim of battering can become "a domestic" case, an arrest case, a prosecution case, a child protection case, a medical case, an immigration case, a welfare case—each with its own steps, sub-steps, and specialists. Such fragmentation and specialization build a kind of maze that it is difficult to navigate under the best of circumstances for those with access to advocacy and those who have standing as the "victim" within the criminal legal system. For victim defendants, the maze is often impossible to navigate.

Focusing on the Mythic "Real Victim" or "Classic Battered Woman"

What does a "battered woman" look like? How does a "victim of battering" act?

The idea that there exists a universal battered woman or other "real victim" of battering has done considerable harm to many who have lived with the realities of battering, including victim defendants. When we hold an image of a universal "everywoman" in mind, we misunderstand

[40] Sue Osthoff, "But, Gertrude, I Beg to Differ, A Hit Is Not a Hit Is Not a Hit: When Battered Women Are Arrested for Assaulting Their Partner," *Violence Against Women* (2002).

the intersecting nature and complexities of women's experiences.[41] Victims of battering who resist and fight back and use legal or illegal force in active ways as a strategy to protect themselves and survive do not often fit the image of a "classic battered woman" nor are they seen as "real victims."

Victims who call the police sometimes gain improved credibility as "real victims"—unless they end up as defendants. The erroneous assumption that if one was really battered she would call the police fails to account for the many reasons that victims may not call the police. These include fear of police violence against the batterer or herself, retaliation and more violence from the abuser, fear of deportation for undocumented victims, cultural norms to solve family problems within the community, fear of arrest (particularly for people of color and for other marginalized people like LGBTQ and gender non-conforming victims where dominant aggressor determinations are often based on binary gender expressions of female and male), the possibility of eviction, and other reasons related to individual circumstances and social conditions.

Practitioners across the criminal legal system sometimes make decisions early on in a case about whether they consider someone a genuine victim. Such assumptions—i.e., looking for a certain demeanor or display of helplessness or passivity or compliance—can block thorough inquiry into self-defense or the impact of battering on a victim defendant's actions. If a "real victim" is expected to sound and act a certain way, such expectations can inhibit emergency call-takers from asking questions about what is happening at the scene, keep patrol officers from adequately investigating for self-defense or dominant aggressor, push prosecutors to hold onto a case instead of dismissing it or refuse to consider the impact of battering on victim defendants in a range of cases, and keep probation officers from exploring how the reality of battering is a risk to a victim defendant's safety and success.

While victims of battering share some common characteristics and experiences, their situations and ways in which they respond can vary dramatically. Victims of battering do many things to try to reduce, resist, cope with, and escape from the violence. Protective and survival strategies vary by individual and often change over time. Static notions about who is a victim of battering—and the accompanying stereotypes they often produce—can be highly problematic for victim defendants.

To avoid doing further harm to victims of battering, advocates—and, ultimately, CCRs—must pause at the familiar, stereotypical use of "victim" and "offender" and apply a new lens to the realities and needs of victim defendants. Reshaping the criminal legal system response from the standpoint of a victim defendant can be a challenging demand, but it is essential to enhancing the safety and well-being of *all* victims of battering.

[41]Dr. Beth Richie has long articulated the problem with the common assertion that "any woman can be battered," especially as it pertains to women of color. See Richie, *Arrested Justice* (2012). For example: ". . . when the national discussion became organized around *'it could happen to anyone,'* 'it' was reduced to direct physical assault from household members and stranger rape, and 'anyone' came to mean the women with the most visibility, the most power, and the most public sympathy, the citizens whose experience of violence is taken most seriously . . . So the image of *everywoman* becomes a white, middle-class woman who can turn to a counselor, a doctor, a police officer, or a lawyer to protect her from abuse" (p. 92).

Recognizing and Responding to Risks for Victim Defendants

All victims of battering face many risks to their safety and well-being; those charged, incarcerated, and reentering the community after jail or prison encounter additional risks. They face these risks at all steps in the criminal legal system, from arrest to probation or incarceration and return to the community after a jail or prison term. To shape an advocacy response and influence a CCR response that is attuned to the needs of victim defendants, requires understanding these complex and often amplified risks. Such understanding helps address the urgency of keeping victims of battering out of the criminal legal system altogether, whenever possible, and develop responses that mitigate the negative impact of the criminal legal system when it is not. The principle of intersectionality is the foundation of oppression-informed intervention and is critical to recognizing the full nature of overlapping risks faced by victims of battering, particularly those who have the most low-power and marginalized status (see *Introduction – Language and Definitions* and *Appendix 4-A: Securing a Fair and Just Response to Victims of Battering Charged with Crimes*).

Increased risk

- *Victimized Again: How the Reentry Process Perpetuates Violence Against Survivors of Domestic Violence,* by Courtney Cross
- *The Impact of Arrests and Convictions on Battered Women*

National Clearinghouse for the Defense of Battered Women

http://ncdbw.org/publications.htm

Intersecting Risks

We are accustomed to thinking of risk primarily in relation to those created by the actions of an individual batterer, but victims of battering must deal with much more than risks from an abusive partner. Battering occurs in a context of additional and overlapping risks related to life circumstances and social standing, as well as the ways in which community systems respond. Victims of battering not only face their partner's direct actions, but must often navigate that violence and try to keep themselves safe—and perhaps their children as well—under conditions of homelessness, economic instability, and/or poor health. Potential risks from battering are also influenced by the extent to which a person's identity is marginalized or denied. Race, class, age, gender, ability, sexual orientation, immigration status, and other aspects of identity impact the experience of being battered and the ways in which help and support is available or inaccessible. This intersection of risks can increase vulnerability to battering, complicate safety planning, and lead to ineffective or harmful interventions.

When a victim of battering is arrested charged, incarcerated, or on probation or parole, she also encounters the difficulties that arise for anyone charged with or convicted of a crime. She must navigate the complex and confusing process of the criminal legal system. She must confront the impact of arrest and conviction records, such as restrictions on housing, employment, and education. She might face the possibility or reality of incarceration and the temporary or permanent loss of her children. She may face removal (deportation) proceedings. She often must live with a completely broken trust of authorities (if she ever trusted them), even while still needing protection.

For a victim defendant, the realities and dangers of battering may be even greater than before she

was arrested. Her abusive partner can use pretrial, probation, or parole conditions to coerce and manipulate her. A batterer's ability to make demands and enforce them is heightened when he can threaten to call or does call the police or her probation officer to report a violation of bail conditions or probation, whether true or not. He can coerce her into participating in activities that may be a violation of her release conditions, such as drinking alcohol or using drugs, and then report her or threaten to do so, or prevent her from attending programs which are conditions of her bail or probation. If her abusive partner is the complaining witness in the criminal case against her, he can coerce her into meeting his demands by promising to "drop charges" or recant his testimony in exchange for her compliance.

A victim defendant faces multiple sources of trauma related to living with abuse and being arrested, charged, and/or incarcerated. *Appendix 3-A: Understanding the Impact of Criminal Charges* illustrates some of the specific risks to victims of battering charged with crimes and the related advocacy strategies to address those risks. These magnified and complex risks can be reduced if everyone working with her understands her increased vulnerability due to arrest and/or conviction. Defense attorneys and community-based advocates must be positioned to support and collaborate with each other to ensure the broadest access to justice and the services needed to increase her safety. Effective systems advocacy means seeking and sustaining changes in the criminal case process that will help keep victims of battering from getting arrested in the first place and that will provide a safe and protective response to those who are charged, incarcerated, or on probation, or returning to the community (see *Section 4 – Changing Criminal Case Practice*).

A Precarious Place

The experience of living with battering often leads women to act in ways that can unwittingly expose them to arrest and can raise obstacles for preparing and presenting a defense. If those pursuing the case on behalf of the state *and* those responsible for the defense are disconnected from the complex realities of battering, victim defendants are in a doubly precarious place.

- ***A victim of battering may over-report her own use of force while a batterer often denies his use of violence.***

  It is common for victims of battering to take a lot of responsibility for their own use of violence, while batterers often take little to no responsibility for their violence and other types of abuse. When police arrive at the scene and ask what happened, many victims of battering will admit to their use of force, while many batterers will only say they were trying to calm down or restrain their "crazy" partner. As they seek to appease the batterer and respond to his coercion and threats, victims often tell the police that what happened was their fault, repeating back what many have heard countless times from their partners: "If you would only [do what I say . . . listen to me . . . shut up . . . stop nagging] then everything would be fine. This is all your fault." Some victims take responsibility for their violence to regain a sense of agency or control over very traumatic situations.

  When a victim of battering says "yes, I hit him," such assertions can keep police from investigating further, particularly when they are poorly prepared to conduct a skilled, battering-informed investigation or are reluctant to follow up. Frequently in assaults

involving strangulation, the victim will hit or scratch her partner, leaving the only marks visible to police on the scene. Many victims of battering are shocked and dismayed when they are arrested after calling for help. In contrast to the tendency of victim defendants to readily agree to a plea offer, batterer defendants are more likely to deny all responsibility for the abuse, cast blame for their behavior on others, and resist an early plea.[42]

- ***A victim of battering may underreport the violence she experienced or have difficulty describing what has happened in ways that are helpful to her defense.***

  It can be difficult for a victim of battering to provide a defense attorney with a detailed, sequenced narrative about the battering she has experienced and the specific events related to the charges she faces. She may be embarrassed or not have words to talk about the abuse, particularly if it involves sexual assault or sexual humiliation. Emerging research on trauma is helping us to better understand that a different part of the brain takes over during traumatic events and impacts the ways in which memories of trauma are recorded and stored. It is common for trauma survivors to remember their experiences out of chronological order, for example. They may forget details at one point and remember them later. They may have been under the influence of drugs or alcohol during an assault and unable to remember everything. Survivors of severe or long-term trauma may have developed complex coping strategies such as dissociation, denial, or minimization. Prosecutors are likely to present such inconsistencies to a jury as a lack of credibility or as outright falsehoods.

  Defense attorneys who are unprepared to conduct trauma-informed interviews may not know the questions to ask or how to ask them. A defense attorney's demeanor and approach may inadvertently impede a victim's ability to recall or disclose important details. Time constraints and the pressure to get to the heart of a specific incident can limit open-ended questions and inhibit a victim from telling her story from start to finish, an important consideration for trauma survivors. Some women who have been battered by a male partner may be uneasy and reluctant to confide in a defense attorney who is a man. Additional barriers to a victim conveying her experience in ways that are most helpful to her defense include pressure from the batterer to not tell the truth; mistrust that anyone can or will believe or help her; a desire to protect the batterer, either as a safety strategy or because she does not want him to go to jail; shame about the details of the abuse (especially sexual assaults); and the impact of finding herself arrested when she told the police the truth about what happened while at the scene.

[42] See, Meg Crager, Merril Cousin, and Tara Hardy, *Victim-Defendants: An Emerging Challenge in Responding to Domestic Violence in Seattle and the King County Region* (April 2003). Several respondents reported that domestic violence survivors are more likely to resolve the case prior to trial. Victim-defendants seem to accept plea deals more readily, usually because batterers pursue their case vigorously, while survivors just want to resolve the case. While there are some studies that look at plea bargaining based on gender, we were unable to find any that explored the differences between victims of battering and batterers.

- ***The constant struggle to keep herself safe—and perhaps her children, too—means that a victim defendant is unlikely to be able to devote time and resources to her own case.***

  As is true with all criminal defendants, those with more resources (e.g., money, free time, flexibility with work and family, transportation, social support) are better equipped to participate in their own defense. Victims of battering who are charged with crimes may have few such resources available, particularly if they have had to seek emergency housing, have separated from their abusive partner, or have few financial resources. They often end up pressured to use what time and resources they have trying to manage the interconnected risks they face from the batterer, life circumstances, and the actions of the criminal legal system.

- ***A victim defendant's movements, phone conversations, and correspondence may be monitored and controlled by her abusive partner.***

  Victims of battering typically face intense scrutiny over their everyday movements and conversations. They are rarely free to speak openly with anyone they choose. A defense attorney whose client is being prohibited or restricted from being fully engaged in case preparation is unlikely to obtain the information needed for an effective defense.

- ***There are many reasons victim defendants plead guilty (and it is not always a bad thing).***

  Depending on the charges, a victim defendant may plead guilty early in the process because she wants to get out of jail and go home to her children or get the case over with as soon as possible. Sometimes the batterer coerces her to plead or she may feel guilty or otherwise responsible, especially if her partner has made her believe that every bad thing that happens is her fault.[43] Some defense attorneys may lack the skills necessary to elicit critical information from trauma survivors and therefore urge a victim defendant to accept an early plea without further exploration of possible defenses, especially if the plea offer seems reasonable. Additionally, it can be difficult for victim defendants to think about the long-term consequences of having a record when evaluating a "reasonable" plea.

  About pleas

  Plea Bargains: Issues to Consider
  http://ncdbw.org/publications.htm

  A plea may be the very best outcome in a particular case, however. Victim defendants and those advocating on their behalf need to understand that each case is different and in certain situations a plea may be a good outcome. For example, a plea may be the best course of action if it results in a diversion agreement that leads to quick expungement of

[43] An advocate told us about a victim defendant who, when asked by the judge how she plead, said "guilty." When asked later why she pleaded guilty even though she used force to defend herself, the woman said, "I thought I couldn't lie" because "after all, I hit him."

the record upon completion of the sentence. Or, a plea to a misdemeanor may avoid the many and severe collateral consequences of a likely felony conviction.

See *Appendix 3-A, Understanding the Impact of Criminal Charges* for advocacy strategies that can help address the risks related to the circumstances that victim defendants may face because of an arrest and subsequent criminal case.

Section 2 – Look Inward First

A Necessary Self-Assessment

To lead systemic change—i.e., to move a CCR and the criminal legal system to reduce the number of victims getting arrested and to end the invisibility of victim defendants—as advocates we must have our own house in order. If community-based advocates are to promote effective systems advocacy on behalf of victims of battering charged with crimes, it is important that we examine the philosophic underpinnings (such as mission statements and guiding principles) that guide our organization's work, as well as our current practices.

One place to start is by asking the following overarching question: Is your organization explicit about working with and serving victim defendants? If not, why not?

Appendix 2-A

Advocacy Organization Survey

Whether any exceptions for who an organization serves are explicitly written in mission statements or program descriptions, the reality is that some community-based advocacy organizations exclude victims of battering who have open criminal charges, a recent arrest, or a criminal record. To advocate on behalf of *all* victims of battering, however, means that you cannot limit your services to victims without open or past criminal cases against them. To advocate on behalf of *all* victims of battering means that you will help those who have criminal charges or a record or who are in prison or on parole. It also means working with those who are undocumented or immigrants, have refugee or migrant status, or are trafficked or sexually exploited. It means working with those who have mental illnesses or substance abuse in their lives. Many funders are increasingly expecting concrete evidence that programs are serving all victims in their community. For example, funding under the Violence Against Women Act and sought directly through the U.S. Department of Justice carries specific requirements related to who cannot be excluded from services.[44]

[44] "No person in the United States shall, on the basis of actual or perceived race, color, religion, national origin, sex, gender identity (as defined in paragraph 249(c)(4) of title 18, United States Code), sexual orientation, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under [VAWA], and any other program or activity funded in whole or in part with funds appropriated for grants, cooperative agreements, and other assistance administered by the Office on Violence Against Women." U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights, *Frequently Asked Questions, April 9, 2014 Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of 2013*. The Office on Violence Against Women (OVW) frequently includes similar language in its funding application guidelines. For example, "Activities that Compromise Victim Safety and Recovery: … Procedures or policies that exclude victims from receiving safe shelter, advocacy services, counseling, and other assistance based on their actual or perceived age, immigration status, race, religion, sexual orientation, gender identity, mental health condition, physical health condition, **criminal record**, work in the sex industry, or the age and/or gender of their children." OVW Fiscal Year 2016 Improving Criminal Justice Responses to Sexual Assault, Domestic Violence, Dating Violence, and Stalking Grant Program (also known as the Grants to Encourage Arrest and Enforcement of Protection Orders Program), solicitation released on or about January 7, 2016.

Advocating for and providing services to victims of battering with extremely complicated lives can be extremely challenging. They are often people who are among the most marginalized and most vulnerable to multiple forms of abuse and exploitation. Yet victims of battering with the most complicated lives typically have the least access to advocacy and the kinds of comprehensive services that many organizations can provide or broker. Since victim defendants often have very complicated lives, too often they are denied advocates' problem-solving skills and support in helping to secure such elements of a safe, stable life as emergency shelter, legal services, safety planning, emotional support, housing, child care, and employment.

To look inward first means to evaluate your current advocacy practices and see if it is time to reconsider and/or update them. Through a deliberate evaluation process, you can identify what is working well, areas that need improvement, and gaps in services and advocacy.

It is easy to assume that an advocacy organization is more attentive to victim defendants than may be the reality. A self-assessment requires that you begin by examining the current scope of services and identifying barriers that prevent your organization from working on behalf of victim defendants. The challenges and barriers can be substantial (see *Section 3 – Prepare for Distinct Challenges*). Some organizations face opposition from local police and prosecutors when they support a victim of battering facing criminal charges. Some may face loss of resources because funders resist providing support to anyone charged with a crime, regardless of the circumstances. Advocates may have nonexistent or hostile relationships with defense counsel, thereby limiting a critical resource for victim defendants. All advocacy on behalf of victim defendants—whether individual or systemic—occurs within the limitations of a troubled criminal legal system, as discussed in earlier sections of the Toolkit. Given these realities, it is critical that advocacy programs look inward to identify and overcome—or at least diminish—any current barriers that prevent them from providing full and effective advocacy services for victim defendants. When you can cite your own organization's role in extending services to victim defendants—and the challenges in doing so—you will be in a better position to encourage a broader community and institutional response.

Advocacy Organization Survey

Readers of this Toolkit are most likely already providing or interested in providing advocacy on behalf of victims of battering charged with crimes. *Appendix 2-A* is a survey designed to help community-based advocacy organizations assess current policy and practice. Completing the survey can be an important first step in strengthening and shaping the larger community response to victim defendants.[45]

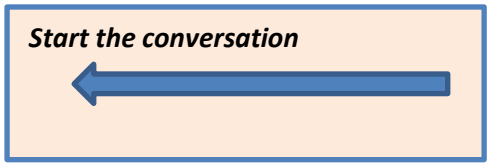
For an organization currently engaged in advocacy on behalf of victim defendants, the survey provides insight into the specific kinds of assistance and connections that are in place—or missing—and the barriers to taking on a more expansive role (if that is the future goal or current plan). If an organization is not currently engaged, the survey helps identify the real or perceived

[45] A version of the survey formatted for Survey Monkey™ is available via the National Clearinghouse at (800) 903-0111, ext. 3, or via ncdbw@ncdbw.org. When possible, staff will also provide the compiled results, including the answers to the open-ended questions (if your program does not have a subscription to Survey Monkey that accommodates a survey of this size and design). The survey is also available as a Microsoft Word document.

barriers and suggests who to connect with and where to begin to define an advocacy role on behalf of victim defendants.

The survey is a tool to help start the conversation about whether, how, and in what ways you are including victim defendants in your advocacy. It can provide the kind of detail that documents current practice and identifies gaps in very specific ways. Regardless of whether you use the survey, you can start the conversation within your organization by asking:

- Who do we advocate for and/or provide services to?
- Are there people/groups of people that we do not routinely advocate for and/or provide services to? If so, why?
- Are there people that we are unable to advocate for and/or provide services to? If so, why?
- Do we know how many victims are battering are arrested in our community?
- Do we know the rate of mutual ("dual") arrest on domestic violence calls in our community?
- What are we currently doing on behalf of victim defendants?
- Do victim defendants reach out to us? Do we reach out to them? If not, why not? If so, at what stage in the criminal case process?
- What are the supports for and barriers to advocacy on behalf of victim defendants?
- Do we have written or unwritten practices, policies, or procedures that limit advocacy services on behalf of victim defendants?
- What does our formal (or informal) mission statement say that is relevant to advocacy on behalf of victims of battering charged with crimes?
- Do we have principles or other guidance that urges us to not discriminate against or exclude victims of battering who may have particularly complex life histories?



It is fine to begin by acknowledging that your advocacy organization has not done much on behalf of victim defendants. That is likely to be true for many organizations. Asking these questions and trying to clarify how you define your work is a good beginning.

It can be beneficial to have several staff complete the survey, rather than relying on a single individual. You might also include board members and other volunteers. By involving advocates and others who are in a variety of roles and have connections in the community—e.g., those who provide legal or economic advocacy, conduct outreach, or facilitate a support group—the survey is a more thorough test of assumptions and perceptions about what is or is not happening on behalf of victims of battering charged with crimes.

Talking about the results together as a staff or organization, rather than leaving them in a memo or printed report, also adds value. For example, you might distribute the survey in advance of a staff meeting or retreat, gather the results, and then discuss each section and its implications together before defining the next steps our organization will take.

Using the Survey Results

With the completed survey in hand—with the conversation about advocacy on behalf of victim defendants started—additional questions will emerge, such as:

- What have we discovered? Were there any surprises?
- Will our organization make any changes? What kind of changes?
- Is there the political will in our organization to increase our work on behalf of victims of battering charged with crimes?
- Are changes needed in how staff positions are assigned to have the flexibility to serve victim defendants? What will be the scope of our advocacy for victim defendants? What is the plan for implementing this advocacy?
- Do we have the resources available to implement the plan?
- What internal and external obstacles might we face?
- How do we begin to implement the plan?

Whether your organization is relatively new to providing advocacy to victim defendants or has a well-established program in place, the survey results will be useful in taking steps to strengthen advocacy on behalf of victims of battering charged with crimes. The survey results can be a catalyst to:

1. Explore leadership and political will.
2. Identify the scope of individual advocacy services and the available or needed resources.
3. Seek out information and tools related to advocacy on behalf of victim defendants.
4. Identify and build relationships with allied groups and individuals.
5. Seek systemic change.

Explore Leadership and Political Will

If you are interested in the questions posed in this section, it is likely that you already have a desire to strengthen advocacy on behalf of victims of battering charged with crimes. Beyond that initial curiosity, however, you need to gauge the breadth and depth of leadership and political will to commit to individual and systemic advocacy on behalf of victim defendants. The survey and related conversation may uncover significant barriers posed by your organization's leadership, funders, community partners, or advocates. What then?

- What if our organization's leadership resists expanding advocacy services to victim defendants?
- What if our organization's staff is eager to engage but key members of the board of directors or other governing body resist?
- What if our organization's staff is reluctant or unprepared to accept system change advocacy as part of its role?
- What if funders say no to our work on behalf of victim defendants?
- What if the prosecutor's office says it will end its working relationship with our advocacy organization?

- What if our organization is reluctant to become more involved with victim defendants, but others in the community want us to do such work?

Addressing such barriers will vary according to the circumstances, the organization, and who is positioned to provide the leadership to build political will. As with any significant aspect of organizational and community change, multiple strategies will be involved. The National Clearinghouse is among the resources available to advocacy organizations seeking to build leadership capacity on behalf of victim defendants.[46]

One concrete way to help leaders and policy-makers better understand why it is important to work with victim defendants is by gathering the data necessary to draw the picture of what is happening in your community (see *Section 4 – Changing Criminal Legal System Practice*). To what extent are victims of battering being charged with crimes? What are their experiences? What stories can you tell to convey the need and urgency?

Tools for advocacy

From the National Clearinghouse:

- *Toolkit Appendix 3-A: Understanding the Impact of Criminal Charges – Increased Risk to Safety and Well-Being for Victims of Battering*
- *Working with Battered Women in Jail: A Manual for Community-Based Battered Women's Advocates*
- *Victimized Again: How the Reentry Process Perpetuates Violence Against Survivors of Domestic Violence*

http://ncdbw.org/

From the Michigan Coalition to End Domestic and Sexual Violence:
Open Doors – Best Practice Toolkit for Working with Domestic Violence Survivors with Criminal Histories

http://www.mcedsv.org/about-us/our-work/open-doors-project.html

Identify the Scope of Individual Advocacy and the Available or Needed Resources

If the political will exists for your organization to do more on behalf of victim defendants, the next task is to think through the type and range of advocacy services you will provide or enhance. Those decisions, in turn, impact the kinds of resources that will be needed. Some level of advocacy may be possible with the staff and other resources currently available. Other services and support may require new resources.

Whether you already provide some level of advocacy and assistance to victims of battering who have been arrested or charged with a crime or whether you are figuring out where to start, you can return to the self-assessment survey (Appendix 2-A) for some direction. The survey asks the essential questions that are necessary to figuring out the scope of advocacy and includes many examples of the kinds of assistance that can be provided to victim defendants.

[46] See Toolkit *Section 5, Resources and References*, for general information on strategizing and messaging, including the Community Toolbox and Frameworks Academy.

Few advocacy organizations are positioned to take on the full range of advocacy services and supports needed by victim defendants throughout the criminal legal system process—from arrest to return after incarceration, appeals, and clemency petitions—as well as needs related to the many collateral consequences resulting from involvement with the criminal legal system. Even though will and commitment may be strong, resources are not unlimited. Therefore, it is important to clarify what your program will and will not do so that victim defendants and others in the community know when it is appropriate to contact your organization for assistance.

There are many questions to be answered in determining the range and depth of individual advocacy services that your organization will provide. Among the core questions:

- Will we serve *all* victims of battering charged with crimes or only individuals where there appears to be a direct relationship between a history of abuse and the crime for which they are charged?[47]
- Does it matter what charges the victim faces? Are there any charges that are "deal breakers" that would prevent us from providing advocacy? If so, what are they?
- At what stages in the criminal case process will we work with victim defendants? Arrest and charging? Trial? Post-sentencing? Return to the community after incarceration?
- Will we visit victim defendants in jail? In prison? Accept collect calls?
- Which advocacy services will we provide directly and which services will we broker or support allied organizations and/or system agencies to provide?

Of the kinds of individual advocacy and support listed in the survey, where could you begin or what could you strengthen? What is ***one thing*** your organization could begin to do now or do differently on behalf of victim defendants? What might a two-year strategic plan for advocacy on behalf of victim defendants look like? A five-year plan?

[47] Sometimes charges that do not seem directly related to a woman's victimization are, in fact, related, particularly charges related to drug and economic crimes. The National Clearinghouse most frequently works on cases that involve victims charged with crimes directly related to their abuse because the history of abuse probably has legal relevance which is pertinent to our work providing technical assistance to legal defense teams. However, we recognize that all victim defendants—regardless of their charges—would probably benefit from advocacy and services.

Seek Information and Tools Related to Advocacy on Behalf of Victim Defendants

Building advocacy and securing an effective and just response for victims of battering charged with crimes is work for the long haul. Meeting the goals presented in this Toolkit[48] requires staying informed of what is happening in the criminal legal system generally, as well as specific issues affecting justice-involved women and victims of battering charged with crimes.

Beginning with the National Clearinghouse, accessible, how-to guidance is available on many aspects of advocacy and change related to victims of battering charged with crimes, from printed material to webinars, websites, on-line publications, electronic newsletters and blogs. *Section 5*, *Resources and References*, provides links to other tools and helps pinpoint those that are most relevant to systems change and advocacy on behalf of victim defendants. National Clearinghouse staff are also available to problem-solve and share additional resources.[49]

Tools to stay informed

Connect with the following organizations to keep abreast of news, resources, and issues related to victims of battering charged with crimes and disparity in the criminal legal system:

- National Clearinghouse for the Defense of Battered Women

  http://ncdbw.org/

- National Resource Center on Justice Involved Women

  http://www.cjinvolvedwomen.org/

- The Sentencing Project

  http://www.sentencingproject.org/

- The Marshall Project

  https://www.themarshallproject.org/

Identify and Build Relationships with Allied Groups and Individuals

Working with victims of battering charged with crimes also requires working with individuals and groups that you may have had little or no relationship with before, or perhaps worked in opposition to in individual cases, such as organizations working on behalf of incarcerated persons or the defense bar. Some allies will be familiar, such as state anti-domestic violence coalitions and other organizations working to end gender-based violence.

Most advocacy organizations work closely with law enforcement and the prosecutor's office, trying to make arrest and prosecution helpful tools for victims of violence. Generally, if a case goes to criminal court, the prosecutor works closely with the victim of battering or sexual assault

[48] Again, the goals of system advocacy on behalf of victim defendants are to: [1] Eliminate inappropriate arrest, charging, and conviction of victims of battering for crimes related to their experiences of abuse. [2] Mitigate the negative impact of criminal legal system intervention on victim defendants. [3] Influence the development of crime and other public policies that minimally "do no harm" to victim defendants and preferably help victim defendants without harming other victims of battering or other defendants. [4] Ensure that victim defendants' experiences of abuse are considered at all stages of the criminal legal process when relevant and helpful to a safe, fair, and just response.

[49] To contact the National Clearinghouse: (800) 903-0111, ext. 3, or via ncdbw@ncdbw.org.

or stalking, while the defense attorney works with the person accused of the crime. The roles are reversed, however, when a victim of battering is charged with a crime: the same prosecutor's office with which the advocacy organization usually works cooperatively will now be prosecuting the victim as a criminal defendant while the defense attorney will be working to defend the victim of battering. To provide comprehensive services to women charged with crimes requires seeking new allies in the community. Because resources are limited, it is even more important to combine the help that is available via our advocacy organizations with the help that might be available in other spheres of community action, such as those providing support to people returning to the community after incarceration or addressing collateral consequences of convictions.

Seek Systemic Change

Individual advocacy support and services clearly benefit individual victims of battering who are charged with crimes. Ultimately, however, the kinds of systemic changes that are the focus of this Toolkit are needed to minimize the number of victims of battering who end up being charged with crimes overall. Among the next steps in advocacy, then, is to pursue systems advocacy via the CCR or other interagency entity that includes the key criminal legal system agencies in your community.

When you come to the table as an advocacy organization that has examined its own practice on behalf of victims of battering charged with crimes, you come with a certain credibility. You can speak to the difficulties, constraints, and fragmentation in what you try to do on behalf of an individual, and the impact of these realities on victims who become defendants. You can speak to the necessity of securing an effective and just response for *all* victims of battering and why it is therefore necessary to include victim defendants. You can speak about why it is important to begin to do this work somewhere, both within our organizations and within the criminal legal system.

Section 3 – Prepare for Distinct Challenges

Effective systems advocacy on behalf of victims of battering charged with crimes requires attention to several distinct challenges, including assumptions about women's use of violence, reliance on the criminal legal system as the primary response to battering, and misconceptions about what it means for advocacy—and a CCR—to have a defense-based perspective. *Section 3* explores these key challenges and suggests strategies for how to address them.

Understanding Women's Use of Violence in Intimate Partner Relationships

When the criminal legal system and the community misunderstand women's use of violence in intimate relationships, victims of battering are more likely to be arrested and charged with crimes and to face compounded risks related to battering and to involvement with the criminal legal system. In our systems advocacy role with a CCR—and in our advocacy on behalf of individual victim defendants—it is essential to address common assumptions about women's use of violence. This section provides a foundation for building our knowledge base about violence in intimate partner relationships, including a discussion of the issue of gender symmetry, the importance of context in differentiating battering from other forms of domestic violence, and links to resources that can help us stay current in identifying and understanding the issues related to women's use of violence and victim defendants.

Strategies to understand women's use of violence in context

- ✓ Ask of research studies and criminal case practice: has context been thoroughly explored? Probe for context in all cases of women/possible victims of battering charged with crimes.
- ✓ Question assumptions and language that present battering as a gender-neutral form of violence.

Battering is neither mutual nor symmetrical

Terms such as "domestic violence" and "intimate partner violence" and "battering" are often used synonymously. In understanding the differences between women's and men's use of violence, however, the distinction between battering and other forms of domestic violence is critical. *Battering* is the patterned use of violence, the threat of violence, and other coercive behaviors to exert power, induce fear, and control and limit the autonomy of an intimate partner (see *Introduction – Language and Definitions*). Not every act of violence against one's partner is an act of battering. While some victims of battering may use violence against their partners, it typically does not mean they are "battering" their partners."[50] While uncommon, some men are battered by their female partners.

[50] Osthoff, "But, Gertrude, I beg to differ . . ."

Claims that women are as violent as men in heterosexual intimate partner relationships—or even more violent—are easily found, however. These assertions are often accompanied by references to studies and the familiar claim that "men are battered, too." Yet for most of us working directly with victims of battering, these claims of parity or mutuality do not fit with what we see and experience. We typically do not find women using strangulation, sexual assault, or stalking against a male partner, especially as or after the relationship has ended. Women are far more likely than men to be victims of lethal violence, severe injury, sexual violence, strangulation, and stalking by their partners or former partners.

We know that both men and women can use violence against an intimate partner and that both men and women can be victims of such violence. Most of the large-scale government-sponsored national studies, however, show that women are far more likely to be victims of intimate partner violence than men[51] and that most intimate partner violence is perpetrated by men.[52] Some smaller studies, however, have concluded that women are as likely, or even more likely, than men to use physical violence against their heterosexual partners.[53] While a number of elements and study designs contribute to assertions such as "equal assault rates" and "women are as physically aggressive or more aggressive than men in their relationships," one or both of two key factors are often involved, including (1) the failure to consider context and severity of the violence and (2) the failure to include sexual violence, strangulation, stalking, and homicide. More specifically:

- Most studies that conclude that women are as violent or more violent than men fail to consider context and severity; they simply count acts of violence without distinguishing between offensive and defensive "hits"[54] or accounting for the history and pattern of violence (and its intent, meaning, and impact) or including information about the severity of the injuries.

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[51] National Violence Against Women Survey(NVAWS) found that more than 1 in 4 adult women reported having been raped, physically assaulted, and/or stalked by an intimate partner, compared with less than 1 in 10 men (conducted 1995-1996). The National Crime Victimization Survey (NCVS) found that about 4 in 5 victims of intimate partner violence were female (conducted 1994 to 2010). The National Intimate Partner and Sexual Violence Survey (NISVS) found that 1 in 4 women have been the victim of severe physical violence by an intimate partner, while 1 in 7 men experienced such violence (2010 report, ongoing). NISVS reports that female victims experience multiple forms of violence, including physical violence, rape, and stalking; male victims most often experience physical violence only. For a comparison of survey findings and methodology, plus links to related documents, see National Resource Center on Violence Against Women, *Apples to Oranges: Comparing Survey Findings from Selected National Surveys on Intimate Partner Violence* (December 2012).

[52] 86.1% of violent crimes against a spouse, and 82.4% of violent crimes against a boyfriend or girlfriend are perpetrated by males. Matthew Durose et al., *Family Violence Statistics, Including Statistics on Strangers And Acquaintances* (2005).

[53] Jon Archer, "Sex Differences in Aggression Between Heterosexual Partners: A Meta-Analytic Review," *Psychological Bulletin* (2000).

[54] The most widely used measure of violence against intimate partners is the Conflict Tactics Scales (CTS; or revised CTS2). While this instrument does measure frequency and severity of violence, it excludes key elements related to context, such as: the meaning and intent of the violence, sexual assault, strangulation, threats to kill (either a partner, child, or other party), and violence after separation or divorce. As a survey based on self-reports, the CTS also excludes homicide, familicide, and homicide-suicide.

- Many of the studies that find similar or equal rates of violence by men and women omit sexual violence, strangulation, stalking, and homicide, which are overwhelmingly perpetrated by men. These studies often do not include threats to kill or violence during separation and divorce.[55]

Context matters

Understanding the distinction between men's and women's use of violence requires attention to definition and context. **Context is the key to differentiating battering from other forms of violence in intimate relationships; counting hits is not enough.**[56] To fully understand the experiences of violence within an intimate relationship, we need to know the ***intended purpose*** of the violence. Is the violence a component in an ongoing pattern of coercive control? Is it self-defense? Is it used to resist an ongoing pattern of coercive control? We also need to know the ***actual impact*** of the violence. When studies include attention to purpose and impact, it is clear that women and men use violence in intimate relationships in different ways. Battering is not symmetrical. For example:

- *PURPOSE:* Men commonly report desire to control their partners as a motivation for violence whereas women report a motive of self-defense.[57] Many women who use violence against their male partners are being battered and are trying to escape further abuse.[58] Women who act violently against their partners are most often victims of battering engaging in active resistance against the battering.[59] Typically, women's use of violence is in response to their own victimization; they are usually trying to defend or protect themselves or their children. When men use violence, they are usually trying to control and dominate their partners.

- *IMPACT:* Women suffer more harm, physically and psychologically, from men's violence than men do from women's violence. They sustain more injuries and more severe injuries. Women experience more ongoing and overlapping concern for their safety,

[55] Molly Dragiewicz & Walter DeKeseredy, "Claims About Women's Use of Non-Fatal Force in Intimate Relationships: A Contextual Review of Canadian Research," *Violence Against Women* (2012).
[56] For discussions of context and distinguishing battering from other forms of domestic violence, see: Osthoff, "But, Gertrude, I beg to differ." Loretta Frederick, *Effective Intervention in Domestic Violence Cases: Context Is Everything* (May 2001). Ellen Pence and Jane Sadusky, *Recognizing and Understanding Battering* (2009).
[57] Kevin Hamberger, Jeffrey Lohr and Dennis Bonge, "The Intended Function of Domestic Violence Is Different for Male and Female Perpetrators," *Family Violence and Sexual Assault Bullet* (1994); Heather Melton and Joanne Belknap, "He Hits, She Hits: Assessing Gender Differences and Similarities in Officially Reported Intimate Partner Violence," *Criminal Justice and Behavior* (2003).
[58] Susan Miller and Michelle Meloy, "Women's Use of Force: Voices of Women Arrested for Domestic Violence," *Violence Against Women* (2006); Suzanne Swan and David Snow, "A Typology of Women's Use of Violence in Intimate Relationships," *Violence Against Women* (2002).
[59] Kevin Hamberger and Clare Guse, "Men's and Women's Use of Intimate Partner Violence in Clinical Samples," *Violence Against Women* (2002).

injury, and trauma.[60] They are more likely than men to respond to violence from an intimate partner with fear.[61] More than 90% of "systematic, persistent, and injurious" violence is perpetrated by men.[62]

Researcher Evan Stark has closely examined coercive control as an essential part of battering. He notes that even if women may report using violence against their partners at similar rates as men—i.e., if pushes, slaps, and hits are counted at similar rates—this does not mean that men are battered at the same rate as women. Stark says that we should not be asking who uses violence but, rather, we should identify how violence functions in relationships to preserve and extend gender inequalities and coercive power by one intimate partner over the other.

"A full appreciation of women's violence," according to Stark, "entails embracing a broader view of what is at stake in abusive relationships, understanding that it is liberty and personhood and the larger rights of women as fully entitled citizens that require defense and our support . . . not merely their physical integrity. This does not mean that we should minimize the suffering of men abused by female partners or the challenges to an equitable partnership posed by the use of force. What is suggests, however, is that we make clearer that we know not only how and why male partner abuse is different than female partner abuse [but that it] merits different forms of policy and intervention. . ."[63]

Resources on the context of battering & intimate partner violence

The National Clearinghouse has an extensive library of articles on women's use of violence, including an annotated bibliography.

http://www.ncdbw.org/

The National Online Resource Center on Violence Against Women (VAWnet), includes related applied research papers.

http://www.vawnet.org/applied-research-papers/

The Northwest Network of Bi, Trans, Lesbian, and Gay Survivors of Abuse explores context from an LGBTQ perspective.

http://nwnetwork.org/

See Toolkit *Section 5 – Resources & References*, for recommended reading and additional links.

Women's use of violence in lesbian relationships

Questions of context are similarly important in considering women's use of violence in same-sex relationships—perhaps even more so because of pervasive assumptions that lesbians are more

[60] Ann Coker et al., "Physical and Mental Health Effects of Intimate Partner Violence for Men and Women," *American Journal of Preventive Medicine* (2002). Barbara Morse, "Beyond the Conflict Tactics Scale: Assessing Gender Differences in Partner Violence," *Violence and Victims* (1995). Centers for Disease Control, *National Intimate Partner and Sexual Violence Survey 2010 Findings* (2011).

[61] Hamberger and Guse, "Men's and Women's Use of Intimate Partner Violence"; Melton and Belknap, "He Hits, She Hits."

[62] National Institute of Justice, *Measuring Intimate Partner Violence* (2010).

[63] Evan Stark is a sociologist, forensic social worker, and award-winning researcher with an international reputation for his innovative work on the legal, policy and health dimensions of interpersonal violence. Evan Stark, "Do Violent Acts Equal Abuse? Resolving the Gender Parity/Asymmetry Dilemma," *Sex Roles* (2009).

likely to equally participate in the violence and that "mutual battering" is common. Again, counting slaps, pushes, and shoves is not enough; it is essential to discover the meaning and impact of the actions.

The point that Evan Stark makes about recognizing how violence functions to preserve and extend power and control also applies in responding to woman-to-woman violence. Here, too, it is essential to embrace a broader view of what is at stake in abusive relationships. A lesbian who is being battered by her female partner experiences that violence within the realities and legacies of sexism and homophobia. She cannot necessarily count on the criminal legal system to see her relationship with accuracy and respect. If she is an LGBTQ woman of color she experiences the violence within the compounding reality of racism, as well. When context is set aside, a 'hit is a hit' and we are unable to determine who is at risk and in what ways.

Individuals attempting to discern violence from battering in same-sex relationships often rely on assumptions about male and female stereotypes in heterosexual relationships to help assess who is the batterer. However, there is no data to support the notion that a more masculine appearing partner is more likely to be the batterer in a same sex relationship. Accurately assessing what is going on in a same-sex relationship can require time and specific knowledge of the dynamics of battering.

There is expanding discussion and research related to all facets of intimate partner violence—including what we define as battering, as well as non-battering forms of violence—in the lives of lesbian, gay, bisexual, queer, and transgender people. The sparse research that exists focuses primarily on lesbian and gay relationships and pays relatively little attention to people who identify as bisexual, transgender, queer, or gender nonconforming. There are indications that "domestic violence happens in same-sex relationships at about the same rate as in heterosexual relationships" or even higher for some LGBTQ people.[64] The National Intimate Partner and Sexual Violence Survey findings, for example, suggest that bisexual women experience the highest lifetime prevalence of rape, physical violence, and/or stalking by an intimate partner when compared to lesbian and heterosexual women and to gay and heterosexual men.[65] Other data suggests that among overall LGBTQ survivors of intimate partner violence, those who identify as young adults, people of color, gay men, and transgender people—particularly transgender women and transgender people of color—are disproportionately impacted by experiences of intimate partner violence.[66]

[64] Mika Albright and DeAnn Alcantara-Thompson, *Contextualizing Domestic Violence from a LGBTQ Perspective* (2011).

[65] NISVS reports the lifetime prevalence of rape, physical violence, and/or stalking by an intimate partner as 61% for bisexual women, compared to 44% for lesbian and 35% for heterosexual. Centers for Disease Control, *NISVS: An Overview of 2010 Findings on Victimization by Sexual Orientation* (2011).

[66] National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence in 2013* (October 2014).

Limitations of the Criminal Legal System as the Primary Response to Battering

The incident-driven criminal legal system was never designed with the patterned nature of battering in mind. It is not surprising that victims of battering charged with crimes often get caught in the middle between one set of expectations—typically carried by advocates—and the actual function of the criminal legal system's intervention, as implemented by its practitioners: police, prosecutors, probation officers, and others. A prevailing message from the advocacy community has been that the criminal legal system can, and should, "hold batterers accountable,"[67] but to do so the system must fully recognize, understand, and account for the dynamics of battering. Calls for "zero tolerance" have swept many victims into the system as defendants when responders focus on individual incidents and fail to look at patterns and context. The criminal legal system is primarily focused on incidents and acts; focused, in a way, on counting hits. Consider:

Advocacy is concerned with battering and how those who use this form of violence:	**Meanwhile, the criminal legal system:**[68]
▪ Establish a pattern of domination that occurs 24/7, day in and day out ▪ Control/exploit their partners over time in many ways beyond physical violence ▪ Use a variety of tactics, some of which are illegal but **most of which are legal** ▪ Rely on systems of oppression and societal inequalities to help them maintain abusive control	▪ Addresses specific incidents and determine if they are legal or illegal ▪ Evaluates "moments in time," not patterns of abusive control ▪ Tends to focus on acts of physical violence ▪ Posits everyone as equal agents under the law, regardless of societal or institutional inequalities

For victims of battering charged with crimes, this contrast means that once arrested, the person most in need of protection and safety is likely to be in an even more precarious place. Victims of battering often find that recognition of the intimidation, coercion, and violence that they have experienced disappears from consideration once they get arrested, as if the battering never existed in their lives. The criminal legal system is concerned with the "offender" and the incident. Yet it is the full context of the violence in a victim defendant's life that must be seen to understand what has occurred and determine what would constitute a fair, just, and protective response. If there is no meaningful advocacy and criminal defense—and if criminal legal system practitioners are unprepared or unauthorized to consider context in their decision-making—a

[67] For critiques of what some have called an over-reliance on the criminal legal system as the primary means of holding batterers accountable see, for example, Dasgupta and Eng, *Safety and Justice for All.* Also, the positions and publications of INCITE! And the papers published in conjunction with the UCLA Law Review Symposium, *Overpoliced and Underprotected.*

[68] Adapted from material developed by the Northwest Network of Bisexual, Trans, Lesbian & Gay Survivors of Abuse. For further discussion, see Morgan Lynn, Kristin Tucker, and Connie Burk, *Proceed! LGBTQ Domestic Violence Legal Toolkit for Advocates* (2013).

victim defendant becomes another generic "offender" who may also be unlikely to get a fair, just, or protective response.[69]

Welcoming a Defense-Based Perspective[70]

Victims of battering charged with crimes are best served when advocates and the larger community understand and support the role of the defense in the criminal legal system. A defense-based perspective is likely to be unfamiliar and uncomfortable ground, however, for some advocates and for many CCR members. As advocates seeking systemic change, we may need to step back and check our assumptions and knowledge about criminal defense work and the rights of defendants.

Strategies to recognize and counteract limitations of criminal law as the primary response

- ✓ Improve competency in making accurate self-defense and predominant aggressor determinations.
- ✓ Increase prosecutorial discretion for dismissing charges against victim defendants.
- ✓ Act from knowledge of the context of actions and mitigating circumstances specific to the nature of battering.
- ✓ Get comfortable with a shift in language and perspective: "i.e., victim defendant."
- ✓ Strengthen defense-based advocacy and criminal legal defense for victims of battering charged with crimes.

A mix of factors contributes to the hesitation, if not strong resistance, to welcoming a defense-based perspective. Such factors include on-going familiarity with the prosecution-based orientation of advocacy, the influence of "court culture," beliefs and assumptions about the role of criminal defense attorneys, and advocates' prior negative experiences with defense counsel representing batterers Those working in the criminal legal system are likely to be wary of treating one person accused of what may appear as the same crime differently from another. Advocates may have become so comfortable working with police and prosecutors—and put so much time into building those relationships—that they are reluctant to challenge decisions that negatively impact victim defendants. Advocates and police and prosecutors are often united in seeing defense attorneys as quintessential "bad guys."

Criminal law as applied to battering also contributes to the disinterest in or resistance to a defense-based perspective by many community-based advocates and others. Utilizing the criminal legal system as a primary response to battering has been so inadequate in many ways that examples of its failure to hold individual batterers accountable are readily found.

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[69] It is important to note that we do not mean to imply that only victim defendants need and deserve advocacy and meaningful criminal defense. As you will see in the next section, "Welcoming a Defense Perspective," we believe that all defendants need and deserve vigorous and competent legal defenses.

[70] This section borrows heavily from an unpublished paper by Cindene Pezzell, Legal Coordinator at the National Clearinghouse. Before coming to the National Clearinghouse in 2008, Cindene worked as a public defender in Philadelphia, PA.

As advocates, many of us have worked with victims who received protection and other help when they turned to the criminal legal system. But we have also worked with victims who found the criminal legal system wholly inadequate when responding to their batterers or to their experiences of being battered. Many of us have seen tremendous harm result, especially when batterers seem to act with total impunity. Some advocates have strong views on what should happen when batterers are convicted of harming their partners, including expectations of lengthy prison sentences and harsh sanctions. Unsurprisingly, then, many advocates have biases and beliefs about "good guys and bad guys" and mistrust the defense bar accordingly. The mistrust of the defense bar may be further strengthened by instances where attorneys representing batterers have used aggressive, highly manipulative, or oppressive strategies. Nonetheless, defendant rights are as essential to a fair and just response for victims of battering charged with crimes as they are for any defendant.

Prosecution-Based Advocacy and "Court Culture"

Most victims of battering involved in the criminal legal system got there because their abusive partners were arrested and charged with crimes. In these cases, the survivor fits the criminal legal system's definition of "victim" (i.e., a person against whom a crime has been committed) or "complaining witness." She is not the defendant. This reality means that most of the work that community-based advocates do in criminal court on behalf of victims of battering is related to prosecution.[71]

Advocates and other CCR members are experienced and comfortable with working to address the needs of survivors in "typical" criminal cases: namely, working with battered women as victims in the customary definition. Longstanding practices related to this type of advocacy are in place in many programs. For example, advocates are likely to be well-versed in court procedure from the victim/complaining witness point of view, including safety considerations in and around the courthouse and the skills and styles of individual prosecutors. Many programs also get specific funding to work with survivors whose partners are being prosecuted for domestic violence.

The connections between advocates and prosecutors contribute to the dynamics of a court culture that often treats community-based advocates as an extension of the prosecutor's office. "Court culture" refers to the day-to-day workings of the participants in a court setting: the judge, court staff, prosecutor, defense attorney, victim-witness specialist (sometimes referred to as a prosecution-based advocate), community-based advocate, defendant, witnesses, and so forth. Even in large urban settings it is common for many of these players to work together daily.

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[71]Community-based advocacy is located in independent, community organizations, in contrast to victim support located in governmental agencies such as a police department or prosecutor's office.
In the context of working to end battering, advocacy is defined "as the specialized practice of empowering and supporting victims and facilitating their safety, recovery, rights, and [self-determination] while also working to reform social institutions, public policy, and community norms." This definition comes from Praxis International and is used with their permission.

Community-based advocates are often present in courtrooms that hear domestic violence cases, usually in support of the prosecutor's complaining witness (i.e., the victim in the crime). This situation naturally involves contact between the community-based advocate and the prosecutor and victim-witness specialist and sometimes between the advocate and the police, as well. These relationships often grow quite collegial, especially for advocates who frequently are present in court. Some advocates sit on the prosecution's side of the court room or behind the prosecutor's table. Often the judge addresses the advocates by name. The court personnel may consult with them regarding a matter involving a complainant. All these actions send messages, whether intended or not. The community-based advocate can appear to be working for the prosecutor—or allied with the prosecutor—rather than standing as an independent advocate who works on behalf of victims of battering. Without having information to the contrary, defense attorneys and defendants, and perhaps others as well, might reasonably assume that the community-based advocate is a member of the prosecutorial team.

Strategies for welcoming a defense-based perspective

- ✓ Within the advocacy organization, *and* within the CCR, reinforce the role of community-based advocacy as working on behalf of victims of battering, independently and distinct from the prosecutor's office.
- ✓ Examine biases and beliefs about criminal defense work and why it is important for social justice to care about defendants' rights.
- ✓ Commit to supporting the tenets of criminal defense on behalf of victim defendants and all defendants.
- ✓ Build relationships between community-based advocacy, criminal defense attorneys, and the CCR.

Criminal court is designed to be adversarial in nature, meaning that the two sides are pitted against each other and a neutral party (a judge or a jury) determines the outcome of a case. This reality and the dynamics of different "teams" of people—i.e., the prosecution team and the defense team, or the "victim's" team and the "offender's" team—make it easy for an "us-and-them" kind of thinking to take hold. Because the complaining witnesses in the large majority of domestic violence cases are usually victims of ongoing battering and defendants are typically their abusive partners,[72] it can be easy for everyone to forget that sometimes the defendants are actually the victims of battering and in need of advocacy and support.

Defense attorneys and others may not realize that community-based advocates are not formally or financially associated with the police or prosecution. Defense attorneys may be therefore unwilling to advise their clients who have experienced abuse to have any communication with advocates. To protect a client's legal interests, some defense attorneys might caution against seeking advocacy, particularly when it is unclear to them what advocates will and will not document and/or share with others. Defense attorneys may assume that because their clients were

[72] It is important to note again that not every intimate relationship in which violence has occurred involves battering. Not all cases that get "flagged" as being domestic violence cases necessarily involve a batterer and a victim of battering. Therefore, it is critical for advocates and others to first evaluate if battering was part of the relationship and, if so, then (and only then) assess who is the batterer and who is the victim of battering.

arrested they are ineligible for community-based advocacy services, whether or not that assumption is accurate.

Criminal defense attorneys may also assume that since advocates often work with complainants, who are witnesses for the prosecution, advocates do not understand or believe in a defendant's right to a fair trial. As a result, defense attorneys may not trust that advocates will be concerned about their client's best legal interests. In our travels around the country, the National Clearinghouse has been pleased to meet with many advocates who care profoundly about defendants' rights. We believe that people who care about social justice need to care about the rights of defendants—as well as victims' rights–and that includes those who are charged with crimes related to violence against women.

Advocates can take the following steps to change this court culture and emphasize their independent role on behalf of victims of battering.

1. Sit away from the prosecutor and outside of the jury box to lessen the likelihood that people will make incorrect assumptions about a community-based advocate's affiliation and loyalties.
2. Check in with any public defender assigned to the courtroom to ascertain if any of her/his clients need the services of a community-based advocate. This practice conveys an advocate's openness to working with victim defendants and creates opportunities for advocates and defense attorneys to collaborate.
3. Share impressions with the defense attorney when something observed in court suggests that a defendant is being battered. Because advocates are well-trained on the dynamics of battering, they may pick up on situations that the defense attorney and prosecutor both miss. Share those impressions first with the defense attorney, not the prosecutor.
4. Avoid giving the impression of participating in courtroom administration. Actions such as answering phones, handing out subpoenas, and even chatting with the bailiff can create the perception that a community-based advocate is working for the court.

Assumptions about "Getting the Bad Guys" and the Role of Criminal Defense

Advocates see firsthand the harm that battering causes and the ways that the harm—and the broad sweep of violence against women—is often discounted by or invisible to the criminal legal system. Because defense attorneys appear alongside and represent people accused of battering and rape in that system—and in the environment of the court culture—criminal defense can be seen as an impediment to justice for victims and accountability of batterers.

There are many people who cannot imagine how and why anyone would want to represent people accused of crimes, particularly violent crimes that cause great fear and damage to victims. Some see defense attorneys as the reason why so many people who harm others are not held accountable for their actions. It is a broadly shared sentiment that defense attorneys do all that they can to turn "bad guys" loose and "put criminals back on the streets." The reality is that defense attorneys have the same interest in the safety and well-being of their communities as everyone else.

Our legal system gives all defendants the right to counsel, counsel who are ethically and legally obligated to advocate zealously on behalf of their clients whether they are guilty or not. Like most advocates and other CCR members, most criminal defense attorneys are dedicated to increasing justice. When someone is charged with a crime, she is subjected to an adversarial court process in which the opposing party is not an individual person, but the local, state, federal, or tribal government. The state can and does use its substantial resources to try to secure a conviction. For example, in a typical homicide trial the state utilizes detectives, prosecutors, paralegals, lab analysts, process servers, expert witnesses, coroners, and other personnel, all of whom work on behalf of the state and bring their collective power to bear against the defendant. Few individual defendants have anywhere close to the state's power or resources.[73] A defense attorney helps remedy this imbalance. Because the consequences of a criminal conviction can be severe and longstanding, the system is designed to give defendants ways to even out the power and resources the state brings to the case. The defense attorney's role is to ensure that an accused person has a full and fair opportunity to present their account of what happened.

The core tenets of criminal defense are as important to victims of battering charged with crimes as they are to any defendant.

- ALL DEFENDANTS HAVE THE RIGHT TO A ZEALOUS AND VIGOROUS DEFENSE. Defendants are entitled by law to challenge the state's evidence against them. Defense attorneys are legally obligated to provide a zealous defense to their clients and failing to do so constitutes a breach of attorney ethics.

- ALL DEFENDANTS ARE INNOCENT UNLESS PROVEN GUILTY. Arrest does not equal guilt. In fact, judges and juries are not allowed to consider the arrest at all. One way to explain this is to say that defendants are covered with a "cloak of innocence." Unless the prosecution presents enough good evidence to convince the judge or jury that the defendant is guilty beyond a reasonable doubt, this cloak does not get removed. The criminal legal system is designed to make it rather difficult to convict someone of a crime because liberty and self-determination are too important to be restricted frivolously or arbitrarily.

- DEFENDANTS HAVE THE RIGHT TO REMAIN SILENT. This means that the defendant is not required to tell her story, though she can if she wants to. This right is more complicated than it seems, but essentially it means that defendants cannot be forced to say things against their own interests. This is important because things that defendants say about what happened can be used against them in criminal court (except statements made privately to their attorneys). For the most part, prosecutors have to prove a crime happen; defendants do not have to disprove it.

- ALL DEFENDANTS HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY. With very few exceptions, defendants have the right to have the costs of a lawyer paid for by the state if they are unable to afford representation. Public defenders are often appointed to represent

[73] It should also be acknowledged that many battered women have the experience that the state does not sufficiently use its power to prosecute their abusive partners. And some defendants—including people who batter their partners—have a great deal of resources to levy against those of the state.

people who cannot afford to hire their own counsel. Public defenders usually cannot pick their cases but must accept the cases assigned to them.

Defense attorneys also help to protect individuals and, as a result, their communities from illegal and/or overreaching actions of the state. When the state arrests someone without probable case, prosecutes a person based on fabricated evidence or a coerced confession, or acts in other ways contrary to the law, a defense attorney's role is to maximize the defendant's chances for as just an outcome as possible.[74]

Giving all defendants the right to a zealous and vigorous defense increases the likelihood that the court will receive all information necessary to make a fair decision about the case. It also means that defendants will be better equipped to confront the tremendous power of the state. These protections are vital for many reasons, including the reality that many people of color, poor people, and lesbian, gay, bisexual, transgender and other marginalized people—many of whom are innocent—are targeted, prosecuted, and convicted. It is also true that some defendants who are acquitted may have done what they were accused of doing. By ensuring that all criminal defendants have the right to skilled counsel who will fight hard for them, however, the pathways to justice for everyone are increased.

The bottom line: Strong relationships between advocates and criminal defense attorneys benefit battered women charged with crimes.

The National Clearinghouse for the Defense of Battered Women is available to think with community-based advocates and defense attorneys about ways to form and strengthen strong working relationships.

215/351-0010 or 800/903-0111, ext. 3

Working with the Defense Bar: What It Means for Victims of Battering Charged with Crimes

How frequently in your community, if ever, are members of the defense bar involved in meetings or initiatives to end violence against women and/or increase justice for victims of battering? In our experience, few communities working to better assist victims of battering include members of the defense bar in their efforts, whether via a formal or informal CCR or other setting. The factors outlined previously—namely, the prosecution-based orientation of advocacy, the influence of "court culture," and beliefs and assumptions about crime and criminal defense work—all contribute to the reluctance of advocates and CCRs to work with defense counsel, and vice versa. It is victims of battering charged with crimes who lose in this situation. When a battered woman is a defendant, she benefits when everyone involved with supporting her works closely together to ensure that their individual efforts are consistent with her best interests and goals and do not jeopardize them.

[74] Such practices by the state are more widespread historically and in certain jurisdictions than the public is aware. For example, see the work of the Marshall Project or the Equal Justice Initiative.

Developing relationships with defense counsel increases the likelihood that individual victim defendants who need advocacy will be identified and referred to appropriate advocacy programs. Such relationships make it more likely that defense attorneys will call upon community programs when they have a client who has or may have experienced abuse.

The structural, historical, and attitudinal barriers addressed earlier have limited the formation of strong working relationships between advocates and CCRs and criminal defense attorneys. While many CCR members may be knowledgeable about and supportive of the role of criminal defense attorneys, there is no shortage of counterproductive assumptions in both directions. Misunderstanding or sometimes outright disdain for one another can prevent building a successful collaborative relationship.

Some CCR members assume that criminal defense attorneys think that most victims/complainants who claim to be battered are probably lying. Others see defense attorneys as motivated only by money and willingness to say or do anything to collect a fee.

For their part, some criminal defense attorneys are suspicious of advocates and other CCR members. They assume that advocates and CCR members are not particularly discerning and always believe complainants, particularly women. Some view advocates as an arm of the prosecutor, whose job is to make sure that the defendant receives the harshest outcome possible. Some defense attorneys may have limited knowledge of battering and how to best defend a woman whose crime is related to her experience of being battered.

Shared commitments to victim-defendants . . . community-based advocates and criminal defense attorneys

- We are on her side, even and especially if nobody else is.
- We are here to help, not to judge her.
- We believe she has the right to access the information she needs to make informed decisions about her life.
- We believe she should be free to live her life without unjust interference by those who have more societal power and privilege than her.
- We believe that everyone should have equal access to safety and justice, and that this access should not limited by racism, sexism, classism, ableism, or any other form of oppression.

Criminal defense attorneys may also have a limited knowledge of the full range of work provided by advocacy programs. They might not understand that community-based programs are staffed by trained advocates committed to increasing safety and justice. When defense attorneys assume that advocacy programs can offer only temporary shelter for battered women trying to escape their abusive partners, they are unlikely to explore how advocacy could be helpful to a client who does not want or need emergency shelter. Some defense attorneys may not understand the nature of battering and coercive control and thereby assume that their clients must show visible injuries in order to qualify for advocacy services. Again, it is victims of battering charged with crimes who lose in an environment that is filled with misinformation and misunderstandings.

Common ground between advocates and defense attorneys

Despite the differences in their roles, community-based advocates and criminal defense attorneys have more in common than either might expect. First and foremost, both have a mandate to serve

the people they are working on behalf of. Advocates and criminal defense attorneys must both use their skills to meet the needs of those they advocate for or represent, as each person defines those needs. When advocates and defense attorneys have clients in common, it falls upon both to fulfill their respective roles in ways that best serve the victim defendant.
Most community-based advocates and criminal defense attorneys—particularly public defenders, attorneys appointed by the court, and those who take pro-bono cases—are committed to the work they do because their efforts have a positive impact on their communities. They wish to serve underserved and marginalized people and groups. They are dedicated to addressing the needs of people who have lost or are at risk of losing liberty, safety, property, or family. They are committed to working hard for people who have been wronged. In short, both community-based advocates and defense attorneys act within their respective roles toward the goal of increasing justice.

Strategies for Bridge-Building

Clarify the role of community-based advocacy

Being clear and transparent about what an advocacy program can offer victim defendants can make a tremendous difference in individual cases and in the defense bar's overall response to victims of battering charged with crimes. If a program's website, mission statement, brochures, and other publications clearly state that it works with *all* victims of battering, including victims charged with crimes, victim defendants and their attorneys are more likely to see it as a helpful and accessible resource. Such visibility requires clarity within the advocacy organization itself about the services it offers, and to whom. (See *Section 2 – Look Inward First*.)

Being explicit about what a community-based advocacy program can offer to victim defendants and to their attorneys—such as court accompaniment, jail visits, and general safety planning—is more useful than a vague offer of assistance. Being explicit can ease the suspicions of defense attorneys who believe that all anti-domestic violence programs are strictly prosecution-oriented. Being clear about what advocates will and will not do (e.g., not talking about the facts of the case and not going to the prosecutor without the defense attorney's approval), can help defense attorneys trust that advocates will avoid practices that could jeopardize a defendant's case. Such clarity about the advocacy role also reassures victims of battering who are facing charges that community-based advocates are a reliable resource. Having strong relationships with advocates provides defense attorneys with more access to information about the risks to safety that their battered clients are facing. Such knowledge can help defense attorneys evaluate and formulate more effective legal strategies and offer more informed legal advice. (See *Appendix 3-A*: *Understanding the Impact of Criminal Charges*.)

The challenge to other CCR partners is to support the community-based advocacy program in defining its role as a resource to victim defendants and their defense attorneys. The initial bridge-building might need to be between advocates and police and prosecutors as much as between advocates and the defense bar. Again, there is nothing in the design, intention, and purpose of a coordinated community response that excludes victim defendants; a just response requires attention to centralizing their safety, as well as that of any other victim of battering. When CCR partners can agree on this shared foundation, work on behalf of victim defendants will be treated

as an acknowledged advocacy role and not grounds for dismissing, punishing, or excluding the advocacy program.

Invite defense attorneys to contribute to the CCR

Inviting a defense attorney to be a member of the board of directors of a community-based advocacy program or to be involved in a coordinated community response can be one way to help community-based advocates and defense attorneys forge strong working relationships. Considering the barriers and misconceptions discussed earlier, it is understandable that advocates might have reservations about this approach, believing that defense attorneys will be able to gain access to information they will use to help their clients who abuse their partners. However, it is hard to articulate any secrets that defense attorneys could really use to benefit batterers that would emerge in settings that are primarily oriented to improving services and the system-wide responses to battering. Relationship building is not the only benefit to this more open invitation. A defense attorney will likely bring a unique perspective that could be helpful to the advocacy program and to the CCR. Input from a defense-based perspective can help ensure that services are relevant and helpful to a broader spectrum of people, including those involved in the criminal legal system as defendants, and that the community response is competent, fair, and grounded in an understanding of battering.

Victims of battering who are charged with crimes are better served when criminal defense attorneys are part of a community's CCR. Like all members of a CCR—advocates, police, prosecutors, other practitioners—defense attorneys have a distinct role to play.

Start by talking

One-on-one meetings may be a good place to start. Perhaps there is a public defender or private defense attorney who is known to have a good understanding of domestic violence or perhaps the public defender has attorneys assigned to domestic violence cases. Connecting with the defense bar in an organized, thoughtful way can provide advocates a chance to explain what services they provide to defendants and reassure counsel that they will not discuss the facts of a specific case with the defendant or go to the prosecutor about the case without first checking in. (See Toolkit *Appendix 3-A: Understanding the Impact of Criminal Charges*.)

Meetings with defense attorneys can also create opportunities to strategize about ways to make sure that battered defendants are identified as early in the process as possible. Many victims of battering who are charged with crimes have never worked with an advocacy program or an advocate before. Defense attorneys can help to bridge the gap between underserved survivors and community-based advocacy programs.

A meeting between the advocacy program director, key CCR partners, and the chief public defender could provide an opportunity to communicate the advocacy program's commitment—and the CCR's commitment—to enhancing the response to victim defendants, highlight common safety issues faced by victims of battering charged with crimes, and dispel any misconceptions the chief public defender may have about anti-domestic violence advocacy or the CCR. The more opportunities for community-based advocates, the CCR, and criminal defense attorneys to talk with one another, the easier it will be to achieve a just and protective response when a

battered woman is charged with a crime. And the easier it will be to include criminal defense attorneys in the CCR.

Shared training

While some defense attorneys know a lot about battering and its effects, others may have had little to no training about the nature and impact of battering. Some defense attorneys' knowledge-based about "domestic violence" may have come almost exclusively from the batterers they have represented in the past. Others may believe some of the prevalent myths and misconceptions about victims of battering (e.g., that it is easy to leave, that leaving ends the violence, or that it is just a problem of a dysfunctional relationship). If the victim is charged with a crime as the result of using violence against her partner, the attorney may think that "she gives as good as she gets." Defense attorneys know that there are direct and collateral consequences for people with criminal convictions, but some of them may not understand the damaging short- and long-term consequences that victims of battering face. Similarly, some community-based advocates know a lot about the criminal legal process, criminal law, and the defense bar, but many do not. Both defense attorneys and advocates have much to learn from each other that can help each group work more effectively with victim defendants—and with each other.

Training can be formal or informal. It can be conducted via two-hour or four-hour or day-long sessions or a ninety-minute webinar. The following kinds of events illustrate the range of shared training that can occur between advocates, CCR partners, and defense attorneys around issues related to victims of battering charged with crimes:

- Hold informal discussions, such as a brown-bag lunch series, on key topics: the characteristics of battering, the community's response to domestic violence, principles of community-based advocacy, and principles of criminal legal defense.
- Invite public defenders to address what they see as the primary barriers to successful change for their clients, both in general and specific to those convicted of domestic violence-related crimes.
- Hold a case-study-based workshop to explore issues and strategies related to successful advocacy and a successful defense for victims of battering charged with crimes.
- Participate in and discuss webinars conducted by the National Clearinghouse. Present an archived webinar at a joint meeting and conduct a follow-up discussion.

Training helps expand understanding about respective roles and similar goals and motivations related to justice and safety for victims of battering.

None of the bridge-building suggestions outlined above will yield overnight results. Over time, however, they can support meaningful connections between community-based advocates, other CCR partners, and defense attorneys. Working together to help one another advance the shared goal of achieving just results strengthens and enhances the community's response to victim defendants.

Section 4 – Changing Criminal Legal System Practice

As advocates, we want to see victims of battering kept out of the criminal legal system as defendants in the first place. This goal requires attention to criminal legal system practice and where changes can be made. When a victim of battering is charged with a crime, we want to see a criminal legal system that recognizes the wide reach and impact of battering and intervenes in ways that strengthen their safety and well-being.

This section presents tools and strategies to help meet the goals of systems advocacy defined in the *Introduction*. Again, to centralize safety and well-being for *all* victims of battering, we seek systemic change to:

1. Eliminate unwarranted arrest, charging, and conviction of victims of battering for crimes related to their experiences of abuse.
2. Mitigate the negative impact of criminal legal system intervention on victim defendants.
3. Influence the development of crime and other public policies that minimally "do no harm" to victim defendants while balancing justice for victims *and* defendants in the criminal legal system.
4. Ensure that victim defendants' experiences of abuse are considered at all stages of the criminal legal process when relevant and helpful to a safe, fair, and just response.

Learn What Is Happening in Your Community

Whether a formal or informal coordinated community response exists—or whether there is little in place that resembles a CCR—effective systems advocacy requires that we collect information about what is happening within the criminal legal system, build relationships with key people and decision-makers, begin to challenge and change established practice on behalf of victims of battering charged with crimes, and include those most impacted in the change process (i.e., include victim defendants who have been arrested, charged, incarcerated, and otherwise subject to state control). How far and how fast change happens depends on many factors and local conditions. It all begins, however, by asking some basic questions.

To figure out ways of responding more effectively and justly to victims of battering who end in the system as defendants, you will need to know what is happening. Gathering data about victim defendants and understanding current practice are essential steps. The process of identifying the strengths and weaknesses of your community's response to victim defendants can also help build relationships with key allies and pinpoint the problems to address.

Here are a few of the kinds of questions you will want to answer about current practice in your community. Some of the questions may have been answered in the advocacy organization survey included in *Section 2*. Some will be expanded upon and others explored in looking closer at aspects of the criminal legal system process.

- What do you know about victims of battering charged with crimes?
- Who is getting arrested for crimes related to intimate partner violence?
- Can you compare across years? Identify trends?
- When victims of battering are arrested, what happens after the arrest? What are the charges? Are these single arrests or dual arrests?
- How are responding officers interpreting probable cause, self-defense, and dominant aggressor?
- Does the prosecutor formally or informally screen to see if the defendant is a victim of battering? How does that happen?
- If the prosecutor determines that the defendant is a victim of battering, what happens? Do they proceed differently?
- Does probation formally or informally screen for a history of battering? How does that happen and when (presentence and ongoing probation supervision)?
- If probation determines that the defendant is a victim of battering, what happens? Do they proceed differently?
- When and how are victim defendants connected with legal representation and defense-based advocacy?
- Do batterer intervention programs routinely screen to determine whether the person sent to them is a victim of battering? What happens if the program determines that the person is a victim of battering?
- Is there an alternative (to batterer intervention programming) for victims of battering who are ordered to "treatment"?

Section 4 includes a variety of tools to assist in gathering and analyzing the information that will help answer these questions.

Appendix 4-A: Securing a Fair and Just Response to Victims of Battering Charged with Crimes

Appendix 4-A provides a reference to elements in the criminal legal system response that, if in place, help secure a fair and just response to victim defendants and keep victims of battering from being charged with crimes, to the fullest extent possible. It is a snapshot of the kinds of change that systems advocacy seeks from CCR partners and criminal legal system agencies.

Appendix 4-B: Collecting the Numbers

This data collection workbook guides the assembly and analysis of basic statistical data related to victims of battering charged with crime, such as arrest, prosecution, sentencing, probation, and incarceration numbers.

Appendix 4-C: Learning from Victims of Battering Charged with Crimes

Appendix 4-C addresses ways of discovering what is happening for victims of battering charged with crimes by talking with them via individual and group interviews and by drawing on the connections that advocates and others in the community have with victim defendants.

Appendix 4-D: Reviewing the Cases

Whenever possible, reviewing cases provides a window into criminal legal system practice and the extent to which it pays attention to or misses the reality of battering in the lives of victim defendants. This tool outlines an approach and provides links to resources on the case review process.

Appendix 4-E: Analyzing Current Practice

This tool provides a template for summarizing what has been learned from collecting statistical data, talking with victims, reviewing cases, and the ongoing dialogue that advocates and CCR partners contribute to the analysis of what is happening for victims of battering charged with crimes. Appendix 4-E helps organize everything that has been learned and gauge the kinds of changes that might be needed at different points in the criminal legal system process.

Praxis International has developed a method of Institutional Analysis and related tools that can be used to analyze community practice and discover problems that lead to victims of battering being charged with crimes. These include the *Praxis Safety & Accountability Audit* and various best practice assessment tools, guidance, and tools for conducting focus groups, collecting and analyzing data, and identifying solutions (available for free download or purchase.)

www.praxisinternational.org
Institutional Analysis Program

Together, the tools in *Section 4* help analyze current practice, identify problems, and position a community to make the changes and corrections that will best serve *all* victims of battering.

An advocacy and CCR partnership to gather information

As advocates, we do not collect or hold all the information needed to draw a complete picture of what is happening in our communities. We are well-positioned to learn directly from victims of battering about their experiences with the criminal legal system, which is a critical foundation for understanding. We may have little access to statistical data, however, beyond general information about domestic violence-related arrests and we are unlikely to be regularly involved in any case review process.

The tools presented in *Section 4* assume that you will partner with the CCR and/or key system agencies to gather and analyze information about what is happening for victims of battering charged with crimes. It may be that the CCR and/or system agencies themselves have little data about domestic violence-related cases in general and even less about those involving victim defendants. It may be that they resist your involvement as advocates in viewing and analyzing the data that they do collect. Whatever the circumstance, as advocates you can talk with victim

defendants and begin to identify what is happening in your community from their perspectives (see *Appendix 4-C: Learning from Victims of Battering Charged with Crimes*).

Cautionary notes about anecdotal information and numbers

We often hear anecdotally that many advocates recognize a problem in their community with victims of battering being arrested for resisting the violence they live with. As advocates, we see that the criminal legal system often misses or discounts the impact of battering. Such impressions may be accurate, but policy and practice needs to rest on more than an anecdote or hunch. We cannot assume that all women who are arrested for allegedly assaulting their partners are battered, although research indicates that a large percentage are likely to have been battered by the "victim" in the arrest incident.[75]

Numbers alone are not enough. Statistical data is an essential starting point and trying to gather it is often an eye-opening exercise for a CCR. Trying to count certain kinds of cases can immediately reveal gaps in information about victims of battering charged with crimes, the overall numbers of domestic violence-related arrests, and whether there is a system organized to collect and track key information. It would be rare for statistical data to include a breakdown of which arrestees are victims of battering. The more complete picture of what is happening for victim defendants is drawn from a combination of sources: statistical data, victims/survivors' lived experiences, and studying how victims of battering end up in the criminal legal system as cases and what happens as those cases are processed.

What Kind of Change at What Point?

No single change can address the complexity of circumstances that victim defendants face individually or the complexity of the larger criminal legal system response. Key changes at key points in the system's response—from the 911 call, to the police response and the legal case (if there is one), to what happens during and after incarceration—and systematic attention to making those changes, can decrease the number of victims of battering who end up in the system as defendants and provide a safer and more just response to those who do. Whether via a formal CCR or other commitment to interagency change, a community can increase justice to *all* victims of battering by taking steps at major points of intervention to change the response.

As advocates, we do not determine the policies and practices of each agency within the criminal legal system. It is through our *systems advocacy* role that we seek to influence the ways that institutions and related systems respond to victims of battering charged with crimes. In systems advocacy on behalf of victim defendants we focus on the CCR or similar entity. Where that kind of interagency coordination does not exist, we can focus on individual steps or agencies within the criminal legal system where securing changes in policy and practice might be most effective.

[75] Miller and Meloy, "Women's Use of Force."

Securing a Fair and Just Response for Victims of Battering Charged with Crimes

A safe, fair, and just response to victim defendants requires a system-wide framework that includes the following elements:

- ***Advocacy and services in all parts of the system***
  Victims of battering connect with defense-based advocacy at each point in the criminal legal system process, from arrest to post-conviction.

- ***Attention to specific risks and context of battering***
  Practitioners recognize that not all violence between intimate partners is the same and that not everyone who uses violence against an intimate partner is a batterer. They apply this understanding to reduce the number of victim defendants and to provide meaningful services for those in the system.

- ***Access to competent legal counsel***
  Defense attorneys address the nature and impact of battering as it is relevant to the defense of victims of battering charged with crimes. They are connected and consult with community-based advocates. The CCR supports the role of competent defense counsel for victims of battering charged with crime.

- ***Oppression-informed***
  Policy and practice recognize and ameliorate the structural nature of oppression and how it manifests in relation to race, class, gender, sexual orientation, ability, and other classifications and produces historical trauma experienced across generations by targeted communities.

- ***Trauma-informed***
  Policy and practice recognize and ameliorate the harmful physical, psychological and emotional impacts of trauma related to the violence, abuse, and other highly distressing life events and circumstances experienced by victims of battering charged with crimes.

- ***Language access***
  At all steps in the criminal legal system process, victims of battering charged with crimes can communicate in their first or primary language.

- ***Disaggregated data collection***
  Data is regularly collected, pulled apart, analyzed, and reported in ways that make it possible to evaluate the impact of policy and practice and any disparity in response according to race, ethnicity, gender identity, sexual orientation, and economic or employment status.

Appendix 4-A: *Securing a Fair and Just Response*, provides a snapshot of recommended practices for each key stage in the criminal case process. These specific recommendations are listed under the key elements outlined above as a reminder of the importance of this overarching framework in guiding change.

The recommended practices draw on wide-ranging sources, including those specific to domestic violence and, in some instances, to criminal legal system practice in general.[76] The actions needed to make the changes included in Appendix 4-A may involve relatively simple and straightforward revisions to policy or training at relatively little cost. Or, they may require legislative action or an entirely new program or protocol. In some communities, the CCR will be highly influential in promoting change across the criminal legal system. In others, the CCR may have far more limited impact on a few agencies. As advocates, some of us have years of systems advocacy experience and influence behind us while others are new to the work. Local conditions and circumstances vary greatly and influence the kind of action needed in any one community accordingly.

The overarching elements and specific practice recommendation in *Appendix 4A: Securing a Fair and Just Response* are aspirational. Your community is unlikely to be able to make all these changes at once. Use the information in the appendix as a kind of cue card to the sorts of change that you can look for and encourage in your CCR partners and throughout the criminal legal system.

Building Community Will for Change

It would be a unique community-based advocacy organization that could lead a CCR to take on all the questions, activities, and changes presented in this Toolkit at once. Changing criminal legal system practice has many dimensions and it would be a rare community that was positioned to address every circumstance faced by victims of battering charged with crimes. Will CCR members even agree that there are problems with what is happening for victim defendants? Will the staff and board of the advocacy organization even agree? Does the system or agency where someone works influence opinions about the system's response, as well as what gets identified as a problem?

As advocates who are calling attention to the needs of victims of battering charged with crimes and seeking systemic change, part of your role is to build community will to examine and address the criminal legal system response. You might start with a few compelling stories and by collecting basic numbers about who is getting arrested. Perhaps you proceed from there to pick a week or a month to take a close look at the nature of every intimate partner case that resulted in the arrest of a woman. Or, perhaps you can engage the CCR in supporting a series of surveys and/or discussion groups with victim defendants. Perhaps a first step is to bring a diverse group of community-based advocates and those working with women in jails and prisons to address the CCR and convey what they are hearing and seeing. There is no perfect starting point. Toolkit *Section 4* provides an array of starting points and tools. The essential first step, however, is to begin somewhere in ways that make sense for your systems advocacy, CCR, and distinct local conditions.

[76] See Toolkit *Section 5* for sources of the recommended practices included in *Appendix 4-A.*

Section 5 – Resources and References

Section 5 provides links to publications and other tools relevant to working with victims of battering charged with crimes. It includes resources specific to coordinated community response, criminal legal system intervention in domestic violence, and examples of the ways in which different jurisdictions have tried to address issues related to victims of battering charged with crimes. *Section 5* also recaps the references and citations included throughout the Toolkit, many of which are available online (see Works Cited).

National Clearinghouse for the Defense of Battered Women

Founded in 1987, the National Clearinghouse for the Defense of Battered Women (National Clearinghouse) is a resource and advocacy center for victims of battering charged with crimes and for community-based advocates and others seeking to change the criminal legal system response. The National Clearinghouse advocates to increase justice and prevent further victimization of people who have been arrested, convicted, or incarcerated for crimes related to the battering they have experienced.

Individualized technical assistance

Of the victims of battering who reach out to the National Clearinghouse, most are battered women who have defended themselves against life-threatening violence at the hands of their abuser and have been charged with assault or homicide. The National Clearinghouse also assists in cases where women have been coerced into crime by their abuser, are charged with a crime related to "failing to protect" their children from their abuser's violence, or are charged with "parental kidnapping" after fleeing to protect themselves or their children from their abuser. Most cases involve a direct nexus between the victim's experience of abuse and the actions that led the victim to be charged.

The National Clearinghouse does not provide direct representation to individuals. Rather, staff provide customized technical assistance to victims of battering charged with crimes and to members of their defense teams (e.g., defense attorneys, advocates, expert witnesses and others). Assistance is available at any stage of the legal process—pre-trial, when the case is on appeal, and, in limited circumstances, during post-conviction proceedings—to increase the likelihood of a fairer and more just outcome.

If you are working on a case that involves a battered victim of battering charged with a crime, please call the National Clearinghouse at 800/903-0111, ext. 3 or 215/351-0010.

Systems advocacy

The National Clearinghouse is the first and only national organization that focuses exclusively on victims of battering charged with crimes. It works to increase public awareness about the many complex issues facing victims of battering who end up charged with crimes and to build alliances among national, statewide, and local organizations and individuals to reduce and eliminate injustices facing victim defendants and incarcerated victims of battering.

National Clearinghouse staff conduct training seminars for members of the criminal justice and advocacy communities and for the public regarding the unique experiences of victim defendants. The resource library contains a comprehensive collection of articles, case law, litigation materials, and legislation relevant to victims of battering who find themselves in conflict with the law.

For relevant resources and publications, please visit the National Clearinghouse's website: http://www.ncdbw.org/.

If you cannot find the resource you are looking for on the website, please contact the National Clearinghouse for additional information, via phone at 215/351-0010 or email at ncdbw@ncdbw.org.

Changing the Criminal Legal System Response

In addition to the National Clearinghouse's decades of experience, many other sources have contributed to developing this Toolkit and its recommendations. The following materials are of note in relation to changing criminal legal system practice, particularly as addressed in *Appendix 4-A: Securing a Fair and Just Response.*

- *Women's Experiences of Abuse as a Risk Factor for Incarceration: A Research Update.* Melissa Dichter, in consultation with Sue Osthoff. VAWnet Applied Research, National Resource Center on Domestic Violence, July 2015. http://vawnet.org/material/womens-experiences-abuse-risk-factor-incarceration-research-update

- *Ten Truths that Matter When Working with Justice Involved Women.* Edited by Becki Ney, Rachelle Ramirez, and Dr. Marilyn Van Dieten. National Resource Center on Justice Involved Women, April 2012. http://cjinvolvedwomen.org/wp-content/uploads/2015/09/Ten_Truths_Brief.pdf

- "Interventions with Victims of Battering as Suspects or Defendants." Training memo supplement to the *Blueprint for Safety: An Interagency Response to Domestic Violence Crimes*, Praxis International, 2010. http://praxisinternational.org/wp-content/uploads/2016/02/BPSupp1CTrainingMemo-InterventionwithVictimsDec2012.pdf.

- *Victim-Defendants: An Emerging Challenge in Responding to Domestic Violence in Seattle and the King County Region*. Meg Crager, Merril Cousin, and Tara Hardy. King County Coalition Against Domestic Violence, April 2003. http://www.kccadv.org/reports/victim-defendant-reports/victim-defendant-report/

- "When Battered Women Are Charged with Crimes: What's a Community to Do?" Symposium presentation by Andrea Bible and Sue Osthoff. *Are We There Yet? Commemorating the Past, Creating the Future*, Seattle, WA, September 11-12, 2009.

- "Enhancing the Response of the Justice System: Criminal Remedies." Chapter 4 in *Toolkit to End Violence Against Women*, National Advisory Council on Violence Against Women, 2001. https://www.ncjrs.gov/pdffiles1/206041.pdf

Disparity and the Criminal Legal System

The following sources have been helpful in thinking about victims of battering charged with crimes and the broader issues of disparity in the criminal legal system and state violence, including the experiences of people of color as well as immigrant and undocumented survivors.

- Converge! Reimagining the Movement to End Gender Violence. 2014 University of Miami Law School Symposium. The symposium papers and transcripts of presentations are published in the *University of Miami Race and Social Justice Law Review*, Summer 2015. http://repository.law.miami.edu/cgi/viewcontent.cgi?article=1032&context=umrsjlr

- Overpoliced and Underprotected: Women, Race, and Criminalization. 2012 UCLA Law Review Symposium. https://maximinlaw.wordpress.com/2012/09/02/symposium-articles-published-ucla-law-review-overpoliced-and-underprotected-women-race-and-criminalization/

- "From Private Violence to Mass Incarceration: Thinking Intersectionally About Women, Race, and Social Control," Kimberlé W. Crenshaw, 2012. http://www.uclalawreview.org/pdf/59-6-1.pdf

- *Safety and Justice for All: Examining the Relationship between the Women's Antiviolence Movement and the Criminal Legal System*, MS. Foundation for Women, 2003. Based on the meeting report by Shamita Das Dasgupta and summary by Patricia Eng. http://www.ncdsv.org/images/Ms_SafetyJusticeForAll_2003.pdf

- *Arrested Justice: Black Women, Violence, and America's Prison Nation.* Beth Richie, 2012. Also by Beth Richie, *Compelled to Crime: The Gender Entrapment of Battered Black Women*, 1996.

- Survived and Punished: http://www.survivedandpunished.org/

  Survived and Punished is a national organizing project to end the criminalization of survivors of domestic and sexual violence. They work for the immediate release of survivors of domestic and sexual violence and other forms of gender violence who are imprisoned for survival actions, including: self-defense, "failure to protect," migration, removing children from abusive people, being coerced into acting as an "accomplice," and securing resources needed to live. *Survived and Punished* was formed by a coalition of feminist anti-prison advocates and defense campaigns to build a larger movement to support criminalized survivors and abolish gender violence, policing, prisons, and deportations. *Survived and Punished* is made up of a coalition of the following freedom campaigns and anti-violence organizations: Free Marissa Now (FMN) Mobilization

Campaign, Love & Protect (L&P), Stand with Nan-Hui (SWNH) and the California Coalition for Women Prisoners (CCWP).

- National Resource Center on Justice Involved Women: http://cjinvolvedwomen.org/

  Provides guidance and support to criminal justice system professionals and others seeking to address the unique and complex needs of justice system-involved women, with the goal of reducing the number and improving outcomes for women. NRCJIW develops policy briefs and tools, serves as a clearinghouse for policies and practice tools, and provides a forum for discussion among experts, policymakers, and practitioners.

- The Sentencing Project: http://www.sentencingproject.org/

  The Sentencing Project is a primary source for information about the U.S. criminal justice system and issues of sentencing policy reform, addressing unjust racial disparities and practice, and advocating for alternatives to incarceration. It publishes a range of fact sheets and research papers, with specific attention to incarcerated women and girls.

- The Marshall Project: https://www.themarshallproject.org/

  A nonprofit news organization, the Marshall Project investigates and reports on issues related to the U.S. criminal justice system, with a goal of creating a sustaining "a sense of national urgency" about issues of fairness and justice. Its coverage often pays attention to gender violence and routinely examines how poverty impacts experiences in the criminal justice system and how the collateral consequences of arrest or conviction impact economic, family, and community stability.

- National Immigration Project of the National Lawyers Guild: https://www.nationalimmigrationproject.org/

  The National Immigration Project of the National Lawyers Guild provides links to resources for immigrant survivors facing criminal charges or convictions and technical assistance to its members who are representing immigrant survivors. The Guild's resources include guides to immigrant rights related to arrests and convictions, plus information on U-Visas and the Trafficking Victims Protection Act.

Context and Intimate Partner Violence

The National Clearinghouse has an extensive library of articles on women's use of violence, including an annotated bibliography. Access at http://www.ncdbw.org/.

The National Online Resource Center on Violence Against Women (VAWnet), includes a wide range of applied research papers, including the following related to context and intimate partner violence.

- *Are Heterosexual Men Also Victims of Intimate Partner Abuse?* Joanne Belknap and Heather Melton, March 2005. http://vawnet.org/sites/default/files/materials/files/2016-09/AR_MaleVictims.pdf

- *Towards an Understanding of Women's Use of Non-Lethal Violence in Intimate Heterosexual Relationships*. Shamita Das Dasgupta, February 2001. http://vawnet.org/sites/default/files/materials/files/2016-09/AR_Womviol.pdf

- *Measuring the Extent of Woman Abuse in Intimate Heterosexual Relationships: A Critique of the Conflict Tactics Scales*. Walter DeKeseredy and Martin Schwartz, February 1998. http://vawnet.org/sites/default/files/materials/files/2016-09/AR_Ctscrit_0.pdf

Intimate Partner Violence and LGBTQ Communities

The Northwest Network of Bi, Trans, Lesbian and Gay Survivors of Abuse (The Northwest Network) provides webinars, training, advocacy tools and onsite technical assistance related to domestic violence within LGBTQ communities, including attention to survivors who use violence. Access at: http://www.nwnetwork.org./

- *Contextualizing Domestic Violence from a LGBTQ Perspective.* Mika Albright and DeAnn Alcantara-Thompson. The Northwest Network, 2011. https://nwnetwork.squarespace.com/s/2011-Intersections-in-Practice-Article.pdf

- *Proceed! LGBTQ Domestic Violence Legal Toolkit for Advocates*. Morgan Lynn, Kristin Tucker, and Connie Burk. The Northwest Network, 2013. https://static1.squarespace.com/static/566c7f0c2399a3bdabb57553/t/566c9c7c2399a3bdabb697bf/1449958524134/NWN-LegalToolkit-2013.pdf

Other useful resources include:

- *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence in 2015*. Report from the National Coalition of Anti-Violence Programs, 2016. https://avp.org/wp-content/uploads/2017/04/2015_ncavp_lgbtqipvreport.pdf

- *Culturally Competent Service Provision to Lesbian, Gay, Bisexual and Transgender Survivors of Sexual Violence.* Sabrina Gentlewarrior with contributions from Kim Fountain. VAWnet Applied Research. September 2009. http://vawnet.org/sites/default/files/materials/files/2016-09/AR_LGBTSexualViolence.pdf

- *Lesbian, Gay, Bisexual and Trans (LGBT) Communities and Domestic Violence: Information and Resources – Statistics.* Mary Allen. National Resource Center on Domestic Violence, 2007. http://vawnet.org/sites/default/files/materials/files/2016-08/NRC_LGBTDVStatistics.pdf

Applied Examples
Jurisdictions Working to Change the Response to Victims of Battering Charged with Crimes

The following resources include local community projects and projects by statewide anti-domestic violence coalitions. It is not complete list, but illustrates the different efforts and resources developed around the country. If you have additional examples to offer, please contact the National Clearinghouse.

Cleveland, OH

Cleveland has a Dedicated Domestic Violence Docket and a Deferred Judgment Initiative. The Deferred Judgment Initiative is a screening process that identifies first-time defendants considered unlikely to offend again, seeking to differentiate between batterers and victims of ongoing battering. In a 2009 podcast sponsored by the Center for Court Innovation, Judge Ronald B. Adrine talks about differentiating between defendants who are habitual batterers and defendants who are one-time perpetrators (such as those acting in self-defense).

- Listen to the podcast at www.courtinnovation.org/Podcasts/Ronald_Adrine.mp3.
- Read the transcript at http://www.courtinnovation.org/research/challenges-differentiating-among-domestic-violence-offenders-podcast?url=research%2F7%2Finterview&mode=7&type=interview&page=1.

Cumberland County, ME

Portland-based Family Crisis Services established the Incarcerated Women's Program after conducting a study in 2002 and learning that approximately 95% of incarcerated women were currently or previously in an abusive intimate relationship. The program offers facilitated educational support groups in the Cumberland County Jail and the Maine Correctional Center. It also provides one-on-one discussions with incarcerated women, information and referrals, and safety planning for release.

- Find information about the program at http://familycrisis.org/incarcerated-womens-program/.

Denver, CO

Elephant Circle works on a broad range of issues related to birth and reproductive justice. Its projects include a group for incarcerated survivors at Denver Women's Correctional Facility and development of anti-shackling legislation to support and protect women who give birth while incarcerated.

- Find information about the organization at http://www.elephantcircle.net/.

Duluth, MN

The Duluth City Attorney's Office, in conjunction with advocates and other criminal legal system practitioners, created a process for addressing issues presented by domestic violence defendants who are also battered women. A monograph by prosecutor Mary Asmus tells the story of how they did this: *At a Crossroads: Developing Duluth's Prosecution Response to Battered Women Who Fight Back* (January 2007). It also offers a firsthand account of how institutional change can happen in the criminal legal system.

- Download the monograph at http://www.bwjp.org/resource-center/resource-results/at-a-crossroads-developing-duluth-s-prosecution-response-to-battered-women-who-fight-back.html.

King County / City of Seattle, WA

The Coalition Ending Gender-Based Violence (formerly the King County Coalition Against Domestic Violence) has a Victim-Defendant Project that focuses on domestic violence defendants who are also victims of ongoing abuse. The project's goal is to provide information that can help increase access to justice and support for all domestic violence survivors who are accused of committing domestic violence-related crimes. The Coalition has published several excellent reports, developed resource materials, and created tools that can be used by survivors charged with crimes as well advocates working in a community or systems capacity. *Victim-Defendants: An Emerging Challenge in Responding to Domestic Violence in Seattle and the King County Region* (2003) is written for practitioners and policy-makers in criminal justice and community-based agencies who share the National Clearinghouse goal of ensuring safety, justice, and support for victims of battering charged with crimes. The Victim-Defendant Project has created other practitioner-specific materials, including:

- For advocates: *Steps in a Criminal Case, FAQs for Advocates on Defense Attorneys* and *Building Relationships with Defense Attorneys*
- For defense attorneys: *FAQs for Defense Attorneys about Community Advocates* and *Building Relationships with Community Advocates*
- For judges: *Issues to Consider for Judges* report. Additionally, they include a summary of a survey thy conducted in 2009 on *Current Practices in Responding to Victim-Defendants in Seattle and King County*

- Download materials from the Victim-Defendant Project at http://www.kccadv.org/reports/victim-defendant-reports/.

New York City

STEPS to End Family Violence (a program of Edwin Gould Services for Children and Families) provides alternatives to incarceration, court-based programs, support for returning to the community, and other services to incarcerated women with histories of violence and abuse.

- Find information about STEPS at http://www.egscf.org/programs/steps/.

Drew House is a partnership between the Kings County (Brooklyn) District Attorney's Office and a non-profit supportive housing organization, Housing + Solutions. The program provides housing and services in a non-secure setting as an alternative to incarceration for women with minor children. Women charged with felony offenses can fulfill the court's mandates while living with their children and the charges are dismissed after completion to prevent further disenfranchisement.

- Find an overview and links to Drew House program reports and evaluation at http://cjinvolvedwomen.org/drew-house/.

North Central Iowa

Crisis Intervention Services serves 15 counties in North Central Iowa and has developed a defense-based advocacy program to help meet the needs of victims of battering who are arrested and involved with the criminal legal system.

- Listen to a 2016 webinar by the Battered Women's Justice Project—*When the Victim is Arrested: Seeking a Just Response*—describing how Crisis Intervention Services approached building its defense-based advocacy program at http://www.bwjp.org/resource-center/resource-results/arrested-victim-seeking-a-just-response.html.

Philadelphia, PA

MOMobile at Riverside Correctional Facility is a program of the Philadelphia Maternity Care Coalition. 92% of women in Philadelphia prisons are single mothers. MOMobile advocates partner with women during incarceration to help them stay connected to their children during incarceration and prepare them for reunification after release. Services includes group education and peer support, post-release home visits, doula services, and assistance to children's caregivers whose mothers are participating in MOMobile.

- Find out more about MOMobile at http://maternitycarecoalition.org/momobile/#momobile-at-riverside.

Santa Clara County, CA

An interdisciplinary team from various Santa Clara County criminal legal system departments conducted a Safety & Accountability Audit in 2008 to examine how the safety and well-being of battered women in their county is affected by the dominant aggressor and pro-arrest provisions.

- Download the report at http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=30108.

St. Paul, MN

Criminal legal system representatives joined with advocates to create *The Blueprint for Safety* (Blueprint), a prototype that can be used by any community hoping to link its criminal justice agencies together in a coherent, philosophically sound domestic violence intervention model. Policies and practices throughout the Blueprint are designed to reduce arrests of victims of battering. A Blueprint adaptation guide is available from Praxis International, based on the experience of St. Paul and three adaptation demonstration sites: Duluth, MN; New Orleans, LA; and Shelby County/Memphis, TN.

- Find Blueprint templates and adaptation tools at http://praxisinternational.org/blueprint-home/.
- Download *Training Memo—Interventions with Victims of Battering as Suspects or Defendants* at http://praxisinternational.org/wp-content/uploads/2016/02/BPSupp1CTrainingMemo-InterventionwithVictimsDec2012.pdf.

State Coalition Resources

If a state coalition against domestic violence has resources related to advocacy on behalf of victims of battering charged with crimes that could be included here, please contact the National Clearinghouse.

Iowa

The Skylark Project of the Iowa Coalition Against Domestic Violence offers comprehensive services to incarcerated victims of domestic abuse and sexual assault. It was formed to highlight and address the broad and underserved needs of survivors of domestic violence in Iowa's prison system. The cornerstone of the Skylark Project is commutation assistance. Skylark Project staff also facilitate classes on healthy ways to cope with post-traumatic stress disorder and past traumas and provide other reentry support.

- Find information about the Skylark Project at http://www.icadv.org/skylark.

Kentucky

Working with the Kentucky Department of Public Advocacy, KCADV advocates for the release of battered women who have been incarcerated for crimes related to their victimization. In December 2015, outgoing Kentucky Governor Beshear granted clemency to ten survivors convicted of killed their abusers. Six of the women had sentences commuted and four were pardoned; five of the ten were released from prison as a result. The KCADV Clemency Project also serves as a support network for incarcerated and formerly incarcerated battered women and their families. The Women and Incarceration Project matches incarcerated battered women with mentors in an effort to help ease their reentry into their communities. KCADV helped develop the Swallow*tale* Project, a jail-based writing project that helps incarcerated women tell their stories. The Swallowtale Project currently meets weekly at the Fayette County Detention Center. *The Swallowtale Project* is a collection of writing exercises based on the program.

- Contact KCADV at https://kcadv.org/.
- Learn about the Swallowtale Project at https://swallowtaleproject.wordpress.com/.

Michigan

The Open Doors project of the Michigan Coalition to End Domestic and Sexual Violence brought together community organizations, university researchers, survivors, and state and national organizations to form dynamic, collaborative partnerships that have contributed to the 2011 publication of three advocacy tools. The tools include:

1. *Open Doors – Best Practice Toolkit for Working with Domestic Violence Survivors with Criminal Histories*
2. *Advocating for Women with Abusive Partners Who Are Facing Criminal Charges*
3. *Road Blocks and Detours Facing Formerly-Incarcerated Survivors, Women Charged with and/or Convicted of a Criminal Offense*

- Download the advocacy tools at http://www.mcedsv.org/about-us/our-work/open-doors-project.html#RBAD.

Ohio

The Ohio Domestic Violence Network and the Ohio Poverty Law Center, with partners from the private bar and the Ohio Alliance to End Sexual Violence, developed two self-help legal manuals: one for incarcerated survivors of domestic violence, sexual violence, and stalking who are incarcerated or recently released and one for the general population.

- Download *Self-Help Manual for Incarcerated Survivors of Domestic Violence, Sexual Violence and Stalking* at http://www.odvn.org/Info-for-survivors/SelfHelpLegalManual2016RevisedFinal_Destinations.pdf.

Vermont

DIVAS (Discussing Intimate Violence and Accessing Support) is a program of the Vermont Network Against Domestic and Sexual Violence. DIVAS provides survivor-centered support, advocacy, and education to women detained or incarcerated at Chittenden Regional Correctional Facility. The program provides individual and group advocacy, planning related to release, and training to facility staff and service provides related to justice-involved survivors.

- Find out more information about DIVAS by contacting the Vermont Network via email at divas@vtnetwork.org.

Coordinated Community Response Addressing Arrests of Victims of Battering

Police and Criminal Legal System Overall

- Battered Women's Justice Project (BWJP): www.bwjp.org

  BWJP is a national training and technical assistance resource center. It provides an extensive collection of publications and archived webinars related to police response and the criminal legal system overall and CCR. BWJP expertise and resources are available to advocates, civil attorneys, judges and related court personnel, law enforcement officers, prosecutors, probation officers, batterers intervention program staff, and defense attorneys.

- Praxis International: praxisinternational.org/

  Praxis is a national advocacy and resource center with a focus on strategies and tools for community and institutional change. It provides training and technical assistance, toolkits, and publications and archived webinars related to the criminal legal system and CCR, including the Blueprint for Safety, and strategies for assessing CCR and other community practice.

  - Blueprint for Safety
    http://praxisinternational.org/blueprint-home/
    NOTE: The Blueprint for Safety includes policy and practice templates and related training memos for all major points of intervention in criminal legal system, from the emergency communications response through sentencing and probation supervision.
  - Institutional Analysis / Community Assessment
    http://praxisinternational.org/institutional-analysiscommunity-assessment-2/

Prosecution

- AEquitas – The Prosecutors' Resource on Violence Against Women: www.aequitasresource.org/

  AEquitas provides training, technical assistance, and resources to develop, refine, and evaluate prosecution practice related to intimate partner violence, sexual violence, stalking, and human trafficking.

  - Download *Intimate Partner Violence Victims Charged with Crimes – Justice and Accountability for Victims of Battering Who Use Violence Against Their Batterers* by Jeffrey P. Greipp, Toolsi Gowin Meisner, and Douglas J. Miles (December 2010) at http://www.aequitasresource.org/Intimate_Partner_Violence.pdf.
  - Listen to a webinar recording about battered women charged with crimes at www.aequitasresource.org/training.webinar.bwcwc.cfm.

Defense attorneys and advocates practicing defense-based advocacy

- National Clearinghouse for the Defense of Battered Women: www.ncdbw.org

Probation

- *Community Corrections Response to DV: Guidelines for Practice* by the American Probation & Parole Association (May 2009) offers recommendations for how probation and parole officers can respond to domestic violence. Guideline 33 addresses women who are ongoing victims of battering who are under supervision and directs community corrections officers to provide the same supportive services for victims who are not on probation or parole. www.appa-net.org/eweb/docs/APPA/pubs/CCRDV.pdf
- *Probation Interviews with Victims of Battering: Building a Foundation for Current and Future Safety*, James E. Henderson, Jr., with Jane Sadusky (April 2014): http://www.bwjp.org/assets/documents/pdfs/probation_interviews_with_victims_of_battering_building_a_foundation_for_current_and_future_safety.pdf
- *The Probation Response to Supervision of Women Who Are Abused* by Sherry Frohman and Connie Neal (June 2005): www.mincava.umn.edu/documents/commissioned/probationanddv/probationanddv.pdf

Online Tools to Support Systems Advocacy

- **The Community Tool Box:** http://ctb.ku.edu/en/table-of-contents
  The Community Tool Box provides free online tools related to organizing and coordinating community change. The Tool Box provides step-by-step guidance in community-building skills, from creating and maintaining partnerships and assessing community needs and resources to building leadership, enhancing cultural competence, and evaluating an initiative. While published by the Work Group for Community Health and Development at the University of Kansas, the tools are not specific to the field of community health and benefit many areas of community change.

- **FrameWorks Academy:** http://www.frameworksinstitute.org/frameworks-academy.html
  Designed by the FrameWorks Institute, this self-paced, online course provides tools and techniques that advocacy organizations can use to design effective public outreach and policy communications to support their vision of social change.

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Appendices

The Toolkit appendices provide a variety of guides, checklists, workbooks, and templates to use in (1) conducting an advocacy organization survey and self-assessment, (2) understanding the impact of criminal charges on the safety and well-being of victims of battering, and (3) assessing current criminal legal system practice and identifying changes that will promote a safe, fair, and just response to victims of battering charged with crimes.

Appendix 2-A: Advocacy Organization Survey

Appendix 3-A: Understanding the Impact of Criminal Charges

Appendix 4-A: Securing a Fair and Just Response

Appendix 4-B: Collecting the Numbers: Data Collection Workbook

Appendix 4-C: Learning from Victims of Battering Charged with Crimes

Appendix 4-D: Reviewing the Cases

Appendix 4-E: Analyzing the Current Criminal Legal System Practice

Appendix 2-A: Advocacy Organization Survey

A Survey Monkey™ version of the following survey is available via the National Clearinghouse at (800) 903-0111, ext. 3, or via email to *ncdbw@ncdbw.org*. When possible, staff will also provide the compiled results, including the answers to the open-ended questions (if you do not have a subscription to Survey Monkey that accommodates a survey of this size and design). The survey is also available as a Microsoft Word document.

Advocacy organization's work with victims of battering charged with crimes

1. Review each section.
2. Check all items that are part of your organization's current practice.
3. Feel free to add comments, including about any gaps that you see in your current services or policies.

SECTION 1

Our organization currently provides advocacy to victims of battering arrested/charged with crimes:

- ❑ YES (Complete Sections 2 through 8)
- ❑ NO (Complete Sections 6 through 8)

SECTION 2

Our organization . . . (check all that apply)

- ❑ Provides advocacy on some level to victims of battering arrested/charged with crimes in one or more of the following settings:
  - ❑ Shelter
  - ❑ Non-shelter (e.g., support or education groups, hotline, phone contact)
  - ❑ Civil legal system (e.g., protective orders, family court)
  - ❑ Criminal legal system (e.g., jail, court, prison, probation)
  - ❑ Other community-based programs (e.g., YWCA, neighborhood center)

- ❑ Tracks and gathers data on the number of victims of battering arrested/charged with crimes that we advocate on behalf of in the following settings:
  - ❑ Shelter
  - ❑ Non-shelter (e.g., support or education groups, hotline, phone contact)
  - ❑ Civil legal system (e.g., protective orders, family court)
  - ❑ Criminal legal system (e.g., jail, court, prison, probation)
  - ❑ Other community-based programs (e.g., YWCA, neighborhood center)

- ❑ Can provide a reliable picture of the number of victims of battering arrested/charged that we advocate on behalf of and the settings in which that advocacy occurs.

Comments (including what you see as gaps in current practice):

Advocacy organization's work with victims of battering charged with crimes

1. Review each section.
2. Check all items that are part of your organization's current practice.
3. Feel free to add comments, including about any gaps that you see in your current services or policies.

SECTION 3

When victim defendants seek services from your organization, does it matter what charges the victim faces or faced?

- ❑ No
- ❑ Yes
- ❑ If yes, please explain:

We assist victims of battering who are . . . (check all that apply)

- ❑ Charged with assaulting their abusers
- ❑ Convicted of assaulting their abusers
- ❑ Charged with killing their abusers
- ❑ Convicted of killing their abusers
- ❑ Coerced into criminal activity by their abusers
- ❑ Charged with a crime for "failing to protect" their children from their abuser's violence
- ❑ Convicted of a crime for "failing to protect" their children from their abuser's violence
- ❑ Charged or convicted of parental kidnapping or custodial interference
- ❑ Charged or convicted of substance abuse/possession-related charges related to their experience of battering
- ❑ Facing other charges [describe the kinds of charges]

Are there any kinds of charges that are "deal breakers" where advocacy is always offered or always denied?

- ❑ Yes
- ❑ No

If yes, what kinds of charges?

Comments (including what you see as gaps in current practice):

Advocacy organization's work with victims of battering charged with crimes

1. Review each section.
2. Check all items that are part of your organization's current practice.
3. Feel free to add comments, including about any gaps that you see in your current services or policies.

SECTION 4

Our organization provides advocacy to victims of battering arrested/charged with crimes at the following stages of the criminal case process (check all that apply):

- ❑ At the time of arrest
- ❑ Pretrial / in jail
- ❑ Pretrial / out of jail
- ❑ During trial
- ❑ Before and during sentencing
- ❑ After sentencing
- ❑ During incarceration
- ❑ Preparing for parole or clemency hearing
- ❑ Returning to the community after serving time
- ❑ On probation
- ❑ On parole
- ❑ If victim acquitted, after acquittal

Comments (including what you see as gaps in current practice):

SECTION 5

The kinds of advocacy and assistance we provide to victims of battering who have been arrested or charged with a crime includes (check all that apply):

- ❑ Help victims find a defense attorney/counsel
- ❑ Work with defense counsel to assist with trial preparation
- ❑ Help find an expert witness
- ❑ Link defense counsel to the National Clearinghouse for the Defense of Battered Women
- ❑ Provide legal advocacy in criminal court (court accompaniment at hearings and trial)
- ❑ Obtain and review daily arrest reports from police and contact known or apparent victims of battering listed as "suspects"
- ❑ Accept collect calls from women in jail or prison
- ❑ Conduct outreach at jail or prison (e.g., posters, brochures)
- ❑ Make individual visits to women in jail or prison
- ❑ Offer advocacy/support for other issues related to safety and well-being (e.g., housing, employment, transportation, clothing for court appearances, supervised visitation with children)
- ❑ Offer individual emotional support/counseling
- ❑ Provide financial assistance
- ❑ Help with civil legal issues (e.g., child custody, eviction)
- ❑ Conduct groups for court-mandated women (outside of jail)
- ❑ Conduct groups for non-court-mandated women focused on women's use of violence
- ❑ Provide support or information groups at jail
- ❑ Provide support or information groups at prison

Advocacy organization's work with victims of battering charged with crimes

1. Review each section.
2. Check all items that are part of your organization's current practice.
3. Feel free to add comments, including about any gaps that you see in your current services or policies.

- ❑ Provide advocacy for clemency, sentence commutation, or parole
- ❑ Make prison visits to individual women
- ❑ Provide support to family members, such as helping to arrange visits and communication with women who are incarcerated
- ❑ Help with returning to the community after prison
- ❑ Other advocacy and assistance [describe]

Comments (including what you see as gaps in current practice):

SECTION 6

We have the following connections with others in the community who might be helpful to victims of battering charged with crimes (check all that apply):

- ❑ Unsure / do not know who works with victims of battering charged with crimes
- ❑ Other DV-related advocacy programs
- ❑ Individual advocates
- ❑ Defense attorneys
- ❑ Expert witnesses
- ❑ Coordinated community response (CCR) council/task force partners
- ❑ Culturally-based programs
- ❑ Community re-entry programs for persons leaving prison
- ❑ Faith-based organizations
- ❑ Other [describe]

- ❑ We know who in the community might be helpful to victims of battering charged with crimes.
- ❑ We know the kinds of help such organizations and programs can provide.

Comments (including what you see as gaps in current practice):

Advocacy organization's work with victims of battering charged with crimes

1. Review each section.
2. Check all items that are part of your organization's current practice.
3. Feel free to add comments, including about any gaps that you see in your current services or policies.

SECTION 7

The following challenges get in the way of whether and how our organization can work with victims of battering charged with crimes:

- ❑ Victim defendants don't reach out to us, but we would help if they did
- ❑ Our organization's policies
- ❑ Funders restrict who we can assist
- ❑ Concerns about our credibility in the community
- ❑ Concerns about damaging our relationship with the prosecutor's office, law enforcement, and/or court
- ❑ Lack of relationships with defense counsel
- ❑ Prior conflict with defense counsel
- ❑ Lack of training on advocacy strategies
- ❑ Limited knowledge of what happens to defendants in the criminal legal system
- ❑ Lack of staff or other resources
- ❑ Limited relationships with other community organizations serving persons involved in the criminal legal system
- ❑ Other [describe]

Comments (including what you see as gaps in current practice):

SECTION 8

1. The biggest needs related to advocacy for victims of battering charged with crimes are:

2. The biggest barriers or challenges in meeting those needs are:

Appendix 3-A: Understanding the Impact of Criminal Charges

Understanding the Impact of Criminal Charges: Increased Risks to Safety and Well-Being for Victims of Battering

National Clearinghouse for the Defense of Battered Women
Revised July 2015

> "Safety has different meanings, both emotional and practical, for different women, according to the specific position each occupies in society by virtue of her race, class, ability, sexuality, residency status, etc. These factors unavoidably interact with each other to influence the circumstances of safety in a battered woman's life. Just as acts of domestic violence do not occur in a vacuum, safety without a context is a myth."
> – Shamita Das Dasgupta, *Creating Sustainable Safety for Battered Women*

All victims of battering face many risks to their safety and well-being, but those charged, incarcerated, and reentering the community after jail or prison encounter additional risks. This chart illustrates many of the risks faced by victim defendants and suggests advocacy strategies to address them. It illustrates the kinds of risks that a victim of battering might encounter at each stage of a criminal case, beginning with the ways in which a batterer uses the threat of arrest or the arrest and pretrial, probation, or parole conditions to coerce and manipulate. The chart also provides examples of the ways in which criminal charges and collateral consequences magnify risks related to life circumstances and social standing. It offers advocacy strategies at each stage to benefit individual victim defendants and to pursue systemic changes on behalf of all.
The chart draws on the following sources:

- *Safety Planning with Battered Women: Complex Lives, Difficult Choices* by Jill Davies, Eleanor Lyon, and Diane Monti-Catania (Sage Publications: Thousand Oaks, 1998) and *Domestic Violence Advocacy: Complex Lives/Difficult Choices* by Jill Davies and Eleanor Lyon (Sage Publications: Thousand Oaks, 2014).

- *The Impact of Arrests and Convictions on Battered Women*, National Clearinghouse for the Defense of Battered Women, 2012 (links updated May 2015). Available at www.ncdbw.org.

- *Women's Experiences of Abuse as a Risk Factor for Incarceration: A Research Update* by Melissa E. Dichter (VAWNet, National Resource Center on Domestic Violence, July 2015). Available at http://vawnet.org/material/womens-experiences-abuse-risk-factor-incarceration-research-update.

- *Assessing Social Risks of Battered Women* by Radhia A. Jaaber and Shamita Das Dasgupta and *Creating Sustainable Safety for Battered Women* by Shamita Das Dasgupta. Both publications available on the website of Praxis International at http://praxisinternational.org/wp-content/uploads/2016/02/AssessingSocialRisk.pdf.

NOTE: The focus of this Toolkit is on systems advocacy and change and not on providing advocacy, services, or support to individual victims of battering. We include this chart to highlight the many ways in which the risks to victims of battering increase dramatically when they are threatened with arrest, arrested, charged, tried, and/or convicted.

This appendix is not a guide to providing individual advocacy. If you are working on a specific case involving a victim defendant or are looking for resources, guidance, or training about providing individual advocacy to victims of battering charged with crimes, please contact the National Clearinghouse for additional information.

Foundational practices of defense-based advocacy

Because the chart includes information about strategies for both systems and individual advocacy, we want to highlight some foundational practices of doing defense-based work. Earlier in the Toolkit we defined defense-based advocacy: i.e., the practice of extending community-based advocacy to victims of battering charged with crimes in ways that coordinate with defense teams to support creative and effective legal strategies that maximize opportunities for justice and help prevent further victimization of arrested, convicted, or incarcerated victims of battering. In addition to understanding the general tenets of criminal defense, defense-based advocacy requires that advocates:

- Obtain the defense counsel's knowledge and consent prior to talking with a victim defendant.
- Avoid discussing the case with the prosecutor without the full knowledge and explicit permission of the defense attorney.
- Redirect or avoid discussing the facts of the case with the victim defendant.

Advocates who work closely with the defense attorney—and who do not approach the prosecutor without defense attorney's knowledge and do not talk about the facts of the case—are more likely to protect the victim-defendant's confidentiality, increase the probability that defense counsel will reach out, and make it less likely that the prosecutor will subpoena advocacy records.

CAUTION: Avoid discussing the facts of the case

When advocating on behalf of a victim defendant, avoid talking about the details surrounding the arrest incident. *WHEN IN DOUBT, DON'T DISCUSS THE CASE*. By not discussing the facts of the case, you help:

- Increase the likelihood that the defense will work in collaboration with you and will be comfortable with you meeting with the defendant.
- Decrease the likelihood that the prosecutor will try to subpoena your records.
- Avoid information being used against the defendant.

Even when not talking about the facts of the case, there is still plenty to talk about.

For example, you can talk about:

- Her history of abuse and its effects on her life
- Her *feelings* about what has happened (e.g., loss, fear, disbelief)
- Steps in the criminal legal system and what she can expect as a defendant
- Effects of incarceration on her, if applicable (e.g., possible trauma, emotional responses, coping/healing strategies)
- Safety planning while in jail and after release

CAUTION: Confidentiality requires constant vigilance

When victim defendants are facing criminal charges or deportation, it is imperative that the advocacy organization is diligent in protecting victim confidentiality.

CAUTION: Working with non-citizen victim defendants requires specialized skills and knowledge.

In some communities, battered immigrant women are getting arrested at high rates, especially when the batterer can speak English better than his partner or when she speaks little or no English.

RESOURCES

- ✓ *Working with Battered Women in Jail: A Manual for Community-Based Battered Women's Advocates*, National Clearinghouse for the Defense of Battered Women. Includes chapters on defense-based advocacy and on confidentiality. http://www.ncdbw.org/NCDBW-jail-manual.pdf

- ✓ *Advocacy Challenges in a CCR: Protecting Confidentiality While Promoting a Coordinated Response*, Sandra Tibbetts Murphy, Battered Women's Justice Project, January 2011. http://www.bwjp.org/assets/documents/pdfs/advocacy_challenges_protecting_confidentiality_while_promoting_coordination.pdf

- ✓ *A Guide for Advocates Working with Battered Immigrant Women Charged with Crimes,* by Anne Benson, Washington State Defender Immigration Project, and Angie Junck, Immigrant Legal Resource Center, for the National Clearinghouse for the Defense of Battered Women. http://www.ncdbw.org/

RISKS TO VICTIMS OF BATTERING CHARGED WITH CRIMES and RELATED ADVOCACY STRATEGIES

This chart illustrates the many and wide-ranging risks of possible coercion and harm that victims of ongoing battering face when they are arrested, charged, incarcerated, on probation and/or returning to the community after jail or prison.

Circumstance/Stage in process	*Batterer-generated risks*	*Life/Systems/Social-generated risks*	*Strategies for individual and systems advocacy*
Being battered and no current police response or charges			
Victim of battering uses various strategies to try to increase safety, some of which may be illegal (or perceived as being illegal) Being battered increases the likelihood that one may be arrested.	• Routinely threatens to have victim of battering arrested when she does things to avoid, escape, limit, or resist the abuse. • Threatens to make or makes false allegations to the police. • Tells her that she will be deported if she calls the police if she is an immigrant victim of battering.	• Victim of battering fears arrest, especially if she's a member of a social group that is at greater risk of arrest (e.g., people of color, immigrants, LGBTQ). • Victim of battering fears she will not be believed if she calls police. • Immigrant victim of battering fears Immigration, Customs, and Enforcement (I.C.E.) will be contacted and she will be deported.	• Include harm reduction education and information about risks of arrest when working with women who are being battered (e.g., risks of parental kidnapping charges if she is thinking of fleeing with her children). • Develop short information sheet and review what to do and how to respond to police if victim of battering is arrested (including information for immigrant victims of battering around I.C.E.). • Build system personnel (e.g., police, prosecutors, defense attorneys) awareness of risks of arrest for victims of battering
Being battered and no current charges, but has a *prior* arrest and/or conviction and <u>not</u> on probation or parole			
Many victims of battering with criminal records say they will never call the police again. Prior record and/or knowing that she will be reluctant to call police gives the batterer additional power/leverage to control her.	• Threatens to call police if she does not do what he wants, knowing it keeps her on edge because of prior record. • Calls the police—and may self-inflict a wound— confident that police will be more likely to see the victim of battering as less credible.	• Victim of battering is arrested again, even if allegations unfounded, because police see that she has a prior arrest. • Some programs and/or advocates have practice or policies that screen out victims of battering with prior arrest or conviction records. • Victim of battering's ability to be financially independent is significantly limited due to barriers to employment for people with criminal records. • Victim of battering's ability to find independent housing is compromised due to her	• Talk with victims of battering and/or have printed or other information about what to do if they are arrested. • Stop using prior arrests or convictions as a tool to screen out people seeking advocacy services. • Eliminate advocacy program policy that allows or requires criminal record checks of victims of battering. • Integrate working with *all* victims of battering—including charged, incarcerated, and formerly incarcerated women—into program's policies and training of advocates. • Know when a victim of battering can apply for an expungement or certificates of relief/good conduct that can help with access

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Circumstance/Stage in process	*Batterer-generated risks*	*Life/Systems/Social-generated risks*	*Strategies for individual and systems advocacy*
		record. • Victim of battering's credibility with systems—already low as a victim—is further reduced by being labelled an "offender."	to housing and other services; develop resources around the steps she needs to take to complete the process.
Being battered and no current charges, but has a *prior* arrest and/or conviction and currently <u>on</u> probation or parole			
Being on probation or parole increases vulnerability for victims of battering. Many victims of battering report that while they are under state control their abusive partners will use the system against them.	• Batterer forces her to drink or use drugs with him and then calls probation/parole officer (P.O.) to report that she's violated the conditions of her supervision. • Batterer prevents her from attending required appointments. • Partner threatens to call her P.O. to report a violation (or make a false allegation) anytime the victim of battering tries to avoid, escape, limit, or resist the abuse.	• Generally, probation is poorly organized or prepared to recognize and support victims of battering • Victim of battering's probation or parole revoked	• Work with her former defense attorney and/or probation officer to strategize with woman about minimizing batterer's ability to sabotage her ability to fulfill terms of her supervision. • Help probation identify and respond to ways in which the batterer might sabotage her probation. • Work with probation and parole departments to develop policies and practices for identifying and responding to the needs of victims of ongoing battering who are on probation or parole. • Support/assist victims in applying for an end to parole/probation.
Being battered and arrest warrant or possible warrant			
It can be very difficult (if not impossible) to find out if there is an active criminal arrest warrant. Abusive partners may lie about existence or non-existence of a warrant.	• Batterer knows (or pretends to know) there is a warrant out for her and threatens to call the police if she tries to avoid, escape, limit, or resist the abuse.	• She's afraid to call police because she does not know if she will be arrested and, if so, how long she will stay in jail. • She's afraid to seek assistance for fear that she might bet arrested (e.g., many Family Justice Centers run	• Work with allies to help them recognize that criminal background checks are harmful and to stop the practice. • Build relationships with defense attorneys so that advocates and/or victims of battering can consult with them if a victim of battering

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Circumstance/Stage in process	*Batterer-generated risks*	*Life/Systems/Social-generated risks*	*Strategies for individual and systems advocacy*
		criminal background checks for people seeking services). • She applies to renew her professional license and discovers that there's a warrant that she didn't know about, thereby jeopardizing her ability to work.	has a warrant. • Create a policy within advocacy programs about working with law enforcement when they attempt to serve warrants on victims of battering receiving services from the program. • Post notices that encourage victims to notify advocacy program staff if they think or know they have an active warrant, especially before going to court hearings. State the advocacy program's willingness to help address the warrant.
Being battered and arrested by police who respond to call			
Victims of battering use various strategies to try to increase safety, some of which may be criminalized. Abusive partners also manipulate the criminal legal system as another tool with which to control their partners.	• Police arrive and don't assess or believe that victim of battering uses force in self-defense and/or in defense of her children (and gets arrested) • She uses force to resist the battering that is not in self-defense. • Batterer forces her to do something that is illegal (e.g., running drugs, prostitution, driving getaway car). • Tells victim of battering that because of her race, "you know who the cops will arrest if I call them." • Tells police she is crazy—and therefore dangerous—and throws around "diagnosis" terms, such as bipolar,	• She makes statement to the police which later is used against her. • She takes responsibility for the incident and/or minimizes abuser's role in the incident. • Police don't conduct proper self-defense investigation or collect evidence of strangulation. • No dominant aggressor statute. • Police don't understand dominant aggressor analysis or the analysis not relevant to this incident (i.e., incident is not related to an assault). • History of battering is often uninvestigated	• Train police on self-defense investigation and strangulation injury patterns on both parties; monitor what they are doing. • Secure policies and procedures that promote a contextual analysis of the incident throughout police response and investigation. • If no dominant aggressor statute, consider working with an allied legislator to introduce one, with attention to avoiding unintended consequences of possible disparate negative consequences for women of color. • Train police on dominant aggressor analysis. • Educate police about batterers' use/misuse of criminal legal system. • Make sure police use certified language

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Circumstance/Stage in process	*Batterer-generated risks*	*Life/Systems/Social-generated risks*	*Strategies for individual and systems advocacy*
	manic-depressive, or addict. Immediately connects himself with available resources for victims of battering (e.g., contacts advocacy program, files order for protection) and thereby limits her access to such resources.	or otherwise uncovered. • No language interpreters at the scene; police accept the abusive partner's word about alleged incident. • Arrest triggers deportation process for undocumented victims of battering	interpreters (not family members), including at the scene. • Reach out to what may be uncommon allies or resources (e.g., disability rights, immigration advocates, LGBTQ organizations, consulates, etc.) to address law enforcement practices involving people who are especially vulnerable to being arrested and/or have needs or rights that are not being recognized, such as ADA accommodation, language interpretation, non-citizen rights to consular contact.
Being battered and pre-trial, <u>in</u> jail			
Some people assume that a victim of battering is safe if she is in jail or prison.	• Batterer calls and says he will post bail for her only if she agrees to come home. • Batterer has a relative in jail who threatens the victim defendant[77] while she is incarcerated. • Victim defendant loses her housing while in jail because rent is due while she is in custody and her abusive partner refuses to pay her rent.	• No one documents her injuries after her arrest, while she is in custody. • Victim of battering loses her job because she missed too many days of work while in custody. • Victim of battering doesn't realize that her conversations are recorded in the jail and makes statements that later are used against her. • If both parties have been arrested, children are likely to	• Work with jail staff and defense bar to implement systems to insure injuries are properly documented. • Establish a bail fund. • Accept collect calls from victims of battering in jail. • Inform victim of battering that she is being recorded. • Caution victim of battering to not discuss her case with anyone but her defense attorney, including other women at the jail. • Develop relationships with system personnel to provide general education about being in custody does <u>not</u> necessarily

[77] "Victim defendant" means a victim of battering who has been criminally charged, whether or not the charges are directly related to her current experiences of being battered.

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Circumstance/Stage in process	*Batterer-generated risks*	*Life/Systems/Social-generated risks*	*Strategies for individual and systems advocacy*
		be taken into state custody by CPS. • Victim of battering's children are at risk of being placed in foster care and she's afraid she will lose custody of them so she pleads guilty without proper information or representation to get out of jail and home to her children.	make victims of battering safer (i.e., risks of batterers' threats to her while she is inside, people on the inside acting on behalf of batterer to harm her, risks to her children and family on the outside). • Explore options of pre-trial release to a community-based program, especially one with experience working with victim defendants; program should be flexible and to keep rules to a minimum so as not to impede compliance with conditions of release. • Consider creating such a pretrial release program if none exists.
Being battered and pre-trial, <u>not</u> in jail			
While a victim of battering is under state control, her abusive partner has an additional tool with which to control her.	• Threatens to report her for violating the criminal no-contact order unless she lets him see the kids. • Tries to get her to violate her conditions of bond by insisting that she return to their shared home in order to see the children, despite the criminal stay-away order in place.	• Victim defendant faces dilemma of violating the no-contact order or losing her job: e.g., her childcare falls through and she'll lose her job if she doesn't have someone to watch the kids, so she asks her partner. • She incurs costs and faces logistical and/or financial barriers in complying with pretrial release conditions: e.g., pay costs for court-ordered pretrial monitoring; miss work or school to get comply with mandated drug testing or other appointments; difficult to manage without reliable transportation and child care.	• If the victim of battering thinks the no-contact order will increase her risk of being harmed, advocate with the defense attorney, prosecutor, and judge to lift the order. • Explain the stages of the criminal justice process to give victim defendants a better understanding of the process and expectations at each stage. • Train advocates to not discuss the details of an open case with victim defendants. • If victim of battering is using community-based advocacy emergency shelter or other housing, review her conditions of release and strategize with her about how to support her compliance.

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This chart illustrates the many and wide-ranging risks of possible coercion and harm that victims of ongoing battering face when they are arrested, charged, incarcerated, on probation and/or returning to the community after jail or prison.

Circumstance/Stage in process	*Batterer-generated risks*	*Life/Systems/Social-generated risks*	*Strategies for individual and systems advocacy*
Being battered and plea negotiation in process[78]			
Victim defendants can feel pressured to plead guilty and accept plea agreement conditions to "get it over with" and return to their children, jobs, homes. Victim defendants may lack information about consequences of the plea agreement.	• Batterer or his family or friends pressure her to take the plea deal; threaten that things will get worse if she doesn't. • Batterer uses her children's needs to pressure her into pleading guilty.	• Defense counsel encourages plea without providing clear picture of implications and consequences. • History of battering is never brought forward to consider in plea negotiation.	• Work with defense attorney to screen for battering and consider it as a factor in plea negotiation. • Prepare information for victim defendants explaining what a plea agreement is and the consequences of a guilty plea.[79]
Being battered and post-trial with deferred adjudication			
Although deferral or diversion may be considered a "successful outcome" because she may avoid a conviction on her record if she successfully fulfills the conditions, she also is at risk for exploitation and coercion by the batterer.	• Batterer threatens to call probation officer to report violation of conditions of deferred adjudication. • Batterer interferes with her efforts to meet mandated conditions, such as drug testing, counseling, classes (e.g., denies use of car, refuses to care for children, insists that she stay home).	• She is late getting to court for her final case status update because of another court-required appointment and ultimately ends up with a conviction. • Misses too much work because of scheduling of mandated appointments and jeopardizes her job. • Cannot pay costs of mandated classes and testing.	Advocate with defense attorney, prosecutor, and probation to have the least restrictive and least costly conditions for deferred adjudications.

[78] This is not to assume that a negotiated plea is necessarily a bad resolution; sometimes it is the best option and best result for a victim defendant.

[79] If you are working directly with victim defendants, please contact the National Clearinghouse for additional information. The National Clearinghouse can provide resources such as a guide for victim defendants that explains what a plea agreement is and the consequences of a guilty plea.

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This chart illustrates the many and wide-ranging risks of possible coercion and harm that victims of ongoing battering face when they are arrested, charged, incarcerated, on probation and/or returning to the community after jail or prison.

Circumstance/Stage in process	*Batterer-generated risks*	*Life/Systems/Social-generated risks*	*Strategies for individual and systems advocacy*
Being battered and case goes to trial			
While her abusive partner or others acting on his behalf are around (e.g., as a co-defendant, witness, or potential witness), the victim of battering is at risk of harm and coercion.	• Testifies against her for assaulting him and minimizes his abuse of her. • Threatens to harm her family unless she testifies that she was the one who committed the crime (whether she actually did or did so under duress).	• System players (e.g., prosecutor, judge) make an example of a woman who is a victim defendant and treat her more harshly to show that they are "gender neutral." • Defense attorney never asked her about a history of battering or explored possible strategies where history of abuse may be relevant.	• Work one-on-one in an ongoing way with defense attorneys to expand their knowledge of battering and ways in which they can partner with community-based advocates on behalf of a victim defendant. • Offer to connect defense attorneys with an expert who has worked on legal cases to learn about possible defense strategies, such as mitigation/self-defense based on battering and its effects. • Involve defense attorneys in coordinated community response; provide brown bag trainings or discussion at the public defender's office; offer training about community-based advocacy.
Being battered and case is post-trial, with <u>acquittal</u>			
Many people assume that if there's an acquittal, justice has been served and life returns to "normal" for the victim of battering, but "normal" may now include still dealing with an increasingly coercive partner and the consequences of an arrest record.	• Threatens to tell or tells her new boss that she has an arrest record. • Introduces the arrest and prosecution into family court proceedings in attempt to discredit her, particularly if she has had other criminal charges in the past.	• Job application asks whether she ever has been arrested for a violent crime. • Custody evaluators may focus on the incident and charges and criminal record overall, regardless of acquittal.	• Assist victim defendants eligible for expungement with that process. • Prepare victim defendants on how to talk with potential employers about their arrest (or conviction) records.

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Circumstance/Stage in process	*Batterer-generated risks*	*Life/Systems/Social-generated risks*	*Strategies for individual and systems advocacy*
Being battered and case is post-trial, with <u>conviction</u>			
Batterer uses conviction as another way of controlling victim of battering, and a very potent way.	• Batterer calls police and/or probation whenever she resists his control.	Significant collateral consequences for people charged with or convicted of crimes and negative impact on employment, housing, economic stability, access to training and education.	• Inform victim defendant in advance that the advocacy program will assist her if she gets arrested again. • Craft a safety plan related to how batterer may try to get her re-arrested (and what she can do if she is re-arrested). • Assist victim defendants in filing appeals to professional licensing boards. • Work to repeal laws that rescind people's licenses based on convictions. • Work to remove the criminal record check box from hiring applications ("ban the box"). • Work to minimize the full range of collateral damages of criminal conviction to housing, employment, education, voting rights.
Being battered and convicted, presentence Continuing opportunities for abusive partner to try to influence the process during presentence investigation (PSI).	• Batterer tells person conducting PSI that the defendant is the one who is controlling.	• PSI doesn't include inquiry into history of battering because it's not seen as part of the case (e.g., case seen as a drug case and coercion by batterer not understood as relevant).	• Advocate with personnel completing PSI to establish history and context of battering as part of investigation with victim defendants; if incarcerated, ensure that this PSI goes in the record sent to the jail or prison. • Work with probation or other PSI agency and the courts to develop sentencing recommendations that account for the existence and context of battering.
Being battered and convicted, sentencing Depending on the charges and the jurisdiction, there may be opportunities to introduce evidence of	• Testifies at sentencing hearing that he is afraid of her.	• She is on psychotropic medications during her trial and sentencing, which gives her a flat affect and clouds her thinking.	• Work with defense attorney to ensure that information is presented at sentencing that clarifies context of the relationship and the violence. • Agree to provide services to and advocacy for victim defendant

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Circumstance/Stage in process	*Batterer-generated risks*	*Life/Systems/Social-generated risks*	*Strategies for individual and systems advocacy*
battering and/or demonstrate community support for alternatives to incarceration.			after she is sentenced. • Consider if victim defendant could stay at shelter as part of her sentence.
Being battered and post-sentencing, <u>not</u> incarcerated			
Although she avoided incarceration, she still is at great risk of sabotage of her sentencing conditions, particularly if under state supervision.	• Forces her to drink with him, even though drinking alcohol is a violation of her probation. • Interferes with her efforts to meet mandated conditions of sentence.	• Parole or probation officer revokes her probation/ parole because of her dirty urine analysis, without asking questions about context of use. • She cannot meet cost of probation and court-ordered programs; may be incarcerated for "failing" probation on technical violation. • She faces the collateral consequences of criminal record on employment, housing, economic stability, access to training and education.	• With the permission of the victim of battering and her defense attorney, and in conjunction with them, meet with parole or probation officer to discuss the context in which this technical violation occurred and explore alternative responses. • Connect with substance abuse recovery organizations that can support victim defendants (ideally, from a gender lens and harm reduction approach).
Being battered and post-sentencing, incarcerated			
Some people assume that if she is in jail or prison, she's safer. Some incarcerated victims of battering describe how being in jail or prison is like living with an abusive partner.	• Batterer refuses to accept collect calls so she can talk to her children. • Batterer will not bring children to visit her.	• Conditions of confinement mirror the coercive control from her partner. • The language and tone used by housing staff reminds her of her abusive partner and childhood. • She faces temporary or permanent loss of children to the child welfare system.	• Establish ways of maintaining connection to incarcerated women. • Offer informational groups to victims of battering in jail, and support groups to women in prison. • Share information about any nearby prison visiting programs for children of incarcerated parents. • Include self-care and healing strategies relevant to incarcerated women in your newsletter and send copies of the newsletter to women in prison or the prison library.

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This chart illustrates the many and wide-ranging risks of possible coercion and harm that victims of ongoing battering face when they are arrested, charged, incarcerated, on probation and/or returning to the community after jail or prison.

Circumstance/Stage in process	*Batterer-generated risks*	*Life/Systems/Social-generated risks*	*Strategies for individual and systems advocacy*
			• Learn more about the experiences of incarcerated victims of battering; incorporate an understanding of the trauma of being incarcerated into the advocacy program's work.
Being battered and post-incarceration			
Despite increased attention to and funding for what are called re-entry services, many barriers remain and few services are in place for formerly incarcerated women.	• Batterer only gives her access to resources (i.e., housing, food, laundry) in exchange for sex. • Restricts her access to the children unless she does what he demands. • If she is on parole, threatens to report her for violations of conditions, whether true or not.	• Housing applications ask about arrest and/or conviction. • She faces the collateral consequences of criminal record on employment, housing, economic stability, access to training and education. • If on parole, continued state surveillance and possibility of returning to prison for technical violation.	• Help formerly incarcerated women access resources for daily living, even if they're not staying at your shelter. • Engage in systems advocacy to reduce structural barriers facing people with convictions. • Advocate for gender-specific and trauma-informed services for victims of battering returning to the community after incarceration.

Appendix 4-A: Securing a Fair and Just Response

Appendix 4-A provides a reference to elements in the criminal legal system response that, if in place, help secure a fair and just response to victim defendants and keep victims of battering from being charged with crimes. It is a snapshot of the kinds of change that systems advocacy seeks from CCR partners and criminal legal system agencies. Use the appendix to help (1) assess current practices and (2) guide what your community might do to secure or strengthen a safe, fair, and just response for victim defendants.

The recommended practices draw on wide-ranging sources, including those specific to domestic violence and others concerned with criminal legal system practice in general. Toolkit *Section 5 – Resources and References* provides more detail about these sources and includes links to the National Clearinghouse, national and state coalitions, resource centers, and other sources of technical assistance.

The overarching elements and specific practice recommendations included in this appendix are aspirational. A community is unlikely to be able to make every change at once. This tool is a kind of cue card to the practices that you can look for and encourage in your CCR partners and throughout the criminal legal system. The practices reflected here help shape a response that identifies and considers the full context of battering and communicates a clear, thorough picture of that context across all key steps in criminal case processing. Such measures contribute to reducing unwarranted arrest, charging, and conviction of victims of battering. Such measures also contribute to mitigating the harmful impacts of criminal legal system intervention on victim defendants.

Appendix 4A: Securing a Fair and Just Response to Victims of Battering Charged with Crimes
Key Elements in the Criminal Legal System Response

- Advocacy and services in all parts of the system
- Attention to specific risks and context of battering
- Access to competent legal counsel
- Oppression-informed response[80]
- Trauma-informed response[81]
- Language access
- Disaggregated data collection to include race, ethnicity, gender identity, sexual orientation, economic and employment status

911 Emergency Communication	• Collect and relay explicit and detailed information about what is happening, circumstances, and parties involved. • Establish who is at risk from whom and in what ways.
Police Patrol & Investigation	• Limit application of mandatory arrest in domestic-violence related cases. • Establish non-arrest as the preferred response to victims of battering who use defensive or resistive violence. • Make sound self-defense determinations. • Make sound dominant/primary aggressor determinations when both parties have used illegal violence.[82] • Use pre-booking diversion to community-based services instead of jail and prosecution whenever possible. • Limit inquiry into immigration status.
Jail	• Post and make information about programs that will assist victim-defendants readily accessible. • Flag bookings of women arrested and examine for trends and attention to battering.
Bail/Release	• Set conditions of release that reflect the risk the individual poses to cause further harm. • Utilize non-cash bail alternatives. • Minimize mandated pretrial services (e.g., drug testing or treatment, in-person reporting) that are unrelated to the risk individual poses to cause further harm. • In evaluating likelihood of failure to appear, determine whether the

[80] *Oppression-informed response:* application of knowledge, policy, and practice that recognizes and ameliorates the structural nature of oppression. An oppression-informed response is grounded in the principle of intersectionality and in understanding the ways in which oppression manifests in relation to race, class, age, gender, ability, sexual orientation, immigration status, and other aspects of identity and can produce historical trauma experienced across generations by targeted communities.

[81] *Trauma-informed response:* application of knowledge, policy, and practice that recognizes and ameliorates the harmful physical, psychological and emotional impacts of trauma related to the violence, abuse, and other highly distressing life events and circumstances experienced by victims of battering charged with crimes. While a trauma-informed response seeks to repair harm and strengthen well-being on behalf of individuals, it also recognizes the trauma of histories of oppression on a community and societal level.

[82] Dominant or primary aggressor: the party to the incident who, by his or her actions in this incident and through known history and actions, has caused the most physical harm, fear and intimidation against the other.

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	defendant is the primary caretaker of dependent children or the elderly, sick, and infirmed. • Count women's shelters and homeless shelters as a person's legitimate address.
Charging	• Review cases for sound self-defense and dominant aggressor determinations. • Establish and consider victim-defendants' histories and experiences of abuse in all charging and plea decisions. • Do not prosecute self-defense actions. • Establish and pay attention to victim defendant's fear of reprisal for cooperating with the criminal legal system. • Stay open to declining and dismissing charges. • Use the narrowest range of charges and consequences. • Use deferred prosecution agreements for victim defendants. • Limit the number and scope of conditions of pretrial release. • Avoid charges that carry mandatory sentencing and sentencing enhancements.[83]
Sentencing	• Focus the pre-sentence investigation on discovering and conveying nature and impact of battering. • Select the least restrictive and most rehabilitative conditions. • Set conditions that account for whether the defendant is the primary caretaker of dependent children or the elderly, sick, and infirmed. • Use alternatives to incarceration. • Keep victims of battering out of batterer intervention programs. • Direct victim defendants to services and intervention options that will help achieve safety.
Probation **Parole**	• Reduce the use of technical violations overall. • Do not issue technical violations for actions related to survival needs or actions done under coercion related to the battering. • Use graduated sanctions. • Understand the scope and context of a victim defendant's use of violence.

[83] See the proposed New York Domestic Violence Survivors' Justice Act that allows judicial discretion in sentencing defendants who were victims of domestic violence at the time of the crime they were convicted of. http://www.nyscadv.org/domestic-violence-survivors-justice-act-2015/.

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Re-entry	• Stay aware of and responsive to the risks to a victim defendant by the person who has battered or is currently battering her. • Help victim-defendants shape compliance strategies to fulfill probation free from a batterer's coercive control and sabotage. • Attend to survival needs (e.g., financial, employment, safe housing, health care). • Use treatment programs that can address interconnected issues of substance abuse, trauma and/or mental illness. • Use education groups that address the nature and impact of battering. • Apply a relational approach that demonstrates empathy, respect, and regard for the victim defendant as a person. • Use a cognitive problem-solving approach. • Share information about community-based anti-domestic violence advocacy with all women on the probation or parole caseload. • Use battering- and trauma-specific assessments in addition to any tools used to establish general "risk" of "recidivism" or "re-arrest." • Provide transitional assistance to victim-defendants upon release from jail or prison. • Address interconnected issues related to a safe and stable life, including but not limited to safe housing for victim-defendants and their children, reunification with children and other family members, childcare and transportation, economic support and employment, housing, trauma support. • Support victim-defendants who seek civil protection orders on their own behalf, but do not require that they obtain such orders.
Incarceration	• Provide treatment programs that address the interconnected issues of substance abuse, trauma and/or mental illness. • Offer education groups that address the nature and impact of battering. • Provide options in non-secure settings that keep mothers and young children together. • Provide reproductive and general health care. • Use a relational approach that demonstrates empathy, respect, and regard. • Use a cognitive problem-solving approach. • Ensure that assessment and classification tools account for the unique risk factors and pathways for women's involvement in crime. • Establish and use gender-responsive and trauma-informed policy, practices,

Appendix 4A: Securing a Fair and Just Response to Victims of Battering Charged with Crimes Key Elements in the Criminal Legal System Response • Advocacy and services in all parts of the system • Attention to specific risks and context of battering • Access to competent legal counsel • Oppression-informed response[80] • Trauma-informed response[81] • Language access • Disaggregated data collection to include race, ethnicity, gender identity, sexual orientation, economic and employment status	
	and services, particularly in relation to strip searches, restraints, and solitary confinement. • Promote routine and quality contacts with children and other family members. • Provide access to civil legal help for mothers who seek a legal pathway to re-establish contact with their children during incarceration. • Remove any PREA (Prison Rape Elimination Act) responses that sanction women for unsubstantiated reports of sexual assault. • Ensure access to a legal library that includes information on release-related remedies and civil legal strategies related to family law, bankruptcy, and other common legal issues that victim defendants face. Provide pathways to reduced sentences for participation in education and rehabilitation programs.
Other	• Accept clemency petitions. • Grant pardons.

Appendix 4-B: Data Collection Workbook

There is no single approach to gathering statistical data about the extent to which victims of battering are charged with crimes. Technologies and information systems vary across jurisdictions and agencies, as do the levels of detail about crimes and the demographics of those who are arrested, charged, convicted, and incarcerated. The workbook suggests multiple sources to consult while "filling in the numbers" to establish a baseline of information about what is occurring in your community. Beyond its specific attention to victims of battering charged with crimes, the workbook covers the kind of information that a CCR would ordinarily seek as it shapes and monitors the criminal legal system response to domestic violence.

This might be the first time that anyone in your community has tried to discover what is happening for victims of battering charged with crimes. Part of the task will be to learn where and how information is collected and who can be helpful in locating it. No one source will have a complete picture. Some agencies may have relatively little statistical data to offer but may have suggestions on where to look or questions to ask.

Local Conditions and Questions

No single tool or approach meets the needs of all communities. The data workbook, like the Toolkit overall, reaches broadly to include many sources and categories of information related to victims of battering charged with crimes. What is useful to a remote Alaskan village, however, might be different than what is useful to an urban, metropolitan county.

It is unlikely that any community would be able to gather and complete every item in the workbook. Case data across the criminal legal system is often challenging to locate and rarely consistent from one agency to the next.[84] What kind of picture can your community draw about the numbers of battered women charged with crimes? What is readily accessible and what is missing? How might that picture be made more complete? These kinds of discussions are an important starting point for a CCR or other community response.

Local Sources

- CCR-type entity (e.g., Domestic Violence Coordinating Council or Domestic Abuse Intervention Project or Council on Family Violence) that collects aggregate data from local sources
- Law enforcement agencies
- Jail
- Community corrections (local pretrial release and/or probation)

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[84] "The open secret is that we know very little about much of how the criminal justice system operates in America . . . state, local and federal governments, which ought to rely on data to inform the policies they enact, just don't know." Among the questions that can't be answered: "how many domestic violence incidents are reported to the police." Tom Meaghger, "13 Important Questions About Criminal Justice We Can't Answer – And the government can't either," The Marshall Project, May 15, 2016.

- District attorney/prosecutor's office
- Court administration
- Community based organizations
    - Advocacy on behalf of victims of battering
    - Prisoner rights and re-entry
    - Criminal legal system reform
    - Immigrant rights

State and Tribal Sources

- State and tribal agencies with arrest, prosecution, and conviction data
- State departments of correction and tribal agencies with incarceration, probation, and parole data
- Sentencing commissions
- Advocacy coalitions
    - Victims of battering
    - Prisoner rights and re-entry
    - Criminal legal system reform
    - Immigrant rights

Why pay attention to statewide data?

Victims of battering end up in the state corrections system under conditions of incarceration, probation, and parole. Gathering some basic information about the numbers and demographics of women charged with crimes draws a more complete picture of how local conditions compare. Questions to consider include: Is your community incarcerating more or fewer women than elsewhere in the state? Are women charged with crimes in your community more likely to be incarcerated or receive probationary sentences for domestic violence-related crimes? Are certain populations disproportionately represented in the data of women arrested and charged with crimes?

TIPS

- The National Criminal Justice Reference Services provides links to statistical reports and other data published by the Bureau of Justice Statistics, National Institute of Justice, and other sources. The site can be searched by topic. Such data can be useful in comparing local information to national trends. https://www.ncjrs.gov/index.html

- A state department of corrections (DOC) website might have much useful information about incarceration, probation, and parole. It is not always obvious where information that is about or relevant to women might be located. For example, it might be under "Offender Services" or tucked in an annual report. If the website information seems minimal or out of date, search out the DOC research and planning office or statistical center to find out what they have and can share.

- The Tribal Law & Policy Institute provides information on justice systems in Indian County, including links to statistical data http://www.home.tlpi.org/current-projects

While your focus will most likely be on gathering local data, including any readily available statewide data is worth the effort. Before trying to get statewide data on your own, you may want to reach out to a statewide advocacy coalition or other organization to see if they have already gathered and analyzed some of the data you seek.

Completing the workbook

The workbook has three parts: (1) survey of how local records are organized, (2) local data items, and (3) state level data items.

Each section includes questions to answer to locate and secure access to criminal legal system data and information. While presented here in a workbook format, the fields can be adapted to other formats, such as a customized database or spreadsheet, according to local interest, capacity, and resources.

Again, it would be a rare community that could check off every item in the workbook. Criminal legal system agencies vary tremendously in how they are organized to collect and report basic data related to arrest, prosecution, and sentencing—let alone more nuanced information related to intimate partner violence and domestic violence crimes or race, ethnicity, gender identity, and sexual orientation. Some agencies have sophisticated databases that can generate detailed reports while others are far more limited.

Basic numbers – To begin, try to determine:

 # Intimate partner violence (IPV) arrests
 # Male IPV arrests & charges & disposition
 # Female IPV arrests & charges & disposition

The key? Start somewhere and do what you can. The detail in the workbook itself—even if you cannot fill in the numbers—is helpful in beginning to understand the range of information needed to draw a full and accurate picture of what is happening for victim defendants in your community. You can ease into gathering the information, particularly if your community is new to the issue of victims of battering charged with crimes or, as is common, unfamiliar with gathering comprehensive or even basic information about battering-related crimes in general. You can begin with one kind of data—perhaps arrest or perhaps a focus on sentencing—and expand from there. What is essential, however, is to step in somewhere and begin to more completely understand the extent and nature of what is happening.

Part 1: Access to local criminal legal system data

To collect statistical data related to victims of battering charged with crimes, it is useful to know how data in the criminal legal system is organized, where it is located, and who has access to it. The following worksheet covers the main points in the process: arrest, prosecution, and sentencing.[85] Completing the worksheet will help you organize information about how data related to intimate partner violence is collected and used, along with what kinds of data are more readily accessible and what is more difficult to obtain.

1. Start with any relevant reports that are available.

   Does your community's CCR or similar entity compile an annual report about domestic violence? Do the police department, sheriff's office, prosecutor, and other criminal legal system agencies publish annual reports?

2. Talk with representatives from the key agencies involved to learn about how data related to domestic violence crimes and intimate partner violence is collected and used.

   Involve the agency's representative to the CCR, if applicable, or approach an administrator, such as a ranking police officer or district attorney or director of probation. If there is a records office or other central point for collecting and managing data, ask to include them in the conversation about what gets collected and how. To gather the kinds of local data listed in Part 2, it will be helpful to have a central point of contact who is familiar with the agency's system and can run specific queries and reports.

3. Begin with a basic question—*what kind of data about domestic violence crimes does the agency collect*—and use the questions on the worksheet to fill in a more complete picture.

   Approach the discussion as a conversation. That initial question is likely to produce much of the information you need about what kind of data is available and how to obtain it before moving on to the kind of detail included in Part 3.

4. Explore the gaps and be curious about the barriers to gathering and sharing data about intimate partner violence and domestic violence crimes.

   If an agency says, "we don't collect that kind of data," find out why. If someone says, "I don't know," ask who might know.

[85] *Prosecution* data includes charging decisions, negotiated pleas, trials, acquittals, and convictions. *Sentencing* data includes length and conditions, incarceration, probation, and parole.

Part 1. Access to local CLS data about domestic violence crimes / intimate partner violence			
Do we know . . .	**Arrest**	**Prosecution**	**Sentencing**
Can we get any data at this stage?			
Where the data is located/kept?			
Who uses the data?			
Process for obtaining the data?			
If data can be retrieved and compared across years?			
If the data tracks all domestic violence-related crimes?[86]			
If the data distinguishes intimate partner relationships from other familial or household relationships?			

[86] *Domestic-violence related crimes* include those specifically classified as domestic violence (e.g., "DV Battery") plus those committed in the context of a domestic relationship (e.g., damage to property or trespassing).

Part 1. Access to local CLS data about domestic violence crimes / intimate partner violence			
Do we know . . .	**Arrest**	**Prosecution**	**Sentencing**
If data can be sorted by "victim" and "offender" according to . . .			
• Intimate partner relationship?			
• Gender?			
• Race?			
• Ethnicity?			
• Immigration status?			
• Tribal enrollment?			
What are the barriers to gathering data about domestic violence-related crimes and intimate partner violence?			

Part 2: Local data related to victims of battering charged with crimes

Part 2: Local data related to victims of battering charged with crimes		
Calendar year or other time frame:		
Data sources:[87]		
Can IPV-related arrests be separated out from the larger category of domestic violence (DV) involving other familial or household relationships?[88] ☐ YES – If yes, check box and use IPV-specific data to complete this section. ☐ NO – If no, check box and use available DV data to complete this section.		
ARRESTS	**Number**	
Total arrests coded as IPV/DV-related crimes		
Total all female[89] IPV/DV arrests		
• Female IPV/DV arrests: single arrest only		
• Female IPV/DV arrests: *dual* arrest (both parties)		
• Female IPV/DV arrest with male victim		
• Female IPV/DV arrest with female victim		
Total all male IPV/DV arrests		
• Male IPV/DV arrests: single arrest only		
• Male IPV/DV arrests: *dual* arrest (both parties)		
• Male IPV/DV arrest with female victim		
• Male IPV/DV arrest with male victim		
Race/ethnicity of persons arrested (enter the total number)	**Female**	**Male**
• African American or Black		
• American Indian or Alaska Native		
• Asian or Pacific Islander		
• Caucasian or White		
• Latina/Latino or Hispanic		
• Bi-racial/multi-racial (specify if you can)		
• Other (specify)		

[87] Specify whether data includes all jurisdictions or is more limited in scope. For example, *Data from City Police Department and Our County Sheriff's Office, covering 90% of the County population; does not include the following villages and municipalities . . .*

[88] Examples of the ways in which police and other agencies can separate IPV from larger DV data: include a data flag for IPV; run database queries to sort data by IPV relationships, such as spouse, boyfriend/girlfriend, etc.

[89] Given the high rates of violence against and arrests of transgender people, we encourage you to track this information if you can. There is space to include this data at the end of this section of the chart.

Part 2: Local data related to victims of battering charged with crimes		
Calendar year or other time frame:		
• Other (specify)		
• Other (specify)		
Immigrant or non-citizen arrests		
Transgender or gender non-conforming arrests		
Enrolled Tribal members		
PATTERNS IN FEMALE IPV ARRESTS: 5-year & 10-year comparisons		
Has the number of female IPV arrests *increased* in the past 5 years? ☐ Yes ☐ No ☐ Unknown		
Has the number of female IPV/DV arrests decreased in the past 5 years? ☐ Yes ☐ No ☐ Unknown		
Has the number of **dual** IPV/DV arrests *increased* in the past 5 years? ☐ Yes ☐ No ☐ Unknown		
Has the number of **dual** IPV/DV arrests decreased in the past 5 years? ☐ Yes ☐ No ☐ Unknown		
Has the number of female IPV/DV arrests *increased* in the past 10 years? ☐ Yes ☐ No ☐ Unknown		
Has the number of female IPV/DV arrests decreased in the past 10 years? ☐ Yes ☐ No ☐ Unknown		
Has the number of **dual** IPV/DV arrests *increased* in the past 10 years? ☐ Yes ☐ No ☐ Unknown		
Has the number of **dual** IPV/DV arrests decreased in the past 10 years? ☐ Yes ☐ No ☐ Unknown		
Have there been any changes in law or policy that might have affected in increase or decrease in female IPV/DV arrests? ☐ Yes ☐ No ☐ Unknown Describe:		
Does state law include dominant aggressor or primary aggressor language? ☐ Yes ☐ No ☐ Unknown How is it defined?		

Part 2: Local data related to victims of battering charged with crimes		
Calendar year or other time frame:		
FEMALE ARRESTS - IPV/DV: WHAT KINDS OF CHARGES? Adjust terms to reflect local statutory language. Note whether the count is based on one primary charge per case or on all charges issued.	**# Misdemeanor**	**# Felony**
• Homicide (adult victim)		
• Homicide (child victim)		
• Assault / battery (non-strangulation)		
• Assault / battery (strangulation involved)		
• Stalking		
• Sexual assault		
• Bail violation / violation of criminal no-contact order		
• Violation of a civil protective order		
• Parental kidnapping or custodial interference		
• Child abuse or neglect		
• False reporting / hindering prosecution / perjury		
• Drug related (e.g., possession, use, sale)		
• Prostitution		
• Economic crimes (e.g., robbery, forgery, burglary, retail theft)		
• Other (specify)		
• Other (specify)		
FEMALE ARRESTS - IPV/DV: WHAT HAPPENS? PROSECUTION Report the number of *cases*:	**# Misdemeanor**	**# Felony**
Referred by law enforcement agencies to prosecutor		
Declined / dismissed / no charges filed		
Charges filed (no deferred prosecution/diversion agreement)		
Deferred prosecution / diversion		
Dismissed after charging		
Negotiated plea		
Trial & guilty verdict		
Trial & acquittal		
FEMALE ARRESTS - IPV/DV: WHAT HAPPENS? SENTENCING □ Report the number of *cases*:	**# Misdemeanor**	**# Felony**
Jail or prison: no stay of sentence		
Jail or prison: sentence stayed		
Time served: with probation		
Time served: no probation		

Part 2: Local data related to victims of battering charged with crimes	
Calendar year or other time frame:	
FEMALE ARRESTS – IPV/DV: COMMON CONDITIONS OF PROBATION Check all that apply	
☐ No contact with victim in the crime ☐ No further violence ☐ No alcohol or drug use ☐ Random drug and alcohol testing ☐ Employment ☐ No firearms or other weapons ☐ Electronic monitoring ☐ Employment ☐ Psychological evaluation ☐ Mental health counseling	☐ Attend "anger management" ☐ Attend batterer intervention program ☐ Attend group for women who have used violence ☐ Housing in half-way house ☐ Supervised visitation with minor children ☐ Other common conditions (list)
Are conditions of probation for female defendants in IPV/DV cases generally the same regardless of the circumstances involved (i.e., "boilerplate" conditions)? ☐ Yes ☐ No ☐ Unknown	
Do conditions of probation for female defendants in IPV/DV reflect an attempt to determine and respond to whether the defendant is a victim of battering? ☐ Yes ☐ No ☐ Unknown	

Part 3: State-level data related to victims of battering charged with crimes

Part 3: State-level data related to victims of battering charged with crimes	
Calendar year or other time frame:	
LOCAL OR REGIONAL JAILS	**Number**
• Women incarcerated in our **local or regional jail**: ***pretrial***	
• Women incarcerated in our local or regional jail: *serving their sentences*	
• Women incarcerated in **jails statewide**: ***pretrial***	
Has the number of women incarcerated in jails increased or decreased in the past 10 years?	
Does your local or regional jail provide any services for battered women and/or to address domestic violence? ☐ Yes ☐ No ☐ Unknown If yes, what are those services? Who provides them (e.g., the jail through staff or outside contracts or community-based organizations)?	
Can you get information about the race, ethnicity, and sexual orientation of women in your local or regional jail? ☐ Yes ☐ No ☐ Unknown If yes, how do these numbers compare to the overall population in your community? Are certain groups overrepresented?	
STATE CORRECTIONS	**Number**
• Women incarcerated in **prisons** statewide	
• Women on **probation** statewide	
• Women on **parole** statewide	
Has the number of women incarcerated in *prisons* increased or decreased in the past 10 years?	
Has the number of women on *probation* increased or decreased in the past 10 years?	

Part 3: State-level data related to victims of battering charged with crimes
Calendar year or other time frame:
Has the number of women on *parole* increased or decreased in the past 10 years?
Have there been any changes in law or policy that might affect the increase or decrease in the numbers of women under state control/monitoring in these ways?
Are there any services run by or available through the Department of Corrections for battered women and/or to address domestic violence? ☐ Yes ☐ No ☐ Unknown If yes, what are those services? In what setting do they occur (i.e., prison, probation, parole)? Who provides them?
Does the Department of Corrections run or broker any community re-entry programs or initiatives? ☐ Yes ☐ No ☐ Unknown If yes, is there any specific programming for women? What does it include? Who provides it?
Can you get information about the race/ethnicity of women under state control/monitoring? ☐ Yes ☐ No ☐ Unknown If yes, how do these numbers compare to the overall population in your state? Are certain groups overrepresented? If yes, how do these numbers compare to incarcerated men? How similar is the statewide prison population to national data?

Appendix 4-C: Learning from Victims of Battering Charged with Crimes

Numbers suggest where to look further and questions to ask in discovering what is happening for victims of battering charged with crimes. Learning from victim defendants and examining the numbers through the lens of their experience is another key tool for drawing the picture.

- How has the battering that victim defendants have experienced been visible or invisible in the criminal legal system response?
- How are victim defendants connected with—or disconnected from—legal defense and advocacy?
- What kinds of supports and services have been in place or missing at each stage of the process?
- What has been most helpful to victim defendants? Least helpful?

These are the kinds of questions that learning from victim defendants will help you answer. Some of the learning will come directly via individual or group conversations with women. It will also come more indirectly via your own work as advocates and from other community-based organizations, such as those working on issues related to the rights of persons arrested, charged, and convicted in the criminal legal system.

Draw on the knowledge of community advocates and others

Community-based advocates have a central role in guiding any coordinated community response. They carry the collective experiences of the victims of battering they work with day in and day out into the CCR. They are positioned—or can position themselves—to see and hear about what is happening for battered women charged with crimes (see *Appendix 3-A: Advocacy Organization Survey*).

Similarly, community organizations active on issues of prisoner rights, community re-entry programs, and other aspects of criminal legal system reform may also have contact with victims of battering who have been charged with crimes, particularly if they are working with women who are on probation or returning to the community after incarceration.

- Provide a regular forum for community advocates and others to share what they are seeing and hearing from victims of battering charged with crimes.

  For example, incorporate into every CCR meeting or discussion a time for advocates to present an update on what they are learning from victims of battering about the criminal legal system's response and any information specific to victim defendants.

- Survey and/or conduct group discussions with community advocates and others to learn about specific questions related to the response to victim defendants.

  For example, if arrests of women for intimate-partner related crimes have increased, survey advocates and other staff who have the most contact with a wide range of women (e.g., via the crisis line, shelter, and support groups) about what they are seeing and hearing. Or, conduct a focus group discussion with advocates and others working with victims of battering in the community. If the increase in arrests seems to be occurring more for some women than others—for example, a greater impact on African American women or Latina immigrants or transgender persons—survey and/or hold focus group discussions with the organizations working most directly with victims from those communities.

  Tools for group discussions

  Conducting focus group-type discussions with victims of battering involves attention to everything from recruitment, compensation, and location to note-taking, facilitation, and group dynamics. See the following resources:

  Collaborating for Safety: Coordinating the Military and Civilian Response to Domestic Violence – Elements & Tools: Planning & Conducting Focus Groups, Battered Women's Justice Project

  http://www.bwjp.org/assets/documents/pdfs/collaborating_for_safety_coordinating_military_civilian_response_domestic_violence.pdf

  Focus Groups: An Important Tool for Strategic Planning, Justice Solutions

  http://www.justicesolutions.org/art_pub_focus_groups.pdf

- Seek out organizations and individuals outside of identified domestic violence advocacy organizations who have connections with victim defendants.

  Find out about what they are seeing and hearing from victim defendants. For example, staff in a women's correctional half-way house, advocates working with women who have been trafficked in the sex trades, social work staff in a public defender's office, and a supervised child visitation center might all have something to contribute to the picture of what is happening for victims of battering charged with crimes.

- Invite coalitions or organizations focused on the rights of incarcerated/formerly incarcerated people to CCR meetings to report on updates and trends they may see.

  Think of ways to collaborate with these coalitions and advocates. Does their work reflect a gender lens? How can you inform each other to expand support for victims of battering charged with crime and change a troubled criminal legal system?

Talk with victim defendants

Reaching and talking with victims of battering charged with crimes has a lot to do with community connection. It is most productive when victim defendants have relationships of trust and credibility with the organization or person asking for their participation and guidance. While a flyer announcing a focus group discussion will catch the eye of a few individuals, the request will receive far more attention if it is handed to a victim defendant by an advocate or someone else whom they know and trust.

> ***The National Clearinghouse is a Resource***
>
> *Consult with NCDBW to develop an approach and questions for group discussions with victims of battering charged with crimes.*
>
> 800/903-0111, ext. 3 or 215/351-0010
> http://www.ncdbw.org/

If possible, talk with victim defendants who no longer have open legal issues to avoid breaches of confidentiality and prevent putting victim defendants in the position of saying something that can potentially be used against them. If you are going to talk with victim defendants who are not completely through the criminal legal proceedings involving them, the cautions discussed earlier apply: (1) obtain the defense counsel's knowledge and consent prior to talking with a victim defendant and (2) redirect or avoid discussing the facts of the case with the victim defendant. (See *Appendix 3-A: Understanding the Impact of Criminal Charges*.)

Individual discussions

In some communities, one-on-one conversations may be the most accessible and productive way of hearing from victim defendants about their experiences. When the reported numbers of victim defendants are relatively small or can be identified only over time, individual discussions can be relatively easy to set up. When victims of battering are reluctant to appear in a group setting—because of personal unease speaking in front of others, for example, or because of fears that anything said in a group discussion will not be kept private—their contributions can be included if there is the option of speaking individually with them.

Group discussions

Group discussions are a way to hear from several individuals at once and to benefit from the ways in which interactions within the group can expand and deepen the conversation. One woman's account of how police responded to her, for example, will prompt similar or contrasting details from other participants and suggest ways in which self-defense or dominant aggressor determinations can be improved. Conducting a series of focus group discussions is a way to map out what happens for victim defendants at each step of the criminal legal system process.

Asking questions: general guidelines

Whether talking with victim defendants in an individual or a group setting, the kinds of questions asked will be similar and be shaped more by the topic or aspect of their experience that you want to learn about than whether you are speaking with one person or ten. The sample facilitation guide at the end of this appendix includes examples of a range of questions and related prompts that can be adapted for use in individual interviews or focus groups.

- Ask questions to learn about the criminal legal system response and related aspects of that response (i.e., criminal defense, re-entry to the community), but **not** the details of the abuse that a victim of battering has experienced or the case for which they were arrested.
- Use open-ended prompts, such as: "Please describe . . . tell me about . . . explain . . .what did you hope would happen?"
- Limit "yes/no" questions to surveying a specific action or experience. For example: "Did your attorney ever ask you about being abused or battered by your partner?" Or, "Did you spend time in jail?"
- Develop one or two questions to launch the discussion for key topics you want to explore. Use additional questions as prompts but stay flexible to exploring a different path depending upon what you are hearing.

Learning from victims of battering charged with crimes means learning about the system's response, <u>not</u> the details of the abuse that a victim of battering has experienced or the case for which they were arrested.

Considerations for safety and well-being

Victim defendants face the harm, fear, and trauma caused by battering. Many are survivors of sexual violence, experienced as children and/or as adults. Incarceration or other forms of state control also have had an impact on their lives and may have included sexual and/or physical violence committed by prison guards or other staff. Whether in an individual interview or focus group or other setting, it is essential to be transparent about the purpose and process of any discussions with victim defendants and to clearly state and affirm their right to stop participating at any point.

- Make it clear that a victim defendant has no obligation to participate.

  Whether in an individual or a group setting, ensure that victim defendants know that they are free to opt out of any question or to stop the conversation at any time. Affirm that each participant understands that she controls what she chooses to share and is free to say no to the discussion.

- Explain how the information provided will be used.

  Before any discussion begins, provide a thorough explanation of who will have access to the information a victim defendant provides and how it will be used. Will members of the CCR see it? The public? Will a transcript be released or a summary or list of common themes? Will direct quotes be used? Invite questions about how the material will be used.

- Explain how confidentiality of personal information will be maintained.

  Address all concerns a victim defendant may have about privacy. Provide assurance that names and other personal identifying information will be removed from any summaries, reports, excerpts, or other material. When a case might be recognized by distinctive circumstances or details of the parties involved, exercise caution in using it as an example and consult with the victim defendant about whether and how to use it. As needed, seek clarification from your organization's legal counsel, state or tribal coalition, and/or national technical assistance providers about how to best address victim defendant confidentiality in the context of assessing institutional practice.[90]

- Obtain informed consent to the discussion and to how the information provided will be used.

  Provide both written and verbal disclosure in the person's first language. Seek out those in the community who can help craft consent language that avoids jargon, fits the needs of people with limited literacy and comprehension skills, and will be understood by victim defendants from culturally and linguistically distinct communities.

- Focus on the institutional response.

  In the context of shifting a CCR's awareness and response, the purpose of discussions with victims of battering charged with crimes is to understand how the criminal legal system has intervened and with what impact. The purpose is not to draw out the specific details of the violence she has experienced, such as a minute-by-minute account of a beating or a rape. It is enough to know that a participant in an individual or group conversation identifies as having been abused by an intimate partner. Victim defendants must know that they are free to say as little or as much as they want to about what has happened in their lives prior to an arrest.

[90] The Battered Women's Justice Project has a variety of resources available that address issues of confidentiality and privilege in providing advocacy to victims of domestic and sexual violence, including *Advocacy Challenges in a CCR: Protecting Confidentiality While Promoting a Coordinated Response*, Sandra Tibbetts Murphy, January 2011. Access at http://www.bwjp.org/resource-center/resource-results/advocacy-challenges-in-a-ccr-protecting-confidentiality-while-promoting-a-coordinated-response.html. The National Clearinghouse has experience in organizing and conducting focus group discussions with victim defendants, including women who are incarcerated, and addressing confidentiality and informed consent.

- Avoid promising individual assistance with a victim defendant's case.

  Be clear up front and throughout discussions with victim defendants that you cannot talk about the details of their specific case or offer individualized assistance. While you will provide links to support and resources that might be helpful to an individual, these will be available to all discussion participants. While there also may be situations where you will be able to facilitate a later connection with more individual assistance, such as a referral to a defense attorney or someone who can assist with a clemency petition, do not promise such actions in the moment.

- Establish a respectful, supportive environment.

  Plan sufficient time for the discussion, including time to explain the purpose, answer questions, and obtain consent. Avoid an atmosphere that feels rushed or inattentive. Provide child care or an adequate stipend to offset the cost if women make their own arrangements. Allow ninety minutes to two hours for individual discussions and two to three hours for a group discussion. Take notes in the least obtrusive way possible, which may require a separate note taker and avoiding the use of audio or video recording. Provide tissues, snacks, and water or, if the discussion is being held via telephone or video, suggest that the person have such things on hand. Do not leave someone in distress. In addition to the facilitator and note taker, have an advocate available who can respond as needed. Provide links to support and resources and include a wrap-up question to bring the discussion to a close. "Is there anything else you would like to say? Is there anything else we should be paying attention to?" Thank participants for sharing their time and insights and provide a means for sharing any further thoughts, such as a contact and email link or postal address.

Compensation

A respectful environment includes compensation to those participating in individual or group discussions. You are asking victims of battering to teach you about how a complex system has become involved in and impacted their lives, often in ways very contrary to what they expected from it as they tried to escape the violence. Just as you might provide an honorarium and pay expenses for other kinds of experts, victims of battering should be compensated for providing their expertise. In addition, it is standard practice in social science research and community-based research and evaluation to provide compensation to individual informants and focus group participants.

Because you are talking with victims of battering *charged with crimes*, however, it is possible that some people at your organization or in your community might be concerned that compensating the participants makes it possible for them to somehow profit from their crime. This is less likely to be an issue if you are talking with women in the community who are not currently incarcerated, such as women who were arrested but never prosecuted or who were charged and sent to a diversion program or who were prosecuted and are either on probation or have served their sentence. In these circumstances, provide compensation in the form of cash or

a grocery gift card. If you encounter resistance, remind those who are objecting to the compensation that you are talking with victims of battering.

For incarcerated women, direct compensation is unlikely and may be prohibited. Depending upon the agreement with the prison or jail, however, some form of indirect compensation might be possible, such as a meal provided during a focus group discussion, a credit to be used at the prison commissary, samples of shampoo or soap, or magazine subscriptions to be shared throughout the facility.

Discussions with incarcerated women

If you talk only with victim defendants who were not sentenced to a term of incarceration, you risk missing critical information about what is happening for *all* victims of battering charged with crimes, given the many ramifications of being incarcerated. Holding discussion groups with victims of battering who are serving sentences in your local jail or in a prison requires support from the facility's administration and negotiation of how the groups will be conducted. Every detail of your process will be under review and discussion, from recruitment and facilitation to dates, number of participants and sessions, and whether there will be any kind of compensation. If possible, speak with women who are already sentenced. Even if they are sentenced, however, their cases may be on appeal or there may be other open legal issues, such as an upcoming parole hearing, that require ongoing vigilance to avoid discussion of the details of the participants' cases. The National Clearinghouse is available to assist in strategizing and planning a best approach to conducting discussions with incarcerated women.

Sample tools

The following tools illustrate the kinds of questions and content that can be explored in discussions with victims of battering charged with crimes, plus sample language for recruiting participants. Again, while flyers announcing a discussion group will catch the eye of a few individuals, they will be most useful when handed to victim defendants by an advocate or someone else whom they know and trust.

1. Key Themes and Questions: Focus Group with Women Arrested for Intimate Partner Violence

   Illustrates how a focus group was structured, the kinds of questions used, and the themes that emerged in response to the questions and discussion.

2. Discussion group flyer content – Sample #1: recruit women who have been arrested because of a domestic abuse complaint

   Provides an example of a flyer distributed primarily in person by community-based advocates and by facilitators of women's groups in neighborhood centers. Copies were also posted in the shelter, legal advocacy and support group meeting spaces, and the

prosecutor's victim/witness office. A prepaid postcard was attached to give women the option of sending their contact information to the organizer if they did not want to call.

3. Discussion group flyer content – Sample #2: recruit women who have been arrested, incarcerated, or on probation

   Includes a flyer targeted to formerly incarcerated victims of battering and their advocates. The flyer is a way to reach potential participants directly and through their advocates, who may or may not be affiliated with the recognized anti-domestic violence program. For a formerly incarcerated victim of battering, her primary advocate—if she has anyone—might be someone from a community re-entry organization.

4. Discussion Groups with Victims of Battering Charged with Crimes: Sample Planning Notes and Questions

   Illustrates a guide put together for discussion group organizers and facilitators to remind them of the goals, structure, cautions against talking about participant's individual cases, participants' right to opt out at any point, and possible questions to ask.

Sample of Key Themes and Question Path

Focus Group with Women Arrested for Intimate Partner Violence

This illustration is based on a community focus group held with women who had been arrested for domestic violence-related crimes (charges of disorderly conduct or domestic assault). The discussion was held to learn about the police and prosecution response when women who are being battered are arrested as domestic violence offenders. All women who participated had been arrested; none of their male partners had been arrested.

Women were not required to disclose the specific nature of the abuse they experienced. From the information they chose to share, however, it was apparent that the women had faced considerable ongoing coercion, control, and violence, including forced sexual activity, strangulation ("choking"), physical restraint, black eyes, permanent injuries, and threats to kill.

Key themes that emerged from the discussion:

- Regardless of whether the woman herself or another party made the 911 call, women wanted police to calm the situation and protect them from abuse.
- The mandatory arrest law appeared to be interpreted by the responding officers as requiring an arrest if it was a domestic violence-related call. Women understood the law in those terms as well: i.e., if police are called, someone must be arrested.
- Women felt that they were arrested because police did not understand their partners' behaviors. The women described how they were emotional and upset when the police arrived while their husbands or boyfriends had remained calm.
- Police treated them respectfully during the arrest, but the women were surprised that they had been arrested. Most felt that the officers spent more time interviewing their abusive partners rather than the women themselves. The consensus was that the police did not properly interpret the situation.
- Arrests of battered women are not necessarily occurring as part of a dual arrest situation, but as single arrests.
- Women tended to plead no-contest to the charges because they were afraid of jail terms and fines threatened by prosecutors and/or they just wanted to "get it over with" and not put their children through a trial. Half of the women had no legal representation.
- Women said they would not contact the police again, but would handle the situation themselves out of fear of being arrested again.[91]

[91] See National Domestic Violence Hotline, *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses* (2015), discussing how both the women who had called the police and the women who hadn't called the police shared a strong reluctance to turning to law enforcement for help. Also see, Sandra Park, Donna Coker and Julie Goldscheid, *Responses from the Field: Sexual Assault, Domestic Violence, and Policing* (2015), finding that that police hostility and bias remain problems for survivors of sexual and domestic violence.

Here is the thread of questions that emerged during the focus group conversation, along with two points of clarification and explanation offered by the facilitator in response to the information the women provided about their experiences.

- When you were arrested, who called the police?
- When you knew that the police were on their way, what did you want them to do?
- What did the police do when they arrived?
- Participant #3 made a comment and I want to check with everyone else. Did you get the impression from the police that if they came to the house they HAD to arrest someone?
- Why do you think you were arrested?
- At the time you were arrested, was your husband/ boyfriend also arrested?
- When the case moved to the District Attorney's office, what was that experience like?
- How has the arrest affected your life?
- If your husband/boyfriend—or a new partner—were to threaten you again, would you call the police?
- What should be done differently in our community, given the experience that you've had?
- What you've brought up shows why this discussion is very helpful. One of the concerns is the understanding and interpretation of the mandatory arrest law, which does not say that police *must* arrest someone when they go on a call. What it says is that *if* an officer has probable cause that a crime has been committed *and* it meets the statutory definition of domestic abuse, then the officer must arrest. If the officer doesn't make an arrest, there's a referral to the district attorney's office. Your comments are valuable in checking what the perception is and what the experiences are. It's also a requirement in the law that the dominant aggressor—the person who poses the greatest risk—is the person to be arrested if an arrest is made. One of the questions being raised is how well the police understand dominant aggressor and make arrest decisions.

Discussion group flyer content – Sample #1

Women's Health & Safety Study
Can You Help Us?

⇒ We will pay you for your time if you qualify for our focus group discussion ⇐

How do I qualify?

- You are a woman who was arrested because of a domestic abuse complaint by your husband or boyfriend (current or ex-)
- Arrest took place somewhere in Our County or Our City in [time frame]
- Case has been closed: dismissed by the district attorney or it went to court

What's a focus group? It's a discussion with 7 to 10 people about their views and experience of a topic. This group is a discussion about women's health and safety related to the experience of being arrested. [Facilitator name & affiliation] will lead the discussion.

When? [Day of the week & date]
5:30 to 7:30 PM (Pizza & soda provided)

Where? [Location name & address]
We'll send a map if you can come and provide cab fare if you need it

If you are interested, please:

1. Return the attached card, OR
2. E-mail to: healthsafetystudy@gmail.com, OR
3. Call me at 789-123-4567 (local number)

You will be paid $50 for your time, plus transportation and child care if needed.

What you say is confidential. We won't use your name or other identifying information in any reports. Only the facilitator [name & affiliation] will know your name. What you say will not affect any services you receive from any agency. The purpose of the discussion is to find out how to better support women's health and safety and respond to domestic abuse. *This study is not connected with any police agency or the district attorney's office*.

Thank You!

[Facilitator name, affiliation, & phone number/e-mail]

Attached card addressed to the focus group organizer includes:
Name / Address / Phone / E-mail
Good times to call / bad times
Can we leave a message?
Is there another number we can try?

Discussion group flyer content – Sample #2

SEEKING VOLUNTEERS FOR A DISCUSSION GROUP

Are you a woman who has been arrested or incarcerated or on probation AND who was abused by an intimate partner (e.g., husband, boyfriend, girlfriend)?

If you have been arrested or incarcerated and were abused by an intimate partner before entering jail or prison, the [Organization or Sponsoring group] would like to talk with you! We want to know:

- Did you get the help you needed after your arrest or during your time in jail or prison or on probation?
- If so, what was particularly helpful? If not, what do you wish had happened?
- What types of services or support would you have wanted while in jail or prison or on probation?
- What support did you need when you returned to your community?

We are holding a small, informal group discussion on [date] to get a better understanding of what services and resources were helpful to you, or would have been helpful. The conversation will not focus on people's individual cases. Instead, we want to get your ideas about how to improve our community's response to women who have experienced violence by an intimate partner and been charged with crimes. You will receive a $50 [Store] gift card for your participation.

WHAT	Discussion about the experiences of battered women charged with crimes (from arrest through incarceration or probation and release)
WHEN	[Date & time] (lunch provided)
WHERE	[Address]
WHO	Formerly incarcerated victims of battering & their advocates
WHY	Increase awareness of issues, highlight concerns, & develop tools for a more meaningful response
TO JOIN	To participate in this group conversation, please: • Call [name, organization, and phone] OR • E-mail her at [e-mail address] and put "Discussion Group" in the subject line

[Information about organization or sponsoring group; name, what it does, its mission, etc.]

Discussion Groups with Victims of Battering Charged with Crimes: Sample Planning Notes and Questions

This sample illustrates the kind of information and decisions that those planning a series of discussion groups would consider and need to make.

Overall goals:

- We want to talk with women who are victims of battering by their intimate partners and have been arrested, charged, incarcerated, or put on probation.
- We want to learn about effective and helpful interventions.
- We'd like to talk to women about what they found to be particularly helpful (as well as unhelpful), focusing primarily on the time from when they were arrested through being incarcerated, released, or on probation. We'll ask them about service providers, friends and families, legal professionals, and other people, groups and/or organizations. We'll ask about what was missing and what would have been helpful had it been offered and available.
- We'd also like to talk with women (especially those with sentences of 5 years or less) about what they think or anticipate will be particularly helpful to them as they leave prison and return to their communities.

What we are NOT doing (or, what's not in it for the participants):

- We want to be clear that we are not here to talk about their specific cases nor are we in positions to offer them individual assistance. Nor can we promise that we will have the people or other resources to provide individualized assistance later.
- We need to stress that we are in the process of merely exploring the possibility of trying to get resources to begin to work with charged, incarcerated, and formerly incarcerated women.

What's in it for the participants?

- They will be part of helping to better inform our community response and increase services for charged, incarcerated, and formerly incarcerated victims of battering—and keep women from being arrested and charged in the first place—although we cannot guarantee this result.
- Women who are not currently incarcerated will get $35 to $50 in cash or a grocery gift card, depending on what we can arrange. We will have to negotiate with jail and prison administrators about whether we can provide anything to incarcerated women.

Proposed structure:

- We would like to have four to six 2.5-hour discussion groups, assuming we get enough volunteers.
- We would like half of the groups to be with incarcerated women and half with women who have been charged or are on probation or released.

- We would like each group of have 7 to 10 women, with one or two facilitators and a note taker. We will have someone available who can provide emotional support and connections to follow-up support and resources as needed by individual participants.
- The note taker will use a laptop; we won't audio- or video-record the groups.

Give women permission to opt out at any time and urge them to take care of themselves and each other:

- Acknowledge that thinking about the past can be difficult and may bring up hard stuff, etc., and they are free to opt out of the discussion at any time. They can pass on a question or decide not to participate at all.
- Let women know that the focus of our questions will be from the time of the arrest onward and on how the criminal legal system responded.
- Let women know that we are not asking about details of the violence/abuse they've experienced. We have so little information about the ways of being helpful or unhelpful from the time of arrest on through the criminal case process that we need to zero in on the system's response. We need their insights to provide us with that information.

Possible questions; we will go with the flow of the group's conversations and insights:

Time of the arrest

- A possible opener: Thinking back to before you were arrested, did you know there were programs for battered women/victims of domestic violence in your community?
- For those of you who did know, did you ever call the program? Why or why not? (If they didn't think the services were for them, ask who they thought they were for).
- Thinking back to when you were arrested, is there anything that you know now that you wish you had known then that would have made a difference in what happened?
    - See if anyone answers; if not, probe further:
        - For those of you who called the police during or right after the incident, did you tell them the whole story when they arrived?
        - Could your partner hear what you were saying when you talked with the police? See you? Did the police separate you? Could you have asked the police to do that?
    - For those of you who gave a statement to the police: Was that version of the story used against you in any way later in the process? Do you remember being read your rights (to remain silent)?
    - Survey participants who said that they talked to a program for domestic violence victims *before* they were arrested. Ask for a show of hands in response to each question. If the domestic violence program had included information on "what to do if you are arrested," would that have been (1) too scary to think about so you probably would have ignored it or assumed it would never apply to you; (2), thought that the information could be helpful but would have probably forgotten it by the time of your arrest? Ask about other reactions or comments on whether and how such information might be useful.

While in jail/pre-trial

- Find out who spent time in jail and for how long.
- Was there anything you did or anyone you were in touch with during your time in jail that was particularly helpful? People from the inside? Resources? "Rituals" (e.g., prayer, writing letters, journal writing)?
- What would have been helpful to you while you were in jail? Visits? Being able to call people? Books? Stamps? Other? Self-soothing techniques?
- For those of you with children who wanted your children to visit, were you able to have as many visits as you wished? If not, why not? What kept your children from visiting as much as you would have liked? (Explore barriers such as transportation, distance, someone to accompany the children, limited visiting hours.)
- If there had been a brochure in the jail saying you could make a collect call to the local domestic violence advocacy program, might you have done that? Why or why not? And if you called the advocacy program, what would you want them to do? If there was such a brochure, what might have caught your attention and got you to say, "Hey, they are talking about me!" How would you have reacted to "Have you ever been [abused] by your [partner]?"
- Did your attorney ever ask you about being abused/battered by your partner? Do you remember how they asked about it? Did you feel like you were given a chance to tell your attorney your full story? All the relevant information? What would you like us to tell defense attorneys who are representing other women in your situation?
- Was there anyone, whether your attorney or anyone else, who was explaining what was going on and what you could expect at each stage of your case? If yes, what kind of information was most helpful. What kind of information would have been helpful?

During trial and sentencing hearing

- Find out how many had a trial; many may have pled. For those of you who had a trial, was there anything about your trial that you feel good about? Anything particularly bad?
- Anything particularly good/helpful about the sentencing hearing? Particularly bad?

Since incarcerated

- What has been particularly difficult? What have you been able to do (if anything) to help make it be less difficult/painful?
- If there are things you do that you find helpful to deal with the stress/difficulties AND that you want to share with us, we'd love to hear about them so we can share those tips/techniques with other incarcerated women.
- In addition to your own ways of taking care of yourself, has there been anything else that help makes the time here less difficult? Classes, decent jobs, groups, contact with children and other family, etc.?
- If you could have any outside group come in, who would that be? What would you want them to do?
- If an organization that worked with women who have been battered—i.e., a "domestic violence" organization—could send people in, what would you like them to do?

When released (for the short-termers or for those who have been released)

- What do you think you will need/needed once you are/were released to help you successfully transition back to the community?
- How might a domestic violence advocacy program help you/might have helped you?

For those who received a probationary sentence

- Did your probation agent ever ask you about being abused/battered by your partner? How did he or she ask about it? Did you feel like you were given a chance to tell your probation agent your full story?
- Did probation connect you with any kind of support or programs for victims of battering?

Appendix 4-D: Reviewing Cases

Reviewing cases can provide a window into criminal legal system practice and the extent to which the response pays attention to or misses battering in the lives of victim defendants. Case review is particularly useful in learning about how what happens in the early stages of a case can influence so much of what happens at each subsequent step.

- How do responding officers interpret probable cause, self-defense, and dominant aggressor in intimate partner violence cases?
- How do those interpretations impact arrest decisions?
- How does the documentation in police reports convey information that helps or hinders prosecutors in making appropriate charging decisions?

Case review can be relatively simple and straightforward or it can be more complicated and complex, depending upon local conditions and the kinds of questions being asked. When CCR members are already comfortable with working together to identify and solve problems, there might be logistical hurdles in locating and preparing cases to review but the buy-in to use this approach is largely in place. Case review will be more complicated—and perhaps not feasible at all—if key players are unaccustomed to a shared problem-solving approach or if there is a high level of mistrust and suspicion. It is important to remember, and perhaps to remind others, that the goal and purpose of reviewing cases is to improve the community's response to victims of battering, not to criticize specific individuals or agencies.

Following cases through the entire criminal legal system process, from arrest to prosecution and sentencing, is a big undertaking. You will want to start small.[92] For example, examining police reports to learn about how officers are making and documenting self-defense determinations, is a manageable and informative place to begin. Analyzing presentence investigation (PSI) reports for victim defendants to see whether and how the PSI pays attention to battering is another useful starting point. The scope of the review will be influenced by case volume and other local conditions. A smaller community might be able to look at every case that occurs within a certain time frame, for example, while a larger community may have to select a more limited sample to review.

A basic form of case analysis is within the capacity of many communities. The following example provides a step-by-step illustration of the method. For more complex applications, consultation with the National Clearinghouse and its partners will help you design an effective approach to reviewing victim-defendant cases.

[92] Although some communities might be positioned to conduct a much more ambitious study of the experiences of battered women charged with crimes. The Institutional Analysis methodology developed by Praxis International can be helpful in designing an approach to complex types of case review, as well as other ways of examining criminal legal system intervention. Also, see the approach and related publications of the King County Victim Defendant Project, which has included case file review among its methods of inquiry.

Case Review Applied Example: Any Town CCR

The following illustration has been adapted from *Text Analysis as a Tool for a Coordinated Community Response: Keeping Safety for Battered Women and their Children at the Center*, published by Praxis International.[93]

This CCR—we will call it Any Town CCR—wanted to look at arrests of women in intimate partner violence cases in the community. The issue emerged after a discussion with community-based advocates. Twice a year the CCR convenes a panel of advocates that includes those most directly involved with the CCR plus those who have contact with victims of battering in the community via other organizations and roles. The panel typically includes a mix of legal advocates and support group facilitators, staff from the YWCA housing program, facilitators from women's groups located in neighborhood centers, and advocates from culturally-specific organizations. "What's going on?" several members of the panel asked. "We're seeing a lot of battered women getting arrested."

Was this a widespread problem or the impact of one or two cases that were handled poorly? Were "a lot" of battered women really getting arrested? If so, was it happening across the community or for some women more than others? The Any Town CCR formed an ad hoc work group to find out. The group included two advocates, a patrol officer, and a patrol sergeant.

The group started by gathering numbers. Police department data showed that over the past two years the numbers of dual arrests and arrests of female suspects in intimate partner violence cases had crept upward, with a spike in female arrests in the past six months. The group decided to do a close analysis of police reports and see what they could discover. They wanted to see how officers were collecting and documenting evidence, interviewing witnesses, determining self-defense, and making dominant aggressor decisions.

The approach

The ad hoc work group took the following broad steps in reviewing cases where women had been arrested in intimate partner cases:

1. Read the state law and police department policy to see what it required officers to do. They paid attention to directives on dual arrests, self-defense, and dominant aggressor in domestic violence cases.
2. Received an overview from the assistant prosecutor (one of the team members) about state law and relevant case law to more fully understand the parameters of self-defense, including in cases that involve intimate partners.
3. Requested copies of any training bulletins issued to officers in the past two years.

[93] Ellen Pence and Jane Sadusky, *Text Analysis for a Coordinated Community Response: Keeping Safety for Battered Women and their Children Center* (2006). Planning and organizing a case file review involves many steps and considerations related to access to records, confidentiality, redacting documents, and guiding the analysis. The guide provides details on the logistics of putting it all together and is available for free download from Praxis International.

4. Read fifteen police reports from previous year, split between five with a double/dual arrest, five with a single arrest of a male suspect, and five with a single arrest of a female subject.
5. Listened to as many of the 911 tapes associated with the reports as possible.
6. Decided to study a second batch of police reports, this time focusing on the most recent six-month period and looking at six double/dual arrest cases and six where there was a single arrest of a female suspect.

The results

The work group saw patterns emerging in the first group of case reports that they analyzed. They added the second group to make sure that what they were seeing was reflective of practice. They made two broad discoveries that reinforced the concerns that had been raised about an increasing number of victims of battering being arrested.

1. A double or dual arrest was more likely when the woman was incapacitated by alcohol or drugs or when she was a limited or less proficient English speaker than the male party.
2. In two-thirds of the female arrests, patrol practices appeared to contribute to outcomes where someone acting in self-defense or who was not the dominant aggressor was arrested.

The work group found specific patrol practices (as described below) that appeared to contribute to arrest of someone who was likely acting to resist an assault:

- Officers tended to base the arrest decision on the statement of the first party to claim an assault, without questioning all parties involved.
- Interviews with the parties, other witnesses, and 911 callers were often missing or limited in detail, resulting in lack of follow-up to contradictory statements and statements that were not linked to observable evidence. In cases where the work group heard the 911 recording, they found information related to conditions at the scene that officers should have included in determinations of self-defense or dominant aggressor.
- When a female party reported strangulation or suffocation, the absence of immediate visible injuries led to hasty decisions to dismiss her claims that she was acting in self-defense.
- In three-fourths of the female arrests, the male parties claimed that she was on medication, bipolar, or suicidal. Such claims were associated with missing or less thorough interviews of female suspects.
- If a female party was drinking or seemingly incoherent, officers often narrowed the investigation and did not follow up with other witnesses or attempt to interview the male party.
- While state law and departmental policy specify a dominant aggressor determination, officers rarely documented the elements contributing to that determination. “I arrested Jane Doe as the dominant aggressor” was the extent of the documentation in most reports.

The next steps

The work group and other members of the Any Town CCR met with police department administrators to review and discuss the results of case analysis. Administrators were surprised at the limited documentation of self-defense and dominant aggressor decisions. They also expected to see more attention to other witnesses. They noted that there had been a lot of departmental turnover recently, resulting in new supervisors and new patrol officers, and there had been no in-service training on domestic violence in almost three years.

The department and Any Town CCR agreed to take the following actions to help reduce the number of victims of battering charged with crimes.

- Issue a "chief's memo" to remind officers of the policy expectations.
- Conduct patrol roll-call training to review requirements for report writing and documentation in domestic violence cases, reiterate attention to self-defense and to dominant aggressor determinations, and reinforce policy that discourages dual arrest.
- Strengthen supervisory review of arrest decisions. Designated patrol sergeants would review all dual and female intimate partner violence arrests.
- Develop and implement a check-list to guide self-defense and dominant aggressor determinations and evidence-gathering related to resistive/defensive injuries.
- Conduct department-wide in-service training that includes self-defense and dominant aggressor determinations, strangulation evidence, and communication with persons with limited English proficiency.
- Conduct case reviews with the case review work group or a similar ad hoc group in four months and again at eight and twelve months.

The Any Town CCR's discussion of the case analysis results raised additional questions that it decided to pursue as it planned its ongoing work. One area of concern was how to best prepare everyone in the system to be more effective and more protective of victims of battering, especially those who are treated as lacking credibility because of alcohol or drug use, a common coping mechanism that also is also correlated with repeat victimization. Another area of concern was to better position interveners to recognize and respond to batterers' manipulation of the system's response by claiming a victim of battering is "crazy" or "a drunk" and how to best respond when women do have mental health or addiction challenges—and increased vulnerability—in their lives.

The Any Town CCR also decided to look more broadly at what was happening for women after an arrest. They posed this question: Are we in any way at other points in the criminal legal system treating victims of ongoing abuse who use some level of force in response as *batterers*? If so, what are the implications for public safety and for a just response to victims of battering?

The CCR decided to look next at what was happening at prosecution, and perhaps beyond. It was clear from the study of arrest reports that the numbers of women arrested had indeed increased in the past year, as advocates had sensed, and that many of those arrests may not have been warranted if self-defense and been thoroughly investigated and if dominant aggressor determinations had been correctly made. But what had happened with those cases? Did prosecutors pursue charges or did they question the arrest decision and send the cases down a

different path? Did they treat the victim defendants as *batterers* or did they apply a different lens?

Work group members recognized there were still many questions that need to be explored and answered and, based on the responses to those questions, additional changes to policies and practices in their community.

Appendix 4-E: Analyzing Current Practice

Appendix 4-E provides a template for analyzing what you have discovered from collecting statistical data, talking with victims, reviewing cases, and the ongoing dialogue that advocates and CCR partners contribute to the analysis of current practice. The template helps organize what you have learned to help gauge the kinds of changes that might be needed to better secure a safe, fair, and just response for victims of battering charged with crimes. Use the template as formatted, as the basis of a report to the CCR or individual agencies, or as a framework for other community discussions, according to your local needs.

Questions

The template is organized around the following key questions, with a series of sub-questions to help provide detail about what you have learned related to each topic:

1. Who is getting arrested for crimes related to intimate partner assault?
2. What types of cases or charges bring victims of battering into the criminal legal system as defendants?
3. How do responding officers interpret probable cause, self-defense, and dominant/primary aggressor guidelines when making arrests?
4. What happens after victims of battering are arrested?
5. What happens when immigrant battered women are arrested?
6. Does the prosecutor formally or informally screen domestic violence cases or any other type of case to see if the defendant is a victim a battering? How and what happens as a result?
7. What role, if any, do probation and/or pretrial personnel play in screening defendants to see if they might be victims of battering?
8. Does the community-based advocacy program assist victim defendants?
9. Does the batterer intervention program (BIP) routinely assess or screen to determine if the person referred is a batterer?
10. Summing up: how does our community response meet the challenges to a safe, fair, and just response for victims of battering charged with crimes?

Discoveries

This column provides a place to summarize key points about what you have learned and to identify practices in the criminal legal system response that contribute to or inhibit a fair and just response for victims of battering charged with crimes.

Changes / Information Needed

This column lists the kinds of changes to be made to address the problems and gaps in practice that have been identified. It also includes notes on additional information that may be needed to more adequately answer the questions.

Cross Reference: Securing a Fair and Just Response

Use *Appendix 4-A: Securing a Fair and Just Response to Victims of Battering Charged with Crimes*, as reference point when summarizing what your community has learned and the changes that CCR partners and criminal legal system agencies may need to make. Appendix 4-A is a snapshot of the kinds of systemic change that can help secure a fair and just response to victim defendants and keep victims of battering from being charged with crimes.

Technical Assistance

Consult the National Clearinghouse and other sources of technical assistance included in *Section 5 – Resources and References*, as you develop a plan for change or address specific problems in your community's response. The examples and organizations included represent many years of expertise related to advocacy on behalf of victims of battering charged with crimes, coordinated community response, criminal legal system reform, and strategies for systemic change.

National Clearinghouse for the Defense of Battered Women

800/903-0111, ext. 3 or 215/351-0010

http://www.ncdbw.org/

Appendix 4E: Analyzing Current Practice		
What supports a safe, fair, and just response for victims of battering charged with crimes? What needs to change?		
Questions	**Discoveries**	**Changes / Information Needed**
[1] Who is getting arrested for crimes related to intimate partner assault? A. How many arrests involve single arrests (only one person gets arrested)? **Dual arrests** (both parties get arrested)? B. What percentage of partner assault arrests identify the arrested person as male? As female? C. What is the race/ethnicity breakdown of arrests of ***men*** for partner assaults? The race/ethnicity breakdown of arrests of ***women***? D. Are a disproportionate number of arrests occurring in certain communities, neighborhoods, or precincts? For example, are a high percentage of transgender people getting arrested for intimate partner assault? Are even more transgender people of color getting arrested? E. What immigrant populations live in the community? Are a disproportionate number of the partner assault arrests of immigrants? Does a high percentage of these arrests involve immigrant women?		

Appendix 4E: Analyzing Current Practice		
What supports a safe, fair, and just response for victims of battering charged with crimes? What needs to change?		
Questions	**Discoveries**	**Changes / Information Needed**
[2] What types of cases or charges bring victims of battering into the criminal legal system as defendants? What are the numbers? A. Homicide B. Assault / battery C. Stalking D. Sexual assault E. Bail no-contact order violation F. Violation of civil protective order G. Parental kidnapping or custodial interference H. Child abuse or neglect I. False reporting / hindering prosecution / perjury J. Drug-related K. Prostitution L. Economic crimes M. Other (specify)		
[3] How do responding officers interpret probable cause, self-defense, and dominant (primary) aggressor guidelines when making arrests? A. Is self-defense assessed prior to an arrest decision? B. Are thorough dominant aggressor determinations being made prior to an arrest decision? C. Is there a problem with current statutes or policies? D. Is there a problem with law enforcement practice that could be improved by additional information and training? E. What messages (if any) are police getting from prosecutors or from their superiors about determining		

Appendix 4E: Analyzing Current Practice		
What supports a safe, fair, and just response for victims of battering charged with crimes? What needs to change?		
Questions	**Discoveries**	**Changes / Information Needed**
who to arrest? About how to determine dominant or primary aggressor (if in place)?		
[4] What happens after victims of battering are arrested? A. Are they getting reasonable bail/conditions of release in relation to the risk posed? B. Are they pleading out early in the process? If so, why? C. Are they consulting with defense counsel before pleading? Is defense counsel asking about their experiences of being battered to find out if that information might be relevant to a possible defense or negotiation with the district attorney/prosecutors? D. What is happening to their children? Is child protective services removing the children when the victim is arrested or are the children likely to stay with relatives or friends? E. Is a community-based victim advocacy program getting in touch with victims who are arrested? At what point?		
[5] What happens when immigrant battered women are arrested? A. Was independent language interpretation available at the scene? Are immigrant		

Appendix 4E: Analyzing Current Practice		
What supports a safe, fair, and just response for victims of battering charged with crimes? What needs to change?		
Questions	**Discoveries**	**Changes / Information Needed**
women's partners or children being used as interpreters at the time of an arrest? B. Do immigrant battered women who are arrested get immediate access to interpreters and culturally-specific advocacy? C. Are they spending longer time in jail than citizen victim defendants because of language barriers? Getting a higher bail? D. Are they getting sent to ICE detention facilities (U.S. Immigration and Customs Enforcement)? E. Are they being deported following arrest or convictions? F. What happens to their children?		
[6] Does the prosecutor formally or informally screen domestic violence cases or any other type of case to see if the defendant is a victim a battering? A. If so, what is the screening process? In which cases? B. What kind of information is involved in the screening and from what sources (e.g., other police reports, victim-witness program staff, community-based advocates, defense counsel, etc.)? C. If the prosecutor determines the defendant is a victim of ongoing battering, what happens? Is the prosecutor willing to drop the charges? If so, under what circumstances?		

Appendix 4E: Analyzing Current Practice		
What supports a safe, fair, and just response for victims of battering charged with crimes? What needs to change?		
Questions	**Discoveries**	**Changes / Information Needed**
[7] What role, if any, do probation and/or pretrial personnel play in screening defendants to see if they might be victims of battering? A. What type of screening? What are they screening for? B. Who gets screened? At what stages (pretrial, post-conviction)? Is it the same screening regardless of conviction? C. What process do probation and/or pretrial screeners use? Are they trying to identify who is a batterer? Who is a victim of battering? Who is neither? D. If a probation or pretrial screener identifies a victim defendant, what happens? E. Do probation or pretrial screeners have discretion to let the court know a defendant is a victim of battering? To recommend different/fewer conditions of probation or pretrial release than would be standard for another "domestic violence" case? F. If a probation officer identifies someone under supervision as a victim defendant what, if anything, do they do differently in their response to that probationer? G. Does probation have a specialized domestic violence unit or case load? H. Does having a specialized unit make it easier or more difficult to create a different probation response to victim-defendants than for batterers?		

Appendix 4E: Analyzing Current Practice		
What supports a safe, fair, and just response for victims of battering charged with crimes? What needs to change?		
Questions	**Discoveries**	**Changes / Information Needed**
[8] Does the community-based advocacy program (or programs) assist victim defendants? A. If no, why not? B. If yes, what types of assistance and advocacy do they provide? C. At what points in the criminal case process? D. Is the advocacy program contacting defense counsel before talking with the defendant? E. Approximately how many victim defendants a month does the program assist? F. In what settings (hotline/other phone contact; program office/shelter; at jail; at prison; in court)? G. What types of assistance is provided (e.g., legal advocacy, outreach at jail, groups in jail or prison, emotional support, help finding a defense attorney or expert, etc.)? H. If there are multiple advocacy programs in the community, how are they similar or different in their work with victim defendants?		
[9] Does the batterer intervention program routinely assess or screen to determine if the person referred is a batterer? A. If yes, do they assess/screen everyone who is sent to them? What do they assess/screen for? B. What assessment/screening process do they use to		

Appendix 4E: Analyzing Current Practice		
What supports a safe, fair, and just response for victims of battering charged with crimes? What needs to change?		
Questions	**Discoveries**	**Changes / Information Needed**
determine if the person is appropriate for the group? C. Is participation in batterer intervention mandatory for people convicted of a domestic violence crime/an assault against one's intimate partner? If so, are a lot of women being sent to these groups? D. Are there groups for women who are convicted for domestic violence crimes in your community? Are women routinely ordered to attend? E. How are the groups for women similar to groups for men convicted of a domestic violence crime? How are they different from groups for men? F. Are there groups for women who are not court-ordered that focus on their use of violence/their use of force?		
[10] Summing up: how does our community response meet the challenges to a safe, fair, and just response for victims of battering charged with crimes? A. Are victim defendants routinely identified and connected with support and defense-based advocacy? B. Do practitioners at all stages of the criminal legal system act from knowledge of the actions and mitigating circumstances (i.e., context) specific to battering? C. Is attention to the intersecting and magnified risks that victim		

Appendix 4E: Analyzing Current Practice		
What supports a safe, fair, and just response for victims of battering charged with crimes? What needs to change?		
Questions	**Discoveries**	**Changes / Information Needed**
defendants face built into each step of a criminal case? D. Do accurate self-defense and dominant aggressor determinations help keep victims of battering from falling further into the criminal case process? E. Is prosecutorial discretion routinely applied to dismiss charges against victim defendants? F. Do CCR partners support community-based advocates to work on behalf of victim defendants? G. Does advocacy and the CCR welcome and encourage a defense-based perspective that supports the tenets of criminal defense on behalf of victim defendants and all defendants? H. Has advocacy and the CCR built relationships with community organizations that work with women who are incarcerated, on probation, or returning to the community?		